

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT SP12-02

Title	Action Requested
Judicial Branch Administration: Judicial Branch Contracting Manual	Review and submit comments by 5:00 p.m., March 6, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise <i>Judicial Branch Contracting Manual</i>	April 24, 2012
Proposed by	Contact
Mary M. Roberts, General Counsel Office of the General Counsel	Evan Garber, Managing Attorney 415-865-4287, evan.garber@jud.ca.gov

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.¹ Because of the short time between the enactment date and the operative date of the Judicial Branch Contract Law, the time period for development of the manual—including its review by judicial branch entity personnel and the public—was extremely compressed. Review and application of the manual since its adoption have revealed the need for many and substantial revisions.

Discussion

With certain exceptions² the Judicial Branch Contract Law, enacted March 24, 2011, requires that judicial branch entities³ comply with the provisions of the Public Contract Code applicable to state agencies and departments related to the procurement of goods and services. 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, referred to in this invitation to comment as the “operative date.”⁴ The Judicial Branch Contract Law also requires the council to adopt a

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

² PCC, §§ 19204(c), 19207, and 19208.

³ *Id.*, § 19205 defines “judicial branch entity” as “any superior court, court of appeal, the California Supreme Court, the Judicial Council, the Habeas Corpus Resource Center, or the Administrative Office of the Courts.”

⁴ *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 These proposals are circulated for comment purposes only.

judicial branch contracting manual containing policies and procedures applicable to judicial branch entities related to the procurement of goods and services.⁵

At the council's business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual*. At its business meeting on December 13, 2011, the council adopted revisions to the introduction of the *Judicial Branch Contracting Manual* and, as recommended by the Judicial Branch Contracting Manual Working Group, directed the Administrative Office of the Courts (AOC) to report further to the council in April 2012 about additional, comprehensive revisions to the manual.

Process for Revising Manual

Following adoption of the manual by the Judicial Council in August 2011, the AOC continued to work closely with the Judicial Branch Contracting Manual Working Group in revising the manual. The working group includes representatives from the Trial Court Presiding Judges Advisory Committee (TCPJAC), Court Executives Advisory Committee (CEAC), the California Appellate Court Clerks Association, and the Habeas Corpus Resource Center. Soon after the manual was adopted, AOC staff invited and welcomed additional representatives from TCPJAC and CEAC as members of the working group. In addition, in the course of regular interactions with the trial courts, the AOC has had opportunity to receive feedback and questions about the contents and requirements of the manual.

Manual Revisions

Revisions to the manual:⁶

- Clarify the manual's provisions and requirements;
- Eliminate internal inconsistencies in the manual;
- Make the manual consistent with requirements in those chapters of the *Trial Court Financial Policies and Procedures Manual* that are superseded by the manual (at least vis-à-vis the trial courts); and
- Remove requirements determined post-adoption to be inapplicable to judicial branch entities.

Specific Comments Sought

The AOC invites comments on the entire proposed revised manual and on the following questions:

1. Is the information presented in a clear and understandable way?
2. Does the content appear to work from a court operations perspective, e.g., does it conflict with any aspect of court operations or appear to make any incorrect assumptions?

⁵ *Id.*, § 19206.

⁶ Except for chapter 8, which has been completely re-written, and the introduction, the manual show all changes that have been made since the manual was adopted in August 2011. The introduction shows changes that were made since it was revised by the council in December 2011.

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.

3. Is the revised manual user-friendly? Does it appear to work for courts of different sizes and staffing capabilities?
4. Are there any material omissions?

In light of the length of the manual, the AOC welcomes the submission of comments in multiple entries as they are completed (e.g., submissions for individual chapters) as opposed to one entry for the entire manual.

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.



Judicial Branch Contracting Manual

EFFECTIVE OCTOBER 1, 2011

REVISED DECEMBER 13, 2011



JUDICIAL COUNCIL
OF CALIFORNIA

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
www.courts.ca.gov

Copyright © 2011 by Judicial Council of California / Administrative Office of the Courts.
All rights reserved.

Except as permitted under the Copyright Act of 1976 and as otherwise expressly provided herein, no part of this publication may be reproduced in any form or by any means, electronic, online, or mechanical, including the use of information storage and retrieval systems, without permission in writing from the copyright holder. Permission is hereby granted to nonprofit institutions to reproduce and distribute this publication for educational purposes if the copies credit the copyright holder.

Adopted by the Judicial Council on August 26, 2011
Revised by the Judicial Council on December 13, 2011

Judicial Council of California

Hon. Tani Cantil-Sakauye
*Chief Justice of California and
Chair of the Judicial Council*

Hon. Judith Meisels Ashmann-Gerst
*Associate Justice of the Court of Appeal
Second Appellate District, Division Two*

Hon. Stephen H. Baker
*Judge of the Superior Court of California,
County of Shasta*

Hon. Marvin R. Baxter
Associate Justice of the Supreme Court

Hon. Emilie H. Elias
*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Noreen Evans
Member of the California State Senate

Hon. Mike Feuer
Member of the California State Assembly

Hon. James E. Herman
*Judge of the Superior Court of California,
County of Santa Barbara*

Hon. Harry E. Hull, Jr.
*Associate Justice of the Court of Appeal
Third Appellate District*

Hon. Teri L. Jackson
*Judge of the Superior Court of California,
County of San Francisco*

Hon. Ira R. Kaufman
*Assistant Presiding Judge of the Superior
Court of California,
County of Plumas*

Ms. Miriam Aroni Krinsky
UCLA School of Public Affairs

Ms. Edith R. Matthai
*Attorney at Law
Robie & Matthai*

Mr. Joel S. Miliband
*Attorney at Law
Rus, Miliband & Smith*

Hon. Douglas P. Miller
*Associate Justice of the Court of Appeal
Fourth Appellate District, Division Two*

Hon. Mary Ann O'Malley
*Judge of the Superior Court of California,
County of Contra Costa*

Mr. James N. Penrod
*Attorney at Law
Morgan, Lewis & Bockius*

Hon. Kenneth K. So
*Judge of the Superior Court of California,
County of San Diego*

Hon. Sharon J. Waters
*Judge of the Superior Court of California,
County of Riverside*

Hon. David S. Wesley
*Assistant Presiding Judge of the Superior
Court of California,
County of Los Angeles*

Hon. Erica R. Yew

*Judge of the Superior Court of California,
County of Santa Clara*

ADVISORY MEMBERS

Hon. Sue Alexander

*Commissioner of the Superior Court of
California,
County of Alameda*

Mr. Alan Carlson

*Court Executive Officer of the Superior
Court of California,
County of Orange*

Hon. David F. De Alba

*Judge of the Superior Court of California
County of Sacramento*

Hon. Terry B. Friedman (Ret.)

*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Robert James Moss

*Judge of the Superior Court of California,
County of Orange*

Mr. Frederick K. Ohlrich

Clerk of the California Supreme Court

Hon. David Rosenberg

*Presiding Judge of the Superior Court of
California,
County of Yolo*

Hon. David M. Rubin

*Judge of the Superior Court of California,
County of San Diego*

Ms. Kim Turner

*Court Executive Officer of the Superior
Court of California,
County of Marin*

Mr. David H. Yamasaki

*Court Executive Officer of the Superior
Court of California,
County of Santa Clara*

**ADMINISTRATIVE OFFICE OF THE
COURTS**

Mr. Ronald G. Overholt

*Interim Administrative Director of the
Courts and Secretary of the Judicial
Council*

Judicial Branch Contracting Manual Working Group
(February 1, 2012)

Mr. Chris Anderson
Procurement Administrator
Superior Court of California,
County of Los Angeles

Hon. Lee Smalley Edmon
Presiding Judge
Superior Court of California,
County of Los Angeles

Mr. D. Brett Bianco
Court Counsel
Superior Court of California,
County of Los Angeles

Ms. Jean Field
Assistant Director
Habeas Corpus Resource Center
(HCRC)

Mr. Geoff Brandt
Assistant Court Executive Officer
Superior Court of California,
County of Placer

Mr. James Flohrschutz
Business Services Manager
Superior Court of California,
County of San Joaquin

Ms. Karen Brewer
Senior Contract Officer
Superior Court of California,
County of Sacramento

Ms. Tammy Grimm
Court Executive Officer
Superior Court of California,
County of Inyo

Mr. Fred Cabrera
Contract Services Manager
Superior Court of California,
County of Sacramento

Hon. Steven J. Howell
Presiding Judge of the
Superior Court of California,
County of Butte

Mr. Michael J. Cappelli
General Counsel
Superior Court of California,
County of Riverside

Mr. Brian Kritzell
Procurement Manager
Superior Court of California,
County of Riverside

Ms. Lynda L. Chang
Contracts Attorney
Superior Court of California,
County of Riverside

Mr. Luke McDannel
Procurement Manager
Superior Court of California,
County of Riverside

Ms. Sherry Clifford
Contracts Officer
Superior Court of California,
County of Orange

Ms. Debra Meyers
Chief Counsel
Superior Court of California,
County of San Bernardino

Ms. Rhonda Mobley
Procurement Specialist
Superior Court of California,
County of Sonoma

Ms. Susan Patrick
Principal Management Analyst
Contracts and Purchasing
Superior Court of California,
County of San Francisco

Ms. Charlene Ynson
Court Administrator
Court of Appeal,
Fifth Appellate District

TABLE OF CONTENTS

Introduction _____

1. Statutory Basis for this Judicial Branch Contracting Manual _____
2. Guiding Principles in the Development of this Manual _____
3. Local Contracting Manual _____
4. Content and Exclusions _____
5. Effect of the Manual on Preexisting Judicial Branch Policies and Procedures _____
6. Access to the Judicial Branch Contracting Manual _____
7. Use of Words Signifying Requirements or Discretion _____
8. Interpretation of the Manual _____

Chapter 1 Purchasing Authority _____

Introduction _____

Defined Terms _____

1.1 Purchasing Authority of Judicial Branch Entites _____

A. Purchasing Authority Basics _____

B. Scope of Authority _____

C. Purchasing Roles and Responsibilites _____

1.2 Local Contracting Manual _____

Chapter 2 Procurement Planning _____

Introduction _____

Defined Terms _____

2.1 Formulating the Procurement Approach _____

A. Competitive or Non-Competitive Procurement _____

B. Classifying the Purchase _____

C. Initial Review _____

D. Other Considerations Affecting The Planning Process _____

E. Statement Of Work (SOW) _____

F. Emergency Purchases _____

G. Negotiation Process _____

2.2 External Notices and Reviews _____

A. CRC rule 10.620 _____

B. Information Technology (IT) Procurements Over \$5 Million _____

C. Other Procurements over \$1 Million _____

2.3 Creating the Procurement File _____

Chapter 3 Socioeconomic and Environmental Programs _____

Introduction _____

Defined Terms _____

3.1 California Disabled Veterans Business Enterprise (DVBE) Program _____

A. Purpose _____

B. Administration _____

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

D. Adoption of Rules and Procedures for DVBE Program _____

E. Appointing a DVBE Advocate _____

F. Waiver of a DVBE Incentive _____

G. General Requirements for DVBE Procurements	_____
3.2 Americans with Disabilities Act Considerations	_____
3.3 State Agency Buy Recycled Campaign (SABRC) Program	_____
A. Utilizing Recycled Content Products	_____
B. Recycled Preference and Competitive Solicitations	_____
C. Supplier Certifications	_____
D. Printer Cartridges	_____

Chapter 4 Competitive Solicitation Overview _____

Introduction	_____
Defined Terms	_____
4.1 The Basics of Competition	_____
A. General Requirements	_____
B. Developing Prospective Bidder Resources	_____
C. Confidentiality	_____
D. Advertising	_____
E. Samples	_____
4.2 Solicitation Documents Generally	_____
A. Developing The Solicitation Document	_____
B. Required Provisions	_____
C. Amending A Solicitation Document	_____
4.3 Bid Handling	_____
4.4 Vendor Selection	_____
A. Vendor Selection Basics	_____
B. No Bids	_____

C. Ineligible Businesses	_____
D. Deviations	_____
4.5 Follow-On Contracting	_____
4.6 Summary Document	_____
Appendix A – Darfur Contracting Act Certification	_____

Chapter 4A Step-by-Step Guide for the Procurement of Non-IT Goods _____

Introduction	_____
Defined Terms	_____
Step 1 – Determine The Procurement Value	_____
Step 2 – Develop List Of Potential Bidders	_____
Step 3 – Assemble Procurement Team	_____
Step 4 – Select Solicitation Document Type	_____
Step 5 – Draft Solicitation Document	_____
Step 6 – Prepare Advertising	_____
Step 7 – Receive Bids	_____
Step 8 – Open Bids	_____
Step 9 – Determining if Competition has been Achieved	_____
Step 10 – Bid Clarification	_____
Step 11 – Evaluate the Bid	_____
Step 12 – Notice of Intent to Award	_____
Step 13 – Create the Contract	_____
Step 14 – Create the Procurement Summary Document	_____
Step 15 – Notify BSA of Large Contracts	_____
Selected Topics Relevant to Solicitations of Goods	_____

A. Incidental Services	_____
B. California Seller's Permit	_____
C. Motor Vehicles	_____
D. Solicitation of Printer or Copier Cartridges	_____

Chapter 4B Step-by-Step Guide for the Procurement of Non-IT Services _____

Introduction	_____
Defined Terms	_____
Step 1 – Determine the Procurement Value	_____
Step 2 – Determine the Type of Service	_____
Step 3 – Develop List of Prospective Bidders	_____
Step 4 – Assemble Procurement Team	_____
Step 5 – Select Solicitation Document Type	_____
Step 6 – Draft Solicitation Document	_____
Step 7 – Prepare Advertising	_____
Step 8 – Optional: Hold Bidders' Conference	_____
Step 9 – Receive Bids	_____
Step 10 – Open Bids	_____
Step 11 – Determine if Competition has been Achieved	_____
Step 12 – Optional: Hold Oral Interviews/Clarification	_____
Step 13 – Evaluate Bids	_____
Step 14 – Notice of Intent to Award	_____
Step 15 – Create the Contract	_____
Step 16 – Create the Procurement Summary Document	_____
Step 17 – Notify BSA of Large Contracts	_____

Chapter 4C Step-by-Step Guide for the Procurement of IT Goods and Services _____

Introduction _____

Defined Terms _____

Step 1 – Perform Preliminary Analysis _____

Step 2 – Development List of Prospective Bidders _____

Step 3 – Assemble Procurement Team _____

Step 4 – Select Solicitation Document Type _____

Step 5 – Consider Phased Approach _____

Step 6 – Draft Solicitation Document _____

Step 7 – Prepare Advertising _____

Step 8 – Optional: Hold Bidders' Conference _____

Step 9 – Optional: Complete Phased Approach Steps _____

Step 10 – Receive Bids _____

Step 11 – Open Bids _____

Step 12 – Determine if Competition has been Achieved _____

Step 13 – Optional: Hold Oral Interviews / Clarification _____

Step 14 – Evaluate Bids _____

Step 15 – Notice of Intent to Award _____

Step 16 – Create the Contract _____

Step 17 – Create the Procurement Summary Document _____

Step 18 – Mandatory Reporting _____

Selected Topics Relevant to the Solicitation of IT Goods and Services _____

A. California Seller's Permit _____

B. New IT Equipment	_____
C. Performance-Based or Share-In Savings Contracts	_____
D. Solicitations of Printer or Copier Cartridges	_____
Appendix A – Sample Method for Assigning Cost Points When Evaluating RFPs	_____
Appendix B – Sample Cost Proposal Certification	_____

Chapter 5 Non-Competitively Bid (NCB) Procurements _____

Introduction	_____
Defined Terms	_____
5.1 Purchases Under \$5,000	_____
5.2 Emergency Purchases	_____
5.3 Purchases From Governmental Entities	_____
5.4 Legal Services	_____
5.5 Certain LPAs	_____
5.6 Community Rehabilitation Programs	_____
5.7 Licensing or Proficiency Testing Examination	_____
5.8 Subvention and Local Assistance Contracts	_____
5.9 Sole Source	_____
A. Sole Source Purchase	_____
B. Repeat Sole Source Authorization	_____
5.10 Amendments	_____
5.11 Trial Courts: Public Input Requirement	_____

Chapter 6 Leveraged Procurement _____

Introduction _____

Defined Terms _____

6.1 Basics _____

A. What is Leveraged Procurement? _____

B. When is Leveraged Procurement Permitted? _____

C. Certain Issues Concerning the Efficient Use of Public Funds _____

6.2 Description of LPA Programs _____

A. California State LPA Programs _____

B. County, Federal, and Other LPA Programs _____

6.3 Use of LPA Programs _____

A. Accessing Available LPAs _____

B. Step-By-Step Guide to Procurement of IT and non-IT Goods and Services
Through an LPA _____

C. Changing Purchase Contracts Executed under an LPA _____

Chapter 7 Protests _____

Introduction _____

Defined Terms _____

7.1 Designation of JBE Protest Personnel _____

7.2 Protest Thresholds _____

7.3 Solicitation Specifications Protests _____

A. Who May Submit a Solicitation Specifications Protest _____

B. Deadline for Receipt of Protest _____

C. Required Information _____

D. Submission of the Protest _____

E. Evaluation	_____
F. Written Determination	_____
G. Appeal	_____
7.4 Award Protests	_____
A. Who May Submit an Award Protest	_____
B. Deadline for Receipt of Protest	_____
C. Required Information	_____
D. Submission of the Protest	_____
E. Evaluation	_____
F. Written Determination	_____
G. Appeal	_____
7.5 Appeals	_____

Chapter 8 Contracts and Contract-Related Documents _____

Introduction	_____
Defined Terms	_____
8.1 Basic Principles	_____
A. Writing Requirements	_____
B. Roles and Responsibilities	_____
8.2 Categories of Contracts	_____
A. Purchase Orders	_____
B. Standard Agreements	_____
C. Short Form Agreements	_____
D. Intergovernmental Contracts (IGCs)	_____

8.3 Preparation of Contracts _____

A. Content of Contracts _____

B. Special Provisions of IGCs _____

C. Additional Provisions Required in Certain Types of Contracts _____

8.4 Approval of Contracts _____

A. Review and Approval of Commercial Terms _____

B. Legal Review _____

C. Review of Certain IT Contracts _____

8.5 Execution of Contracts _____

A. Authority _____

B. Process _____

C. Payee Data Record _____

Appendix A – Contractor Certification Clauses _____

Appendix B – Mandatory and Recommended Contract Provisions _____

Appendix C – Additional Information for Certain Types of Contracts _____

Appendix D – Sample Contract Dollar Thresholds for Legal Review _____

Chapter 9 Disbursements and Payment Programs _____

Introduction _____

Defined Terms _____

9.1 Disbursements _____

A. Payment Fundamentals _____

B. Advance Payments _____

C. Progress Payments _____

D. Periodic Payments	_____
E. Payee Data Record	_____
F. Payment of Invoices	_____
G. Additional Payment and Invoice Considerations	_____
9.2 Purchase Card Programs	_____
A. Use of Purchase Cards Generally	_____
B. Use of Purchase Cards by the Superior Courts	_____
C. Use of Purchase Cards by Other JBEs	_____

Chapter 10 Receiving, Inspection, and Acceptance or Rejection of Goods and Services _____

Introduction	_____
Defined Terms	_____
10.1 General Process for Receiving Goods and Services	_____
A. Receiving Process	_____
B. Packaging and Shipping	_____
C. Follow-up on Open Orders	_____
10.2 Receiving Goods	_____
A. Questions to Consider When Receiving Goods	_____
B. Receiving Goods at Other Locations	_____
10.3 Inspection of Goods	_____
10.4 Acceptance Testing	_____
10.5 Rejecting Non-Conforming Goods	_____
10.6 Asset Management	_____
A. Control Over Assets	_____

B. Lost, Stolen, or Destroyed Equipment	_____
10.7 Receiving Services	_____
A. Acceptance or Rejecting Services	_____
B. Maintenance Services	_____

Chapter 11 Contract Administration _____

Introduction	_____
Defined Terms	_____
11.1 Principles	_____
11.2 Contract Administration Plan	_____
11.3 Role of Contract Administrators	_____
11.4 Ethical Decisionmaking and Contract Administration	_____
11.5 Record Keeping and Files	_____
A. Vendor Lists	_____
B. File Integrity	_____
11.6 Vendor Licenses, Insurance and Performance/Payment Bonds	_____
11.7 Vendor Performance and Payment	_____
A. Performance and Delivery Control	_____
B. Vendor Payment Issues	_____
11.8 Options, Amendments and Change Orders	_____
A. Options	_____
B. Modification of Contract Terms by Amendment or Change Order	_____
C. Change Administration	_____
D. Communication	_____
11.9 Contract Disputes, Vendor Demands, and JBE Complaints	_____

A. Contract Disputes	_____
B. Vendor Demands	_____
C. JBE Complaints Regarding Vendor Performance	_____
11.10 Contract Termination	_____
A. Termination for Convenience	_____
B. Termination Due to Nonavailability of Funds	_____
C. Termination for Cause	_____
D. Contract Work Suspensions	_____
11.11 Filing Practices	_____
11.12 Contract Closeout	_____
11.13 Disclosure of Contract Documentation	_____

Chapter 12 Reporting Requirements _____

Introduction	_____
Defined Terms	_____
12.1 Judicial Council Reports Under PCC 19209	_____
A. Reporting Periods	_____
B. Content of Reports	_____
C. Responsibility of JBEs to Provide Information for Reports	_____
D. Responsibility to Prepare Reports for Judicial Council	_____
12.2 Notifications by JBEs to the State Auditor Under PCC 19204	_____

Abbreviations and Acronyms

Glossary



Judicial Council of California

Judicial Branch Contracting Manual

Introduction
Page 1 of 7

INTRODUCTION

Original Release Date:
October 1, 2011

Effective Date:
December 13, 2011

Revision Date:
December 13, 2011

1. STATUTORY BASIS FOR THIS JUDICIAL BRANCH CONTRACTING MANUAL

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

Judicial Branch Contracting Manual

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

Applicable Dates of JBCL Requirements

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

On August 26, 2011, the Judicial Council adopted this *Judicial Branch Contracting Manual (Manual)* in compliance with PCC 19206. This effective date of this Manual is October 1, 2011.

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

² See PCC 19204(c), 19207, and 19208.

2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

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

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

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

3. LOCAL CONTRACTING MANUAL

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

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

4. CONTENT AND EXCLUSIONS

The Manual addresses judicial branch entities’ procurement of goods and services, including information technology goods and services, contracting, and contract management. The Manual does *not* address:

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

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

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

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

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

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

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

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

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

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

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

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

Finally, this Manual supersedes the *Court Facilities Contracting Policies and Procedures*, adopted by the Judicial Council December 7, 2007, for all facilities-related

procurement and contracting purposes *except* for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.

County and other Local Agency Procurement Policies

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

6. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at www.courts.ca.gov/7465.htm.

7. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

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

Use of Words Signifying Requirements or Discretion			
Words→	Words signifying a mandatory duty or prohibition are: “must,” “shall,” “mandatory,” “required,” “must not,” and “may not”	Words signifying reasonable discretion: “should” and “should not”	Words signifying full discretion: “may,” “ and “encouraged” “
When used→	To reflect obligations or prohibitions under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of favored but not mandated business or accounting practices	To provide guidance

Compliance→	Mandatory unless there is an applicable exemption	Not mandatory, but favored unless there is a good business reason for variance	Optional
Documenting Noncompliance→	Documentation required	Include justification for variance in the appropriate file ³	None required

If and to the extent a provision of this Manual expressly authorizes a JBE to waive a mandatory duty, the actual waiver must be necessary or appropriate, in the best interests of the JBE and the public, and, in the opinion of the JBE’s legal counsel, consistent with applicable law.⁴ Any other waiver is void. Documentation of waivers must be kept on file in accordance with the records retention requirements set forth in chapter 11, section 11.5 of this Manual.⁵

8. INTERPRETATION OF THE MANUAL

The AOC/OGC is available to assist JBEs in answering questions or providing clarification regarding this Manual.

³ If specific to a particular procurement, the procurement file is the appropriate file. -If the noncompliance affects many procurements, the JBE may note the noncompliance and include justification in its Local Contracting Manual.

⁴ Trial courts may arrange for legal review by their in-house legal staff or retained counsel, or through AOC/OGC. Other JBEs should arrange for legal review through AOC/OGC.

⁵ FIN 12.01, *Record Retention*, of the *Trial Court Financial Policies and Procedures Manual* addresses the period of time that trial court contract records are retained.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 1
Page 1 of 11

PURCHASING AUTHORITY

CHAPTER 1

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
1.1 Purchasing Authority of Judicial Branch Entities	3
A. Purchasing Authority Basics.....	3
B. Scope of Authority.....	4
1. Limitations on Purchasing Authority.....	4
2. Authority to Enter into Intergovernmental Contracts (IGCs).....	4
C. Purchasing Roles and Responsibilities	5
1. Roles and Responsibilities.....	5
2. Ethics	8
1.2 Local Contracting Manual.....	10

INTRODUCTION

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

DEFINED TERMS

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

1.1 PURCHASING AUTHORITY OF JUDICIAL BRANCH ENTITIES**A. Purchasing Authority Basics**

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

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

Habeas Corpus Resource Center (HCRC)	Pursuant to GC 68664(a), responsibility for the HCRC’s “day-to-day operations” is assigned to the Executive Director.
Judicial Council	Article VI, section 6 of the California Constitution. See also GC 68506.
AOC	Article VI, section 6 of the California Constitution, as delegated by the Judicial Council. See also GC 68506. Pursuant to CRC rule 10.80(d), the Administrative Director of the Courts is responsible for allocating the financial and other resources of the AOC.

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

B. Scope of Authority

1. Limitations on Purchasing Authority

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

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

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

2. Authority to Enter into Intergovernmental Contracts (IGCs)

JBEs may enter into intrabranh agreements (IBAs) with other JBEs for goods or services, including IT goods and services. JBEs may enter into interagency

~~agreements (IAs) or~~ memoranda of understanding (MOUs) with ~~executive branch entities or~~ other governmental entities for goods or services, including IT goods and services.

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

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

C. Purchasing Roles and Responsibilities

1. Roles and Responsibilities

The following table defines the roles and responsibilities of individuals involved in a JBE's procurement activities. There must be segregation of duties among the employees involved in the procurement process. In some JBEs, especially smaller trial courts, one individual may perform several of these roles. The same employee may initiate the requisition and receive the goods or services, although receipt by a second person strengthens internal controls. Different employees must be responsible for procurement activities and payment approval. However, JBEs should maintain sufficient separation of duties to reduce the risk of error or fraud in the JBE's purchasing program.⁴

~~No one person should perform more than one of the four categories of procurement duties:~~

⁴ ~~The term “should” is used here in recognition of the fact that smaller JBEs may not have enough procurement (or other) personnel to separate the specified duties completely. JBEs should separate duties as much as possible, however, given their staffing constraints.~~

- ~~Requisition request and contract/PO approval;~~
- ~~Acknowledging and receiving goods and services;~~
- ~~Authorizing or approving invoices; and~~
- ~~Preparing payments.~~

~~At a minimum, the person approving invoices and the person preparing payments must be different people.~~

Assignment	Roles and Responsibilities
Procurement and Contracting Officer (PCO)	<ul style="list-style-type: none"> • Is responsible for all procurement and contracting within the JBE • Ensures that all procurement and contracting activities within the JBE comply with Applicable Procurement Laws • Provides the necessary resources to ensure that all staff are properly qualified and trained in all aspects of the procurement process • Oversees development of the Local Contracting Manual
Buyer Note: A JBE may elect not to designate a Buyer. If the JBE does not do so, then the Buyer role reverts to the PCO.	<ul style="list-style-type: none"> • Performs day-to-day purchasing and contracting activities • Is knowledgeable about Applicable Procurement Laws and best practices • Ensures that the needs of the JBE are met within Applicable Procurement Laws • Maintains the procurement file and related documentation

<p>ADA Coordinator</p> <p>Note: A JBE may elect not to designate an ADA Coordinator. If the JBE does not do so, then the ADA Coordinator role reverts to the PCO.</p>	<ul style="list-style-type: none"> Assists and responds to questions or concerns regarding procurement-related reasonable accommodation needs
<p>DVBE Advocate</p> <p>Note: A JBE may elect not to designate a DVBE Advocate. If the JBE does not do so, then the DVBE Advocate role reverts to the PCO.</p>	<ul style="list-style-type: none"> Identifies potential DVBE prime contractors or subcontractors and potential contracting opportunities Makes information regarding pending solicitations available to certified DVBE firms capable of meeting the JBE's business needs (MVC 999.12)
<p>CALProcurement-Card Coordinator</p> <p>Note: A JBE may elect not to designate a CALProcurement-Card Coordinator. If the JBE does not do so, then the CALProcurement-Card Coordinator role reverts to the PCO.</p>	<ul style="list-style-type: none"> Ensures compliance with relevant CALprocurement -Ccard procedures and contract terms Adds, deletes, and alters card restrictions/limits Reviews billing reports to monitor payments and disputes
<p>Receiving Staff</p> <p>Note: A JBE may elect not to designate Receiving Staff. If the JBE does not do so, then the Receiving Staff role reverts to the PCO.</p>	<ul style="list-style-type: none"> Receives or acknowledges deliveries Inspects goods Completes required reports, as required by the Local Contracting Manual or another JBE policy

<p>Protest Hearing Officer</p> <p>Note: If a Protest Hearing Officer is not designated by a JBE, the Buyer's supervisor will act as the Protest Hearing Officer.</p>	<ul style="list-style-type: none"> • Evaluates protests • Issues written determinations regarding protests
<p>Protest Appeals Officer</p> <p>Note: If a Protest Appeals Officer is not designated by a JBE, the Protest Hearing Officer's supervisor Approving Authority will act as the Protest Appeals Officer.</p>	<ul style="list-style-type: none"> • Evaluates protest-related appeals • Issues written determinations regarding appeals of protests
<p>Payment Officer</p>	<ul style="list-style-type: none"> • Ensures timely payment of invoices • Ensures that proper internal approvals have been secured before processing payment

2. Ethics

a. Ethics training

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

~~All personnel involved in the procurement process should have the appropriate training, experience, level of responsibility, and accountability as necessary to ensure compliance with Applicable Procurement Laws.~~

b. Ethics and Conflicts

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

All personnel involved in the procurement process must:

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

Other ethical issues include the following:

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

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

c. Gifts and Gratuities

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

Accepting gifts and gratuities: ~~No~~ Persons involved in the procurement process of a JBE must not~~may~~ accept, directly or indirectly, any gift, loan of money or

equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with that JBE. Doing so could be construed as intent to influence JBE personnel in their official duties or as a reward for an official action performed by the JBE personnel. Favors must be declined.

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

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

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

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

~~**Note:** If a JBE elects to accept free goods or services, the contract should state that by accepting the goods or services at no cost, the JBE has no further obligations or hidden costs associated with acceptance.~~

1.2 LOCAL CONTRACTING MANUAL

This section provides broad guidance to JBE staff involved in developing their Local Contracting Manuals. This section is not intended to dictate the techniques that should

be used, because the details of the process should suit the individual JBE, the stakeholders affected, and JBE business needs.

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

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

Contents: The Local Contracting Manual must include:

- The JBE’s organizational structure; for example, who fills the roles identified in section 1.1.C.1; and
- Signature authorization listing (who can sign what and when).

The signature authorization listing may take the form of a chart, such as the one below:

<u>Value of Purchase Order or Contract</u>	<u>Person(s) or Position(s) Authorized to Sign</u>
<u>Purchase orders and contracts up to \$5,000</u> -	<u>[name or position]</u>
<u>Purchase orders and contracts up to \$100,000</u> -	<u>[name or position]</u>
<u>Purchase orders and contracts above \$100,000</u> -	<u>[name or position]</u>

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

- Normal lead times for different types of purchases;

- Required approvals, both internal and external;
- Certification of availability of funds; [and](#)
- ~~Approval and payment of invoices;~~
- ~~Receiving; and~~
- Setting up and maintaining official procurement files.

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



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 2
Page 1 of 17

PROCUREMENT PLANNING

CHAPTER 2

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
2.1 Formulating the Procurement Approach.....	3
A. Competitive or Non-Competitive Procurement	3
B. Classifying the Purchase	4
C. Initial Review	9
D. Other Considerations Affecting the Planning Process.....	11
E. Statement of Work (SOW).....	13
F. Emergency Purchases	14
G. Negotiation Process	14
2.2 External Notices and Reviews.....	17
A. CRC rule 10.620.....	18
B. Information Technology (IT) Procurements over \$5 Million	18
C. Other Procurements over \$1 Million	18
2.3 Creating the Procurement File	18
Appendix A – Lease Versus Purchase Analysis.....	20

INTRODUCTION

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

DEFINED TERMS

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

2.1 FORMULATING THE PROCUREMENT APPROACH

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

A. Competitive or Non-Competitive Procurement

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

- Purchases under \$5,000;
- Emergency purchases;
- Purchases from a governmental entity;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP); and
- Sole source.

For more information on these types of procurements, see chapter 5. [For more information about determining the value of the procurement, see step 1 of chapter 4A, 4B, or 4C.](#) For more information on determining whether a purchase qualifies as an emergency purchase, see section F below. [Non-competitive procurement transactions are subject to the reporting requirements noted in chapter 12, unless otherwise stated in chapter 12.](#)

B. Classifying the Purchase

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.

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 food, 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.

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

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

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

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

- 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.

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:

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 & accessories)
- Memory products (RAM, Flash, USB)
- Monitors & 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
- 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 & management, networking, virtual computing, web-publishing
- Special electronics, including automation & control systems, cellular/Smartphone & accessories, eReaders, handheld devices & accessories
- Computer Accessories (video cards, imaging, keyboards & keypads, mice & trackballs)
- ~~Central processing units (mainframes) and all related features and peripheral units, including processor storage, console devices, channel devices, etc.~~
- ~~Minicomputers, midrange computers, microcomputers and personal computers and all peripheral units associated with such computers~~
- ~~Special purpose systems:

 - ~~— Magnetic ink character recognition~~
 - ~~— Optical character recognition (OCR)~~
 - ~~— Photo composition~~
 - ~~— Typesetting and electronic bookkeeping~~~~
- ~~Communication devices used for transmission of data such as:

 - ~~— Modems~~
 - ~~— Data sets~~
 - ~~— Multiplexors~~
 - ~~— Concentrators~~
 - ~~— Routers~~
 - ~~— Switches~~
 - ~~— Local area networks (LANs)~~
 - ~~— Private branch exchanges~~~~
- ~~Network control equipment, or microwave or satellite communications systems~~
- ~~Input-output (peripheral) units (off-line or on-line) including:

 - ~~— Terminal~~
 - ~~— Card readers~~
 - ~~— Optical character readers~~
 - ~~— Magnetic tape units~~
 - ~~— Mass storage devices~~~~

- ~~— - Card punches~~
- ~~— - Printers~~
- ~~— - Computer output to microform (COM) converters~~
- ~~— - Video display units~~
- ~~— - Data entry devices~~
- ~~— - Teletypes~~
- ~~— - Teleprinters~~
- ~~— - Plotters~~
- ~~— - Scanners~~
- ~~Any device used as a terminal to a computer and control units for these devices~~

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, ~~floppy disks~~, magnetic tape and printer ribbons or cartridges)
- Furniture (IT-related, such as desktop station tables and printer stands)

The following consumable items are IT goods:

- PC keyboards
- mice
- zip drives
- memory cards
- personal digital assistants (PDA)
- software
- scanners

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

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

Example: 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, ~~and are acquired as IT services.~~

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.

Need help in classifying purchases?

Courts needing assistance in determining the classification of a purchase after reviewing the available resources (i.e., this Manual, the Local Contracting Manual) should contact the AOC's Business Services Unit or the AOC's Trial Court Administrative Services Division.

C. Initial Review

~~Start planning early:~~—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.

~~Initial Buyer review:~~—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. ~~JBEs should consider adopting a policy stating when legal participation is required in procurement efforts. This policy, if adopted, should be included in the Local Contracting Manual.~~
- ~~Purchasing activities that benefit from legal participation may include but are not limited to the following:~~
- ~~Purchases of a type that has a history of litigation;~~
~~IT warranty issues; and~~
~~Conflict of interest issues.~~
- See chapter 8, section 8.3.B for more information on legal approval and 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 ~~(e.g., CMAS)~~?
 - 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

Requests for reasonable accommodation purchases: A purchase made in response to a request for reasonable accommodation 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.

Leasing equipment: ~~Leasing may be used, for example, when a JBE lacks sufficient funds for a purchase, when the JBE has insufficient data to project future needs, or when the relevant technology is evolving rapidly and the JBE does not want to purchase equipment that may soon be obsolete or outdated.~~

Prior to initiating an equipment lease, a JBE ~~must~~ 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. ~~complete a "lease versus purchase analysis" as described in appendix A. Lease versus purchase analysis documentation should be retained within the procurement file.~~

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

Term purchases: JBEs ~~may~~ should establish term purchase contracts through a competitive bid process.

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:

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

- A competitive ~~bid procurement must~~should be conducted whenever the dollar amount of the term purchase is \$5,000 or greater;
- The solicitation ~~should~~must identify contract start and end dates;
- The solicitation ~~should~~must 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 state the delivery terms over the course of the contract term;~~
- The solicitation ~~should~~must 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.

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 its procurement file to support that the price offered by a CRP is fair and reasonable.~~ 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.

Socioeconomic Programs:

JBEs should consider the socioeconomic and environmental program requirements set forth in chapter 3 when planning procurements.

E. Statement of Work (SOW)

Determining the need for an SOW: A JBE ~~should~~must 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.

What to include in an SOW: ~~A SOW is unique to each transaction, but usually consists of some or all of the following:~~

~~For services (including consulting services):~~

~~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;~~
~~A description of any specific functions, tasks, or activities to 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 deliverable (such as progress reports or a final report summarizing a consultant's findings);~~
~~A description of the assistance or materials to be provided by the JBE, if applicable;~~
~~Practical and policy information, technological requirements or specifications, and legal limitations, if applicable;~~
~~The job classification or approximate skill level of the personnel to be made available by the Vendor;~~
~~The name or identification of the Vendor personnel to be assigned; and~~
~~The Vendor's work hours required to accomplish the purpose, objective, or goals.~~

~~For goods:~~

~~Specifications for goods; and~~
~~Description of when, where, and how goods are to be delivered.~~

[For information on what to include in an SOW, see chapter 8.3.B.1.](#)

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.

An emergency as defined by PCC 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

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

Example of a non-emergency: 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, it does not meet the definition of an “emergency.” The opportunity to get a good deal does not constitute an emergency.

G. Negotiation Process

During the procurement planning phase for goods and services of any type, a JBE should consider whether a negotiation process is appropriate. If so, the JBE must add language to its Solicitation Document indicating the JBE’s intent to utilize a negotiation process.

When to use a negotiation process: The JBE may initiate negotiations if it determines one or more of the following conditions exist:

1. The business need or purpose of a procurement can be further defined as a result of a negotiation process.

Example: A JBE has identified a general need for a new technology; however, market research indicates the technology may have multiple, unanticipated, secondary benefits. The JBE would be able to further define its business needs for the technology by conducting direct negotiations with Prospective Bidders that are subject matter experts in the new technology.

2. The business need or purpose of a procurement is known, but a negotiation process may identify different types of solutions to fulfill the business need or purpose.

Example: A JBE has identified specific business problems and technical requirements, but a negotiation process with Prospective Bidders may produce multiple potential solutions using goods, services, or a combination of both.

3. The complexity of the purpose or need suggests a Prospective Bidder's costs to prepare and develop a Bid are likely to be extremely high.

Example: A JBE has a need for a complex procurement and has ascertained through market research that the cost for Prospective Bidders to develop a Bid is extremely high and may limit the number of bidders willing to participate.

4. The business need or purpose of a procurement is known, but negotiation is necessary to ensure the JBE is receiving the best value or the most cost-effective goods, services, information technology, or telecommunications.

Example: A JBE needs to conduct a procurement for a telecommunications system; however, market research has shown the technology within the industry is changing so rapidly that a traditional procurement method will not yield the best value to the JBE.

Considerations, guidelines, and procedures for negotiation: When a JBE uses a negotiation process, the following considerations, guidelines, and procedures are applicable:

1. Each Solicitation Document must set forth in detail the evaluation methodology and criteria to be applied to that particular solicitation. The evaluation methodology will be specific to the type of procurement being conducted (i.e., goods, services, information technology).
2. An Evaluation Team will evaluate all Bids according to the methodology specified in the Solicitation Document and consider all award-evaluation criteria, which may include administrative and technical requirements, as well as price.

3. The JBE may elect to proceed with negotiations if one or more conditions identified above (in “When to use a negotiation process”) exists. In some instances, the condition supporting negotiations may be known to the JBE prior to issuing a solicitation. In some instances, the condition supporting negotiations may not be known to the JBE until after a solicitation commences.
4. If the JBE elects to proceed with negotiations, a negotiation team must be convened. The negotiation team may be the same team as the Evaluation Team on any individual procurement or may be limited to legal counsel, the PCO, the Buyer, or another authorized person or persons.
5. Once convened, the negotiation team must confirm the purpose and scope of the negotiations and the identity of the Bidders to be invited to participate in the negotiation process.
6. The JBE must identify the Bidders that will participate in the negotiations in one of the following ways:
 - The JBE may identify in the Solicitation Document the methodology that will be used to identify Bidders to participate in negotiations. This may include, but is not necessarily limited to, a methodology that establishes a competitive range based on Bidders’ preliminary rankings following initial Bid evaluations;
 - The JBE may identify in an addendum to the Solicitation Document the methodology that will be used to identify Bidders to participate in negotiations;
 - or
 - The JBE may negotiate with all responsive responsible Bidders following Bid evaluations.

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 negotiating leverage with the leading Bidder and still has an opportunity to negotiate exceptions taken by lower-ranked bidders before the final score and ranking are determined. The JBE states in the Solicitation Document 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 do come in and are scored, the evaluation team notes that the Bid with the highest score includes material 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.

7. JBEs must notify Bidders in writing:

- That the JBE is initiating a negotiation process;
- Of the general purpose and scope of the negotiations;
- Of the anticipated schedule for the negotiations; and
- Of the procedures to be followed for those negotiations.

This information may be provided in a single document or separate documents.

8. If needed, the JBE may issue additional information and/or instructions to Bidders participating in negotiations.
9. As part of the negotiation process, participating Bidders may be asked to submit supplemental Bids. Any request for supplemental Bids must be directed in writing to all Bidders participating in the negotiations, and must provide details concerning the format and due date for the supplemental Bids.
10. The negotiation team must decide how the negotiations will be completed:
- In a single round, or in several rounds; and
 - Orally or in writing.
- Oral negotiations may be held in person, by conference call, or by use of video or web conferencing.
11. The Buyer must maintain a written record describing the procedural steps taken in the negotiation process and the basis for final contract award.
12. The JBE may terminate negotiations and/or the solicitation at any time.

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 rule 10.620

CRC rule 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% of the total trial court budget; and
- The execution of a contract that exceeds the greater of \$400,000 or 10% of the total trial court budget.

For detailed requirements regarding this notice, see CRC rule 10.620.

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

California Technology Agency (CTA) Review

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 CTA, as specified in GC 68511.9.

C. Other Procurements over \$1 Million

Bureau of State Audits (BSA) Review

If the total cost of the purchase is estimated at more than \$1 million, the Buyer must notify the BSA in writing of the existence of such contract, as specified in PCC 19204(a). The JBE must make this notification within 10 days of execution of the contract. BSA may review the contract to ensure compliance with the California Judicial Branch Contract Law.

Note: This requirement does not apply to contracts covered by GC 68511.9 (i.e., contracts for administrative and infrastructure IT projects over \$5 million) discussed in section 2.2.B above.

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.

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

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

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

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

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

~~Consequently, avoid typos, scratch-outs, and personal notations not relevant to the procurement.~~

~~APPENDIX A~~
~~LEASE VERSUS PURCHASE ANALYSIS~~

~~[To be developed, based on SAM 3700 et seq.]~~



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 3
Page 1 of 12

SOCIOECONOMIC AND ENVIRONMENTAL PROGRAMS

CHAPTER 3

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
3.1 California Disabled Veterans Business Enterprise (DVBE) Program	3
A. Purpose.....	3
B. Administration	4
C. Outline of Principal Requirements for JBE Implementation of the DVBE Program.....	4
D. Adoption of Rules and Procedures for a DVBE Program	5
E. Appointing a DVBE Advocate.....	5
F. Waiver of a DVBE Incentive	6
G. General Requirements for DVBE Procurements	6
1. Verifying Bidder Status as a DVBE	6
2. Determining if a DVBE Performs a Commercially Useful Function	7
3. Other Requirements.....	8
4. Other Considerations	9
3.2 Americans with Disabilities Act Considerations.....	9
3.3 State Agency Buy Recycled Campaign (SABRC) Program	10
A. Utilizing Recycled Content Products	10
B. Recycled Preference and Competitive Solicitations	11
C. Supplier Certification	11
D. Printer Cartridges	11

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 Veterans 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 to familiarize JBEs with the importance of making all procurement activities available to all persons, including persons with disabilities. Finally, this chapter discusses the requirements of California's State Agency Buy Recycled Campaign (SABRC) program that promote the purchase of products that are energy efficient and have other preferable environmental attributes.

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 VETERANS 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.¹

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

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

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

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

B. Administration

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

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

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

1. Adopting rules and procedures to implement the requirements of MVC 999 and the following and PCC 10115 et seq.;
2. Appointing a DVBE advocate;
3. Determining which contracts are subject to a DVBE Incentive;
4. Utilizing available resources for implementation of the program; and
5. For those procurements that provide for a DVBE Incentive:
 - Verifying Bidder status as a DVBE;
 - Verifying whether the certified DVBE is providing a “commercially useful function” as that term is defined below;
 - Not awarding any contract to a Bidder suspended for violating PCC 10115.10 for the period of the applicable suspension;

- Not permitting a Vendor to utilize a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension;
- Notifying the Office of Small Business and Disabled 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. ~~Alternatively, the~~ DGS has established a system of rules and regulations for managing the DVBE program that includes forms that may be adopted and modified by JBEs that wish to establish their own program. The AOC Finance Division's Business Services Unit (BSU), with the assistance of the AOC Office of the General Counsel (AOC/OGC), will develop a program for use by the AOC that will be available for JBEs to adopt or use in developing their own rules and procedures. Additionally, the BSU and the AOC/OGC will be available to assist courts in establishing a program.

Rules and procedures for the following must be established:

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

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

E. Appointing a DVBE Advocate

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

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

F. Waiver of a DVBE Incentive

Although all competitive procurements are subject to the DVBE incentive, a JBE, through its Procurement and Contracting Officer (PCO) or designee (see chapter 1), has the discretion to waive inclusion of DVBE participation in an individual solicitation. Note, however, that the overall DVBE participation goal of 3% 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, search on California DGS or (www.bidsync.com/DPXBisCASB). If this database is used in support of DVBE certification, a printout can simply be placed in the procurement file.

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

A plan is a Bidder's written commitment to contract with certified DVBEs for at least 3% 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% 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:

- “Broker” or “agent” means any individual or entity, or combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding JBE, unless one or more certified disabled veterans has 50% 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,² 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.

² The determination is made from the Bidder information supplied with its Bid (see preceding paragraph).

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; 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 Veteran Affairs and the DGS Office of Small Business and DVBE Services (OSDS) in implementing the DVBE program. (PCC 10115.4 and MVC 999.6)

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

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

- Fraudulently obtaining or retaining certification as a DVBE, or aiding another to do so;
- Making a false statement to defraud a state official or employee to influence certification as a DVBE;

- Obstructing or impeding the investigation of qualifications of a business entity as a DVBE;
- Fraudulently obtaining, attempting to obtain, or helping another to obtain public monies to which there is no entitlement under the laws establishing the DVBE program; and
- Establishing or exercising control over a firm that has engaged in such activities. (See PCC 10115.10 for a complete list of violations and associated penalties.)

Contractor post-contract 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.³

3.2 AMERICANS WITH DISABILITIES ACT CONSIDERATIONS

³ 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.

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

JBEs must provide reasonable accommodations 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 accommodations” 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 (Public Resources Code section 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% 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 post-consumer recycled content varies by category (e.g., recycled paper products must consist of at least 30% postconsumer fiber).

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

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

B. Recycled Preference and Competitive Solicitations

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

C. Supplier Certification

Unless otherwise waived as noted below, JBEs must require all Vendors to certify in writing, under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the JBE (PCC 12205). This requirement applies even if the product contains no recycled material. To access the Post-Consumer Recycled-Content Certification form (CIWMB 74), search on CalRecycle or www.calrecycle.ca.gov/buyrecycled/stateagency/Forms/CIWMB74.doc.

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

D. Printer Cartridges

No JBE may purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person (PCC 12156). Each JBE must print a statement on the cover of its printer or duplicator cartridge Solicitation

Documents, 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).



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 4
Page 1 of 21

COMPETITIVE SOLICITATION OVERVIEW

CHAPTER 4

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
4.1 The Basics of Competition	3
A. General Requirements	3
B. Developing Prospective Bidder Resources	3
C. Confidentiality.....	4
D. Advertising	6
E. Samples	8
4.2 Solicitation Documents Generally.....	8
A. Developing the Solicitation Document.....	8
B. Required Provisions	9
C. Amending a Solicitation Document	12
D. Multiple Awards for Services	13
4.3 Bid Handling.....	13
4.4 Vendor Selection	14
A. Vendor Selection Basics	14
B. No Bids	14
C. Ineligible Businesses.....	15
D. Deviations	17
4.5 Follow-On Contracting.....	19
4.6 Summary Document.....	20
Appendix A Darfur Contracting Act Certification.....	22

INTRODUCTION

This chapter discusses topics that arise in multiple types of competitive solicitations. Chapters 4A, 4B, and 4C 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.

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

B. Developing Prospective Bidder Resources

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) database;
- Internet searches; and
- Telephone directories.

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. Buyers ~~should~~must provide a copy of the Solicitation Document to all responding Prospective Bidders. The Buyer should retain the RFI and the contact list in the procurement file.

RFI components: 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 provide contact name, address, telephone number, and submittal date; and
- Include where and how to submit the response to the RFI.

C. Confidentiality

During the solicitation development, information regarding the solicitation is confidential. This is to prevent any Prospective Bidder from obtaining an unfair advantage. Before the public opening of written Bids, any Bids received must remain confidential. If a solicitation is conducted using an RFQ, Bids remain confidential until execution of a contract. ~~Before the award of a contract using a RFQ, the Bids received must remain confidential.~~

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

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

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 for more information.

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.

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

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

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 BidSync system, or other electronic bidding systems, may require that an advertisement remain in the CSCR longer than 10 days. Buyers should confirm the advertisement end date if using these systems.

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

Re-solicitations: A JBE conducting a re-solicitation does not need to re-advertise the solicitation if:

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

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.

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

A JBE may submit an advertisement to CSCR by using DGS Procurement Division's Internet Web page (www.pd.dgs.ca.gov), or by submitting Form STD 815 to DGS/Business Development Unit (contact Marc Anderson at (916) 375-4582 or marc.anderson@dgs.ca.gov). 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 pre-purchase testing, the Solicitation Document should:

- Explain that sample goods are required for demonstration or pre-purchase 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 (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.

Avoid writing restrictive requirements: JBEs should not include requirements in competitive solicitations 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.

B. Required Provisions

Bidder Instructions: Each Solicitation Document ~~should~~must 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.

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 appendixes.

Protest information: Each Solicitation Document must include information regarding protest procedures, including relevant protest deadlines and the name and address of the Protest Hearing Officer. 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.

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;
- Requirement of a signature of an authorized Bidder representative who can bind the Bidder contractually;
- 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;
- Evaluation information; and
- ~~Information regarding protest procedures (including relevant protest deadlines and the name and address of the Protest Hearing Officer).~~

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

- Bidder conflict of interest (see PCC 10410 - 10411);
- Antitrust claims (see GC 4552 - 4554); and
- ~~Loss leader prohibition.~~

Bidder signatures: For any written solicitation, regardless of dollar value, solicitation format, or delivery method (i.e., faxed, mailed, emailed, or delivered in person), Bids must 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 email or telephone using an RFQ, although the Buyer should must document the name of the Bidder representative who provides the Bid.

Faxed bid responses: The following paragraph (or equivalent) must be included in all written ~~competitive~~ 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. To be considered, all pages of the faxed bid that are received before the bid opening time specified in the solicitation document will be considered 'the complete bid.' Please be advised that there is a heavy demand placed on the fax machine receiving bids and the JBE assumes no responsibility if a bidder cannot transmit its bid via fax, or if the entire bid is not received before the bid opening time.

Note: JBEs should consider adopting a solicitation value (e.g., \$100,000) above which faxed bids will not be accepted. JBEs should also consider limiting the acceptance of faxed Bids to solicitations using an RFQ. Any limit on faxed bids should be included in the JBE's Local Contracting Manual.

Loss leader prohibition: Except as noted below, every Solicitation Document must contain the following statement:

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

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

- Request for Offers (RFOs) for acquisitions from LPAs; and
- Procurements under \$5,000.

Other Considerations and Requirements: JBEs are reminded to include socioeconomic and environmental program language in their solicitations, as applicable. Refer to chapter 3 for further information.

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

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

Tie bids: It is possible that the Evaluation Team, after considering all stated evaluation criteria, may assign the same score to two or more Bids. 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.

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

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

C. Amending a Solicitation Document

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 solicitation 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. The addendum must be communicated to Prospective Bidders in the same manner in which the original solicitation was communicated to the Prospective Bidders, except when the solicitation was conducted by phone, as noted below.

Example: If a solicitation is conducted by phone, then the addendum may be communicated by phone or in writing, at the Buyer's discretion. If the addendum is communicated by phone, the addendum information must be documented as part of the RFQ and must become part of the procurement file.

Example: An addendum to an IFB or RFP cannot be communicated by phone. If the solicitation was released in written format, any addendum to the solicitation must be in writing.

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, the addendum is significant and Prospective Bidders will need more time to submit a responsive Bid, then the Bid Closing Time should be extended in the addendum.

Evaluation criteria revisions: Evaluation criteria may not be changed after the Bid due date and time~~once Bids have been submitted~~.

D. Multiple Awards for Services

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

The single solicitation must (i) have clear, concise descriptions of the work to be performed or goals and objectives to be achieved, (ii) state the intended number of awards, (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

Bid submissions: Generally, Bids are handled as follows:

- When sealed Bids are required, each Bid must be separately sealed inside an envelope, signed, 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.¹

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

- The Solicitation Document specifically states they will be allowed; and

¹ A JBE may adopt, in its Local Contracting Manual, a requirement that late Bids be returned unopened to the applicable Bidder.

- They are received on the fax machine at the phone 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 cost submission cannot be faxed.

4.4 VENDOR SELECTION

A. Vendor Selection Basics

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

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

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

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

B. No Bids

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

Option 1: The Buyer may cancel and re-issue 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 5.7.A. If possible, the JBE should select as the sole source a Responsible Bidder whose Bid was substantially technically compliant/responsive with the specifications.

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

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

C. Ineligible Businesses

Various provisions of California law prohibit JBEs from contracting with certain entities. The Buyer must ensure that a contract is not executed with an ineligible entity.

~~Good Standing: Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. JBEs can determine whether a corporation is in good standing by accessing the Office of the Secretary of State's web site at www.ss.ca.gov.~~

~~Plastic Trash Bag Law: JBEs cannot contract with any plastic trash bag supplier, manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, that is not compliant with the Recycled Content Plastic Trash Bag Law,² regardless of the goods or services being provided. The prohibition extends beyond trash bags to all goods and services.~~

~~The Recycled Content Plastic Trash Bag Law requires that plastic trash bag manufacturers and wholesalers certify their compliance with the law. Those businesses~~

² ~~Public Resources Code section 42290 and following.~~

~~(and any of their divisions, subsidiaries, or successors) found to be not in compliance are deemed to be ineligible for:~~

- ~~• Award of any JBE contract or subcontract; and~~
- ~~• Renewal, extension, or modification of an existing contract or subcontract.~~

~~Because a Bidder may have divisions, subsidiaries, or successors, unknown to the JBE, that supply or manufacture plastic trash bags, the JBE should include appropriate certifications even in contracts unrelated to plastic trash bags.~~

~~A listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the CalRecycle website at www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/.~~

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 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, or develop its own form.

The only exception to JBEs obtaining this information is for contracts awarded using LPAs, or for 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.

~~Timing of checks: JBEs may check for ineligible businesses when creating contact lists, before soliciting Bids, during the evaluation of Bids, or before the creation of a contract or amendment. In any event, the JBE must ensure that it does not enter into a contract with an ineligible business.~~

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.

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 ~~them~~ must be rejected. All such deviations must be documented in the procurement file to support the rejection.

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.

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.

Material Deviation: A material deviation ~~in the Bid that~~ affects the amount of the Bid, or provides an advantage or benefit not allowed other Bidders. A material deviation ~~that~~ 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.

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.
- Bids must be accepted until the specified closing date and time.

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

4.6 FOLLOW-ON CONTRACTING

A Vendor may, as part of the consulting services provided to a JBE, recommend or suggest the purchase of certain goods or services. This is common when, for example, the JBE contracts with a Vendor to create a feasibility study. No Vendor (or subsidiary thereof) that makes such a recommendation may submit a Bid or be awarded a contract to provide those goods or services to the JBE. In addition, no Vendor may be paid out of JBE funds for developing recommendations on the acquisition of IT goods or services or assisting in the preparation of a feasibility study, if that Vendor is to be a source of such acquisition or would otherwise directly and/or materially benefit from the JBE's adoption of such recommendations or the course of action recommended in the feasibility study.

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

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

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

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

1. IT contracts typically considered as consulting services contracts:
 - Feasibility study;
 - Strategic planning and business process reengineering/improvement (not included in the lifecycle of an IT project); and
 - Maintenance and operations.
2. IT contracts typically not considered as consulting services contracts:
 - Design development and implementation;
 - Project management;
 - Independent validation and verification; and
 - Independent project oversight consultant.
3. IT contracts that require analysis of the specific details of the contract to determine whether or not it is a consulting services contract:
 - Acquisition specialist.

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

4.7 SUMMARY DOCUMENT

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

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

Procurement summary information includes but is not limited to:

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

APPENDIX A**DARFUR CONTRACTING ACT CERTIFICATION**

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

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

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

OR

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

OR

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

CERTIFICATION FOR PARAGRAPH 3:

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

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

~~Public Contract Code sections 10475 – 10481 apply to any company that currently or within the previous three years has had business activities or other operations outside of the United States. For such a company to submit a bid to a [Court/HCRC/AOC], the company must certify that it is either (a) not a scrutinized company; or (b) a scrutinized company that has been granted permission by the [Court/HCRC/AOC] to submit a bid. If your company, within the previous three years, has not had any business activities or other operations outside of the United States, you do **not** need to complete this form.~~

OPTION #1 - CERTIFICATION

~~If your company, within the previous three years, has had business activities or other operations outside of the United States, in order to be eligible to submit a bid, please insert your company name and Federal ID Number and complete the certification below.~~

~~I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that (a) the company named below is **not** a scrutinized company per Public Contract Code section 10476; and (b) I am duly authorized to legally bind the company named below. This certification is made under the laws of the State of California.~~

<u>Company/Vendor Name (Printed)</u>	<u>Federal ID Number</u>
--------------------------------------	--------------------------

<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>

OPTION #2 – WRITTEN PERMISSION FROM THE [COURT/HCRC/AOC]

The [Court/HCRC/AOC] may permit a scrutinized company, on a case-by-case basis, to bid on a contract with the [Court/HCRC/AOC] for goods or services, if it is in the best interests of the [Court/HCRC/AOC]. If you are a scrutinized company that has obtained written permission from the [Court/HCRC/AOC] to submit a bid or proposal, complete the information below.

The company identified below is a scrutinized company as defined in Public Contract Code section 10476, and it has received written permission from the [Court/HCRC/AOC] to submit a bid or proposal. A copy of the written permission from the [Court/HCRC/AOC] is included with our bid or proposal.

<i>Company/Vendor 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

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
Step 1 – Determine the Procurement Value.....	3
Step 2 – Develop List of Prospective Bidders	4
Step 3 – Assemble Procurement Team.....	4
Step 4 – Select Solicitation Document Type	4
Step 5 – Draft Solicitation Document.....	5
Step 6 – Prepare Advertising	7
Step 7 – Receive Bids	7
Step 8 – Open Bids	8
Step 9 – Determine if Competition has been Achieved	8
Step 10 – Bid Clarification	8
Step 11 – Evaluate the Bid.....	8
Step 12 – Notice of Intent to Award.....	10
Step 13 – Create the Contract.....	10
Step 14 – Create the Procurement Summary Document	11
Step 15 – Notify BSA of Large Contracts	11
Selected Topics Relevant to Solicitations of Goods	11
A. Incidental Services	11
B. California Seller’s Permit.....	12
C. Motor Vehicles	12
D. Solicitations of Printer or Copier Cartridges	13

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 valued at \$5025,000 or above 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 at \$5025,000 or above (PCC 10301).

This chapter sets forth a step-by-step guide that Buyers can use when competitively soliciting non-IT goods. For non-competitive solicitation of non-IT goods, see chapter 5.

DEFINED TERMS

The definitions of capitalized terms used in this chapter 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-must 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.

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 for additional information on developing a list of Prospective Bidders.

~~The Buyer should consider verifying whether any of the Prospective Bidders identified is ineligible for contract award. By doing so, the Buyer will avoid soliciting Bids from entities to which the JBE cannot award the contract. The verification must be completed in any event before contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~

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](#) ~~chapter 2, section 2.1.C~~ for more information on seeking legal participation.)

If required by the Local Contracting Manual, the Buyer ~~should~~must have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C 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:

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

For procurements valued less than \$50,000, the Buyer may use an RFQ or IFB. For procurements valued at or above \$50,000, a Buyer must use an IFB. See the table below for additional information about when each type of Solicitation Document should be used.

Solicitation Document	Procurement Size	Description
RFQ	Up to \$50,000 ¹	Used for straightforward, uncomplicated, and low-risk procurements. <i>Note: Cannot be used if incidental services included in the purchase (e.g., set-up, installation) exceed \$4,999.99 unless an exemption is granted. See section A in the “Selected Topics Relevant to Solicitations of Goods” section below for additional information.</i>
IFB	Any size	Used for more complicated, higher risk, and higher value procurements.

~~* A JBE may adopt a lower threshold on the use of RFQs. Any lower threshold should be included in the JBE’s Local Contracting Manual.~~

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 The Solicitation Document should comply with the applicable requirements set forth in chapter 4, section 4.2. In particular, it must include all provisions identified as required. In addition, the Solicitation Document should specify any warranty requirements.

¹ A JBE may adopt a lower threshold on the use of RFQs. Any lower threshold should be included in the JBE’s Local Contracting Manual. Also, procurements under \$5,000 may be conducted without a competitive solicitation; see chapter 5 section 5.1.

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

- The Bidder must submit a California seller's permit certification (see section B in the "Selected Topics Relevant to Solicitations of Goods" section below for additional information); and
- 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.

RFQs: An RFQ is used for straightforward procurements where Bids ~~are~~ 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 email 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 phone, email, fax, etc.); and
- Include a reference to the web page containing the current bidder instructions and applicable general provisions associated with the purchase, if applicable.

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 appendixes. The IFB should state that any ~~proposed~~ 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.

~~When using an IFB, the Buyer should consider whether to use a negotiation process. If so, appropriate language must be included in the IFB. See chapter 2, section 2.1.G for additional information on using a negotiation process.~~

STEP 6 – PREPARE ADVERTISING

A JBE should-must advertise any solicitation of non-IT goods **in excess of \$50,000**. See section chapter 4, section 4.1.D 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.

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

STEP 7 – RECEIVE BIDS

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

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

IFBs: If the estimated value of the purchase is \$50,000 or higher, Bids must be submitted in sealed envelopes. A JBE ~~may wish to~~should time/date stamp Bids as they are received.

STEP 8 – OPEN BIDS

All Bids in response to IFBs must be publicly opened at the time and place specified in the ~~IFB Solicitation Document~~. 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.

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.

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 ~~may~~should contact the Bidder that submitted the affected Bid.

STEP 11 – EVALUATE THE BID

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.

~~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. If the Bidder has taken a material exception to any of the JBE's terms and conditions, the JBE should deem the Bid to be non-responsive.~~ JBEs have discretion to determine materiality.

~~Before awarding the contract, the Buyer should verify whether any of the Bidders are ineligible for contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~ 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 contract.
- **Responsive Bid** means a Bid that indicates compliance without *material deviation* from the requirements of the Solicitation Document and the terms and conditions of the proposed contract. See chapter 4, section 4.4.D for guidance on determining whether a deviation is material.

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).

RFQs: The JBE should award the contract to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable. (PCC 10301 requires contracts of ~~\$50~~\$25,000 or more to be awarded to the lowest responsible bidder. Because RFQs are used for procurements under that threshold, JBEs are not statutorily required to award those contracts to the lowest responsible bidder, but should do so in the absence of a valid business reason.)

Note: See chapter 3 for more information regarding preferences, incentives, and discounts.

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

Note: See chapter 3 for more information regarding preferences, incentives, and discounts.

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 posting and notification requirements when using an IFB.

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.

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 ~~has made a final decision regarding the action to be taken~~ relative to the protest. For more information regarding protest procedures, see chapter 7.

STEP 13 – CREATE THE CONTRACT

The Buyer ~~should~~must memorialize the purchase using a contract. Except in extraordinary circumstances, negotiations ~~should~~ ^[AOC1] be limited to finalizing the form of agreement and non-substantive terms. 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.

STEP 15 – NOTIFY BSA OF LARGE CONTRACTS

If the total cost of the purchase is ~~estimated to be more than~~ \$1,000,000 ~~or higher~~, the Buyer must notify the Bureau of State Audits (BSA) in writing of the existence of the contract. The JBE must make this notification within 10 business days of execution of the contract. BSA may review the contract to ensure compliance with the California Judicial Branch Contract Law.

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~~Must not exceed \$4,999.99, and
- ~~Should~~Must be directly related to the purchase of the non-IT goods, such as set up or installation.

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

The Approving Authority may grant an exemption to these requirements if the Approving Authority 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. California Seller's Permit

~~The Each Prospective~~ Bidder must certify that it and all of its affiliates that make sales for delivery into California are holders 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 selected Bidder must submit supporting 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.

C. 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.

D. 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

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
Step 1 – Determine the Procurement Value.....	3
Step 2 – Determine the Type of Service.....	3
Step 3 – Develop List of Prospective Bidders	4
Step 4 – Assemble Procurement Team.....	4
Step 5 – Select Solicitation Document Type	5
Step 6 – Draft Solicitation Document.....	6
Step 7 – Prepare Advertising	12
Step 8 – Optional: Hold Bidders’ Conference.....	12
Step 9 – Receive Bids	13
Step 10 – Open Bids	13
Step 11 – Determine if Competition has been Achieved	13
Step 12 – Check for Ineligible Bidders	14
Step 13 – Optional: Hold Oral Interviews/Clarifications	15
Step 14 – Evaluate Bids	15
Step 15 – Notice of Intent to Award.....	17
Step 16 – Create the Contract.....	19
Step 17 – Create the Procurement Summary Document	19
Step 18 – Notify BSA of Large Contracts	19

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 ~~goods~~ services. For non-competitive 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~~ must not split a single transaction into a series of transactions for the purpose of evading procurement requirements.

STEP 2 – DETERMINE THE TYPE OF SERVICE

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

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

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

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

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

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

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 for additional information on developing a list of Prospective Bidders.

~~The Buyer should consider verifying whether any of the Prospective Bidders identified is ineligible for contract award. By doing so, the Buyer will avoid soliciting Bids from entities to which the JBE cannot award the contract. The verification must be completed in any event before contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~

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 8.34.B](#) ~~chapter 2, section 2.1.C~~ for more information on seeking legal participation.)

If required by the Local Contracting Manual, the Buyer ~~should~~must have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C 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:

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

For procurements valued at less than \$5,000, the Buyer may use an RFQ, IFB, or RFP. For procurements of \$5,000 or above, the Buyer may use an IFB or an RFP.

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

Solicitation Document	Procurement Size	Description	Awarded to:
RFQ	Less than \$5,000 ¹	Used for very small purchases.	Lowest Responsible Bidder <u>or Highest Scored Bid, at the JBE's discretion</u>

¹ Alternately, procurements under \$5,000 may be conducted without a competitive solicitation; see chapter 5 section 5.1.

IFB	Any size	Used for for a wide range of non-IT services, from (a) simple, common, or routine services that may require personal or mechanical skills to (b) complex services in which professional expertise is needed.	Lowest Responsible Bidder
RFP	Any size	Used for very 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

An ~~RFP-IFB is often should not be~~ 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 ~~should~~ 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. The Solicitation Document should comply with the applicable requirements set forth in chapter 4, section 4.2. In particular, it must include all provisions identified as required. In addition, the Solicitation Document should specify any warranty requirements.

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 ~~are~~ 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 email 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 phone, email, fax, etc.); and
- Include a reference to the web page containing the current bidder instructions and applicable general provisions associated with the purchase, if applicable.

Before soliciting Bids in response to an RFQ, the JBE should determine whether 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 appendixes.
- 3.4. Where the intent to award notice will be posted. If the JBE will post the intent to award notice on its web site, 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 for more information regarding Progress Payments.

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

1. A description of the Bidder's qualifications, including:
 - 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 performed similar work.
3. A list of similar services successfully completed by the Bidder, with samples if applicable.
4. 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.
5. Identification of a project coordinator.
6. Resumes for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the non-IT services (resumes are required, not optional, for consulting services contracts).
7. An overall description of the techniques, approaches, and methods to be used in performing the non-IT services.
8. 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;
 - resumes of each major subcontract participant; and
 - description of how subcontracted work will be controlled, monitored, and evaluated.
9. 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.

~~When using an IFB or RFP, the Buyer should consider whether to use a negotiation process. If so, appropriate language must be included in the IFB or RFP. See chapter 2, section 2.1.G for additional information on using a negotiation process.~~

C. IFBs Specifically

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.

~~Other Procurement-Related Information: The IFB must state where the intent to award notice will be posted, if any Bidder requests such posting. If the JBE will post the intent to award notice on its web site, the JBE should specify the applicable URL.~~

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 a Bid that takes exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive.

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% of the total points.
- Exceptions (additions, deletions, or other modifications) to the JBE's terms and conditions are evaluated and given substantial weight in the score assigned to the Bid.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive~~will be deemed nonresponsive~~.

The RFP must contain the ~~JBEs should disclose in the RFP the~~ evaluation criteria or categories and should state 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. ~~The RFP must also state where the intent to award notice will be posted. If the JBE will post the intent to notice award on its web site, the JBE should specify the applicable URL.~~

STEP 7 – PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT services **of \$5,000 or more**. See section chapter 4, section 4.1.D 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.

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. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of non-IT services using different Solicitation Documents.

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

IFBs and RFPs: Bids must be submitted as specified in the IFB or RFP. A JBE ~~should~~may wish to date/time stamp Bids as they are received.

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.

IFBs: ~~The Buyer~~A JBE staff member must review all Bids received to determine those that meet the format requirements and the standards specified in the IFB. The sealed envelopes containing the cost portions for those Bids that meet the format requirements and standards must then be publicly opened at the time and place specified in the IFB.

~~A JBE staff member~~The Buyer (or designee) must read the cost information for each Bid that meets the format requirements and standards.

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.

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.

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 (which may be accessed via DGS's BidSync system) 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).
- ~~The procurement is for the development, maintenance, administration, or use of licensing or proficiency testing examinations.~~

If the JBE does not receive at least three Bids, and none of the exceptions above applies, then:

- The Buyer should consider canceling and re-issuing the solicitation. If the Buyer takes this course, the Buyer should consider modifying any possible restrictive requirements in the IFB or RFP.

If the Buyer decides to award the contract, the Buyer should must document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

~~STEP 12 – CHECK FOR INELIGIBLE BIDDERS~~

~~The Buyer should verify whether any of the Bidders are ineligible for contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~

~~In addition, when non-IT services are to be performed in the state by a corporation, the JBE should obtain verification that the Bidder is currently qualified to do business in California in order to ensure that all obligations to the state have been fulfilled.~~

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 may 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. The JBE should evaluate the Bids in accordance with chapter 4, section 4.4 and this step.~~ The JBE will must award the contract as described in this step. However, there is no requirement to award a contract if:

- In the opinion of the JBE, no Bid contained a reasonable contract price, or
- There is another business-based reason not to make an award.

A. RFQs

~~The JBE may award the RFQ 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. RFQs and IFBs

The JBE must evaluate the Bids and award the contract 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, financial resources and is fully capable of performing the contract.
- **Responsive Bid** means a Bid that indicates compliance without *material deviation* from the requirements of the Solicitation Document and the terms and conditions of the proposed contract (see chapter 4, section 4.4.D for guidance on determining whether a deviation is material).

Note: See chapter 3 for more information regarding preferences, incentives, and discounts.

C. RFPs

~~A JBE staff member~~ **The Buyer** must review all Bids to determine which meet the format requirements specified in the RFP.

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 to the Bidder whose Bid is given the highest score by the Evaluation Team. As discussed above, however, the JBE may decide not to award the contract at all.

Suggested Non-Cost 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 awarding-assigning cost points set forth in chapter 4C, appendix A. Alternately, JBEs may adopt their own processes for awarding-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. ~~The JBE may issue notices of intent to award in other circumstances in its own discretion.~~

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.

~~**Note:** This step is inapplicable to solicitations using RFQs.~~

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.

~~Once the notice has been posted, the time for submitting a protest begins to count down.~~

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 email 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 ~~has made a final decision as to the action to be taken relative~~ to the protest. For more information regarding the protest procedure, see chapter 7.

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 must not award the contract until either the protest has been withdrawn or the JBE's Protest Hearing Officer has responded ~~has made a final decision as to the action to be taken relative~~ to the protest. For more information regarding the protest procedure, see chapter 7.

STEP 15 – CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Except in extraordinary circumstances, negotiations should ^[AOC1] be limited to finalizing the form of agreement and non-substantive terms. The contract must be signed by an authorized representative of the Bidder that can bind the Bidder contractually.

STEP 16 – CREATE THE PROCUREMENT SUMMARY DOCUMENT

The Buyer should create a procurement summary document and place it in the procurement file (for more information on procurement summary documents, see chapter 4, section 4.7).

STEP 17 – NOTIFY BSA OF LARGE CONTRACTS

If the total cost of the purchase is estimated to be more than \$1 million ~~or higher~~, the Buyer must notify the Bureau of State Audits (BSA) in writing of the existence of the contract. The JBE must make this notification within 10 business days of execution of the contract. BSA may review the contract to ensure compliance with the California Judicial Branch Contract Law.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 4C
Page 1 of 28

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

CHAPTER 4C

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	4
Defined Terms.....	4
Step 1 – Perform Preliminary Analysis.....	4
Step 2 – Develop List of Prospective Bidders	5
Step 3 – Assemble Procurement Team.....	5
Step 4 – Select Solicitation Document Type	6
Step 5 – Consider Phased Approach	7
Step 6 – Draft Solicitation Document.....	8
Step 7 – Prepare Advertising	16
Step 8 – Optional: Hold Bidders’ Conference.....	17
Step 9 – Optional: Complete Phased Approach Steps.....	17
Step 10 – Receive Bids.....	19
Step 11 – Open Bids	19
Step 12 – Determine if Competition has been Achieved	20
Step 13 – Check for Ineligible Bidders	20
Step 14 – Optional: Hold Oral Interviews/Clarification.....	20
Step 15 – Evaluate Bids	21
Step 16 – Notice of Intent to Award.....	23
Step 17 – Create the Contract.....	24
Step 18 – Create the Procurement Summary Document	24
Step 19 – Mandatory Reporting	25
Selected Topics Relevant to the Solicitation of IT Goods and Services	25
A. New IT Equipment.....	25
B. Performance-Based or Share-In Savings Contracts	26
C. Solicitations of Printer or Copier Cartridges	27
Appendix A – Sample Method for Assigning Cost Points When Evaluating RFPs.....	28

Judicial Branch Contracting Manual	Step-by-Step Guide for the Procurement of IT Goods and Services	Chapter 4C Page: 3 of 30
------------------------------------	--	-----------------------------

Appendix B – Sample Cost Proposal Certification 30

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. (See PCC 12102(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.

DEFINED TERMS

The definitions of capitalized terms used in this chapter 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.

JBEs may-must 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 come 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 for additional information on developing a list of Prospective Bidders. ~~The Buyer should consider verifying whether any of the Prospective Bidders identified are ineligible for contract award. By doing so, the Buyer will avoid soliciting Bids from entities to which the JBE cannot award the contract. The verification must in any event be completed before contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~

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 8.34](#). ~~Chapter 2, section 2.1.C~~ for more information on seeking legal participation.)

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

STEP 4 – SELECT SOLICITATION DOCUMENT TYPE

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

- Request for Quotes (RFQs)
- Requests for Proposal (RFPs)

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

Solicitation Document	Procurement Size	Type of Procurement
RFQ	Up to \$100,000 ^{1*}	IT goods
	Up to \$5,000	IT services
RFP	Any size	IT goods, IT services, and any combination of IT goods and services

¹ A JBE may adopt a lower threshold when using RFQs. Any lower threshold should be included in the JBE's Local Contracting Manual. Also, procurements under \$5,000 may be conducted without a competitive solicitation; see chapter 5 section 5.1.

~~* A JBE may adopt a lower threshold when using RFQs. Any lower threshold should be included in the JBE's Local Contracting Manual.~~

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

STEP 5 – CONSIDER PHASED APPROACH

Note: This step is applicable to RFP-based procurements, but is inapplicable to RFQ procurements.

The JBE should consider a phased approach when using an 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. It requires the JBE, working 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 as reflected in the RFP. It 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 Bid, and it facilitates the correction of defects before they become fatal to the 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 RFP and, if not, where the Bidder must change a concept. This step invites the Bidder to be as innovative as the 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 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 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. The Solicitation Document should comply with the applicable requirements set forth in chapter 4, section 4.2. In particular, it must include all provisions identified as required. In addition, the Solicitation Document should specify any warranty requirements.

If the solicitation includes IT goods, the Bidder must submit a California seller's permit certification. See section A in the "Selected Topics Relevant to Solicitations of IT Goods and Services" section below for additional information.

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 useful in drafting the two types of Solicitation Documents.

A. RFQs

An RFQ is used for straightforward procurements where Bids ~~are~~ 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 email 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 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 phone, email, fax, etc.); and
- Include a reference to the web page containing the current bidder instructions and applicable general provisions associated with the purchase, if applicable.

B. 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 appendixes.

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 any 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; 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 a Bid that takes exception (addition, deletion, or other modification) to a minimum term will be deemed nonresponsive.

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 for more information regarding Progress Payments.

Format and 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, including:
 - 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;
 - Resumes 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;
- Resumes 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) are evaluated and given substantial weight in the score assigned to the Bid.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid ~~will be deemed~~ nonresponsive.

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 time lines.
- 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% and cost should equal 50%.

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

Exception: If the JBE is acquiring hardware independently of a system integration project, the JBE may assign 100% of the total points to cost. In other words, the JBE can award such contracts to the Responsible Bidder that submitted the lowest Responsive Bid after application of any preference, incentives, or discounts, if applicable.

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) paragraphs 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 must should include the language below (or substantially similar language). ~~Amendments to contracts that incorporate a consulting services component that was not part of the original Solicitation Document must also contain this (or substantially similar) language.~~

~~No consultant shall 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 consultant 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.~~

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 agreements (OEM), 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.

~~In addition, should a consultant establish or become aware of such a financial interest during the course of contract performance, the consultant must inform~~

~~the JBE in writing within ten court days. If, in the JBE's judgment, the newly-established financial interest will jeopardize the objectivity of the recommendations, the JBE shall have the option of terminating the contract. A consultant's failure to disclose a relevant financial interest is grounds for termination of the contract with all associated costs to be borne by the consultant.~~

~~The Buyer should consider whether to use a negotiation process. If a negotiation process is desired, appropriate language must be included in the RFP. See chapter 2, section 2.1.G for additional information on using a negotiation process.~~

STEP 7 – PREPARE ADVERTISING

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

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

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

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 not make counter-proposals.~~ The Evaluation Team should only identify its concerns, ask for clarification, and express its reservations if a particular requirement of the RFP is not appropriately satisfied, in the opinion of the Evaluation Team.

At the conclusion of the meeting, the JBE may-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 re-submission 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 will-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 will-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 will-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 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. In addition to those general requirements, this step sets forth additional requirements applicable to solicitations of IT goods and services using different Solicitation Documents.

RFQs: Bids must be submitted as specified in the RFQ. The Buyer must document **any all** Bids received. ~~The Buyer should document all Bids received~~ and retain the documentation in the procurement file. In addition, the RFQ (script, email, or other writing) ~~should~~ **must** be retained in the procurement file.

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

RFPs: The Bids must be submitted as specified in the RFP. A JBE ~~may wish to~~ **should** time/date stamp Bids as they are received.

Bids received pursuant to an RFP solicitation remain confidential until an intent to award notice is posted.

STEP 11 – OPEN BIDS

The JBE must first open the non-cost 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 non-cost portion of all Bids.

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

Note: This step is inapplicable to RFQs, which do not use sealed Bids.

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. RFPs

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

- The Buyer should consider cancelling and re-issuing the solicitation. If the Buyer takes this course, he or she should consider modifying any possible restrictive requirements in the RFP.
- If the Buyer decides to award the contract, the Buyer ~~should~~must document in the procurement file the names and addresses of the firms or individuals that were solicited for Bids.

~~STEP 13 – CHECK FOR INELIGIBLE BIDDERS~~

~~The Buyer should verify whether any of the Bidders are ineligible for contract award. See chapter 4, section 4.4.C for additional information on ineligible entities.~~

~~In addition, when IT services are to be performed in the state by corporations, the JBE should obtain verification that the Bidder is currently qualified to do business in California to ensure all obligations to the state have been fulfilled.~~

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 may-should contact the Bidder that submitted the affected Bid.

STEP 14 – EVALUATE BIDS

The process of evaluating Bids differs significantly for RFQs and RFPs. The requirements in this step are in addition to the general requirements set forth in chapter 4, section 4.4. The JBE should evaluate the Bids in accordance with chapter 4, section 4.4, and any requirements listed in the Solicitation Document, ~~and this step~~. There is no requirement to award a contract if:

- In the opinion of the JBE, no Bid contained a reasonable contract price, or
- There is another business-based reason not to make an award.

A. RFQs

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 for more information regarding preferences, incentives, and discounts.

B. RFPs

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

1. The Evaluation Team must review the non-cost 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 non-cost criteria for all Bids using the methods specified in the RFP.

3. The JBE must publish the results of the completed non-cost evaluation. Unless specified otherwise in the Local Contracting Manual, this publication must occur on the JBE's website.
4. The Evaluation Team must publicly open the cost portion of the Bids as specified in the RFP (except Bids determined to have a material deviation in the non-cost portion).
5. The Evaluation Team must evaluate the cost portion of the Bids opened in item 4 above.

In addition, the evaluation process may include a demonstration, at the JBE's discretion.

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.

~~Suggested Non-Cost Evaluation Criteria: In addition to any criteria specified in the RFP, the JBE may consider using the following criteria when evaluating and scoring Bids.~~

- ~~• 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 time lines.~~
- ~~• Organizational and management capability, management competency, fiscal and personnel resources.~~
- ~~• Exceptions 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.~~

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

Note: There ~~are-is an~~ additional cost evaluation requirement for 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 ~~provide for consideration-of~~ consider a Bidder's "best financing alternative" (including lease or purchase alternatives) if any Bidder requests such consideration at least 30 days before 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 may also include a demonstration of some aspect of a Bid. 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 will be determined by the Bidder; however, its performance within California is preferred and will be attended at the JBE's expense. Demonstration outside California will be attended only if the Bidder agrees to reimburse the JBE for travel and per diem expenses. 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.

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. RFPs:

When using an 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. ~~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 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.

The JBE may, as a courtesy to Bidders, send a copy of the notice of intent to award to each Bidder by email 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 has made a final decision regarding the action to be taken relative~~ to the protest. For more information regarding the protest procedure, see chapter 7.

STEP 16 – CREATE THE CONTRACT

The Buyer should memorialize the purchase using a contract. Except in extraordinary circumstances, negotiations should [AOC1] be limited to finalizing the form of agreement and non-substantive terms. 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.

STEP 18 – MANDATORY REPORTING

There are two types of reports that may be required, depending on the dollar value of the procurement, discussed below.

California Technology Agency (CTA) Reporting

All administrative and infrastructure IT 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 CTA, as specified in Government Code (GC) 68511.9.

Bureau of State Audits (BSA) Reporting

If the total cost of the purchase is estimated to be more than \$1 million ~~or higher~~, the Buyer must notify the BSA in writing of the existence of the contract. The JBE must make this notification within 10 business days of execution of the contract. BSA may review the contract to ensure compliance with the California Judicial Branch Contract Law.

Note: Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure IT projects of the Judicial Council and courts with total costs estimated at more than \$5 million.

SELECTED TOPICS RELEVANT TO THE SOLICITATION OF IT GOODS AND SERVICES

A. California Seller's Permit

If the solicitation includes IT goods, the Bidder must certify that it and all of its affiliates that make sales for delivery into California are holders 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 selected Bidder must submit supporting 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.

A.B. 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.C. 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.D. 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.

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

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

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

| Bidder A is ~~awarded~~ 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 ~~awarded~~ 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



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 5
Page 1 of 10

NON-COMPETITIVELY BID (NCB) PROCUREMENTS

CHAPTER 5

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
5.1 Purchases Under \$5,000.....	3
5.2 Emergency Purchases	4
5.3 Purchases from Governmental Entities	5
5.4 Legal Services.....	5
5.5 Certain LPAs	6
5.6 Community Rehabilitation Programs (CRPs)	6
5.7 Sole Source.....	7
A. Sole Source Purchase	8
B. Repeat Sole Source Authorization	9
5.8 Amendments	9
5.9 Trial Courts: Public Input Requirement.....	10

INTRODUCTION

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

The following are the categories of allowed NCB procurements:

- Purchases under \$5,000;
- Emergency purchases;
- Purchases from a governmental entity;
- Legal services;
- Certain leveraged procurement agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP); and
- Sole source.

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

DEFINED TERMS

The definitions of capitalized terms used in this chapter are set forth in the glossary.

5.1 PURCHASES UNDER \$5,000

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

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

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

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

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

5.2 EMERGENCY PURCHASES

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

Public Contract Code (PCC) 1102 defines an emergency as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

An emergency procurement must be approved in writing by the Approving Authority or his or her delegee. The Approving Authority (or delegee) ~~should~~ 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 ~~an emergency (as defined in PCC 1102) exists.~~

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

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

5.3 PURCHASES FROM GOVERNMENTAL ENTITIES

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

Note: The procurements covered by this section are those in which the governmental entity directly sells the non-IT goods, non-IT services, or IT goods or services to the JBE. This situation is distinct from when a governmental entity has signed an LPA with a Vendor and allows the JBE to purchase from that Vendor using the LPA. For more information on LPAs, see section 5.5 below.

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

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

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

JBEs should carefully review individual LPA user instructions to determine if the LPA is exempt from competitive bidding.

If the LPA is exempt from competitive bidding, the JBE may purchase non-IT goods, non-IT services, or IT goods and services pursuant to the LPA without conducting a competitive procurement. The JBE may make those purchases up to the maximum amount allowed under the LPA, as applicable.

The Buyer should note in the procurement file that the purchase is made through an LPA. Unless otherwise required by the JBE's Local Contracting Manual, no other documentation or approval is required. See chapter 6 for further information on LPAs.

5.6 COMMUNITY REHABILITATION PROGRAMS (CRPS)

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

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

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

5.7 LICENSING OR PROFICIENCY TESTING EXAMINATIONS

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

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

5.8 SUBVENTION AND LOCAL ASSISTANCE CONTRACTS

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

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

5.9 SOLE SOURCE

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

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

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

A. Sole Source Purchase

~~A sole source request must be provided to the sole source approver. The JBE employee requesting the procurement should submit a sole source request 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 should approve the sole source request if he or she determines that the JBE's best interests are served by allowing the sole source procurement. If the sole source approver approves the sole source request, the Buyer ~~may~~ should conduct the procurement as proposed. If the sole source approver denies the sole source request, the Buyer ~~will~~ must 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.

B. Repeat Sole Source Authorization

The JBE may, under certain circumstances, establish a repeat sole source authorization for the NCB procurement of non-IT goods, non-IT services, or IT goods and services. The repeat sole source authorization is limited to a specific type of non-IT goods, non-IT services, or IT goods and services for which:

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

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

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

5.10 AMENDMENTS

The JBE ~~must~~ 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 order where the type of change contemplated in the amendment was not evaluated in the RFO process; and

- Amendments to a small purchase (originally under \$5,000) which increase the value of the purchase to \$5,000 or more, if the original purchase was completed pursuant to section 5.1 above.

Examples:

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 ~~must~~ should submit the amendment to an NCB process.

The JBE purchases 40 chairs, each costing \$100. The value of the purchase (\$4,000) is below \$5,000, and the purchase was completed as an NCB procurement pursuant to section 5.1 above. The JBE wishes to purchase an additional 20 chairs, each costing \$100, through use of an amendment. Because the new value of the contract (\$6,000) will be over \$5,000, the JBE ~~must~~ 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 a NCB amendment request to the sole source approver.

The NCB amendment request should include the following information:

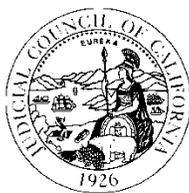
- Description of the contract terms to be changed;
- Documentation that the pricing of the amended contract is fair and reasonable; and
- Why the Buyer has determined that the amendment is in the JBE's best interest.

5.11 TRIAL COURTS: PUBLIC INPUT REQUIREMENT

A trial court must seek input from the public at least 15 Court Days before execution of a NCB contract in an amount that exceeds the greater of \$400,000 or 10% 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 Government Code (GC) 77212).

For detailed requirements regarding this public-input process, see CRC rule 10.620.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 6
Page 1 of 17

LEVERAGED PROCUREMENT

CHAPTER 6

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
6.1 Basics.....	3
A. What is Leveraged Procurement?	3
B. When Is Leveraged Procurement Permitted?	4
C. Certain Issues Concerning the Efficient Use of Public Funds	4
6.2 Description of LPA Programs	5
A. California State LPA Programs	5
B. County, Federal, and Other LPA Programs	10
6.3 Use of LPA programs	11
A. Accessing Available LPAs.....	11
B. Step-By-Step Guide to Procurement of Information Technology (IT) and non-IT Goods and Services Through an LPA	11
C. Amendment of an LPA	17

INTRODUCTION

This chapter addresses benefits, risks, conditions, and processes related to leveraging a procurement undertaken by another government entity or a not-for-profit organization (NPO) established for a public purpose. This chapter also addresses how a Judicial Branch Entity (JBE) may allow another government entity or NPO to leverage a procurement undertaken by the JBE.

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

A. What is Leveraged Procurement?

“Leveraged procurement” is an alternative to competitive or non-competitively bid (NCB) procurement and refers to undertaking and documenting a purchase of goods or services through collaboration with one or more entities, or without collaboration by “tagging on” to an initiating entity’s procurement, under a price schedule negotiated by the initiating entity. Typically, the purpose of leveraged procurement is to:

- Combine buying power, for example, to reduce pricing or improve terms and conditions; or
- Improve efficiency by reducing administrative expense or delay.

An ancillary benefit of leveraged procurement is that certain non-IT goods valued at \$25,000 or more may be awarded based on a “best value” (also known as “value effectiveness”) basis, instead of the “lowest responsible bidder” basis required under chapter 4A.

A leveraged procurement agreement (LPA) refers in this Manual to any contract between an issuing government entity or issuing NPO and its supplier that permits a third entity (e.g., a JBE) to procure the same or substantially similar goods or services on the same or better terms as the issuing entity.

B. When Is Leveraged Procurement Permitted?

Leveraged procurement is optional. A JBE may procure goods or services itself or under the LPA of another purchasing entity, consistent with all of the following:

- Efficient use of public funds;
- Maintenance of sound fiscal practices; and
- Compliance with this Manual and the JBE's Local Contracting Manual, the California Judicial Branch Contract Law, and other applicable law.

C. Certain Issues Concerning the Efficient Use of Public Funds

1. LPA Pricing and Terms

A JBE must assure itself that undertaking the procurement through an LPA can be reasonably expected to result in the efficient use of public funds. JBEs are cautioned that leveraged procurement does not necessarily promote the efficient use of public funds.

Example: A prospective supplier may wish to promote its goods by making them available under a California Multiple Award Schedule (CMAS) contract. The supplier may, however, offer better *prices* to customers that assure the supplier of a certain purchase volume (e.g., under a contract providing for a fixed purchase volume) or enter into a requirements contract. The supplier may also offer its other customers better *terms and conditions*, for example, to include acceptance testing by the customer. In fact, the supplier may *expect* its CMAS pricing and terms to be merely a starting point in negotiations for a separate contract.

In the above example, unless the JBE negotiates better pricing and terms, any administrative cost savings associated with the LPA could be undercut by paying the published price or accepting risk associated with the existing terms of the CMAS contract. This chapter includes step-by-step processes intended to help JBEs obtain value for money under leveraged procurement.

2. Administrative Fees

The Department of General Services (DGS), other entities that establish LPAs, or LPA Vendors may impose LPA-related administrative fees on entities that wish to purchase through LPAs. By undertaking its own procurement, a JBE may avoid the payment of LPA administrative fees.

6.2 DESCRIPTION OF LPA PROGRAMS

For purposes of this Manual, there are two varieties of LPA:

- A collaboratively procured LPA is either:
 - A contract procured in accordance with the procurement requirements applicable to a JBE under this Manual and the JBE's Local Contracting Manual, and with the active participation of the JBE and one or more other public entities or NPOs, and that permits the JBE and the other entity to procure goods or services off of the LPA; or
 - A "piggybacking arrangement," whereby the entity that executes the contract (the "issuing entity") assigns its purchase rights under the contract (e.g., rights under an option to purchase a specified quantity of goods) to a third party. The third party utilizes the issuing entity's rights by executing a contract with the issuing entity. The third party may require the use of terms and conditions that are different from those of the issuing entity, but this requires agreement by the supplier either by use of a separate contract, or tripartite agreement among the issuing entity, third party and supplier.
- A non-collaboratively procured LPA is a contract executed by one or more entities for the entities' own purchases of goods or services, but does not provide for a third party's purchases. The third party purchases off the LPA by "tagging" onto the pricing and other terms of the LPA by executing a separate contract with the supplier on terms and conditions that are substantially similar to those in the issuing entity's contract.

A. California State LPA Programs

1. JBE LPA Programs

- a. Use of a JBE LPA Program: JBEs may procure goods and services using LPAs established by the AOC or another JBE under terms and conditions established by the AOC or other JBE. A JBE may also procure goods and services under an LPA that the JBE itself has previously established on the same terms as the LPA provides for other entities to procure them. The JBE, however, must not divide a single procurement into two or more transactions to avoid competitive procurement and other requirements applicable to a larger procurement.

Note: At the time of publication of this Manual, the AOC has established LPAs for payroll services, banking services, office supplies, collection of court-ordered debt services, translation services, telephonic court appearance services, security CCTVs, and access and security equipment and related maintenance.

- b. Establishment of a JBE LPA: A JBE may undertake its own procurement and establish by means of an option in the contract for the Vendor to extend the same pricing and terms to other JBEs or NPOs. The contract that includes the options would thus be an LPA.

To calculate the procurement amount for purposes of determining what procurement requirements (e.g., competitive or non-competitive solicitation, etc.) apply to establishing an LPA by means of an option, a JBE may decide to use only its own total estimated payments under the LPA. If so, the establishing JBE must state in either the LPA or user instructions (i.e., terms and conditions for use of the LPA) a maximum dollar amount for procuring off of the LPA. The total amount procured by other JBEs and NPOs must not in combination with the issuing JBE's purchases exceed the maximum dollar ceiling permitted by this Manual for the procurement method used by the issuing JBE to establish the LPA.

Note: Tagging on to another entity's LPAs that add quantities *after* the issuing entity's solicitation to allow other entities to use the same pricing are generally disfavored, because the purchases that are "tagged on" are not vetted through a competitive process. Therefore, a JBE undertaking an initial solicitation should specify potential additional purchases as options to permit

other JBEs and NPOs to procure goods and services not purchased by the JBE.

2. DGS LPA Programs

JBEs ~~may~~must not procure goods and services under a DGS LPA unless the supplier agrees to extend substantially similar or more favorable terms and conditions to the JBE under a JBE Purchase Document. A list of current LPAs and related materials may be obtained through the DGS website or by contacting DGS's LPA suppliers identified on the website. For reference, DGS LPA programs as of the time of publication are summarized below.

- a. LPAs that are treated as ~~NPOs-NCBs~~ by DGS: The programs discussed below extend to multiple state agencies and departments pricing and terms that have not been competitively procured by DGS. Pricing and terms do not reflect advantages that could be realized by a JBE through a competitive process, or cost reductions suppliers may be willing to pass through based on definite quantity or requirements purchases by JBEs. Consequently, JBEs should consider whether they can improve value for money by undertaking further negotiations or through a competitive procurement process.
 - CMAS (California Multiple Award Schedules): A multiple award contract is one that is awarded to multiple suppliers for the same or similar products or services that offer substantially similar pricing and terms. The CMAS program provides pricing and terms for the purchase of a wide variety of commodity goods and services at prices DGS considers "fair, reasonable, and competitive." CMAS contracts are based primarily on products, services, and prices, which may or ~~may~~notmust not have been competitively bid, from the federal GSA multiple award schedule program. With agreement of the supplier, DGS then substitutes DGS contract terms and conditions for federal terms and conditions. Examples of products offered under CMAS contracts are computers and laptops, printers, copiers, ergonomic equipment, paint, and records storage.
 - State Price Schedules: This program provides statewide pricing and terms for the purchase of unique or unusual items for which

competition may be very limited. Examples are adaptive equipment and services for persons with disabilities.

- b. LPA that are treated as competitively procured by DGS: The programs discussed below extend to multiple state departments and agencies pricing and terms that have been competitively procured. Consequently, pricing and terms reflect the benefits of competition. They do not, however, reflect cost reductions suppliers may be willing to make based on definite quantity or requirements purchases by JBEs. JBEs should consider whether they can improve value for money by undertaking further negotiations or through a competitive process.
- **Statewide Contracts**: This program provides for statewide pricing and terms for the purchase of goods, and is intended to take advantage of lower costs passed on by suppliers bidding on large quantities of goods repetitively used by multiple state agencies and departments. Statewide commodities contracts include contracts for envelopes (recycled paper), safety supplies, office supplies, toner and ink cartridges (new and remanufactured), and vehicles.
 - **Master Agreements**: This program provides for statewide pricing and terms for goods, rental of goods, and services, and it is intended to simplify the purchasing process for government users through the prequalification of suppliers and service providers. Master agreements provide for document conversion services, office moving services, Cal-Card purchases, copiers, and telephone equipment for the deaf and hearing impaired.
 - **Cooperative Agreements**: This program provides pricing and terms for goods and services based on procurements undertaken by a government entity other than the state executive branch. As a practical matter, pricing and terms are available most frequently through the state's participation in the Western States Contracting Alliance (WSCA) or the National Association of State Procurement Officials (NASPO). Examples of WSCA agreements are for copiers, postage and mail processing equipment, wireless telecommunications services, and mailing equipment and maintenance. Examples of NASPO

agreements are for automatic external defibrillators and toner cartridges.

- **Software Licensing Program (SLP):** This program provides statewide software discounts through authorized resellers based on pricing and terms negotiated by DGS with major software publishers. The reseller contracts provide for the purchase and warranty of the publisher's software, software maintenance, and technical support; consulting, training, and installation services, however, are not available under the contracts. SLP contracts are established to reduce the need for individual departments to conduct repetitive acquisitions for proprietary software licenses and software upgrades without taking advantage of volume discounts offered by the software publishers. Participating software manufacturers include HP, IBM, Microsoft, and Oracle.
- c. Maximum amount of procurement: For each type of DGS LPA, unless otherwise specified in an LPA's user instructions, the dollar maximums¹ in the chart below apply to use of the LPA:

LPA Program Type	Non-IT Dollar Maximum		IT Dollar Maximum
	Goods	Services	Goods and Services
CMAS	\$100,000	\$250,000	\$500,000
State Price Schedules Program	\$100,000	N/A	\$100,000
Statewide Contracts Program	Unlimited	N/A	Unlimited
Master Agreements Program			
• Purchase or Price Agreement	\$500,000*	N/A	\$1,500,000*
• Master Services Agreement	N/A	\$500,000*	\$1,500,000*
• Master Rental Agreement	\$500,000*	N/A	\$1,500,000*
Cooperative Agreements Program	\$500,000*	\$500,000*	Unlimited

¹ DGS dollar maximums are exclusive of sales and use taxes, finance charges and costs, postage, handling, and shipping charges.

Software Licensing Program	N/A	N/A	\$2,000,000*
----------------------------	-----	-----	--------------

* May be exceeded if the JBE’s Approving Authority and the particular LPA’s user instructions specify a higher maximum.

- d. Administrative fees: DGS administrative fees, if applicable, are identified in either the DGS State Price Book or the LPA user instructions associated with a particular LPA.² JBEs are cautioned that a potential supplier’s published LPA pricing may already incorporate LPA administrative fees that the supplier must [collect from an entity using its LPA and](#) forward to DGS. Before placing an order JBEs should determine whether pricing includes DGS administrative fees or whether DGS will invoice the JBE separately for the fees.

B. County, Federal, and Other LPA Programs

Counties and other local agencies, states other than California, the federal General Services Administration (GSA), and other government entities or NPOs may also have established LPAs. References in this Manual to specific programs are not intended to preclude procuring off of LPAs of counties, other government entities, or NPOs within the United States of America and its territories. When procuring from the LPA of an entity other than a State of California entity, the following limits apply:

LPA Program Type	Non-IT Dollar Maximum		IT Dollar Maximum
	Goods	Services	Goods and Services
Non-competitively Bid Program	\$100,000	\$250,000	\$500,000
Competitively Bid Program	\$500,000*	\$500,000*	\$1,500,000*
Competitively Bid Software Licensing Program	N/A	N/A	\$2,000,000*

² Administrative fees are waived for CMAS purchase orders issued to California certified small businesses.

* May be exceeded if the JBE's Approving Authority and the particular LPA's user instructions specify a higher maximum.

A JBE may conclude that using the LPA of such an entity is impractical or impossible because the potential supplier will not agree to the JBE's certification requirements, or contract terms and conditions. In that case, the JBE may undertake a separate procurement, or seek to establish a separate LPA.

6.3 USE OF LPA PROGRAMS

A. Accessing Available LPAs

As of the time of publication of this Manual, the AOC is developing a site on which AOC LPAs and related materials will be made available to other JBEs. Other JBEs may wish to provide for a site or sites where their LPAs may be located.

As of the time of publication of this Manual, a JBE may follow the following link to access DGS LPAs and related materials:

www.dgs.ca.gov/pd/Programs/Leveraged.aspx.

B. Step-By-Step Guide to Procurement of Information Technology (IT) and non-IT Goods and Services Through an LPA

A JBE that intends to procure non-IT goods or services off of an LPA must undertake the following steps:

Step 1—Define business requirements, for example in a Statement of Work (SOW).

Step 2—Estimate in good faith the projected total cost of what is to be procured.

Step 3—Identify a relevant LPA and determine whether pricing is fair and reasonable. If a JBE wishes to use an LPA (i) issued by DGS, (ii) not issued by a California government entity ~~(other than DGS)~~, or (iii) ~~that was~~ not competitively bid by the issuing [California government](#) entity, [then](#) identify by reasonable means, including reviewing AOC and DGS websites, at least *three* relevant LPAs, including at least one that in

which a certified Disabled Veterans Business Enterprise (DVBE) participates,³ and list them for comparison against one another.⁴ The listed LPAs must be similar enough that work, pricing, and terms and conditions are subject to reasonable comparison.

Note: JBEs must consider LPAs of certified DVBEs when available, but need not list for consideration an LPA that includes a DVBE unless the JBE identifies more than two relevant LPAs. If so, the JBE must include at least one LPA with a California certified DVBE (if available) in the comparison.⁵

If using DGS LPAs: For purposes of identifying at least three LPAs, a JBE ~~may not~~must not consider LPAs from more than one type/category (for types and categories, refer to the chart in section 6.2) of DGS LPAs because, under DGS LPAs:

- Offers from different categories of DGS LPA programs ~~may not~~must not be mixed when executing a single order; and
- LPA types (e.g., CMAS or master agreement) ~~may not~~must not be combined to obtain offers and select a supplier.

If purchasing off of a Statewide Contract Program contract or a Cooperative Agreement Program contract established by WSCA, it is not necessary to list or obtain offers from three suppliers or to document best value.

If three relevant LPAs are required but cannot be identified, the JBE must undertake an independent procurement (refer to chapters 2, 4, and 5), unless the JBE determines that pricing is fair and reasonable, documentation that supports the JBE's conclusion is retained in the procurement file, and either:

1. The LPA meets one of the following three criteria:

³ A listed DVBE must perform a commercially useful function.

⁴ Consequently, a competitively bid LPA issued by a California county, the AOC, or another JBE may be used without the need to list and compare three LPAs, but, if the JBE wishes to use a non-collaborative LPA, the JBE should consider undertaking its own competitive procurement or, as previously stated, at least negotiating with the supplier for better pricing and terms.

⁵ Most DGS user instructions provide JBEs with a means to claim certain expenditures towards meeting DVBE goals or requirements, whether the potential supplier is a DVBE or subcontracts with a DVBE. If using a DVBE subcontractor, the JBE must obtain from the prime contractor the dollar amount that may be applied towards meeting DVBE participation.

- The procurement is for goods or services estimated to cost less than \$5,000;
 - The procurement is off an LPA under the DGS Statewide Contracts Program (for goods), a DGS Cooperative Agreements Program LPA established by WSCA or NASPO; or an LPA consisting of a contract (other than a price schedule) under which an issuing JBE or another state entity makes actual purchases of goods or services; or
 - The procurement is off an LPA established by a JBE, DGS, or other state entity, and the LPA or user instructions provide that multiple offers are not required to be compared.
2. Applicable law (e.g., statute or rule of court) provides an independent basis for exempting the JBE from comparing three LPAs (e.g., if availability is limited under patent or copyright law).

Note: If user instructions for an LPA include a provision for “not specifically priced” (NSP) items, items incidental, subordinate, or peripheral to those listed in the schedule may be purchased under the same contract as the primary items, subject to certain dollar limits and limitations, as follows:

- Total purchase price is \$250,000 or less: The total, maximum dollar amount of NSP items is \$5,000.
- Total purchase price exceeds \$250,000: The total, maximum dollar value of all NSP items is the lower of (i) \$25,000, and (ii) 5% of the total purchase price.

If using DGS LPAs: The NSP provision is not included in contracts that are only for services or software. [Certain other restrictions apply \(see revision 4 of SCM Vol. 2, section 6.B3.6\).](#)

Step 4—Obtain LPA documentation⁶ for the listed LPAs, and review it for applicable terms and conditions of use, including pricing⁷ and the term of the LPA. Using the documentation:

⁶ Documentation may include user instructions, contract terms and conditions, order documents, specifications, certifications, payee data records, registration and permits, references, etc.

⁷ Pricing may be fixed, or based on a discount to published prices. Be aware of cost of living or other adjustments.

- Confirm whether actual pricing is at or below listed pricing, and determine whether the projected total price is within the maximum dollar amount permitted to be procured under the LPA;
- Confirm whether the desired goods or services as listed are actually offered and not specifically excluded;
- Confirm whether the potential supplier has [licenses and permits a valid seller's permit \(for goods\), is licensed as necessary, and is otherwise authorized](#) to perform the services or sell the goods desired;
- Ascertain the commercial sufficiency of warranties, guarantees, maintenance provisions, product return policies, bond requirements, travel costs, etc.;
- Determine whether additional approvals, forms, filings, etc. are required;
- Confirm whether the supplier is a California certified DVBE, if applicable;⁸ and
- Obtain [information typically found on](#) the supplier's signed Payee Data Record.

Step 5—If not comparing multiple LPAs, skip to step 6. If comparing multiple potential LPAs, determine what factors the JBE will use to compare the listed suppliers against one another to determine “best value.” The “best value” comparison must include a comparison of pricing offered by the suppliers for the product or service. Refer to chapters 4B and 4C of this Manual for other criteria a JBE may wish to use. Document the factors in the procurement file.

Step 6—If there is any uncertainty as to LPA terms and conditions or a potential LPA supplier's willingness to accept an order from the JBE, the JBE should first solicit specific offers from the listed LPA suppliers by use of a Request for Offer (RFO)⁹ or similar document. An RFO may be formal or informal (e.g., an email). The RFO must describe the JBE's business requirements (e.g., through an SOW for services). To [avoid save time and expense of negotiations after award \(when the JBE has less leverage\)](#), a written RFO may include the JBE's general terms and conditions, as modified to comply with the LPA user instructions [or and](#) applicable law or policy.

⁸ If documentation of a potential DVBE supplier from a DGS LPA is being reviewed and considered, the JBE must confirm the supplier's DVBE status through DGS's database.

⁹ An RFO is a document sent to potential LPA suppliers to specify requirements for a specific transaction. The RFO requests a specific response or offer from the supplier based on the RFO.

Because use of an LPA is not a competitive solicitation, do **not** include in the RFO:

- Competitive solicitation language, e.g., DVBE provisions, bid protests, intent to award notices, evaluation criteria, and advertising requirements;
- Words such as “bid,” “quote,” “solicitation,” or “evaluation”; or
- Use of the two-envelope evaluation process for offers.

If the JBE is comparing multiple LPAs, the RFO should provide that the JBE will evaluate offers to determine “best value,” but the JBE should not describe in the RFO the priorities it will use to determine “best value.”

If using DGS LPAs: A JBE must select the type/category of LPA it wants to use before issuing an RFO. A JBE ~~must not~~must not solicit offers from potential suppliers whose LPAs are not in the same type and category.

An RFO process may be conducted by mail, fax, email, phone, or by other means so long as it complies with applicable user instructions and requirements of the LPA. JBEs must document all potential LPA suppliers that were contacted, provide a recap of their offers, and record the criteria used to compare best value and how the selection was made.

Step 7–Determine based on available LPAs and LPA offers whether procurement off of an LPA will satisfy applicable law and policy. If not utilizing an LPA, plan to undertake an independent procurement (refer to chapters 2, 4, and 5). If utilizing an LPA, proceed to Step 8.

Step 8–If required, compare at least three LPAs/LPA offers on a best value basis. In doing so, the JBE may wish to prepare and use a “best value worksheet.” If fewer than three offers are received, the JBE may nevertheless proceed with the procurement, but the JBE must document the procurement file with an explanation¹⁰ as to why at least three potential suppliers did not respond with offers. Even if a procurement is exempt from the comparative evaluation process (see step 3), conducting price comparisons among multiple suppliers, if available, is encouraged.

¹⁰ Contact potential suppliers as necessary to find out why they did not respond.

Step 9–Determine what form of contract the JBE will use to execute its purchase off of the LPA. If using a non-collaborative LPA, consider whether a document similar to STD-65 (see below) or another document are appropriate, and, if using a cooperatively procured LPA, consider whether a contract with both the issuing entity and the potential supplier are required. Prepare the document, considering the LPA user instructions, any RFO, and any supplier offer. List all NSP items separately from the principal items. Finalize the contract and notify the supplier selected by the JBE that the JBE intends to award the contract to the supplier under the contract provided. After consulting with the supplier, make any mutually acceptable final revisions to the contract.

If using DGS LPAs: DGS user instructions state that a state agency or department ~~must implement~~ may place any order off of a DGS LPA only by executing DGS form STD-65 (Purchasing Authority Purchase Order), STD-213 (Standard Agreement (non-IT services)), GSOP-191-2 (Master Agreement Order), GSOP-191-2 (Master Agreement Form) or an approved alternative. The specified forms are appropriate, however, for purchases by state departments and agencies rather than JBEs. A JBE procuring off of such a DGS LPA ~~should~~ must modify the DGS form so that terms and conditions are consistent with law and policy

Step 10– If required by the LPA instructions, notify the party that created the LPA that the JBE intends to contract for or order goods or services off of the LPA and the dollar value of the proposed transaction, and adhere to any instructions or limitations that may be imposed by the party that created the LPA. Obtain ~~After obtaining appropriate internal approvals~~ all required internal and external approvals, and then, use the JBE's standard procedures under its Local Contracting Manual to sign and date the JBE's PO order, and deliver it to the supplier.

Note: If using a contract requiring ~~a mutual~~ the signature of ~~each~~ the parties, the JBE should instead deliver an unsigned contract to the potential supplier and countersign the contract upon its return.¹¹

Step 11–Create a procurement summary document and place it in the procurement file. Review the file to ensure it includes, as applicable, a list of all potential LPA suppliers

¹¹ A contract (instead of a PO) ~~must be used~~ is required to obtain the supplier's commitment to deliver the goods or perform the service.

contacted and a recap of their offers, a description of how the selection was made (including criteria for determining “best value”), and the signed contract or a reference as to where it is located.

If the contract is for a total cost of more than \$1 million, notify the State Auditor, in writing, of the existence of the contract within 10 business days of entering into it (PCC 19204(a)).

C. Amendment of Changing Purchase Contracts Executed under an LPA

An NCB process is required to amend-change a contract executed under another entity’s LPA, except in any of the following circumstances:

- A JBE may amend an LPA executed the contract under the terms of any option in the LPA contract that provides for changes (e.g., quantity or time) and was evaluated and considered in the comparison of offers during the RFO process;
- Unless the user instructions or LPA specify otherwise, A JBE may amendments may also be executed for contractor name changes or to increase the original transaction amount by \$4,999 or less;
- Except to increase the original transaction amount, JBE may amend an LPA the contract if pricing and other terms and conditions of the LPA contract as amended are substantially similar to or improve upon the terms and conditions of the original LPA contract, for the purpose of correcting incidental errors or omissions or reflect the contractor’s name change; and
- A JBE may amend the contract if it is under a DGS CMAS LPA, or LPA substantially similar to a DGS CMAS LPA that incorporates the JBE’s terms and conditions, whether or not the contract specifies the changes permitted as an option, subject, however, to the following limitations:
 - This exception applies only to the first amendment;
 - The time for performance must not be extended for more than one year;
and
 - The amendment must not add more than 30 percent of the transaction amount under the contract, not to exceed \$250,000.

If amending a DGS CMAS LPA or a JBE LPA that is substantially similar in form to a DGS CMAS LPA: If the original LPA permitted amendments, a JBE may amend the LPA without using an NCB process regardless of whether the LPA specifies the changes permitted, subject, however, to the following limitations:



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 7
Page 1 of 13

PROTESTS

CHAPTER 7

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
7.1 Designation of JBE Protest Personnel	3
7.2 Solicitation Specifications Protests.....	3
A. Who May Submit a Solicitation Specifications Protest	4
B. Deadline for Receipt of Protest	4
C. Required Information.....	5
D. Submission of the Protest	5
E. Evaluation	6
F. Written Determination	6
G. Appeal.....	7
7.3 Award Protests.....	7
A. Who May Submit an Award Protest	7
B. Deadline for Receipt of Protest	8
C. Required Information.....	8
D. Submission of the Protest	9
E. Evaluation	10
F. Written Determination	10
G. Appeal.....	11
7.4 Appeals	11
7.5 Post-Award Disputes.....	12
A. Deal in Good Faith	13
B. Resolving Disputes	13

INTRODUCTION

There are two types of protests in Judicial Branch Entity (JBE) procurement: solicitation specifications protests and award protests. This chapter provides information on these types of protest and how they are handled by JBEs.

DEFINED TERMS

The definitions of capitalized terms used in this chapter are set forth in the glossary.

7.1 DESIGNATION OF JBE PROTEST PERSONNEL

Each JBE should designate a protest hearing officer to evaluate and issue written determinations regarding protests. To ensure proper segregation of duties, the protest hearing officer should be someone other than the Buyer. Each JBE should also designate a protest appeals officer to evaluate and issue written determinations regarding appeals of the protest hearing officer's written determinations. These designations should be documented in the JBE's Local Contracting Manual.

If a JBE does not designate a protest hearing officer, the Buyer will act as the protest hearing officer. If a JBE does not designate a protest appeals officer, the Approving Authority will act as the protest appeals officer.

7.2 PROTEST THRESHOLDS

A JBE may adopt, in its Local Contracting Manual, thresholds for the acceptance of protests. The thresholds adopted by the JBE may not be higher than the dollar amounts in the following chart, for the applicable type of procurement.

<u>Type of Procurement</u>	<u>Threshold</u>
<u>Non-IT goods</u>	<u>\$50,000</u>
<u>Non-IT services</u>	<u>\$5,000</u>
<u>IT goods and services</u>	<u>\$100,000</u>

If the JBE adopts protest thresholds, the JBE must (i) state in any Solicitation Document associated with a procurement estimated to be below the applicable threshold that

protests will not be accepted, and (ii) reject any protest received for a procurement if the procurement is below the applicable threshold.

The remainder of this chapter is applicable only to procurements above the applicable protest thresholds.

7.3 SOLICITATION SPECIFICATIONS PROTESTS

A solicitation specifications protest is a protest alleging that a Solicitation Document contains a technical, administrative, or cost specification or requirement that is defective. The specification or requirement may be defective because it is:

- Onerous, unfair, or illegal; or
- Imposes unnecessary constraints in proposing less costly or alternate solutions.

Example: A JBE inappropriately requires that goods be of a specific brand, when goods of another brand meet the JBE's requirements equally well at a lower cost. The requirement could result in a solicitation specifications protest.

A Protester's failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of a solicitation specifications protest.

A. Who May Submit a Solicitation Specifications Protest

Any Prospective Bidder may submit a solicitation specifications protest.

B. Deadline for Receipt of Protest

The deadline for the JBE to receive a solicitation specifications protest is the applicable date specified in the Solicitation Document. If no date is specified in the Solicitation Document, the deadline for the JBE to receive a solicitation specifications protest is the Bid Closing Time.

The Prospective Bidder is solely responsible for ensuring that a solicitation specifications protest is received by the JBE by the deadline. The failure of a Prospective Bidder to submit a timely solicitation specifications protest constitutes a waiver of the Prospective Bidder's right to protest the solicitation's specifications or requirements.

C. Required Information

A solicitation specifications protest must include the following information:

- Contact information of the Prospective Bidder or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the Solicitation Document to which the protest is related;
- The specific alleged deficiency in the solicitation's technical, administrative, or cost specifications or requirements;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

A solicitation specifications protest lacking any of this information may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the solicitation specifications protest without requesting further information from the Prospective Bidder. Therefore, the solicitation specifications protest must include all grounds for the protest and all evidence available at the time the protest is submitted. If the Prospective Bidder later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider the new grounds or new evidence.

D. Submission of the Protest

The Prospective Bidder must send the solicitation specifications protest to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the Prospective Bidder must send the solicitation specifications protest by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the Prospective Bidder may also deliver the solicitation specifications protest personally as specified in the Solicitation Document. If the solicitation specifications protest is personally delivered, a receipt must be provided to the Prospective Bidder if requested.

E. Evaluation

When evaluating the solicitation specifications protest, the protest hearing officer should consider:

- The validity and defensibility of the allegedly defective technical, administrative, or cost specification or requirement;
- Whether the Prospective Bidder has raised a valid issue; and
- Whether competition would be advanced by revising the allegedly defective technical, administrative, or cost specification or requirement.

The protest hearing officer should seek legal advice as needed.

Note: The Prospective Bidder bears the burden of proof to show that the Solicitation Document contains a defective technical, administrative, or cost specification or requirement.

F. Written Determination

The protest hearing officer must issue a written determination before the JBE opens the Bids (or evaluates the Bids, if the Bids are not sealed). If required, the JBE may extend the Bid Closing Time to allow for time to review the solicitation specifications protest.

If the protest hearing officer determines that the solicitation specifications protest has merit, the protest hearing officer ~~should~~must take appropriate remedial action. Such action may include:

- Changing or clarifying the defective technical, administrative, or cost specification or requirement through an addendum to the Solicitation Document; or
- Canceling the solicitation.

If an addendum to the Solicitation Document is issued and the addendum may require additional time for Prospective Bidders to respond, the addendum should extend the Bid Closing ~~Date-Time~~ by an appropriate amount of time (as determined by the protest hearing officer).

G. Appeal

The protest hearing officer's written determination is the final action by the JBE unless the Prospective Bidder submits an appeal to the protest appeals officer within 2 Court Days of the issuance of the protest hearing officer's written determination.

Note: The JBE may adopt in its Local Contracting Manual a different deadline for the filing of an appeal, provided it is not fewer than two Court Days.

See section 7.5 for the handling of appeals.

7.4 AWARD PROTESTS

An award protest is a protest alleging that:

- The JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award; or
- The JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Example: The Solicitation Document stated that 50% of a Bid's total score would be cost points, but the JBE instead made cost points only 30% of the Bid's total score. This error could result in an award protest.

Failure to comply with the protest processes set forth in this chapter may result in the JBE's rejection of an award protest.

A. Who May Submit an Award Protest

A Bidder may submit an award protest if the Bidder meets the following requirements:

- The Bidder submitted a Bid that the Bidder believes to be responsive to the Solicitation Document; and
- The Bidder believes that the JBE has incorrectly selected another Bidder for an award.

A person or entity who did not submit a Bid may not make an award protest.

In no event will a JBE consider a protest if the JBE rejected all Bids or the solicitation was canceled for any reason.

B. Deadline for Receipt of Protest

For any solicitation using an RFQ, the deadline for the JBE to receive an award protest should be specified in the RFQ. If no deadline is specified in the RFQ, the award protest must be received by the JBE before the contract is executed. For solicitations using an IFB or RFP, the deadline for the JBE to receive an award protest is specified in the table below.

The Bidder is solely responsible for ensuring that an award protest is received by the JBE by the applicable due date. In no event will a JBE consider a protest after the contract has been awarded.

NON-IT GOODS	NON-IT SERVICES	IT GOODS AND SERVICES
The JBE must receive the award protest within 24 hours after the JBE issues the intent to award.	The JBE must receive the award protest within 5 Court Days after the JBE issues the intent to award.	The JBE must receive the award protest within 5 Court Days after the JBE issues the intent to award.
The Bidder will have 10 calendar days after the JBE receives the protest to submit all information in section C below to the JBE.	The Bidder will have 5 calendar days after the JBE receives the protest to submit all information in section C below to the JBE.*	The Bidder will have 10 calendar days after the JBE receives the protest to submit all information in section C below to the JBE.

* A JBE may extend this deadline to 10 calendar days in its Local Contracting Manual if the JBE prefers to have a uniform deadline for all three types of procurements.

C. Required Information

An award protest must include the following information:

- Contact information of the Bidder or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the Solicitation Document to which the protest is related;
- The specific alleged error or irrational decision made by the JBE;
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation; and
- The specific ruling or relief requested.

If an award protest is missing any of this information (by the date the Bidder is required to have all such information to the JBE), the award protest may be rejected by the protest hearing officer.

The protest hearing officer may issue a written determination regarding the award protest without requesting further information from the Bidder. Therefore, the award protest must include all grounds and all evidence available at the time the award protest is submitted. If the Bidder later raises new grounds or evidence that was not included in the initial protest submittal but which could have been raised at that time, the JBE shall not consider such new grounds or new evidence.

Note: For protests of non-IT goods solicitations, the Bidder must assert that it is the lowest responsible bidder meeting specifications unless the JBE waives this requirement. A JBE may include a general waiver of this requirement in its Local Contracting Manual.

D. Submission of the Protest

The Bidder must send the award protest (and any supporting documentation) to the protest hearing officer or other individual identified in the Solicitation Document to receive protests. Unless personal delivery is permitted as noted below, the Bidder must send these materials by certified mail, registered mail, or overnight courier.

If allowed by the Solicitation Document, the Bidder may also deliver these materials personally to the JBE as specified in the Solicitation Document. If the materials are personally delivered, a receipt must be provided to the Bidder if requested.

E. Evaluation

When evaluating the award protest, the protest hearing officer should consider:

- Whether the JBE committed an error in the award process;
- Whether an allegedly defective decision lacks a rational basis; and
- If the JBE committed an error in the award process or made a decision that lacks a rational basis, the materiality of the error or decision.

The protest hearing officer should seek legal advice as needed.

The Bidder bears the burden of proof to show that (i) the JBE has committed an error in the award process sufficiently material to justify invalidation of the proposed award, or (ii) the JBE's decisions are lacking a rational basis and are, therefore, arbitrary and capricious.

Note: The following do **not** constitute the absence of a rational basis:

- The Bidder disagrees with the scores assigned by the Evaluation Team; or
- The Evaluation Team could have assigned different scores based on the same information.

F. Written Determination

The protest hearing officer must respond to an award protest with a written determination before the contract is awarded. The protest hearing officer should issue the written determination within 10 Court Days of the complete submission of the award protest, or notify the Bidder that additional time will be required. The JBE may extend the award date to allow for time to review the award protest.

If the protest hearing officer determines that the award protest has merit, the protest hearing officer ~~should~~must take appropriate remedial action. In determining the appropriate remedial action, the protest hearing officer should consider all circumstances surrounding the procurement, including:

- The seriousness of the procurement deficiency;
- The degree of prejudice to other Bidders;
- The impact on the integrity of the competitive procurement system;

- The good faith of the parties;
- The cost to the JBE;
- The urgency of the procurement; and
- The impact on the JBE.

Remedial actions may include:

- Issuing a new solicitation;
- Re-competing the contract;
- Terminating the contract (e.g., if a contract was executed despite a pending appeal);
- Refraining from the exercise of options under the awarded contract; and
- Awarding the contract consistent with law.

G. Appeal

The protest hearing officer's written determination is considered the final action by the JBE unless the Bidder submits an appeal to the protest appeals officer within 5 calendar days of the issuance of the protest hearing officer's written determination.

The JBE may, at its sole discretion, delay the contract award until the appeal is resolved or proceed with the award and execution of the contract. See section 7.5 for the handling of appeals.

7.5 APPEALS

Unless personal delivery is permitted as noted below, the Protester must send the appeal to the protest appeals officer by certified mail, registered mail, or overnight courier. If allowed by the Solicitation Document, the Protester may also deliver the appeal personally to the JBE as specified in the Solicitation Document. If the appeal is personally delivered, a receipt must be provided to the Protester if requested.

Any appeal not received by the protest appeals officer by the applicable deadline for submission ~~will~~must be rejected by the protest appeals officer. The Protester is solely responsible for ensuring that an appeal is received by the protest appeals officer by the applicable due date.

The appeal must include:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include email address and facsimile number);
- The title of the Solicitation Document to which the protest is related;
- A copy of the protest hearing officer's written determination;
- A detailed description of the specific legal and factual grounds for the appeal and any supporting documentation; and
- The specific ruling or relief requested.

An appeal lacking any of this information may be rejected by the protest appeals officer. The appeal must include all information that the Protester wants the protest appeals officer to consider.

The Protester bears the burden of proof to show that the protest hearing officer's written determination is incorrect:

- In light of new information related to the protest that was not available at the time the protest was originally submitted; or
- Because it is in error of law or regulation.

The protest appeals officer reviews the appeal and issues a written determination.

Issues that could have been raised earlier are not to be considered on appeal. The written determination of the protest appeals officer constitutes the final determination of the JBE regarding the protest. ~~Issues that could have been raised earlier will not be considered on appeal.~~

If the protest appeals officer determines that the appeal has merit, the protest appeal officer will direct the protest hearing officer to take appropriate remedial action.

7.5 POST-AWARD DISPUTES

~~— A post-award dispute is a disagreement or conflict between a Vendor and a JBE after a contract has been executed. Most often, post-award disputes arise due to contract performance issues on the part of either the Vendor or the JBE. For more guidance on post-award disputes, see chapter 11.~~

~~A. Deal in Good Faith~~

~~JBEs and Vendors should deal with one another in good faith and attempt to resolve post-award disputes quickly and fairly.~~

~~B. Resolving Disputes~~

~~Buyers and other JBE personnel should consider the following when a post-award dispute arises:~~

- ~~• The Buyer should review the dispute resolution language contained in the contract to see if a specified dispute resolution process is required. The Buyer should ensure that any dispute resolution process is followed.~~
- ~~• When possible, the JBE should attempt to resolve the dispute through informal discussions and negotiations. These discussions and negotiations should include the Buyer, the contract managers, and any other key parties.~~
- ~~• A JBE cannot make a gift of public funds. Accordingly, any settlement to be paid by a JBE must be justifiable and not constitute a gift.~~
- ~~• JBE management and/or legal counsel should be involved, as appropriate.~~
- ~~• If a dispute resolution requires a change to the contract, the Buyer should prepare and process an amendment to document the change expeditiously.~~

~~Post-award disputes, regardless of magnitude, must be documented in the procurement file.~~



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 8
Page 1 of 34

CONTRACTS

CHAPTER 8

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:



Table of Contents

Introduction.....	4
Defined Terms	4
Contract Templates	4
8.1 Basic Principles	4
A. Writing Requirement	4
B. Roles and Responsibilities	5
8.2 Categories of Contracts	5
A. Purchase Orders (POs).....	5
B. Standard Agreements	6
C. Short Form Agreements.....	6
D. Intergovernmental Contracts (IGCs)	6
8.3 Preparation of Contracts.....	7
A. Content of Contracts	7
B. Special Provisions for IGCs	12
C. Additional Provisions Required in Certain Types of Contracts.....	13
8.4 Approval of Contracts	13
A. Review and Approval of Commercial Terms	13
B. Legal Review	14
C. Review of Certain IT Contracts	16
8.5 Execution of Contracts.....	16
A. Authority.....	16
B. Process.....	16
C. Payee Data Record.....	17
Appendix A Contractor Certification Clauses	18

Appendix B Mandatory and Recommended Contract Provisions20
Appendix C Additional Information for Certain Types of Contracts.....24
Appendix D Sample Contract Dollar Thresholds for Legal Review.....34

INTRODUCTION

This chapter provides information on preparing, approving, and executing JBE contracts.¹ The main body of this chapter discusses the basic construction of contracts and the mandatory and permissive subject matters for inclusion in JBE contracts. The Appendices to this chapter identify mandatory and permissive contract terms for JBE contracts.

DEFINED TERMS

The definitions of capitalized terms used in this chapter are set forth in the glossary.

Under California law a “contract” is “an agreement to do or not to do a certain thing.”² This chapter refers specifically to agreements for goods and services. Unless expressly excluded, or the context dictates otherwise, the term “contract” as used in this chapter includes all agreements for goods or services, including purchase orders (POs), intergovernmental contracts (IGCs), and other documents for goods and services, regardless of the document’s form or title.

CONTRACT TEMPLATES

Contract templates for the categories of contracts described in section 8.2 are available for JBEs to use to comply with the contract terms and certification requirements of this chapter. Templates are posted for JBE use at the following URL: _____

8.1 BASIC PRINCIPLES

A. Writing Requirement

All contracts entered into by JBEs must be in writing.

¹ This chapter does not address contracts for public works. Contracts for public works will be addressed in the AOC’s *Local Contracting Manual*.

² Civil Code section 1549.

B. Roles and Responsibilities

Each JBE is responsible for the commercial risks that flow from contracts it enters into and should undertake risks only in proportion to the benefits expected from a contract. Contracts should be prepared, negotiated, and executed in the best interests of the JBE. Contracts should be prepared and negotiated only by persons with appropriate skill and experience who are free from conflicts of interest. Contracts must be executed only by persons with legal authority to do so.

It is the JBE's responsibility to ensure that the contract meets applicable legal requirements, and that the contract terms are appropriate to the type of contract.

8.2 CATEGORIES OF CONTRACTS

This subsection describes the basic categories of contracts used by JBEs and when those contracts are used. The category names are used for reference, as an individual contract may have a different name or title. For example, certain MOUs with executive branch agencies may be called "Interagency Agreements" or "IAs." Requirements in this Manual apply to all contracts in the following categories of contract, regardless of the name or title of the contract.

A. Purchase Orders (POs)

These contracts may be used for purchase of goods from non-governmental entities³ regardless of the purchase amount. POs are also often used for purchase of goods and for services which are ancillary to the purchase of the goods. (See chapter 4B.) In addition, POs may be used for "off the shelf" goods and software, or for routine, low cost or low risk services of under \$5,000 if the contract does not require additional terms under this Manual.

³ For purposes of this chapter, a "governmental entity" includes, for example, (i) a California department or agency, or a department or agency of any other state, (ii) a public college or state university established by California or any other state, (iii) a local government entity or agency in the United States or its territories, (iv) an auxiliary organization of the California State University, or a California community college, (v) the federal government, (vi) a foundation organized to support the Board of Governors of the California Community Colleges, (vii) an auxiliary organization of the Student Aid Commission established under Education Code section 69522, or (viii) a public benefit organization. A public benefit organization is an organization chartered by a governmental entity and designed to perform some public benefit such as building or maintaining public infrastructure, or raising bond money for those purposes.

- Goods that must be customized or specially manufactured, and services of a higher dollar amount, should be purchased using a standard agreement.
- Unless the PO is signed by both parties, the proposed vendor has no duty of performance unless and until the vendor commences performance of its duties under the PO. If the PO is not to be countersigned and returned to the JBE, the PO should contain a clause that states that vendor's commencement of performance under the PO constitutes acceptance and binds the vendor to all contract terms.

B. Standard Agreements

These contracts may be used for the purchase of goods or services from non-governmental entities regardless of the contract amount.

C. Short Form Agreements

These contracts include fewer terms and conditions than a Standard Agreement, and may be used for the purchase of goods or services under \$5,000 from non-governmental entities. The agreement is intended to be used for routine purchases and in situations where not all of the provisions found in a standard agreement would be appropriate. As noted in the Appendices, fewer terms are required to be included in these agreements than are required in standard agreements.

D. Intergovernmental Contracts (IGCs)

These contracts may be used for any purchase of goods and services between a JBE and another governmental entity. If the other governmental entity is not within the judicial branch, the agreement is often called a Memorandum of Understanding (MOU). If the other governmental entity is another JBE, the agreement is often called an Intra-branch Agreement (IBA). IGCs⁴ are simpler and have fewer provisions than POs or Standard Agreements. A JBE, however, always has the option of using a PO or Standard Agreement when contracting with a governmental entity.

⁴ IBAs and MOUs are collectively referred to herein as IGCs.

8.3 PREPARATION OF CONTRACTS

This subsection describes the elements of a contract and typical contract provisions, and where applicable describes the specific subject matters JBEs should address in particular contract provisions.

Appendices A and B supplement this subsection. Appendices A and B identify the substance of the certifications and provisions that are required to be included in specified categories of JBE contracts. These appendices also indicate which terms are recommended to be included in JBE contracts but are not legally required.

A. Content of Contracts

JBEs must include legally required terms in their contracts, and should include other terms that the JBE determines are necessary to protect the JBE and mitigate the risks associated with the contract.

Sample language for terms and certifications required to be included in JBE contracts is available from the AOC, together with templates for complete contracts. Use of these provisions and templates is optional. Each JBE may modify the provisions or templates or use its own forms provided that the substance of the requirements is included. JBEs may also use a vendor-provided form contract provided the final contract includes appropriate terms and meets applicable legal requirements.

- **Contract Provisions**

Each contract must identify the contracting parties. Contracts typically consist of three major elements:

- Statement of Work (SOW), including the schedule of performance;
- Pricing and Payment; and
- Terms and Conditions.

Each of these elements must be clearly defined so that the JBE's needs are met, and the contractor and the JBE understand their performance obligations.

- Each major element is described below, including typical subject matters that are frequently grouped together in contract sections regarding the specific element. However, contract provisions are not required to be in any specific location in the

contract. For example, a topic listed below as part of a typical Statement of Work may be placed under a different heading in a particular contract.

1. *Statement of Work (SOW):*

The SOW describes the goods to be purchased and/or the services to be performed. The JBE must include a detailed description of the goods to be delivered or the services to be performed, together with any deliverables required and conditions of performance, if applicable. The contract must specify (as applicable): (i) when goods are to be delivered, (ii) when services are to be performed (start date and end date), (iii) when deliverables must be provided to the JBE, and (iv) when other contract milestones must be completed.

- The following are matters that are typically included in the SOW as part of the detailed description of the goods, services, and deliverables, and required conditions on performance:
 - Quantities, specifications, and specific requirements;
 - Quality standards and warranties
 - Delivery instructions;
 - Acceptance criteria including inspections;
 - Results and required deliverables (e.g., reports, data, or other documentation);
 - Location of performance of services, and contractor's work hours;
 - Performance timelines (schedule) or completion dates;
 - Standards of performance and skill level required, and, if applicable, specific personnel and staffing requirements and identification of contractor's key personnel;
 - Details regarding equipment, labor, or materials to be provided by the parties, and coordination of effort, if applicable;
 - Optional goods or services, and provisions for requesting this items; and
 - Possible conditions that may arise during performance of the contract that would trigger modifications to the SOW, cost, or schedule.

2. *Pricing and payment:*

The price the JBE will pay for goods and services under a contract must be clearly stated. The contract should clearly specify the basis for compensation and

the terms of payment, such as: lump sum (one-time payment), firm fixed price, unit price, labor rate, or other specific basis.

- Required terms:
 - A provision that makes payment subject to appropriation of funds is required in all multi-year contracts requiring the payment of state funds and in contracts to be performed entirely within a single budget year.
 - If a JBE is contracting for labor, a schedule listing the hourly, daily, weekly, or monthly cost for each person or job classification must be incorporated into the contract.
- Contracts typically include provisions covering the following subjects, as applicable in the particular circumstances, to specify the basis for compensation and set out the terms of payment:
 - Firm Price or not to exceed amount of all compensation;
 - Basis of pricing such as (i) hours times hourly rate (e.g., rates contained in a fee schedule), (ii) costs incurred plus any agreed markup, or (iii) a firm fixed price;
 - For lump sum or firm fixed price contracts, a schedule of billing rates if the schedule was used to establish the fixed or lump sum price of authorized work. The schedule may also be used as the basis for establishing the cost of additional work authorized under the contract.
 - Any cost substantiation requirements and processes;
 - Any allowances that are a part of established prices;
 - Allowable and unallowable pass-through expenses (e.g., travel expenses at state rates);
 - Expense reimbursement substantiation requirements and processes;
 - Payment frequency, and schedule for progress payments;
 - Retention or withholding amounts:
 - Each contract should provide for payment, or a reasonable portion thereof, to be withheld pending resolution of any material dispute;
 - Conditions of payment;
 - Pricing of any modifications that may be effected by change order or through exercise of an option;

- Respecting IGCs only:
 - A JBE should ensure that any overhead or administrative costs are reasonable considering the services being performed and conform to any applicable requirements imposed under the JBE's A-87 Cost Recovery Plan;⁵ and
 - A JBE should not pay mark-ups (e.g., administration fees) on any subcontract except on the first \$25,000 of each subcontract.

3. Terms and Conditions:

The contract must include specified rights and obligations of either party that are not included in the SOW or the pricing and payment section, including additional provisions that apply to performance under the contract, as applicable.

- Standard Terms and Conditions. Contracts typically include the following “standard” or “general” terms and conditions:
 - Terms of shipping or packaging requirements;
 - Contract term, including any options to extend the term;
 - Where contract notices must be directed;
 - Identification of the parties’ representatives;
 - Dispute resolution; and
 - Indemnification.
- Deal Terms and Conditions. The contract may also include “deal-specific” terms applicable to the particular goods or services being procured or the circumstances of a particular purchase, such as:
 - If establishing an LPA, LPA options, terms, and conditions;
 - Any performance bond requirement;
 - Permits or licenses required of the Contractor and standards of performance required by particular personnel performing the services; and
 - Product warranties, detailed service level agreements, or performance criteria.
- Modification Provisions. Generally, provisions for modifying contract terms, including provisions for formal amendments, and for change orders and exercises of options, if applicable, are required to be in a contract. These

⁵ For superior courts, see TCFPPM, FIN 15.02, for details about establishing and complying with cost recovery plans required to be established by federal Office of Management and Budget Rule A-87.

terms establish the procedure to be used for each type of modification. If a JBE wants to be able to modify a contract without a formal amendment (i.e., modifying a contract by change order or exercise of an option), the contract must include a change order provision or an option provision. See Chapter 11 for more information on contract modifications.

- Contractor certification clauses (CCCs). CCCs *are required* in JBE contracts as provided in Appendix A, which contains a chart showing which CCCs are required in specific categories of contracts. CCCs provide a contractor's certification that it is in compliance with certain laws, or that certain conditions have been met or certain circumstances are true. CCCs may be included in the terms and conditions (often in the representations and warranties section) or may be placed in a separate document that is incorporated by reference into the contract.
- Insurance. When contracting with a non-governmental entity, the JBE should determine whether to require the contractor to maintain insurance in connection with the performance of the contract. If so, the JBE must determine what types of insurance to require, and the minimum dollar levels of each required policy. At a minimum, the JBE should require insurance in contracts involving the performance of high-risk activities described in section 8.3.B.1.b.

The most common types of insurance include:

- Commercial General Liability. This is a basic insurance policy the JBE should consider requiring. This policy covers bodily injury and property damage liability, including coverage for products, operations, hazard, personal and advertising injury liability, and contractual liability.
- Workers' Compensation and Employer's Liability. This policy must be required if the contractor has employees.
- Professional Liability. This policy should be required if the contractor performs consulting or professional services.
- Commercial Automobile Liability. This policy should be required if the contractor uses an automobile or other vehicle in the performance of the contract.
- Commercial Crime Insurance. If the contractor handles or has access to the JBE's funds or property of significant value to the JBE, the JBE should consider requiring this coverage.

Notes for contracts requiring insurance:

- If required, the commercial general liability and automobile insurance policies should be endorsed to include the JBE, its officers, agents, and employees as additional insureds with respect to the work performed for or items purchased by the JBE under the contract.
- Certificates of insurance (or, if acceptable to the JBE, Certificates of Self-Insurance) for all required policies must be received from the contractor or be verified as current and on file with the JBE prior to the beginning of any work. The certificates must be of a form and content that meets the requirements of the contract.
- The contract should state that no payments will be made to the contractor until all required current and complete certificates of insurance are properly endorsed and on file with the JBE. Agreements that include commercial crime insurance should state that the work will not begin until all required current and complete certificates of insurance are properly endorsed and on file with the JBE.
- The JBE must require that certificates of insurance include a provision that requires at least 15 days' written notice to the JBE in the event that insurance coverage is cancelled or materially changed.
- The contract should state that insurance must be issued by an insurance company that is acceptable to the JBE.
- If a Solicitation Document is used, the JBE should ensure that the required types and levels of insurance are specified in the Solicitation Document.

B. Special Provisions for IGCs

Because of the inter-governmental nature of IGCs, not all of the subject matters discussed above are necessary in IGCs. In preparing an IGC a JBE should review the information above regarding each element to determine which of the topics are appropriate for inclusion in the particular contract and whether any of the specific requirements noted above apply to the contract. See the appendices for required and recommended certifications and contract provisions for IGCs.

C. Additional Provisions Required in Certain Types of Contracts

Certain contracts require that specific clauses be included in the contract. Appendix C addresses these contracts, listed below:

1. Consulting Services Contracts
2. Credit Card Issuer Contracts
3. Equipment Purchase Contracts
4. Federally Funded Contracts
5. IGCs with Counties for County Services
6. IGCs with California Government Entities
7. IGCs with Local Governmental Entities
8. Information Technology Contracts
9. Janitorial/Building Maintenance Contracts
10. Legal Services Contracts
11. Parts Cleaning Contracts
12. Printing Contracts
13. Rental Agreements
14. Subvention and Local Assistance Contracts

In some instances a single contract may fit into more than one of these types of contracts. For example, an IGC between a court and a county fits types 5, 6, and 7, (and possibly others, depending on the contents of the contract). A JBE should ensure that it has consulted all relevant information in Appendix C before finalizing a contract.

8.4 APPROVAL OF CONTRACTS

A. Review and Approval of Commercial Terms

Each JBE's Local Contracting Manual must establish processes and levels of approval authority for entering into contracts that are consistent with applicable law (including rules of court), and that promote responsible stewardship of public funds and help avoid prohibited conflicts of interest. Consideration must be given to applicable financial and accounting standards, and best practices associated with contracting and procurement responsibility. Each JBE should also consider its size and resources when establishing processes and levels of approval authority.

B. Legal Review

JBEs may arrange for legal review of their contracts by their in-house legal staff or retained counsel, or through the AOC/OGC. In the event the JBE decides to require legal review of contracts, the JBE should adopt a policy in its Local Contracting Manual describing the circumstances where review is required.

The following are circumstances where legal review should be required.

- (a) High Risk Activities: The JBE should provide for legal review if the contract provides for the performance of high-risk activities. Each JBE should define “high-risk activities” in its Local Contracting Manual. High-risk activities may include, for example:
- Operating heavy equipment;
 - Transporting, holding, or incarcerating a person;
 - Applying, treating, removing, storing, or any other handling of hazardous chemicals or other hazardous substances;
 - Carrying a firearm, explosive, or other weapon; or
 - Transporting outside of secure premises cash, cash equivalents, securities, and other financial instruments with an aggregate value on any occurrence in excess of a certain dollar amount as specified in the Local Contracting Manual.
- (b) Contract template: The JBE should provide for legal review where the JBE plans to adopt a contract template.
- (c) Contract Modifications: The JBE should provide for legal review where one or more contract terms are to be modified, and:
- The contract is being modified to work out a contract dispute;
 - The modification itself triggers a requirement for legal review under the JBE’s Local Contracting Manual.
- (d) Certain Substantive Provisions Affecting Legal Risk: The JBE should provide for legal review if the proposed terms and conditions involve, for example:

- Assuming a risk or contingent liability not under the direct control of the JBE;
- Indemnifying any contractor or third party;
- Substantially narrowing any limitation of liability that favors the JBE as set forth in the JBE's standard terms and conditions;
- Substantially limiting the liability of a contractor or other third party;
- Agreeing to liquidated damages; or
- Releasing any claim or potential claim, or otherwise settling any dispute.

The following are sample circumstances where the JBE may wish to require legal review.

- (a) Dollar Value of Contract: The dollar value of the contract is above a certain dollar threshold. Appendix D sets out sample thresholds for legal review.
- (b) Revenue Agreements; Financing Agreements: The contract is a revenue agreement or financing agreement. Revenue agreements include reimbursement, income, receivable, and cost recovery contracts. They typically fall into one of two categories:
- Contracts between a JBE and a private entity, under which the private entity provides services and pays the state; or
 - Contracts between a JBE and a governmental or private entity, under which the JBE provides services and receives payment for the services.

Financing agreements include equipment lease/finance agreements, installment sales contracts, and other contracts under which compensation for purchased goods or services comes due over time instead of on receipt.

C. Review of Certain IT Contracts

All administrative and infrastructure information technology (IT) projects of the Judicial Council or the courts with total costs estimated at more than \$5 million are subject to review and recommendations of the California Technology Agency, as specified in GC 68511.9 (PCC 19204(a)).

8.5 EXECUTION OF CONTRACTS

A. Authority

Contracts may not be executed by persons without authority to do so according to established levels of authority in each JBE's Local Contracting Manual.

B. Process

- Contracts may be either manually signed or digitally signed:
 - If the contract is signed manually, the JBE should create at least two originally signed counterparts of each contract, one for the JBE and one for each contractor. Other than purchase orders, contracts should first be provided to the contractor for signature and then delivered back to the JBE, who will countersign the document and return an original to the contractor. Contracts may be executed in multiple counterparts if the contract so provides. If a manually signed document is delivered to the other party electronically (e.g., by fax or .pdf attached to an email), receipt should be confirmed and the originally executed counterparts exchanged promptly.
 - If the contract is signed digitally, the JBE must ensure compliance with California Code of Regulations, title 2, division 7, chapter 10 (Digital Signatures), promulgated under GC 16.5.
- Contracts should be mutually executed and delivered before work under the contract begins. Any work performed under a contract before it is fully executed and delivered is at the contractor's own risk. If a contract is not mutually executed and delivered before work begins, the contractor may not be paid for that work unless the effective date of the contract is no later than the date work begins.

C. Payee Data Record

This form must be completed and signed by all private entity contractors before execution of a contract unless the JBE has previously obtained a Payee Data Record from the contractor. This form may also be requested for a limited purpose in connection with contracts with public entities (e.g., for the purpose of properly issuing warrants, or recordkeeping).

APPENDIX A

CONTRACTOR CERTIFICATION CLAUSES

Some contractor certification clauses (CCCs) are **mandatory** in specific categories of contracts; these are marked with an “M” in the table below. A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other CCCs are **recommended** in specific categories of contracts; these are marked with an “R” in the table below. A JBE should include recommended CCCs.¹

Sample CCC’s are provided by AOC/OGC at the following URL: [_____](#). If a JBE drafts its own CCC, it must be in compliance with applicable law.

	CCC	PO	Standard Agreement	Short Form Agreement	MOU	IBA
1.	Authority	M	M (See note 1)	R (See note 1)	R	
2.	Qualification in California	R (See note 2)	M (See note 2)			
3.	No gratuities	M	M		R	
4.	No conflict of interest	M	M		R	
5.	No interference with other contracts	R	R		R	
6.	No litigation	R	R		R	
7.	Compliance with laws	M	M	R	M	
8.	Work eligibility	R	R			
9.	Union organizing	M	M			
10.	Drug-free workplace	R	R			
11.	No harassment	R	M	R		
12.	Non-discrimination	M	M	M		
13.	Domestic partners, spouses, gender	M (See note 3)	M (See note 3)			

¹ If CCC is neither mandatory (M) nor recommended (R), the table shows no mark.

	CCC	PO	Standard Agreement	Short Form Agreement	MOU	IBA
14.	National Labor Relations Board	M (See note 4)	M (See note 4)	M (See note 4)		
15.	Sweatfree Code of Conduct	M (See note 5)	M (See note 5)	M (See note 5)		
16.	Child Support Compliance Act	M (See note 6)	M (See note 6)			
17.	Use of post-consumer material	R				
18.	Jury duty	(See note 7)	(See note 7)			

Note 1: Mandatory only in janitorial and facilities maintenance contracts. If services are significant to the JBE, the representation is highly recommended.

Note 2: Mandatory only if services are performed in-state.

Note 3: Applies only to contracts for \$100,000 or more.

Note 4: Not applicable to purchases of goods by credit card for an amount less than \$2,500 from any one vendor, not to exceed in the aggregate \$7,500 per year from the vendor.

Note 5: This representation is mandatory only if the contract provides (i) for furnishing equipment, materials, or supplies (except related to the provision of public works), or (ii) for the laundering of apparel, garments or corresponding accessories.

Note 6: This representation is mandatory only if the contract is for \$100,000 or more.

Note 7: The jury duty representation is optional. It is included in this appendix because some JBEs have historically included this representation in their contracts.

APPENDIX B

MANDATORY AND RECOMMENDED CONTRACT PROVISIONS

Some of the sample contract provisions below are **mandatory** in specific categories of contracts; these are marked with an “M” in the table below. A provision is designated mandatory if the JBCL requires its inclusion in a contract, or it is required to comply with some other law, rule, or policy.

Other sample contract provisions below are **recommended** in specific categories of contracts; these are marked with an “R” in the table below.¹

Sample contract provisions are provided by the AOC/OGC at the following URL:

_____.

Note: The list in the chart below is not exhaustive. Other provisions may be appropriate depending on the subject matter of the contract and desired allocation of commercial and legal risks between the parties.

For low value, low risk, and short form agreements, JBEs may consider drafting provisions with less detail than in their standard agreements and POs, to the extent the particular language or detail is not expressly required by law.

	Provision	PO	Standard Agreement	Short Form Agreement	MOU	IBA
1.	CCCs (Refer to Appendix A)	M	M	M	M	
2.	Budget contingency provision	M (See note 1)	M (See note 1)	M (See note 1)	M (See note 1)	
3.	Loss leader	M	M	M		
4.	Antitrust claims	M (See note 2)	M (See note 2)	M		
5.	Recycling	M (See note 3)	M (See note 3)	M (See note 3)		

¹ If a provision is neither mandatory (M) nor recommended (R), the table shows no mark.

	Provision	PO	Standard Agreement	Short Form Agreement	MOU	IBA
6.	Priority hiring		M (See note 4)			
7.	DVBE participation certification	M (See note 5)	M (See note 5)	M (See note 5)		
8.	Union activities	M (See note 6)	M (See note 6)			
9.	Insurance	M (See note 7)	M (See note 7)	M (See note 7)		
10.	BSA audit provision	M (if over \$10,000)	M (if over \$10,000)		M (if over \$10,000)	M (if over \$10,000)
11.	General audit and records provision ²	R	R	R	R	R
12.	Indemnification by contractor	R	R	R		
13.	Independent contractor provision	M	M	M		
14.	Termination for default	R	R	R	R	R
15.	Termination by JBE for convenience	R	R	R	R	R
16.	Effect of expiration or termination; survival provisions	R	R		R	R
17.	Prohibition on assignment and subcontracting	R	R	R	R	R

² Audit or records provisions should require the contractor to retain for a period of 4 years following final payment under the contract documentation supporting the allocation of any costs to the JBE.

	Provision	PO	Standard Agreement	Short Form Agreement	MOU	IBA
18.	Binding on successors	R	R			
19.	Personnel and background checks	R	R			
20.	GAAP compliance	R	R			
21.	Ownership of results, rights in work product	M ³	M ⁴	R	M ⁵	R
22.	Confidentiality	R		R	R	R
23.	Publicity	R	R			
24.	Choice of law (California)	M	M	R	R	
25.	Amendment	R	R		R	R
26.	Waiver	R	R		R	R
27.	Severability	R	R		R	
28.	Time of the essence	R	R	R	R	
29.	Negotiated agreement	R	R			
30.	Headings	R	R			
31.	Counterparts	R	R	R	R	R
32.	Entire agreement	R	R	R	R	R
33.	Informal dispute resolution					R

Note 1: This provision is mandatory unless the JBE has the right to terminate the contract for convenience.

Note 2: This provision is mandatory if a contract was obtained by means of a competitive bid. Otherwise, the provision is not mandatory.

³ Mandatory for IT agreements only, otherwise recommended where there is valuable work product.

⁴ See 2 above.

⁵ See 2 above

Judicial Branch Contracting Manual	CONTRACTS	Chapter 8 Page: 23 of 34 (Appendix B)
------------------------------------	------------------	---

- Note 3: This provision is mandatory if a contract is for the purchase of products, materials, goods, or supplies. Otherwise, the provision is not mandatory.
- Note 4: With certain exceptions, this provision is mandatory if a contract includes services in excess of \$200,000. Exceptions: this provision should not be included in (i) consulting services contracts,⁶ or (ii) contracts for services related to public works, if the contract value exceeds the amount set from time to time pursuant to PCC 10105. Except as specified in this note, the provision is not mandatory.
- Note 5: This provision is mandatory if a Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation. Otherwise, the provision is not mandatory.
- Note 6: This provision is mandatory in contracts only if the amount is \$50,000 or more. Otherwise, the provision is not mandatory (although applicable portions of GC 16645-16649 still apply).
- Note 7: In specified circumstances (see section 8.3.A.3) employer’s liability insurance or self-insurance is mandatory, and in any legal services contract professional liability insurance is mandatory if the legal services are rendered to the JBE. Other insurance is recommended under the JBCM and may be required under the Local Contracting Manual.

⁶ For information regarding consulting services contracts, see Appendix C, section 2.

APPENDIX C

ADDITIONAL INFORMATION FOR CERTAIN TYPES OF CONTRACTS

This appendix contains additional information for the following types of contracts:

1. Consulting Services Contracts
2. Credit Card Issuer Contracts
3. Elevator Maintenance Contracts
4. Equipment Purchase Contracts
5. Federally Funded Contracts
6. IGCs (MOUs) with Counties for County Services
7. IGCs with California Government Entities
8. IGCs with Local Government Entities
9. Information Technology Contracts
10. Janitorial/Building Maintenance Contracts
11. Legal Services Contracts
12. Parts Cleaning Contracts
13. Printing Contracts
14. Rental Agreements
15. Subvention and Local Assistance Contracts

In some instances a single contract may fit into more than one of these types of contracts. For example, a court-county MOU fits within categories 6, 7, and 8 (and possibly others, depending on the content of the MOU). A JBE should ensure that it has consulted all relevant information in this Appendix before finalizing a contract.

1. CONSULTING SERVICES CONTRACTS

- a. Definition.** A consulting services contract (or “consultant services contract”) is a services contract in which the service to be provided is advice or recommendations rather than the use of mechanical or physical skills. The product may include anything from answers to specific questions to the design of a system or development of a plan. Consulting services may include workshops, seminars, retreats, and conferences for which paid expertise is retained by contract, grant, or other payment for services. Consulting services contracts typically do not include:
 - Contracts between JBEs and the federal government;
 - Contracts with any city, county, JBE, special district, authority or other political subdivision of the state, to subvene federal funds for which no matching state funds are required; and

- Contracts for architectural and engineering services (GC 4525 et seq.).

b. Requirements. A consulting services contract must include:

- A provision for settlement of contract disputes.
- If the contract is for \$5,000 or more:
 - Detailed performance criteria and a schedule for performance;
 - A requirement that the contractor provide a detailed analysis of the costs of performing the contract;
 - A resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor; and
 - A statement that the JBE shall evaluate the contractor's performance.

c. Recommendations. A consulting services contract should contain:

- A clear description of the work to be done or the problem to be solved;
- What the contractor is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is to be done; a description of the items to be delivered; the format and number of copies to be made of the completed reports; and the extent and nature of the assistance and cooperation that will be available to the contractor from the JBE;
- Time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion;
- Manner of Progress Payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price;
- Final meeting requirements between the contractor and JBE management (if the contractor is to present findings, conclusions, or recommendations);
- Final report requirements that require the contractor to submit a comprehensive final report (if applicable);
- The identity of the project coordinator or manager; and
- A notice similar to the following:

Subject to certain exceptions, no person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

2. CREDIT CARD ISSUER CONTRACTS

GC 6159(d) establishes the minimum requirements that must be met when a JBE enters into a contract with a credit card issuer allowing the JBE to accept payments by credit card. These contracts must define:

- The respective rights and duties of the JBE and credit card issuer regarding the presentation, acceptability, and payment of credit card drafts.
- A reasonable method to facilitate payment settlements.
- A reasonable fee or discount to be paid to the credit card issuer.
- Other matters that may be agreed upon by the parties.

For superior courts: additional information regarding credit card payments is set forth in the TCFPPM, FINs 10.01 and 10.02.

3. EQUIPMENT PURCHASE CONTRACTS

Contracts providing for the purchase of equipment using JBE funds should include a provision in substance as follows:

- Title to equipment purchased or built with JBE funds vests in the JBE upon payment of the purchase price.
- The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from contractor's invoice to the JBE, or require contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, contractor must file a police report immediately.

4. FEDERALLY FUNDED CONTRACTS

All contracts subject to this Manual that are funded in whole or in part by the federal government must contain a 30-day cancellation provision and the following provisions:

- It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made. This contract is valid and enforceable only if sufficient funds are made available

to the JBE by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.

- The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- The parties may invalidate this Agreement under any termination for convenience or cancellation provision or amend the contract to reflect any reduction in funds.

Exemptions from these requirements may be made by the JBE if the JBE can certify in writing that federal funds are available for the term of the contract.

JBEs using federal assistance for procurement should be aware of any applicable third-party contracting requirements that may be a condition of a specific grant. JBEs should consult with legal counsel as appropriate on a case-by-case basis to ensure compliance with all grant conditions.

5. IGCs (MOUs) WITH COUNTIES FOR COUNTY SERVICES

If a superior court and its county agree that the county will provide or continue to provide services to the court that were provided in 1997, GC 77212 requires the superior courts and county to enter into a contract regarding the services. The parties must cooperate in developing and implementing the contract. The contract is typically in the form of an MOU.

- Services provided to the court may be discontinued by either party giving written notice to the other no later than 90 days before the end of the fiscal year (i.e., prior to April 1); some MOUs may require earlier notice. Service discontinuation only becomes effective at the beginning of the new fiscal year (July 1), per GC 77212 (b) and (c).
- Under CRC rule 10.805, if the superior court receives or issues a notice regarding the discontinuation of county-provided services under GC 77212, a copy of the notice must be provided to the AOC Director of Finance within 10 days of the notice issue or receipt date.
- GC 77212(d) specifically requires that a court-county agreement identify the scope of services, the method of service delivery, the term of the agreement, the anticipated services outcomes, and the cost of the services. A court-county

agreement for services should also contain appropriate provisions applicable to IGCs generally under this chapter.

- In addition to the general requirements on costs, GC 77212 also requires inclusion of the following provision related to costs:

Costs. Costs charged to the court may not exceed the costs of providing similar services to county departments or special districts (GC 77212(a)).

- Counties periodically approve “cost allocation plans” detailing the actual expenditures of departments that provide indirect services to county departments and identifying the specific cost allocation methods that are used to distribute those costs. For purposes of determining the costs associated with its contract with the county, the contract should allow the superior court to review the specific charges in the cost allocation plan that were used to complete the plan, including the data elements provided by each county department.
- The amount of any indirect or overhead costs must be individually stated, together with the method of calculation of the indirect or overhead costs. (GC 77212 (d)).
- The Judicial Council or its delegee may audit the county figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the superior court.
- CRC rule 10.810 defines the division of responsibility between the state and county for funding the superior court. Costs payable by a superior court under any IGC, including agreements covered by GC 77212, may not contain items that are not otherwise allowable court operations.

6. IGCs WITH CALIFORNIA GOVERNMENT ENTITIES

Except for IBAs, JBEs should include the following waiver provision, or a similar provision that is modified as appropriate to address any indemnity provision in the contract:

Waiver of Per Capita Risk Allocation. The parties waive the per capita risk allocation set forth in Government Code section 895.6. Instead, they agree if one of them is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, the parties’ respective pro-rata shares in satisfaction of the judgment will be determined by applying principles of comparative fault.

7. IGCs WITH LOCAL GOVERNMENT ENTITIES

When a JBE contracts with a county, city, district, or other local government entity, the JBE should require, together with the signed contract, a copy of the resolution or other document authorizing the local governing body to enter into the proposed contract. When performance by the local government entity will be completed before any payment by the JBE, however, such as a room rental or a one-time event, the JBE does not need to obtain this documentation. The JBE may wish to include the following provision in the contract (e.g., in the CCCs):

Authority. Attached is a true copy of the code, rule, resolution, order, motion, or ordinance authorizing Contractor to enter into or execute this Agreement.

8. INFORMATION TECHNOLOGY CONTRACTS

When contracting for the performance of IT services, the contract must specify who will own the work product. If the JBE will own the work product, the contract must assign ownership to the JBE. If the contractor or some other party will own the work product, the contract should provide the JBE a worldwide license to the work product at no additional cost. The license should be broad enough to allow the JBE to use the work product for any reasonable purpose. The JBE may also wish the contract to provide the JBE a right to sublicense the work product at no additional cost.

IT contracts should include a provision in substance as follows:

Use Tax Collection. In accordance with PCC 10295.1, Contractor certifies that it complies with the requirements of section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC10295.1.

If the contract is for the purchase of systems, software, or instrumentation with imbedded chips, JBEs should include a provision substantially similar to the following in the contract:

Four Digit Date Compliance. Contractor warrants that it will provide only Four-Digit Date Compliant deliverables and/or services to the State. "Four Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is

subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.

9. JANITORIAL/BUILDING MAINTENANCE CONTRACTS

- The contract should provide that the contractor must retain for 60 days any employees employed at each site by the contractor/subcontractor who previously provided those services.¹
- End of Contract. The contract should require the contractor upon termination of the contract to provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- To the extent economically feasible, the contract should also require the use of supplies containing recycled products only, and must contain a recycling certification. (See chapter 3, section 3.3.)

10. LEGAL SERVICES CONTRACTS

Legal services contracts must contain, in substance, the following provisions.

The contractor shall:

- a. Adhere to legal cost and billing guidelines designated by the JBE.
- b. Adhere to litigation plans designated by the JBE, if applicable.
- c. Adhere to case phasing of activities designated by the JBE, if applicable.
- d. Submit and adhere to legal budgets as designated by the JBE.
- e. Maintain legal malpractice insurance in an amount not less than the amount designated by the JBE.
- f. Submit to legal bill audits and law firm audits if so requested by the JBE. The audits may be conducted by employees or designees of the JBE or by any legal cost-control provider retained by the agency for that purpose.

In addition, the following language must be added to legal services contracts for the representation of a California government entity:

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of this Agreement equal to the

¹ This does not apply to court/county MOUs for janitorial and maintenance service. See GC 71626.1 for applicable law regarding transfer of janitorial and maintenance services between court and county.

lesser of either (i) 30 multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (ii) 10 percent of this Agreement. "Ten percent of this Agreement" shall mean the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for non-renewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with the a judicial branch entity for legal services.

11. PARTS CLEANING CONTRACTS

To the extent economically feasible, the contract should require the use of recycled solvents only. The contract must contain a recycling certification clause. (See chapter 3, section 3.3.)

12. PRINTING CONTRACTS

To the extent economically feasible, the contract should require the use of recycled paper only. The contract must contain a recycling certification clause. (See chapter 3, section 3.3.)

13. EQUIPMENT RENTAL CONTRACTS

- A JBE should not agree to:
 - Indemnify a contractor;
 - Assume responsibility for matters beyond its control;
 - Agree to make payments in advance;
 - Accept any other provision creating a contingent liability against the state; or
 - Agree to obtain insurance to protect the contractor.

- The contract should provide that the JBE does not have responsibility for loss or damage to the rented equipment arising from causes beyond the control of the JBE. Any provision obligating the JBE to return the equipment in good condition, subject to reasonable wear and tear, also should except or exclude loss or damage arising from causes beyond the control of the JBE. The contract should expressly limit the JBE's responsibility for repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the state or its officers, employees, or agents.

- If the JBE does not elect to maintain the equipment, the contract should:
 - Place the obligation on the contractor, as lessor, to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification; and
 - Include a clear right in the JBE to terminate or cease paying rent should the contractor fail to maintain the equipment properly,
- Personal property taxes are not generally reimbursed when leasing equipment. If the contractor does not bargain for the JBE to pay the taxes, the contract should state the JBE will not do so.

14. 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. Because subvention aid or local assistance contracts are generally not awarded to a low bidder through competitive bidding, these contracts should contain adequate control language and address the necessity and reasonableness of the cost.

- a. Payment provisions in subvention aid contracts should be on a cost-reimbursement basis with a ceiling specifying the maximum dollar amount payable by the JBE. Contracts should set forth in detail the reimbursable items, unit rates, and extended total amounts for each line item. The following information is provided as a guide for items that may be included in these contracts:
 - Identify and justify direct costs and overhead costs, including employee fringe benefits.
 - Monthly, weekly, or hourly rates, as appropriate, and personnel classifications should be specified, together with the percentage of personnel time to be charged to the contract, when salaries and wages are a reimbursable item.
 - Rental reimbursement items should specify the unit rate, such as the rate per square foot.
 - If travel is to be reimbursable, the contract should specify that the rates of reimbursement for necessary travel and meal expenses and any other related expense shall be set in accordance with the rates of the JBE for comparable classes and that no travel outside the State of California will be reimbursed unless prior written authorization is obtained from the JBE.

Subvention aid contracts should specifically reserve title to the JBE for JBE–purchased or financed property, which is not fully consumed in the performance of the contract, even when the property is purchased in whole or in part by federally-supplied funds (absent a federal requirement for transfer of title).

- The contract should include a detailed inventory of any JBE-furnished property. (Superior courts must comply with the TCFPPM regarding state-owned property.) Provisions should be included regarding the usage, care, maintenance, protection, and return to the JBE of the property.
 - If purchase of equipment is a reimbursable item, the equipment to be purchased should be specified. Automotive equipment should be purchased by the JBE or a delegate. The contracting JBE should arrange for purchase of all other major equipment items by the JBE or a delegate, as well as other items when economies can be achieved by so doing, with the cost to be deducted from the amount payable to the contractor.
- b. Payments should not be permitted for construction, renovation, alteration, improvement, or repair of privately owned property when such work would enhance the value of the property to the benefit of the owner.
- c. The contract should require prior authorization in writing by the JBE before the contractor will be reimbursed for any purchase order or subcontract exceeding \$2,500 for any articles, supplies, equipment, or services. The contract should also require the contractor to provide in its request for authorization all particulars necessary for evaluation of the necessity or desirability of incurring such cost and the reasonableness of the price or cost. Three competitive quotations should be submitted or adequate justification provided for the absence of bidding.
- d. The contract should reserve prior JBE approval controls over the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference and over any reimbursable publicity or educational materials to be made available for distribution.
- e. The contract should require the contractor to maintain books, records, documents, and other evidence pertaining to the reimbursable costs and any matching costs and expenses and to hold them available for audit and inspection by the JBE or state for four years following final payment.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 9
Page 1 of 10

DISBURSEMENTS AND PAYMENT PROGRAMS

CHAPTER 9

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	3
Defined Terms.....	3
9.1 Disbursements	3
A. Payment Fundamentals	3
B. Advance Payments	3
C. Progress Payments.....	4
D. Periodic Payments	8
E. Payee Data Record.....	8
F. Payment of Invoices.....	8
G. Additional Payment and Invoice Considerations	9
9.2 Purchase Card Programs.....	10
A. Use of Purchase Cards Generally.....	10
B. Use of Purchase Cards by the Superior Courts	10
C. Use of Purchase Cards by Other JBEs	12

INTRODUCTION

This chapter describes payment practices including when payments should be released, what is required before making invoice payments, and what are acceptable and unacceptable payment practices. Also included in this chapter is information about the use of purchase cards.

DEFINED TERMS

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

9.1 DISBURSEMENTS

A. Payment Fundamentals

Payments ~~should~~must not be processed or released by a Judicial Branch Entity (JBE) to a Vendor for any goods or services unless the JBE possesses all of the following:

- A properly authorized contract;
- Documentation verifying the goods/services were satisfactorily received and/or performed; and
- An accurate, properly submitted Vendor invoice.

B. Advance Payments

Advance payments are payments made to a Vendor before the Vendor performs its obligations under the contract. Advance payments should only be made in special circumstances when necessary and may only be made under the following types of contracts:

- Contracts for basic software support/maintenance services (such as uncustomized software upgrades, or access to a customer technical support phone line to resolve software issues, but does not include, for example, services to develop or assist in correcting customized software programs);
- Contracts for services provided by community-based private nonprofit agencies where advance payment is essential for implementation of a particular program, provided the contract amount does not exceed \$400,000¹

¹ This amount may be increased by the [California](#) Department of Finance; any future increases will be posted on Serranus.

and provided that the advance payment does not exceed 25%² of the annual allocation to be made under the contract;

- Memorandums of Understanding (MOUs) with counties with a population of 150,000 or less as of January 1, 1983,³ if requested by the Board of Supervisors, where advance payment is essential for implementation of a particular program and where payment is not more frequent than once a month and does not exceed one-twelfth of the annual allocations required for the delivery of services by the county; and
- Contracts with state agencies or federal government entities for the provision of services, materials, or equipment to the JBE.

Note: For superior courts, see FIN 8.01, Section 6.5(1)(e) of the *Trial Court Financial Policies and Procedures Manual* regarding additional advance payment requirements.

Note: Insurance contract premiums that are typically required to be paid in advance of the coverage period are not advance payments under this Manual.

C. Progress Payments

A Progress Payment is a partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

General recommendations regarding Progress Payments:

- During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm the JBE's project manager has the expertise to properly monitor the Vendor's performance of its obligations.
- Discourage Progress Payments whenever possible;

² Advance payments in excess of 25% may be made on such contracts financed by a federal program when the advances are not prohibited by federal guidelines.

³ This includes the following counties: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Placer, Plumas, San Benito, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba (based on estimated populations from California Statistical Abstract).

- Do not allow Progress Payments on agreements with a term of fewer than three months;
- If Progress Payments are to be made, they should be described in the agreement with the Vendor and made at clearly identifiable stages of progress or not more frequently than monthly in arrears, based upon written progress reports submitted with the Vendor's invoices;
- Progress Payments should ~~must~~ not be made before goods or services are provided;
- Contracts should require a withholding of at least 10% of each Progress Payment pending satisfactory completion of the purchase transaction or a separate and distinct task (unless otherwise authorized by statute – please note: as further described below, PCC 12112(a) permits lower withholding percentages in certain cases for progress payments involving IT goods/services);
- Establish procedures/criteria in the contract for release of the amount withheld; and
- A written Statement of Work should be developed to clearly define the tasks that when completed would permit a Progress Payment to be made.

Consideration of Progress Payments: During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm the JBE's contract administrator has the expertise to properly monitor the Vendor's performance of its obligations.

When Progress Payments are Allowed

Progress Payment Requirements for Non-IT Services:

For a Progress Payment under a contract for non-IT services:⁴

- At least 10% of the contract amount must be withheld pending final completion of the contract;
- If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task; and

⁴ These requirements are based on PCC 10346.

- A Progress Payment must not be made unless the JBE has established procedures to ensure that the work or services are being delivered in accordance with the contract.

Note: The foregoing Progress Payment requirements do not apply to contracts: (i) for the construction, alteration, improvement, repair, or maintenance of real or personal property; (ii) less than \$5000 in amount (including contracts less than \$5000 where only travel expenses are to be paid); or (iii) between a JBE and state agency, or between a JBE and a local agency or federal agency.

Progress Payment Requirements for Non-IT Custom Goods Involving Work at Vendor's Facility~~Non-IT Goods:~~

~~Progress Payments for non-IT goods may be made for work performed and costs incurred at the Vendor's shop or plant if~~Contracts for non-IT goods to be specially manufactured for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary to protect its interests, for Progress Payments for work performed and costs incurred at the Vendor's shop or plant, provided that:⁵

- ~~• The goods are specially manufactured for the state~~JBE, and not suitable for sale to others in the ordinary course of the Vendor's business;
- ~~• The Progress Payments are made under terms and conditions that protect the state's interests;~~
- At least 10% of the contract price is withheld until final delivery and acceptance of the goods; and
- The Vendor provides a faithful performance bond, acceptable to the JBE, of at least one-half of the total amount payable under the contract.

Progress Payment Requirements for Custom IT Goods and Services Involving Work at Vendor's Facility:

~~Contracts for Progress Payments for~~IT goods or services to be specially manufactured or performed for the JBE and not suitable for sale to others in the ordinary course of the Vendor's business may provide, on terms and conditions that the JBE deems necessary

⁵ These requirements are based on PCC 10314.

~~to protect its interests, for Progress Payments may be made~~ for work performed and costs incurred at the Vendor's shop or plant if:⁶

- ~~• The goods or services are especially manufactured or performed by the Vendor for the state JBE, not suitable for sale to others in the ordinary course of the Vendor's business;~~
- ~~• The payments are made under terms and conditions that the JBE deems necessary to protect the state's interests; and~~
- At least 10% of the contract price is withheld until final delivery and acceptance of the goods or services; provided, however, that if the JBE determines that lower withholding levels are appropriate based upon its own risk analysis, which may include consideration of financial protection items (e.g., performance bond, surety, letter of credit, additional contract terms, other forms of security or guaranty to protect against Vendor's breach), then:
 - (i) if the contract price is \$10 million or more, the JBE must withhold at least 5% of the contract price until final delivery and acceptance of the goods or services; and
 - (ii) if the contract price is less than \$10 million, the JBE must withhold at least 3% of the contract price until final delivery and acceptance of the goods or services.

~~Consideration of Progress Payments: During procurement planning, and before entering into an agreement that involves Progress Payments to a Vendor, JBEs should carefully evaluate whether Progress Payments are warranted and reconfirm the JBE's contract administrator has the expertise to properly monitor the Vendor's performance of its obligations.~~

~~General recommendations regarding Progress Payments:~~

- ~~• Discourage Progress Payments whenever possible;~~
- ~~• Do not allow Progress Payments on agreements with a term of fewer than 3 months;~~
- ~~• If Progress Payments are to be made, they should be described in the agreement with the Vendor and made at clearly identifiable stages of progress or not more frequently than monthly in arrears, based upon written progress reports submitted with the Vendor's invoices;~~
- ~~• Progress Payments should not be made before goods or services are provided;~~

⁶ These requirements are based on PCC 12112(a).

- ~~• Contracts should require a withholding of at least 10% of each Progress Payment pending satisfactory completion of the purchase transaction or a separate and distinct task;~~
- ~~• Establish procedures/criteria in the contract for release of the amount withheld; and~~
- ~~• A written Statement of Work should be developed to clearly define the tasks that when completed would permit a Progress Payment to be made.~~

D. Periodic Payments

Periodic payments are payments made on a regular, recurring basis under installment purchase or lease-purchase agreements. Installment purchase and lease-purchase agreements ~~may present~~ are often complex legal issues, so JBEs are encouraged to consult with the AOC's Office of the General Counsel. JBEs are also encouraged to consult with the AOC's Business Services Unit on non-legal, business-related issues.

E. Payee Data Record

Before executing any contract (if the Vendor is not a government entity) and before any payment is released, a JBE ~~should~~ must confirm that a completed Payee Data Record has been obtained from the Vendor. ~~(The Payee Data Record template for trial courts can be found in section 7.0 of FIN 8.01 in the Trial Court Financial Policies and Procedures Manual).~~ The Payee Data Record provides, among other data, a Vendor's taxpayer identification number and is needed in order to process payments of invoices.

The Payee Data Record should be retained in the JBE's business services or accounting office, as determined by each JBE's policy, and in the procurement file. Because each Vendor's Payee Data Record is maintained at the JBE's business services or accounting office, a Vendor only needs to submit one Payee Data Record to the JBE. If any information changes, the Payee Data Record ~~should~~ must be updated.

F. Payment of Invoices

Accurate, properly submitted invoices: JBEs should instruct Vendors to submit accurate and correct invoices to ensure timely payment for goods or services received. JBEs ~~should~~ must not pay for anything that is not set forth in the contract (pallets, shipping, travel costs, etc.).

An accurate, properly submitted invoice includes the following:

- Detailed identification of the goods/services provided, quantities, unit price, extension, description, etc.;
- Applicable sales tax and/or use tax as a separate line item from goods;
- Service period, unit price (i.e., hourly, monthly), and quantity applicable to the service;
- Accurate billing address as stated in the contract;
- Invoice number;
- Invoice date;
- Vendor name and remittance address; and
- Submission of the invoice to the JBE address as identified in the contract as “billed to” or “invoice submitted to” for payment.

Invoice tracking: To accurately track invoices so they are paid in a timely manner, all invoices:

- ~~Should~~Must be promptly made available to accounts payable (or other appropriate department or personnel); and
- ~~Should~~Must be date stamped or have the receipt date noted when first received by accounts payable (or other appropriate department or personnel).

Invoice dispute notification: If there is a dispute about a submitted invoice, the JBE ~~should~~must promptly notify the Vendor. Buyers and project managers should consult with their JBE’s accounting office (or other unit as determined by JBE policy and procedures) to develop a plan of action for resolving the dispute in a timely manner. See chapter 10 for information on acceptance/rejection of goods and services.

Prompt payment discounts: Some Vendors may offer discounts for prompt payment. A JBE may elect to accept these payment terms when it is in the best interests of the JBE, after considering all financial and Vendor performance factors.

Separation of duties: JBEs should ~~have policies and procedures in place to ensure a clear maintain sufficient~~ separation of duties in order to reduce the risk of error or fraud in the JBE’s contracting and procurement programs. See chapter 1 on purchasing roles and responsibilities for more information.

G. Additional Payment and Invoice Considerations

Invoice Processing by Trial Courts: Superior courts should also refer to FIN 8.01 of the *Trial Court Financial Policies and Procedures Manual* regarding invoice processing by the trial courts.

Travel provisions: All travel expenses ~~should~~ must be related to official JBE business. Reimbursement for such expenses ~~should only be is~~ permitted only if provided for in the contract. ~~If the JBE will be reimbursing the Vendor for travel expenses, the contract must include appropriate travel-related provisions, including travel expense reimbursement limits that are in accordance with the Judicial Branch Travel Guidelines. Travel rates paid to Vendors should be set in accordance with the judicial branch travel rate guidelines (available at <http://serranus.courtinfo.ca.gov>). The contract should include appropriate travel-related provisions. Also Trial courts should also~~ refer to FIN 8.03 of the *Trial Court Financial Policies and Procedures Manual* regarding travel expenses under trial court contracts.

~~Training vouchers: JBEs may contract for training vouchers (e.g., reservations for IT-related training sessions) in advance of the training being provided if the Vendor does not invoice and the JBE does not pay for the training in advance.~~

9.2 PURCHASE CARD PROGRAMS

A. Use of Purchase Cards Generally

Purchase cards are a method of payment that works ~~like similar to~~ personal credit cards. ~~and offers a number of streamlining advantages over traditional procurement methods.~~ JBEs ~~should~~ must establish internal controls to monitor their use of purchase cards.

Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card should be initiated by an approved purchase requisition. Purchase cards may be used only for official JBE business; personal use is prohibited.

B. Use of Purchase Cards by the Superior Courts

1. The state-administered procurement card program, CAL-Card, is available to all trial courts, and has usage limitations defined by the program. The AOC's

Business Services Procurement Supervisor can be contacted at (415) 865-7978 for assistance.

2. Purchase cards typically are used only for the procurement of goods. Examples of items that may be purchased using purchase cards include library purchases, subscriptions, ~~seminar registrations~~, office supplies, and minor equipment.

~~Purchase cards should not be used to pay for services, but if the court does use a purchase card to pay for services (e.g., emergency repairs, towing services, etc.), the court must comply with Internal Revenue Service regulations and should maintain a Vendor data record or W-9 on file for each Vendor. The court is required to track credit card expenditures for services and, unless the court's credit card provider accepts the 1099 processing responsibilities, the court may be required to report such expenditures per IRS (Form 1099 – MISC.) reporting requirements. The trial court may be responsible for IRS penalties if the expenditures are not properly reported. Note that because credit card expenditures are bundled on a monthly statement, tracking of services may be extremely labor intensive. Although purchase cards must not be used to procure services, if a trial court purchases goods that have ancillary services associated with them, the entire transaction may be charged to a purchase card. For example, a court vehicle gets a flat while on a business trip and a full-size replacement tire is required to complete the trip. The tire and the ancillary services associated with the tire (mounting, balancing) may be charged to a purchase card.~~

3. Purchase cards may only be used for purchases with a maximum of \$1,500 per transaction. A suggested daily limit of \$5,000 should also be set for purchase card use. Alternative procedures should be documented, incorporated into the court's local contracting manual, and distributed to court personnel. ~~Any alternative procedure that is different from what is included in this chapter is required to be approved by the AOC before its implementation. Use of undocumented or unapproved policies will not be considered valid for audit purposes.~~
4. Purchase cardholders are responsible for providing documentation in the form of requisitions and receipts for purchases made using the purchase card (this includes providing such documentation upon receiving a monthly statement of card activity). The receipts and the statement ~~should~~ must be forwarded to accounts payable for verification and payment.

5. If the trial court receives a monthly master statement of purchase card activity, either accounts payable or the cardholder(s) is responsible for assembling the documentation (requisitions, receipts) necessary to verify purchases before issuing payment to the purchase card company.
6. If there is no receipt issued for a purchase card charge, the employee making the purchase ~~should~~must provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase ~~should~~must be provided.
7. Travel expenses may be ~~paid by reimbursed, or purchased with~~ a court credit card that is used only for travel expenses, or centrally purchased using a court travel account.

C. Use of Purchase Cards by Other JBEs

Currently, the only purchase cards authorized for use by JBEs other than the superior courts are the CAL-Cards, which ~~should~~must be used by these JBEs in accordance with the AOC's CAL-Card, State of California VISA Purchasing Card procedures.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 10
Page 1 of 10

RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES

CHAPTER 10

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction 3

Defined Terms..... 3

10.1 General Process for Receiving Goods and Services..... 3

 A. Receiving Process 3

 B. Packaging and Shipping 4

 C. Follow-up on Open Orders..... 5

10.2 Receiving Goods 5

 A. Questions to Consider When Receiving Goods 5

 B. Receiving Goods at Other Locations..... 6

10.3 Inspection of Goods 6

10.4 Acceptance Testing..... 7

10.5 Rejecting Non-Conforming Goods..... 7

10.6 Asset Management 8

 A. Controls Over Assets 8

 B. Lost, Stolen, or Destroyed Equipment..... 9

10.7 Receiving Services..... 9

 A. Accepting or Rejecting Services..... 9

 B. Maintenance Services..... 10

Judicial Branch Contracting Manual	RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES	Chapter 10 Page: 3 of 10
------------------------------------	---	-----------------------------

INTRODUCTION

This chapter discusses the process for Judicial Branch Entities (JBEs) to receive, inspect, and accept or reject goods and services that they have purchased. It also includes information about asset management.

DEFINED TERMS

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

10.1 GENERAL PROCESS FOR RECEIVING GOODS AND SERVICES

A. Receiving Process

Each JBE determines whether or not the goods and/or services received are acceptable and conform to all of the terms and conditions of the contract. The receiving process is set forth in the table below, along with definitions, in the context of this chapter, for certain related terms. A current and complete contract (including technical specifications, as applicable) is necessary to compare goods/services received to what was ordered.

Documentation on receiving, inspection and acceptance of goods/services may be maintained in electronic form and accessible through an online purchasing system. Accounts payable staff may utilize online information to process invoices. However, original documents are still required as supporting evidence when invoices are submitted for approval. For superior courts, original documents must also be retained in compliance with FIN 12.01 (Record Retention) in the *Trial Court Financial Policies and Procedures Manual*.

Term	Definition	Example
Receiving	The act of taking possession of goods or receiving services. Caution: Placing goods into inventory without inspection may waive inspection rights and remedies.	A JBE signs for goods, acknowledging that the goods were delivered, not that they were accepted.
Inspection	The act of examining goods/services to determine conformance to the contract.	A JBE inspects a delivery of office supplies and confirms that the delivery conforms to what was ordered in the contract.
Acceptance Testing	The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria, specifications). After inspection, Acceptance Testing may be required for certain goods and services.	A JBE purchases a network printer. The contract provides for a 30-day Acceptance Testing period, during which the printer must run error-free and meet other acceptance criteria.
Acceptance	The legal act of indicating to the Vendor the acceptance of goods and/or services. Note: goods/services could also be deemed accepted if the JBE fails to make an effective rejection of the goods/services.	After completing an acceptance test, a JBE notifies the Vendor in writing, confirming that the equipment passed the test and the JBE accepts the product.

B. Packaging and Shipping

Packaging and shipping requirements/instructions (if applicable) must be included in the contract.

A Vendor that ships multiple containers to a JBE should be instructed to number the containers with shipping labels and identify the total number of containers in the shipment, as well as identify the container in which the packing slip is enclosed.

JBEs should also instruct Vendors to include packing slips in all shipments. The Vendor should provide at least the following information on the packing slip:

- Contract number as issued by the JBE;
- Description of the goods;
- Quantity and unit of measure; and
- Item/part number.

~~Timely Release of Purchasing Documents~~

~~Buyers should promptly provide fully executed and properly approved contracts to the appropriate JBE personnel involved in post-award activities such as receiving shipments, accepting goods/services or authorizing payments. Such personnel should have a current and complete contract (including technical specifications) to compare goods/services received to what was ordered.~~

C. Follow-up on Open Orders

Each JBE should develop policies and procedures ~~for its Buyers and its receiving staff~~ to follow up on goods and services ordered but not yet received.

10.2 RECEIVING GOODS

A. Questions to Consider When Receiving Goods

A JBE should consider the following before taking receipt of any shipment:

- Is the shipment for this JBE?
- Is it damaged?
- Does it include a packing slip containing correct information and identifying a contract?

In addition, the following should also be considered:

- Is the delivery late, unsatisfactory, or incomplete?
- Do the goods comply with the specifications and packaging requirements in the contract?
- Are specialized skills or expertise required for inspecting the goods?

- Have all the terms listed in the contract been met and properly documented?

A JBE should promptly contact the Buyer with any questions or issues regarding the delivery, receipt, inspection, or acceptance of goods. If there is a partial delivery of goods, the staff receiving the goods should notify the Buyer if the contract did not state whether or not partial deliveries are acceptable. Staff receiving the goods should make available partial delivery documentation to the Buyer on a timely basis to facilitate any necessary communications with the Vendor.

B. Receiving Goods at Other Locations

JBEs that allow goods to be delivered at JBE locations other than main JBE sites should develop policies and procedures to inform staff receiving goods at such locations of their responsibilities, which should be consistent with the policies and procedures in this chapter (such staff should review JBE policies and procedures to facilitate accurate and efficient receiving of goods).

10.3 INSPECTION OF GOODS

Inspections should be completed within a reasonable amount of time or as specified in the contract. The JBE should confirm the following:

- What was delivered conforms to the contract (e.g., Statement of Work, specifications, attachments, etc.), including the product description, model, brand, and product numbers;
- The quantity ordered matches the quantity delivered;
- The goods are not damaged (and if the packaging cannot be opened immediately, it should be inspected; if a box, crate or other packaging looks damaged, it should be noted on the bill of lading);
- To the extent applicable, operability/functionality of the goods;
- Instructions regarding special handling or packaging were followed; and
- The delivery documentation (e.g., packing slip) is acceptable.

JBEs should document inspection results. At a minimum, the documentation should identify the scope of the inspection, name/title of JBE and Vendor personnel in

Judicial Branch Contracting Manual	RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES	Chapter 10 Page: 7 of 10
------------------------------------	---	-----------------------------

attendance, when and where the inspection occurred, and the inspection results. The documentation should be retained in the procurement file.

After determining that goods received and inspected are either in conformance with the terms of the contract or are to be rejected, the JBE must document the delivery and inspection. Staff receiving the goods should make available the following to accounts payable:

- The packing slip (and related documents such as the bill of lading, delivery receipt, etc.);
- A copy of the contract (if accounts payable does not already have it); and
- Documentation confirming that the delivery is in accordance with the contract.

Failure to make documentation available and follow related policies and procedures could delay payments to the Vendor. JBEs should keep contracts on file at least until Vendors have met all obligations. This is particularly important when accepting any partial deliveries or staggered deliveries over a period of time.

10.4 ACCEPTANCE TESTING

Where appropriate, contracts should contain provisions on Acceptance Testing and acceptance criteria (including description of the Acceptance Testing period, and how acceptance of the goods or services will be defined).

JBEs are encouraged to consult with the AOC Office of the General Counsel (AOC/OGC) regarding appropriate contract terms for Acceptance Testing, acceptance criteria, and related matters. JBEs are also encouraged to consult with the AOC's Business Services Unit on non-legal, business-related issues.

10.5 REJECTING NON-CONFORMING GOODS

If the goods do not conform to the requirements of the contract (including technical specifications) and the JBE decides to reject the goods, then the JBE should must notify the Vendor in writing in a timely manner or as specified in the contract. The notice should describe the non-conformity to the contract (including any applicable acceptance criteria).

Judicial Branch Contracting Manual	RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES	Chapter 10 Page: 8 of 10
------------------------------------	---	-----------------------------

~~To preserve its legal rights, the JBE should notify the Vendor of the rejection within a reasonable time after delivery or tender of the goods.~~

~~**Note:** in addition to this general requirement, there may be a specific deadline to reject the goods under the contract.~~

To preserve its legal rights, the JBE is responsible for making arrangements to hold the rejected goods, protect them from damage, and take reasonable care of rejected goods until the Vendor can take possession of the goods.

Note: Acceptance/rejection of goods can involve complex legal requirements and considerations. JBEs are encouraged to consult with AOC/OGC as needed (as well as with the AOC's Business Services Unit, as needed, on non-legal, business-related issues).

10.6 ASSET MANAGEMENT

Superior courts should also refer to FIN 9.01 of the *Trial Court Financial Policies and Procedures Manual* regarding asset management by the superior courts.

A. Controls Over Assets

JBEs ~~should implement~~ are responsible for policies and procedures to secure and safeguarding their assets, and should implement sufficient security controls for goods considered vulnerable to loss or unauthorized use. Inventory should be periodically taken and compared to control records.

The following items purchased by JBEs ~~should~~ must be tagged:

- An item with a value of more than \$1,000 and an anticipated useful life of more than one year; or
- An item with a value less than \$1,000 but which is particularly subject to loss or theft, such as small office equipment, cellular phones, printers, monitors, etc.

JBEs must record the following information on an item transferred from the county or purchased directly by the JBE with a value of \$5,000 or more and with an anticipated useful life of more than one year:

- Description of the item.
- Date of acquisition
- Value of the item (based on acquisition cost or appraisal value at time of transfer)
- Estimated useful life
- Salvage value (if applicable); and
- Remaining balance (net book value), if applicable.

~~JBEs should record the following information when property is acquired:~~

- ~~• Date acquired and name of contractor from which the property was acquired;~~
- ~~• Property description and location;~~
- ~~• Property identification number;~~
- ~~• Cost or other basis of valuation;~~
- ~~• Rate of depreciation (or depreciation schedule), if applicable; and~~
- ~~• Purchase Order number.~~

B. Lost, Stolen, or Destroyed Equipment

Whenever equipment is lost, missing, stolen, or destroyed, a JBE ~~should~~ must update its equipment records, prepare a report describing the event, and take precautions to prevent repeat situations.

JBEs should ensure that the appropriate documentation is provided to the Buyer to support the purchase of replacement equipment as a result of being lost, stolen, or destroyed.

10.7 RECEIVING SERVICES

A. Accepting or Rejecting Services

~~Appropriate JBE personnel should be assigned to monitor vendor performance of service contracts. Please refer to Chapter 11 for information on monitoring vendor performance. When preparing contracts for services, JBEs should develop clear, concise, and detailed descriptions of the services to be performed. Appropriate JBE personnel should be assigned to monitor Vendor performance. Please also refer to chapter 11 for information on monitoring of Vendor performance.~~ Any non-conforming or unacceptable performance levels should be documented ~~and provided to the Buyer~~ to assist in problem resolution.

~~Acceptance/rejection of services can involve complex legal requirements and considerations. JBEs are encouraged to consult with AOC/OGC as needed.~~

B. Maintenance Services

JBEs receiving equipment repair/maintenance services should develop a uniform process for collecting essential data on repair/maintenance incidents. JBEs should keep track of the following:

- When the JBE requested the services;
- When the contractor's personnel arrived to provide the service;
- When the equipment was returned to service; and
- A description of the equipment malfunction or incident.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 11
Page 1 of 24

CONTRACT ADMINISTRATION

CHAPTER 11

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction	4
Defined Terms	4
11.1 Principles.....	4
11.2 Contract Administration Plan.....	4
11.3 Role of Contract Administrators.....	5
11.4 Ethical Decisionmaking and Contract Administration	5
11.5 Record Keeping and Files	6
A. Vendor Lists.....	6
B. File Integrity	7
11.6 Vendor Licenses, Insurance and Performance/Payment Bonds	8
11.7 Vendor Performance and Payment	8
A. Performance and Delivery Control.....	8
B. Vendor Payment Issues.....	9
11.8 Options, Amendments and Change Orders	9
A. Options	9
B. Modification of Contract Terms by Amendment or Change Order	10
C. Change Administration.....	12
D. Communication	14
11.9 Contract Disputes, Vendor Demands, and JBE Complaints.....	15
A. Contract Disputes	15
B. Vendor Demands.....	15
C. JBE Complaints Regarding Vendor Performance	17
11.10 Contract Termination.....	18
A. Termination for Convenience.....	18
B. Termination Due to Nonavailability of Funds	18
C. Termination for Cause	19

D. Contract Work Suspensions19

11.11 Filing Practices21

11.12 Contract Closeout.....22

11.1 Disclosure of Contract Documentation23

INTRODUCTION

This chapter describes the requirements and recommended practices associated with contract administration. It also addresses contract provisions and actions required to protect each Judicial Branch Entity's (JBE) interests and ensure Vendor performance.

DEFINED TERMS

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

11.1 PRINCIPLES

Contract administration focuses on the relationship between the JBE and the Vendor from contract award to closeout to ensure the Vendor delivers the goods and/or services in conformance with contract requirements.

Contract administration is the communication between the JBE and its Vendors that conveys the JBE's expectations specified in a contract, protects its contractual interests, and documents the activities associated with the contract including payment, contract compliance, disputes, etc.

11.2 CONTRACT ADMINISTRATION PLAN

JBEs should establish a contract administration plan and include the plan in their Local Contracting Manual. This plan, detailing the conduct of contract administration within the JBE, should reflect or reference the principles, rules, and requirements affecting contract administration contained within this Manual.

Depending on the staffing capabilities of the particular JBE, with respect to the management of contract administration activities, this plan should provide for:

- The appointment of a senior Contract Administrator ultimately responsible for the performance of all contract administration functions;
- A grant of authority to the senior Contract Administrator to delegate to other JBE employees the authority and responsibility to perform contract administration functions, that makes them Contract Administrators;
- The establishment of clear lines of authority for the management and conduct of contract administration functions; and

- A description of each Contract Administrator's function within the JBE.

11.3 ROLE OF CONTRACT ADMINISTRATORS

Contract Administrators are those JBE staff who perform contract administration functions. Each Contract Administrator must understand all aspects of the contract.

Contract Administrators must ensure that:

- The procurement of goods and services is appropriately documented;
- Vendors comply with the terms of their contracts as well as applicable laws, rules, and regulations;
- Contract performance progresses satisfactorily;
- Problems that may threaten performance are promptly identified; and
- Contractual disputes are addressed and resolved appropriately, applying sound administrative practice and business judgment.

Contract Administrators are responsible for the following:

- Acting only within the limits of their authority;
- Authorizing contractual actions that are within authorized budgets or available funding;
- Ensuring Vendor and JBE compliance with the terms of the contract;
- Safeguarding the JBE's interests in its contractual relationships; and
- Ensuring that Vendors receive impartial, fair, and equitable treatment.

11.4 ETHICAL DECISIONMAKING AND CONTRACT ADMINISTRATION

Contract Administrators must adhere to and conduct business by maintaining high ethical standards.

Contract Administrators must:

- Conduct themselves in a professional manner, refraining from mixing outside relationships with business, and not engaging in incompatible activities, conflicts of interest, or unethical behavior;
- Accurately account for expenditures and goods and services received;
- Be aware that perceptions can override reality; and

- Involve the JBE's procurement and legal staff or, alternatively, the Administrative Office of the Courts/Office of the General Counsel (AOC/OGC), when questions arise regarding acceptable or unacceptable behavior when dealing with Vendors.

No Contract Administrator may accept, directly or indirectly, any gift, money, loan of money or equipment, meal, lodging, transportation, gratuity, favor, entertainment, service, or any other item of value from any person who is doing or seeking to do business of any kind with the Contract Administrator's JBE. Such circumstances could be construed as intent to influence the Contract Administrator in his or her official duties or as a reward for official action performed by the Contract Administrator and such items must be declined.

Other ethical issues include the following:

- Contract Administrators must not purchase goods or services from any business entity in which they have a financial interest;
- Contract Administrators are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the Contract Administrator and the judicial branch.

11.5 RECORD KEEPING AND FILES

A. Vendor Lists

The JBE should develop and maintain a list of Vendors. The JBE may use an electronic procurement system for this purpose. For each Vendor, the following information should be included:

- Firm name;
- Tax identification number;
- Firm address;
- Point of contact information including telephone and fax numbers, email addresses, etc.;
- The firm's valid seller's permit number, if applicable;
- The licenses required for the firm to perform the contracted services;

- Type of business (corporation, partnership, sole proprietorship, joint venture, parent company or subsidiary, etc.);
- Types of goods or services offered;
- Firm's status as a Disabled Veteran Business Enterprise (see chapter 3); and
- Year the firm was established.

Files should contain each firm's data and any other information submitted by the Vendor.

B. File Integrity

Files must be established and maintained for every procurement action.¹ This requirement applies to the Vendor selection process (preaward) and to postaward contract administration, maintenance, and contract closeout.

The requirement to maintain contract files is based on three standards of sound contract administration:

- **One:** A contract administration system ~~must~~ ensures that Vendors perform according to the terms, conditions, and specifications of their contracts;
- **Two:** Sound business judgment is exercised in settling all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation and the administration of protests, change orders, amendments, disputes, and claims; and
- **Three:** Documentation of a fair and competitive procurement is maintained.

Contract files should be readily available to protect and support the principles of providing transparency and accountability to the procurement process and to protect the JBE's best interests in the event of future claims, litigation, audits, reviews, or investigations.

¹ An electronic file system may be used for this purpose (as part of a procurement and contract management system) so long as file integrity and security are adequately maintained.

11.6 VENDOR LICENSES, INSURANCE AND PERFORMANCE/PAYMENT BONDS

The Contract Administrator must ensure that all required Vendor certificates of insurance, licenses, and performance or payment bonds are current by establishing and enforcing a compliance plan and affirmatively acting to ensure contract compliance.

Vendors that provide services must furnish the JBE certificates of insurance to evidence compliance with the contract insurance requirements before commencing work.

- Insurance certificates must be of a form and content that meet the requirements of the contract; and
- Vendors that have current contracts with the JBE should provide a new insurance certificate on or before the expiration date of any required certificate.

Where the contract calls for performance or payment bonds, Vendors must furnish the JBE evidence of compliance with contract bonding requirements before commencing work.

Any Vendor license required for the Vendor to perform the contracted service must be in place before commencing the service that requires the license and, unless otherwise provided for in the contract, must be maintained continuously for the duration of the contract.

11.7 VENDOR PERFORMANCE AND PAYMENT

A. Performance and Delivery Control

The JBE must monitor Vendor performance to ensure that the value of the goods or services it receives is in compliance with the contract price and meets prescribed acceptance criteria and contract milestone dates. The Contract Administrator or other authorized JBE member, with feedback from the employee who requested-receives the goods or evaluates the services, must ensure that the Vendor's delivery or performance meets the JBE's contract requirements. See section 11.9 and section 11.10 for procedures related to unacceptable Vendor performance.

The Contract Administrator or other authorized JBE member, must ensure that the goods and services procured under each contract conform to quality, safety, quantity, and any other measures associated with quality assurance (e.g., warranties) specified in the contract as follows:

- Monitoring Vendor performance, quality, and warranty obligations when appropriate and necessary to protect the JBE's interests; and
- Ensuring that nonconforming goods or services are rejected.

Monitoring Vendor performance can be facilitated by the following best practices:

- Conducting status reviews of Vendor compliance at regularly scheduled project meetings;
- Requiring written monthly or quarterly reviews of the Vendor's performance in meeting goals;
- Requiring the Vendor to propose and implement plans to cure unsatisfactory performance when contract goals are not met; and
- Performing a Vendor evaluation at the conclusion of the contract and retaining the evaluation for future reference.

B. Vendor Payment Issues

Every effort should be made to pay Vendors in a timely manner according to the terms of the contract for goods provided and services rendered. Unresolved payment problems can put the JBE in breach of contract, or may damage Vendor relationships and lead to unnecessary administrative costs. Payment issues that cannot be resolved quickly and informally should be elevated to an appropriate level of JBE management before they lead to disputed claims or litigation. Vendors should be kept aware of the effort to remedy the payment issue until a final resolution is reached.

If a portion of an invoice is in dispute, only the disputed portion of the invoice may be withheld from payment. All correspondence related to a payment dispute must be kept in the procurement file including a description of the problem and efforts made toward resolution.

11.8 OPTIONS, AMENDMENTS AND CHANGE ORDERS

A. Options

1. An option is a party's unilateral right, agreed to by the parties and specified in the contract, to elect to exercise a privilege specified in the contract.²
2. A contract may be drafted to include an option that is exercised upon the inaction of a party. The contract may call for the extension for an additional term or multiple additional terms if a party does not issue a notice of termination of the contract by a certain time prior to the end of the then-existing term. This is known as an "evergreen clause."³ Because a JBE could become unintentionally bound to perform for an extended term due to inaction, the use of an evergreen clause [should be carefully considered and contracts containing this clause will need to be carefully managed. A more sound and risk adverse practice would be to use an](#) option to extend the term of the contract requiring written election to be exercised.
3. A contract may provide the JBE the opportunity to issue a unilateral change amendment affecting fundamental terms such as the Statement of Work (SOW) and price. Unilateral amendments constitute a permitted change to the contract terms and the resulting altered contract has the full force and effect of the original contract. They do not prejudice or limit any of the Vendor's rights to make claims or appeal disputes under other provisions of the contract. The JBE should issue a unilateral amendment only after review and consultation with legal counsel.
4. The AOC, the HCRC and the appellate courts should notify the appropriate person in the AOC Finance Division upon the exercise of a contract option⁴ including an [extension of time](#) or an [increase or decrease in the contract value](#). In the event of an option exercised by a notice of exercise option or other form of communication, the AOC, the HCRC and the appellate court's notice to the AOC Finance Division should contain a copy of the notice of exercise of option or other form of communication.

B. Modification of Contract Terms by Amendment or Change Order

² [The exercise of an option included in a contract is not an amendment of the contract but should be in writing. \(If, however, a contract specifies an option must be exercised, if at all, by "amending" the contract, a party exercising the option must adhere to contractually required procedures for amending the contract.\)](#)

³ Contracts containing evergreen clauses are often referred to as "evergreen contracts."

⁴ This applies regardless of whether the option is exercised by action or inaction.

A change to the original contract's terms ~~may~~must be accomplished by amendment or change order and may alter delivery point, date of delivery, contract period, price, quantity, or other provisions of the contract.

Most contract terms are modified by amendment. Amendments must be mutually agreed to and executed by authorized representatives of both parties.

Amendments most frequently deal with changes to the work to be performed, time extensions, compensation for delays, and changes in the contract price due to any or all of the above. A request for an amendment may be initiated by the JBE or the Vendor.

Trial courts are responsible for [inputting contract commitments into](#) the Phoenix Statewide Financial System (Phoenix) [and updating Phoenix so that it accurately reflects subsequent contract amendments](#). Trial courts should coordinate with the AOC Trial Court Administrative Services Division, as appropriate, to ensure accurate updating of Phoenix.

Provisions for change orders are usually found in construction and large scale software development agreements where the SOW may be defined but the specifics as to how that scope will be fulfilled may not be known until the project is underway. A change order may take the form of a unilateral written order by the JBE directing the Vendor to change the contract's service and/or materials requirements that may affect contract price and time of contract completion. Such changes must be within the scope of the contract and in accordance with a contract "changes" clause that permits unilateral change by the JBE to be legally implemented without the consent of the Vendor.

Failure by the JBE and the Vendor to agree to the terms and conditions of a requested modification may occasionally result in disputes between the parties. In such cases, the dispute should be resolved according to the contract's terms and the procedures for disputes (see section 11.9).

[Amendments](#)

[An amendment is used to modify a contract when the modification exceeds the scope of changes that may be made by change order. Contract modifications must be documented in a mutually executed written amendment. Emails, letter correspondence, and oral notification between parties are insufficient to amend a contract.](#)

C. Change Administration

~~1. Changes Clause~~

~~The JBE should include a “changes” clause in each contract to accomplish the following:~~

- ~~• Specify the types of changes that must be made within the scope of the contract by amendment and those that may be made by change order. As disputes may arise over whether certain modifications to the contract terms should be made by amendment or change order, JBEs should carefully consider the scope of this provision to minimize disputes. Change order provisions should be reviewed by legal counsel;~~
- ~~• Include provisions for adjustments in contract price, delivery schedules, and other contract terms that are appropriate to the type of contract; and~~
- ~~• Identify the individuals authorized to sign amendments and the project manager authorized to sign change orders.~~

~~2.1. Vendor Requested Changes~~

~~If the Vendor requests a change, the Vendor must do so in writing on a timely basis according to the terms of the contract. The Vendor must be required to support its requested change through the submittal of a timely proposal as follows:~~

- ~~• The proposal should incorporate the appropriate billing rates and factors outlined in the contract for changes, extras, or delays (if applicable);~~
- ~~• Amendments for consulting services are sometimes based on the Vendor’s fee schedule that is included in the contract. On unit price or fixed price line item contracts, the consideration for reductions in quantity must be at the stated contract price. Proposed increases in fixed contract prices or labor rates must be supported to the satisfaction of the JBE; and~~
- ~~• In some cases (e.g., the addition of hours to a time and materials contract or a simple time extension), it may be appropriate for the JBE to prepare the contract change without a proposal from the Vendor.~~

The JBE must exercise its judgment and discretion in determining when a proposal from the Vendor is needed.

3.2. Negotiation of Changes

Some of the following steps may be applicable to the negotiation of changes to contract terms:

- a. **Written Prenegotiation Objectives**: The JBE should develop written pre-negotiation objectives for amendments and change orders, **for internal JBE use only**. This useful step establishes the JBE's goals and assures that negotiations are conducted along lines more likely to achieve the JBE's objectives.
- b. **Written Memorandum of Negotiations**: A written memorandum should be prepared by the Contract Administrator to record the results of negotiations. The memorandum is a summary of negotiations that sets forth the agreement between the parties on major issues (e.g., price, delivery, performance time, payment terms and any special provisions to be included in the contract).

The memorandum should explain the differences, if any, between the negotiated price adjustment and the prenegotiation position. When there are numerous differences involving significant sums, use a tabular format to show the price differences. Price differences should be explained in a narrative accompanying the tabulation. For small purchases, this can be handwritten on the requisition or other suitable file document.

- c. **Lock in the resolution or change**: To avoid subsequent controversies that may result from a contract modification, JBEs should:
 - Ensure that all elements of the amendment or change order have been presented and resolved; and
 - Consult with legal counsel as to whether to include a release statement in the amendment or change order, in that the Vendor releases the JBE from any liability attributable to the facts giving rise to the Vendor's proposal for adjustment, unless specific exceptions are expressly set forth in the release statement.

No contract modification requested by the Vendor should be allowed, if it is not within the original scope, fully justified to the JBE's satisfaction, reasonably priced, and in compliance with the terms of the contract. Ultimately, the modification ~~should~~must serve the public interest.

D. Communication

All correspondence regarding amendments, change orders and the exercise of options, as well as disputes and terminations, should be directed to the person or persons designated in the notices section of the contract. Failure to provide notice to the appropriate person in a timely fashion may result in the loss of rights under the contract.

Following are differences among alternative ways to affect changes in performance under a contract:

	<u>The contract must provide for the modification?</u>	<u>Requires rebidding (or an applicable exception)?</u>	<u>May be accomplished by personnel with or without authority to sign contracts (e.g. the project manager)?</u>	<u>Requires mutual agreement and signature?</u>	<u>Subject to Legal Review?</u>
<u>Change Order</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No*</u>	<u>No</u>
<u>Option</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	<u>No*</u>	<u>No</u>
<u>Amendment</u>	<u>No</u>	<u>Yes**</u>	<u>No</u>	<u>Yes</u>	<u>Yes***</u>

*unless the contract expressly provides otherwise

**as set forth in chapter 4 (e.g., depending on the scope of amendment, one or more amendments may be permitted without rebidding)

[***as set forth in chapter 8 \(e.g., if legal review was recommended or required for the initial contract or initial contract as previously amended\)](#)

11.9 CONTRACT DISPUTES, VENDOR DEMANDS, AND JBE COMPLAINTS

A. Contract Disputes

Contract disputes generally arise when the JBE and the Vendor disagree about the interpretation of contract language, SOW, specifications, schedule, price, or other issues that impact performance, completion, payment, amendments, or other contract terms.

Minimizing and settling disputes before they become claims is one goal of contract administration. Contract Administrators should anticipate and minimize potential unresolved disputes that can disrupt operations and overrun budgets. The JBE should work with its Vendors and communicate effectively to develop a clear understanding of the contract's performance requirements.

The best forum for dispute resolution is often an informal meeting, conducted between the parties who are most knowledgeable of the facts and who have the authority to make decisions. These meetings should be conducted whenever the JBE denies a Vendor request for a significant modification of the terms of the contract or the parties express a contrary view of the contract requirements. Resolving contractual issues by mutual agreement at the lowest appropriate level of authority is a worthwhile goal.

Although two-way communication is essential to developing a mutual understanding of the issues, all Vendor-requested modifications or expressed differences in the interpretation of contract terms and requirements should be submitted in writing. The JBE must not compromise on issues of integrity or clear JBE entitlement under the contract. However, there is often a middle ground that is fair and equitable to both parties.

B. Vendor Demands

1. If a dispute cannot be resolved to the satisfaction of the parties informally as discussed above, the Vendor can submit a formal written demand. The demand

may result from the JBE's denial of the Vendor's contract modification request or invoice, JBE's notice of a unilateral amendment, rejection of work, or the failure of the parties' good faith efforts to resolve disputed issues through informal communication or meetings. Demands seek the payment of money, a time extension, adjustment or interpretation of contract terms, or other relief. A demand may or may not be allowed or timely depending on the provisions of the contract (e.g., if the dispute resolution provision directs that disputes be submitted to mediation as a next step).

2. Vendor demands should be submitted to the JBE on or before the date of final payment. All demands must follow contract requirements, be submitted in writing, follow the format established by the contract, and include a narrative description and documents necessary to substantiate the Vendor's position.
3. Responsibility for the processing, review, and research of Vendor demands, along with participation in the dispute resolution process, should be assigned to a Contract Administrator.
4. The JBE must respond in writing to all properly submitted Vendor demands within the time limits established by contract or as mutually agreed by the JBE and Vendor.
5. Unless otherwise noted in the contract, if the Vendor disputes the JBE's written response, the JBE (with guidance from legal counsel) must inform the Vendor that it may petition the JBE.
6. The JBE must seek to resolve all demands in a fair and equitable manner by the most expeditious and cost-effective means possible. The JBE must first seek resolution by reviewing the contract and all applicable documents to find an equitable solution within the scope of the contract. If the demand has merit, the assigned Contract Administrator should prepare a negotiation settlement memorandum. If a written response meant to bind the JBE is made offering the Vendor a monetary settlement or other remedy, such offer must be executed by the Procurement and Contracting Officer (see chapter 1, section 1.1.C) or a Buyer with the authority to execute amendments on behalf of the JBE.
7. Any resolution of a demand must include a release statement in that the Vendor releases the JBE from any liability with respect to the demand unless specific exceptions are expressly set forth in the release statement.

C. JBE Complaints Regarding Vendor Performance

The JBE must attempt to settle informally all complaints against the Vendor. If informal efforts are unsuccessful, the JBE should give the Vendor written notice of its complaint and an opportunity to take corrective action, as follows (unless otherwise directed in the contract):

1. Give notice: The written notice to the Vendor detailing the complaint and asking the Vendor to comply with the terms of the contract is called a cure notice.⁵ The cure notice informs the Vendor that it is deficient with respect to one or more contractual obligations. The Vendor is further advised that if the deficiency is not cured within the prescribed time frame, the JBE may initiate specific remedies up to and including issuing a notice of Termination for Cause.
2. Inform the AOC/OGC: JBEs, other than the HCRC, must inform the AOC/OGC in a timely manner when they have issued a cure notice and provide counsel with requested information and documents including the cure notice. (See CRC rule 10.202.)
3. Take Corrective Action: If the Vendor fails to meet the demands of the cure notice within a reasonable time, the JBE must take appropriate action.
4. Reclaim Expenses of Corrective Action: If the JBE takes action to correct the failures of the Vendor, appropriate back-charges ~~must~~ should be assessed against the Vendor. If available and allowed by the contract, offsets against amounts owed to the Vendor should be taken from pending payments.
5. Assessment by AOC/OGC: For JBEs other than the HCRC, the AOC/OGC will evaluate the complaint. After consultation with the JBE, if appropriate, AOC/OGC may provide an additional level of negotiation, identify possible remedies (including possible contract termination), and determine whether to recommend initiating legal action.

⁵ Depending upon the circumstances and the terms of the contract, failure to provide a cure notice where informal settlement efforts have been unsuccessful may have a negative impact on the JBE's position. It is recommended that JBEs consult with legal counsel regarding whether or not to issue a cure notice.

11.10 CONTRACT TERMINATION

Each contract must contain provisions that address the potential for termination, how terminations are accomplished, and the basis for termination. JBEs should seek legal counsel when terminating any contract.

A. Termination for Convenience

All contracts should contain provisions that allow the JBE to terminate the contract for the convenience of the JBE. A “Termination for Convenience” clause allows the JBE, at its sole option and discretion, to terminate the contract in whole or in part, without any liability other than payment for work already performed, up to the date of termination.

Contracts should set forth the method for compensating the Vendor for work already performed upon Termination for Convenience.

Written notice to the Vendor is necessary to terminate all or part of a contract for convenience. Notice must state that the contract is being terminated under the Termination for Convenience provision, the effective date of the termination, the extent of termination, and instructions to the Vendor to stop performance under the contract.

Unless there is a clear and significant benefit to the JBE in permitting a vendor Termination for Convenience clause that clearly outweighs the risks of permitting a vendor to terminate at will, contracts ~~should~~must not allow a Termination for Convenience by a Vendor.

B. Termination Due to Nonavailability of Funds

The JBE must be allowed to terminate the contract, if expected or actual funding is withdrawn, reduced, or limited in any way before the expiration of the contract. All JBE contracts must contain a clause allowing termination in the case of nonavailability of funds. The JBE must provide the Vendor with written notice of such a termination.

In the event of a termination in whole or in part due to the nonavailability of funds, the Vendor will be paid for goods or services satisfactorily rendered up to the effective date of termination. The Vendor will also be released from any further obligation under the contract with respect to the cancelled portion of the contract.

Contracts whose terms extend beyond the end of the current fiscal year should specify that the contract extension is conditioned upon the appropriation of sufficient funds by the applicable legislative authority. If sufficient funds are not appropriated, this type of

contract is subject to termination at the conclusion of the fiscal year through which funds are available.

C. Termination for Cause

JBE contracts must contain a Termination for Cause clause to protect the JBE in the event of a Vendor default.

Vendors must be provided with a reasonable written notice of any Termination for Cause. The Vendor must also be provided an opportunity to be heard.

If required by the contract, or allowed by the contract and deemed reasonable by the JBE, the Vendor must be notified by a written cure notice of the default and advised that if the default is not “cured” within the time prescribed in the cure notice, the JBE may immediately initiate the contract termination process and hold the Vendor and its sureties liable for associated costs and liquidated damages (if applicable).

The JBE must issue a notice of default to the Vendor, if the Vendor fails to:

- Respond in a timely manner; or
- Satisfactorily cure the default.

If included as a provision to the contract, and a Vendor's right to proceed in performing the contract is terminated for cause, the JBE may take over and complete the work or cause it to be completed by other appropriate means to protect the JBE's interests. The contract should specify that the Vendor is liable to the JBE for any increased costs incurred by the JBE associated with completing the work. In addition, the Vendor may be liable for damages, depending on the terms of the contract.

D. Contract Work Suspensions

If a temporary delay is a possibility, a “Suspension of Work” provision should be included in the contract. In accordance with the contract terms, and as the need arises, the JBE may issue a written order to the Vendor to suspend, delay, or interrupt all or any part of the work for the period of time that the JBE determines appropriate.⁶

⁶ Suspensions should include a time limit, after which the provisions of the Suspension of Work clause should be clear that the work will either resume or one of the termination clauses will go into effect.

If the performance of all or any part of the contract work is delayed or interrupted (i) by an act of the JBE in the administration of the contract that is not implied or expressly authorized by the contract, (ii) by a failure of the JBE to act within the time specified in the contract (outside of a force majeure and subject to any contractually permitted or agreed-to extension of the time specified), or (iii) within a reasonable time if not specified, an adjustment should be made for an increase in the cost and time of performance of the contract caused by the delay or interruption and the contract should be modified accordingly.

The Suspension of Work provision should state that the JBE is not liable for the Vendor's loss of anticipated profits in the event of a Suspension of Work.

11.11 WARRANTIES

~~Vendor warranties consist of terms designed to protect the JBE from product defects and poor quality services. The JBE should obtain warranties for the goods and services it procures in most circumstances. Additionally, there are warranties implied by law whose breach may provide the JBE with a remedy for damages due to product defects or poor quality of services.~~

~~The JBE should take advantage of warranties for the repair and/or replacement of commercial items, where appropriate and in the JBE's best interests.~~

~~When acquiring a warranty, the JBE should consider the following factors:~~

~~1. The nature and use of the goods and services, that may include:~~

- ~~• Complexity and function;~~
- ~~• Stage of development and technological advancement;~~
- ~~• End use;~~
- ~~• Expected useful life;~~
- ~~• Difficulty in detecting defects before acceptance; and~~
- ~~• Potential harm if the goods or services are defective.~~

~~2. Warranties for durations in excess of a standard period are sometimes offered at additional cost.~~

~~3. The JBE's ability to track and enforce warranty provisions is essential to warranty effectiveness. If the JBE is unable to enforce warranties systematically, warranty coverage beyond customary trade practice should be scrutinized.~~

~~4. In many cases, warranties are included as part of the basic price of an item. If there is no price difference, the JBE should obtain the warranty. If there is a price difference, the JBE should assess the financial risk of not having a warranty.~~

~~To facilitate pricing evaluations and enforcement, the JBE should ensure that warranties clearly state:~~

- ~~• The exact nature of the goods or services that the Vendor warrants;~~
- ~~• The extent of the Vendor's warranty, including the specific duration; and~~
- ~~• The specific remedies available to the JBE in the event of a defect.~~

11.11 FILING PRACTICES

The initial file set-up is the responsibility of the JBE employee assigned to conduct the procurement. A JBE employee should be assigned to manage file maintenance.

The following practices will ensure the integrity of JBE contract files:

- Maintain files in a safe and secure area;
- Provide access to files on a "need-to-know" basis only, to minimize the potential for documents to be lost or misplaced;
- Do not permit original files to leave the building where they are filed until the contract work is completed. After completion and a holding period of six months, files may be sent to off-site storage;⁷
- Establish and follow a procedure for making copies and releasing files to the public to avoid losing files and records;
- Establish and follow a system such as the use of "out cards" to control accountability and mark the locations of files removed from the filing area. Depending upon the JBE's staffing capability, the assignment of a file administrator who has sole responsibility to pull files and file out cards is recommended;

⁷ FIN 12.01, Record Retention of the *Trial Court Financial Policies and Procedures Manual*, addresses the period of time that trial court contract records are retained.

- Return original file folders to their designated file locations at the end of the workday. An assigned file administrator should be responsible for assuring that files that leave the designated area are retrieved within a reasonable time; and
- Discard duplicate files and working papers.

The JBE should develop a filing method using a consistent file format. One method of organizing contract files into distinct sections is presented below. Documents should be filed in reverse chronological order within each of the following file sections:

- Correspondence (with sub-sections for Vendor [incoming], and JBE [outgoing]);
- Preaward/Solicitation (includes Solicitation Document, an abstract of all Bids, etc.);
- Selection and Award (includes all management input and approvals, notice of award, etc.);
- Contract (with sub-sections for amendments, change orders, and notices, as appropriate);
- Reports, progress reviews, schedules and payment requests/invoices and Vendor evaluation;
- Internal documents (memos, emails, records of meetings and telephone conversations, etc.); and
- Miscellaneous (price lists, resumes, brochures, etc.).

The JBE should conduct annual reviews to assure its compliance with established file integrity requirements.

11.12 CONTRACT CLOSEOUT

The JBE must properly close out all contract files.

Closing out routine contracts for goods and other commercial products should be straightforward. The Contract Administrator must ensure that goods and services have been accepted and conform to the contract's specifications. Delivery and acceptance should be documented in the file that should also include any descriptive literature or warranty documentation. There should also be documentation confirming final payment by the accounts payable department.

Upon the authorization of final payment, the procurement file may be closed out. Closing out procurement files may consist of, but is not limited to, assuring that all pertinent documentation is included in the file, disencumbering any remaining funds (if appropriate), completing any required Vendor performance evaluation, and sending the file for appropriate storage and retention. Files should be maintained onsite for six months after closeout, after that they may be sent for off-site storage and retention.

Postcontract Evaluation

The JBE may evaluate the performance of the Vendor in doing the work or delivering the services for which the contract was awarded. The JBE evaluation may include the following:

- Whether the contracted work or services were completed as specified in the contract and reasons for and amount of any cost overruns or delayed completions;
- Whether the contracted work or services met the quality standards specified in the contract;
- Whether the Vendor fulfilled all the requirements of the contract and, if not, in what ways the Vendor did not fulfill the contract;
- Factors outside the control of the Vendor that caused difficulties in Vendor performance; and
- How the contract results and findings will be utilized to meet JBE goals.

If the JBE conducts an evaluation, the JBE must notify and send a copy of the evaluation to the Vendor within 15 days. The Vendor must have the right, within 30 days after receipt, to submit to the JBE a written response statement that must be filed with the evaluation in the procurement file.

11.13 DISCLOSURE OF CONTRACT DOCUMENTATION

Records created for the purpose of procuring goods and services are generally “judicial administrative records” subject to CRC rule 10.500, and are therefore available to the public absent an exemption. These records include but are not limited to contracts executed by the courts, the Judicial Council, and the AOC, as well as invoices and records maintained by these JBEs, and fiscal information related to contract administration.

Judicial Branch Contracting Manual	Contract Administration	Chapter 11 Page: 24 of 24
------------------------------------	--------------------------------	------------------------------

Specific provisions of this Manual also require disclosure of certain documents at stated intervals in the solicitation process. These requirements vary depending on the category of purchase involved and on the type of solicitation used. These specific requirements are discussed in chapters 4, 4A, 4B, and 4C, respectively.

Legal counsel should be consulted regarding questions about disclosure requirements under CRC rule 10.500 or this Manual.



Judicial Council of California

Judicial Branch Contracting Manual

Chapter 12
Page 1 of 6

REPORTING REQUIREMENTS

CHAPTER 12

Original Release Date:
October 1, 2011

Effective Date:
October 1, 2011

Revision Date:

Table of Contents

Introduction..... 3

Defined Terms 3

12.1 Judicial Council Reports Under PCC 19209 3

 A. Reporting Periods 3

 B. Content of Reports 3

 C. Responsibility of JBEs to Provide Information for Reports 4

 D. Responsibility to Prepare Reports for Judicial Council..... 5

12.2 Notifications by JBEs to the State Auditor Under PCC 19204 5

INTRODUCTION

This chapter describes the Judicial Council's obligations under PCC 19209 to provide reports to the Joint Legislative Budget Committee and the State Auditor relating to the "procurement of contracts" by any Judicial Branch Entity (JBE). In connection with these reports, this chapter describes the role of each JBE in providing information related to the JBE's contracts with Vendors to be included in the reports.

This chapter also describes the obligations under PCC 19204(a) of all JBEs to notify the State Auditor of certain contracts with total costs estimated at more than \$1 million.

DEFINED TERMS

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

12.1 JUDICIAL COUNCIL REPORTS UNDER PCC 19209**A. Reporting Periods**

The Judicial Council will provide two semiannual reports each year to the Joint Legislative Budget Committee and the State Auditor as required by PCC 19209. One report will cover the period from January 1 through June 30 and will be provided by August 1. The other report will cover the period from July 1 through December 31 and will be provided by February 1 of the following year.

B. Content of Reports

The Judicial Council report will include a list of all Vendors that receive a payment from a JBE during the reporting period. PCC 19209 also requires the Judicial Council to submit additional information on each distinct contract between a Vendor and a JBE, but only if more than one payment was made under the distinct contract during the reporting period. For each distinct contract, the report will include the following information by Vendor:

- The JBE that contracted for the good or service;
- The amount of payment; and
- The type of service or good provided.

The report will also include a list of all JBE contracts that were amended during the reporting period. The report will contain the following information by Vendor for each distinct contract that was amended:

- The name of the Vendor;
- The type of service or good provided;
- The nature of the amendment;
- The duration of the amendment; and
- The cost of the amendment.

C. Responsibility of JBEs to Provide Information for Reports

Supreme Court: The AOC Finance Division maintains information relating to payments to and contracts with the Supreme Court's Vendors. The Supreme Court is responsible for coordinating with the AOC Finance Division, as appropriate, to ensure the information relating to payments to, and contracts with, the Supreme Court's Vendors is accurate, consistent, and complete ~~in the form and format as required by the AOC Finance Division for Judicial Council reporting purposes.~~

Courts of Appeal: The AOC Finance Division maintains information relating to payments to and contracts with Vendors of each Court of Appeal. Each Court of Appeal is responsible for coordinating with the AOC Finance Division, as appropriate, to ensure the information relating to payments to, and contracts with, Vendors is accurate, consistent, and complete ~~in the form and format as required by the AOC Finance Division for Judicial Council reporting purposes.~~

Superior Courts: The Phoenix Statewide Financial System (Phoenix) is the source of information for compiling reports relating to payments during a reporting period by each Superior Court to Vendors and relating to contracts between Vendors and each Superior Court. Each Superior Court is responsible for ensuring that the information in Phoenix relating to payments to, and contracts with, that Superior Court's Vendors is accurate, consistent, and complete ~~as required for Judicial Council reporting purposes.~~

Habeas Corpus Resource Center (HCRC): The AOC Finance Division maintains information relating to payments to and contracts with Vendors of the HCRC. The HCRC is responsible for coordinating with the AOC Finance Division, as appropriate, to ensure the information relating to payments to, and contracts with, the HCRC's Vendors is accurate, consistent, and complete ~~in the form and format as required by the AOC Finance Division for Judicial Council reporting purposes.~~

Judicial Council/AOC: The AOC Finance Division is responsible for maintaining and providing accurate, consistent, and complete information relating to payments to, and contracts with, Vendors of the Judicial Council/AOC.

~~Accurate and Consistent Information: It is important that each JBE maintain and provide accurate and consistent information so that the reports provided by the Judicial Council in turn contain accurate and complete information.~~ All JBE personnel involved in maintaining and providing the necessary information for reports must-should have the appropriate training, experience, level of responsibility, and accountability as is necessary to ensure the accuracy, completeness, and consistency of the information in the reports provided by the Judicial Council.

D. Responsibility to Prepare Reports for Judicial Council

The AOC Finance Division is responsible for preparing the portion of the Judicial Council reports that relates to the Supreme Court, Courts of Appeal, Judicial Council, AOC, and HCRC.

The Trial Court Administrative Services Division (TCAS) is responsible for preparing the portion of the Judicial Council reports that relates to the Superior Courts.

The AOC Finance Division and TCAS are responsible for coordinating with each other to ensure that all information to be included in the Judicial Council reports is reported timely, accurately, and in a consistent form and format.

The AOC Finance Division has lead responsibility for presenting the reports to the Judicial Council for approval for submission to the Joint Legislative Budget Committee (JLBC) and the State Auditor. ~~The Judicial Council may delegate to an internal council committee and/or the Administrative Director of the Courts responsibility for review and approval of reports to be provided to the JLBC and State Auditor.~~

12.2 NOTIFICATIONS BY JBEs TO THE STATE AUDITOR UNDER PCC 19204

Under PCC 19204(a), any JBE contract with a total cost estimated at more than \$1 million is subject to the review and recommendations of the Bureau of State Audits to ensure compliance with the California Judicial Branch Contract Law. Each JBE must notify the State Auditor, in writing, of the existence of any such contract within 10

Judicial Branch Contracting Manual	REPORTING REQUIREMENTS	Chapter 12 Page: 6 of 6
------------------------------------	-----------------------------------	----------------------------

business days of entering into the contract. The date of “entering into the contract” is the date on which the contract is fully executed by all parties.

Note: Excluded from this requirement are contracts covered by GC 68511.9, which covers contracts for the California Case Management System and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than \$5 million. (Under GC 68511.9, these contracts are subject to the review and recommendations of the office of the State Chief Information Officer.)

ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms are used in this Manual:

ADA	Americans with Disabilities Act
AOC	Administrative Office of the Courts
AOC/OGC	Administrative Office of the Courts/Office of the General Counsel
BPO	Blanket Purchase Order
BSA	Bureau of State Audits
CARI	California Alliance of Rehabilitation Industries
CCC	Contractor Certification Clauses
CMAS	California Multiple Award Schedule
CRC	California Rules of Court
CRP	Community Rehabilitation Program
CSCR	California State Contracts Register
CTA	California Technology Agency
DGS	Department of General Services
DVBE	Disabled Veterans Business Enterprise
GC	Government Code
GSA	General Services Administration
HCRC	Habeas Corpus Resource Center
IA	Interagency Agreement
IBA	Intra-branch Agreement
IFB	Invitation for Bids
IGC	Intergovernmental Contract
IRS	US Internal Revenue Service
IT	Information Technology
JBCL	California Judicial Branch Contract Law
JBE	Judicial Branch Entity
JPA	Joint Powers Authority Agreement
LPA	Leveraged Purchase Agreement
MOU	Memorandum of Understanding
MVC	Military and Veterans Code
NASPO	National Association of State Procurement Officials
NCB	Non-Competitively Bid
NPO	Non-profit organization
NSP	Not specifically priced
OSDS	Office of Small Business and Disabled Business Enterprise
PCC	Public Contract Code
PCO	Procurement and Contracting Officer

PO	Purchase Order
RFI	Request for Interest
RFO	Request for Offer
RFP	Request for Proposals
RFQ	Request for Quote
SABRC	State Agency Buy Recycled Campaign
SAM	State Administrative Manual
SCM	State Contracting Manual
SLP	Software Licensing Program
SOW	Statement of Work
TCAS	Trial Court Administrative Services Division
U.S.	United States, or federal
WIC	Welfare and Institutions Code
WSCA	Western States Contracting Alliance

GLOSSARY

This glossary provides definitions of key terms used throughout the Manual.

Acceptance Testing – The testing of goods or services to determine compliance with contract requirements (e.g., acceptance criteria and specifications).

ADA Coordinator – The JBE officer or employee who is available to respond to questions or concerns during the procurement process regarding reasonable accommodation for disability.

Applicable Procurement Laws – All laws, regulations, policies, and procedures applicable to procurement activities including the *Judicial Branch Contracting Manual* and the JBE’s Local Contracting Manual.

Approving Authority – For each type of JBE, the person identified in the following table:

JBE	Approving Authority
Supreme Court	Clerk of the Supreme Court
Courts of Appeal	Administrative Presiding Justice
Superior Courts	Presiding Judge
HCRC	Executive Director
Judicial Council / AOC	Senior Manager, Business Services

Bid – A response to a competitive solicitation issued by a JBE. (The term “Bid” is used in this manual, regardless of the Solicitation Document used by the JBE—(e.g., RFQ, IFB, or RFP. Thus a response to an RFQ, IFB, or RFP is referred to as a “Bid.”)

Bid Closing Time – The date and time at which Bids are due for a particular solicitation.

Bidder – Any person or entity that submits a response to a competitive solicitation issued by a JBE, regardless of the Solicitation Document used by the JBE (e.g., RFQ, IFB, or RFP).

Buyer – The JBE officer or employee who performs day-to-day purchasing and contracting activities.

Certificate of Insurance – A document that provides evidence that an insurance policy has been underwritten and that includes a statement of the policy coverage; see chapter 8, section 8.2.D.

Certificate of Participation – An ancillary contract document used to demonstrate a JBE participates in the Judicial Council Litigation Management Program; see chapter 8, section 8.2.D.

Contract Administrator – See definition in chapter 11, section 11.3.

Contract/Contractor Evaluation – A post-contract assessment of the quality of a contractor's performance under the contract.

Court Day – A business day of the applicable JBE.

Evaluation Team – A group responsible for evaluating Bids.

Intra-branch Agreement (IBA) – A type of contract between judicial branch entities; see chapter 8, section 8.2.B.

Invitation for Bid (IFB) – An invitation for bid; a type of Solicitation Document used in the procurement of non-IT goods and non-IT services.

Joint Legislative Budget Committee (JLBC) – A committee of the California State Senate with membership from both houses created to make recommendations to the Legislature and its houses on various matters including the California state budget, revenues and expenditures, and organization and functions of the State of California.

Judicial Branch Contract Law (JBCL) – Part 2.5 of the PCC; PCC 19201-19210.

Judicial Branch Entity (JBE) – A superior court, appellate court, the Judicial Council, the Administrative Office of the Courts (AOC), or the Habeas Corpus Resource Center (HCRC).

Leveraged Procurement – A type of purchasing process described in chapter 6, section 6.1 A.

Leveraged Procurement Agreement (LPA) – See definition in chapter 6, section 6.1.A.

Local Contracting Manual – A manual adopted by a JBE governing its procurement and contracting activities, as required by PCC 19206.

Memorandum of Understanding (MOU) – A type of Intergovernmental agreement; see chapter 8, section 8.2.B.

Payee Data Record – A form of document used primarily in connection with tax withholding.

Phoenix Statewide Financial System – The financial system maintained by the AOC for recording and processing various financial activities of the 58 trial courts including recording transactions in the general ledger, recording purchasing activities, and processing payments for goods and services.

Progress Payment – A partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

Prospective Bidder – A person or entity who supplies non-IT goods, non-IT services, or IT goods and services relevant to a competitive solicitation conducted by a JBE, but who has not yet submitted a Bid.

Protester – A person or entity who has submitted a protest in connection with a competitive solicitation conducted by a JBE.

Purchase Order (PO) – A document used to purchase goods, as described in chapter 8.

Request for Interest (RFI) – A document issued by a JBE to separate those Prospective Bidders who intend to participate in an upcoming solicitation from those who have no interest in participating.

Request for Proposal (RFP) – A type of Solicitation Document used in the procurement of non-IT services and IT goods and services.

Request for Quote (RFQ) – A type of Solicitation Document used in certain low-value or low risk procurements.

Responsible Bidder – A Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.

Responsive Bid – A Bid that complies with the requirements of the Solicitation Document and the terms and conditions of the proposed Purchase Document without material deviation.

Solicitation Document – A document created by a JBE for seeking Bids from persons or entities interested in providing the non-IT goods, non-IT services, or IT goods and services being procured by the JBE. The term Solicitation Document includes Requests for Quote, IFBs, and RFPs.

State Auditor – The State of California's independent external auditor that provides independent and nonpartisan assessments of California government's financial and operational activities in compliance with generally accepted government auditing standards.

Statement of Work (SOW) – A detailed description or reference to the object of a contract (e.g., goods, services, information technology).

Suspension of Work – A temporary delay of contract performance initiated by a written notice from the JBE to the Vendor.

Termination for Cause – A permitted termination of a contract for a specific cause. (This is usually provided as a right of a party in the event of the other party's failure to meet a material condition of a contract.)

Termination for Convenience – See definition in chapter 11, section 11.10.A.

Vendor – A person or entity with whom a JBE has entered into a contract for the provision of non-IT goods, non-IT services, or IT goods and services.