Judicial Branch Contracting Manual

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JUDICIAL COUNCIL OF CALIFORNIA

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INTRODUCTION

Original Release Date: October 1, 2011	Revised Effective~~Revision Date~~: ~~August 31, 2012~~ January 1, 2014

1. STATUTORY BASIS FOR THIS JUDICIAL BRANCH CONTRACTING MANUAL

On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the Public Contract Code (PCC) designated the California Judicial Branch Contract Law (JBCL).[1] With certain exceptions,[2] the JBCL requires that superior and appellate courts, the Judicial Council of California (Judicial Council), the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (HCRC) (referred to collectively as judicial branch entities or JBEs) comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.

Judicial Branch Contracting Manual

PCC 19206 of the JBCL requires the Judicial Council to adopt and publish a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that JBEs must follow. The policies and procedures in the Judicial Branch Contracting Manual must be "consistent with" the PCC and "substantially similar" to the provisions contained in the *State Administrative Manual* (SAM) and the *State Contracting Manual* (SCM).

Applicable Dates of JBCL Requirements

The JBCL became effective March 24, 2011, and applies to all contracts initially entered into or amended on or after October 1, 2011. PCC 19206 requires the council to adopt and publish a Judicial Branch Contracting Manual no later than January 1, 2012, but PCC 19204(d) provides that until the council adopts and publishes the required manual, JBEs "shall instead be governed by applicable policies and procedures in the State Administrative Manual and the State Contracting Manual, or policies and procedures as otherwise required by law to be adopted by the Department of General Services applicable to state agencies."

On August 26, 2011, the Judicial Council adopted this *Judicial Branch Contracting Manual* (Manual) in compliance with PCC 19206. The original effective date of this Manual is October 1, 2011, and the~~later~~ effective date~~s~~ of the last revision~~s~~ to each chapter of the Manual is~~are~~ reflected on the first page of each chapter.

[1] SB 78 (Comm. on Budget and Fiscal Review, Stats. 2011, ch.10). The California Judicial Branch Contract Law is at PCC 19201–19210. The law was amended by SB 92 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 36), effective June 30, 2011.
[2] See PCC 19204(c), 19207, and 19208.

2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

Development of this Manual was guided by the principles reflected in the findings and declarations of the Legislature in enacting the PCC, which express the legislative intent to achieve the following objectives as set forth in PCC 100:

- To clarify the law with respect to competitive bidding requirements;
- To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds;
- To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and
- To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

In addition, the Legislature has declared that California public contract law "should be efficient and the product of the best of modern practice and research" (PCC 101) and that, "to encourage competition and to aid in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform." (PCC 102)

Development of this Manual was complicated by the inapplicability of the SAM and SCM to the organization and operations of JBEs. The SAM and SCM were written for use by executive branch agencies, with the Department of General Services (DGS) as the entity charged with administering those agencies' procurement and contracting activities. In contrast, management in the judicial branch is decentralized; for the superior courts, by way of example, the presiding judge of each court is responsible for approving procurements and contracts and the court executive officer is responsible for contract negotiations.[3] In addition, PCC 19207 acknowledges that neither DGS nor any other state entity is involved in approval or review of judicial branch procurement, except as specifically required by law. As a result, much of the material in the SAM and SCM either does not apply to JBEs or is incompatible with judicial branch organization and operations. Additionally, even when applied to the executive branch, SAM and SCM

[3]CRC 10.603(c)(6)(D) and 10.610(c)(3); GC 77009(e). Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., SCM, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). In light of the decentralized structure of the judicial branch, and the fact that each JBE possesses its own purchasing authority, certain PCC provisions granting authority to DGS or the Director of DGS have been interpreted as granting equivalent authority to each JBE, or the Approving Authority of each JBE.

procurement and contracting policies and procedures have been found by government studies to be out-dated, ineffective, and ultimately costly.[4]

Because of the fundamental differences between the underlying and often out-dated assumptions of the SAM and SCM and the organization and operations of JBEs, the drafters of this Manual balanced the conflicting requirements of incorporating "substantially similar" policies and procedures from SAM and SCM and accomplishing the legislative objectives of PCC 100–102. As a result, when the SAM or SCM did not implement a specific PCC requirement, but rather a DGS concept or process, the drafters interpreted the provision in light of PCC 100–102 and the business operations and organizational structure of the judicial branch. If a SAM or SCM provision was not compatible for literal adoption in the context of judicial branch operations, the drafters distilled that provision to its essential objective and then developed processes and procedures that achieve the same objective in a manner compatible with judicial branch organization and operations. Thus, the processes and procedures reflected in this Manual are intended to implement the objectives of both the underlying SAM or SCM provision and, most importantly, PCC 100–102.

3. INTERPRETATION AND APPLICATION OF THIS MANUAL

In interpreting the requirements of this Manual and applying those requirements in the context of their own local operations and specific procurements, JBEs should seek to achieve the objectives of PCC 100, including ensuring full compliance with competitive bidding statutes; providing all qualified bidders with a fair opportunity to enter the bidding process; and eliminating favoritism, fraud, and corruption in the awarding of public contracts. Under the decentralized management system of the judicial branch, each Judicial Branch Entity is vested with individual purchasing authority.[5] In the case of a superior court, the purchasing authority is vested in the presiding judge.[6] To meet the unique needs of the court and ultimately achieve the goals set forth in PCC 100–102, each presiding judge has the authority to vary the court's application of any nonmandatory business or accounting practice set forth in this Manual. Any variances should be documented in the court's Local Contracting Manual.

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[4]See California Performance Review, *The Report of the California Performance Review,* Vol. 4, Chapter 7, Statewide Operations-Procurement (2007)~~,~~ ~~www.cpr.ca.gov/CPR_Report/Issues_and_Recommendations/Chapter_7_Statewide_Operations/Procurement/Chapter_7D_Summary.html (as of August 17, 2012)~~.

[5]See section 1.1.A of chapter 1 of this Manual for the source and designation for each JBE's purchasing authority.

[6]CRC 10.603(c)(6)(D).

In this Manual, when the verb "include" is used to preface a list, the list is not exhaustive. The AOC Legal Services Office (AOC/LSO)~~GC~~ is available to assist JBEs in answering questions or providing clarification regarding this Manual.

4. LOCAL CONTRACTING MANUAL

PCC 19206 requires the Judicial Council to include in this Manual a requirement that each JBE shall adopt a Local Contracting Manual for procurement and contracting for goods and services by that JBE. The content of each Local Contracting Manual must be "consistent with" the PCC and "substantially similar" to the provisions contained in the SAM and the SCM.

- Each JBE must adopt a manual consistent with the requirements of PCC 19206.
- Each JBE must identify individual(s) with responsibility and authority for procurement and contracting activities as required by this Manual.
- Each JBE may include in its Local Contracting Manual policies and procedures governing its procurement and contracting activities, and those policies and procedures must not be inconsistent with this Manual or with applicable law.

5. CONTENT AND EXCLUSIONS

The Manual addresses Judicial Branch Entities' procurement of goods and services, including information technology goods and services, contracting, and contract management. The Manual does *not* address:

- Procurement and contracting for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities, as those activities are expressly excluded from coverage under Part 2.5 by PCC 19204(c);
- Procurement and contracting specific to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of facilities *other than* trial court facilities and maintenance of facilities, as those activities are the responsibility of the AOC~~ and will be addressed in the AOC's Local Contracting Manual~~; and
- Any provision of the PCC that does not apply to contracting or procurement by state agencies and departments as such provision is inapplicable to Judicial Branch Entities. (PCC 19208)

The Manual does *not* address procurement and contracting for the following contracts that are unique to the judicial branch and are not subject to the JBCL or this Manual:

- Contracts (often referred to as MOUs) between a superior court and the sheriff for court security services;
- Contracts between a court and a court reporter when the court reporter provides services as an independent contractor; and
- Contracts between a court and a court interpreter when the court interpreter provides services as an independent contractor.

The Manual is drafted also to comply with PCC 19207, which states:

> Except as provided in subdivision (a) of Section 19204 or as otherwise specifically required by law applicable to any judicial branch entity, nothing in this part is intended, nor shall it be construed, to require the approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services or the Secretary of California Technology, in the procurement of any judicial branch goods or services, including information technology goods and services.

The above-referenced exception provided in subdivision (a) of PCC 19204 applies to all contracts with total cost estimated at more than $1 million (unless exempted from the requirements of the JBCL or this Manual) and to contracts for administrative or infrastructure information technology (IT) projects of the council or the courts with total costs estimated at more than $5 million. (GC 68511.9) These types of contracts are subject to the following requirements:

- Contracts estimated to cost more than $1 million, *except* contracts for administrative or infrastructure IT projects estimated to cost more than $5 million, are subject to "review and recommendations" by the ~~Bureau of~~ State Auditor~~s~~ to ensure compliance with PCC Part 2.5. JBEs that enter into any such contract must notify the State Auditor, in writing, within 10 Court Days of entering the contract.
- Contracts for administrative or infrastructure IT projects of the council or the courts with total costs estimated at more than $5 million are subject to "review and recommendations" of the California Technology Agency. That agency must consult with and provide recommendations to the council or the court, and must submit a copy of its review and recommendations to the Joint Legislative Budget Committee. (GC 68511.9)

6. EFFECT OF THE MANUAL ON PREEXISTING JUDICIAL BRANCH POLICIES AND PROCEDURES

This Manual supersedes the following chapters of the *Trial Court Financial Policies and Procedures Manual* (TCFPPM) that would otherwise apply to the superior courts:

- FIN 6.01, Procurement;
- FIN 7.01, Contracts;[7]
- FIN 7.02, Memorandums of Understanding (MOUs), Interagency Agreements (IAs) and Intra-branch Agreements (IBAs); and
- FIN 7.03, Contract Administration.

The other requirements of the TCFPPM, however, including, but not limited to, those relating to invoice processing and expense reimbursement, are not superseded by this Manual. JBEs will continue to be responsible for maintaining fiscal and operational accountability by following established procedures and policies, including, for ~~trial~~ superior courts, those set out in the TCFPPM.

In addition, this Manual supersedes (a) the AOC "Policy Regarding Legal Review of Procurement Matters," and (b) the AOC policy "7.2.1, Procurement of Goods and Services," for all procurement and contracting purposes *except* as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

Finally, this Manual supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council on December 7, 2007, for all facilities-related procurement and contracting purposes *except* for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

County and other Local Agency Procurement Policies

PCC 19204 requires JBEs to comply with the provisions of the JBCL. This requirement supersedes any county or other local agency policies and procedures that a JBE may have followed prior to October 1, 2011.

[7]Chapters FIN 6.01 and FIN 7.01 of the TCFPPM are not superseded for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

7. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at *www.courts.ca.gov/finance.htm*.

8. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

Words used in this Manual to signify requirements or discretion have the meaning and intent specified in the table below.

Use of Words Signifying Requirements or Discretion			
Words→	Words signifying a mandatory duty or prohibition are: "must," "shall," "mandatory," "required," "must not," and "may not"	Words signifying reasonable discretion: "should" and "should not"	Words signifying full discretion: "may" and "encouraged"
When used→	To reflect obligations or prohibitions under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of favored but not mandated business or accounting practices	To provide guidance
Compliance→	Mandatory unless there is an applicable exemption	Not mandatory, but favored unless there is a good business reason for variance	Optional

Use of Words Signifying Requirements or Discretion			
Documentation	Documentation of noncompliance required	Documentation of variance recommended for the appropriate file[8]	None required

9. UPDATES TO THIS MANUAL

This Manual is not meant to be static and should change as processes and procedures better tailored for judicial branch operations are developed or recognized. It is anticipated that this Manual will be reviewed periodically and updated as necessary to ensure effective and efficient contracting and procurement policies across the judicial branch.

[8] If specific to a particular procurement, the procurement file is the appropriate file. If the variation affects many procurements, the JBE may note the variation and include reasons in its Local Contracting Manual.

Judicial Council of California

PURCHASING AUTHORITY

CHAPTER 1

Original Release Date: October 1, 2011	Revised Effective~~Revision Date~~: ~~August 31, 2012~~January 1, 2014

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INTRODUCTION

This chapter identifies the sources of purchasing authority of Judicial Branch Entities (JBEs). This chapter also describes the roles of JBE personnel involved in the purchasing process, discusses ethical considerations, and provides guidance for developing a Local Contracting Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

1.1 PURCHASING AUTHORITY OF JUDICIAL BRANCH ENTITIES

A. Purchasing Authority Basics

Each JBE possesses its own authority to purchase goods and services (both IT and non-IT). The source of authority is reflected in the table below:

JBE	Legal Basis
Supreme Court	Established by article VI, section 2 of the California Constitution. See also Government Code (GC) sections 68803 and 68807.
Courts of Appeal	Established by article VI, section 3 of the California Constitution. See also GC 69141. Pursuant to CRC 10.1004(c)(6), authority is vested in the Administrative Presiding Justice, who may in turn delegate this authority to the clerk/administrator pursuant to CRC 10.1020(c).
Superior Courts	Established by article VI, section 4 of the California Constitution. Pursuant to CRC 10.603(c)(6)(D), authority is vested in the Presiding Judge, who may in turn delegate this authority to the Court Executive Officer.

JBE	Legal Basis
Habeas Corpus Resource Center (HCRC)	Established by GC 68661. Pursuant to GC 68664(a), responsibility for the HCRC's "day-to-day operations" is assigned to the Executive Director.
Judicial Council	Established by article VI, section 6 of the California Constitution. See also GC 68506.
AOC	Established pursuant to Judicial Council resolution. See also CRC ~~rule~~ 10.81. Pursuant to CRC ~~rule~~ 10.80(d), the Administrative Director of the Courts is responsible for allocating the financial and other resources of the AOC.

JBEs must ensure that any delegation of purchasing authority is properly documented.

B. Scope of Authority

1. Limitations on Purchasing Authority

Most facilities-related expenditures are outside the scope of purchasing authority for appellate and superior courts.

The Judicial Council is responsible for the construction, acquisition, and operation of appellate court facilities (GC 69204(b)) and superior court facilities (GC 70391(b)). In addition to any responsibilities delegated by the Judicial Council, GC 69206 and 70392 assign certain court facilities-related responsibilities to the AOC.

Under GC 70392(e), however, the AOC is authorized to delegate its responsibilities for ongoing operation and management to a court for some or all of the existing court facilities used by that court.

2. Authority to Enter into Intergovernmental Contracts (IGCs)

JBEs may enter into I~~i~~ntra-branch ~~a~~Agreements (IBAs) with other JBEs for goods or services, including IT goods and services. JBEs may enter into M~~m~~emoranda of

~~u~~Understanding (MOUs) with other governmental entities for goods or services, including IT goods and services.

Note: The terms "IBA" and "MOU" are used to refer to types of Intergovernmental Contracts (IGCs), not to limit a JBE's ability to enter into IGCs. JBEs may enter into IGCs even if the agreements are labeled or named something other than IBA or MOU (see chapter 8 of this Manual for additional information regarding IGCs).

IGCs do not need to be competitively bid (but the JBE may opt to do so in its sole discretion). Other types of procurements are also exempt from certain competitive bidding requirements. These include emergency purchases, purchases under $5,000, and purchases made under certain Leveraged Procurement Agreements (for additional information regarding noncompetitively bid procurements, see chapter 5 of this Manual).

C. Purchasing Roles and Responsibilities

1. Roles and Responsibilities

The following table defines the roles and responsibilities of individuals involved in a JBE's procurement activities. In some JBEs, especially smaller superior courts, one individual may perform several of these roles. The same employee may initiate the requisition and receive the goods or services, although receipt by a second person strengthens internal controls. Different employees must be responsible for procurement activities and payment approval.

Assignment	Roles and Responsibilities
Procurement and Contracting Officer (PCO)	• Is responsible for all procurement and contracting within the JBE • Ensures that all procurement and contracting activities within the JBE comply with applicable procurement laws • Provides the necessary resources to ensure that all staff are properly qualified and trained in all aspects of

Assignment	Roles and Responsibilities
	the procurement process • Oversees development of the Local Contracting Manual
Buyer **Note:** A JBE may elect not to designate a Buyer. If the JBE does not do so, then the Buyer role reverts to the PCO.	• Performs day-to-day purchasing and contracting activities • Is knowledgeable about applicable procurement laws and best practices • Ensures that the needs of the JBE are met within applicable procurement laws • Maintains the procurement file and related documentation
ADA Coordinator **Note:** A JBE may elect not to designate an ADA Coordinator. If the JBE does not do so, then the ADA Coordinator role reverts to the PCO.	• Assists and responds to questions or concerns regarding procurement-related reasonable accommodation needs
DVBE Advocate **Note:** If no DVBE Advocate is designated, ~~A JBE may elect not to designate a DVBE Advocate. If the JBE does not do so, then~~ the DVBE Advocate role reverts to the PCO.	• Identifies potential DVBE prime contractors or subcontractors and potential contracting opportunities • Makes information regarding pending solicitations available to certified DVBE firms capable of meeting the JBE's business needs (MVC 999.12)

Assignment	Roles and Responsibilities
Procurement-Card Coordinator **Note:** A JBE may elect not to designate a Procurement-Card Coordinator. If the JBE does not do so, then the Procurement-Card Coordinator role reverts to the PCO.	• Ensures compliance with relevant procurement card procedures and contract terms • Adds, deletes, and alters card restrictions/limits • Reviews billing reports to monitor payments and disputes
Protest Hearing Officer **Note:** If a protest hearing officer is not designated by a JBE, the Buyer's supervisor will act as the protest hearing officer.	• Evaluates protests • Issues written determinations regarding protests
Protest Appeals Officer **Note:** If a protest appeals officer is not designated by a JBE, the protest hearing officer's supervisor will act as the protest appeals officer.	• Evaluates protest-related appeals • Issues written determinations regarding appeals of protests
Payment Officer	• Ensures timely payment of invoices • Ensures that proper internal approvals have been secured before processing payment

2. *Ethics*

a. Ethics training

JBEs should ensure that personnel involved in procurement activities receive ethics training, and they should regularly remind personnel of the importance of maintaining professional and ethical standards when conducting procurements.

b. Ethics and Conflicts

All personnel involved in the procurement process must adhere to and conduct business by maintaining high ethical standards.

All personnel involved in the procurement process must:

- Conduct themselves in a professional manner, refrain from mixing outside relationships with business, and not engage in incompatible activities, conflicts of interest, or unethical behavior;
- Avoid wasteful and impractical purchasing practices;
- Not make any commitment or promise regarding the selection of a Bidder or award of a contract;
- Be aware that perceptions can override reality; and
- Involve the JBE's procurement and legal staff or, alternatively, the AOC Legal Services Office ~~Office of the General Counsel~~ (AOC/LSO~~OGC~~), when questions arise regarding acceptable or unacceptable behavior when dealing with Bidders or Vendors.

Other ethical issues include the following:

- Personnel involved in the procurement process must not make purchases of materials or services from any business entity in which they have a financial interest (see GC 1090 et seq.);
- Personnel involved in the procurement process are prohibited from using their position in state government to bestow any preferential benefit on anyone connected to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the personnel involved and the judicial branch.

Note: For restrictions on contracting with current and former JBE employees, see CRC 10.103 and 10.104.

c. Gifts and Gratuities

This section discusses certain restrictions regarding the acceptance of gifts and gratuities. These restrictions are minimum requirements. JBEs may adopt more stringent restrictions in their Local Contracting Manuals.

Accepting gifts and gratuities: No person involved in the procurement process of a JBE may accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with that JBE. Doing so could be construed as intent to influence JBE personnel in their official duties or as a reward for an official action performed by the JBE personnel. Favors must be declined.

Financial Interest in Contract: GC 1090 is applicable to members of Evaluation Teams, as they are responsible for evaluating Bids. GC 1090 requires that state officers and others not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Any person who is found to have willfully violated GC 1090 may be punished by a fine of not more than $1,000 or by imprisonment in state prison, and will be forever disqualified from holding any office in this state.

Avoid making a gift of public funds: Article 16, section 6 of the California Constitution strictly prohibits any gift of public funds. To not be considered a gift of public funds, an expenditure must support the JBE's mission (function and purpose) and benefit the judicial branch.

Accepting free or loaner equipment from suppliers: JBEs should not accept an offer of goods or services without cost or obligation to the JBE that is made by a Prospective Bidder, Bidder, or Vendor. If a Buyer's decision is contrary to this best practice, the JBE should execute a contract to memorialize the agreement.

Before accepting any goods and services offered at no cost or obligation to the JBE, the JBE should consider the perception of the acceptance to other suppliers. How does the JBE remain fair and impartial if a decision is eventually made to solicit the goods or services?

1.2 LOCAL CONTRACTING MANUAL

This section provides broad guidance to JBE staff involved in developing their Local Contracting Manuals. This section is not intended to dictate the techniques that should be used, because the details of the process should suit the individual JBE, the stakeholders affected, and the JBE's business needs.

Statutory requirement: Please see the Introduction to this Manual for a discussion of the statutory requirement for Local Contracting Manuals.

Purpose: The purpose of a Local Contracting Manual is to familiarize JBE employees with the JBE's specific purchasing and contracting practices. The Local Contracting Manual expands on and supplements this Manual.

Contents: The Local Contracting Manual must include the JBE's organizational structure; for example, who fills the roles identified in section 1.1.C.1 of this chapter.

The remaining contents of the Local Contracting Manual are determined by the individual JBE as necessary to describe its particular processes and personnel. The Local Contracting Manual must be consistent with all applicable law, as well as with this Manual. Each JBE may address topics such as:

- Normal lead times for different types of purchases;
- Required approvals, both internal and external;
- Certification of availability of funds;
- Setting up and maintaining official procurement files; and
- Signature authorization (who can sign what).

The JBE may include in its Local Contracting Manual a signature authorization listing chart, such as the one below:

Value of Contract	Person(s) or Position(s) Authorized to Sign
Up to $5,000	*[name or position]*
Up to $100,000	*[name or position]*

Value of Contract	Person(s) or Position(s) Authorized to Sign
Above $100,000	*[name or position]*

Other topics that may be addressed in the Local Contracting Manual are ~~highlighted~~ referenced in the following chapters of this Manual.

Judicial Council of California

PROCUREMENT PLANNING

CHAPTER 2

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INTRODUCTION

This chapter describes the preliminary considerations and activities that help ensure the success of any procurement effort. These include determining the type of procurement (non-IT goods, non-IT services, or IT goods and services) and considering numerous other issues that arise in procurement planning.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

2.1 FORMULATING THE PROCUREMENT APPROACH

There are several preliminary steps required to determine the approach to be taken in a particular procurement.

A. Competitive or Non-Competitive Procurement

Most Judicial Branch Entity (JBE) procurements are competitive, and require the use of Solicitation Documents, advertising, and Bids. In certain circumstances, however, JBEs can procure non-IT goods, non-IT services, and IT goods and services without a competitive process. These types of procurements are:

- Purchases under $5,000;
- Emergency purchases;
- Purchases from governmental entities;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP);
- Licensing or proficiency testing examinations;
- Subvention and local assistance contracts; and
- Sole source.

For more information on these types of procurements, see chapter 5 of this Manual. For more information about determining the value of the procurement, see step 1 of chapter 4A, 4B, or 4C of this Manual. For more information on determining whether a purchase qualifies as an emergency purchase, see section F below.

B. Classifying the Purchase

1. Benefits: Properly classifying a purchase enables the Buyer to conduct the procurement by correctly:

- Applying the appropriate laws, regulations, policies, and procedures to the specific purchase; and
- Completing external notices and reviews as applicable.

Improperly classifying a purchase may result in:

- Delaying a JBE's program or project;
- Waste of time and effort, ultimately wasting taxpayer money;
- Loss of funding; and
- Disputes, protests, or lawsuits.

2. Purchase classification: The first step in classifying a purchase is determining whether:

- The purchase involves goods or services; and
- The purchase is for IT or non-IT goods or services.

In most cases, a Buyer will be able to classify a purchase quite simply. If the purchase involves only the purchase of ladders, furniture, or office supplies, the purchase is a non-IT goods purchase. If the purchase involves only the purchase of legal services, the purchase is a non-IT services purchase. If the purchase involves only computer equipment and software, the purchase is an IT goods purchase. In other cases, a single purchase may involve the purchase of both goods and services, or both IT and non-IT goods and services. The sections below provide guidance to Buyers in classifying mixed purchases.

3. Classifying mixed purchases: Classifying a mixed purchase begins by determining the main value or the major objective of the entire purchase. The dollar value associated with the services provided and the dollar value of the goods being supplied are factors that should be considered.

What is the main value of the contract—the goods or the services?

- If the main value is the **goods**, the transaction should be treated as a goods purchase. In procurements of non-IT goods, however, if the value of

incidental non-IT services is $5,000 or higher, the non-IT services must be procured separately unless an exemption is obtained. For more information on this topic, see chapter 4A of this Manual.

- If the main value is the **services**, the transaction should be treated as a services purchase.

Example: A manager requests new furniture for an office. The Buyer needs to purchase the new furniture and acquire services necessary to position that furniture in the office. The main value is the furniture. The request should be treated as a goods purchase.

4. Non-IT vs. IT: Section 4819.2 of the *State Administrative Manual* (SAM) defines IT as "all computerized and auxiliary automated information handling, including systems design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, data communications, requisite systems controls, and simulation."

IT goods. The following are examples of IT goods:

- Computers (desktop, notebook, tablet, workstation);~~.~~
- Data storage (interfaces/controllers, drive arrays, hard drives [desktop, internal, portable, removable], tape backup, tape cartridges, CD/DVD, storage area network [SAN], network attached storage [NAS], media and accessories);~~.~~
- Memory products (RAM, flash, USB);~~.~~
- Monitors and projectors (displays, touchscreens);~~.~~
- Networking products (cables, adapters, switches, routers, hubs, modems, gateways, VoIP, standalone appliances);~~.~~
- ~~Cables;~~
  ~~Adapters;~~
  ~~Switches;~~
  ~~Routers;~~
  ~~Hubs;~~
  ~~Modems;~~
  ~~Gateways;~~
  ~~VoIP; and~~
- ~~Standalone appliances.~~
- Power, cooling and racks (batteries, uninterruptable power supplies, surge protectors, HVAC equipment (when related to IT equipment spaces));~~.~~
- ~~Batteries;~~

- ~~Uninterruptable power supplies;~~
- ~~Surge protectors; and~~
- ~~HVAC equipment (when related to IT equipment spaces).~~
- Printing devices (laser, ink jet, all-in-one multi-function devices, plotters);~~.~~
  - ~~Laser;~~
  - ~~Ink jet;~~
  - ~~All-in-one multi-function devices; and~~
  - ~~Plotters.~~
- Scanners (barcode, document, graphics);~~.~~
  - ~~Barcode;~~
  - ~~Document; and~~
  - ~~Graphics.~~
- Servers (standalone, rack-mount, blades, associated controllers and interfaces);~~.~~
  - ~~Standalone;~~
  - ~~Rack-mount;~~
  - ~~Blades; and~~
  - ~~Associated controllers and interfaces.~~
- Software (including antivirus, security, backup, business, productivity tools, database, development, education, reference, operating system and management, networking, virtual computing, and web-publishing);~~.~~
- Special electronics (including automation and control systems, cellular/smartphones and accessories, eReaders, handheld devices and accessories);~~.~~
- Computer accessories (including video cards, imaging, keyboards and keypads, mice and trackballs);~~.~~
- Audio equipment.

The following consumable items are considered IT goods, but may also be acquired as non-IT goods:

- Documents (e.g., standards and procedures manuals, Vendor-supplied systems documentation and educational or training manuals);
- Equipment supplies (e.g., printer forms, disk packs, magnetic tape and printer ribbons or cartridges);
- Furniture (IT-related, such as desktop station tables and printer stands).

The following consumable items are IT goods:

- PC keyboards;
- Mice;
- Zip drives;
- Memory cards;
- Personal digital assistants (PDA);
- Software;
- Scanners.

IT services. IT services are those services where information technology knowledge or skills are of primary importance, such as:

- Hardware, software, or system maintenance services; ~~and~~
- IT consulting services (services of an advisory nature that provide a recommended course of action or personal expertise).

Independent verification and validation (IVV) consulting services or independent project oversight (IPO) consulting services are considered IT services because they provide oversight and validation on large IT integration projects.

Example: A JBE buys 10 personal computer keyboards for replacement stock to issue when existing keyboards fail. A personal computer processes data electronically and the keyboard is a critical component to the operation of the computer. The keyboards are considered IT goods and the purchase is an IT-goods procurement.

Example: A JBE purchases a vehicle for business use. The vehicle has been fitted with an electronic mapping system, which is an IT good. The features of the mapping system are secondary to the purpose of the vehicle, which is a means of transportation and a non-IT good. Consequently, the purchase is a non-IT goods procurement.

5. Need help in classifying purchases? Courts needing assistance in determining the classification of a purchase after reviewing the available resources (i.e., this Manual, the Local Contracting Manual) should contact the AOC Business Services Unit or the Trial Court Administrative Services Office, Judicial and Court Administrative Services Division (TCAS).

C. Initial Review

Planning the purchase should begin at the earliest practicable time. The amount of time necessary for the planning process is dependent on the dollar value, risk, complexity, and criticality of the proposed purchase.

The Buyer's first step in the planning and scheduling of a procurement effort is the initial review of a purchase request. Reviewing the request in terms of the following information will assist the Buyer in determining any impact to the procurement planning and scheduling activities.

1. Internal review and approvals: Consider the following:

- Have the proper approval signatures been obtained to conduct the procurement in conformance with the JBE's Local Contracting Manual?
- Is the request in compliance with applicable equipment standards?
- Is there documentation in sufficient detail to support and justify conducting the procurement?
- Are there any program schedule requirements, special delivery instructions, time constraints, etc.?

2. Funding authority: Is the procurement scheduling and planning effort limited by:

- Federal funding limitations and/or restrictions?
- Availability of current and future year funding?
- Timing constraints impacted by availability of fiscal year funding?

3. External notices and reviews: Are any external notices or reviews required (refer to section 2.2 of this chapter for additional details)?

4. Seeking legal participation: Buyers should seek JBE legal participation as necessary to manage risk. See chapter 8, section 8.4.B of this Manual for more information on legal review.

5. Narrowing procurement alternatives: To assist in determining the procurement approach that best meets the JBE's needs, Buyers should ask the following questions:

- Can other requests for similar goods or services be consolidated into a single purchase to maximize purchasing power?

- What available purchasing approach can effectively meet the JBE's needs at the least cost in terms of time and resources?
- Can the functional requirements of the request be met through an LPA?
- For IT goods and services, can the JBE's needs be met by conducting a procurement using the SB/DVBE option? (See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.)
- Is there a known supplier market and can the acquisition best be met through open competition?
- What risk factors are inherent to the purchase and what steps can be taken in advance to mitigate them?

D. Other Considerations Affecting the Planning Process

1. Requests for reasonable accommodation purchases: A purchase made in response to a request for reasonable accommodation of a disability is not exempt from applicable procurement laws. However, when conducting a procurement to fulfill a reasonable accommodation request, Buyers should be mindful of the need to expedite the purchase. All reasonable accommodation requests should be coordinated with the JBE's human resources department or other department with responsibility for addressing disability accommodation requests.

2. Leasing equipment: Prior to initiating an equipment lease, a JBE should consider whether leasing or purchasing equipment is the more economical option. JBEs may consult SAM section 3700 et seq. for more information on comparison methods and other issues to be considered.

3. Shipping charges: JBEs conducting competitive solicitations should determine shipping terms during the procurement-planning phase. Shipping costs should be addressed in the Solicitation Document. The preferred shipping method is "Free on Board" (FOB) Destination Freight Prepaid (FRT.PPD) where the Vendor is responsible for freight charges and costs and owns the goods while in transit.[1]

4. Term purchases: A term purchase establishes a purchasing mechanism for:

- A specified period of time;

[1] An important reason for the preferred shipping method is to avoid the risk of loss in transit.

- A specified list of products and quantities; and
- Items a JBE acquires on a routine basis, such as office supplies.

When conducting a competitive solicitation for a term purchase:

- A competitive procurement should be conducted whenever the dollar amount of the term purchase is $5,000 or greater;
- The solicitation should identify contract start and end dates;
- The solicitation should state the aggregate amount of the contract; and
- The solicitation should state a maximum number of units that may be purchased.

Example: 10 units will be purchased on award, and the JBE reserves the right to purchase up to 10 more units during the contract term.

Note: Evaluation and award are based on the total quantities per line item to be purchased during the contract term. Using the above example, the Bid would be evaluated and the contract awarded on the assumption that all 20 units will be purchased.

- The solicitation should clearly define whether pricing is firm over the course of the contract or if allowances will be made for price increases or decreases; and
- The JBE should keep a running total of orders placed against each term purchase contract in the procurement file.

5. Purchases from Community Rehabilitation Programs (CRPs): JBEs may consider purchasing products and services from rehabilitative or sheltered workshops pursuant to Welfare and Institutions Code section 19403. JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from a business entity operating a CRP without conducting a competitive procurement, provided that the goods or services meet the specifications and needs of the JBE and are purchased at a fair market price as determined by the JBE.

Note: The JBE should document in its procurement file that the price offered by a CRP is fair and reasonable.

The California Alliance of Rehabilitation Industries (CARI) provides a statewide network of community rehabilitation programs to assist state entities in meeting their needs. Contact CARI at 916-441-5844 for additional information.

6. Socioeconomic Programs: JBEs should consider the socioeconomic and environmental program requirements set forth in chapter 3 of this Manual when planning procurements.

E. Statement of Work (SOW)

1. Determining the need for an SOW: A JBE should include an SOW for all services transactions and all goods transactions that involve a services component. An SOW protects the JBE and the Vendor by identifying and documenting the details of the work to be performed.

2. What to include in an SOW: For information on what to include in an SOW, see chapter 8, section 8.3.A.1 of this Manual.

F. Emergency Purchases

Emergency purchases are exempt from certain competitive bidding requirements. This section will help Buyers identify valid emergency purchases. If the Buyer determines that a purchase should be an emergency purchase, refer to chapter 5 of this Manual.

An emergency purchase is appropriate when immediate acquisition is necessary for the protection of the public health, welfare, or safety.

Example of emergency: A courthouse is flooded and staff must make an immediate purchase of supplies to clean up the water.

Example of a nonemergency: A JBE wants to purchase used copy machines for office use at a total cost of $12,000. The purchase saves the JBE an estimated $6,000 when prices are compared to new copy machine prices. Although it may be in the JBE's best interest to purchase the used equipment, the opportunity to get a good deal does not constitute an emergency.

G. Negotiations

A JBE may negotiate with Bidders either before or after award of a contract to ensure that the JBE receives the most favorable terms possible. Generally, a JBE will have more negotiating leverage prior to the award of a contract.

Example: A JBE wishes to avoid awarding a contract to a Bidder that transfers substantial risk to the JBE through the contract. Therefore, the JBE wishes to finalize the contract with the Bidder before award while the JBE has both (i) negotiating leverage with the leading Bidder and (ii) an opportunity to negotiate exceptions taken by lower-ranked bidders before the final score and ranking are determined. The JBE states in the RFP that the JBE may clarify or negotiate contract terms and conditions with one or more of the Bidders based on the Bidders' preliminary rankings following initial scoring of their Bids. When Bids are scored, the Evaluation Team notes that the Bid with the highest score includes exceptions to the JBE's contract terms and conditions. The Evaluation Team wishes, therefore, (i) to seek clarification from or negotiate with the leading Bidder on contract terms and conditions before making the award, or (ii) if scores are close enough that changes to exceptions to contract terms and conditions may affect ranking, to seek clarification from or negotiate with the leading Bidder and one or more of the other Bidders with the highest preliminar~~i~~ly scores. Final scores and ranking will reflect the negotiated terms and conditions, and, if the final rankings change which Bidder is highest-ranked, the formerly leading Bidder will not be awarded the contract.

H. PCC 6611 Special Negotiation Process

1. When Allowed: Consistent with PCC 6611, JBEs may use special negotiation processes,[2] including a process whereby the JBE receives supplemental bids after the initial bids are opened (i.e., a "best and final offer" process). These special

[2] PCC 6611 allows the Department of General Services (DGS) to use special negotiation processes on behalf of executive branch entities. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the ability to use special negotiation processes resides in each individual JBE. The JBE must ensure that (i) any special negotiation process it adopts is reasonable and appropriate, and (ii) the JBE provides adequate oversight for procurements conducted using a special negotiation process.

negotiation processes may be used only in procurements involving the following circumstances:

- The business need or purpose of a procurement or contract can be further defined as a result of a special negotiation process.
- The business need or purpose of a procurement or contract is known by the JBE, but a special negotiation process may identify different types of solutions to fulfill this business need or purpose.
- The complexity of the purpose or need suggests a Bidder's costs to prepare and develop a solicitation response are extremely high.
- The business need or purpose of a procurement or contract is known by the JBE, but the negotiation process is necessary to ensure that the JBE is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

2. Procedures and Guidelines: If the JBE uses a special negotiation process, the JBE must include procedures and guidelines regarding the process in its Local Contracting Manual. These procedures and guidelines must include the methodology that will be used by the JBE to evaluate affected Bids. If the process allows for the use of supplemental bids, the procedures and guidelines must specify the conditions under which supplemental bids may be received by the JBE.

2.2 EXTERNAL NOTICES AND REVIEWS

Depending on the type and size of a procurement, the JBE may be required to provide notice or allow review of a transaction. Details of the different notices and reviews are set forth below.

A. CRC 10.620

CRC 10.620 requires a trial court to provide public notice of:

- Any solicitation of non-IT goods, non-IT services, or IT goods and services that exceeds the greater of $400,000 or 10 percent of the total trial court budget; and
- The execution of a contract that exceeds the greater of $400,000 or 10 percent of the total trial court budget.

For detailed requirements regarding this notice, see CRC 10.620.

B. Information Technology (IT) Procurements over $5 Million

All administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than $5 million are subject to the review and recommendations of the California Technology Agency, as specified in GC 68511.9.[3]

C. Other Procurements over $1 Million

The JBE must notify the State Auditor ~~Bureau of State Audits (BSA)~~ of certain contracts for purchases estimated to be more than $1 million. See chapter 12, section 12.2 of this Manual for additional details.

2.3 CREATING THE PROCUREMENT FILE

The Buyer should create a procurement file for each transaction. This section provides guidance on what should be included in the procurement file. Please note that the following list is not exhaustive. A JBE may adopt policies respecting the creation and contents of procurement files in its Local Contracting Manual.

Document decisions: Buyers should develop a strategy of how the procurement activity will be accomplished, and document the rationale for developing that strategy. In simple terms, Buyers should maintain a diary of the events and decisions that lead up to and complete the purchase transaction, providing a timeline and history of the actions and decisions made throughout the procurement process.

Provide the basis of the decisions: Buyers should also describe how competition will be sought, promoted, and sustained throughout the course of the purchasing activity. If open competition is not the method of choice, document the basis of the decision.

Degree of detail: The degree of documentation detail is determined by the cost, risk, complexity, and criticality of the purchasing activity.

Take notes: Buyers should make notations of meetings held and decisions made, and create a phone log to record phone conversations impacting the procurement effort. Consistent, high quality file documentation helps the transaction be easily understood by a reader who is unfamiliar with it and makes documents easy to locate. It will also assist the JBE during audits by the State Auditor~~BSA~~.

[3] Note that GC 68511.9 refers to the Office of the Chief Information Officer (OCIO). However, the OCIO has been renamed the California Technology Agency in accordance with Chapter 404, Statutes of 2010 (AB 2408).

Public record: Buyers should create and maintain their procurement files keeping in mind that most procurement records are subject to disclosure under CRC 10.500.

Judicial Council of California

SOCIOECONOMIC AND ENVIRONMENTAL PROGRAMS

CHAPTER 3

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INTRODUCTION

This chapter describes socioeconomic and environmental programs and considerations that affect procurement activities of Judicial Branch Entities (JBEs). The first and most extensively discussed is the California Disabled Veteran~~s~~ Business Enterprise (DVBE) program that is intended to increase business opportunities for disabled veteran businesses. Next, is a brief discussion of pertinent requirements of the Americans with Disabilities Act (ADA) to familiarize JBEs with the importance of making all procurement activities available to all persons, including persons with disabilities. ~~Finally~~Next, this chapter discusses the requirements of California's State Agency Buy Recycled Campaign (SABRC) program that promotes the purchase of products that are energy efficient and have other preferable environmental attributes. Finally, this chapter discusses the small business preference applicable to procurements of IT goods and services.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

3.1 CALIFORNIA DISABLED VETERAN~~S~~ BUSINESS ENTERPRISE (DVBE) PROGRAM

A. Purpose

The Legislature established the DVBE program to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. In doing so, the Legislature stated its intent "that every state procurement authority honor California's disabled veterans by taking all practical actions necessary to meet or exceed the Disabled Veteran~~s~~ Business Enterprise participation goals of a minimum of 3 percent of total contract value" (MVC 999(a)).

These goals apply to the total contract value expended each year by each JBE.[1]

Example: A JBE annually expends $10 million in contracts to purchase goods and services. Its DVBE participation goal would be not less than $300,000—3 percent of

[1] Total contract value should not include the value of contracts with state entities (such as counties) that are mandated by law.

$10 million—that would go to certified DVBEs that are contractors, subcontractors, or suppliers to perform a "commercially useful function" (see section 3.1.G.2) in specific procurements.

DVBE incentive: To implement the DVBE program JBEs must grant Bidders that provide DVBE participation a DVBE incentive (MVC 999.5(a)). A DVBE incentive is a prescribed percentage reduction in the DVBE Bidder's Bid price where the JBE is selecting a Bidder using the "lowest responsible Bidder" methodology or the addition of a prescribed number of points to the DVBE Bidder's Bid score where the JBE is using the "highest scoring Bidder" approach.

B. Administration

The MVC and PCC establish DGS as the administering agency for this program. In that role, DGS manages certification and decertification of companies as DVBEs. JBEs must use DGS--certified entities or entities that have DGS-approved business utilization plans to meet their DVBE goals.

C. Outline of Principal Requirements for JBE Implementation of the DVBE Program

The PCC and MVC have procedural and management requirements JBEs must fulfill. These include:

1. Adopting rules and procedures to implement the requirements of MVC 999 and the following and PCC 10115 et seq.;
2. Appointing a DVBE advocate;
3. Determining which contracts are subject to a DVBE incentive;
4. Utilizing available resources for implementation of the program; and
5. For those procurements that provide for a DVBE incentive:

    - Verifying Bidder status as a DVBE;
    - Verifying whether the certified DVBE is providing a "commercially useful function" as that term is defined below;
    - Not awarding any contract to a Bidder suspended for violating PCC 10115.10 for the period of the applicable suspension;
    - Not permitting a Vendor to utilize a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension;

- Notifying the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) of alleged Vendor violations of PCC 10115.10; and
- Upon completion of the contract term, requiring each prime contractor with DVBE subcontractors to submit to the JBE certain certifications under MVC 999.5(d).

D. Adoption of Rules and Procedures for a DVBE Program

Each JBE must develop or adopt a set of rules and procedures for the implementation of a DVBE program. DGS has established a system of rules and regulations for managing the DVBE program that includes forms that may be adopted and modified by JBEs that wish to establish their own program. The AOC ~~Finance Division's~~ Business Services Unit~~-~~ and the AOC Legal Services Office (AOC/LSO) ~~Office of the General Counsel~~ are available to assist courts in establishing a program.

Rules and procedures for the following must be established:

- A method for monitoring adherence to DVBE goals;
- Use of existing state government resources to assist in implementing the DVBE program; and
- Incentive amounts and a formula for incentive calculation for procurements that are subject to DVBE incentives.

Solicitation Documents should be drafted to include reference to DVBE procedures and contracts must include appropriate DVBE provisions.

E. Appointing a DVBE Advocate

Each JBE must designate a DVBE advocate whose duties include, but are not limited to:

- Identifying potential DVBE prime contractors or subcontractors and potential contracting opportunities; and
- Making information regarding pending solicitations available to and considering offers from certified DVBE firms capable of meeting the JBE's business needs. (MVC 999.12)

F. Waiver of a DVBE Incentive

Although all competitive procurements are subject to the DVBE incentive, a JBE, through its Procurement and Contracting Officer (PCO) or designee ~~(see chapter 1 of this Manual)~~, has the discretion to waive inclusion of the DVBE incentive~~participation~~ in an individual solicitation or a number of solicitations.[2] ~~.~~ Note, however, that the overall DVBE participation goal of 3 percent of annual total contract value still applies. The JBE's PCO or designee must document the procurement file whenever the DVBE requirement has been waived.

G. General Requirements for DVBE Procurements

1. Verifying Bidder Status as a DVBE

Verifying certification status: For competitive solicitations that include the DVBE incentive, JBEs must verify California DVBE certification status before a contract award regardless of the procurement approach. Status can be verified by accessing the DVBE services certified firm inquiry database, currently available at ~~search on California DGS or (~~*www.bidsync.com/DPXBisCASB*~~)~~. If this database is used in support of DVBE certification, a printout can simply be placed in the procurement file.

Business utilization plan alternative: There is an additional method for a Bidder to qualify as a DVBE for contracts for non-IT goods and for IT goods and services. For those procurements, a JBE must accept from a Bidder a DVBE business utilization plan (plan) in lieu of DGS certification (PCC 10115.15(a)). The use of a plan does not extend to non-IT service contracts.

A plan is a Bidder's written commitment to contract with certified DVBEs for at least 3 percent of its business's total contract dollars expended in California during the next year (i.e., the year after the year in which the contract is awarded). This 3-percent commitment applies to all business done by the Bidder in California, not just contracts with the State of California. The DGS procurement division provides plan approval. A plan is considered approved by the DGS on the date of submission provided the plan meets requirements set forth in PCC 10115.15. However, the DGS may audit the plan and later disapprove it. To qualify as a DVBE by use of a plan, a

[2] A JBE may determine that a fiscal emergency exists necessitating the temporary suspension of the JBE's DVBE program. If a JBE suspends its program due to a fiscal emergency, the JBE should have the Approving Authority, or his/her appointee, document the extent of and reasons for the suspension.

Bidder must provide a written certification that it has submitted its plan to DGS when it submits its Bid to the JBE.

Broker/agent status: The benefits of DVBE status are intended to apply to DVBEs that are not "brokers" or "agents." MVC 999.2(b) defines those terms as follows:

- "Broker" or "agent" means any individual or entity, or combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding JBE, unless one or more certified disabled veterans has ~~50~~ 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- "Equipment broker" means any broker or agent who rents equipment, directly or indirectly, to an awarding JBE.

A DVBE that is a "broker" or "agent" must inform the JBE of its status at the time of submission of its Bid.

If a JBE contracts with a DVBE that is determined to be a broker or agent,[3] then:

- The DVBE broker or agent will not receive the benefit of its DVBE certification for the transaction, which means no DVBE incentive may be applied; and
- The JBE may not count the DVBE broker's or agent's participation in the contract towards the JBE's annual DVBE participation goal.

2. Determining if a DVBE Performs a Commercially Useful Function

Certified DVBE contractors, subcontractors, and suppliers that Bid on or seek to participate in a JBE contract must perform a commercially useful function to be eligible to participate as a DVBE in a specific procurement. The JBE is responsible for determining whether the contractor, subcontractor, or supplier will perform a commercially useful function before making a contract award to the DVBE.

A certified DVBE is deemed to perform a commercially useful function if the business does all of the following:

- Is responsible for the execution of a distinct element of the work of the contract;

[3] The determination is made from the Bidder information supplied with its Bid (see preceding paragraph).

- Carries out its obligation by actually performing, managing, or supervising the work involved;
- Performs work that is normal for its business services and functions; ~~and~~
- Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and
- Is not subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a contract through which funds are passed to obtain the appearance of a DVBE participation.

3. Other Requirements

Utilizing available resources in managing the DVBE program: JBEs must utilize existing resources such as the Department of Veterans Affairs and ~~the DGS Office of Small Business and DVBEDisabled Veteran Business Enterprise Services (~~OSDS~~)~~ in implementing the DVBE program. (PCC 10115.4 and MVC 999.6)

Suspended Bidders and subcontractors: A JBE may not award any contract to a Bidder suspended for violating PCC 10115.10 for the period of the applicable suspension. (See PCC 10115.10(6)(c).) A JBE may not permit a Vendor to utilize a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension. To access a DGS list of suspended Bidders, search on *www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx*.

Contractor violations of PCC 10115.10: If a JBE suspects that a Vendor is in violation of PCC 10115.10, the JBE must notify OSDS. Violations include:

- Fraudulently obtaining or retaining certification as a DVBE, or aiding another to do so;
- Making a false statement to defraud a state official or employee to influence certification as a DVBE;
- Obstructing or impeding the investigation of qualifications of a business entity as a DVBE;
- Fraudulently obtaining, attempting to obtain, or helping another to obtain public monies to which there is no entitlement under the laws establishing the DVBE program; and

- Establishing or exercising control over a firm that has engaged in such activities. (See PCC 10115.10 for a complete list of violations and associated penalties.)

Contractor postcontract certification: Upon completion of an awarded contract that contains a commitment to achieve a DVBE goal, the JBE must require the prime contractor that entered into a subcontract with a DVBE to certify to the JBE:

- The total amount of money the prime contractor received under the contract;
- The name and address of the DVBE subcontractor that participated in the performance of the contract;
- The amount of money each DVBE subcontractor received from the prime contractor; and
- That all payments under the contract have been made to the DVBE subcontractor.

The JBE must keep this certification on file.

4. Other Considerations

Effect on Contracts of Failure to Meet DVBE Goals: Failure of a JBE to meet the goals established under MVC 999 et seq. and PCC 10115 et seq. does not affect the validity or enforceability of any contract (PCC 10115.6, MVC 999.8).

No Goals Reporting Requirement: There are no DVBE goals–reporting requirements in either the PCC or MVC applicable to JBEs.[4]

LPAs: If a JBE procures goods or services using an LPA that includes DVBE participation, some or all of the purchase may count toward the JBE's DVBE goal. See chapter 6 of this Manual for additional information regarding DVBE considerations when using LPAs.

SB/DVBE Option: The DVBE incentive is not applicable when a JBE conducts a procurement using the SB/DVBE option. See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.

[4] MVC 999.7 and PCC 10115.5, which required state agencies to provide annual reports to the Governor and DGS with respect to meeting DVBE goals, were repealed effective January 1, 2007.

3.2 AMERICANS WITH DISABILITIES ACT CONSIDERATIONS

In compliance with the Americans with Disabilities Act (ADA) and similar California statutes, JBEs must make reasonable efforts to ensure that their programs, activities, and services are accessible to persons with disabilities. Contracting and procurement are activities covered by these laws.

JBEs must provide reasonable accommodation to persons with disabilities that enable them to participate in the procurement process. JBEs must also be prepared to respond to questions about reasonable accommodation by persons with disabilities. The term "reasonable accommodation" does not include actions that would fundamentally alter the nature of the procurement process or that would impose an undue financial or administrative burden upon a JBE.

JBEs should designate an individual (ADA Coordinator) who is available to respond to questions or concerns regarding reasonable accommodation of disabilities in the procurement process. Solicitation Documents should advise Prospective Bidders that the JBE complies with the ADA and similar California statutes and that requests for accommodation of disabilities should be directed to the ADA Coordinator.

3.3 STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC) PROGRAM

The SABRC is a joint effort between the California Department of Resources Recycling and Recovery (CalRecycle) and DGS to implement state law requiring state agencies and the Legislature to purchase recycled-content products (RCPs). It complements the efforts of the Integrated Waste Management Act (Pub. Resources Code, § 4000 et seq.), which was enacted to reduce the amount of waste going to California's landfills.

A. Utilizing Recycled Content Products

PCC 12203 requires JBEs to ensure that at least 50 percent of reportable purchases are recycled products. This requirement applies to purchases in each of the targeted categories identified in PCC 12207, which includes categories covering paper products, office supplies, office products, and a wide range of other products. The required postconsumer recycled content varies by category (e.g., recycled paper products must consist of at least 30 percent postconsumer fiber).

Example: A JBE is purchasing $20,000 worth of paper for its copy machines. At least $10,000 of the paper must have 30 percent recycled content by weight. The other $10,000 may be any mix of recycled or nonrecycled products. For additional information, search on CalRecycle or *www.calrecycle.ca.gov.*

Note: CRC 10.503, adopted by the Judicial Council effective January 1, 1994, states: "All courts must use recycled paper for all purposes except for uses for which recycled paper is not practically available."

B. Recycled Preference and Competitive Solicitations

To the maximum extent economically feasible in performance of the contract work, each JBE must require Vendors to use recycled content products (PCC 12203(d)). Contact Resources Recycling and Recovery (CalRecycle) at 916-341-6199 or 916-341-6524 or *SABRC@CalRecycle.ca.gov* for information on qualifying SABRC reusable and recycled content products.

C. Supplier Certification

Unless otherwise waived as noted below, JBEs must require all Vendors to certify in writing, under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the JBE (PCC 12205). This requirement applies even if the product contains no recycled material. To access the Postconsumer-Content Certification form (CIWMB 74), search on CalRecycle or *www.calrecycle.ca.gov/buyrecycled/stateagency/Forms/CIWMB074.doc*.

This certification can be waived if the postconsumer recycled content can be verified by other written means such as product label, packaging, catalog, manufacturer/Vendor website, product advertisement. For additional information regarding the SABRC program, search on CalRecycle or *www.calrecycle.ca.gov/BuyRecycled/StateAgency/*.

D. Printer Cartridges

No JBE may purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person (PCC 12156). Each JBE must print a statement on the cover of its Solicitation Document for printer or duplicator cartridges, or in some other noticeable place in the Solicitation Document, notifying Prospective Bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in PCC 12156(b).

3.4 SMALL BUSINESS PREFERENCE

State law requires JBEs to provide a small business preference in the award of **IT goods or services** contracts.[5] In competitive procurements of IT goods and services, JBEs must provide a five percent preference to entities that have been certified as a "small business" or "microbusiness" by DGS. The small business preference is not applicable to procurements of non-IT goods or non-IT services.

The small business preference is not applicable when a JBE conducts a procurement using the SB/DVBE option. See section D in the "Selected Topics Relevant to the Solicitation of IT Goods and Services" portion of chapter 4C of this Manual for additional information regarding the SB/DVBE option.

Each JBE must adopt small business preference procedures applicable to the competitive procurement of IT goods and services. These procedures must implement the requirements of applicable provisions of article 1 of the Small Business Procurement and Contract Act (GC 14835–14843). AOC/LSO has developed a sample set of procedures, and other related materials, to assist JBEs in meeting these obligations.

There are no small business preference reporting requirements applicable to JBEs.

JBEs may procure IT goods or services using LPAs that include Small Business participation. See chapter 6 of this Manual for additional information regarding Small Business considerations when using LPAs.

[5] PCC 12102.2(c).

COMPETITIVE SOLICITATION OVERVIEW

CHAPTER 4

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INTRODUCTION

This chapter discusses topics that arise in multiple types of competitive solicitations. Chapters 4A, 4B, and 4C of this Manual provide specific guidance for procurements of non-IT goods, non-IT services, and IT goods and services, respectively. To reduce repetition of similar information, each of those chapters refers to sections contained in this chapter.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

4.1 THE BASICS OF COMPETITION

Competition is one of the basic tenets of procurement under the California Judicial Branch Contract Law. The type of competition will vary depending on the type of goods or services to be procured, as well as the value of the procurement.

A. General Requirements

Judicial Branch Entities (JBEs) must conduct competitive procurements in a manner that promotes open, fair, and equal competition among Prospective Bidders. Generally speaking, a procurement must be competitive unless it falls into one of the categories covered in chapter 5 of this Manual.

~~1. Supplier treatment:~~ Buyers conducting competitive procurements must provide qualified Prospective Bidders with a fair opportunity to participate in the competitive solicitation process, stimulating competition in a manner conducive to sound fiscal practices without favoritism, fraud, or corruption.

B. Developing Prospective Bidder Resources

1. Contact lists: JBEs should establish contact lists using a variety of means to identify Prospective Bidders. Resources available to JBEs to identify and/or establish contact lists include:

- Recommendations from customers;
- Local trade unions;
- Chambers of commerce;
- Industry listings;

- Leveraged Procurement Agreement (LPA) databases;
- Certified Disabled Veteran Business Enterprise (DVBE) databases;
- Internet searches; and
- Telephone directories.

2. Request for I~~i~~nterest: JBEs may use a ~~r~~Request for ~~i~~Interest (RFI) to separate those Prospective Bidders that intend to participate in an upcoming solicitation from those that have no interest in participating. RFIs are typically used when there is an excessively large pool of Prospective Bidders.

The RFI establishes or supplements the contact list for Buyers to use when distributing a Solicitation Document. A copy of the Solicitation Document will be provided to all responding Prospective Bidders. The Buyer should retain the RFI and the contact list in the procurement file.

An RFI should:

- Be short, concise, and to the point;
- Include the solicitation number and title;
- Include a general description of the goods or services to be solicited;
- Include estimated quantities, features, general time frames, any pertinent geographic information, Buyer's name and telephone number, etc.;
- Not provide or ask for any cost information, as such information could create an unfair bidding environment;
- Provide space for Prospective Bidders to supply contact name, address, telephone number, and submittal date; and
- Include where and how to submit the response to the RFI.

Note: Nothing in this section limits a JBE's ability to use a "request for information." A request for information is used to gather information about goods or services available in the marketplace, what goods or services generally cost, or similar topics. A request for information is not used to separate those Prospective Bidders that intend to participate in an upcoming solicitation from those that have no interest in participating.

C. Confidentiality

1. Period of confidentiality: During the solicitation development, information regarding the solicitation is confidential. This is to prevent any Prospective Bidder from obtaining an unfair advantage. See c~~C~~hapter 4A, 4B, or 4C (as applicable) of this Manual regarding the confidentiality of Bids.

Although a Bid may have pages marked “confidential” or “proprietary,” the Bid may be subject to release in response to a CRC 10.500 request. See chapter 11 of this Manual for further discussion.

2. Confidentiality/conflict statements: In addition to the Buyer, other personnel may be involved in the solicitation development, evaluation, and selection process. The JBE may adopt a requirement in its Local Contracting Manual that these personnel sign confidentiality/conflict statements.

A confidentiality/conflict statement typically requires that the person signing:

- Certify that all information concerning the procurement will be kept confidential and secure;
- Certify that no information will be disclosed to any party who has not signed a confidentiality/conflict statement;
- Acknowledge that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, terms and conditions, and includes concepts and discussions as well as written or electronic materials;
- Acknowledge that if the person leaves the procurement project before it ends, all procurement information must still be kept confidential;
- Agree that any instructions relating to the confidentiality of procurement information will be followed;
- Acknowledge that any unauthorized disclosure may be a basis for civil or criminal penalties and/or disciplinary action;
- Agree to advise the Buyer immediately in the event the person either learns or has reason to believe that someone who has access to confidential procurement information has disclosed or intends to disclose that information in violation of a confidentiality/conflict statement;
- Certify that the person has no personal or financial interest and no present or past employment or activity that would be incompatible with participation in the procurement; and
- Agree that no gift, benefit, gratuity, or consideration will be accepted from any Prospective Bidder.

D. Advertising

1. When advertising is required: JBEs are sometimes required to advertise solicitations. Even when a JBE is not required to advertise a solicitation the JBE may wish to do so to increase competition.

Note: A JBE does not need to advertise any non-competitively bid procurement. See chapter 5 of this Manual for more information regarding non-competitively bid procurements.

The requirements for advertising depend on the type of procurement: non-IT goods, non-IT services, or IT goods and services. See the applicable section in chapters 4A, 4B, and 4C of this Manual.

2. Types of advertising: A JBE may advertise a solicitation by:

- posting a notice on its own website;
- placing an advertisement in print media;
- submitting the procurement to the California State Contracts Register (CSCR), which may be accessed via DGS's eProcurement system;[1]
- posting a notice to another electronic bidding system; or
- other methods the Buyer determines are reasonably likely to reach Prospective Bidders.

3. Timing of advertising: Solicitation Documents should be released after or simultaneously with any required advertisement to ensure that Prospective Bidders learn about solicitations in a timely manner.

Solicitations should be advertised for at least 10 working days before the Bid Closing Time to ensure Prospective Bidders have enough time to generate Bids. For small value solicitations, however, the JBE may wish to consider a shorter advertising period. If a JBE adopts a shorter advertising period for small value solicitations, it should include details in its Local Contracting Manual.

Note: DGS's eProcurement system may require that an advertisement remain in the CSCR longer than 10 days. Other electronic bidding systems may have similar requirements. Buyers should confirm the advertisement end date if using these systems.

[1] DGS's eProcurement system currently uses BidSync technology. JBEs may be required to register with BidSync to use certain features of DGS's eProcurement system.

4. Record of advertisement: A copy of the published advertisement should be included in the procurement file.

5. Resolicitations: A JBE conducting a resolicitation does not need to readvertise the solicitation if:

- The resolicitation occurs within three months of the publication of the original advertisement;
- Notice of resolicitation is provided to Prospective Bidders that requested and/or were sent the original Solicitation Document; and
- There is no material change to the solicitation.

6. Contract advertising exemption: JBEs can be granted an exemption from advertising by the Approving Authority or delegee when there is a compelling reason to do so. An exemption may be warranted if, for example, only one Prospective Bidder can supply the required goods or services and advertising would not produce more Prospective Bidders.

7. Advertising in the CSCR: The CSCR is a centralized listing of state procurements that DGS is required to publish by Government Code (GC) section 14825. The CSCR currently takes the form of an online database, accessed through DGS's eProcurement systems. Prospective Bidders are likely to see advertisements in the CSCR.

A JBE may submit an advertisement to the CSCR by using DGS Procurement Division's Internet web page (*www.pd.dgs.ca.gov*), or by submitting Form STD 815 to DGS/Business Development Unit. DGS charges a fee for each advertisement that appears in the CSCR. There is an additional fee for advertisements that are not submitted electronically.

E. Samples

The practice of obtaining samples from Prospective Bidders before contract award is not recommended. If sample goods are needed for review before award for demonstration or prepurchase testing, the Solicitation Document should:

- Explain that sample goods are required for demonstration or prepurchase testing;

- State that the JBE is not obligated for the cost of the sample goods or for their return; and
- Specify the quantities of the sample goods required.

Caution should be taken to ensure that a Bid does not contain terms or conditions that would result in the automatic purchase of the goods being tested.

4.2 SOLICITATION DOCUMENTS GENERALLY

The Solicitation Document sets forth the procurement process and includes the solicitation and contract requirements. It is the guiding document that ensures that Bidders are able to submit Responsive Bids and that the procurement is successful.

A. Developing the Solicitation Document

Each Solicitation Document, regardless of format (Request for Quote (RFQ), Invitation for Bid (IFB), Request for Proposal (RFP)), should clearly state the needs or business requirements of the JBE in order for a Prospective Bidder to weigh associated risks and price the purchase.

1. Avoid writing restrictive requirements: JBEs should not include requirements in Solicitation Documents that restrict the bidding to a single Prospective Bidder. Buyers can avoid restrictive requirements by:

- Including only essential requirements;
- Avoiding restrictive, impractical, or nonessential requirements;
- Carefully checking delivery requirements to ensure that the turnaround time from a Bidder's receipt of order to delivery is not too restrictive or limiting;
- Defining requirements to promote and encourage Bidders to bid standard items or standard services where possible;
- Not specifying a particular brand name, product, or product feature that is peculiar to one manufacturer, except for reference purposes;
- Not dictating detailed design solutions prematurely; and
- Allowing sufficient time from the posting of the solicitation to the Bid Closing Time or first key action date to provide Prospective Bidders time to review and consider the requirements, prepare a Bid, and submit the Bid.

2. PCC 6611 Special Negotiation Process: If the procurement will include a special negotiation process (e.g., the use of supplemental bids), the Solicitation Document must provide appropriate details.

B. Required Provisions

1. Bidder instructions: Each Solicitation Document should include instructions to Prospective Bidders detailing how to submit a Responsive Bid. A JBE may adopt a standard set of bidder instructions for use in its solicitations. If adopted, the standard set of bidder instructions should be included in the JBE's Local Contracting Manual.

2. General provisions: Each Solicitation Document should include the JBE's standard terms and conditions for the applicable type of purchase (non-IT goods, non-IT services, or IT goods and services). To the extent practicable, the JBE should include terms and conditions specific to that procurement, or simply attach the entire proposed contract including available appendices.

3. Protest information: Each Solicitation Document must include information regarding protest procedures, including relevant protest deadlines and where protests must be sent. If the JBE estimates that the procurement will be below the applicable protest threshold adopted by the JBE, the Solicitation Document must state that protests will not be accepted. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

4. Common elements of RFPs and IFBs: All RFPs and IFBs must contain the following elements:

- A schedule of key dates, including the Bid Closing Time;
- Information on how Bids are to be submitted (e.g., sealed envelope with the solicitation number on the outside of the sealed package);
- Where Bids must be sent or delivered;
- Any attachments that are required to be returned by Bidders, such as administrative or technical requirements; and
- Evaluation information.

All RFPs and IFBs must also contain provisions addressing the following:

- Bidder conflict of interest (see PCC 10410–10411); and
- Antitrust claims (see GC 4552–4554).

5. Bidder signatures: For any written solicitation, regardless of dollar value, solicitation format, or delivery method (i.e., faxed, mailed, or delivered in person), Bids should include the signature of an authorized representative of the Bidder. Faxed or electronic signatures are acceptable if allowed by the Solicitation Document. Of course, a faxed or electronic signature could not be used in any solicitation requiring a sealed bid as such bids must be delivered to the JBE in a sealed envelope.

Note: Bidder signatures are not required if the solicitation is conducted via e-mail or telephone, although the Buyer should document the name of the Bidder representative who provides the Bid.

6. Faxed bid responses: The following paragraph (or equivalent) must be included in all written solicitations when a JBE accepts faxed Bids:

> Bids submitted by facsimile machine (fax) will be considered only if they are sent to [office fax number]. Bids sent to any other fax number will not be considered. The~~o be considered, all~~ pages of the faxed bid ~~that are~~ received before the ~~bid opening time~~bid due date and time specified in the solicitation document will be considered "the complete bid." Please be advised that there is a heavy demand placed on the fax machine receiving bids and the JBE assumes no responsibility if a bidder cannot transmit its bid via fax, or if the entire bid is not received before the ~~bid opening~~ bid due date and time~~time~~.

Note: JBEs should consider adopting a solicitation value (e.g., $10,000) above which faxed bids will not be accepted. JBEs may also consider limiting the acceptance of faxed Bids to solicitations conducted via telephone or e-mail. Any limit on faxed bids should be included in the JBE's Local Contracting Manual.

7. Loss leader prohibition: Except as noted below, a JBE must include the following statement in every (i) non-IT goods Solicitation Document, (ii) non-IT services IFB or RFP that involves the furnishing of equipment, materials, or supplies, and (iii)- IT goods or services RFP ~~must contain the following statement~~:

> It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.

Exceptions: The following acquisitions do not require loss leader language:

- Request for Offers (RFOs) for acquisitions from LPAs;
- Procurements using the SB/DVBE option; and
- Procurements under $5,000.

8. Socioeconomic and environmental program language: JBEs are reminded to include socioeconomic and environmental program language in their solicitations, as applicable. If the DVBE incentive is waived, the Solicitation Document should state that the DVBE incentive is being waived. Refer to chapter 3 of this Manual for further information regarding socioeconomic and environmental programs, including circumstances in which JBEs may waive the DVBE incentive from individual competitive solicitations.

~~With proper approval, JBEs may waive the DVBE requirement from any individual competitive solicitation. When this occurs, the Solicitation Document should state that the DVBE requirement is being waived. The waiver may be approved by the Approving Authority or delegee.~~

~~**Note:** Whenever the DVBE participation requirement is not included in a solicitation, the Buyer should document the procurement file to support the approval of the waiver.~~

9. Tie bids: It is possible that two Bids will have the same cost (when a lowest responsible bidder approach is used) or receive the same score (when a highest scored bid approach is used). JBEs should include a tiebreaker provision in the Solicitation Document to address how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are a coin toss or other similar objective method. The event must be observed by witnesses, and the affected Bidders should be invited to observe.

10. Warranty requirements: The Solicitation Document should specify any warranty requirements.

11. Shipping costs: For any procurement including goods (non-IT or IT), shipping costs must be addressed in the Solicitation Document.

12. Conflict Minerals: PCC 10490 places restrictions on procurements that include goods or services that involve certain “conflict minerals.” These minerals include cassiterite, columbite-tantalite, gold, and wolframite—minerals found in many

technological products such as mobile telephones, laptop computers, and digital video recorders.

Scrutinized companies, as defined in PCC 10490(b), are ineligible to submit Bids to JBEs for procurements involving conflict minerals. Accordingly, if a JBE is conducting a procurement for goods or services that involves these minerals, the JBE should require each Bidder to certify either (i) it is not a "scrutinized company" as defined in PCC 10490(b), or (ii) the goods or services the Bidder would provide to the JBE are not related to products or services that are the reason the Bidder must comply with Section 13(p) of the Securities Exchange Act of 1934.[2]

C. Amending a Solicitation Document

1. Clarifications or changes to a Solicitation Document: Clarifications or changes to a Solicitation Document are made by an addendum. An addendum should include at a minimum the following information:

- Addendum number;
- Solicitation title and number;
- Indication of where the clarification or change is made in the Solicitation Document (e.g., deleting and inserting pages); and
- Revised Bid Closing Time, or statement that the Bid Closing Time is unchanged.

A Solicitation Document may be modified before the Bid Closing Time. In the case of a modification resulting from a solicitation specifications protest, a Solicitation Document may be modified after the Bid Closing Time.

If the original solicitation was in written format, any addendum to the solicitation must be in writing. If the original solicitation was conducted by telephone, then the addendum may be communicated by telephone or in writing, at the Buyer's discretion. If the addendum is communicated by telephone, the addendum must be documented as part of the RFQ. All addenda become part of the procurement file.

[2] PCC 10490(b) defines a "scrutinized company" as "a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement." Section 13(p) of the Securities Exchange Act of 1934 requires certain entities to make disclosures concerning conflict minerals.

Note: An addendum should be issued a reasonable time before the Bid Closing Time to allow Prospective Bidders sufficient time to prepare their Bids. If, in the Buyer's judgment, Prospective Bidders will need more time to submit a responsive Bid, then the Bid Closing Time should be extended in the addendum.

2. Evaluation criteria revisions: Evaluation criteria may not be changed after the Bid Closing Time.

D. Multiple Awards for Services

JBEs may award multiple contracts for services through a single solicitation. This is useful, for example, when there are a variety of services or locations involved.

The single solicitation must (i) have clear, concise descriptions of the work to be performed or goals and objectives to be achieved, (ii) state the intended number of awards,[3] and (iii) provide a clear objective standard on how awards will be made. The single solicitation should give Bidders sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

4.3 BID HANDLING

1. Bid submissions: Generally, Bids are handled as follows:

- When sealed Bids are required, each Bid must be separately sealed inside an envelope, signed (if required by the Solicitation Document), and received by the Bid Closing Time to be considered for award.
- Bids must be kept in a secured area and remain confidential until bid opening.
- Bids received after the Bid Closing Time are considered nonresponsive and must not be considered for award.[4]

2. Submission of bids by fax: Faxed bids should only be accepted when:

- The Solicitation Document specifically states they will be allowed; and
- They are received on the fax machine at the telephone number specified in the Solicitation Document.

[3] The intended number of awards may be a range; for example, 2–4.
[4] A JBE may adopt, in its Local Contracting Manual, a requirement that late Bids be returned unopened to the applicable Bidder.

The internal clock of the receiving fax machine is the clock by which the official time of receipt will be determined.

Any solicitation that requires a sealed Bid cannot be faxed.

4.4 VENDOR SELECTION

A. Vendor Selection Basics

The Evaluation Team should be composed of personnel familiar with the subject matter of the procurement, as well as applicable legal requirements. Each Evaluation Team member must:

- Be unbiased and able to evaluate all Bids fairly; and
- Withdraw from participating in an evaluation if he or she has or acquires a disqualifying interest.

An example of a disqualifying interest is where the Evaluation Team member's spouse is an employee of a Bidder.

Private consultants may not be voting members of the Evaluation Team. Private consultants may be used only to provide clarification or subject matter expertise to the Evaluation Team.

B. No Bids

If no Responsive Bid is received from a Responsible Bidder, the Buyer has two options:

Option 1: The Buyer may cancel and reissue the solicitation, modifying any possible restrictive requirements. The Buyer should also consider methods to broaden the number of Bidders.

Option 2: If, in the opinion of the Buyer, a second solicitation would not result in a different outcome, the Buyer may cancel the solicitation and proceed with a sole source purchase following the requirements in chapter 5, section 5.9.A of this Manual. If possible, the JBE should select as the sole source a responsible Bidder whose Bid was substantially technically compliant/responsive with the specifications.

Note: A JBE's ability to cancel a solicitation is not limited to situations where too few Bids were received. Before the Bid Closing Time, a JBE may cancel a solicitation for any or no reason. After the Bid Closing Time, all Bids may be rejected if the JBE determines that:

- The Bids received do not reflect effective competition;
- The cost is not reasonable;
- The cost exceeds the amount expected; or
- ~~The JBE determines otherwise that a~~Awarding the contract is not in the best interest of the JBE.

C. Required Certifications or Permits

The PCC requires JBEs to obtain certifications or permits in connection with certain purchases.~~.~~

1. Darfur Contracting Act: Procurements for **non-IT goods or services** must address the requirements of the Darfur Contracting Act. The act is intended to preclude JBEs generally from contracting with "scrutinized companies" that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons stated in PCC 10475.

For acquisitions of non-IT goods or services, JBEs must require certain vendors to certify whether they are a "scrutinized company." This applies regardless of the procurement approach used including, but not limited to: RFQs, RFPs, IFBs, and non-competitively bid procurements (except as specified below). The JBE may use the certification form contained in appendix A of this chapter, or develop its own form.

The only exception to JBEs obtaining this information is for contracts awarded using (i) an LPA, if the entity creating the LPA obtained a Darfur certification, or (ii) Intergovernmental Contracts (IGCs).

A scrutinized company is ineligible to submit a Bid for a contract with a JBE for non-IT goods or services. PCC 10478(a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a scrutinized company in order to submit a Bid to a JBE. A scrutinized company may, however, submit a Bid to a JBE if the company first obtains permission from the JBE.

2. Iran Contracting Act: Procurements of non-IT goods, non-IT services, or IT goods and services of **one million dollars ($1,000,000) or more** must address the requirements of the Iran Contracting Act. Generally speaking, the act is intended to place limits on transaction with entities that engage in certain investment activities in Iran, for the reasons stated in PCC 2201.

An entity is ineligible to bid on, submit a proposal for, enter into, or renew any contract with a JBE for goods or services of one million dollars ($1,000,000) or more if the entity engages in investment activities in Iran, as defined in the act.

In addition, a financial institution is ineligible to bid on, submit a proposal for, enter into, or renew any contract with a JBE for goods or services of one million dollars ($1,000,000) or more if the financial institution extends credit, as defined in the act, to a business identified on a list of ineligible vendors maintained by DGS (Iran List).

Prior to submitting a bid or proposal and prior to executing any JBE contract or renewal for goods or services of one million dollars ($1,000,000) or more, an entity must certify that it is not on the Iran List. Also, financial institutions must certify that they are not extending credit to an ineligible vendor as described in the act. This certification requirement applies regardless of the procurement approach, method, or solicitation format used, including RFPs, IFBs, RFQs, and non-competitively bid procurements. The act provides exceptions to the certification requirement; see PCC 2203(c) and (d) for additional information regarding the exceptions.

This sample certification in Attachment B may be used to satisfy the act's certification requirements.

3. Purchases of Tangible Personal Property: If a purchase includes tangible personal property, the Vendor must submit to the JBE, for itself and each of its affiliates that make sales for delivery into California, a copy of either:

- A California seller's permit issued under Revenue and Taxation Code section 6066 and following; or
- A certificate of registration issued under Revenue and Taxation Code section 6226.

The Vendor must submit this documentation before a contract is executed.

There are two exemptions to this requirement:

- Purchases of $2,500 or less if the JBE is using a credit card to pay for the purchase (**note:** the total amount allowed under this exception for each Vendor per year is $7,500 per JBE); and
- Purchases where the Approving Authority, or his or her delegee, makes a written finding that the contract is necessary to meet a "compelling state interest." "Compelling state interests" include ensuring the provision of essential services, ensuring the public health, safety, and welfare, and responding to an emergency, as that term is defined in PCC 1102.

The JBE should inform Bidders of this requirement in applicable Solicitation Documents. Alternately, the JBE may require all Bidders to submit this documentation with their Bids in applicable solicitations.

Note: Depending on the specific situation, computer software may constitute "tangible personal property" for purposes of this section. Software is considered tangible personal property if (i) the software is transmitted to the JBE on a CD-ROM or other tangible medium, or (ii) the software includes a printed user's manual or other physical accessory. Software is not considered tangible personal property if (i) the software is transmitted to the JBE via the Internet, and (i) no tangible medium, printed manual, or other physical accessory is included with the software.

4. Document the file: If a Bidder or Bid is rejected due to ineligibility, the procurement file should be documented identifying the reason, with a printout of the supporting documentation.

D. Deviations

The JBE may reject any or all Bids, or parts thereof, and may waive any immaterial deviation or defect in a Bid. The JBE's waiver of any immaterial deviation or defect in no way modifies the Solicitation Documents or excuses the Bidder from full compliance with the solicitation specifications if awarded the contract.

1. Waiving mandatory requirements is prohibited: Mandatory requirements include those required by applicable law. Material deviations of mandatory requirements cannot be waived, and any Bid containing such deviations must be rejected. All such deviations must be documented in the procurement file to support the rejection.

2. Determining whether a deviation is material: JBEs should evaluate Bids by first determining that each Bid is responsive to the solicitation requirements. A deviation from a requirement or a defect is material if, in the opinion of the JBE, the affected Bid:

- Is not in substantial accord with the solicitation requirements;
- Provides an advantage to one Bidder over other Bidders in any way (such as reducing the cost of providing the goods or services); or
- Has a potentially significant effect on the delivery, quantity, or quality of items bid, amount paid to the Vendor, or the cost to the JBE.

3. Immaterial deviation: A Bid that substantially conforms to the requirements set forth in a Solicitation Document, but is not strictly responsive, may be accepted if the variance cannot have affected the amount of the Bid or given the Bidder an advantage or benefit not allowed other Bidders. In other words, if the variance is inconsequential, the Bid may still be accepted.

Example: A Bidder referenced the wrong page in its supporting technical literature. The Bidder directed the Evaluation Team to page 4 and the correct page was page 5.

4. Material deviation: A material deviation affects the amount of the Bid or provides an advantage or benefit not allowed other Bidders. A material deviation typically affects the cost, quantity, or quality of the product or services to be provided to the JBE.

Example: The solicitation required a telephone system that would serve 500 users and the Bidder offered a system that would serve 250 users.

5. JBE discretion: The JBE, in its sole discretion, will determine what constitutes a material deviation from a mandatory requirement.

E. Tax Delinquents

Pursuant to PCC 10295.4, a JBE shall not enter into any contract for the acquisition of **non-IT goods or services** with a person or entity indentified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one of the 500 largest tax delinquents. Any contract entered into in violation of PCC 10295.4 is void and unenforceable.

Before executing any contract or renewal for non-IT goods or services, the JBE should verify that the contractor is not on either of the following lists:

FTB list: ~~https://~~*www.ftb.ca.gov/aboutFTB/Delinquent_Taxpayers.shtml*

BOE list: ~~http://~~*www.boe.ca.gov/cgi-bin/deliq.cgi*

This requirement applies regardless of the procurement approach, method, or solicitation format used, including: RFPs, IFBs, RFQs, and non- competitively bid procurements.

4.5 REVERSE AUCTIONS

JBEs may use a "reverse auction" for the acquisition of non-IT goods, non-IT services, or IT goods and services. A reverse auction is a competitive online solicitation process for fungible goods or services in which Bidders compete against each other online in real time in an open and interactive environment.

Any reverse auction process used by a JBE must comply with the following:

- The reverse auction documentation must specify (i) the date and time when the JBE will start accepting online Bids, and (ii) the date and time when the JBE will stop accepting online Bids;
- Prospective Bidders must register before the reverse auction opening date and time;
- Prospective Bidders must agree to any terms and conditions and other requirements of the solicitation;
- All Bids must be posted online and be updated on a real-time basis;
- Bidders must be allowed to lower their Bids below the lowest currently-posted bid; and
- Bids must be accepted until the specified closing date and time.

A JBE may require Prospective Bidders to be prequalified prior to placing Bids in a reverse auction. A JBE may adopt other policies respecting reverse auctions in its Local Contracting Manual.

4.6 FOLLOW-ON CONTRACTING

A Vendor may, as part of the consulting services provided to a JBE, recommend or suggest the purchase of certain goods or services. This is common when, for example, the JBE contracts with a Vendor to create a feasibility study. No Vendor (or subsidiary

thereof) that makes such a recommendation may submit a Bid or be awarded a contract to provide those goods or services to the JBE. In addition, no Vendor may be paid out of JBE funds for developing recommendations on the acquisition of IT goods or services or assisting in the preparation of a feasibility study, if that Vendor is to be a source of such acquisition or would otherwise directly and/or materially benefit from the JBE's adoption of such recommendations or the course of action recommended in the feasibility study.

This "follow-on" prohibition does not extend to Vendors that were awarded a subcontract of the original consulting services contract that amounted to no more than 10 percent of the total monetary value of the consulting services contract. To determine whether a follow-on situation exists, the JBE should examine the initial and subsequent contracts.

Analysis of the initial contract: The first step is determining whether the initial contract is for consulting services. If it is not, the prohibitions above do not apply. The essential issue is what the Vendor delivers, not how it is labeled. The following questions may prove helpful:

- Are consulting services present?
- Does the contract call for services that are advisory in nature, providing a recommended course of action or personal expertise and having an end product that transmits information or analysis related to the governmental functions of a JBE?

Determining whether certain IT-related contracts constitute consulting services contracts can be difficult. For reference, the following are examples of what are typically or not typically considered consulting services in the IT area:

1. IT contracts typically considered as consulting services contracts:
   - Feasibility study;
   - Strategic planning and business process reengineering/improvement (not included in the lifecycle of an IT project); and
   - Maintenance and operations.

2. IT contracts typically not considered as consulting services contracts:
   - Design development and implementation;
   - Project management;
   - Independent validation and verification; and
   - Independent project oversight consultant.

3. IT contracts that require analysis of the specific details of the contract to determine whether or not it is a consulting services contract:
   - Acquisition specialist.

Analysis of the subsequent contract: If the initial contract is determined to be a consulting services contract, determine the causal relationship, if any, between the initial contract and the subsequent contract. The purpose of the causal inquiry is to determine whether there is a sufficient link between the end product(s) of the first contract and the deliverable(s) to be procured by the second contract to warrant preclusion of the Vendor that performed the first contract. In general, if there is a causal relationship, the JBE must reject the Prospective Bidder or withhold the award of a contract. Consultation with legal counsel is recommended before the JBE decides either to reject a Prospective Bidder or to withhold an award of a contract.

4.7 SUMMARY DOCUMENT

~~Procurement summary document:~~ The evaluation and selection process for every procurement effort should be documented and referenced in a procurement summary. The purpose of the procurement summary is to create a single document that provides the history of a particular procurement transaction and explains the significant facts, events, and decisions leading up to the contract execution. The procurement summary should be included in the procurement file.

Procurement summaries should be written clearly and concisely to support the soundness of the purchasing decision.

Procurement summary information includes but is not limited to:

- Documenting the prices offered by the Bidders;
- Documenting that the selection process occurred in accordance with the Solicitation Document;
- Determining that the selected Bidder is responsible and the Bid is responsive; and
- Attaching the scoring sheets, if applicable.

APPENDIX A

DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a "scrutinized company" as defined in PCC 10476, or (ii) receive written permission from the [Court/HCRC/AOC] to submit a bid or proposal.

To submit a bid or proposal to the [Court/HCRC/AOC], you must complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

☐ 1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

OR

☐ 2. We are a "scrutinized company" as defined in PCC 10476, but we have received written permission from the [Court/HCRC/AOC] to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the [Court/HCRC/AOC] is included with our bid or proposal.*

OR

☐ 3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a "scrutinized company" as defined in PCC 10476.

CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer/bidder to the clause in paragraph 3. This certification is made under the laws of the State of California.

Company Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of _____ in the State of _____*

APPENDIX B

IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2204, you must complete this Iran Contracting Act certification when (i) submitting a bid or proposal to the [Court/HCRC/AOC] for a solicitation of goods or services of $1,000,000 or more, or (ii) entering into or renewing a contract with the [Court/HCRC/AOC] for the purchase of goods or services of $1,000,000 or more.

To submit a bid or proposal to, or enter into or renew a contract with, the [Court/HCRC/AOC], you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, simply check the corresponding box.

☐ 1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC 2203(b), and we are not a financial institution extending $20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

☐ 2. We have received written permission from the [Court/HCRC/AOC] to submit a bid or proposal, or enter into or renew a contract, pursuant to 2203(c) or (d). *A copy of the written permission from the [Court/HCRC/AOC] is included herewith.*

CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, certify that I am duly authorized to legally bind the proposer/bidder/vendor to the clause in paragraph 1. This certification is made under the laws of the State of California.

Company Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of _____ in the State of _____*

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT GOODS

CHAPTER 4A

Original Release Date: October 1, 2011	Revised Effective~~Revision Date~~: ~~August 31, 2012~~ January 1, 2014

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INTRODUCTION

The most significant change to Judicial Branch Entity (JBE) procurement required by the California Judicial Branch Contract Law is that JBEs must procure non-IT goods above a threshold amount ($25,000, unless a higher amount is established by the JBE's Approving Authority) using a "lowest responsible bidder" methodology rather than a "best value" or "highest scoring bidder" approach. JBEs can no longer use these other approaches to procure non-IT goods valued above the threshold amount.

This chapter sets forth a step-by-step guide that Buyers can use when competitively soliciting non-IT goods.[1] For noncompetitive solicitation of non-IT goods, see chapter 5 of this Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—DETERMINE THE PROCUREMENT VALUE

The value of the procurement directly affects the processes to be used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the non-IT goods to be procured;
- Value of any associated incidental services (such as installation);
- Delivery costs;
- Taxes (if applicable); and
- Other associated costs, as applicable.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for additional information on incidental services acquired in connection with the procurement of non-IT goods.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

STEP 2—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. ~~, s~~See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 3—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. This may include:

- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on ~~seeking~~ legal review of contracts~~participation~~.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 4—SELECT SOLICITATION DOCUMENT TYPE

Two types of Solicitation Documents are used in the procurement of non-IT goods:

- Requests for Quote (RFQs); and
- Invitations for Bid (IFBs).

See the table below for information about when each type of Solicitation Document should be used.

Solicitation Document	Procurement Size	Description
RFQ	Up to $50,000[2]	Used for straightforward, uncomplicated, and low-risk procurements.

[2] A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

Solicitation Document	Procurement Size	Description
		Note: Cannot be used if incidental services included in the purchase (e.g., set-up, installation) exceed $4,999.99, unless an exemption is granted. See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for additional information.
IFB	Any size	Used for more complicated, higher risk, and higher value procurements.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as "RFQs" or "IFBs."

STEP 5—DRAFT SOLICITATION DOCUMENT

The Buyer should draft the final Solicitation Document. For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

In addition to the required provisions identified in chapter 4 of this Manual, a Solicitation Document for non-IT goods must comply with the following requirement:

- Product specifications must not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California (see PCC 10302.6).

The following subsections provide additional information useful in drafting the two types of Solicitation Documents.

A. RFQs

An RFQ is used for straightforward procurements where Bids may be solicited by telephone or another method of electronic communication. If the Buyer solicits Bids by telephone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or another written

manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a general description of the non-IT goods to be solicited;
- Include quantities of the non-IT goods to be solicited;
- Include any required features of the non-IT goods to be solicited;
- Specify when the non-IT goods must be delivered;
- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

B. IFBs

The IFB must include the JBE's standard terms and conditions for the acquisition of non-IT goods. The JBE should also distribute with the IFB the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices. The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The IFB must state the time and place Bids will be publicly opened. This place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities.

STEP 6—PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT goods **in excess of $50,000.**[3] See chapter 4, section 4.1.D of this Manual for advertising methods.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

[3] All solicitations of non-IT goods in excess of $50,000 must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than $50,000.

Note: If incidental services included in the purchase (e.g., set-up, installation) exceed $4,999.99, the solicitation must be advertised even if the total estimated value of the solicitation is under $50,000. See section A in the "Selected Topics Relevant to Solicitations of Goods" section below for information regarding exemptions to this requirement.

STEP 7—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. Some aspects of receiving Bids depend on the type of Solicitation Document used.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer should document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs

Bids must be submitted in sealed envelopes. A JBE should time/date stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened.

STEP 8—OPEN BIDS

All Bids in response to IFBs must be publicly opened at the time and place specified in the IFB. If any person present at the opening requests that the Bids be read, the Buyer (or designee) must read the Bids aloud. Once opened, the Bids must be made available for public inspection.

Note: Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

STEP 9—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs.

A. RFQs

If a Buyer obtains a single Bid, and the Buyer determines that the Bid is fair and reasonable, the Buyer does not need to obtain additional Bids. If a Buyer obtains a single Bid, and the Buyer determines that the Bid is not fair and reasonable, the Buyer should obtain at least one additional Bid.

B. IFBs

The Buyer should make reasonable efforts to obtain at least two Responsive Bids from Responsible Bidders. Advertising the solicitation constitutes a reasonable effort.

STEP 10—BID CLARIFICATION

If the JBE requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 11—EVALUATE ~~THE~~ BIDS

The Evaluation Team must evaluate the Bids using the criteria specified in the Solicitation Document. The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual.

A Bidder's exception to the JBE's terms or conditions (addition, deletion, or other modification) may constitute a material deviation. A Bid with a material deviation is nonresponsive. JBEs have discretion to determine materiality.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: For purposes of determining the lowest Bid, the amount of sales tax must be excluded from the total amount of the Bid (PCC 10301). See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

A. RFQs

Under PCC 10301, JBEs must award contracts for non-IT goods above a threshold amount to the lowest responsible bidder. The default threshold amount is $25,000, but the Approving Authority may establish a higher threshold amount for his or her JBE.[4] If the Approving Authority establishes a higher threshold amount, the JBE should document this higher threshold amount in its Local Contracting Manual.

RFQs less than the threshold amount: JBEs are not statutorily required to award the contract to the lowest responsible bidder if the JBE has a valid business reason to do otherwise.

RFQs equal to or above the threshold amount: The JBE must award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

B. IFBs

The JBE must award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

[4] PCC 10301 allows the director of the Department of General Services (DGS) to establish a higher threshold amount applicable to procurements of non-IT goods by state agencies. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the authority to establish a higher threshold amount for a JBE resides in the Approving Authority of that JBE. If the Approving Authority establishes a higher threshold amount, the Approving Authority must ensure that (i) the higher threshold amount is reasonable and appropriate, and (ii) the JBE provides adequate oversight for procurements conducted pursuant to the higher threshold amount.

STEP 12—NOTICE OF INTENT TO AWARD

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs

There are both posting and notification requirements when using an IFB.

1. Posting

The JBE must post a "notice of intent to award" on its website or in a public place in the offices of the JBE at least 24 hours before the contract is awarded. Once the notice has been posted, the time for submitting a protest begins to count down.

Exception: The JBE does not need to post a notice of intent to award if (i) the JBE has adopted a protest threshold applicable to non-IT goods, and (ii) the procurement is below that protest threshold. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

2. Notification

If the contract will be awarded to a Bidder that did not submit the lowest Bid (because, e.g., the lowest Bid was not a Responsive Bid, or the Bidder that submitted the lowest Bid was not a Responsible Bidder), the JBE must notify the lowest Bidder at least 24 hours before awarding the contract. The 24-hour period excludes Saturdays, Sundays, and legal holidays. If the lowest Bidder submits a valid protest, the JBE must not make an award until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding protest procedures, see chapter 7 of this Manual.

STEP 13—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, ~~T~~the contract must be signed by an authorized representative of the Bidder who can bind the Bidder contractually.

STEP 14—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual.

STEP 15—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

SELECTED TOPICS RELEVANT TO SOLICITATIONS OF GOODS

A. Incidental Services

Unless an exemption is granted, incidental services included with the purchase of non-IT goods:

- May not exceed $4,999.99, and
- Should be directly related to the purchase of non-IT goods, such as setup or installation.

Unless an exemption is granted, the solicitation must be advertised if the value of incidental services included in the purchase exceeds $4,999.99, even if the total estimated value of the solicitation is under $50,000.

The Approving Authority, or his or her delegee, may grant an exemption to these requirements if he or she determines, in his or her sole discretion, that the cost of complying with the requirement will likely exceed the savings generated by complying with the requirement.

B. Motor Vehicles

In establishing specifications for the purchase of a motor vehicle, and in determining the lowest responsible bidder, a JBE may consider the probable resale value of the vehicle as determined by:

- Recognized published used car marketing guides;

- Other established historical evidence of future used motor vehicle value; or
- Contractual guarantee of the apparent low Bidder that the resale value of the vehicle will be no less in proportion to Bid price than any other comparable vehicle complying with specifications for which a Bid was received.

C. Solicitations of Printer or Copier Cartridges

If a JBE procures printer or copier cartridges, it must include a statement on the cover of the Solicitation Document (or in some other prominent place in the Solicitation Document) informing Bidders that it is unlawful to prohibit a printer or copier cartridge that is sold to a JBE from being recycled or remanufactured, except as noted below.

Exception: This requirement does not apply where the Bidder enters into signed agreements with its customers consenting to the return of the used cartridge to the Bidder for (a) recycling and remanufacturing, or (b) recycling.

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF NON-IT SERVICES

CHAPTER 4B

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INTRODUCTION

The Public Contract Code (PCC) is more flexible in the procurement of non-IT services than in the procurement of non-IT goods. When procuring non-IT services, Judicial Branch Entities (JBEs) have the ability to use a "lowest responsible bidder" approach or a "highest scored bid" approach.

This chapter sets forth a step-by-step guide that Buyers can use when competitively soliciting non-IT services.[1] For noncompetitive solicitation of non-IT services, see chapter 5 of this Manual.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—DETERMINE THE PROCUREMENT VALUE

The value of the procurement directly affects the processes used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the non-IT services to be procured;
- Taxes (if applicable); and
- Other associated costs, as applicable.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

STEP 2—DETERMINE THE TYPE OF SERVICE

The Buyer should determine the type of non-IT services being procured. Certain types of non-IT services have special or different procurement and contract requirements, so it is important to make this determination early in the procurement process.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

Are the non-IT services being procured **consulting services**? Consider these factors:

- Is the primary purpose of the procurement some type of recommendation, or product of the mind?
- Is the unique knowledge or intellectual abilities of an individual of critical importance to the success of the non-IT services?

Are the non-IT services being procured **legal services**? Consider these factors:

- Must the services be performed by a licensed attorney?
- Are the services directed by an attorney or necessary for the performance of attorney services? Examples include services performed by jury consultants and expert witnesses.

Note: Contracts for legal services may be competitively bid, but there is no requirement to do so (for more information on non-competitively bid procurements, see chapter 5 of this Manual).

STEP 3—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 4—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. These may include:

- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on seeking legal participation.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 5—SELECT SOLICITATION DOCUMENT TYPE

Three types of Solicitation Documents are used in the procurement of non-IT services:

- Requests for Quote (RFQs);
- Invitations for Bid (IFBs); and
- Requests for Proposal (RFPs).

The table below provides guidance on when ~~to use~~ the various types of Solicitation Documents are typically used.

Solicitation Document	Procurement Size	Description	Awarded to:
RFQ	Less than $5,000[2]	Used for very small purchases.	Lowest Responsible Bidder or Highest Scored Bid, at the JBE's discretion
IFB	Any size	Used for simple, common, or routine services that may require personal or mechanical skills.	Lowest Responsible Bidder
RFP	Any size	Used for complex or unique non-IT services in which professional expertise and methods may vary greatly, and creative or innovative approaches are needed.	Highest Scored Bid

[2] A JBE may adopt a higher threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5 section 5.1 of this Manual.

An IFB is often used when the non-IT services are routine, or common, or when there is a standard associated with the service. For example, the hiring of a pest-control firm to do routine exterminations would typically be solicited using an IFB, not an RFP. However, in any solicitation, the JBE may choose to use either an IFB or an RFP in its sole discretion.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as “RFQs,” “IFBs,” or “RFPs.”

STEP 6—DRAFT SOLICITATION DOCUMENT

For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

The more thorough a JBE is in communicating its specific needs, requirements, goals, and objectives in the Solicitation Document, the more complete, responsive, and acceptable the Bids received will be.

The following subsections provide additional information on drafting the three types of Solicitation Documents.

A. RFQs

An RFQ is used for straightforward procurements where Bids may be solicited by telephone or another method of electronic communication. If the Buyer solicits Bids by telephone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or another written manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a general description of the non-IT services to be solicited;
- Include any deliverable resulting from the non-IT services (such as a report);
- Specify when the non-IT services must be completed and any deliverable must be delivered;

- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

Before soliciting Bids in response to an RFQ, the JBE should determine whether the contract resulting from the RFQ will be awarded on a "lowest responsible bidder" basis or on a "highest scored bid" basis. The determination is solely within the JBE's discretion.

B. IFBs and RFPs

IFBs and RFPs share many characteristics and requirements. These shared aspects are addressed in this section B. Section C contains additional information applicable only to IFBs, and section D contains additional information applicable only to RFPs.

Information about the Procurement Process: IFBs and RFPs must include:

1. The standards the JBE will use in evaluating Bids.
2. Time schedules relating to the procurement, including:

    - Date to submit questions or seek clarification (if applicable);
    - Date of Bidders' conference (if applicable);
    - Bid Closing Time;
    - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
    - Anticipated contract term, including start and end dates.

3. The JBE's standard terms and conditions for the acquisition of non-IT services. To the extent practicable, the JBE should also distribute with the IFB or RFP the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices.
4. Where the intent to award notice will be posted. If the JBE will post the intent to award notice on its website, the JBE should specify the applicable URL.

Description of Services: The IFB or RFP must contain a description of the desired non-IT services. The description should include:

- A clear, precise description of the work to be performed, services to be provided, problem to be solved, questions to be answered, issues to be addressed, or the goals and objectives to be met;
- An explanation of the desired approach to the problem, if any;
- Any requirements as to where the work must be performed (e.g., at the JBE's site);
- A description of any specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence, if applicable;
- Performance timelines or completion dates;
- Required quality control standards to be met, if applicable;
- A description of any required deliverables (such as progress reports or a final report summarizing a consultant's findings);
- A description of the assistance to be provided by the JBE, if applicable;
- Acceptance criteria; and
- Practical and policy information, technological requirements or specifications, and legal limitations, if applicable.

Payment Information: The IFB or RFP should contain some basic payment information, including (as applicable):

- Whether and to what extent Progress Payments will be allowed;
- Whether payments are subject to payment withholding;
- Penalties for late or inadequate performance;
- Known or estimated budgetary limitations on the contract price; and
- Travel expenses (what will and will not be paid by the JBE).

Note: See chapter 9 of this Manual for more information regarding Progress Payments.

Required Elements of Bids: IFBs and RFPs specify what Bidders must address or include in their Bids, such as:

1. Required certifications (e.g., Darfur Contracting Act certification).
2. A description of the Bidder's qualifications, which may include at the JBE's discretion:

- Copies of current business licenses, professional certifications, or other credentials;
- Proof of financial solvency or stability (e.g., balance sheets and income statements);
- Proof that the Bidder, if a corporation, is in good standing and qualified to conduct business in California; and
- For Bidders that are nonprofit organizations, proof of nonprofit status.

3. A list of references for whom the Bidder has performed similar work.
4. A list of similar services successfully completed by the Bidder, with samples, if applicable.
5. Identification of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work.
6. Identification of a project coordinator.
7. Resumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out non-IT services.
8. An overall description of the techniques, approaches, and methods to be used in performing non-IT services.
9. If subcontractors are contemplated:

    - identification of those persons or firms;
    - the portions and monetary percentages of the work to be done by subcontractors;
    - how and why subcontractors were selected;
    - resumés of each major subcontractor participant; and
    - description of how subcontracted work will be controlled, monitored, and evaluated.

10. The total cost of the non-IT services, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:

    - Identification of position/classification titles funded;
    - Salary rates or ranges;
    - Percentage of time devoted to the work;
    - Fringe benefits;
    - Operating expenses;
    - Travel and per diem expenses;

- Overhead or indirect costs;
- Subcontractors with the same type of cost details; and
- Other costs.

C. IFBs Specifically

Contracts resulting from IFBs are awarded to the lowest Responsible Bidder. Accordingly, IFBs must be drafted in a manner to allow the JBE to determine which Bidders meet the minimum requirements specified in the IFB. For each specific requirement, a yes or no answer is required. There is no "fully," "barely," "almost," or "exceeded" level of evaluation.

The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The IFB must state the time and place Bids will be publicly opened. This place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities.

Bid Requirements: The IFB must include a requirement that the cost portion of a Bid be submitted in a sealed envelope separate from the remainder of the Bid.

D. RFPs Specifically

RFP Content Requirements: The RFP should identify any "minimum terms" in the JBE's terms and conditions. "Minimum terms" are the terms so important that a proposed exception (addition, deletion, or other modification) will render a Bid nonresponsive. The RFP should require that Bidders identify all proposed exceptions (if any) to the JBE's terms and conditions. The RFP should state that (i) a Bid that takes a material exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive, and (ii) the JBE, in its sole discretion, will determine what constitutes a material exception.

The RFP must specify how the cost portion of the Bid will be submitted. The cost portion of the Bid may be submitted in a sealed envelope separate from the remainder of the Bid, or it may be included with the remainder of the Bid.

Evaluation Plan: Although not part of the RFP itself, the Buyer should develop an evaluation plan along with the RFP. By developing the evaluation plan with the RFP, the Buyer will ensure that the JBE receives all information necessary to properly evaluate the Bids.

The evaluation plan must provide for a fair and equitable evaluation of all Bids. The evaluation plan must include:

- Rating and scoring factors that will be considered; and
- Criteria for assigning cost points (see step 13 regarding assignment of cost points).

The evaluation plan should include the following:

- Price is given substantial weight in relationship to all other criteria used. JBEs should seek legal counsel before issuing an RFP where cost points are less than 30 percent of the total points.
- Exceptions (additions, deletions, or other modifications) to the JBE's terms and conditions may be considered as part of the evaluation process.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

JBEs should disclose in the RFP the evaluation criteria or categories and the percentage weight for each criterion or category. Examples of criteria include price and prior experience.

Other Procurement-Related Information: The RFP should state the date of oral interviews, if any. The date for oral interviews may be tentative.

STEP 7—PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT services **of $5,000 or more.**[3] See chapter 4, section 4.1.D of this Manual for advertising methods.

[3] All solicitations of non-IT services of $5,000 or more must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than $5,000.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

STEP 8—OPTIONAL: HOLD BIDDERS' CONFERENCE

Bidders' conferences provide Prospective Bidders an opportunity to understand better the non-IT services being procured by a JBE. Holding a Bidder's conference is always optional, at the JBE's discretion. Bidders' conferences are more common in solicitations for complex non-IT services. Accordingly, they are rarely held in solicitations using IFBs, but are held more often in solicitations using RFPs.

Note: Bidders' conferences are not held for RFQ solicitations.

STEP 9—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of non-IT services using different Solicitation Documents.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer should document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs and RFPs

Bids must be submitted as specified in the IFB or RFP. A JBE should date/time stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened. Bids received pursuant to an RFP solicitation remain confidential until the scoring process is completed.

STEP 10—OPEN BIDS

The way in which Bids are opened differs for IFBs and RFPs. Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

A. IFBs

The Buyer must publicly open the sealed Bids. The Buyer (or designee) must read the cost information for each Bid.

B. RFPs

The Bids do not need to be publicly opened and read unless the specific RFP requires otherwise.

STEP 11—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs and RFPs.

A. RFQs

If a Buyer obtains a single Bid, and the Buyer determines that the Bid is fair and reasonable, the Buyer does not need to obtain additional Bids. If a Buyer obtains a single Bid, and the Buyer determines that the Bid is not fair and reasonable, the Buyer should obtain at least one additional Bid.

B. IFBs and RFPs

The JBE must receive at least three Bids in response to an IFB or RFP, unless one of the following exceptions applies:

- The JBE advertised the solicitation in the California State Contracts Register (CSCR) (which may be accessed via DGS's eProcurement system[4]) and has solicited all known Prospective Bidders, but still received fewer than three Bids;
- The contract will be awarded to a Community Rehabilitation Program (CRP) entity (see Welfare and Institutions Code section 19404); or

[4] DGS's eProcurement system currently uses BidSync technology. JBEs may be required to register with BidSync to use certain features of DGS's eProcurement system.

- The JBE could have completed the transaction without a competitive solicitation (e.g., procurements of legal services or licensing or proficiency testing examinations).

If the JBE does not receive at least three Bids, and none of the exceptions above applies, then the JBE may consider canceling and reissuing the solicitation. If the JBE takes this course, the JBE should consider modifying any possible restrictive requirements in the IFB or RFP. If the JBE awards the contract, the Buyer should document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

STEP 12—OPTIONAL: HOLD ORAL INTERVIEWS/CLARIFICATIONS

Oral interviews provide the JBE an opportunity to understand better or clarify the Bids submitted by Bidders. Holding oral interviews is always optional, at the JBE's discretion. The JBE is not obligated to hold an oral interview with every Bidder; it may limit interviews to only those Bidders whose Bids need clarification. Oral interviews are more common in solicitations for especially complex non-IT services.

Note: Oral interviews are not held for RFQ or IFB solicitations.

If the JBE otherwise requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 13—EVALUATE BIDS

The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual. The JBE will award the contract as described in this step, if at all. There is no requirement to award a contract; see chapter 4, section 4.4.B of this Manual for additional details.

A. RFQs

The JBE may award the ~~RFQ~~ contract on a "lowest responsible bidder" basis or on a "highest scored bid" basis, depending on which methodology was selected in step 6 above.

For more information about the "lowest responsible bidder" basis, see section B below. For more information about the "highest scored bid" basis, see section C below.

B. IFBs

The JBE must evaluate the Bids and award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

C. RFPs

The Buyer must review all Bids to determine which Bids meet the format requirements specified in the RFP.[5]

All Bids meeting the format requirements must then be submitted to the Evaluation Team that will evaluate and score the Bids using the methods specified in the RFP. The JBE must make all Bids and all evaluation and scoring summary sheets available for public inspection at the conclusion of the scoring process.

The JBE must award the contract, if at all, to the Bidder whose Bid is given the highest score by the Evaluation Team.

[5] For example, the RFP may require that the cost portion of the Bid be submitted on a specified worksheet.

Suggested Noncost Evaluation Criteria: The JBE may consider using the following criteria when evaluating and scoring Bids:

- Does the Bidder understand the JBE's problem or needs?
- Has the Bidder taken any exceptions (addition, deletion, or other modification) to the terms and conditions that are detrimental to the JBE?
- Can the Bidder fit this work into its existing obligations?
- Are the Bidder's proposed approaches, methods, and procedures reasonable and feasible?
- Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
- Does the Bidder have the organization, management capability, management competency, fiscal and personnel resources, and experience to perform the non-IT services being sought?
- Does the Bidder have experience performing work of a similar nature, size, and scope?
- Does the Bidder's past experience qualify the Bidder to perform these non-IT services?
- What are the professional qualifications of the personnel who the Bidder will commit to the project?
- Did the Bidder allocate sufficient staff resources?
- Has the Bidder addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
- Does the Bidder appear to be able to handle and resolve unanticipated complications and delays without interrupting the delivery of non-IT services?
- Are any proposed timelines for performance presented by the Bidder feasible?
- Did the Bidder include plans that will show how performance will be monitored and measured to ensure that all non-IT services are successfully performed and that the objectives, goals, and requirements are met?
- Does the Bidder appear to have the capacity to manage fiscal resources responsibly?
- Does the Bidder have sound fiscal, accounting, cost-monitoring or budget-monitoring procedures in place?

Suggested Cost Evaluation Criteria:

JBEs may use the process for assigning cost points set forth in chapter 4C, appendix A of this Manual. Alternately, JBEs may adopt their own processes for assigning cost points.

STEP 14—NOTICE OF INTENT TO AWARD

In certain circumstances, JBEs must issue or post a notice of intent to award a contract. The requirements differ for solicitations using IFBs and RFPs.

Note: The requirements in this step relating to IFBs and RFPs apply even if the IFB or RFP is used in a procurement valued less than the JBE's protest threshold for non-IT services.

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs

Posting: The JBE must post a "notice of intent to award" on its website or in a public place in the offices of the JBE at least five Court Days before the contract is awarded.

Notification: If the contract will be awarded to a Bidder that did not submit the lowest Bid (because, e.g., the lowest Bid was not a Responsive Bid, or the Bidder that submitted the lowest Bid was not a Responsible Bidder), the JBE must notify the lowest cost Bidder at least five Court Days before awarding the contract.

The JBE may, as a courtesy to Bidders, send a copy of the notice of intent to award to each Bidder by e-mail or fax.

If any Bidder submits a valid protest before award of the contract on the grounds that the protesting Bidder was the lowest Responsible Bidder, the JBE must not award the contract until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of the Manual.

C. RFPs

Posting: When using an RFP, the JBE must post a notice of intent to award the contract in a place accessible by the general public (including any Internet site identified in the RFP) for at least five Court Days before awarding the contract.

If any Bidder submits a valid protest before award of the contract, the JBE will not award the contract until either the protest has been withdrawn or the JBE's protest hearing officer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of this Manual.

STEP 15—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, t~~T~~he contract must be signed by an authorized representative of the Bidder that can bind the Bidder contractually.

STEP 16—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. ~~(f~~For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual~~)~~.

STEP 17—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

Judicial Council of California

STEP-BY-STEP GUIDE FOR THE PROCUREMENT OF IT GOODS AND SERVICES

CHAPTER 4C

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INTRODUCTION

In light of the unique aspects of information technology (IT) and its importance to Judicial Branch Entity (JBE) programs, the Public Contract Code (PCC) allows for a flexible and expeditious approach to IT procurements. The most significant difference between IT and non-IT procurements is that IT procurements may be awarded on the basis of "value effectiveness" within a competitive framework. When procuring IT goods and services, JBEs must consider factors other than price, except when acquiring hardware independently of a system integration project. (See PCC 12102(b).) In additon, JBEs may use a phased approach of Bid development.

This chapter sets forth a step-by-step guide for the procurement of IT goods and services.[1]

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

STEP 1—PERFORM PRELIMINARY ANALYSIS

The Buyer should perform two analyses, discussed below, at the beginning of any IT procurement.

Procurement Value

The value of the procurement directly affects the processes that are used in the procurement. The JBE employee requesting the procurement should estimate the total value of the procurement, including:

- Value of the IT goods to be procured;
- Value of the IT services to be procured;
- Taxes (if applicable); and
- Other associated costs, as applicable.

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process. For more information regarding special negotiation processes, see chapter 2, section 2.1.H of this Manual.

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

IT-Specific Issues

The Buyer may consider the following issues, which are drawn from PCC 12103.5, to help plan and execute the IT procurement:

- The judicial branch policy, legislative mandate, or operational reason for the IT procurement;
- The existing business processes currently used to implement the judicial branch policy, legislative mandate, or operational reason;
- The most important priorities for the IT project to accomplish;
- What current technology is being used and how it is being used;
- If the data used in a proposed IT system comes from multiple sources, the existing business processes or technical systems that produce and maintain the source data to ensure interoperability;
- How the new IT project leverages existing technology investments while accomplishing its business objectives; and
- How to meet the JBE's anticipated IT life cycle requirements.

STEP 2—DEVELOP LIST OF PROSPECTIVE BIDDERS

The JBE employee requesting the procurement should develop a list of Prospective Bidders. See chapter 4, section 4.1.B of this Manual for additional information on developing a list of Prospective Bidders.

STEP 3—ASSEMBLE PROCUREMENT TEAM

The Buyer, with assistance from the JBE employee requesting the procurement, should identify additional JBE personnel who will be involved in the procurement. These may include:

- Technical experts;
- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and
- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on seeking legal participation.)

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C of this Manual for additional information on confidentiality/conflict statements.

STEP 4—SELECT SOLICITATION DOCUMENT TYPE

Three types of Solicitation Documents are used in the procurement of IT goods and services:

- Request for Quotes (RFQs)
- Invitations for Bid (IFBs)
- Requests for Proposal (RFPs)

The table below provides guidance on when to use the three types of Solicitation Documents.

Solicitation Document	Procurement Size	Type of Procurement
RFQ	Up to $100,000[2]	IT goods, IT services, and any combination of IT goods and services
IFB	Any size	Acquisition of hardware independently of a system integration project
RFP	Any size	IT goods, IT services, and any combination of IT goods and services

[2] A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $5,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

Note: The JBE may use other names for these Solicitation Documents; it does not need to refer to or title them as “RFQs,” “IFBs,” or “RFPs.”

STEP 5—CONSIDER PHASED APPROACH

Note: This step is applicable to procurements using IFBs and RFPs, but is inapplicable to RFQ procurements.

The JBE may consider a phased approach when using an IFB or RFP to solicit IT goods and services. A phased approach may be particularly useful in especially complex procurements. A phased approach allows for an interactive, conversational mode of Bid and contract development. If a phased approach is used, the JBE will work together in confidence with each Bidder to assess and discuss the viability and effectiveness of the Bidder’s proposed methods of meeting the JBE’s needs. This is accomplished through the submission of a conceptual proposal, a detailed technical proposal, or a draft Bid prior to the submission of a final Bid. This approach is a departure from the rigid “accept or reject” philosophy of traditional competitive bidding, yet it is highly competitive in nature. It provides the flexibility needed for the Bidder to test a solution before formal submittal of a final Bid, and it facilitates the correction of defects before they become fatal to a Bid.

A phased approach includes one or more of the following:

- Submission of a conceptual proposal by the Bidder;
- Submission of a detailed technical proposal by the Bidder; and
- Submission of a draft Bid by the Bidder.

<u>Conceptual proposal</u>: A conceptual proposal may be included to allow each Bidder to provide a general concept of a Bid with just enough detail to enable the Evaluation Team to determine if the Bidder is on the right track toward meeting the functional requirements as stated in the IFB or RFP and, if not, where the Bidder must change a concept. This step invites the Bidder to be as innovative as the IFB or RFP requirements allow in eliminating unnecessary constraints.

<u>Detailed technical proposal</u>: The detailed technical proposal may be included to allow each Bidder to provide a detailed technical description of its Bid to determine at an early stage whether the Bid is totally responsive to all the requirements of the IFB or RFP, and if not, which elements are not responsive and what changes would be necessary and acceptable.

Draft Bid: A draft Bid may be included to allow each Bidder to submit an "almost final" Bid in order to identify any faulty administrative aspect of the Bid that, if not corrected, could cause the final Bid to be rejected for ministerial reasons.

The IFB or RFP must be drafted to implement the phased approach, if applicable.

STEP 6—DRAFT SOLICITATION DOCUMENT

The Buyer should draft the final Solicitation Document. For requirements applicable to Solicitation Documents, see chapter 4, section 4.2 of this Manual.

The more thorough a JBE is in communicating its specific needs, requirements, goals, and objectives in the Solicitation Document, the more complete, responsive, and acceptable the Bids received will be.

Bidders may claim a small business preference in any competitive solicitation of IT goods and services of $5,000 or more.[3] Applicable Solicitation Documents must contain language regarding the small business preference. For additional information regarding the small business preference, see chapter 3, section 3.4.

The following subsections provide additional information useful in drafting the three types of Solicitation Documents.

A. RFQs

An RFQ is used for procurements where Bids may be solicited by phone or another method of electronic communication.

If the Buyer solicits Bids by phone, the Buyer must prepare and use a script (a narrative of the Bid requirements) so that each Prospective Bidder receives the same information and Bids may be evaluated fairly. Similarly, if the Buyer solicits Bids by e-mail or

[3] Government Code section 14838.5(c) allows the director of the Department of General Services (DGS) to establish a higher threshold above which state agencies must offer the small business preference. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the authority to establish a higher threshold amount for a JBE resides in the Approving Authority of that JBE. If the Approving Authority establishes a higher threshold amount, the Approving Authority must ensure that the higher threshold is reasonable and appropriate.

another written manner, the Buyer must send the same information to each Prospective Bidder so that Bids may be evaluated fairly.

The RFQ should:

- Be short, concise, and to the point;
- Include a description of the IT goods or services to be solicited;
- Include any required technical specifications;
- Include any deliverable resulting from the IT services;
- Specify when the IT services must be completed and any deliverable must be delivered;
- Specify how the Prospective Bidder must deliver its Bid (e.g., by telephone, e-mail, fax, etc.); and
- Include bidder instructions and applicable general provisions associated with the purchase, or a reference to the web page containing these, if applicable.

Before soliciting Bids in response to an RFQ, the JBE should determine whether the contract resulting from the RFQ will be awarded on a "lowest responsible bidder" basis or on a "highest scored bid" basis. If the RFQ is being used to procure hardware independently of a system integration project, the JBE may award the contract on a "lowest responsible bidder" basis or on a "highest scored bid" basis. Otherwise, the JBE must award the contract on a "highest scored bid" basis.

B. IFBs

IFBs may be used to procure hardware independently of a system integration project.[4] Contracts resulting from IFBs are awarded to the lowest Responsible Bidder. Accordingly, IFBs must be drafted in a manner to allow the JBE to determine which Bidders meet the minimum requirements specified in the IFB. For each specific requirement, a yes or no answer is required. There is no "fully," "barely," "almost," or "exceeded" level of evaluation.

[4] See PCC 12102(c): "The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications."

IFBs must include:

1. Time schedules relating to the procurement, including:

    - Date to submit questions or seek clarification (as applicable);
    - Date of Bidders' conference (as applicable);
    - Due date for the conceptual proposal (as applicable);
    - Due date for the technical proposal (as applicable);
    - Due date for the draft Bid (as applicable);
    - Bid Closing Time;
    - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
    - Anticipated contract term, including start and end dates.

2. Time and place where the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
3. Where the intent to award notice will be posted (e.g., website address);
4. The JBE's contact person for administration of the solicitation; and
5. The JBE's standard terms and conditions for the acquisition of IT goods and services.

To the extent practicable, the JBE should also distribute with the IFB the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices. The IFB should state that any material exception (addition, deletion, or other modification) to the JBE's terms and conditions will render a Bid nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

<u>Description of IT Goods</u>: The IFB must contain a description of the desired IT goods. The description should include:

- Product specifications;
- Description of when and where the IT goods are to be delivered; and
- Support and maintenance requirements.

<u>Acquisition of additional items</u>: It is sometimes difficult at the IFB stage to know with certainty the exact quantities of IT goods that will be required. To the extent practical, the IFB should provide for a contract to be written so as to enable acquisition of additional

items. This will avoid redundant acquisition processes if the JBE determines it needs more of the IT goods of the type already procured.

Required Elements of Bids: IFBs must specify what Bidders must address or include in their Bids. This includes certifications (e.g., Iran Contracting Act certification) or other required document or information.

Bid Sealing Requirements: The IFB must include a requirement that the cost portion of a Bid be submitted in a sealed envelope separate from the remainder of the Bid.

Phased Approach—Notice to Bidders: If the IFB is to include a conceptual proposal and/or a detailed technical proposal step, the JBE should include the following (or substantially similar) language in the IFB:

> This procurement will follow a phased approach designed to increase the likelihood that Bids will be received without disqualifying defects. The additional step(s) will (1) ensure that the Bidders clearly understand the JBE's requirements before attempting to develop their final Bids; (2) ensure that the JBE clearly understands what each Bidder intends to offer before those Bids are finalized; and (3) give the JBE and each Bidder the opportunity to discuss weaknesses or potentially unacceptable elements of a Bid and give the Bidder the opportunity to modify its Bid to correct such problems.
>
> As part of the phased approach, the JBE may review a Bidder's submissions for errors, defects, or other problems. **The JBE makes no warranty that all errors, defects, or other problems will be identified. The Bidder is solely responsible for submitting a Bid that is free of errors and defects, and complies with all IFB requirements.**

If a draft Bid is included in the procurement, the IFB should specify that the draft Bid must contain all the material required in the final Bid, except that no cost information may be included.

C. RFPs

RFPs are used to procure a wide variety of IT goods and services. Depending on the type and value of the procurement, the RFP content requirements will vary.

Information about the Procurement Process:

RFPs must include:

1. The standards the JBE will use in evaluating Bids;
2. Time schedules relating to the procurement, including:

    - Date to submit questions or seek clarification (as applicable);
    - Date of Bidders' conference (as applicable);
    - Due date for the conceptual proposal (as applicable);
    - Due date for the technical proposal (as applicable);
    - Due date for the draft Bid (as applicable);
    - Bid Closing Time;
    - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
    - Anticipated contract term, including start and end dates.

3. Time and place where the sealed cost portions of the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
4. Where the intent to award notice will be posted (e.g., website address);
5. The JBE's contact person for administration of the solicitation; and
6. The JBE's standard terms and conditions for the acquisition of IT goods and services.

To the extent practicable, the JBE should also distribute with the RFP the terms and conditions specific to the procurement, or simply attach the entire proposed contract, including available appendices.

Description of IT Goods: The RFP must contain a description of the desired IT goods (if any). The description should include:

- Product specifications;
- Description of when and where the IT goods are to be delivered; and
- Support and maintenance requirements.

Description of IT Service: The RFP must contain a description of the desired IT services (if any). The description should include:

- A clear, precise description of the work to be performed, services to be provided, problem to be solved, questions to be answered, issues to be addressed, or the goals and objectives to be met;
- An explanation of the desired approach to the problem, if any;
- Any requirements as to where the work must be performed (e.g., at the JBE's site);
- A description of any specific functions, tasks, or activities that must be performed, in the order of importance and probable sequence, if applicable;
- Performance timelines or completion dates;
- Required quality control standards to be met, if applicable;
- A description of any required deliverables (such as progress reports or a final report summarizing a consultant's findings);
- A description of the assistance to be provided by the JBE, if applicable; and
- Practical and policy information, technological requirements or specifications, and legal limitations, if applicable.

Terms and Conditions: The RFP should identify any "minimum terms" in the JBE's terms and conditions. "Minimum terms" are the terms so important that a proposed exception (addition, deletion, or other modification) will render a Bid nonresponsive. The RFP should require that Bidders identify all proposed exceptions (if any) to the JBE's terms and conditions. The RFP should state that (i) a Bid that takes a material exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive, and (ii) the JBE, in its sole discretion, will determine what constitutes a material exception.

Acquisition of additional items: It is sometimes difficult at the RFP stage to know with certainty the exact quantities of IT goods that will be required. To the extent practical, the RFP should provide for a contract to be written so as to enable acquisition of additional items. This will avoid redundant acquisition processes if the JBE determines it needs more of the IT goods of the type already procured.

Payment Information: The RFP should contain some basic payment information, including (as applicable):

- Whether and to what extent Progress Payments will be allowed;
- Penalties for late or inadequate performance;

- Known or estimated budgetary limitations on the contract price; and
- Travel expenses (what will and will not be paid by the JBE).

Note: See chapter 9 of this Manual for more information regarding Progress Payments.

Required Elements of Bids: RFPs must specify what Bidders must address or include in their Bids, such as:

1. A description of the Bidder's qualifications, which may include at the JBE's discretion:

    - Copies of current business licenses, professional certifications, or other credentials;
    - Proof of financial solvency or stability (e.g., balance sheets and income statements);
    - Proof that the Bidder, if a corporation, is in good standing and qualified to conduct business in California; and
    - For Bidders that are nonprofit organizations, proof of nonprofit status.

2. A list of references for whom the Bidder has provided similar goods or performed similar work; and
3. If subcontractors are contemplated:

    - Identification of those persons or firms;
    - The portions and monetary percentages of the work to be done by the subcontractors;
    - How and why these subcontractors were selected;
    - Resumés of each major subcontract participant; and
    - Description of how subcontracted work will be controlled, monitored, and evaluated.

If the RFP is soliciting IT services, the JBE may also require Bids to include:

- A list of similar services successfully completed by the Bidder, with samples if applicable;
- A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work;
- Identification of a project coordinator;

- Resumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services;
- An overall description of the techniques, approaches, and methods to be used in performing the services; and
- The total cost of the services, with a detailed breakdown showing how the costs were determined, and the desired method of payment. The detailed budget breakdown may include:
    - Identification of position/classification titles funded;
    - Salary rates or ranges;
    - Percentage of time devoted to the work;
    - Fringe benefits;
    - Operating expenses;
    - Travel and per diem expenses;
    - Overhead or indirect costs;
    - Subcontractors with the same type of cost details; and
    - Other costs.

Evaluation Plan: Although not part of the RFP itself, the Buyer should develop an evaluation plan along with the RFP. By developing the evaluation plan with the RFP, the Buyer may ensure that the JBE receives all information necessary to properly evaluate the Bids.

The evaluation plan must provide for a fair and equitable evaluation of all Bids. The evaluation plan should ensure the following:

- Cost is appropriately considered (see the section below regarding the assignment of cost points).
- Exceptions to the JBE's terms and conditions (additions, deletions, or other modifications) may be considered as part of the evaluation process.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

The JBE may consider the following criteria when developing the evaluation plan.

- Quality of the IT goods or services.
- Technical competency of Bidder's personnel.
- Reliability of delivery and implementation schedules.
- The maximum facilitation of data exchange and systems integration.

- Warranties, guarantees, support, and return policy.
- Bidder's understanding of the JBE's problem or needs.
- Ability to deliver IT goods and services on time.
- Reasonability and feasibility of the Bidder's proposed approaches, methods, procedures, and timelines.
- Organizational and management capability, management competency, fiscal and personnel resources.
- Exceptions (additions, deletions, or other modifications) to the terms and conditions that may be detrimental to the JBE.
- Professional qualifications of the personnel who the Bidder will commit to the project.
- Sufficiency of allocated staff resources.
- Performance monitoring plans and procedures.
- Adequate fiscal, accounting, cost-monitoring or budget-monitoring procedures.

Cost Points: The evaluation criteria must be based on value-effective factors that include cost. These factors are weighted; generally, the administrative and technical requirements should equal 50 percent and cost should equal 50 percent.

The evaluation criteria for the acquisition of IT goods and services must not be limited to cost alone. The JBE may not assign 100 percent of the total points to cost; other factors must be considered.

JBEs should disclose in the RFP the evaluation criteria or categories and the percentage weight for each criterion or category. Examples of criteria include price and prior experience.

Bid Sealing Requirements: The RFP must require the Bidder to submit the cost portion of its Bid in a sealed envelope separate from the remainder of the Bid.

Phased Approach—Notice to Bidders: If the RFP is to include a conceptual proposal and/or a detailed technical proposal step, the JBE should include the following (or substantially similar) language in the RFP:

> This procurement will follow a phased approach designed to increase the likelihood that Bids will be received without disqualifying defects. The additional step(s) will (1) ensure that the Bidders clearly understand the JBE's requirements before attempting to develop their final solutions;

> (2) ensure that the JBE clearly understands what each Bidder intends to propose before those Bids are finalized; and (3) give the JBE and each Bidder the opportunity to discuss weaknesses or potentially unacceptable elements of a Bid and give the Bidder the opportunity to modify its Bid to correct such problems.
>
> As part of the phased approach, the JBE may review a Bidder's submissions for errors, defects, or other problems. **The JBE makes no warranty that all errors, defects, or other problems will be identified. The Bidder is solely responsible for submitting a Bid that is free of errors and defects, and complies with all RFP requirements.**

If a draft Bid is included in the procurement, the RFP should specify that the draft Bid must contain all the material required in the final Bid, except that no cost information may be included.

Consulting Services—Follow-On Contracting Language: All RFPs that include a consulting services component should include the language below (or substantially similar language).

> Bids in response to JBE procurements for assistance in the preparation of feasibility studies or the development of recommendations for the acquisition of IT goods and services must disclose any financial interests (e.g., service contracts, original equipment manufacturer (OEM) agreements, remarketing agreements) that may foreseeably allow the Bidder to benefit materially from the JBE's adoption of a course of action recommended in the feasibility study or of the acquisition recommendations.

STEP 7—PREPARE ADVERTISING

A JBE must advertise solicitations as shown in the following table:[5]

Procurement for	Advertising required
IT Goods	If total procurement value is $100,000 or

[5] All IT solicitations must be advertised as set forth in this table, even if the JBE adopts a threshold for use of RFQs that is higher than $100,000.

Procurement for	Advertising required
	more
IT Services	If total procurement value is $5,000 or more
IT Goods and Services	If the total procurement value is $100,000 or more ***or*** the services portion of the procurement is $5,000 or more

Although not required, a JBE may advertise a solicitation that has a total procurement value less than the applicable amount shown in the table above. Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document. See chapter 4, section 4.1.D of this Manual for advertising methods.

Note: If the JBE is using an RFP, the JBE must post the RFP in a public location such as the JBE's website. All changes to the RFP must also be posted in the same public location in which the RFP was originally posted.

STEP 8—OPTIONAL: HOLD BIDDERS' CONFERENCE

Bidders' conferences provide Prospective Bidders an opportunity to understand better the IT goods or services being procured by a JBE. Holding a Bidder's conference is always optional, at the JBE's discretion. Bidders' conferences are more common in solicitations for complex procurements.

Note: Bidders' conferences are not held for RFQ solicitations.

STEP 9—OPTIONAL: COMPLETE PHASED APPROACH STEPS

If included in the IFB or RFP, the JBE should complete the various steps of the phased approach, as described below.

Note: A phased approach is not used in RFQ solicitations.

Review Conceptual Proposal and Detailed Technical Proposal

The Evaluation Team will receive and review the conceptual proposal and/or the detailed technical proposal to determine if either proposal (or portion thereof):

- Is nonresponsive to a requirement;
- Is otherwise defective; or
- Requires clarification so that the JBE may fully understand the proposed solution.

The Evaluation Team must review each proposal in accordance with any evaluation methodology outlined in the IFB or RFP.

Confidential Discussions with Bidder

Based on its review of the proposal(s), the Evaluation Team will prepare an agenda of items to be discussed separately with the Bidder and transmit the agenda to the Bidder. The agenda will include the identification of discovered defects, but may also include a discussion of the Bidder's proposed support, implementation plans, validation plans, demonstration plans, and proposed contracts, as appropriate. The Evaluation Team should meet with the Bidder to discuss the items on the agenda. These discussions are confidential.

The primary purpose of the discussion is to ensure that the Bidder's final Bid will be responsive. The Evaluation Team should identify its concerns, ask for clarification, and express its reservations if a particular requirement of the IFB or RFP is not appropriately satisfied, in the opinion of the Evaluation Team.

At the conclusion of the meeting, the JBE should prepare a memorandum documenting the clarified items and how the Bidder proposes to correct the noted defects. The JBE may schedule additional meetings with a Bidder at the JBE's discretion. If additional meetings are scheduled, the process set forth in this sub-step ("Confidential Discussions with Bidder") will be repeated. The JBE may require the resubmission of selected materials as part of this process.

If, after discussion with a Bidder, the JBE is of the opinion that the Bidder's conceptual proposal or detailed technical proposal cannot be restructured or changed in a reasonable time to satisfy the needs of the JBE, and that further discussion would not likely result in an acceptable Bid in a reasonable time, the Evaluation Team should give

the Bidder written notice that the conceptual proposal or detailed technical proposal has been rejected and that a final Bid submitted along such lines would be nonresponsive.

Evaluate Draft Bids

The Evaluation Team should review draft Bids for administrative or clerical errors and inconsistencies that, if contained in the final Bid, may cause the Bid to be rejected. If the Evaluation Team discovers errors that can be corrected without overhauling the Bid, the Evaluation Team should communicate this information to the Bidder and give the Bidder an opportunity to correct the identified errors before the Bid Closing Time. The Evaluation Team may communicate this information through a confidential memo, or through a confidential meeting.

Note: The draft Bid review is not intended to check for responsiveness to IFB or RFP requirements, but only for administrative or clerical errors and inconsistencies that could cause the Bid to be deemed nonresponsive on a technicality.

STEP 10—RECEIVE BIDS

Bids are received and handled as described in chapter 4, section 4.3 of this Manual. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of IT goods and services using different Solicitation Documents.

A. RFQs

Bids must be submitted as specified in the RFQ. The Buyer must document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, e-mail, or other writing) should be retained in the procurement file.

Bids received pursuant to an RFQ solicitation remain confidential until a contract is executed.

B. IFBs and RFPs

Bids must be submitted as specified in the IFB or RFP. A JBE should time/date stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened. Bids received pursuant to an RFP solicitation remain confidential until an intent to award notice is posted.

STEP 11—OPEN BIDS

The way in which Bids are opened differs for IFBs and RFPs. Because RFQs do not involve sealed Bids, this step is inapplicable to solicitations using RFQs.

A. IFBs

The Buyer must publicly open the sealed Bids.

B. RFPs

The opening and evaluation of Bids in response to IT RFPs is a multistep process. See step 14 for information for additional details.

The JBE must first open the noncost portion of all Bids received. This does not need to be done publicly. The sealed cost portions of the Bids must not be opened until the Evaluation Team has completed evaluating the noncost portion of all Bids.

The sealed cost portion of a Bid will not be opened if the noncost portion of the Bid contains one or more material deviations. See section 4.4.D for more information regarding material deviations.

STEP 12—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

Two methods are used to determine whether competition has been achieved: one for RFQs and another for IFBs and RFPs.

A. RFQs

A Buyer should use his or her procurement expertise and experience to determine whether the Bid to be selected is fair and reasonable. Buyers should obtain at least two Bids from Bidders whenever there is reason to believe a response from a single Bidder is not a fair and reasonable price.

B. IFBs or RFPs

If the JBE does not receive at least two Bids then:

- The JBE may consider cancelling and reissuing the solicitation. If the JBE takes this course, the JBE should consider modifying any possible restrictive requirements in the IFB or RFP.
- If JBE awards the contract, the Buyer should document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

STEP 13—OPTIONAL: HOLD ORAL INTERVIEWS/CLARIFICATION

Oral interviews provide the JBE an opportunity to understand better or clarify the Bids submitted by Bidders. Holding oral interviews is always optional, at the JBE's discretion. The JBE is not obligated to hold an oral interview with every Bidder; it may limit interviews to only those Bidders whose Bids need clarification. Oral interviews are more common in complex procurements. If the JBE opts for a phased approach, the Evaluation Team will usually meet with Bidders as part of that process. In such procurements, a separate oral interview may not be necessary.

Note: Oral interviews are not held for RFQ solicitations.

If the JBE otherwise requires clarification regarding a Bid, the JBE should contact the Bidder that submitted the affected Bid.

STEP 14—EVALUATE BIDS

The process of evaluating Bids differs significantly for RFQs, IFBs, and RFPs. The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4 of this Manual, and any requirements listed in the the Solicitation Document. There is no requirement to award a contract; see chapter 4, section 4.4.B of this Manual for additional details.

A. RFQs

The JBE must award the contract (if at all) on a "lowest responsible bidder" basis or on a "highest scored bid" basis, depending on which methodology was selected in step 6 above. For more information about the "lowest responsible bidder" basis, see section B below. For more information about the "highest scored bid" basis, see section C

below.~~to the Bidder whose Bid is given the highest score by the Evaluation Team, after applying any preference, incentives, or discounts. See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts.~~

B. IFBs

The JBE must evaluate the Bids and award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

For ease of reference, the following definitions are excerpted from the glossary:

- **Responsible Bidder** means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.
- **Responsive Bid** means a Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Note: See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

C. RFPs

The evaluation of Bids received in response to RFPs involves a five-step process.

1. The Evaluation Team must review the noncost portion of each Bid to confirm that it meets the format requirements specified in the RFP.
2. The Evaluation Team must complete its evaluation of noncost criteria for all Bids using the methods specified in the RFP.[6]
3. The JBE must publish the results of the completed noncost evaluation, excluding the small business preference and DVBE incentive. Unless

[6] Evaluation of the noncost criteria includes determining if a Bidder has met the applicable requirements for the small business preference and the DVBE incentive, if applicable. However, because the small business preference and DVBE incentive cannot properly be applied until both the noncost and cost portions of the Bids have been scored, these factors should be excluded when publishing the results of the completed noncost evaluation.

specified otherwise in the Local Contracting Manual, this publication must occur on the JBE's website.

4. The Evaluation Team must publicly open the cost portion of the Bids as specified in the RFP (except Bids determined to have a material deviation in the noncost portion).
5. The Evaluation Team must evaluate the cost portion of the Bids opened in item 4 above.

The Evaluation Team must not use any requirements other than those provided by law or specified in the RFP (or addenda thereto) to score Bids. The JBE must award the contract (if at all) to the Bidder whose Bid is given the highest score by the Evaluation Team, after applying any preference, incentives, or discounts. See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts.

Suggested Cost Evaluation Criteria: JBEs may use the process for assigning cost points set forth in appendix A of this chapter. Alternately, JBEs may adopt their own processes for assigning cost points.

Note: There is an additional cost evaluation requirement for IT goods solicitations that are required to be advertised (see the table in step 7 for which solicitations must be advertised). For those solicitations, the JBE must consider a Bidder's "best financing alternative" (including lease or purchase alternatives) if any Bidder timely requests such consideration. If the solicitation is posted more than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE at least 30 days before the Bid Closing Time. If the solicitation is posted less than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE by the day that is halfway between the posting date and the Bid Closing Time. However, the JBE does not need to consider a particular financing alternative if, in the judgment of the Approving Authority, that financing alternative should not be considered. (See PCC 12102(e).)

Demonstration: The evaluation process may also include a demonstration, at the JBE's discretion. The demonstration may be used to verify the claims made in the Bid, corroborate the evaluation of the Bid, or confirm that the hardware and software are actually in operation. If a demonstration is required, the JBE will give notice to the Bidder. The Bidder must make all arrangements for demonstration facilities at no cost to the JBE. The location of the demonstration may be determined by the JBE. The Evaluation Team, in its good faith judgment, will determine whether or not a demonstration has been successfully executed.

Certification: The JBE's contact person for administration of the solicitation (who should have been identified in the RFP) must execute a certificate under penalty of perjury that the cost portions of all Bids received by the JBE were maintained sealed and secured until the time all cost portions of Bids were opened. The signed certificate should be included in the procurement file.

A sample certificate that JBEs may use is included as appendix B of this chapter.

STEP 15—NOTICE OF INTENT TO AWARD

A. RFQs

When using an RFQ, the JBE is not required to post a notice of intent to award.

B. IFBs and RFPs

When using an IFB or RFP, the JBE must post a notice of intent to award on its website or in a public place in the offices of the JBE at least five Court Days before the contract is awarded.

Exception: The JBE does not need to post a notice of intent to award if (i) the JBE has adopted a protest threshold applicable to IT goods and services, and (ii) the procurement is below that protest threshold. For more information regarding protest thresholds, see chapter 7, section 7.2 of this Manual.

The JBE may, as a courtesy to Bidders, send a copy of the notice of intent to award to each Bidder by e-mail or fax.

If a Bidder submits a valid protest within five Court Days of the posting of the intent to award, the JBE must not award the contract until either the protest has been withdrawn or the JBE's pProtest Hhearing Oofficer has responded to the protest. For more information regarding the protest procedure, see chapter 7 of this Manual.

STEP 16—CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Unless a purchase order is used, tThe contract must be signed by an authorized representative of the Bidder that can bind the Bidder contractually.

STEP 17—CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file. For more information on procurement summary documents, see chapter 4, section 4.7 of this Manual.

STEP 18—NOTICES OR REVIEWS

The JBE must complete any required notices or reviews. See chapter 2, section 2.2 of this Manual for additional details.

SELECTED TOPICS RELEVANT TO THE SOLICITATION OF IT GOODS AND SERVICES

A. New IT Equipment

To avoid the purchase of unreliable or outdated equipment, JBEs should procure new IT equipment unless budget priorities dictate otherwise. All equipment should be the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not recommended.

B. Performance-Based or Share-In Savings Contracts

For contracts related to IT integration or development projects that generate revenues or achieve savings over a quantifiable baseline of existing costs, JBEs must consider and may incorporate performance-based or share-in-savings contract terms to manage risks and create incentives for successful contract performance.

Performance-based or share-in-savings contracts may have the following characteristics, among others:

- Contract terms that specify business outcomes to be achieved, not the solution to be provided;
- Contract terms that structure the contract to maintain maximum Vendor commitment to project success and minimize risk to the JBE by sharing risk with the private sector;

- Utilization of "best value" evaluation methods, which means to select the solution that will achieve the best result based on business performance measures, not necessarily the lowest price; and
- Contract terms that base payments to the Vendor primarily on achieving predefined performance measures.

C. Solicitations of Printer or Copier Cartridges

If a JBE procures printer or copier cartridges, it must include a statement on the cover of the Solicitation Document (or in some other prominent place in the Solicitation Document) informing Bidders that it is unlawful to prohibit a printer or copier cartridge that is sold to a JBE from being recycled or remanufactured, except as noted below.

Exception: This requirement does not apply where the Bidder enters into signed agreements with its customers consenting to the return of the used cartridge to the Bidder for (a) recycling and remanufacturing, or (b) recycling.

D. SB/DVBE Option

For procurements of IT goods and services greater than $5,000 but less than $250,000, a JBE may use a streamlined competitive solicitation that targets only Small Businesses or DVBEs. This streamlined competitive solicitation is known as the SB/DVBE option.

When using the SB/DVBE option, the JBE must target either Small Businesses or DVBEs. The JBE must receive Responsive Bids from at least two Small Businesses or two DVBEs. Each Prospective Bidder must itself be a Small Business or a DVBE; entities subcontracting to Small Businesses or DVBEs may not be targeted when using the SB/DVBE option.

To solicit IT goods or services using the SB/DVBE option, follow the steps set forth in this chapter 4C, with the following modifications:

Step 2

- The list of Prospective Bidders must consist of Small Businesses or DVBEs. The JBE may locate eligible entities using the DGS database located at *www.bidsync.com/DPXBisCASB.*

Step 6

- Because protests are not allowed in connection with the SB/DVBE option, the Solicitation Document should (i) state that no protest is allowed, and (ii) indicate that no intent to award notice will be posted.
- Because Bids in connection with the SB/DVBE option do not need to be opened publicly, the Solicitation Document should not include (i) the time and place where Bids will be opened, or (ii) a requirement that the Bids, or any portion thereof, be sealed.
- The "loss leader" language may be omitted from the Solicitation Document.
- The Solicitation Document should indicate that no small business preference or DVBE incentive will be offered.
- Instead of using a fixed Bid Closing Time, the JBE may award the contract upon receipt of the second Responsive Bid. If this approach is used, details must be provided in the Solicitation Document. Once the second Responsive Bid is received, the JBE should notify any known Prospective Bidders that have not yet submitted a Bid that the JBE is no longer accepting Bids.

Step 7

- There is no advertising requirement for solicitations using the SB/DVBE option. Instead, the JBE provides the Solicitation Document to the selected Small Businesses or DVBEs directly. The JBE may wish to provide the Solicitation Document to more than two Small Businesses or DVBEs, to increase the chances it will receive at least two Responsive Bids.
- The JBE is not required to post the Solicitation Document on its website or in any other public location.

Step 10

- Bids received pursuant to an SB/DVBE option solicitation remain confidential until a contract is executed.

Step 11

- Bids in connection with the SB/DVBE option do not need to be opened publicly. The multistep process for opening Bids in response to RFPs is not applicable.

Step 12

- Competition has been achieved if the JBE receives Responsive Bids from at least two Small Businesses or two DVBEs.

- If the JBE does not receive Responsive Bids from at least two Small Businesses or two DVBEs, the JBE may not award a contract using the SB/DVBE option.

Step 14

- The multistep process for opening Bids in response to RFPs is not applicable.
- The certification in connection with Bids received in response to RFPs is not applicable.

Step 15

- The JBE is not required to post an intent to award.

Note: The JBE should ensure that the bidder instructions and other documents related to the solicitation correctly reflect the process to be used by the JBE.

APPENDIX A
SAMPLE METHOD FOR ASSIGNING COST POINTS WHEN EVALUATING RFPs

STEP ONE:

The Bid with the lowest cost is assigned the maximum number of cost points.

STEP TWO:

Use the worksheet below to calculate the number of cost points to be assigned to each of the remaining Bids. The number of cost points to be assigned to the Bid being evaluated is the number in line 6.

Line 1 Enter the maximum number of cost points…… _____

Line 2 Enter the dollar amount of the lowest bid…….....…$_____

Line 3 Enter the dollar amount of the bid you are evaluating. $_____

Line 4 Divide the number in line 2 by the number in line 3, and enter the resulting number ……..……. _____

Line 5 Multiply the number in line 1 by the number in line 4, and enter the resulting number……..…. _____

Line 6 Round the number in line 5 to the nearest whole number and enter that number……..…. _____

<u>Example</u>:

A superior court issues an RFP where the maximum number of cost points is 60. The court receives three bids:

Bidder	Bid Amount
A	$90,000
B	$98,000
C	$80,000

In this scenario, Bidder C submitted the lowest Bid and is assigned the maximum 60 cost points.

Bidder A is assigned 53 cost points, as shown below:

Line 1	60
Line 2	$80,000
Line 3	$90,000
Line 4	.8888
Line 5	53.3333
Line 6	53

Bidder B is assigned 49 cost points, as shown below:

Line 1	60
Line 2	$80,000
Line 3	$98,000
Line 4	.8163
Line 5	48.9795
Line 6	49

APPENDIX B
SAMPLE COST PROPOSAL CERTIFICATION

Cost Proposal Certification
For
RFP #_____

I certify under penalty of perjury under the laws of the State of California that I have kept the cost portion of each Bid received for the RFP identified above sealed and secured from its receipt until the Bid opening on [***date***].

_____ _____

[***Buyer's name***] [***date***]

Executed in _____ [city], _____[state]

Judicial Council of California

NON-COMPETITIVELY BID (NCB) PROCUREMENTS

CHAPTER 5

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INTRODUCTION

In certain circumstances, Judicial Branch Entities (JBEs) may procure non-IT goods, non-IT services, and IT goods and services without going through a competitive process (advertising, receiving Bids, etc). In these non-competitively bid (NCB) procurements, a single entity is afforded the opportunity to provide the specified non-IT goods, non-IT services, or IT goods and services.

The following are the categories of allowed NCB procurements:

- Purchases under $5,000;
- Emergency purchases;
- Purchases from governmental entities;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP);
- Licensing or proficiency testing examinations;
- Subvention and local assistance contracts; and
- Sole source.

This chapter explains when NCB procurements are allowed and the processes required in conducting an NCB procurement.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

5.1 PURCHASES UNDER $5,000

For very small purchases, NCB procurements are permitted because the cost of conducting a competitive procurement may exceed the savings expected from the competitive process.

JBEs may purchase non-IT goods, non-IT services, or IT goods and services that cost less than $5,000 without conducting a competitive procurement so long as the Buyer determines that the pricing is fair and reasonable.

The Buyer should include documentation on fair and reasonable pricing in the procurement file. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

Note: JBEs may not split a single transaction into a series of transactions for the purpose of evading competitive solicitation requirements.

Note: Although not required to do so, JBEs may competitively solicit Bids for purchases under $5,000. An RFQ is usually used for such procurements.

5.2 EMERGENCY PURCHASES

In the event of an emergency, JBEs may purchase non-IT goods, non-IT services, or IT goods and services of any value without conducting a competitive procurement.

An emergency procurement must be approved in writing by the Approving Authority or his or her delegee. The Approving Authority (or delegee) may approve an emergency procurement only if he or she determines that immediate acquisition is necessary for the protection of the public health, welfare, or safety.[1]

When completing an emergency purchase, the Buyer should include in the procurement file the following information:

- A description of the emergency;
- A description of the non-IT goods, non-IT services, or IT goods and services to be purchased, and their prices;
- The names and quotations of suppliers contacted; and
- A copy of the written approval.

5.3 PURCHASES FROM GOVERNMENTAL ENTITIES

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from other governmental entities without conducting a competitive procurement.

Note: The procurements covered by this section are those in which the governmental entity directly sells the non-IT goods, non-IT services, or IT goods or services to the

[1] For purchases of non-IT services, the Approving Authority (or delegee) may also approve an emergency procurement if he or she determines that immediate acquisition is necessary for the protection of state property.

JBE. This situation is distinct from when a governmental entity has signed an LPA with a Vendor and allows the JBE to purchase from that Vendor using the LPA. For more information on LPAs, see section 5.5 below.

The Buyer should note in the procurement file that the purchase is being made from a governmental entity. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

Note: Contracts with governmental entities cannot be used to circumvent bidding requirements (see, e.g., PCC 10340(b)(3)).

Note: For purposes of this chapter, a "governmental entity" includes, without limitation, (i) a governmental agency from California or any state, (ii) a state college or state university from California or any state, (iii) a local governmental entity or agency, including those created as a joint powers authority, (iv) an auxiliary organization of the California State University, or a California community college, (v) the federal government, (vi) a foundation organized to support the Board of Governors of the California Community Colleges, or (vii) an auxiliary organization of the Student Aid Commission established under Education Code section 69522.

5.4 LEGAL SERVICES

JBEs may purchase legal services of any value without conducting a competitive procurement. Legal services include:

- Services performed by an attorney or an attorney's staff; and
- Services performed by consultants and expert witnesses in connection with pending or anticipated legal proceedings.

The Buyer should note in the procurement file that the purchase is for legal services. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.5 CERTAIN LPAs

If a JBE procures non-IT goods, non-IT services, or IT goods and services in accordance with chapter 6 of this Manual through an LPA established by such JBE or another entity, the JBE may procure such goods or services without having to conduct its own competitive bidding.

5.6 COMMUNITY REHABILITATION PROGRAMS (CRPs)

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value from a business entity operating a CRP without conducting a competitive procurement, provided that the goods or services meet the specifications and needs of the JBE and are purchased at a fair market price as determined by the JBE.

Note: The CRP must meet the criteria established by Welfare and Institutions Code section 19404 in order for the JBE to purchase from the CRP. To confirm compliance, the JBE should request a copy of the CRP's approval certificate, issued by the Department of Rehabilitation.

The Buyer should note in the procurement file the purchase is being made from a CRP. The JBE should document its procurement file to support that the price offered by a CRP is fair and reasonable.

5.7 LICENSING OR PROFICIENCY TESTING EXAMINATIONS

JBEs may purchase non-IT services of any value related to the development, maintenance, administration, or use of licensing or proficiency testing examinations, without conducting a competitive procurement.

The Buyer should note in the procurement file that the purchase is for licensing or proficiency testing examinations. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.8 SUBVENTION AND LOCAL ASSISTANCE CONTRACTS

These are contracts providing assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose. JBEs may enter into subvention and local assistance contracts without conducting a competitive procurement.

The Buyer should note in the procurement file that the contract is a subvention or local assistance contract. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required.

5.9 SOLE SOURCE

JBEs may purchase non-IT goods, non-IT services, and IT goods and services of any value without conducting a competitive procurement if (i) the goods, services, or goods and services are the only non-IT goods, non-IT services, or IT goods and services that meet the JBE's need, or (ii) a grant application submittal deadline does not permit the time needed for a competitive procurement of services.

Example: A JBE needs to purchase a replacement fuse. The JBE's electrical systems are quite old, and only one entity currently manufactures the type of fuse that is needed. The JBE may purchase the fuse from that entity as a sole source.

Example: A JBE needs a piece of software customized. Only one entity has the intellectual property rights necessary to alter the software and license the resulting modifications to the JBE. The JBE may contract with that entity as a sole source.

~~A. Sole Source Purchase~~

A sole source request must be provided to the sole source approver.

The sole source request should include the following information:

- Description of the non-IT goods, non-IT services, or IT goods and services to be procured;
- Explanation of why the non-IT goods, non-IT services, or IT goods and services cannot be procured competitively;
- The effort made to solicit competitive Bids, if any;
- Documentation that the pricing offered is fair and reasonable; and
- Special factors affecting the cost or other aspect of the procurement, if any.

The sole source approver is:

- The Approving Authority;
- The delegee of the Approving Authority; or
- Another person identified as the sole source approver in the JBE's Local Contracting Manual.

The sole source approver approves or denies the sole source request. If the sole source approver approves the sole source request, the Buyer should conduct the procurement as proposed. If the sole source approver denies the sole source request, the Buyer will

either cancel the procurement or conduct a competitive solicitation to acquire the same or equivalent non-IT goods, non-IT services, or IT goods and services.

The JBE may, in its Local Contracting Manual, place restrictions on the use of sole source procurements or specify a form for sole source requests. If no form is specified in the Local Contracting Manual, the sole source request may take the form of a memorandum.

5.10 SPECIAL CATEGORY NCB CONTRACT REQUEST~~REPEAT SOLE SOURCE AUTHORIZATION~~

The JBE may, under certain circumstances, establish a special category non-competitively bid~~NCB~~ contract request (SCR) ~~repeat sole source authorization~~ when it determines that a significant number of repeat ~~for the~~ NCB procurements of non-IT goods, non-IT services, or IT goods and services will occur. The SCR~~repeat sole source authorization~~ is limited to a specific type of non-IT goods, non-IT services, or IT goods and services for which:

- There is no viable competition; or
- Competitive bidding cannot be completed using reasonable efforts before the time such non-IT goods, non-IT services, or IT goods and services are required.

The JBE may, in its Local Contracting Manual, place restrictions on the use of SCRs ~~repeat sole source authorizations~~ or specify a form for use in SCRs~~repeat sole source authorizations~~. If no form is specified in the Local Contracting Manual, the SCR~~repeat sole source authorization~~ may take the form of a memorandum.

The SCR ~~repeat sole source authorization~~ must be signed by the sole source approver. The Buyer should place a copy of the SCR~~repeat sole source authorization~~ in the procurement file for any procurement of the affected non-IT goods, non-IT services, or IT goods and services.

5.~~10~~ 11 AMENDMENTS

The JBE should submit certain amendments to the NCB process outlined below. The NCB process ensures that the amendment is in the best interest of the JBE.

A. Amendments Covered

The types of amendments covered are those that affect the competitive basis on which the contract was awarded, including amendments that increase or decrease quantity, dollar amounts, or time. Specifically:

- Amendments to a competitively-solicited contract where the type of change contemplated in the amendment was not evaluated in the selection process;
- Amendments to an LPA purchasing document where the type of change contemplated in the amendment was not evaluated during the LPA review process; and
- Amendments to a small purchase (originally under $5,000) which increase the value of the purchase to $5,000 or more, if the original purchase was completed pursuant to section 5.1 above.

Example: The JBE has a services contract that is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, but renewal terms were not addressed in the Solicitation Document and were not considered by the Evaluation Team. Before extending the term of this contract using an amendment, the JBE should submit the amendment to an NCB process.

Example: The JBE has a contract that grants the JBE the option to extend the term of the contract for one year. The contract is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, and the extension term was evaluated during the solicitation process. There is no need to submit the amendment to an NCB process.

Example: The JBE purchases 40 chairs, each costing $100. The value of the purchase ($4,000) is below $5,000, and the purchase was completed as an NCB procurement pursuant to section 5.1 above. The JBE wishes to purchase an additional 20 chairs, each costing $100, through use of an amendment. Because the new value of the contract ($6,000) will be over $5,000, the JBE should submit the amendment to an NCB process.

Note: Amendments correcting incidental omissions or mistakes (not affecting quantity, dollar amounts, or time) do not require an NCB process. For example, an amendment correcting or updating contact information would not require an NCB process.

B. NCB Process for Amendments

The Buyer submits an NCB amendment request to the sole source approver.

The NCB amendment request should include the following information:

- Description of the contract terms to be changed;
- Documentation that the pricing of the amended contract is fair and reasonable; and
- Why the Buyer has determined that the amendment is in the JBE's best interest.

5.12~~1~~ TRIAL COURTS: PUBLIC INPUT REQUIREMENT

A trial court must seek input from the public at least 15 Court Days before execution of an NCB contract in an amount that exceeds the greater of $400,000 or 10 percent of the total trial court budget.

This requirement does not apply to a contract between a trial court and a county that is provided for by statute (e.g., court-county MOUs under GC 77212).

For detailed requirements regarding this public-input process, see CRC 10.620.

5.12~~2~~3 CERTIFICATION AND OTHER REQUIREMENTS IN NCB PROCUREMENTS

JBEs are required to comply with certain certification and other requirements in NCB procurements. These include:[2]

- Iran Contracting Act certification for purchases of goods or services of $1,000,000 or more (see chapter 4, section 4.4.C.2 of this Manual);
- Darfur Contracting Act certification for purchases of non-IT goods or services (see chapter 4, section 4.4.C.1 of this Manual); and
- seller's permit requirement for purchases of tangible personal property (see see chapter 4, section 4.4.C.3 of this Manual).

In addition, any contract for the purchase of non-IT goods or services with a contractor indentified by the Franchise Tax Board or the Board of Equalization as one of the 500

[2] Contracts resulting from NCB procurements must comply with applicable requirements in chapter 8 of this Manual.

largest tax delinquents is void and unenforceable (see chapter 4, section 4.4.E of this Manual).

Judicial Council of California

LEVERAGED PROCUREMENT

CHAPTER 6

Original Release Date: October 1, 2011	Revised Effective~~Revision Date~~: ~~August 31, 2012~~ January 1, 2014

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INTRODUCTION

This chapter discusses the procurement of goods and services by Judicial Branch Entities (JBEs) through Leveraged Procurement Agreements (LPAs) that have been established by other entities. This chapter also discusses how a JBE may establish an LPA, and allow other entities to use the LPA to procure goods and services.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

6.1 BASICS OF LEVERAGED PROCUREMENT

Leveraged procurement typically involves consolidating the procurement needs of multiple entities, and leveraging the entities' combined buying power to reduce prices, improve terms and conditions, or improve procurement efficiency.

In this Manual, a leveraged procurement generally refers to either:

- A JBE's procurement of goods/services through the use of an agreement (the LPA) that is established by a third party entity with a Vendor, and which enables the JBE to procure goods/services from the Vendor (without competitive bidding) on the same or substantially similar terms as in the LPA; or
- The establishment of an LPA by a JBE, on behalf of or in collaboration with other entities, that permits the JBE and other entities to procure goods or services from the Vendor that is contracted under the LPA.

As of ~~August 31, 2012~~January 1, 2014, information about LPAs established by the AOC is posted at: ~~http://~~*www.courts.ca.gov/procurementservices.htm*.

6.2 STEP-BY-STEP GUIDE TO USING AN LPA

The following are recommended steps for a JBE that intends to procure goods/services using an LPA that has been established by another entity:

STEP 1—Business Requirements

Define the JBE's business requirements. Estimate in good faith the total cost of what will be procured.

STEP 2—Identify an LPA

Identify an LPA for the desired goods/services and determine whether pricing is fair and reasonable.

Note: Use of an LPA may not necessarily promote the efficient use of public funds. For example, in some LPAs, the published pricing and other contract terms may represent only a starting point, and do not necessarily reflect volume discounts that Vendors may be willing to provide to JBEs. Any cost savings associated with the LPA could be undercut by paying the published price or accepting unfavorable LPA terms. Therefore, JBEs should consider whether they can obtain better pricing or other terms through Vendor negotiations or conducting competitive bidding.

STEP 3—Identify Multiple LPAs

If the identified LPA in Step 2 was established by a California governmental entity[1] and competitively bid, skip to Step 4.

If a JBE wants to use an LPA that is either (i) not established by a California governmental entity, or (ii) established by a California governmental entity but not competitively bid by such entity, then the JBE should identify at least *three* LPAs for the desired goods/services whenever multiple suppliers are known to exist, and compare the LPAs on a "best value" (also known as "value effectiveness") basis.[2]

The LPAs that the JBE identifies should be similar enough that work, pricing, and terms and conditions are subject to reasonable comparison. If multiple LPAs cannot be

[1] For the purposes of this chapter, a "California governmental entity" includes, for example: (i) a California state or local governmental agency or entity; or (ii) a public college or state university established by California.

[2] If using an LPA established (and competitively bid) through the Western States Contracting Alliance (WSCA)/National Association of State Procurement Officials (NASPO) (or similar multi-state, established LPA programs), or if using a DGS LPA and its instructions state that comparison of multiple LPAs (or obtaining multiple offers from Vendors) is not required, then the JBE may consider not identifying/comparing multiple LPAs.

identified, and the JBE is procuring goods or services estimated to cost $5,000 or more, then: (i) the JBE should consider conducting a competitive solicitation if it knows there are Vendors of the desired goods/services other than the Vendor that is party to the LPA; or (ii) if the JBE does not know of any other Vendor of the desired goods or services other than the Vendor that is party to the LPA, the JBE should consider following the sole source procedures in ~~C~~chapter 5 of this Manual before proceeding with the LPA, or consider conducting an independent sole source procurement.

Note: If comparing multiple LPAs, determine the criteria, including pricing, the JBE will use to determine "best value."[3]

STEP 4—LPA Review

- Review the LPA documentation[4] and confirm that: (i) the LPA documentation provides the JBE with sufficient rights to procure goods/services; and (ii) the terms and conditions in the LPA documentation are acceptable to the JBE, and consistent with this Manual.[5]
- Determine any maximum dollar limits (or other restrictions) that the LPA documentation places on the JBE's procurement. **Note:** In addition to any dollar limits imposed by the LPA, JBEs should consider setting their own dollar limits in their Local Contracting Manuals as a safeguard, since the JBE's use of another entity's LPA typically does not involve any further competitive bidding by the JBE.
- If required by the LPA instructions or as otherwise necessary (e.g., to reconfirm the current document version or communication protocols with the Vendor), contact the entity that established the LPA with the Vendor.
- DGS, other entities that establish LPAs, or Vendors may impose LPA-related administrative fees. These fees may outweigh the benefits of the LPA. JBEs should determine whether an LPA imposes administrative fees and how the fees will be collected from the JBE.
- If a JBE procures goods or services using an LPA that meets the requirements of certain socioeconomic or environmental programs (e.g., DVBE), some or all of the procurement could count towards the JBE's applicable goals. Review the

[3] Other best value criteria can include, for example: (i) the quality of the goods/services~~,~~; (ii) the Vendor's warranties/guarantees, reliability of delivery/implementation, and contract terms and conditions~~,~~; (iii) the Vendor's financial stability, technical competence, and prior record of performance; and (iv) DVBE or Small Business participation.

[4] LPA documentation includes the LPA's user instructions, contract terms and conditions, ordering documents, etc. LPA user instructions can include, for example, the LPA's "user guides," "ordering instructions," or similar documents that may contain additional requirements for use of the LPA.

[5] See, for example, chapters 5 and 8 of this Manual.

LPA documentation for specific provisions regarding socioeconomic or environmental programs.

STEP 5—Request for Offer

- If there is uncertainty about an LPA's terms and conditions or a potential LPA Vendor's willingness to accept an order from the JBE, the JBE should issue a Request for Offer (RFO). An RFO is a request made by the JBE to the potential LPA Vendor for a specific response or offer from the Vendor to clarify or confirm the terms of the JBE's procurement under the LPA.
- An RFO may be conducted by mail, fax, email, phone, or by other means as long as it complies with the LPA documentation. The RFO should describe the JBE's business requirements (e.g., through an SOW for services). To avoid lengthy, later-stage negotiations, a JBE may want to include the JBE's general terms and conditions (consistent with the LPA documentation).
- Because a JBE's procurement via another entity's LPA does not typically involve competitive bidding, do **not** include in the RFO language regarding bid protests, intent to award notices, or, for example, references to "bid," or "solicitation."

STEP 6—Best Value Comparison

If comparing potential LPAs (in connection with Step 3 above), compare LPAs (and RFO replies) to select the LPA that provides the "best value."

STEP 7—Finalize the Contract for Purchasing through the LPA

- Determine what form of contract the JBE will use to execute its purchase under the LPA.[6] The contract should contain sufficient references to the LPA.
- Prepare the contract, considering the LPA documentation, and any RFO (or Vendor's reply to an RFO).
- Discuss the contract with the Vendor (and, if necessary, the entity that established the LPA), and make any mutually acceptable, final revisions to the ~~LPA documentation.~~contract. Proceed with contract signature.[7]

[6] The LPA documentation may specify the form of contract for executing a purchase under the LPA. Modifications to such forms (and other LPA documentation) may need to be discussed and negotiated with the entity that established the LPA and/or the Vendor.
In certain cases, a JBE's procurement under another entity's LPA may occur through an alternative arrangement. For example, in some cases, the entity that established the LPA may assign purchase rights under the LPA (e.g., rights under an option to purchase a specified quantity of goods) to the JBE by executing a contract with the JBE.

[7] If the JBE's purchasing contract under the LPA is for a total estimated cost of more than $1 million, see chapter 12, section 12.2~~.~~ of this Manual. Following the execution of the purchasing contract, certain amendments to the purchasing contract may require an NCB process (see chapter 5 of this Manual).

STEP 8—Procurement Summary
Create a procurement summary for the procurement file. Confirm that the file includes the LPA documentation or a reference to its location, and, as applicable, a list of all potential LPA Vendors contacted and a recap of their offers, as well as a description of how the LPA was selected (including "best value" criteria).

6.3 STEP-BY-STEP GUIDE TO ESTABLISHING AN LPA

If the Approving Authority (or delegee) has authorized the JBE to establish an LPA,[8] the recommended steps for doing so are as follows:

STEP 1—Business Requirements
Define the business requirements of the entities that will be procuring goods/services under the LPA.

STEP 2—LPA Planning
Determine the structure of the LPA, including, for example, the following:

- Is the JBE establishing the LPA on its own or with the participation of other entities (i.e., will the JBE be the sole contractual party with the Vendor)? Consider the benefits and risks of entering into the LPA with the Vendor along with other entities.
- Which entities will have the right to procure under the LPA? What are the rights and obligations of the JBE and the other entities?
- Whether the LPA will contain any limits on the quantity or dollar amount (or other restrictions) regarding goods/services that entities procure under the LPA.
- If the LPA involves DVBE or Small Business participation, include provisions (for example, in the LPA user instructions) regarding to what extent entities procuring under the LPA may be able to claim DVBE or Small Business participation.

STEP 3—Vendor Selection / LPA Formation
Select a Vendor in accordance with the procurement requirements in this Manual.[9] Inform ~~bidders~~Bidders and ~~potential bidders~~Prospective Bidders about the entities that will have the right to procure under the LPA. To ensure that dollar thresholds for certain procurement methods are not exceeded, JBEs should consider using the most rigorous

[8] Consistent with the Director of DGS being authorized to establish LPAs for executive branch entities, the Approving Authority (or delegee) may authorize the JBE to establish LPAs.
[9] See, for example, chapters 4, 4A, 4B, and 4C of this Manual.

procurement methods available (e.g., using an RFP instead of an RFQ). Confirm that the LPA terms are consistent with this Manual[10] and address issues such as:

- Which entities can procure goods/services from the Vendor under the LPA (and the rights/obligations of those entities);[11]
- The Vendor's obligations to the entities procuring under the LPA; and
- Procedures/requirements for procuring under the LPA, documents for ordering goods/services, and any limits on quantity or dollar amount of goods/services.

STEP 4—LPA Execution

Finalize and execute the LPA.[12] If necessary, prepare user instructions for the LPA, based on the LPA's requirements. Distribute user instructions as necessary.

[10] See, for example, chapter 8 of this Manual.

[11] The JBE should consider stating in the LPA that the entity placing orders for goods/services is solely liable for its breach (i.e., the JBE will have no liability for breaches by other entities procuring under the LPA). Consistent with PCC 10298(b), JBEs must not incur financial responsibilities in connection with establishing LPAs for local agencies (e.g., a city or a county).

[12] If the JBE's own procurement under the LPA is for an estimated total cost of more than $1 million, see chapter 12, section 12.2. of this Manual.

Judicial Council of California

PROTESTS

CHAPTER 7

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INTRODUCTION

There are two types of protests in Judicial Branch Entity (JBE) procurement: solicitation specifications protests and award protests. This chapter provides information on these types of protest and how they are handled by JBEs.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

7.1 DESIGNATION OF JBE PROTEST PERSONNEL

Each JBE should designate a protest hearing officer to evaluate and issue written determinations regarding protests. To ensure proper segregation of duties, the protest hearing officer should be someone other than the Buyer. Each JBE should also designate a protest appeals officer to evaluate and issue written determinations regarding appeals of the protest hearing officer's written determinations. These designations should be documented in the JBE's Local Contracting Manual.

If a JBE does not designate a protest hearing officer, the Buyer's manager will act as the protest hearing officer. If a JBE does not designate a protest appeals officer, the protest hearing officer's manager will act as the protest appeals officer.

7.2 PROTEST THRESHOLDS

A JBE may adopt in its Local Contracting Manual thresholds for the acceptance of protests. The thresholds adopted by the JBE may not be higher than the dollar amounts in the following chart for the applicable type of procurement.

Type of Procurement	Threshold
Non-IT goods	$50,000
Non-IT services	$5,000
IT goods and services	$100,000

If a JBE adopts protest thresholds, the JBE must (i) state in any Solicitation Document associated with a procurement estimated to be below the applicable threshold that protests will not be accepted, and (ii) reject any protest received for a procurement if the procurement is below the applicable threshold.

The remainder of this chapter is applicable only to procurements above the applicable protest thresholds.

7.3 SOLICITATION SPECIFICATIONS PROTESTS

A solicitation specifications protest is a protest alleging that a Solicitation Document contains a technical, administrative, or cost specification or requirement that is defective. The specification or requirement may be defective because it is:

- Onerous, unfair, or illegal; or
- Imposes unnecessary constraints in proposing less costly or alternate solutions.

Example: A JBE inappropriately requires that goods be of a specific brand, when goods of another brand meet the JBE's requirements equally well at a lower cost. The requirement could result in a solicitation specifications protest.

Failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of a solicitation specifications protest.

A. Who May Submit a Solicitation Specifications Protest

Any Prospective Bidder may submit a solicitation specifications protest.

B. Deadline for Receipt of Protest

The deadline for the JBE to receive a solicitation specifications protest is the applicable date specified in the Solicitation Document. If no date is specified in the Solicitation Document, the deadline for the JBE to receive a solicitation specifications protest is the deadline specified in the JBE's Local Contracting Manual. If no deadline is specified in the JBE's Local Contracting Manual, the deadline for the JBE to receive a solicitation specifications protest is the Bid Closing Time.

The Prospective Bidder is solely responsible for ensuring that a solicitation specifications protest is received by the JBE by the deadline. The failure of a Prospective Bidder to submit a timely solicitation specifications protest constitutes a

waiver of the Prospective Bidder's right to protest the solicitation's specifications or requirements.

C. Required Information

A solicitation specifications protest must include the following information:

- Contact information of the ~~Prospective Bidder~~Protester or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);
- The title of the Solicitation Document to which the protest is related;
- The specific alleged deficiency in the solicitation's technical, administrative, or cost specifications or requirements;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

A solicitation specifications protest lacking any of this information may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the solicitation specifications protest without requesting further information from the Protester~~Prospective Bidder~~. Therefore, the solicitation specifications protest must include all grounds for the protest and all evidence available at the time the protest is submitted. If the ~~Prospective Bidder~~Protester later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider the new grounds or new evidence.

D. Submission of the Protest

The ~~Prospective Bidder~~Protester must send the solicitation specifications protest to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the ~~Prospective Bidder~~Protester must send the solicitation specifications protest by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the ~~Prospective Bidder~~Protester may also deliver the solicitation specifications protest personally as specified in the Solicitation Document. If the solicitation specifications protest is personally delivered, a receipt must be provided to the ~~Prospective Bidder~~Protester if requested.

E. Evaluation

When evaluating the solicitation specifications protest, the protest hearing officer should consider:

- The validity and defensibility of the allegedly defective technical, administrative, or cost specification or requirement;
- Whether the ~~Prospective Bidder~~Protester has raised a valid issue; and
- Whether competition would be advanced by revising the allegedly defective technical, administrative, or cost specification or requirement.

The protest hearing officer should seek legal advice as needed.

Note: The Protester~~Prospective Bidder~~ bears the burden of proof to show that the Solicitation Document contains a defective technical, administrative, or cost specification or requirement.

F. Written Determination

The protest hearing officer must issue a written determination before the JBE opens the Bids (or evaluates the Bids, if the Bids are not sealed). If required, the JBE may extend the Bid Closing Time to allow for time to review the solicitation specifications protest.

If the protest hearing officer determines that the solicitation specifications protest has merit, the protest hearing officer should take appropriate remedial action. Such action may include:

- Changing or clarifying the defective technical, administrative, or cost specification or requirement through an addendum to the Solicitation Document; or
- Canceling the solicitation.

If an addendum to the Solicitation Document is issued and the addendum may require additional time for Prospective Bidders to respond, the addendum should extend the Bid Closing Time by an appropriate amount of time (as determined by the protest hearing officer).

G. Appeal

The protest hearing officer's written determination is the final action by the JBE unless the Protester ~~Prospective Bidder~~ submits an appeal to the protest appeals officer within two Court Days of the issuance of the protest hearing officer's written determination.

Note: The JBE may adopt in its Local Contracting Manual a different deadline for the filing of an appeal, provided it is not fewer than two Court Days.

See section 7.5 for the handling of appeals.

7.4 AWARD PROTESTS

An award protest is a protest alleging that:

- The JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award; or
- The JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Example: The Solicitation Document stated that 50 percent of a Bid's total score would be cost points, but the JBE instead made cost points only 30 percent of the Bid's total score. This error could result in an award protest.

Failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of an award protest.

A. Who May Submit an Award Protest

A Bidder may submit an award protest if the Bidder meets the following requirements:

- The Bidder submitted a Bid that the Bidder believes to be responsive to the Solicitation Document; and
- The Bidder believes that the JBE has incorrectly selected another Bidder for an award.

A person or entity who did not submit a Bid may not submit an award protest.

In no event will a JBE consider a protest if the JBE rejected all Bids or the solicitation was canceled for any reason.

B. Deadline for Receipt of Protest

For solicitations using an RFQ, the deadline for the JBE to receive an award protest should be specified in the RFQ. If no deadline is specified in the RFQ, the award protest must be received by the JBE before the contract is executed. In no event will a JBE consider a protest for a solicitation using an RFQ after the contract has been executed.

For solicitations using an IFB or RFP, the deadline for the JBE to receive an award protest is specified in the table below.[1]

The Bidder is solely responsible for ensuring that an award protest is received by the JBE by the applicable due date. The failure of a Bidder to submit a timely award protest constitutes a waiver of the Bidder's right to protest the award.

Non-IT goods	Non-IT services	IT goods and services
The JBE must receive the award protest within **24 hours** after the JBE posts the intent to award. The ~~Bidder~~ Protester will have **10 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.	The JBE must receive the award protest within **5 Court Days** after the JBE posts the intent to award. The Protester ~~Bidder~~ will have **5 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.[2]	The JBE must receive the award protest within **5 Court Days** after the JBE posts the intent to award. The Protester ~~Bidder~~ will have **10 calendar days** after the JBE receives the protest to submit all information in section C below to the JBE.

C. Required Information

An award protest must include the following information:

- Contact information of the Protester~~Bidder~~ or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);

[1] On a case-by-case basis, a JBE may in its sole discretion extend any deadline in the table below for the receipt of the required information in section C.

[2] A JBE may extend this deadline to 10 calendar days in its Local Contracting Manual if the JBE prefers to have a uniform deadline for all three types of procurements.

- The title of the Solicitation Document to which the protest is related;
- The specific alleged error or irrational decision made by the JBE;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

If an award protest is missing any of this information (by the date the Protester ~~Bidder~~ is required to have all such information to the JBE), the award protest may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the award protest without requesting further information from the Protester~~Bidder~~. Therefore, the award protest must include all grounds and all evidence available at the time the award protest is submitted. If the Protester~~Bidder~~ later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider such new grounds or new evidence.

Note: For protests of non-IT goods solicitations, the Protester~~Bidder~~ must assert that it is the lowest responsible bidder meeting specifications unless the JBE waives this requirement. A JBE may include a general waiver of this requirement in its Local Contracting Manual.

D. Submission of the Protest

The Protester~~Bidder~~ must send the award protest (and any supporting documentation) to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the Protester~~Bidder~~ must send these materials by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the Protester ~~Bidder~~ may also deliver these materials personally to the JBE as specified in the Solicitation Document. If the materials are personally delivered, a receipt must be provided to the Protester ~~Bidder~~ if requested.

E. Evaluation

When evaluating the award protest, the protest hearing officer should consider:

- Whether the JBE committed an error in the award process;

- Whether an allegedly defective decision lacks a rational basis; and
- If the JBE committed an error in the award process or made a decision that lacks a rational basis, the materiality of the error or decision.

The protest hearing officer should seek legal advice as needed.

The Protester~~Bidder~~ bears the burden of proof to show that (i) the JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award, or (ii) the JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Note: The following do **not** constitute the absence of a rational basis:

- The Protester~~Bidder~~ disagrees with the scores assigned by the Evaluation Team; or
- The Evaluation Team could have assigned different scores based on the same information.

F. Written Determination

The protest hearing officer must respond to an award protest with a written determination before the contract is awarded. The protest hearing officer should issue the written determination within 10 Court Days of the complete submission of the award protest, or notify the Protester~~Bidder~~ that additional time will be required. The JBE may extend the award date to allow for time to review the award protest.

If the protest hearing officer determines that the award protest has merit, the protest hearing officer should take appropriate remedial action. In determining the appropriate remedial action, the protest hearing officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;
- The good faith of the parties;
- The cost to the JBE;
- The urgency of the procurement; and
- The impact on the JBE.

Remedial actions may include:

- Issuing a new solicitation; and
- ~~Recompeting the contract; and~~
- ~~Terminating the contract (e.g., if a contract was executed despite a pending appeal);~~
- ~~Refraining from the exercise of options under the awarded contract; and~~
- Awarding the contract consistent with law.

G. Appeal

The protest hearing officer's written determination is considered the final action by the JBE unless the Protester~~Bidder~~ submits an appeal to the protest appeals officer within five calendar days of the issuance of the protest hearing officer's written determination.

The JBE may, at its sole discretion, delay the contract award until the appeal is resolved or proceed with the award and execution of the contract. See section 7.5 for the handling of appeals.

7.5 APPEALS

Unless personal delivery is permitted as noted below, the Protester must send the appeal to the protest appeals officer by certified mail, registered mail, or overnight courier. If allowed by the Solicitation Document, the Protester may also deliver the appeal personally to the JBE as specified in the Solicitation Document. If the appeal is personally delivered, a receipt must be provided to the Protester if requested.

Any appeal not received by the protest appeals officer by the applicable deadline for submission will be rejected by the protest appeals officer. The Protester is solely responsible for ensuring that an appeal is received by the protest appeals officer by the applicable due date.

The appeal must include:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include e-mail address and fax number);
- The title of the Solicitation Document to which the protest is related;
- A copy of the protest hearing officer's written determination;

- A detailed description of the specific legal and factual grounds for the appeal and any supporting documentation; and
- The specific ruling or relief requested.

An appeal lacking any of this information may be rejected by the protest appeals officer. The appeal must include all information that the Protester wants the protest appeals officer to consider.

The Protester bears the burden of proof to show that the protest hearing officer's written determination is incorrect:

- In light of new information related to the protest that was not available at the time the protest was originally submitted; or
- Because it is in error of law or regulation.

The protest appeals officer reviews the appeal and issues a written determination. Issues that could have been raised earlier are not to be considered on appeal. The written determination of the protest appeals officer constitutes the final determination of the JBE regarding the protest.

If the protest appeals officer determines that the appeal has merit, the protest appeal officer will direct the protest hearing officer to take appropriate remedial action. In determining the appropriate remedial action, the protest appeals officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;
- The good faith of the parties;
- The cost to the JBE;
- The urgency of the procurement; and
- The impact on the JBE.

Remedial actions may include:

- Issuing a new solicitation;
- Recompeting the contract;
- Terminating the contract (e.g., if a contract was executed despite a pending appeal);

- Refraining from the exercise of options under the awarded contract; and
- Awarding the contract consistent with law.

7.6 SB/DVBE OPTION

Protests are not allowed in solicitations using the SB/DVBE option.[3]

[3] See Government Code section 14838.5(a).

Judicial Council of California

CONTRACTS

CHAPTER 8

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INTRODUCTION

This chapter provides information on preparing, approving, and executing JBE contracts.[1] The main body of this chapter discusses the basic construction of contracts and the mandatory and permissive subject matters for inclusion in JBE contracts. The appendices to this chapter identify mandatory and permissive contract terms for JBE contracts.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

Under California law a "contract" is "an agreement to do or not to do a certain thing."[2] This chapter refers specifically to agreements for goods and services. Unless expressly excluded from the JBCM or JBCL, or the context dictates otherwise, the term "contract" as used in this chapter includes all agreements for goods or services, including purchase orders (POs), intergovernmental contracts (IGCs), and other documents for goods and services, regardless of the document's form or title.

8.1 BASIC PRINCIPLES

A. Writing Requirement

All contracts entered into by JBEs must be in writing.

B. Roles and Responsibilities

Each JBE is responsible for the commercial risks that flow from contracts it enters into and should undertake risks only in proportion to the benefits expected from a contract. Contracts should be prepared, negotiated, and executed in the best interests of the JBE. Contracts should be prepared and negotiated only by persons with appropriate skill and experience who are free from conflicts of interest. Contracts must be executed only by persons with legal authority to do so.

It is the JBE's responsibility to ensure that the contract meets applicable legal requirements and that the contract terms are appropriate to the type of contract.

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[1] This chapter does not address contracts for public works. Contracts for public works will be addressed in the AOC's Local Contracting Manual.
[2] Civil Code section 1549.

8.2 CATEGORIES OF CONTRACTS

This subsection describes the basic categories of contracts used by JBEs and when those contracts are used. The category names are used for reference, as an individual contract may have a different name or title. For example, certain MOUs with executive branch agencies may be called "Interagency Agreements" or "IAs." Requirements in this Manual apply to all contracts in the following categories of contract, unless expressly excluded from the JBCL or JBCM, regardless of the name or title of the contract.

A. Purchase Orders (POs)

These contracts may be used for purchase of goods from nongovernmental entities[3] regardless of the purchase amount. POs are also often used for purchase of goods and for services that are ancillary to the purchase of the goods. In addition, POs are typically used for "off the shelf" goods and software or for routine, low cost, or low risk services.[4]

- Goods that must be customized or specially manufactured and services of a complex, high risk, or specialized nature should be purchased using a standard agreement.
- Unless the PO is signed by both parties, the proposed Vendor has no duty of performance unless and until the Vendor commences performance of its duties under the PO. If the PO is not to be countersigned and returned to the JBE, the PO should contain a clause that states that Vendor's commencement of performance under the PO constitutes acceptance and binds the Vendor to all contract terms.

B. Standard Agreements

These contracts may be used for the purchase of goods or services from nongovernmental entities regardless of the contract amount.

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[3] For purposes of this chapter, a "governmental entity" includes, without limitation, (i) a California department or agency, or a department or agency of any other state, (ii) a public college or state university established by California or any other state, (iii) a local governmental entity or agency in the United States or its territories, including those created as a joint powers authority (iv) an auxiliary organization of the California State University, or a California community college, (v) the federal government, (vi) a foundation organized to support the Board of Governors of the California Community Colleges, (vii) an auxiliary organization of the Student Aid Commission established under Education Code section 69522, or (viii) a public benefit organization. A public benefit organization is an organization chartered by a governmental entity and designed to perform some public benefit such as building or maintaining public infrastructure, or raising bond money for those purposes.

[4] A JBE may wish to adopt in its Local Contracting Manual limitations on the use of POs to purchase services. For example, the JBE may limit the use of POs to services incidental to a purchase of goods, or for services valued at less than a certain dollar amount.

C. Short Form Agreements

These contracts include fewer terms and conditions than a Standard Agreement, and are typically used for the purchase of goods or services not to exceed $50,000 from nongovernmental entities.[5] The agreement is intended to be used for routine purchases and in situations where not all of the provisions found in a Standard Agreement would be appropriate. As noted in the appendices to this chapter, fewer terms are required to be included in these agreements than are required in Standard Agreements.

D. Intergovernmental Contracts (IGCs)

These contracts may be used for any purchase of goods and services between a JBE and another governmental entity. If the other governmental entity is not within the judicial branch, the agreement is often called a Memorandum of Understanding (MOU). If the other governmental entity is another JBE, the agreement is often called an Intra-branch Agreement (IBA). IGCs[6] are simpler and have fewer provisions than POs or Standard Agreements. A JBE, however, always has the option of using a PO or Standard Agreement when contracting with a governmental entity.

8.3 PREPARATION OF CONTRACTS

This subsection describes the elements of a contract and typical contract provisions and, where applicable, describes the specific subject matters JBEs should address in particular contract provisions.

Appendices A, B, and C supplement this subsection. These appendices identify the substance of the certifications and provisions that are required to be included in specified categories of JBE contracts. These appendices also indicate which terms are recommended to be included in JBE contracts but are not legally required.[7]

[5] A JBE may adopt a higher or lower threshold for the use of short form agreements in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value short form agreements. In addition, the JBE must ensure that larger-value short form agreements include all clauses required to be in contracts of the applicable value.
[6] IBAs and MOUs are collectively referred to as IGCs in this Manual.
[7] A JBE is not required to include in the procurement file an explanation for why a recommended CCC or other provision was included in or omitted from a contract.

A. Content of Contracts

JBEs must include legally required terms in their contracts and should include other terms that the JBE determines are necessary to protect the JBE and mitigate the risks associated with the contract.

Sample language for terms and certifications required to be included in JBE contracts is available from the AOC, together with templates for complete contracts.

Use of these sample provisions and templates is optional. Each JBE may modify the provisions or templates or use its own forms. JBEs may also use a Vendor-provided form contract provided the final contract includes appropriate terms and meets applicable legal requirements.

- Contract elements

  Each contract must identify the contracting parties. Contracts typically consist of three major elements:

  - Statement of Work (SOW), including the schedule of performance;
  - Pricing and payment; and
  - Other terms and conditions.

  Each of these elements must be clearly defined so that the JBE's needs are met, and the contractor and the JBE understand their performance obligations.

- Each major element is described below, including typical subject matters that are frequently grouped together in contract sections regarding the specific element. However, contract provisions are not required to be in any specific location in the contract. For example, a topic listed below as part of a typical SOW may be placed under a different heading in a particular contract.

1. Statement of Work (SOW)

The SOW describes the goods to be purchased and/or the services to be performed. The JBE must include a detailed description of the goods to be delivered or the services to be performed, together with any deliverables required and conditions of performance, if applicable. The contract must specify (as applicable): (i) when goods are to be delivered,[8] (ii) when services are to be

[8] The JBE may, but is not required to, specify a delivery date for goods. If no delivery date is specified, the time for shipment shall be a reasonable time in accordance with Commercial Code section 2309.

performed (start date and end date), (iii) when deliverables must be provided to the JBE, and (iv) when other contract milestones must be completed.

- The following are matters that are typically included in the SOW as part of the detailed description of the goods, services, deliverables, and required conditions of performance:
  - Quantities, specifications, and specific requirements;
  - Quality standards and warranties;
  - Delivery instructions;
  - Acceptance criteria including inspections;
  - Results and required deliverables (e.g., reports, data, or other documentation);
  - Location of performance of services, and contractor's work hours;
  - Performance timelines (schedule) or completion dates;
  - Standards of performance and skill level required and, if applicable, specific personnel and staffing requirements and identification of contractor's key personnel;
  - Details regarding equipment, labor, or materials to be provided by the parties, and coordination of effort, if applicable;
  - Optional goods or services, and provisions for requesting these items; and
  - Possible conditions that may arise during performance of the contract that would trigger modifications to the SOW, cost, or schedule.

2. *Pricing and payment*

The price the JBE will pay for goods and services under a contract must be clearly stated. The contract should clearly specify the basis for compensation and the terms of payment, such as: lump sum (one-time payment), firm fixed price, unit price, labor rate, or other specific basis.

- Required terms:
  - A provision that makes payment subject to appropriation of funds is required in all contracts requiring the payment of JBE funds unless the JBE has the right to terminate for convenience;[9] and
  - If a JBE is contracting for labor, a schedule listing the hourly, daily, weekly, or monthly cost for each person or job classification must be incorporated into the contract.

[9] See chapter 11, section 11.10 of this Manual for addition information regarding termination and termination clauses.

- Contracts typically include provisions covering the following subjects, as applicable in the particular circumstances, to specify the basis for compensation and set out the terms of payment:
  - Firm price or not to exceed amount of all compensation;
  - Basis of pricing such as (i) hours times hourly rate (e.g., rates contained in a fee schedule), (ii) costs incurred plus any agreed markup, or (iii) a firm fixed price;
  - For lump sum or firm fixed price contracts, a schedule of billing rates if the schedule was used to establish the lump sum or fixed price of authorized work. The schedule may also be used as the basis for establishing the cost of additional work authorized under the contract;
  - Any cost substantiation requirements and processes;
  - Any allowances that are a part of established prices;
  - Allowable and unallowable pass-through expenses (e.g., travel expenses at state rates);
  - Expense reimbursement substantiation requirements and processes;
  - Payment frequency, and schedule for Progress Payments;
  - Retention or withholding amounts:
    - Each contract should provide for payment, or a reasonable portion thereof, to be withheld pending resolution of any material dispute;
  - Conditions of payment;
  - Pricing of any modifications that may be effected by change order or through exercise of an option;
  - Respecting IGCs only:
    - A JBE should ensure that any overhead or administrative costs are reasonable considering the services being performed and conform to any applicable requirements imposed under the JBE's A-87 Cost Recovery Plan;[10] and
    - A JBE should not pay overhead charges (mark-ups) on more than the first $25,000 of a subcontract.

3. Terms and Conditions

The contract must include specified rights and obligations of either party that are not included in the SOW or the pricing and payment section, including additional provisions that apply to performance under the contract, as applicable.

[10] For superior courts, see TCFPPM, FIN 15.02 (Indirect Cost Rate Proposal) for details about cost recovery plans and Office of Management and Budget guidelines.

- Standard Terms and Conditions. Contracts typically include the following "standard" or "general" terms and conditions:
  - Terms of shipping or packaging requirements;
  - Contract term, including any options to extend the term;
  - Where contract notices must be directed;
  - Identification of the parties' representatives;
  - Dispute resolution; and
  - Indemnification.

- Deal Terms and Conditions. The contract may also include "deal-specific" terms applicable to the particular goods or services being procured or the circumstances of a particular purchase, such as:
  - If establishing an LPA, LPA options, terms, and conditions;
  - Any performance bond requirement;
  - Permits or licenses required of the Contractor and standards of performance required by particular personnel performing the services; and
  - Product warranties, detailed service level agreements, or performance criteria.

- Modification Provisions. Generally, provisions for modifying contract terms, including provisions for formal amendments, change orders, and exercises of options, if applicable, are required to be in a contract. These terms establish the procedure to be used for each type of modification. If a JBE wants to be able to modify a contract without a formal amendment (i.e., modifying a contract by change order or exercise of an option), the contract must include a change order provision or an option provision. See chapter 11 of this Manual for more information on contract modifications.

- Contractor Certification Clauses (CCCs). CCCs include certifications from a contractor regarding particular laws. CCCs may include a contractor's representation or warranty that certain conditions have been met or certain circumstances are true. CCCs may be included in the terms and conditions (often in the representations and warranties section) or may be placed in a separate document that is incorporated by reference into the contract. Appendix A to this chapter contains a chart of typical CCCs, and indicates which categories of contract must include the listed CCCs. If the CCC is not required, it may be listed as recommended for a particular category of contract. Whether or not to include CCCs listed as recommended, and whether or not to include CCCs in contracts when the CCC is not listed as

mandatory or recommended, is in the discretion of the JBE, based on JBE policy and the particular circumstances.

- Insurance. When contracting with a nongovernmental entity, the JBE should determine whether to require the contractor to maintain insurance in connection with the performance of the contract. If so, the JBE must determine what types of insurance to require and the minimum dollar levels of each required policy. At a minimum, the JBE should require insurance in contracts involving the performance of high-risk activities described in section 8.4.B.1 of this chapter.

  The most common types of insurance include:

  - Commercial General Liability. This is a basic insurance policy the JBE should consider requiring. This policy covers bodily injury and property damage liability, including coverage for products, operations, hazard, personal and advertising injury liability, and contractual liability.
  - Workers' Compensation and Employer's Liability. This policy should be required if the Vendor has employees.
  - Professional Liability. This policy should be required if the Vendor performs consulting or professional services.
  - Commercial Automobile Liability. This policy should be required if the Vendor uses an automobile or other vehicle in the performance of the contract.
  - Commercial Crime Insurance. If the Vendor handles or has access to the JBE's funds or property of significant value to the JBE, the JBE should consider requiring this coverage.

  Notes for contracts requiring insurance:

  - If required, the commercial general liability and automobile insurance policies should be endorsed to include the JBE and its officers, agents, and employees as additional insureds with respect to the work performed for or items purchased by the JBE under the contract.
  - ~~Certificates of insurance (or, if acceptable to the JBE, certificates of self-insurance) for all required policies must be received from the Vendor or be verified as current and on file with the JBE prior to the beginning of any work. The certificates must be of a form and content that meet the requirements of the contract.~~

- The contract should state that no payments will be made to the contractor until all required current and complete ~~c~~Certificates of ~~i~~insurance are properly endorsed and on file with the JBE. Agreements that include commercial crime insurance should state that the work will not begin until all required current and complete ~~c~~Certificates of ~~i~~insurance are properly endorsed and on file with the JBE.
- The JBE should require that ~~c~~Certificates of ~~i~~insurance include a provision that requires at least 15 days' written notice to the JBE in the event that insurance coverage is cancelled or materially changed.
- The contract should state that insurance will be issued by an insurance company that is acceptable to the JBE.
- If a Solicitation Document is used, the JBE should ensure that the required types and levels of insurance are specified in the Solicitation Document.

B. Special Provisions for IGCs

Because of the inter-governmental nature of IGCs, not all of the subject matters discussed above are necessary in IGCs. In preparing an IGC a JBE should review the information above regarding each element to determine which of the topics are appropriate for inclusion in the particular contract and whether any of the specific requirements noted above apply to the contract. See the appendices for required and recommended certifications and contract provisions for MOUs and IBAs.

C. Additional Provisions Required in Certain Types of Contracts

Certain clauses are required or recommended for certain types of contracts. Appendix C to this chapter addresses these contracts, listed below:

1. Consulting Services Contracts;
2. Credit Card Issuer Contracts;
3. Equipment Purchase Contracts;
4. Federally Funded Contracts;
5. IGCs (MOUs) with Counties for County Services;
6. IGCs with California Governmental Entities;
7. IGCs with Local Governmental Entities;
8. Information Technology Contracts;
9. Janitorial/Building Maintenance Contracts;
10. Legal Services Contracts;
11. ~~Parts Cleaning Contracts;~~
~~12.~~11. Printing Contracts; and

~~13.~~12. Equipment Rental Contracts.

In some instances a single contract may fit into more than one of these types of contracts. For example, an MOU between a court and a county fits types 5, 6, and 7 (and possibly others, depending on the content of the contract). A JBE should ensure that it has consulted all relevant information in appendix C before finalizing a contract.

8.4 APPROVAL OF CONTRACTS

A. Review and Approval of Commercial Terms

Each JBE should establish processes and levels of approval authority for entering into contracts that are consistent with applicable law (including rules of court), and that promote responsible stewardship of public funds and help avoid prohibited conflicts of interest. Consideration should be given to applicable financial and accounting standards and best practices associated with contracting and procurement responsibility. Each JBE should also consider its size and resources when establishing processes and levels of approval authority.

B. Legal Review

JBEs may arrange for legal review of their contracts by their in-house legal staff or retained counsel, or through the AOC Legal Services Office (AOC/LSO~~OGC~~). The JBE should adopt a policy in its Local Contracting Manual describing the circumstances where legal review is required.

The following are circumstances where legal review should be required.

1. High Risk Activities

The JBE should provide for legal review if the contract provides for the performance of high risk activities. Each JBE should define “high risk activities” in its Local Contracting Manual. High risk activities may include, for example:

- Operating heavy equipment;
- Transporting, holding, or incarcerating a person;
- Applying, treating, removing, storing, or any other handling of hazardous chemicals or other hazardous substances;
- Carrying a firearm, explosive, or other weapon; or

- Transporting outside of secure premises cash, cash equivalents, securities, and other financial instruments with an aggregate value on any occurrence in excess of a certain dollar amount as specified in the Local Contracting Manual.

2. Contract template

The JBE should provide for legal review where the JBE plans to adopt a contract template.

3. Contract Modifications

The JBE should provide for legal review where one or more contract terms are to be modified, and:

- The contract is being modified to resolve a contract dispute; or
- The modification itself triggers a requirement for legal review under the JBE's Local Contracting Manual.

4. Certain Substantive Provisions Affecting Legal Risk

The JBE should provide for legal review if the proposed terms and conditions involve, for example:

- Assuming a risk or contingent liability not under the direct control of the JBE;
- Indemnifying any contractor or third party;
- Substantially narrowing any limitation of liability that favors the JBE as set forth in the JBE's standard terms and conditions;
- Substantially limiting the liability of a contractor or other third party;
- Agreeing to liquidated damages; or
- Releasing any claim or potential claim, or otherwise settling any dispute.

The following are sample circumstances where the JBE may also wish to require legal review.

1. Dollar Value of Contract

The dollar value of the contract is above a certain dollar threshold.

2. Revenue Agreements; Financing Agreements

The contract is a revenue agreement or financing agreement. Revenue agreements include reimbursement, income, receivable, and cost recovery contracts. They typically fall into one of two categories:

- Contracts between a JBE and a private entity, under which the private entity provides services and pays the JBE; or
- Contracts between a JBE and a governmental or private entity, under which the JBE provides services and receives payment for the services.

  Financing agreements include equipment lease/finance agreements, installment sales contracts, and other contracts under which compensation for purchased goods or services comes due over time instead of on receipt.

C. Review of Certain IT Contracts

All administrative and infrastructure information technology (IT) projects of the Judicial Council or the courts with total costs estimated at more than $5 million are subject to review and recommendations of the California Technology Agency, as specified in GC 68511.9 (PCC 19204(a)).

8.5 EXECUTION OF CONTRACTS

A. Authority

Contracts may not be executed by persons without authority to do so according to established levels of authority.

B. Process

- Contracts may be either manually signed or digitally signed:

  - If the contract is signed manually, the JBE should create at least two originally signed counterparts of each contract—one for the JBE and one for each contractor. Other than purchase orders, contracts should first be provided to the contractor for signature and then delivered back to the JBE, who will countersign the document and return an original to the contractor. Contracts may be executed in multiple counterparts if the contract so provides. If a manually signed document is delivered to the other party electronically (e.g., by fax or a PDF file attached to an e-mail), receipt should be confirmed and the originally executed counterparts exchanged promptly.

- If the contract is signed digitally, the JBE must ensure compliance with California Code of Regulations, title 2, sections 22000–22005 (Digital Signatures), promulgated under GC 16.5.

- Contracts (other than POs) should be mutually executed and delivered before work under the contract begins. Any work performed under a contract before it is fully executed and delivered is at the contractor's own risk. If a contract is not mutually executed and delivered before work begins, the contractor may not be paid for that work unless the effective date of the contract is no later than the date work begins.

C. Payee Data Record

~~This form must be completed and signed by all private entity contractors before execution of a contract unless the JBE has previously obtained a Payee Data Record from the contractor.~~ For ~~additional~~ information regarding Payee Data Records, see chapter 9, section 9.1.E of this Manual.

APPENDIX A

CONTRACTOR CERTIFICATION CLAUSES

The following table lists Contractor Certification Clauses (CCCs) that are ***mandatory*** in specific categories of contracts; these are marked with an "M." A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other CCCs are ***recommended*** in specific categories of contracts; these are marked with an "R" in the table below. If a CCC is neither mandatory nor recommended, the table shows no mark.

Some CCCs are listed as recommended but not mandatory because there is no specific requirement that the contractor provide a certification or representation to that effect; the contract and contractor must still comply with the law.

Whether or not to include CCCs listed as recommended, and CCCs that are not listed as mandatory or recommended, is in the discretion of the JBE based on JBE policy and the particular circumstances. JBEs are not required to include in the procurement file an explanation for including or omitting a recommended CCC.

	CCC	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
1.	Authority		R	R	R (see note 1)	
2.	Qualification in California	M (s~~S~~ee note 2)	M (s~~S~~ee note 2)	M (s~~S~~ee note 2)		
3.	No gratuities		R			
4.	No conflict of interest		R			
5.	No interference with other contracts		R			

	CCC	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
6.	No litigation		R			
7.	Compliance with laws	R	R	R	R	
8.	Drug-free workplace		R			
9.	No harassment		R	R		
10.	Nondiscrimination	M	M	M		
11.	Domestic partners, spouses, gender	M (s~~S~~ee note 3)	M (s~~S~~ee note 3)			
12.	National Labor Relations Board	M (~~S~~see note 4)	M (~~S~~see note 4)	M (~~S~~see note 4)		
13.	Expatriate Corporations	M (~~S~~see note 5)	M (~~S~~see note 5)	M (~~S~~see note 5)		
14.	Sweatshop Labor	M (~~S~~see note 6)	M (~~S~~see note 6)	M (~~S~~see note 6)		
15.	Child Support Compliance Act	M (~~S~~see note 7)	M (~~S~~see note 7)			
16.	Iran Contracting Act	M (~~S~~see note 8)	M (~~S~~see note 8)			

Note 1: It is recommended that all contracts include a general representation as to the Vendor's authority. In MOUs with government agencies, the JBE should obtain a copy of the resolution or other document authorizing the local governing body to enter into the proposed contract, unless performance by the local governmental entity will be completed before any payment by the JBE will be made.

Note 2: Mandatory if (i) Vendor is a corporation, limited liability company, or limited partnership, and (ii) the contract will be performed in California.

Note 3: Applies only to contracts for $100,000 or more. This CCC may be omitted if, after the JBE has taken all reasonable measures to find a contractor that complies with this CCC, the JBE determines that: (i) there is only one prospective contractor willing to enter into a specific contract with the JBE; (ii) the contract is necessary to respond to an emergency, as determined by the JBE, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies

with the requirements of this CCC capable of responding to the emergency is immediately available; or (iii) the requirements of this CCC violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the JBE to change the terms or conditions of any grant, subvention, or agreement to authorize application of this CCC.

Note 4: Not applicable to purchases of goods by credit card for an amount less than $2,500 from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor.

Note 5: Not applicable to purchases of goods by credit card for an amount of $2,500 or less from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor. In addition, the Approving Authority, or his or her designee, may waive this requirement upon a written finding that the contract is necessary to meet a compelling public interest. “Compelling public interest” includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in PCC 1102.

Note 6: Mandatory only if the contract provides (i) for furnishing equipment, materials, or supplies (except related to the provision of public works), or (ii) for the laundering of apparel, garments, or corresponding accessories. Not applicable to purchases by credit card for an amount less than $2,500 from any one Vendor, not to exceed in the aggregate $7,500 per year from the Vendor.

Note 7: Mandatory only if the contract is in excess of $100,000.

Note 8: Mandatory only if (i) the JBE is entering into a contract for $1,000,000 or more and the JBE did not receive an Iran Contracting Act certification as part of the solicitation process, or (ii) the JBE is renewing a contract for $1,000,000 or more. For additional information, including a sample certification form, see chapter 4, section 4.4.C.2 of this Manual.

APPENDIX B

MANDATORY AND RECOMMENDED CONTRACT PROVISIONS

Some of the sample contract provisions below are ***mandatory*** in specific categories of contracts; these are marked with an "M" in the table below. A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other sample contract provisions below are ***recommended*** in specific categories of contracts; these are marked with an "R" in the table below. If a provision is neither mandatory nor recommended, the table shows no mark. JBEs are not required to include in the procurement file an explanation for including or omitting a recommended CCC.

Note: The list in the chart below is not exhaustive. Other provisions may be appropriate depending on the subject matter of the contract and desired allocation of commercial and legal risks between the parties.

For low value, low risk, and short form agreements, JBEs may consider drafting provisions with less detail than in their standard agreements and POs, to the extent the particular language or detail is not expressly required by law.

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
1.	Termination due to nonavailability of funds~~Budget contingency provision~~	M (~~S~~see note 1)	M (~~S~~see note 1)	M (~~S~~see note 1)	M (~~S~~see note 1)	
2.	Loss leader	M (see note 2)	M (see note 2)	M (see note 2)		
3.	Antitrust claims	M (~~S~~see note 3)	M (~~S~~see note 3)	M (~~S~~see note 3)		

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
4.	Recycled products/post-consumer material	M (~~S~~see note 4)	M (~~S~~see note 4)	M (~~S~~see note 4)		
5.	Priority hiring	M (~~S~~see note 5)	M (~~S~~see note 5)			
6.	DVBE commitment ~~participation certification~~	M (~~S~~see note 6)	M (~~S~~see note 6)	M (~~S~~see note 6)		
7.	Small business preference commitment	M (see note 7)	M (see note 7)	M (see note 7)		
~~7.~~8.	Union activities	M (~~S~~see note ~~7~~8)	M (~~S~~see note ~~7~~8)			
~~8.~~9.	Insurance	R ~~(See note 8)~~	R ~~(See note 8)~~	R ~~(See note 8)~~		
~~9.~~10	State Auditor~~BSA~~ audit provision	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)	M (if over $10,000)
~~10.~~1	General audit and records provision	R	R	R	R	R
~~11.~~1	Indemnification by contractor	R	R	R		
~~12.~~1	Independent contractor provision	R	R	R		
~~13.~~1	Termination for ~~default~~cause	R	R	R	R	R
~~14.~~1	Termination by JBE for convenience	R	R	R	R	R

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
~~15.~~	Effect of expiration or termination; survival provisions		R		R	R
~~16.~~	Prohibition on assignment and subcontracting	R	R	R	R	R
~~17.~~	Binding on successors		R			
~~18.~~	Personnel and background checks		R			
~~19.~~	GAAP compliance		R			
~~20.~~	Ownership of results, rights in work product	R (see note ~~8~~9)	R (see note ~~8~~9)	R (see note ~~8~~9)	R (see note ~~8~~9)	R
~~21.~~	Confidentiality		R	R	R	R
~~22.~~	Publicity		R			
~~23.~~	Choice of law (California)	R	R	R	R	
~~24.~~	Amendment	R	R		R	R
~~25.~~	Waiver		R		R	R
~~26.~~	Severability		R		R	
~~27.~~	Time of the essence	R	R	R	R	
~~28.~~	Negotiated agreement		R			
~~29.~~	Headings		R			
~~30.~~	Counterparts		R		R	R
~~31.~~	Entire agreement	R	R	R	R	R

	Provision	PO	Standard Agreement	Short Form Agreement (under $50,000)	MOU	IBA
~~32.1~~	Informal dispute resolution	R	R	R	R	R
34.	Suspension of work		R (see note 10)			

Note 1: Mandatory unless the JBE has the right to terminate the contract for convenience.

Note 2: Mandatory in any contract under which goods are provided to a JBE.

Note 3: Mandatory only if a contract was obtained by means of a competitive bid.

Note 4: Mandatory if the contract provides for the purchase of goods specified in PCC 12207 (paper products; printing and wrapping papers; mulch, compost, and cocompost products; glass products; lubricating oils; plastic products; paint; antifreeze; tires and tire-derived products; and metal). Also mandatory in janitorial/building maintenance contracts, and printing contracts~~, and parts cleaning contracts~~, as described in appendix C of this chapter.

Note 5: With certain exceptions, mandatory if a contract includes services in excess of $200,000. Exceptions: this provision should not be included in (i) consulting services contracts, or (ii) contracts for services related to public works, if the contract value exceeds the amount set from time to time, pursuant to PCC 10105. For information regarding consulting services contracts, see appendix C, section 1 of this chapter.

Note 6: Mandatory only if a Vendor received a DVBE incentive in connection with the agreement~~made a commitment to achieve disabled veterans business enterprise (DVBE) participation~~.

Note 7: Mandatory only if a Vendor received a small business preference in connection with the agreement; applicable only to procurements of IT goods and services.

Note ~~7~~8: Certain language is mandatory in any contract that allows for reimbursement of Vendor expenses. Other language is mandatory in contracts if the amount is above $50,000.

Note ~~8~~9: Strongly recommended for IT agreements or other agreements where there is valuable work product.

Note 10: Recommended if temporary delay is a possibility, particularly in large-scale or complex services agreements.

APPENDIX C

ADDITIONAL INFORMATION FOR CERTAIN TYPES OF CONTRACTS

This appendix contains additional information for the following types of contracts:

1. Consulting Services Contracts;
2. Credit Card Issuer Contracts;
3. Equipment Purchase Contracts;
4. Federally Funded Contracts;
5. IGCs (MOUs) with Counties for County Services;
6. IGCs with California Governmental Entities;
7. IGCs with Local Governmental Entities;
8. Information Technology Contracts;
9. Janitorial/Building Maintenance Contracts;
10. Legal Services Contracts;

~~11. Parts Cleaning Contracts;~~

~~12.~~11. Printing Contracts; and

~~13.~~12. Equipment Rental Contracts.

In some instances a single contract may fit into more than one of these types of contracts. For example, a court-county MOU fits within categories 6, 7, and 8 (and possibly others, depending on the content of the MOU). A JBE should ensure that it has consulted all relevant information in this appendix before finalizing a contract.

1. CONSULTING SERVICES CONTRACTS

a. Definition. A consulting services contract (or "consultant services contract") is a services contract in which the service to be provided is advice or recommendations rather than the use of mechanical or physical skills. The product may include anything from answers to specific questions to the design of a system or development of a plan. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services. Consulting services contracts typically do not include:

- Contracts between JBEs and the federal government;

- Contracts with any city, county, JBE, special district, authority or other political subdivision of the state, to subvene federal funds for which no matching state funds are required; and
- Contracts for architectural and engineering services (GC 4525 et seq.).

b. Contents. A consulting services contract may include:

- A provision for settlement of contract disputes.
- If the contract is for $5,000 or more:
  - Detailed performance criteria and a schedule for performance;
  - A requirement that the contractor provide a detailed analysis of the costs of performing the contract;
  - A resumé for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor; and
  - A statement that the JBE will evaluate the contractor's performance.

2. CREDIT CARD ISSUER CONTRACTS

GC 6159(d) establishes the minimum requirements that must be met when a JBE enters into a contract with a credit card issuer allowing the JBE to accept payments by credit card. These contracts must define:

- The respective rights and duties of the JBE and credit card issuer regarding the presentation, acceptability, and payment of credit card drafts;
- A reasonable method to facilitate payment settlements;
- A reasonable fee or discount to be paid to the credit card issuer; and
- Other matters that may be agreed upon by the parties.

For superior courts: additional information regarding credit card payments is set forth in the TCFPPM, FIN 10.01 (Revenue Collection and Distribution) and FIN 10.02 (Cash Handling).

3. EQUIPMENT PURCHASE CONTRACTS

Contracts providing for the purchase of equipment using JBE funds should include a provision in substance as follows:

- Title to equipment purchased or built with JBE funds vests in the JBE upon payment of the purchase price; and

- The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from contractor's invoice to the JBE, or require contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, contractor must file a police report immediately.

4. FEDERALLY FUNDED CONTRACTS

All contracts subject to this Manual that are funded in whole or in part by the federal government should contain a 30-day cancellation provision and the following provisions:

- It is understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made. This contract is valid and enforceable only if sufficient funds are made available to the JBE by the U.S. Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- The parties agree that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- The parties may invalidate this Agreement under any termination for convenience or cancellation provision or amend the contract to reflect any reduction in funds.

JBEs using federal assistance for procurement should be aware of any applicable third party contracting requirements that may be a condition of a specific grant. JBEs should consult with legal counsel as appropriate to ensure compliance with all grant conditions.

5. IGCs (MOUs) WITH COUNTIES FOR COUNTY SERVICES[1]

If a superior court and its county agree that the county will provide or continue to provide services to the court that were provided in 1997, GC 77212 requires the superior courts and county to enter into a contract regarding the services. The parties must cooperate in developing and implementing the contract. The contract is typically in the form of an MOU.

[1] This section does not apply to security MOUs between a superior court and a county.

- Services provided to the court may be discontinued by either party giving written notice to the other no later than 90 days before the end of the fiscal year (i.e., prior to April 1); some MOUs may require earlier notice. Service discontinuation only becomes effective at the beginning of the new fiscal year (July 1), per GC 77212(b) and (c).
- Under CRC 10.805, if the superior court receives or issues a notice regarding the discontinuation of county-provided services under GC 77212, a copy of the notice must be provided to the AOC Director of Finance within 10 days of the notice issue or receipt date.
- GC 77212(d) specifically requires that a court-county agreement identify the scope of services, the method of service delivery, the term of the agreement, the anticipated services outcomes, and the cost of the services. A court-county agreement for services should also contain appropriate provisions applicable to IGCs generally under this chapter.
- GC 77212(a) states that services provided to a court shall be provided at a rate that shall not exceed the costs of providing similar services to county departments or special districts. A court may include this clause in its court-county MOU~~In addition to the general requirements on costs, GC 77212 also requires inclusion of the following provision related to costs~~:

  Costs. Costs charged to the court may not exceed the costs of providing similar services to county departments or special districts (GC 77212(a)).

- Counties periodically approve "cost allocation plans" detailing the actual expenditures by departments that provide indirect services to county departments and identifying the specific cost allocation methods that are used to distribute those costs. For purposes of determining the costs associated with its contract with the county, the contract should allow the superior court to review the specific charges in the cost allocation plan that were used to complete the plan, including the data elements provided by each county department.
- The amount of any indirect or overhead costs must be individually stated, together with the method of calculation of the indirect or overhead costs.[2] ~~(GC 77212 (d)).~~
- The Judicial Council or its delegee may audit the county figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the superior court.

[2] This requirement is limited to contracts entered into after January 1, 2002. See GC 77212(d).

- CRC 10.810 defines the division of responsibility between the state and county for funding the superior court. Costs payable by a superior court under any IGC, including agreements covered by GC 77212, may not contain items that are not otherwise allowable court operations.

6. IGCs WITH CALIFORNIA GOVERNMENTAL ENTITIES

Except for IBAs, JBEs should include the following waiver provision, or a similar provision modified as appropriate to address any indemnity provision in the contract:

> **Waiver of Per Capita Risk Allocation.** The parties waive the per capita risk allocation set forth in Government Code section 895.6. Instead, they agree if one of them is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, the parties' respective pro-rata shares in satisfaction of the judgment will be determined by applying principles of comparative fault.

7. IGCs WITH LOCAL GOVERNMENTAL ENTITIES

When a JBE contracts with a county, city, district, or other local governmental entity, the JBE should require, together with the signed contract, a copy of the resolution or other document authorizing the local governing body to enter into the proposed contract. When performance by the local governmental entity will be completed before any payment by the JBE, however, such as a room rental or a one-time event, the JBE does not need to obtain this documentation. The JBE may wish to include the following provision in the contract (e.g., in the CCCs):

> **Authority.** Attached is a true copy of the code, rule, resolution, order, motion, or ordinance authorizing Contractor to enter into or execute this Agreement.

8. INFORMATION TECHNOLOGY ~~(IT)~~ CONTRACTS

When contracting for the performance of IT services, the contract should specify who will own the work product. If the JBE will own the work product, the contract must assign ownership to the JBE. If the contractor or some other party will own the work product, the contract should provide the JBE a worldwide license to the work product at no additional cost. The license should be broad enough to allow the JBE to use the work product for any reasonable purpose. The JBE may also want to consider whether the contract should provide the JBE a right to sublicense the work product at no additional cost.

If the contract is for the purchase of systems, software, or instrumentation with imbedded chips, JBEs should include a provision substantially similar to the following in the contract:

> **Four-Digit Date Compliance.** Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to [JBE]. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. The contractor's warranty and representation are subject to the warranty terms and conditions of this Agreement and do not limit the generality of warranty obligations set forth elsewhere in this Agreement.

9. JANITORIAL/BUILDING MAINTENANCE CONTRACTS

The contract should provide that the contractor must retain for 60 days any employees employed at each site by the contractor/subcontractor who previously provided those services.[3]

End of Contract. The contract should require the contractor upon termination of the contract to provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.

To the extent economically feasible, the contract should also require the use of supplies containing recycled products only, and must contain a recycled products/post-consumer material clause. (See chapter 3, section 3.3 of this Manual for additional information on recycling requirements.)

10. LEGAL SERVICES CONTRACTS

Legal services contracts with nongovernmental entities must contain, in substance, the following provisions. However, these provisions are not required in contracts with governmental entities, such as court-county MOUs.

The contractor shall:

a. Adhere to legal cost and billing guidelines designated by the JBE.

[3] This does not apply to court/county MOUs for janitorial and maintenance service. See GC 71626.1 for applicable law regarding transfer of janitorial and maintenance services between court and county.

b. Adhere to litigation plans designated by the JBE, if applicable.
c. Adhere to case phasing of activities designated by the JBE, if applicable.
d. Submit and adhere to legal budgets as designated by the JBE.
e. Maintain legal malpractice insurance in an amount not less than the amount designated by the JBE.
f. Submit to legal bill audits and law firm audits if so requested by the JBE. The audits may be conducted by employees or designees of the JBE or by any legal cost-control provider retained by the agency for that purpose.

If (a) the contract amount is greater than $50,000, (b) the services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the services are to be performed within the state of California, then the following language (or equivalent) must be added to the legal services contract:

> Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of this Agreement equal to the lesser of either (i) 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (ii) the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with [JBE] for legal services.

~~**11. PARTS CLEANING CONTRACTS**~~

~~To the extent economically feasible, the contract should require the use of recycled solvents only. The contract must contain a recycled products/post-consumer material clause. (See chapter 3, section 3.3 of this Manual for additional information on recycling requirements.)~~

~~12.~~11. PRINTING CONTRACTS

To the extent economically feasible, the contract should require the use of recycled paper only. The contract must contain a recycled products/post-consumer material clause. (See chapter 3, section 3.3 of this Manual for additional information on recycling requirements.)

~~13.~~12. EQUIPMENT RENTAL CONTRACTS

A JBE should not agree to:

- Indemnify a contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the JBE; or
- Agree to obtain insurance to protect the contractor.

The contract should provide that the JBE does not have responsibility for loss or damage to the rented equipment arising from causes beyond the control of the JBE. Any provision obligating the JBE to return the equipment in good condition, subject to reasonable wear and tear, also should except or exclude loss or damage arising from causes beyond the control of the JBE. The contract should expressly limit the JBE's responsibility for repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the JBE or its officers, employees, or agents.

If the JBE does not elect to maintain the equipment, the contract should:

- Place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification; and
- Include a clear right in the JBE to terminate or cease paying rent should the contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment. If the contractor does not bargain for the JBE to pay the taxes, the contract should state the JBE will not do so.

Judicial Council of California

DISBURSEMENTS AND PAYMENT PROGRAMS

CHAPTER 9

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INTRODUCTION

This chapter describes payment practices, including when payments should be released, what is required before making invoice payments, and what are acceptable and unacceptable payment practices. Also included in this chapter is information about the use of purchase cards.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

9.1 DISBURSEMENTS

A. Payment Fundamentals

Payments should not be processed or released by a Judicial Branch Entity (JBE) to a Vendor for any goods or services unless the JBE possesses all of the following:

- A properly authorized contract;
- Documentation verifying the goods/services were satisfactorily received and/or performed; and
- An accurate, properly submitted Vendor invoice.

B. Advance Payments

Advance payments are payments made to a Vendor before the Vendor performs its obligations under the contract. Advance payments may only be made under the following:

- Contracts for basic support/maintenance services (such as uncustomized software upgrades, a pre-established set of maintenance services, or access to a customer technical support telephone line to resolve software issues, but does not include, for example, services to develop or assist in correcting customized software programs);
- Subscriptions that are typically required to be paid in advance;
- Contracts for services provided by community-based private nonprofit agencies where advance payment is essential for implementation of a

particular program, provided the contract amount does not exceed $400,000,[1] and provided that the advance payment does not exceed 25 percent[2] of the annual allocation to be made under the contract;

- Memoranda of Understanding (MOUs) with counties with a population of 150,000 or less as of January 1, 1983,[3] if requested by the Board of Supervisors, where advance payment is essential for implementation of a particular program and where payment is not more frequent than once a month and does not exceed one-twelfth of the annual allocations required for the delivery of services by the county; and
- Contracts with state agencies or federal government entities for the provision of services, materials, or equipment to the JBE.

Note:

- For superior courts, in addition to the foregoing, advance payments may also be made as authorized by FIN 8.01 (Vendor Invoice Processing), Section 6.5(1)(e) of the *Trial Court Financial Policies and Procedures Manual.*

- The following are not advance payments under this Manual: license payments, lease payments, and insurance premiums that are typically required to be paid in advance.

- In addition to the foregoing, if the JBE has conducted a reasonable risk assessment, and if the JBE's Approving Authority (or delegee) has authorized the advance payment, a JBE may also make an advance payment under a contract in the following situations: (i) in exchange for a contractual benefit from such advance payment (e.g., price discount from a Vendor); or (ii) where it is industry standard to pay in advance for goods/services.

[1] This amount may be increased by the California Department of Finance; any future increases will be posted on Serranus.
[2] Advance payments in excess of 25 percent may be made on such contracts financed by a federal program when the advances are not prohibited by federal guidelines.
[3] This includes the following counties: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Placer, Plumas, San Benito, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba (based on estimated populations from California Statistical Abstract).

C. Progress Payments

A Progress Payment is a partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

General recommendations regarding Progress Payments:

- Discourage Progress Payments;
- During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm that the JBE's project manager has the expertise to properly monitor the Vendor's performance of its obligations;
- Do not allow Progress Payments on agreements with a term of fewer than three months;
- If Progress Payments are to be made, they should be described in the agreement with the Vendor and made at clearly identifiable stages of progress or not more frequently than monthly in arrears, based upon written progress reports submitted with the Vendor's invoices;
- It is important that Progress Payments not be made before goods or services are provided;
- Contracts should require a withholding of at least 10 percent of each Progress Payment pending satisfactory completion of the transaction or a separate and distinct task (unless otherwise authorized by statute as further described below, PCC 12112(a) permits lower withholding percentages in certain cases for Progress Payments involving IT goods/services);
- Establish contractual procedures/criteria for release of the amount withheld; and
- A written Statement of Work should be developed to clearly define the tasks that, when completed, would permit a Progress Payment to be made.

Progress Payment Requirements for Non-IT Services:

For a Progress Payment under a contract for non-IT services:[4]

- At least 10 percent of the contract amount must be withheld pending final completion of the contract;

[4] These requirements are based on PCC 10346.

- If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task; and
- A Progress Payment must not be made unless the JBE has established procedures to ensure that the work or services are being delivered in accordance with the contract.

Note: The foregoing Progress Payment requirements do not apply to contracts: (i) for the construction, alteration, improvement, repair, or maintenance of real or personal property; (ii) less than $5,000 in amount (including contracts less than $5,000 where only travel expenses are to be paid); or (iii) between a JBE and state agency, or between a JBE and a local agency or federal agency.

Progress Payment Requirements for Non-IT Custom Goods Involving Work at Vendor's Facility:

Contracts for non-IT goods to be specially manufactured for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant, provided that:[5]

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods; and
- The Vendor provides a faithful performance bond, acceptable to the JBE, of at least one-half of the total amount payable under the contract.

Progress Payment Requirements for Custom IT Goods and Services Involving Work at Vendor's Facility:

Contracts for IT goods or services to be specially manufactured or performed for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant if:[6]

[5] These requirements are based on PCC 10314.
[6] These requirements are based on PCC 12112(a).

- At least 10 percent of the contract price is withheld until final delivery and acceptance of the goods or services; provided, however, that if the JBE determines that lower withholding levels are appropriate based upon its own risk analysis, which may include consideration of financial protection items (e.g., performance bond, surety, letter of credit, additional contract terms, other forms of security or guaranty to protect against Vendor's breach), then: (i) if the contract price is $10 million or more, the JBE must withhold at least 5 percent of the contract price until final delivery and acceptance of the goods or services; and (ii) if the contract price is less than $10 million, the JBE must withhold at least 3 percent of the contract price until final delivery and acceptance of the goods or services.

D. Periodic Payments

Periodic payments are payments made on a regular, recurring basis under installment purchase or lease-purchase agreements. Installment purchase and lease-purchase agreements may present complex legal issues, so JBEs are encouraged to consult with the AOC Legal Services Office ~~of the General Counsel~~. JBEs are also encouraged to consult with the AOC Business Services Unit on nonlegal, business-related issues.

E. Payee Data Record

Note: Superior courts should refer to FIN 8.01 (Vendor Invoice Processing) of the *Trial Court Financial Policies and Procedures Manual* regarding Payee Data Records in lieu of the information below.

Before executing any contract (if the Vendor is not a government entity) and before any payment is released, a JBE should confirm that a completed Payee Data Record has been obtained from the Vendor. The Payee Data Record provides, among other data, a Vendor's taxpayer identification number and is needed in order to process payments of invoices.

The Payee Data Record should be retained in the JBE's business services or accounting office, as determined by each JBE's policy, and in the procurement file. Because each Vendor's Payee Data Record is maintained at the JBE's business services or accounting office, a Vendor only needs to submit one Payee Data Record to the JBE. If any information changes, the Payee Data Record should be updated.

F. Payment of Invoices

Note: Superior courts should refer to the *Trial Court Financial Policies and Procedures Manual,* FIN 8.01 (Vendor Invoice Processing) regarding payment of invoices and to FIN 8.03 (Travel Expense Reimbursement for Trial Court Judges and Employees) regarding travel expenses in lieu of the information below.

Accurate, properly submitted invoices: JBEs should instruct Vendors to submit accurate and correct invoices to ensure timely payment for goods or services received. JBEs should not pay for anything that is not set forth in the contract (pallets, shipping, travel costs, etc.).

An accurate, properly submitted invoice includes the following:

- Detailed identification of the goods/services provided, quantities, unit price, extension, description, etc.;
- Applicable sales tax and/or use tax as a separate line item from goods;
- Service period (e.g., monthly, quarterly, yearly)~~, unit price (i.e., hourly, monthly),~~ and quantity applicable to the service;
- Accurate billing address as stated in the contract;
- Invoice number;
- Invoice date;
- Vendor name and remittance address; and
- Submission of the invoice to the JBE address as identified in the contract as "billed to" or "invoice submitted to" for payment.

Invoice tracking: To accurately track invoices so they are paid in a timely manner, all invoices:

- Should be promptly made available to accounts payable (or other appropriate department or personnel); and
- Should be date stamped or have the receipt date noted when first received by accounts payable (or other appropriate department or personnel).

Invoice dispute notification: If there is a dispute about a submitted invoice, the JBE should promptly notify the Vendor. Buyers and project managers should consult with their JBE's accounting office (or other unit as determined by JBE policy and procedures) to develop a plan of action for resolving the dispute in a timely manner. See chapter 10 of this Manual for information on acceptance/rejection of goods and services. See chapter 11 of this Manual for information on resolving contract disputes.

Prompt payment discounts: Some Vendors may offer discounts for prompt payment. A JBE may elect to accept these payment terms when it is in the best interests of the JBE, after considering all financial and Vendor performance factors.

Separation of duties: JBEs should have policies and procedures in place to ensure a clear separation of duties in order to reduce the risk of error or fraud in the JBE's contracting and procurement programs. See chapter 1 of this Manual on purchasing roles and responsibilities for more information.

Travel provisions: All travel expenses should be related to official JBE business. Reimbursement for such expenses should only be permitted if provided for in the contract. If the JBE will be reimbursing the Vendor for travel expenses, the contract should include appropriate travel-related provisions, including travel expense reimbursement limits that are in accordance with the judicial branch travel guidelines.

9.2 PURCHASE CARD PROGRAMS

A. Use of Purchase Cards Generally

Purchase cards are a method of payment that works similar to personal credit cards. JBEs should establish internal controls to monitor their use of purchase cards.

Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card should be initiated by an approved purchase requisition. Purchase cards may be used only for official JBE business; personal use is prohibited.

B. Use of Purchase Cards by the Superior Courts

1. The state-administered procurement card program, CAL-Card, is available to all ~~trial~~superior courts, and has usage limitations defined by the program. The AOC Business Services Unit is available to assist with answering questions about this program.

2. Purchase cards typically are used only for the procurement of goods. Examples of items that may be purchased using purchase cards include library purchases, subscriptions, office supplies, and minor equipment. Although purchase cards should not be used to procure services, if a ~~trial~~superior court purchases goods that have ancillary services associated with them, the entire transaction may be

charged to a purchase card. For example, a court vehicle gets a flat while on a business trip and a full-size replacement tire is required to complete the trip. The tire and the associated ancillary services (i.e., mounting, balancing) may be charged to a purchase card.

3. Purchase cards may only be used for purchases with a maximum of $1,500 per transaction. A suggested daily limit of $5,000 should also be set for purchase card use. Alternative procedures should be documented, incorporated into the court's Local Contracting Manual, and distributed to court personnel.

4. Purchase cardholders are responsible for providing documentation in the form of requisitions and receipts for purchases made using the purchase card (this includes providing such documentation upon receiving a monthly statement of card activity). The receipts and the statement should be forwarded to accounts payable for verification and payment.

5. If the ~~trial~~superior court receives a monthly master statement of purchase card activity, either accounts payable or the cardholder(s) is responsible for assembling the documentation (requisitions, receipts) necessary to verify purchases before issuing payment to the purchase card company.

6. If there is no receipt issued for a purchase card charge, the employee making the purchase should provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase should be provided.

7. Travel expenses may be paid by a court credit card that is used only for travel expenses, or centrally purchased using a court travel account.

C. Use of Purchase Cards by Other JBEs

Currently, the only purchase cards authorized for use by JBEs other than the superior courts are the CAL-Cards. It is important that CAL-Cards be used by these JBEs in accordance with the AOC's CAL-Card, State of California VISA Purchasing Card procedures.

Judicial Council of California

RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES

CHAPTER 10

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INTRODUCTION

This chapter discusses the process for Judicial Branch Entities (JBEs) to receive, inspect, and accept or reject goods and services that they have purchased. It also includes information about asset management.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

10.1 GENERAL PROCESS FOR RECEIVING GOODS AND SERVICES

A. Receiving Process

Each JBE determines whether or not the goods and/or services received are acceptable and conform to all of the terms and conditions of the contract. The receiving process is set forth in the table below, along with definitions, in the context of this chapter, for certain related terms. JBEs should have a current and complete contract (including technical specifications, as applicable) to compare goods/services received to what was ordered.

Documentation on receiving, inspection, and acceptance of goods/services may be maintained in electronic form and accessible through an online purchasing system. Accounts payable staff may utilize online information to process invoices. For superior courts: retain original documents in accordance with FIN 8.01 (Vendor Invoice Processing) and FIN 12.01 (Record Retention) in the *Trial Court Financial Policies and Procedures Manual*.

Term	Definition	Example
Receiving	The act of taking possession of goods or receiving services. **Caution**: Placing goods into inventory without inspection may waive inspection rights and remedies.	A JBE signs for goods, acknowledging that the goods were delivered, not that they were accepted.

Term	Definition	Example
Inspection	The act of examining goods/services to determine conformance to the contract.	A JBE inspects a delivery of office supplies and confirms that the delivery conforms to what was ordered in the contract.
Acceptance Testing	The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria, specifications). After inspection, Acceptance Testing may be required for certain goods and services.	A JBE purchases a network printer. The contract provides for a 30-day Acceptance Testing period, during which the printer must run error-free and meet other acceptance criteria.
Acceptance	The legal act of indicating to the Vendor the acceptance of goods and/or services. **Note:** goods/services could also be deemed accepted if the JBE fails to make an effective rejection of the goods/services.	After completing an acceptance test, a JBE notifies the Vendor in writing, confirming that the equipment passed the test and the JBE accepts the product.

B. Packaging and Shipping

JBEs should include packaging and shipping requirements/instructions (if applicable) in the contract.

A Vendor that ships multiple containers to a JBE should be instructed to number the containers with shipping labels and identify the total number of containers in the shipment, as well as identify the container in which the packing slip is enclosed.

JBEs should also instruct Vendors to include packing slips in all shipments. The Vendor should provide at least the following information on the packing slip:

- Contract number as issued by the JBE;
- Description of the goods;
- Quantity and unit of measure; and
- Item/part number.

C. Follow-up on Open Orders

Each JBE should develop policies and procedures to follow up on goods and services ordered but not yet received.

10.2 RECEIVING GOODS

A. Questions to Consider When Receiving Goods

A JBE should consider the following before taking receipt of any shipment:

- Is the shipment for this JBE?
- Is it damaged?
- Does it include a packing slip containing correct information and identifying a contract?

In addition, the following should also be considered:

- Is the delivery late, unsatisfactory, or incomplete?
- Do the goods comply with the specifications and packaging requirements in the contract?
- Are specialized skills or expertise required for inspecting the goods?
- Have all the terms listed in the contract been met and properly documented?

A JBE should promptly contact the Buyer with any questions or issues regarding the delivery, receipt, inspection, or acceptance of goods. If there is a partial delivery of goods, the staff receiving the goods should notify the Buyer if the contract did not state whether or not partial deliveries are acceptable. Staff receiving the goods should make available partial delivery documentation to the Buyer on a timely basis to facilitate any necessary communications with the Vendor.

B. Receiving Goods at Other Locations

JBEs that allow goods to be delivered at JBE locations other than main JBE sites should develop policies and procedures to inform staff receiving goods at such locations of their responsibilities, which should be consistent with the policies and procedures in this chapter.

10.3 INSPECTION OF GOODS

Inspections should be completed within a reasonable amount of time or as specified in the contract. The JBE should confirm the following:

- What was delivered conforms to the contract (e.g., Statement of Work, specifications, attachments, etc.), including the product description, model, brand, and product numbers;
- The quantity ordered matches the quantity delivered;
- The goods are not damaged (and if the packaging cannot be opened immediately, it should be inspected; if a box, crate or other packaging looks damaged, it should be noted on the bill of lading);
- To the extent applicable, operability/functionality of the goods;
- Instructions regarding special handling or packaging were followed; and
- The delivery documentation (e.g., packing slip) is acceptable.

JBEs should document inspection results. At a minimum, the documentation should identify the scope of the inspection, name/title of JBE and Vendor personnel in attendance, when and where the inspection occurred, and the inspection results. The documentation should be retained in the procurement file.

After determining that goods received and inspected are either in conformance with the terms of the contract or are to be rejected, the JBE should document the delivery and inspection.

Failure to make documentation available and follow related policies and procedures could delay payments to the Vendor. JBEs should keep contracts on file at least until Vendors have met all obligations.[1] This is particularly important when accepting any partial deliveries or staggered deliveries over a period of time.

10.4 ACCEPTANCE TESTING

Where appropriate, contracts should contain provisions on Acceptance Testing and acceptance criteria (including description of the Acceptance Testing period, and how acceptance of the goods or services will be defined).

JBEs are encouraged to consult with the AOC Legal Services Office ~~of the General Counsel~~ (AOC/~~OGC~~LSO) regarding appropriate contract terms for Acceptance Testing,

[1] JBEs may also need to retain contracts on file until record retention requirements have been met.

acceptance criteria, and related matters. JBEs are also encouraged to consult with the AOC Business Services Unit on nonlegal, business-related issues.

10.5 REJECTING NONCONFORMING GOODS

If the goods do not conform to the requirements of the contract (including technical specifications) and the JBE decides to reject the goods, then the JBE should notify the Vendor in writing as specified in the contract or, if not specified, in a timely manner. The notice should describe the nonconformity to the contract (including any applicable acceptance criteria).

To preserve its legal rights, the JBE is responsible for making arrangements to hold the rejected goods, protect them from damage, and take reasonable care of rejected goods until the Vendor can take possession of the goods.

Note: Acceptance/rejection of goods can involve complex legal requirements and considerations. JBEs are encouraged to consult with AOC/~~OGC~~LSO as needed (as well as with the AOC Business Services Unit, as needed, on nonlegal, business-related issues).

10.6 ASSET MANAGEMENT

Note: Superior courts should refer to FIN 9.01 (Fixed Asset Management) of the *Trial Court Financial Policies and Procedures Manual* regarding asset management in lieu of the information below.

A. Controls Over Assets

JBEs are responsible for safeguarding their assets, and should implement sufficient security controls for goods considered vulnerable to loss or unauthorized use. Inventory should be periodically taken and compared to control records.

The following items purchased by JBEs should be tagged:

- An item with a value of more than $1,000 and an anticipated useful life of more than one year; or
- An item with a value less than $1,000 but which is particularly subject to loss or theft, such as small office equipment, cellular phones, printers, monitors, etc.

JBEs should record the following information on an item transferred from the county or purchased directly by the JBE with a value of $5,000 or more and with an anticipated useful life of more than one year:

- Description of the item;
- Date of acquisition;
- Value of the item (based on acquisition cost or appraisal value at time of transfer);
- Estimated useful life;
- Salvage value (if applicable); and
- Remaining balance (net book value), if applicable.

B. Lost, Stolen, or Destroyed Equipment

Whenever equipment is lost, missing, stolen, or destroyed, a JBE should update its equipment records, prepare a report describing the event, and take precautions to prevent repeat situations.

JBEs should ensure that the appropriate documentation is provided to the Buyer to support the purchase of replacement equipment as a result of being lost, stolen, or destroyed.

10.7 RECEIVING SERVICES

A. Accepting or Rejecting Services

Appropriate JBE personnel should be assigned to monitor Vendor performance of service contracts. Please refer to chapter 11 of this Manual for information on monitoring of Vendor performance. Any nonconforming or unacceptable performance levels should be documented to assist in problem resolution.

B. Maintenance Services

JBEs receiving equipment repair/maintenance services should develop a uniform process for collecting essential data on repair/maintenance incidents. JBEs should keep track of the following:

- When the JBE requested the services;
- When the contractor’s personnel arrived to provide the service;
- When the equipment was returned to service; and
- A description of the equipment malfunction or incident.

Judicial Council of California

CONTRACT ADMINISTRATION

CHAPTER 11

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INTRODUCTION

This chapter describes the requirements and recommended practices associated with contract administration. It also addresses contract provisons and actions required to protect each Judicial Branch Entity's (JBE's) interests and ensure Vendor performance.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

11.1 PRINCIPLES

Contract administration focuses on the relationship between the JBE and the Vendor from contract award to closeout to ensure the Vendor delivers the goods and/or services in conformance with contract requirements.

Contract administration ~~is the~~includes communication between the JBE and its Vendors that conveys the JBE's expectations specified in a contract, protects its contractual interests, and documents the activities associated with the contract, including payment, contract compliance, disputes, etc.

11.2 CONTRACT ADMINISTRATION PLAN

JBEs should establish a contract administration plan and include the plan in their Local Contracting Manual. This plan, detailing the conduct of contract administration within the JBE, should reflect or reference the principles, rules, and requirements affecting contract administration contained within this Manual.

Depending on the staffing capabilites of the particular JBE, with respect to the management of contract administration activities, this plan should provide for:

- The appointment of a senior Contract Administrator ultimately responsible for the performance of all contract administration functions;
- A grant of authority to the senior Contact Administrator to delegate to other JBE employees the authority and responsibility to perform contract administration functions that makes them Contract Administrators;
- The establishment of clear lines of authority for the management and conduct of contract administration functions; and
- A description of each Contract Administrator's function within the JBE.

11.3 ROLE OF CONTRACT ADMINISTRATORS

Contract Administrators are those JBE staff who perform contract administration functions. Each Contract Administrator must understand all aspects of the contract.

Contract Administrators must ensure that:

- The procurement of goods and services is appropriately documented;
- Vendors comply with the terms of their contracts as well as applicable laws, rules, and regulations;
- Contract performance progresses satisfactorily;
- Problems that may threaten performance are promptly identified; and
- Contractual disputes are addressed and resolved appropriately, applying sound administrative practice and business judgment.

Contract Administrators are responsible for the following:

- Acting only within the limits of their authority;
- Authorizing contractual actions that are within authorized budgets or available funding;
- Ensuring Vendor and JBE compliance with the terms of the contract;
- Safeguarding the JBE's interests in its contractual relationships; and
- Ensuring that Vendors receive impartial, fair, and equitable treatment.

11.4 ETHICAL DECISION-MAKING AND CONTRACT ADMINISTRATION

Contract Administrators must adhere to and conduct business by maintaining high ethical standards.

Contract Administrators must:

- Conduct themselves in a professional manner, refrain from mixing outside relationships with business, and not engage in incompatible activities, conflicts of interest, or unethical behavior;
- Accurately account for expenditures and goods and services received;
- Be aware that perceptions can override reality; and
- Involve the JBE's procurement and legal staff or, alternatively, the AOC~~/~~ Legal Services Office ~~of the General Counsel~~ (AOC~~/OGC~~/LSO), when questions arise regarding acceptable or unacceptable behavior when dealing with Vendors.

No Contract Administrator may accept, directly or indirectly, any gift, money, loan of money or equipment, meal, lodging, transportation, gratuity, favor, entertainment, service, or any other item of value from any person who is doing or seeking to do business of any kind with the Contract Administrator's JBE. Such circumstances could be construed as intent to influence the Contract Administrator in his or her official duties or as a reward for official action performed by the Contract Administrator and such items must be declined.

Other ethical issues include the following:

- Contract Administrators must not purchase goods or services from any business entity in which they have a financial interest;
- Contract Administrators are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the Contract Administrator and the judicial branch.

11.5 RECORD KEEPING AND FILES

A. Vendor Lists

The JBE should develop and maintain a list of Vendors[1]. The JBE may use an electronic procurement system for this purpose. For each Vendor, the following information should be included:

- ~~Firm~~Vendor name;
- Tax identification number;
- ~~Firm~~Vendor address;
- Point of contact information including telephone and fax numbers, e-mail addresses, etc.;
- ~~Firm's~~Vendor's valid seller's permit number, if applicable;
- Licenses required for the ~~firm~~Vendor to perform the contracted services;
- Type of business (corporation, partnership, sole proprietorship, joint venture, parent company or subsidiary, etc.);
- Types of goods or services offered;

[1] The list may be maintained in multiple record-keeping systems.

- ~~Firm's~~Vendor's status as a Disabled Veteran~~s~~ Business Enterprise or a Small Business (see chapter 3 of this Manual~~);~~); and
- Year the ~~firm~~Vendor was established.

Files should contain each ~~firm's~~Vendor's data and any other information submitted by the Vendor.

B. File Integrity

Files must be established and maintained for every procurement action.[2] This requirement applies to the Vendor selection process (preaward) and to postaward contract administration, maintenance, and contract closeout.

The requirement to maintain contract files is based on three standards of sound contract administration:

- **One:** A contract administration system ensures that Vendors perform according to the terms, conditions, and specifications of their contracts;
- **Two:** Sound business judgment is exercised in settling all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation and the administration of protests, change orders, amendments, disputes, and claims; and
- **Three:** Documentation of a fair and competitive procurement is maintained.

Contract files should be readily available to protect and support the principles of providing transparency and accountability to the procurement process and to protect the JBE's best interests in the event of future claims, litigation, audits, reviews, or investigations.

11.6 VENDOR LICENSES, INSURANCE, AND PERFORMANCE/PAYMENT BONDS

The Contract Administrator must ensure that all required Vendor ~~c~~Certificates of ~~i~~Insurance, licenses, permits, and performance or payment bonds are current by establishing and enforcing a compliance plan and affirmatively acting to ensure contract compliance.

[2] An electronic file system may be used for this purpose (as part of a procurement and contract management system) so long as file integrity and security are adequately maintained.

Vendors that provide services must furnish the JBE Certificates of Insurance or, where permitted, evidence of self insurance to evidence compliance with the contract insurance requirements before commencing work.

- ~~Insurance c~~Certificates of Insurance must be of a form and content that meet the requirements of the contract; and
- Vendors that have current contracts with the JBE should provide a new ~~insurance c~~Certificate of Insurance on or before the expiration date of any required certificate.

Where the contract calls for performance or payment bonds, Vendors must furnish the JBE evidence of compliance with contract bonding requirements before commencing work.

Any Vendor license or permit required for the Vendor to perform the contracted service must be in place before commencing the service that requires the license and, unless otherwise provided for in the contract, must be maintained continuously for the duration of the contract.

11.7 VENDOR PERFORMANCE AND PAYMENT

A. Performance and Delivery Control

The JBE must monitor Vendor performance to ensure that the value of the goods or services it receives is in compliance with the contract price and meets prescribed acceptance criteria and contract milestone dates. The Contract Administrator or other authorized JBE member, with feedback from the employee who receives the goods or evaluates the services, must ensure that the Vendor's delivery or performance meets the JBE's contract requirements. See section 11.9 and section 11.10 for procedures related to unacceptable Vendor performance.

The Contract Administrator or other authorized JBE member must ensure that the goods and services procured under each contract conform to quality, safety, quantity, and any other measures associated with quality assurance (e.g., warranties) specified in the contract as follows:

- Monitoring Vendor performance, quality, and warranty obligations when appropriate and necessary to protect the JBE's interests; and
- Ensuring that nonconforming goods or services are rejected.

Monitoring Vendor performance can be facilitated by the following best practices:

- Conducting status reviews of Vendor compliance at regularly scheduled project meetings;
- Requiring written monthly or quarterly reviews of the Vendor's performance in meeting goals;
- Requiring the Vendor to propose and implement plans to cure unsatisfactory performance when contract goals are not met; and
- Performing a Vendor evaluation at the conclusion of the contract and retaining the evaluation for future reference.

B. Vendor Payment Issues

Every effort should be made to pay Vendors in a timely manner according to the terms of the contract for goods provided and services rendered. Unresolved payment problems can put the JBE in breach of contract, or may damage Vendor relationships and lead to unnecessary administrative costs. Payment issues that cannot be resolved quickly and informally should be elevated to an appropriate level of JBE management before they lead to disputed claims or litigation. Vendors should be kept aware of the effort to remedy the payment issue until a final resolution is reached.

If a portion of an invoice is in dispute, only the disputed portion of the invoice may be withheld from payment. All correspondence related to a payment dispute must be kept in the procurement file, including a description of the problem and efforts made toward resolution.

11.8 OPTIONS, ~~AMENDMENTS, AND~~ CHANGE ORDERS, AND AMENDMENTS

A. Options

1. An option is a party's unilateral right, agreed to by the parties and specified in the contract, to elect to exercise a privilege specified in the contract.[3]

[3] The exercise of an option included in a contract is not an amendment of the contract but should be in writing. (If, however, a contract specifies an option must be exercised, if at all, by "amending" the contract, a party exercising the option must adhere to contractually required procedures for amending the contract.)

2. A contract may be drafted to include an option that is exercised upon the inaction of a party. The contract may call for the extension for an additional term or multiple additional terms if a party does not issue a notice of termination of the contract by a certain time prior to the end of the then-existing term. This is known as an "evergreen clause."[4] Because a JBE could become unintentionally bound to perform for an extended term due to inaction, the use of an evergreen clause should be carefully considered and contracts containing this clause will need to be carefully managed. ~~A more sound and risk averse~~An alternative practice would be to use an option to extend the term of the contract requiring written election to exercise an option.

3. The AOC, the HCRC, and the appellate courts should notify the appropriate person in the AOC ~~Finance Division's~~ Business Services Unit ~~(BSU)~~upon the exercise of a contract option,[5] including an extension of time or an increase or decrease in the contract value. In the event of an option exercised by a notice of exercise of option or other form of communication, the AOC, the HCRC, and an appellate court's notice to ~~BSU~~the AOC Business Services Unit should contain a copy of the notice of exercise of option or other form of communication.

B. Change Orders

1. A change order is a modification to the terms of the original contract that is permitted by the original contract. Change orders may affect any term of the original contract such as the Statement of Work (SOW), delivery point, date of delivery, contract period, price, or quantity as long as the change is anticipated and permitted by the original contract. The resulting modified contract has the full force and effect of the original contract. Change orders do not prejudice or limit any of the Vendor's rights to make claims or appeal disputes under other provisions of the contract.

2. Provisions for change orders are usually found in construction and large scale software development agreements where the SOW may be defined but the specifics as to how that scope will be fulfilled may not be known until the project is underway. A change order may take the form of a unilateral written order by the JBE directing the Vendor to change the contract's service and/or materials requirements that may affect contract price and time of contract completion. Such

[4] Contracts containing evergreen clauses are often referred to as "evergreen contracts."
[5] This applies regardless of whether the option is exercised by action or inaction.

changes must be within the scope of the contract and in accordance with a contract "changes" clause that permits unilateral change by the JBE to be legally implemented without the consent of the Vendor.

C. Amendments

1. An ~~written~~ amendment is a contract modification authorized by the parties (not including options or change orders). For example, an amendment can be used when change orders are not permitted by the original contract or when ~~used to modify a contract when~~ the modification **exceeds the scope of changes that may be made by change order.** E-mails, letter correspondence, and oral notification between parties are insufficient to amend a contract. Amendments must be mutually agreed to and executed by authorized representatives of both parties. Amendments most frequently deal with changes to the work to be performed, time extensions, compensation for delays, and changes in the contract price due to any or all of the above. A request for an amendment may be initiated by the JBE or the Vendor.

2. ~~Trial~~Superior courts are solely responsible for inputting contract information into the Phoenix Statewide Financial System (Phoenix) and updating Phoenix so that it accurately reflects subsequent contract amendments. ~~Trial~~Superior courts should coordinate with the Trial Court Administrative Services Office, Judicial and Court Administrative Services Division as appropriate.

D. Change Administration

1. Vendor Requested Changes

If the Vendor requests a change, the Vendor must do so in writing on a timely basis according to the terms of the contract. The Vendor must be required to support its requested change through the submittal of a timely proposal as follows:

- The proposal should incorporate the appropriate billing rates and factors outlined in the contract for changes, extras, or delays (if applicable);
- Amendments for consulting services are sometimes based on the Vendor's fee schedule that is included in the contract. On unit price or fixed price line item contracts, the consideration for reductions in quantity

must be at the stated contract price. Proposed increases in fixed contract prices or labor rates must be supported to the satisfaction of the JBE; and

- In some cases (e.g., the addition of hours to a time and materials contract or a simple time extension), it may be appropriate for the JBE to prepare the contract change without a proposal from the Vendor. It is within the JBE's discretion to determine whether and when a proposal from the Vendor is needed.

2. Negotiation of Changes

Some of the following steps may be applicable to the negotiation of changes to contract terms:

a. Written Prenegotiation Objectives: The JBE should develop written prenegotiation objectives for amendments and change orders, **for internal JBE use only**. This useful step establishes the JBE's goals and assures that negotiations are conducted along lines more likely to achieve the JBE's objectives.

b. Written Memorandum of Negotiations: A written memorandum should be prepared by the Contract Administrator to record the results of negotiations. The memorandum is a summary of negotiations that sets forth the agreement between the parties on major issues (e.g., price, delivery, performance time, payment terms and any special provisions to be included in the contract).

   The memorandum should explain the differences, if any, between the negotiated price adjustment and the prenegotiation position. When there are numerous differences involving significant sums, a tabular format is useful to show the price differences. Price differences should be explained in a narrative accompanying the tabulation. For small purchases, this can be handwritten on the requisition or other suitable file document.

c. Lock in the resolution or change: To avoid subsequent controversies that may result from a contract modification, JBEs should:

   - Ensure that all elements of the amendment or change order have been presented and resolved; and
   - Consult with legal counsel as to whether to include a release statement in the amendment or change order, by which the Vendor releases the JBE

from any liability attributable to the facts giving rise to the Vendor's proposal for adjustment, unless specific exceptions are expressly set forth in the release statement.

E. Communication

All correspondence regarding amendments, change orders and the exercise of options, as well as disputes and terminations, should be directed to the person or persons designated in the contract. Failure to provide notice to the appropriate person in a timely fashion may result in the loss of rights under the contract.

11.9 CONTRACT DISPUTES, VENDOR DEMANDS, AND JBE COMPLAINTS

A. Contract Disputes

Contract disputes generally arise when the JBE and the Vendor disagree about the interpretation of contract language, SOW, specifications, schedule, price, or other issues that impact performance, completion, payment, amendments, or other contract terms.

Minimizing and settling disputes before they become claims is one goal of contract administration. Contract Administrators should anticipate and minimize potential unresolved disputes that can disrupt operations and overrun budgets. The JBE should work with its Vendors and communicate effectively to develop a clear understanding of the contract's performance requirements.

The best forum for dispute resolution is often an informal meeting, conducted between the parties who are most knowledgeable of the facts and who have the authority to make decisions. These meetings should be conducted whenever the JBE denies a Vendor request for a significant modification of the terms of the contract or the parties express a contrary view of the contract requirements. Resolving contractual issues by mutual agreement at the lowest appropriate level of authority is a worthwhile goal.

Although two-way communication is essential to developing a mutual understanding of the issues, all Vendor--requested modifications to the terms of a contract or expressed differences in the interpretation of contract terms and requirements should be submitted in writing. The JBE must not compromise on issues of integrity or clear JBE entitlement under the contract. However, there is often a middle ground that is fair and equitable to both parties.

B. Vendor Demands

1. If a dispute cannot be resolved to the satisfaction of the parties informally as discussed above, the Vendor can submit a formal written demand. The demand may result from the JBE's denial of the Vendor's request for a change to the terms of the contract or invoice, JBE's notice of a unilateral amendment, rejection of work, or the failure of the parties' good faith efforts to resolve disputed issues through informal communication or meetings. Demands seek the payment of money, a time extension, adjustment or interpretation of contract terms, or other relief. A demand may or may not be allowed or timely depending on the provisions of the contract (e.g., if the dispute resolution provision directs that disputes be submitted to mediation as a next step).

2. Vendor demands should be submitted to the JBE on or before the date of final payment. All demands must follow contract requirements, be submitted in writing, follow the format established by the contract, and include a narrative description and documents necessary to substantiate the Vendor's position.

3. Responsibility for the processing, review, and research of Vendor demands, along with participation in the dispute resolution process, should be assigned to a Contract Administrator.

4. The JBE must respond in writing to all properly submitted Vendor demands within the time limits established by contract or as mutually agreed by the JBE and Vendor.

5. Unless otherwise noted in the contract, if the Vendor disputes the JBE's written response, the JBE (with guidance from legal counsel) must inform the Vendor that it may petition the JBE.

6. The JBE must seek to resolve all demands in a fair and equitable manner by the most expeditious and cost-effective means possible. The JBE must first seek resolution by reviewing the contract and all applicable documents to find an equitable solution within the scope of the contract. If the demand has merit, the assigned Contract Administrator should prepare a negotiation settlement memorandum. If a written response meant to bind the JBE is made offering the Vendor a monetary settlement or other remedy, such offer must be executed by an individual with authority to bind the JBE to a settlement agreement as set forth in its Local Contracting Manual.

7. Any resolution of a demand must include a release statement in that the Vendor releases the JBE from any liability with respect to the demand unless specific exceptions are identified in the release statement.

C. JBE Complaints Regarding Vendor Performance

Contracts typically require the JBE to attempt to settle informally all complaints against the Vendor. If informal efforts are unsuccessful, the JBE should give the Vendor written notice of its complaint and an opportunity to take corrective action, as follows (unless otherwise directed in the contract):

1. Give notice: The written notice to the Vendor detailing the complaint and asking the Vendor to comply with the terms of the contract is called a cure notice.[6] The cure notice informs the Vendor that it is deficient with respect to one or more contractual obligations. The Vendor is further advised that if the deficiency is not cured within the prescribed time frame, the JBE may initiate specific remedies up to and including issuing a notice of ~~T~~termination for ~~C~~cause.

2. Inform the AOC/~~OGC~~LSO: JBEs, other than the HCRC, must inform the AOC/~~OGC~~LSO in a timely manner when they have issued a cure notice and provide counsel with requested information and documents including the cure notice. (See CRC 10.202.)

3. Take Corrective Action: If the Vendor fails to meet the demands of the cure notice within a reasonable time, the JBE must take appropriate action.

4. Reclaim Expenses of Corrective Action: If the JBE takes action to correct the failures of the Vendor, appropriate back-charges should be assessed against the Vendor. If available and allowed by the contract, offsets against amounts owed to the Vendor should be taken from pending payments.

5. Assessment by AOC/~~OGC~~LSO: For JBEs other than the HCRC, the AOC/~~OGC~~LSO will evaluate the complaint. After consultation with the JBE, if appropriate, AOC/~~OGC~~LSO may provide an additional level of negotiation, identify possible remedies (including possible contract termination), and determine whether to recommend initiating legal action.

[6] Depending upon the circumstances and the terms of the contract, failure to provide a cure notice where informal settlement efforts have been unsuccessful may have a negative impact on the JBE's position. It is recommended that JBEs consult with legal counsel regarding whether or not to issue a cure notice.

11.10 CONTRACT TERMINATION

Each contract must contain provisions that address the potential for termination, how terminations are accomplished, and the basis for termination. JBEs should seek legal counsel when terminating any contract.

A. Termination for Convenience

All contracts should contain provisions that allow the JBE to terminate the contract for the convenience of the JBE. A "~~T~~termination for ~~C~~convenience" clause allows the JBE, at its sole option and discretion, to terminate the contract, in whole or in part, without any liability other than payment for work already performed, up to the date of termination.

Contracts should set forth the method for compensating the Vendor for work already performed upon t~~T~~ermination for c~~C~~onvenience.

Written notice to the Vendor is necessary to terminate all or part of a contract for convenience. Notice must state that the contract is being terminated under the t~~T~~ermination for c~~C~~onvenience provision, the effective date of the termination, the extent of termination, and instructions to the Vendor to stop performance under the contract. A Vendor termination for convenience clause may be warranted where the benefit to the JBE in permitting termination for convenience clearly outweighs the risks of permitting a ~~v~~Vendor to terminate at will.

B. Termination Due to Nonavailability of Funds

The JBE must be allowed to terminate the contract if expected or actual funding is withdrawn, reduced, or limited in any way before the expiration of the contract. If the contract does not contain a termination for conv~~i~~enience clause providing for termination in time to avoid a period where there are insufficient funds available for payment then the~~-~~ contract must contain a clause allowing termination in the case of nonavailability of funds. The JBE must provide the Vendor with written notice of such a termination.

In the event of a termination, in whole or in part, due to the nonavailability of funds, the Vendor will be paid for goods or services satisfactorily rendered up to the effective date of termination. ~~The Vendor will also be released from any further obligation under the contract with respect to the cancelled portion of the contract.~~

Contracts whose terms extend beyond the end of the current fiscal year should specify that the contract extension is conditioned upon the appropriation of sufficient funds by

the applicable legislative authority. If sufficient funds are not appropriated, this type of contract is subject to termination at the conclusion of the fiscal year through which funds are available.

C. Termination for Cause

JBE contracts ~~must~~should contain a t~~T~~ermination for c~~C~~ause clause to protect the JBE in the event of a Vendor default, especially when the contract does not contain a termination for convenience clause.

Vendors must be provided with a reasonable written notice of any ~~T~~termination for ~~C~~cause. The Vendor must also be provided an opportunity to be heard.

If required by the contract, or allowed by the contract and deemed reasonable by the JBE, the Vendor must be notified by a written cure notice of the default and advised that if the default is not "cured" within the time prescribed in the cure notice, the JBE may immediately initiate the contract termination process and hold the Vendor and its sureties liable for associated costs and damages (if applicable).

The JBE must issue a notice of default to the Vendor, if the Vendor fails to:

- Respond in a timely manner; or
- Satisfactorily cure the default.

If included as a provision to the contract, and a Vendor's right to proceed in performing the contract is terminated for cause, the JBE may take over and complete the work or cause it to be completed by other appropriate means to protect the JBE's interests. The contract should specify that the Vendor is liable to the JBE for any increased costs incurred by the JBE associated with completing the work. In addition, the Vendor may be liable for damages, depending on the terms of the contract.

D. Contract Work Suspensions

If a temporary delay is a possibility, a "~~S~~suspension of ~~W~~work" provision should be included in the contract. In accordance with the contract terms, and as the need arises, the JBE may issue a written order to the Vendor to suspend, delay, or interrupt all or any part of the work for the period of time that the JBE determines appropriate.[7]

[7] Suspensions should include a time limit, after which the provisions of the ~~S~~suspension of ~~W~~work clause should be clear that the work will either resume or one of the termination clauses will go into effect.

If the performance of all or any part of the contract work is delayed or interrupted (i) by an act of the JBE in the administration of the contract that is not implied or expressly authorized by the contract, (ii) by a failure of the JBE to act within the time specified in the contract (outside of a force majeure and subject to any contractually permitted or agreed-to extension of the time specified), or (iii) within a reasonable time if not specified, an adjustment should be made for an increase in the cost and time of performance of the contract caused by the delay or interruption, and the contract should be modified accordingly.

The ~~S~~suspension of ~~W~~work provision should state that the JBE is not liable for the Vendor's loss of anticipated profits in the event of a ~~S~~suspension of ~~W~~work.

11.11 FILING PRACTICES

The initial file setup is the responsibility of the JBE employee assigned to conduct the procurement. A JBE employee should be assigned to manage file maintenance.

The following practices will ensure the integrity of JBE contract files:

- Maintain files in a safe and secure area;
- Provide access to files on a "need-to-know" basis only, to minimize the potential for documents to be lost or misplaced;
- Do not permit original files to leave the building where they are filed until the contract work is completed. After completion and a holding period of six months, files may be sent to off-site storage;[8]
- Establish and follow a procedure for making copies and releasing files to the public to avoid losing files and records;
- Establish and follow a system such as the use of "out cards" to control accountability and mark the locations of files removed from the filing area. Depending upon the JBE's staffing capability, the assignment of a file administrator who has sole responsibility to pull files and file out cards is recommended;
- Return original file folders to their designated file locations at the end of the workday. An assigned file administrator should be responsible for assuring

[8] FIN 12.01 (Record Retention) of the *Trial Court Financial Policies and Procedures Manual* addresses the period of time that ~~trial court~~superior court contract records are retained.

that files that leave the designated area are retrieved within a reasonable time; and
- Discard duplicate files and working papers.

The JBE should develop a filing method using a consistent file format. One method of organizing contract files into distinct sections is presented below. Documents should be filed in reverse chronological order within each of the following file sections:

- Correspondence (with subsections for Vendor [incoming], and JBE [outgoing]);
- Preaward/Solicitation (includes Solicitation Document, an abstract of all Bids, etc.);
- Selection and Award (includes all management input and approvals, notice of award, etc.);
- Contract (with subsections for amendments, change orders, and notices, as appropriate);
- Reports, progress reviews, schedules and payment requests/invoices and Vendor evaluation;
- Internal documents (memos, e-mails, records of meetings and telephone conversations, etc.); and
- Miscellaneous (price lists, resumes, brochures, etc.).

The JBE should conduct annual reviews to assure its compliance with established file integrity requirements.

11.12 CONTRACT CLOSEOUT

The JBE must properly close out all contract files.

Closing out routine contracts for goods and other commercial products should be straightforward. The Contract Administrator must ensure that goods and services have been accepted and conform to the contract's specifications. Delivery and acceptance should be documented in the file that should also include any descriptive literature or warranty documentation. There should also be documentation confirming final payment by the accounts payable department.

Upon the authorization of final payment, the procurement file may be closed out. Closing out procurement files may consist of, but is not limited to, assuring that all pertinent documentation is included in the file, disencumbering any remaining funds (if

appropriate), completing any required Vendor performance evaluation, and sending the file for appropriate storage and retention. Files should be maintained on site for six months after closeout; after that, they may be sent for off-site storage and retention.

11.13 DISCLOSURE OF CONTRACT DOCUMENTATION

Records created for the purpose of procuring goods and services are generally “judicial administrative records” subject to CRC 10.500, and are therefore available to the public absent an exemption. These records include, but are not limited to, contracts executed by the courts, the Judicial Council, and the AOC, as well as invoices and records maintained by these JBEs and fiscal information related to contract administration.

Specific provisions of this Manual also require disclosure of certain documents at stated intervals in the solicitation process. These requirements vary depending on the category of purchase involved and on the type of solicitation used. These specific requirements are discussed in chapters 4, 4A, 4B, and 4C, respectively, of this Manual.

Legal counsel should be consulted regarding questions about disclosure requirements under CRC 10.500 or this Manual.

Judicial Council of California

REPORTING REQUIREMENTS

CHAPTER 12

Original Release Date: October 1, 2011	Revised Effective~~Revision Date~~: ~~August 31, 2012~~January 1, 2014

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INTRODUCTION

This chapter describes the Judicial Council's obligations under PCC 19209 to provide reports to the Joint Legislative Budget Committee and the State Auditor relating to the "procurement of contracts" by any Judicial Branch Entity (JBE). In connection with these reports, this chapter describes the role of each JBE in providing information related to the JBE's contracts with Vendors to be included in the reports.

This chapter also describes the obligations under PCC 19204(a) of all JBEs to notify the State Auditor of certain contracts with total costs estimated at more than $1 million.

DEFINED TERMS

If not defined in the text of this chapter, the definitions of capitalized terms are set forth in the glossary.

12.1 JUDICIAL COUNCIL REPORTS UNDER PCC 19209

A. Reporting Periods

The Judicial Council will provide two semiannual reports each year to the Joint Legislative Budget Committee and the State Auditor as required by PCC 19209. One report will cover the period from January 1 through June 30, and will be provided by August 1. The other report will cover the period from July 1 through December 31, and will be provided by February 1 of the following year.

B. Content of Reports

The Judicial Council report will include a list of all Vendors that receive a payment from a JBE during the reporting period. PCC 19209 also requires the Judicial Council to submit additional information on each distinct contract between a Vendor and a JBE, but only if more than one payment was made under the distinct contract during the reporting period. For each distinct contract, the report will include the following information by Vendor:

- The JBE that contracted for the good or service;
- The amount of payment; and
- The type of service or good provided.

The report will also include a list of all JBE contracts that were amended during the reporting period. The report will contain the following information by Vendor for each distinct contract that was amended:

- The name of the Vendor;
- The type of service or good provided;
- The nature of the amendment;
- The duration of the amendment; and
- The cost of the amendment.

C. Responsibility of JBEs to Provide Information for Reports

Supreme Court: The AOC ~~Finance Division~~ Fiscal Services Office maintains information relating to payments to and contracts with the Supreme Court's Vendors. The Supreme Court is responsible for coordinating with the AOC ~~Finance Division~~Fiscal Services Office, as appropriate, to ensure the information relating to payments to, and contracts with, the Supreme Court's Vendors is accurate, consistent, and complete.

Courts of Appeal: The AOC ~~Finance Division~~ Fiscal Services Office maintains information relating to payments to and contracts with Vendors of each Court of Appeal. Each Court of Appeal is responsible for coordinating with the AOC ~~Finance Division~~Fiscal Services Office, as appropriate, to ensure the information relating to payments to, and contracts with, Vendors is accurate, consistent, and complete.

Superior Courts: The Phoenix Statewide Financial System (Phoenix) is the source of information for compiling reports relating to payments during a reporting period by each ~~S~~superior ~~C~~court to Vendors and relating to contracts between Vendors and each ~~S~~superior ~~C~~court. Each ~~S~~superior ~~C~~court is responsible for ensuring that the information in Phoenix relating to payments to, and contracts with, that ~~S~~superior ~~C~~court's Vendors is accurate, consistent, and complete.

Habeas Corpus Resource Center (HCRC): The AOC ~~Finance Division~~ Fiscal Services Office maintains information relating to payments to and contracts with Vendors of the HCRC. The HCRC is responsible for coordinating with the AOC ~~Finance Division~~Fiscal Services Office, as appropriate, to ensure the information relating to payments to, and contracts with, the HCRC's Vendors is accurate, consistent, and complete.

Judicial Council/AOC: The AOC ~~Finance Division~~ Fiscal Services Office is responsible for maintaining and providing accurate, consistent, and complete information relating to payments to, and contracts with, Vendors of the Judicial Council/AOC.

All JBE personnel involved in maintaining and providing the necessary information for reports should have the appropriate training, experience, level of responsibility, and accountability as is necessary to ensure the accuracy, completeness, and consistency of the information in the reports provided by the Judicial Council.

D. Responsibility to Prepare Reports for Judicial Council

The AOC ~~Finance Division~~ Fiscal Services Office is responsible for preparing the portion of the Judicial Council reports that relates to the Supreme Court, Courts of Appeal, Judicial Council, AOC, and HCRC.

The Trial Court Administrative Services Office, Judicial and Court Administrative Services Division (TCAS) is responsible for preparing the portion of the Judicial Council reports that relates to the superior courts.

The AOC ~~Finance Division~~Fiscal Services Office and TCAS are responsible for coordinating with each other to ensure that all information to be included in the Judicial Council reports is reported timely, accurately, and in a consistent form and format.

The AOC ~~Finance Division~~ Fiscal Services Office has lead responsibility for presenting the reports to the Judicial Council for approval for submission to the Joint Legislative Budget Committee and the State Auditor.

12.2 NOTIFICATIONS BY JBEs TO THE STATE AUDITOR UNDER PCC 19204

Under PCC 19204(a), any JBE contract with a total cost estimated at more than $1 million is subject to the review and recommendations of the ~~Bureau of State Audits~~ State Auditor[1] to ensure compliance with the California Judicial Branch Contract Law. Each JBE must notify the State Auditor, in writing, of the existence of any such contract within 10 Court Days of entering into the contract. The date of "entering into the contract" is the date on which the contract is fully executed by all parties.

Note: Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than $5 million. (Under GC 68511.9,

[1] PCC 19204(a) refers to the Bureau of State Audits; the Bureau of State Audits, however, now refers to itself as the California State Auditor's Office. This Manual uses the term State Auditor.

these contracts are subject to the review and recommendations of the California Technology Agency.)

ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms are used in this Manual:

ADA Americans with Disabilities Act
AOC Administrative Office of the Courts
AOC/LSO~~OGC~~ Administrative Office of the Courts/Legal Services Office~~Office of the General Counsel~~
~~**BSA** Bureau of State Audits~~
CARI California Alliance of Rehabilitation Industries
CCC Contractor Certification Clauses
~~**CMAS** California Multiple Award Schedule~~
CRC California Rules of Court
CRP Community Rehabilitation Program
CSCR California State Contracts Register
~~**CTA** California Technology Agency~~
DGS Department of General Services
DVBE Disabled Veteran~~s~~ Business Enterprise
GC Government Code
~~**GSA** General Services Administration~~
HCRC Habeas Corpus Resource Center
IA Interagency Agreement
IBA Intra-branch Agreement
IFB Invitation for Bids
IGC Intergovernmental Contract
IT Information Technology
JBCL California Judicial Branch Contract Law
JBE Judicial Branch Entity
LPA Leveraged Procurement Agreement
MB Microbusiness
MOU Memorandum(a) of Understanding
MVC Military and Veterans Code
NASPO National Association of State Procurement Officials
NCB Non-Competitively Bid
~~**NPO** Nonprofit organization~~
~~**NSP** Not specifically priced~~

OSDS	Office of Small Business and Disabled Veteran Business Enterprise Services
PCC	Public Contract Code
PCO	Procurement and Contracting Officer
PO	Purchase Order
RFI	Request for Interest
RFO	Request for Offer
RFP	Request for Proposals
RFQ	Request for Quote
SABRC	State Agency Buy Recycled Campaign
SAM	State Administrative Manual
SB	Small Business
SCM	State Contracting Manual
SCR	Special category non-competitively bid contract request
~~**SLP**~~	~~Software Licensing Program~~
SOW	Statement of Work
TCAS	Trial Court Administrative Services Office, Judicial and Court Administrative Services Division
TCFPPM	Trial Court Financial Policies and Procedures Manual
U.S.	United States or federal
WSCA	Western States Contracting Alliance

GLOSSARY

This glossary provides definitions of key terms used throughout the Manual.

Acceptance Testing – The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria and specifications).

ADA Coordinator – The JBE officer or employee who is available to respond to questions or concerns during the procurement process regarding reasonable accommodation for disability.

Approving Authority – For each type of JBE, the person identified in the following table:

JBE	Approving Authority
Supreme Court	Clerk of the Supreme Court
Courts of Appeal	Administrative Presiding Justice
Superior Courts	Presiding Judge
HCRC	Executive Director
Judicial Council / AOC	Administrative Director of the Courts ~~Senior Manager, Business Services~~

Bid – A response to a competitive solicitation issued by a JBE. (The term "Bid" is used in this manual regardless of the Solicitation Document used by the JBE. Thus, a response to an RFQ, IFB, or RFP is referred to as a "Bid~~.~~" even though industry practice may involve use of different terms such as "quote" or "proposal.")

Bid Closing Time – The date and time at which Bids are due for a particular solicitation.

Bidder – Any person or entity that submits a response to a competitive solicitation issued by a JBE, regardless of the Solicitation Document used by the JBE (e.g., RFQ, IFB, or RFP).

Buyer – The JBE officer or employee who performs day-to-day purchasing and contracting activities.

Certificate of Insurance – A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage; see chapter 8, section 8.2.D.

~~**Certificate of Participation** – An ancillary contract document used to demonstrate a JBE participates in the Judicial Council Litigation Management Program; see chapter 8, section 8.2.D.~~

Contract Administrator – See definition in chapter 11, section 11.3 of this Manual.

Court Day – A business day of the applicable JBE.

DVBE – A business certified by the California Department of General Services as a "disabled veteran business enterprise," as that term is defined in MVC 999.

Evaluation Team – A group responsible for evaluating Bids. See chapter 4, section 4.4.A of this Manual for additional information.

Intra-branch Agreement (IBA) – A type of contract between judicial branch entities; see chapter 8, section 8.2.D~~B~~ of this Manual.

Invitation for Bid (IFB) – An invitation for bid; a type of Solicitation Document used in the procurement of non-IT goods and non-IT services.

Joint Legislative Budget Committee (JLBC) – A committee of the California State Senate with membership from both houses created to make recommendations to the Legislature and its houses on various matters including the California state budget, revenues and expenditures, and organization and functions of the State of California.

Judicial Branch Contract Law (JBCL) – Part 2.5 of the PCC; PCC 19201–19210.

Judicial Branch Entity (JBE) – A superior court, appellate court, the Judicial Council, the Administrative Office of the Courts (AOC), or the Habeas Corpus Resource Center (HCRC).

Leveraged Procurement – A type of procurement described in chapter 6, section 6.1 of this Manual.

Leveraged Procurement Agreement (LPA) – See definition in chapter 6, section 6.1 of this Manual.

Local Contracting Manual – A manual adopted by a JBE governing its procurement and contracting activities, as required by PCC 19206.

Memorandum of Understanding (MOU) – A type of intergovernmental agreement; see chapter 8, section 8.2.D~~B~~ of this Manual.

Microbusiness – A type of Small Business.

Payee Data Record – A form of document used primarily in connection with tax withholding.

Phoenix Statewide Financial System – The financial system maintained by the AOC for recording and processing various financial activities of the 58 superior courts, including recording transactions in the general ledger, recording purchasing activities, and processing payments for goods and services.

Progress Payment – A partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

Prospective Bidder – A person or entity who supplies non-IT goods, non-IT services, or IT goods and services relevant to a competitive solicitation conducted by a JBE, but who has not yet submitted a Bid.

Protester – A person or entity who has submitted a protest in connection with a competitive solicitation conducted by a JBE.

Purchase Order (PO) – A typical purchase document, as described in chapter 8 of this Manual.

Request for Interest (RFI) – A document issued by a JBE to separate those Prospective Bidders who intend to participate in an upcoming solicitation from those who have no interest in participating.

Request for Offer (RFO) – A request made by a JBE to a potential LPA Vendor for a specific response or offer from the Vendor to clarify or confirm the terms of the JBE's procurement under the LPA.

Request for Proposal (RFP) – A type of Solicitation Document used in the procurement of non-IT services and IT goods and services.

Request for Quote (RFQ) – A type of Solicitation Document used in certain low-value or low-risk procurements.

Responsible Bidder – A Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.

Responsive Bid – A Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed contract without material deviation.

Small Business – A business certified by the California Department of General Services as a "small business" or a "microbusiness," as those terms are defined in GC 14837.

Solicitation Document – A document created by a JBE for seeking Bids from persons or entities interested in providing the non-IT goods, non-IT services, or IT goods and services being procured by the JBE. The term Solicitation Document includes RFQs, IFBs, and RFPs.

State Auditor – The State of California's independent external auditor that provides independent and nonpartisan assessments of California government's financial and operational activities in compliance with generally accepted government auditing standards.

Statement of Work (SOW) – A detailed description or reference to the object of a contract (e.g., goods, services, information technology).

~~**Suspension of Work** – A temporary delay of contract performance initiated by a written notice from the JBE to the Vendor.~~

~~**Termination for Cause** – A permitted termination of a contract for a specific cause. (This is usually provided as a right of a party in the event of the other party's failure to meet a material condition of a contract.)~~

~~**Termination for Convenience** – See definition in chapter 11, section 11.10.A.~~

Vendor – A person or entity with whom a JBE has entered into a contract for the provision of non-IT goods, non-IT services, or IT goods and services.