

# Judicial Council of California

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## INVITATION TO COMMENT SP18-10

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Title	Action Requested
Judicial Administration: <i>Judicial Branch Contracting Manual</i>	Review and submit comments by 5:00 p.m., May 7, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise <i>Judicial Branch Contracting Manual</i>	August 1, 2018
Proposed by	Contact
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### Executive Summary

At the Judicial Council’s business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual* effective October 1, 2011, the operative date of substantive requirements of the California Judicial Branch Contract Law.<sup>1</sup> The council adopted revisions to the manual in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, and July 2017.

Additional revisions to the manual are proposed below, and staff invites public comment regarding the proposed revisions.

### Background

With certain exceptions,<sup>2</sup> the Judicial Branch Contract Law, enacted March 24, 2011, requires that California judicial branch entities comply with the provisions of the Public Contract Code (PCC) applicable to state agencies and departments related to the procurement of goods and services.<sup>3</sup> The Judicial Branch Contract Law applies to all covered contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.<sup>4</sup> The Judicial Branch

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<sup>1</sup> PCC, §§ 19201–19210, henceforth referred to as “Judicial Branch Contract Law.”

<sup>2</sup> PCC, §§ 19204(c), 19207, and 19208.

<sup>3</sup> *Id.*, § 19204(a).

<sup>4</sup> *Id.*, § 19203.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

Contract Law also requires the council to adopt a judicial branch contracting manual containing policies and procedures applicable to judicial branch entities related to the procurement of goods and services.<sup>5</sup> Under PCC section 19206, the policies and procedures in the manual must be “consistent with” the PCC and “substantially similar” to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*.

At the council’s business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual* (JBCM). The council adopted revisions to the manual in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, and July 2017. The version of the manual adopted at the council’s July 2017 regular business meeting remains in effect as of the date of this invitation to comment. Following the adoption of the JBCM by the council in August 2011, staff has continued to receive input from the JBCM Working Group regarding revisions to the manual.<sup>6</sup>

Proposed revisions to the current version of the JBCM were posted for public comment from March 5 through March 20, 2018. However, after the foregoing public comment period had ended, revisions were made to the *State Contracting Manual* on April 13, 2018. As a result, additional revisions are proposed for the JBCM in this Invitation to Comment. These proposed revisions are shown in tracked changes format below.

Following the public comment period, staff plans to submit the proposed revisions to the JBCM for review by the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (AFA Advisory Committee). It is anticipated that the proposed revisions to the JBCM will be considered by the Judicial Council at its July 2018 meeting, and if adopted by the council, the effective date of the revised manual would be August 1, 2018.

### **Summary of the Proposed Revisions to the Manual**

Effective April 13, 2018, revisions were made to the *State Contracting Manual*. As part of these revisions, the dollar amount threshold (i.e., the threshold below which a competitive solicitation is not required) for *non-IT goods, as well as IT goods and services*, was increased. The threshold was raised from \$5,000 to \$10,000. Edits are proposed for the JBCM, in connection with the foregoing changes to the *State Contracting Manual*.

A prior revision to the *State Contracting Manual* increased the dollar amount threshold (below which a competitively bid procurement is not required) for *non-IT services* from \$5,000 to \$10,000. In connection with this prior revision to the *State Contracting Manual*, conforming edits to the JBCM’s dollar amount threshold (for non-IT services) were also proposed, as part of the March 2018 Invitation to Comment. Therefore, the edits currently proposed include increasing the dollar amount threshold from \$5,000 to \$10,000 for non-IT services, non-IT goods, as well as IT goods and services.

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<sup>5</sup> *Id.*, § 19206.

<sup>6</sup> The working group includes representatives (with experience in contracting and procurement) from small, medium, and large courts throughout California.

## **Request for Specific Comments**

Comments are invited on the proposed revisions to the manual and on the following questions:

1. Are the revisions clear and understandable?
2. Do the revisions appear to work from a court operations perspective, e.g., do they conflict with any aspect of court operations or appear to make any incorrect assumptions?
3. Are the revisions user-friendly? Do the revisions appear to work for courts of different sizes and staffing capabilities?



# Judicial Council of California

Judicial Branch Contracting Manual

Chapter 2  
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## PROCUREMENT PLANNING

### CHAPTER 2

Original Release Date:  
October 1, 2011

Revised Effective:  
August 1, 201~~8~~7

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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 certain dollar amounts;
- 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 \$~~105~~,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);
- Power, cooling and racks (batteries, uninterruptable power supplies, surge protectors, HVAC equipment (when related to IT equipment spaces));
- Printing devices (laser, ink jet, all-in-one multi-function devices, plotters);
- Scanners (barcode, document, graphics);
- Servers (standalone, rack-mount, blades, 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;
- 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 Judicial Council's Branch Accounting and Procurement office.

### 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.<sup>1</sup>

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

- A specified period of time;
- 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 exceeds the maximum non-competitively bid procurement (NCB) dollar amount (see Chapter 5, section 5.1);
- 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.

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<sup>1</sup> An important reason for the preferred shipping method is to avoid the risk of loss in transit.

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 preliminary 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,<sup>2</sup> including a process whereby the JBE receives supplemental

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<sup>2</sup> 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

bids after the initial bids are opened (i.e., a “best and final offer” process). These special 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.

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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.

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 Department of Technology, as specified in GC 68511.9.<sup>3</sup>

### **C. Other Procurements over \$1 Million**

The JBE must notify the State Auditor 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.

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<sup>3</sup> Note that GC 68511.9 refers to the Office of the Chief Information Officer (OCIO). However, the OCIO was renamed the California Technology Agency in accordance with Chapter 404, Statutes of 2010 (AB 2408), and then became the California Department of Technology.

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.

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

Judicial Branch Contracting Manual

Chapter 3  
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## **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 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. 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 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 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.<sup>1</sup>

**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 \$10 million—that would go to certified DVBEs that are contractors, subcontractors, or

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

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 Judicial Council's Business Services unit and the Legal Services office 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, has the discretion to waive inclusion of the DVBE incentive in an individual solicitation or a number of

solicitations.<sup>2</sup> 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 <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

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 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:

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<sup>2</sup> 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.

- “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 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,<sup>3</sup> 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;
- Carries out its obligation by actually performing, managing, or supervising the work involved;
- Performs work that is normal for its business services and functions;

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<sup>3</sup> The determination is made from the Bidder information supplied with its Bid (see preceding paragraph).

- 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 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](http://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.<sup>4</sup>

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.

### **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,

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<sup>4</sup> 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.

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). On and after January 1, 2020, JBEs must ensure that at least 75 percent of reportable purchases are recycled products, except for paint, antifreeze, and tires, which remain at the 50 percent requirement. See PCC 12203(a).

**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](http://www.calrecycle.ca.gov).

## 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 the SABRC at 916-341-6199 or [SABRC@CalRecycle.ca.gov](mailto: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, search on CalRecycle or <http://calrecycle.ca.gov/BuyRecycled/StateAgency/Forms/CalRecycle074.pdf>.

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/](http://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.<sup>5</sup> In competitive procurements of IT goods and services (~~i.e., those procurements of \$5,000 or greater~~), JBEs must provide a five percent preference to entities that have been certified as a “small business” or “microbusiness”

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<sup>5</sup> PCC 12102.2(c). See also chapter 4C, step 6 of this Manual for further information.

by DGS.<sup>6</sup> 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. The SB/DVBE option is different from the small business preference and may be used for competitive solicitations of IT goods and services that are greater than \$5,000 and less than \$250,000 in value. 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). The Judicial Council’s Legal Services office 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.

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<sup>6</sup> See, *infra*, Chapter 4C, at step 6, p.7.



# Judicial Council of California

Judicial Branch Contracting Manual

Chapter 4  
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## 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.

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 Interest: JBEs may use a Request for 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 chapter 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 Cal eProcure system;<sup>1</sup>
- 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 Cal eProcure 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.

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<sup>1</sup> DGS's Cal eProcure system currently uses FI\$Cal technology. JBEs may be required to register with FI\$Cal to use certain features of DGS's Cal eProcure 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 Cal eProcure 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.dgs.ca.gov/pd/Home.aspx](http://www.dgs.ca.gov/pd/Home.aspx)), 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 pages of the faxed bid received before the 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 due date and 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:

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
- Non-competitively bid 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.

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.<sup>2</sup>

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<sup>2</sup> 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

### 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.

**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.

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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.

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,<sup>3</sup> 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.<sup>4</sup>
  
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.

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:

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<sup>3</sup> The intended number of awards may be a range; for example, 2–4.

<sup>4</sup> A JBE may adopt, in its Local Contracting Manual, a requirement that late Bids be returned unopened to the applicable Bidder.

- 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 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
- 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.

The sample certification in Appendix B may be used to satisfy the act's certification requirements.

3. Unruh Civil Rights Act and California Fair Employment and Housing Act: All procurements of **one hundred thousand dollars (\$100,000) or more** must address the requirements of PCC 2010. Generally speaking, PCC 2010 is intended to protect civil rights and prevent discrimination.

Prior to submitting a bid or proposal and prior to executing any JBE contract or renewal for goods or services of one hundred thousand dollars (\$100,000) or more, an entity must certify that it is in compliance with the Unruh Civil Rights Act and the California Fair Employment and Housing Act, and that any policy that the entity has adopted against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act or the California Fair Employment and Housing Act.

The sample certification in Appendix C may be used to satisfy the PCC 2010's certification requirements.

The certification is required regardless of the procurement approach, method, or solicitation format, including, but not limited to: RFQs, RFPs, IFBs, non-competitive bids, and the SB/DVBE Option.

4. 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. Alternatively, 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.

5. 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 identified 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: [www.ftb.ca.gov/aboutFTB/Delinquent-Taxpayers.shtml](http://www.ftb.ca.gov/aboutFTB/Delinquent-Taxpayers.shtml)

BOE list: [www.boe.ca.gov/sutax/top500.htm](http://www.boe.ca.gov/sutax/top500.htm)

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**

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 [JBE] to submit a bid or proposal.

To submit a bid or proposal to the [JBE], the proposer/bidder must insert its company name and Federal ID Number below and 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.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)</i>	

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 [JBE] to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the [JBE] 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.

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

**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 [JBE] for a solicitation of goods or services of \$1,000,000 or more, or (ii) entering into or renewing a contract with the [JBE] 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 [JBE], 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 [JBE] 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 [JBE] 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.

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

**APPENDIX C****UNRUH CIVIL RIGHTS ACT AND  
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the [JBE] for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the [JBE] for the purchase of goods or services of \$100,000 or more.

**CERTIFICATIONS:**

1. We are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. We are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. We do not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the proposer/bidder/vendor to the certifications made in this document.

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



# Judicial Council of California

Judicial Branch Contracting Manual

Chapter 4A  
Page 1 of 12

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

CHAPTER 4A

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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.<sup>1</sup> 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.

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<sup>1</sup> 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. 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 legal review of contracts.)

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 <sup>2</sup>	Used for straightforward, uncomplicated, and low-risk procurements.

<sup>2</sup> 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~~10,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

Solicitation Document	Procurement Size	Description
		<i>Note: Cannot be used if incidental services included in the purchase (e.g., set-up, installation) exceed <del>\$4,999,999,999.99</del>, unless an exemption is granted. See section A in the “Selected Topics Relevant to Solicitations of Goods” section below for additional information.</i>
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**.<sup>3</sup> See chapter 4, section 4.1.D of this Manual for advertising methods.

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<sup>3</sup> 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.

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.

**Note:** If incidental services included in the purchase (e.g., set-up, installation) exceed ~~\$4,999,999,999.99~~, 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 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.<sup>4</sup> 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.

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<sup>4</sup> 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, 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 \$4,999,999,999.99, 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 \$4,999,999,999.99, 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

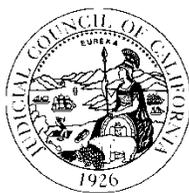
- Contractual guarantee of the apparent low Bidder that the resale value of the vehicle will be no less in proportion to Bid price than any other comparable vehicle complying with specifications for which a Bid was received.

Under Public Resources Code (PRC) section 25722.7, fleet vehicle purchases by JBEs must meet minimum fuel economy standards. Under PRC 25722.7(a) and (b), fleet vehicle purchases must meet the fuel economy standard in section 3620.1 of the *State Administrative Manual (SAM)*, which sets forth a minimum miles per gallon standard for the combined annual purchases of vehicles by each JBE. Please refer to PRC 25722.7 and SAM 3620.1 for further information.

### 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

Judicial Branch Contracting Manual

Chapter 4B  
Page 1 of 18

## **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.<sup>1</sup> 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. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to competitive solicitation 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.

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<sup>1</sup> 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?
- Do the services involve legal defense or legal advice?
- 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 legal review of contracts.)

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 the various types of Solicitation Documents are typically used.

Solicitation Document	Procurement Size	Description	Awarded to:
RFQ	Less than \$10,000 <sup>2</sup>	Used for 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

<sup>2</sup> 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 **non-IT services** procurements under \$10,000 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 \$10,000 or more.**<sup>3</sup> 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.

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<sup>3</sup> All solicitations of non-IT services of \$10,000 or more must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than \$10,000.

**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<sup>4</sup>) 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
- The JBE could have completed the transaction without a competitive solicitation (e.g., procurements of legal services or licensing or proficiency testing examinations).

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<sup>4</sup> DGS's Cal eProcure system currently uses FI\$Cal technology. JBEs may be required to register with FI\$Cal to use certain features of DGS's Cal eProcure system.

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 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.<sup>5</sup>

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.

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<sup>5</sup> 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, the contract must be signed by an authorized representative of the Bidder who 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. 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

Judicial Branch Contracting Manual

Chapter 4C  
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## **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 12102.2(b).) In addition, 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.<sup>1</sup>

## **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.

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<sup>1</sup> 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 legal review of contracts.)

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 <sup>2</sup>	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

<sup>2</sup> 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~~10,000 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.

Conceptual proposal: 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.

Detailed technical proposal: 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~~.<sup>3</sup> 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

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<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> See PCC 12102.2(b): “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.

Description of IT Goods: 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.

Acquisition of additional items: 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:<sup>5</sup>

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

<sup>5</sup> 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
IT Services	If total procurement value is <del>\$5,000</del> <u>10,000</u> or more
IT Goods and Services	If the total procurement value is \$100,000 or more <b>or</b> the services portion of the procurement is <del>\$5,000</del> <u>10,000</u> 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 a 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.

## 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.<sup>6</sup>
3. The JBE must publish the results of the completed noncost evaluation, excluding the small business preference and DVBE incentive. Unless specified otherwise in the Local Contracting Manual, this publication must occur on the JBE's website.

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<sup>6</sup> 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.

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 protest hearing officer 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, the 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.<sup>7</sup>

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.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx](http://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx).

#### Step 6

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<sup>7</sup> The SB/DVBE option should not be confused with the small business preference or the DVBE incentive. See chapter 3 of this Manual regarding those distinct programs.

- 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..... \_\_\_\_\_

**Example:**

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

<u>Bidder</u>	<u>Bid Amount</u>
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

Judicial Branch Contracting Manual

Chapter 5  
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## **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 certain dollar amounts;
- 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 CERTAIN DOLLAR AMOUNTS

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 \$105,000 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. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to competitive solicitation requirements.

**Note:** Although not required to do so, JBEs may competitively solicit Bids for purchases under the foregoing dollar amount limits. 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.<sup>1</sup>

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.

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<sup>1</sup> 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.

### 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 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, and local governmental entities from other states, (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 vendor is the only source of the goods and/or 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 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**

The JBE may, under certain circumstances, establish a special category non-competitively bid contract request (SCR) when it determines that a significant number of repeat NCB procurements of non-IT goods, non-IT services, or IT goods and services will occur. The SCR 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 or specify a form for use in SCRs. If no form is specified in the Local Contracting Manual, the SCR may take the form of a memorandum.

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

### **5.11 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 \$105,000) which increase the value of the purchase to \$105,000 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 480 chairs, each costing \$100. The value of the purchase (\$48,000) is below \$105,000, and the purchase was completed as an NCB procurement pursuant to section 5.1 above. The JBE wishes to purchase an additional 320 chairs, each costing \$100, through use of an amendment. Because the new value of the contract (\$116,000) will be over \$105,000, 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 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.

**5.13 CERTIFICATION AND OTHER REQUIREMENTS IN NCB PROCUREMENTS**

JBEs are required to comply with certain certification and other requirements in NCB procurements. These include:<sup>2</sup>

- 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 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 identified by the Franchise Tax Board or the Board of Equalization as one of the 500 largest tax delinquents is void and unenforceable (see chapter 4, section 4.4.E of this Manual).

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<sup>2</sup> Contracts resulting from NCB procurements must comply with applicable requirements in chapter 8 of this Manual.



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Judicial Branch Contracting Manual

Chapter 6  
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## LEVERAGED PROCUREMENT

### CHAPTER 6

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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 January 1, 2014, information about LPAs established by the Judicial Council is posted at: [www.courts.ca.gov/procurementservices.htm](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<sup>1</sup> 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.<sup>2</sup>

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 identified, and the JBE is procuring goods or services estimated to cost \$510,000 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

services other than the Vendor that is party to the LPA, the JBE should consider following the sole source procedures in 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.”<sup>3</sup>

#### **STEP 4—LPA Review**

- Review the LPA documentation<sup>4</sup> 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.<sup>5</sup>
- 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 LPA documentation for specific provisions regarding socioeconomic or environmental programs.

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> See, for example, chapters 5 and 8 of this Manual.

**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.<sup>6</sup> 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 contract. Proceed with contract signature.<sup>7</sup>

**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

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<sup>6</sup> 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.

<sup>7</sup> 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).

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,<sup>8</sup> 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.<sup>9</sup> Inform Bidders and 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 procurement methods available (e.g., using an RFP instead of an RFQ). Confirm that the LPA terms are consistent with this Manual<sup>10</sup> and address issues such as:

- Which entities can procure goods/services from the Vendor under the LPA (and the rights/obligations of those entities);<sup>11</sup>

<sup>8</sup> 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.

<sup>9</sup> See, for example, chapters 4, 4A, 4B, and 4C of this Manual.

<sup>10</sup> See, for example, chapter 8 of this Manual.

<sup>11</sup> The JBE should consider stating in the LPA that the entity placing orders for goods/services is solely

- 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.<sup>12</sup> If necessary, prepare user instructions for the LPA, based on the LPA's requirements. Distribute user instructions as necessary.

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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).

<sup>12</sup> 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.