



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 26, 2011

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Title	Agenda Item Type
<i>Judicial Branch Contracting Manual</i>	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Judicial Branch Contracting Manual	August 26, 2011
	Date of Report
	August 22, 2011
Recommended by	Contact
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### Executive Summary

The Judicial Council is required under the recently enacted California Judicial Branch Contract Law<sup>1</sup> to adopt a judicial branch contracting manual containing policies and procedures related to the procurement of goods and services by judicial branch entities.<sup>2</sup> Adoption of the proposed *Judicial Branch Contracting Manual* would satisfy this statutory obligation. The Judicial Branch Contract Law applies to all contracts initially entered into or amended on or after October 1, 2011.

### Recommendation

The Administrative Office of the Courts (AOC) recommends that the Judicial Council:

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<sup>1</sup> Pub. Contract Code, §§ 19201–19210 (Sen. Bill 78, Stats. 2011, ch. 10, effective March 24, 2011; amended by Sen. Bill 92, Stats. 2011, ch. 36, effective June 28, 2011) (Judicial Branch Contract Law). See Attachment A.

<sup>2</sup> Pub. Contract Code, §§ 19206 and 19205. Section 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.”

1. Adopt the proposed *Judicial Branch Contracting Manual* to take effect October 1, 2011, to comply with the Judicial Branch Contract Law.
2. In light of the need to consult further with judicial branch entities regarding the Judicial Branch Contract Law and the manual, direct the AOC to:
  - expand the membership of the Judicial Branch Contracting Manual Working Group to increase the representation of small, medium, and large trial courts; and
  - report back to the council in December 2011 and present any proposed amendments to the manual resulting from further consultation with the working group and feedback from judicial branch entities.
3. Direct the AOC to seek legislative support, in light of significant funding reductions since enactment of the Judicial Branch Contract Law, to:
  - defer implementation of the law for a time period sufficient to enable judicial branch entities to make structural changes to their procurement and contracting systems and reporting mechanisms and to train staff as necessary to comply with the new law's requirements; and
  - clarify the scope of the audits mandated by the law and cap the total reimbursement each judicial branch entity is required to make to the State Auditor for its conduct of the mandated audits.

The text of the proposed manual is included as Attachment B.

### **Previous Council Action**

None.

### **Rationale for Recommendation 1**

#### **Statutory Requirement**

With certain exceptions,<sup>3</sup> the Judicial Branch Contract Law enacted March 24, 2011, requires that judicial branch entities 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 contracts initially entered into or amended by judicial branch entities on or after October 1, 2011, referred to in this report as the “operative date.”<sup>4</sup> The Judicial Branch Contract Law also requires the council to adopt a judicial branch contracting

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<sup>3</sup> Pub. Contract Code, §§ 19204(c), 19207, and 19208.

<sup>4</sup> Pub. Contract Code, § 19203.

manual containing policies and procedures applicable to judicial branch entities related to the procurement of goods and services.<sup>5</sup>

The required manual must incorporate policies and procedures consistent with the Public Contract Code and “substantially similar to the provisions contained in the State Administrative Manual [SAM] and the State Contracting Manual [SCM].”<sup>6</sup> Adoption of the manual would satisfy this requirement.

### **Process—Judicial Branch Involvement**

The AOC has worked closely with the trial courts and other judicial branch entities during the development of the manual, and sought comments from the public. The need for timely adoption of the manual required a compressed development and review period.

Following enactment of the law in March 2011, information regarding its requirements was presented at three AOC regional meetings in May 2011. An outline of the proposed manual was presented and discussed at the joint Court Executives Advisory Committee (CEAC)/Trial Court Presiding Judges Advisory Committee (TCPJAC) meeting on May 26, 2011. The drafters also convened the Judicial Branch Contracting Manual Working Group, which comprises representatives from TCPJAC, CEAC, the California Appellate Court Clerks Association, and the Habeas Corpus Resource Center (HCRC),<sup>7</sup> to ensure that all affected judicial branch entities had the opportunity to provide input during the manual’s development. Members of the working group reviewed and commented on chapters of the proposed manual as the chapters were developed.

One of the initial subjects addressed by the working group was the impact of the Judicial Branch Contract Law on the existing policies regarding trial court procurement and contracting set out in the *Trial Court Financial Policies and Procedures Manual (TCFPPM)*. The new law imposes significantly more requirements on judicial branch contracting than are included in the *TCFPPM*, and the manual supersedes some sections of the *TCFPPM*. Further information on specific changes made to current policy and procedure is provided below in the section on the contents of the manual.

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<sup>5</sup> Pub. Contract Code, § 19206.

<sup>6</sup> *Ibid.*

<sup>7</sup> The Judicial Branch Contracting Manual Working Group consists of the following judicial branch personnel: Hon. Lee Smalley Edmon, Presiding Judge, Superior Court of Los Angeles County; Mr. D. Brett Bianco, Court Counsel, Superior Court of Los Angeles County; Mr. Geoff Brandt, Assistant Court Executive Officer, Superior Court of Placer County; Ms. Karen Brewer, Senior Contract Officer, Superior Court of Sacramento County; Mr. Fred Cabrera, Contract Services Manager, Superior Court of Sacramento County; Mr. Michael J. Cappelli, General Counsel, Superior Court of Riverside County; Ms. Sherry Clifford, Procurement Specialist, Superior Court of Orange County; Ms. Jean Field, Assistant Director, Habeas Corpus Resource Center; Mr. James Flohrschutz, Business Services Manager, Superior Court of San Joaquin County; Mr. Brian Kritzell, Procurement Manager, Superior Court of Riverside County; Ms. Rhonda Mobley, Procurement Specialist, Superior Court of Sonoma County; Ms. Susan Patrick, Principal Management Analyst, Contracts and Purchasing, Superior Court of San Francisco County; and Ms. Charlene Ynson, Court Administrator, Court of Appeal, Fifth Appellate District.

### **Need for timely adoption**

The Judicial Branch Contract Law requires all judicial branch entities to comply with the Public Contract Code, as noted above, with respect to all contracts initially entered into or amended by the entities on or after the October 1, 2011, operative date.<sup>8</sup> This statutory requirement is separate from the council's obligation to adopt, by January 1, 2012, a judicial branch contracting manual that must be followed by all judicial branch entities.<sup>9</sup> If the council has not adopted a manual by the October 1, 2011, operative date, however, judicial branch entities will be required to follow applicable policies and procedures in the *SAM* and *SCM*.<sup>10</sup> Those manuals<sup>11</sup> were developed specifically for use by executive branch entities. By setting forth policies and procedures that are tailored for judicial branch operations, the manual will be more effective and workable for judicial branch entity procurement and contracting than would the *SAM* and *SCM*.

In addition, the Judicial Branch Contract Law imposes new reporting requirements on judicial branch entities.<sup>12</sup> The proposed manual specifies the items on which judicial branch entities must report and the reporting process, which will enable the judicial branch to comply with the reporting requirements of the Judicial Branch Contract Law.

The policies and procedures in the manual reflect the requirements made applicable to judicial branch entity contracting and procurement under the Judicial Branch Contract Law. The manual also includes appendices containing model contract provisions and other tools to assist judicial branch entities in their contracting activities.

### **Need to comply with reporting requirements**

The Judicial Branch Contract Law requires the Judicial Council, beginning in 2012, to provide reports to the Joint Legislative Budget Committee and the State Auditor twice each year on contracting activities by judicial branch entities.<sup>13</sup> The reports must contain specific information, including details about contracts and amendments to contracts entered into by judicial branch entities with vendors or contractors, payments received by vendors and contractors, and the nature of the services or goods provided under the contracts and amendments.<sup>14</sup> By statute, each year, one report is to cover the period from January 1 through June 30 and be provided by August 1. The other report must cover the period from July 1 through December 31 and be provided by February 1 of the following year.

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<sup>8</sup> Pub. Contract Code, §§ 19203 and 19204(a).

<sup>9</sup> Pub. Contract Code, § 19206.

<sup>10</sup> Pub. Contract Code, § 19204(d).

<sup>11</sup> The *SCM* alone comprises over 850 pages.

<sup>12</sup> Pub. Contract Code, § 19209.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

The manual provides guidelines to judicial branch entities on the reporting requirements and instructions for reporting the required information to the council for inclusion in its reports. Because the substantive provisions of the Judicial Branch Contract Law apply to contracts entered into or amended by judicial branch entities on or after October 1, 2011, the AOC recommends that the first Judicial Council report to the Joint Legislative Budget Committee and the State Auditor, which is to be provided by February 1, 2012, cover the three-month period of October 1, 2011, through December 31, 2011. Each report provided after the initial report will cover the full six-month reporting period.

### **Need to draft local contracting manuals**

The Judicial Branch Contract Law provides that the policies and procedures in the *Judicial Branch Contracting Manual* adopted by the council must include a requirement that each judicial branch entity adopt a local contracting manual for procurement and contracting for goods or services.<sup>15</sup> Because judicial branch entities must comply with the policies in the manual, the local contracting manual each entity adopts must not be inconsistent with the manual. A judicial branch entity, therefore, cannot draft a local contracting manual effectively until the council adopts the *Judicial Branch Contracting Manual*.

The policies and procedures in the manual reflect requirements made applicable to judicial branch entity procurement and contracting under the Judicial Branch Contract Law. Judicial branch entities will not have to restate those requirements in their own local contracting manuals, leaving very few elements that will be necessary to include in a local contracting manual. For smaller courts, their local contracting manuals may contain designations of the staff members performing certain procurement roles, information regarding signature authority, and little else. For larger courts with more robust procurement departments, their local contracting manuals may contain a great deal of information supplementing and implementing the requirements of the manual. Adoption of the manual likely will reduce the amount of resources each judicial branch entity will need to devote to preparing its local contracting manual.

The manual has been drafted to enable judicial branch entities, at their discretion, to adopt requirements that are more restrictive than those in the manual. In addition, judicial branch entities may include in their local contracting manuals procurement- or contract-related policies or procedures on topics not addressed by the manual.

### **Manual Contents**

The manual covers judicial branch procurement and contracting activities except those activities that are specifically excluded by the Judicial Branch Contract Law.

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<sup>15</sup> Pub. Contract Code, § 19206.

***Subjects excluded from the manual.*** The manual does not address provisions of the Public Contract Code that do not apply to contracting or procurement by state agencies and departments because the Judicial Branch Contract Law states that those provisions are inapplicable to judicial branch entities.<sup>16</sup>

The manual also complies with Public Contract Code section 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.

As a result, the portions of the *SCM* and *SAM* that concern the Department of General Services (DGS) or other state entity processes and procedures are not included in the manual.

The Judicial Branch Contract Law does not apply to procurement and contracting by judicial branch entities related to *trial court* construction, including the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities.<sup>17</sup> The law does apply to construction of *other* judicial branch entity facilities, and also applies to maintenance of all judicial branch facilities not under the operations and management of DGS.<sup>18</sup> These activities are performed by the AOC, and policies and procedures related to these activities will be included in the AOC's local contracting manual, not in this manual.

***Subjects included in the manual addressing judicial branch operations.*** The proposed manual was drafted to implement the Judicial Branch Contract Law by setting forth policies and procedures that are required by applicable sections of the Public Contract Code and that are substantially similar to the provisions in the *SAM* and *SCM*.

The *SAM* and *SCM* were written specifically for use by executive branch agencies, with the assumption that DGS would administer or review those agencies' procurement and contracting efforts. The concept of DGS involvement is intertwined throughout the *SAM* and *SCM*. As noted, however, the new law provides that unless specifically stated it is not intended that any other state entity be involved in procurement of judicial branch goods and services.<sup>19</sup> As a result, much of the material in the *SAM* and *SCM* does not apply to judicial branch entities.

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<sup>16</sup> Pub. Contract Code, § 19208.

<sup>17</sup> Pub. Contract Code, § 19204(c) (emphasis added).

<sup>18</sup> *Ibid.*

<sup>19</sup> Pub. Contract Code, § 19207.

The drafters followed a standard process in preparing the manual. First, staff analyzed the Public Contract Code to determine which provisions are made applicable to judicial branch entities through the Judicial Branch Contract Law. Staff then located the *SAM* and *SCM* provisions that implement those Public Contract Code provisions, and drafted manual provisions that are substantially similar to those *SAM* and *SCM* provisions.

If a *SAM* or *SCM* provision implemented a specific code requirement (such as a dollar limit or required deadline), that requirement was included in the manual without modification. If the provision did not implement a specific requirement, but rather a concept or process, staff interpreted the provision in light of Public Contract Code sections 100–102<sup>20</sup> and the business and organization of the judicial branch. If the *SAM* or *SCM* provision required the involvement of an executive branch agency, such as DGS, the provision was not included in the manual in accordance with Public Contract Code section 19207.

**Chapter summaries.** The proposed manual is organized into 12 chapters, plus an introduction and a glossary of terms. A brief description of each chapter and its potential impact on judicial branch entities are set out below.

**Chapter 1. Purchasing Authority.** Chapter 1 discusses the purchasing authority of each judicial branch entity and establishes the roles, responsibilities, and general ethical requirements of judicial branch personnel who will be involved in purchasing. Unlike agencies in the executive branch, each judicial branch entity possesses its own purchasing authority. The chapter requires that judicial branch entities segregate specific duties among staff and designate a procurement and contracting officer responsible for ensuring compliance with applicable laws and a payment officer responsible for ensuring proper internal controls. Chapter 1 also includes broad guidance for judicial branch entity staff in developing the entity’s local contracting manual.

**Chapter 2. Procurement Planning.** Chapter 2 addresses the process of planning an individual purchase. It includes a new requirement, stemming from the Judicial Branch Contract Law, that judicial branch entities must classify each procurement as one of three categories: non-IT goods, non-IT services, or IT goods and services. The chapter provides guidance on making these classifications. It also addresses requirements that apply to particular types of purchases such as equipment leases, and explains how to create procurement files.

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<sup>20</sup> Pub. Contract Code, §§ 100–102 contain the Legislature’s findings and intent regarding the code. Section 100 includes the legislative finding that placing all public contract law in one code will make that law clearer and easier to find, and states that the legislative intent in enacting the code is to achieve the following objectives: 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. Section 101 provides that California public contract law should be efficient and the product of the best of modern practice and research. Section 102 provides that California’s public contract law should be uniform to encourage competition for public contracts and to aid public officials in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies.

**Chapter 3. Socioeconomic and Environmental Programs.** This chapter describes socioeconomic and environmental programs and considerations about new requirements affecting the procurement activities of judicial branch entities. The first and most extensively discussed is the California Disabled Veterans Business Enterprise program. The chapter has a brief discussion of pertinent requirements of the Americans with Disabilities Act and addresses California's State Agency Buy Recycled Campaign program requirements.

**Chapter 4. Competitive Solicitation Overview.** Chapter 4 discusses the principles of competitive solicitation, and provides general standards that apply to solicitations for all three categories of purchases. A general requirement is that solicitations must be competitive unless they fall into one of the categories covered in chapter 5. The chapter discusses the principles and goals of competitive procurements. Step-by-step guidance for the procurement of each purchase category is set out in individual chapter sections 4A, 4B, and 4C.

**Chapter 5. Noncompetitively Bid (NCB) Procurements.** This chapter explains the circumstances under which judicial branch entities may procure goods and services without going through a competitive process (advertising, receiving bids, etc.). In these non-competitively bid procurements, a single entity is afforded the opportunity to provide the specified goods and services. Examples include very small purchases, emergency purchases, and purchases from another governmental entity.

**Chapter 6. Leveraged Procurement.** This chapter discusses the benefits, risks, conditions, and processes related to leveraged procurements, under which a judicial branch entity may bypass certain competitive procurement requirements by procuring goods or services through existing contracts and programs established by other public entities. This chapter identifies certain leveraged procurement programs and provides information on how to implement such agreements.

**Chapter 7. Protest and Post-Award Disputes.** Chapter 7 explains the process that judicial branch entities must use to handle protests related to competitive solicitations. It covers both solicitation specifications protests, which allege deficiencies with the solicitation document, and award protests, which allege deficiencies in the selection of a winning bidder. In addition, the chapter provides basic guidance in handling post-award disputes with vendors.

**Chapter 8. Contracts and Contract-Related Documents.** This chapter describes processes for preparing and approving contracts and related documents. Legal review and approval are required for specified contracts. It also describes special provisions required for compliance with various state and federal laws that judicial branch entities are required to follow under the Judicial Branch Contract Law. Sample contract provisions and other tools are included in the appendices to this chapter.

**Chapter 9. Disbursements and Payment Programs.** Chapter 9 describes policies and procedures for payments, including when payments should be released, what is required before making invoice



payments, and what are acceptable and unacceptable payment practices. This chapter also addresses advance payments, progress payments, and policies and procedures for the use of purchase cards.

**Chapter 10. Receiving, Inspection, and Acceptance or Rejection of Goods and Services.** This chapter describes policies and procedures for receiving, inspecting, and accepting or rejecting goods and services. Also included is a discussion of asset management.

**Chapter 11. Contract Administration.** This chapter provides guidance and information regarding contract administration. Because neither the *SAM* nor the *SCM* addresses contract administration adequately, this chapter is primarily derived from the current edition of the *Trial Court Financial Policies and Procedures Manual (TCFPPM)*, Fin. 7.03–Contract Administration. The concepts and procedures outlined in this chapter, therefore, will be familiar to trial court personnel engaged in procurement activities.

**Chapter 12. Reporting Requirements.** This chapter describes the council’s obligations under section 19209 to provide reports to the Joint Legislative Budget Committee and the State Auditor. In connection with these reports, this chapter describes the role of each judicial branch entity in providing information related to the judicial branch entities’ contracts that must be included in the reports. It also describes the obligations of judicial branch entities under section 19204(a) to notify the State Auditor, in writing, of the existence of any contract with total costs estimated at more than \$1 million (with the exception of contracts for the California Case Management System and all other administrative and infrastructure technology projects that are subject to the review and recommendations of the California Technology Agency).

**Major differences between the manual and current branch policies.** The overview below discusses major concepts included in the manual that, while incorporating concepts from the Public Contract Code that apply to judicial branch entities through the Judicial Branch Contract Law and provisions of the *SAM* and *SCM*, differ from current judicial branch contracting practices. A summary of the individual chapters, and their potential impact on judicial branch entity procurement and contracting activities, follows the overview.

*1. Distinction between non-IT goods, non-IT services, and IT goods and services*

Under the *TCFPPM*, one set of policies and procedures applies regardless of the type of goods or services being procured. By contrast, under the code and the proposed manual, procurement is divided into three basic categories: non-IT goods, non-IT services, and IT goods and services. Different policies and procedures govern each category. The areas of procurement most affected by this categorization are the selection methodology and the dollar threshold for written solicitations.

*2. Selection methodology: best value vs. lowest responsible bidder*

Under the *TCFPPM* and other applicable policies, judicial branch entities have the flexibility to select the vendor that provides the best value based on an evaluation of all offers. A judicial branch entity is not required to award a contract to the lowest bidder if another bidder provides better value to the judicial branch entity, as determined by the selection criteria. Under the manual, consistent

with the Public Contract Code, *SAM*, and *SCM*, judicial branch entities may employ a similar best value methodology for procurement of non-IT services, and IT goods and services. For procurements of most non-IT goods, the manual requires that the lowest responsible bidder be selected. For purchases of goods valued at less than \$50,000, however, the manual allows use of best value selection methodology if there is a good business reason for doing so.

*3. Dollar thresholds for different solicitation methods*

Under the *TCFPPM* and other applicable policies, judicial branch entities are required to employ written solicitation documents when the value of the goods or services being sought total \$25,000 or more. Under the manual, different thresholds apply, as follows:

<b>Type of Procurement</b>	<b>Dollar Threshold Under Proposed Manual</b>
Non-IT goods	\$50,000
Non-IT services	\$5,000
IT goods and services	IT goods only: \$100,000 IT services only: \$5,000  Mixed IT goods and services: (i) If services portion is less than \$5,000: up to \$100,000 (ii) If services portion is \$5,000 or more, solicitation must be written

Judicial branch entities may establish lower dollar thresholds in their local contracting manuals.

*4. Reporting requirements*

The Judicial Branch Contract Law imposes mandatory reporting requirements on all judicial branch entities, and applies to all contracts subject to the new law, including contracts resulting from non-competitively bid procurements. The Judicial Council is required to provide the first semiannual report to the Joint Legislative Budget Committee and the State Auditor by February 1, 2012, for the period ending December 31, 2011. Because the new law’s substantive provisions apply to contracts entered into or amended by judicial branch entities on or after October 1, 2011, the first Judicial Council report will cover the three-month period of October 1, 2011, through December 31, 2011.

The manual addresses the mandatory reporting requirements applicable to the council under Public Contract Code section 19209 and sets forth the requirements applicable to individual judicial branch entities to provide information for inclusion in the reports. Section 19204(a) requires judicial branch entities to notify the State Auditor of certain contracts with total costs estimated at more than \$1 million, and that requirement is also reflected in the manual.

*5. Delegation of procurement activities*

Some superior courts engage county governments to undertake a significant number of a court’s procurements on a court’s behalf. County procedures and required contract provisions, however,

differ substantially from those of the state that are included in the manual. The manual has been drafted to mitigate these concerns as much as possible, as discussed more fully in the comment section below. Nevertheless, courts and counties should anticipate changing their existing procurement processes to accommodate procurements undertaken under the local contracting manual instead of under policies courts may have in common with their counties.

### **Rationale for Recommendation 2**

To have a manual in place by 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. The short period of time available for development of the manual allowed for a public comment period of only two weeks. Although the members of the Judicial Branch Contracting Manual Working Group were involved in the manual’s development and several trial courts submitted detailed comments, the AOC recommends further discussion of the manual among judicial branch personnel as experience is acquired in implementing the requirements of the new law and following the policies and procedures in the manual.

Because of the anticipated impact of the new law and the new requirements, the AOC recommends that the working group be expanded to provide an opportunity for more court representatives to participate so as to include representatives from small, medium, and large trial courts with different numbers of staff and varying amounts of procurement and contracting activity. The intent is to provide for consultation with and input from more trial courts than those that have participated to date to benefit from a wider range of perspectives on the manual and its requirements.

### **Rationale for Recommendation 3**

Due to the significant additional requirements imposed the Judicial Branch Contract Law, including detailed requirements on procurement and contracting processes and reporting of most contract activities, it is anticipated that implementation of the new law will be a major undertaking requiring substantial additional judicial branch resources. The extremely short time period from enactment of the new law to the operative date of its requirements has not provided sufficient time for judicial branch entities to reconfigure their procurement and contracting processes as necessary to implement the new law.

The Judicial Branch Contract Law provides that audits required under Government Code section 77206 must now include an audit and report by the State Auditor on his or her assessment of the implementation of the new law.<sup>21</sup> Judicial branch entities are required to reimburse the State Auditor for all reasonable costs associated with the audit.<sup>22</sup>

Legislative support to provide judicial branch entities with the time necessary to implement the new law would be extremely beneficial to the judicial branch and will present no detriment to the public.

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<sup>21</sup> Pub. Contract Code, § 19210.

<sup>22</sup> *Ibid.*

The AOC recommends, therefore, that the council seek support in the Legislature for initiatives to defer implementation of the new law until judicial branch entities have a reasonable time to reconfigure systems and staffing necessary for compliance and to cap the total reimbursement each judicial branch entity will be required to make to the State Auditor.

### **Comments and Alternatives Considered**

As noted, the manual was developed in consultation with a working group of judicial branch representatives, and the participants are identified on page three, *supra*. The proposed manual was posted for public comment for two weeks, from July 15 through 29, 2011. The invitation to comment specifically sought input on whether the manual presents information in a clear and understandable way and is user-friendly, whether the content is appropriate and workable for courts of different sizes and staffing capabilities, and whether commentators identified any material omissions in the proposed manual. The working group continued its review and development of the proposed manual throughout the public comment process. Seven formal comments were received in response to the invitation to comment, all from representatives of California superior courts.<sup>23</sup>

Most of the suggestions, comments received, and alternatives considered refer to the differences between *TCFPPM* requirements and the requirements generated by the Judicial Branch Contract Law that are reflected in the proposed manual.

#### ***Comments received***

In addition to the technical comments and suggestions discussed below, commentators raised major issues regarding the development of the manual and the implementation of its requirements.

#### ***Substantive comments***

Many commentators noted that the time period provided for review and comment on the manual was insufficient. Given the length of the review period, commentators also noted that it is extremely likely that they will have additional comments on the manual as they begin to apply it to their procurement and contracting activities.

Recognizing that the effective date of the Judicial Branch Contract Law is set by statute, some commentators requested additional time for review and discussion of the manual given its length and the new requirements applicable to judicial branch procurement and contracting that it contains. The Superior Court of Orange County noted that to ensure that judicial branch entities are able to procure goods and services in the most cost-effective and efficient manner, the *SAM* and *SCM* procedures should only be added into the manual after careful review and consideration.

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<sup>23</sup> A chart providing the full text of the comments and responses is attached at pages 17–63. For ease of use, the comment chart has been organized by the chapters of the manual. The comment chart first lists the commentators in alphabetical order and provides any general or overall comments made by that commentator. The chart then lists the comments received on each chapter.

The Superior Court of Orange County also noted that the mandated policies and procedures stated in the manual are stricter than those required by the *SAM* and *SCM*. The court expressed disagreement with the drafters' interpretation of "substantially similar" and noted that the Judicial Branch Contract Law does not require judicial branch entities to follow procedures that are more strict than those in the Public Contract Code, or that do not provide for the flexibility available under that code.

The court and other commentators also noted that *SAM* and *SCM* procedures do not include the most modern procurement methods available, and that following these procedures can be anticipated to add substantial costs and burden to the process by requiring more complexity, increase documentation and reporting, and impose more onerous restrictions. As a result, it was noted, judicial branch entities will lose the opportunity to seek the "best value" in goods and services.

As discussed previously regarding the process followed in drafting the manual, the drafters intended to include in the manual only those requirements that are required to be included by the Judicial Branch Contract Law. In response to the comments received, the manual has been modified in several areas to assure that such intent was actualized.

Most of the commentators emphasized their concern that the new procurement requirements will add additional workload to procurement and contracting than is currently required under the *TCFPPM*, and that the costs of implementation will be substantial. The Superior Court of San Diego County noted the potential need to add several administrative staff positions and an attorney in order to meet the new requirements set forth in the manual. The court and other commentators also noted that in light of potential staffing reductions the courts are facing, this increase in workload will have a tremendous impact on court operations.

The Trial Court Budget Working Group is in the process of surveying the trial courts to ascertain the likely workload associated with complying with the Judicial Branch Contract Law. The working group has also created a subcommittee to provide information and assess survey responses, and to develop a budget change proposal to be submitted to the Department of Finance this fall to request resources to address the fiscal impact associated with these new requirements.

### ***Comments on technical requirements in the manual***

Written comments received, and the responses to those comments, are included in the attached comment chart. Most of the comments and suggested revisions received requested clarification on specific technical requirements in the manual. Modifications were made where possible to address comments received and to incorporate the suggested revisions. The most common comments, and their responses, are set out below. For information on all comments received, please see the comment chart attached.

Several commentators sought clarification regarding technical aspects of the solicitation process. For example, one commentator asked what effect a material exception to a minimum contractual term would have on a bid. Staff clarified that a material exception to a minimum term would render a bid non-responsive. Another commentator sought information on whether the Darfur Contracting Act

certification could be combined with other bidder certifications. Staff responded that such a combination is not prohibited.

Commentators also noted the need for training on the manual, and the need for assistance in complying with certain required certifications, such as the certifications required because of implementation of the Disabled Veterans Business Enterprise (DVBE) program, and with the process of creating local contracting manuals. The drafters modified the manual to clarify requirements. The AOC will prepare a sample local contracting manual, and will provide guidelines for judicial branch entities in implementing the DVBE requirements.

The Superior Court of Los Angeles County expressed strong concerns about the structural and personnel changes that would be required for it to undertake the approximately 7,000 procurements per year that are presently done by the county. In response, the manual was modified to enable trial courts to continue to engage their county procurement offices to undertake procurements on their behalf under leveraged procurement agreements. The manual was also modified to address the concern that the county may be unwilling to procure goods and services for the court under the manual because the county's procedures and required contract provisions differ substantially from those of the state. To facilitate cooperation between courts and counties, the manual has been modified to limit further the circumstances when a procuring judicial branch entity must compare at least three leveraged procurement agreements before selecting a supplier.

Nevertheless, courts and counties should anticipate changing their existing procurement processes and budget to accommodate procurements undertaken under the local contracting manual instead of under policies they have in common with the counties.

### ***Alternatives considered***

The drafters discussed the following alternatives:

1. *Option of adopting the manual to take effect October 1, 2011.*
2. *Option of deferring adoption of the manual.*

Under any option, judicial branch entities will be subject to the provisions of the new Judicial Branch Contract Law and, until the council adopts the manual, the *SAM* and the *SCM*, as of October 1, 2011. The council is required by statute to adopt a judicial branch contracting manual by January 1, 2012.

After taking into consideration the important concerns raised by commentators, it was ultimately decided to recommend adoption of the manual effective October 1, 2011. Having a manual in place as of the October 1, 2011, operative date of the new law will provide guidance to judicial branch entities on the provisions of the Public Contract Code that apply to them even if a manual is not adopted. It was determined that adoption of the manual is preferable to the alternative of being governed by the *SCM* and *SAM* provisions beginning October 1, 2011, as of that date.

As noted, the *SAM* and *SCM* as written reflect an overarching, pervasive assumption of DGS's authority and role in executive branch contracting. The manuals cannot, therefore, be applied wholesale, and must be reviewed carefully to segregate applicable provisions from those that do not apply to judicial branch entities. The *SAM* and *SCM* collectively consist of four volumes and thousands of pages. Due to the size of the manuals alone, judicial branch entities would be affected immediately by the need to devote significant staff resources to understanding and applying the manuals' substantive and procedural requirements.

In addition, applying the requirements of the *SAM* and *SCM* to judicial branch entities is complicated. Although major portions of the manuals do not apply to judicial branch procurement and contracting, these portions are intertwined with concepts that are made applicable to judicial branch entities by the new law. Judicial branch entities would be understandably unclear on which requirements apply to their own contracting and procurement activities. Further confusion and possible inconsistency would likely result if each judicial branch entity were to attempt to incorporate *SAM* and *SCM* requirements into its procurement and contracting processes.

Adoption of the manual is also recommended because the manual is concise and specifically created to reflect the independent authority of judicial branch entities and judicial branch organization and operations. Containing all applicable requirements in one manual will aid in one objective of the Legislature in enacting the Judicial Branch Contract Law, which is to clarify the law with respect to competitive bidding requirements.<sup>24</sup>

Finally, the drafters considered whether the proposed manual could be recommended for approval to the council by circulating order shortly before October 1, 2011. Approval of the manual does not appear to be suited to action taken by circulating order, given the importance of the manual to judicial branch entities and to the individuals, firms, and agencies with which judicial branch entities do business.

Under the rule of court rule that authorizes council action on urgent matters by circulating order, subject to the Chief Justice's or Administrative Director of the Courts' approval, actions taken by circulating order do not require prior public notice.<sup>25</sup> As specifically provided in a different rule, circulating orders may be used to allow the council to adopt rules, forms, or standards between council meetings when necessary.<sup>26</sup> Typically, the types of proposals the council acts on by circulating order are those that would appear on the consent agenda of a council business meeting. The use of circulating orders is therefore discouraged if the action is likely to involve discussion.

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<sup>24</sup> Pub. Contract Code, §19202.

<sup>25</sup> California Rules of Court, rule 10.5(h). The rule provides that circulating orders must be included on the agenda for the council's next business meeting as an information item.

<sup>26</sup> California Rules of Court, rule 10.13(d).

## **Implementation Requirements, Costs, and Operational Impacts**

The Judicial Branch Contract Law will impose significant implementation costs on all judicial branch entities. Individual procurements are likely to be more costly to execute under the new requirements. It is also anticipated that the addition of more complex requirements on procurement and contracting efforts will require significantly more staff resources and therefore increase operational costs during a time of budget reductions. Compliance with the new reporting requirements will also require significant time and resources to implement. Finally, resources, including staff time, will be required to educate staff on the requirements of the new law and the manual.

As noted, the Trial Court Budget Working Group is aware of the potential impact on trial court operations, and is developing a budget change proposal to be submitted to the Department of Finance this fall. The budget change proposal will request additional resources that are necessary to address the fiscal impact associated with implementing the new law and the new requirements.

It is intended that adoption of this manual by the council will mitigate some implementation costs, because the manual provides a set of requirements for judicial branch entities and appendices containing model contract provisions and other tools to assist entities in their contracting activities. The preparation of local contracting manuals, which must be consistent with this manual, is anticipated to be eased by the adoption of the manual at this time. Preparation of local contracting manuals without the basic structure and requirements set forth in the manual would impose significant additional implementation costs on all judicial branch entities.

## **Attachments**

1. Comment chart at pages 17–63
2. Attachment A: Public Contract Code sections 19201–19210
3. Attachment B: *Judicial Branch Contracting Manual*



List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Response
1.	Superior Court of California, County of Butte by Kimberly Flener, Court Executive Officer	NI	See comments on specific provisions below.	
2.	Superior Court of California, County of Kern by Kristin Jimenez, Court Buyer	A	No narrative comments submitted.	No response required.
3.	Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer	AM	Public Contract Code section 19206 says the “policies and procedures in the [judicial branch] manual shall be <i>consistent with</i> this code and <i>substantially similar to</i> the provisions contained in the State Administrative Manual and the State Contracting manual” ( <i>emphasis added</i> ). It does not say “adopt”, nor does it say “be more restrictive than” the code and manuals referenced. Many provisions in the draft appear to be more restrictive than the Executive Branch practices and also unnecessarily preclude more up-to-date purchasing approaches, for example, various aspects of electronic bidding systems. The approach here should be to start with the basics and fundamentals, and add detail and broaden coverage as we learn how it works. The attempt to provide a comprehensive manual on day one, particularly when the state manuals contemplate statewide purchasing model, as opposed to 58 trial courts, seems unwise. It will be very difficult to ‘undo’ provisions that prove impractical or are not appropriately scaled to the variety of purchasing needs of organizations ranging from LA to Alpine. More specific concerns are stated in the attached memo with comments and questions prepared	The threshold requirement of the California Judicial Branch Contract Law (JBCL; PCC 19201-19210) is that all judicial branch entities (JBEs) must comply with the provisions of the California Public Contract Code (PCC) that are “applicable to state agencies and departments related to the procurement of goods and services, including information technology goods and services.” (PCC 19204(a)) The JBCL also requires the Judicial Council to adopt a judicial branch contract manual with provisions that are “consistent with” the PCC and “substantially similar” to those contained in the <i>State Administrative Manual (SAM)</i> and the <i>State Contracting Manual (SCM)</i> . (PCC 19206) The requirement that JBEs comply with the PCC exists independently of the requirement to adopt a judicial branch contracting manual. The proposed <i>Judicial Branch Contracting Manual (Manual)</i> provides guidance on the PCC sections with which JBEs must comply and tools (e.g., model contract terms and conditions) to assist JBEs in complying with the new statutory requirements. Staff anticipate that revisions to the Manual may become necessary or desirable as JBEs gain experience in working under the

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	Commentator	Position	Comment	Response
			<p>by OCSC Contracts and Procurement Unit.</p> <p><u>Initial Memo</u> [ITC Summary]                      Judicial Branch is being held to a higher standard than other state agencies. The OCSC believes that many of the mandated policies and procedures stated in the JBCM are stricter than those required by the SAM and SCM.</p> <p>The OCSC defines the term “substantially compliant” to mean that the Judicial Branch must be compliant with the broad policies of the PCC, the SCM and the SAM. The OCSC does not believe that the term “substantially compliant” means that the Judicial Branch must be compliant with all procedures set forth in the SCM and SAM.</p>	<p>JBCL. Staff will continue to work with the Judicial Branch Working Group convened to review the Manual to identify and resolve issues and report back to the council with proposed amendments to the Manual.</p> <p>The Manual is not intended to include policies or procedures that are stricter than those in the SCM or SAM. Modifications have been made throughout the Manual to address expressed concerns.</p> <p>The JBCL does not use the term “substantially compliant.” The JBCL requires “All judicial branch entities [to] comply with the provisions of [the PCC] that are applicable to state agencies and departments related to the procurement of goods and services ...” (PCC 19204 (a)) The JBCL does not limit compliance requirements to “broad policies” of the PCC. Staff concur with the commentator that “substantially compliant” does not mean compliant with all procedures in the SAM and SCM.</p> <p>The term “substantially similar” is used only in PCC 19206 in reference to the Manual. That section requires provisions in the Manual and in JBES’ local contracting manuals to be “substantially similar” to the provisions—not the broad principles—contained in the SAM and SCM, in addition to being “consistent with” the PCC.</p>

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	Commentator	Position	Comment	Response
			<p>The Judicial Branch should be required to be compliant with the current JBCM Table of Contents and any PCC requirements. Many of the SCM and SAM procedures are not the most modern procurement methods and add substantial costs and burden to the Courts. SCM and SAM procedures should only be added into the JBCM after careful review and consideration. This will ensure that the Courts are able to procure goods and services in the most cost effective and efficient manner.</p> <p><u>October 1, 2011 - Contracts with renewal options:</u> Contract renewals arising after October 1, 2011 should be exempt from PCC section 2.5. Contract renewals arising after October 1, 2011 should be exempt from PCC section 2.5. Requiring contract renewals to be compliant with the PCC and the JBCM is burdensome for the Courts and adds additional costs to the Courts.</p> <p><u>Throughout manual</u> Use of the words “bid” and “proposal.” The</p>	<p>PCC 19206 requires the Manual and JBEs’ local contracting manuals to be substantially similar to the “provisions”—not the tables of contents—contained in the SAM and SCM. Staff agree with the commentator that many of the SCM and SAM procedures are not the most modern procurement methods and that compliance with the requirements of the JBCL will add costs and burdens to all JBEs. SCM and SAM provisions were included in the JBCM after an analysis determined that those provisions were based on a PCC provision that was made applicable to JBEs by the JBCL. If the provision codified a specific PCC requirement or a fundamental aspect of the SAM/SCM (such as a threshold dollar amount for written solicitations), the provision was made included in the Manual as a requirement. Otherwise, the provision was generally made optional.</p> <p>The JBCL states that it applies to all contracts entered into <i>or amended</i> on or after October 1, 2011. (PCC 19203) If a renewal does not involve an amendment, it would not be covered by the JBCL requirements; if a renewal requires an amendment, the JBCL by its express terms would apply to the amendment.</p> <p>Staff agree that consistent use of terms is</p>

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Response</b>
			<p>OCSC requests that the JBCM be consistent when referencing Bids and Proposals.</p> <p>References to DGS BidSync: The JBCM reference to the “DGS BidSync” limits the ability of the Courts to utilize their own electronic bidding system or enter into an independent agreement with BidSync. This may mislead or confuse other Courts looking to utilize an electronic bidding system. One take away from referring to BidSync as “DGS’s BidSync” is that there is an obligation for the Courts to work from DGS’s BidSync agreement. For example, the OCSC has its own agreement with BidSync.</p> <p>Furthermore, this reference does not allow for the Courts to utilize other electronic bidding systems outside of BidSync. The JBCM should be drafted in a manner that contemplates technological advances and allows the Courts to utilize new technologies.</p> <p>The OCSC requests that the AOC change all references from “DGS’s BidSync” to “BidSync or other electronic bidding system”.</p> <p>See comments on specific provisions below.</p>	<p>appropriate and desirable. The term “Bid” is defined in the Manual to include any response to a solicitation document, including proposal, and is used consistently throughout the Manual.</p> <p>The Manual has been modified to clarify that JBEs can advertise using “other methods the Buyer determines are reasonably likely to reach Prospective Bidders.” This broad language will enable JBEs to take advantage of new technologies as they arise.</p> <p>The advertising section in chapter 4 has been modified to allow “posting a notice to another electronic bidding system.”</p> <p>The Manual has been modified as requested except where not appropriate to do so. For example, step 11B of chapter 4B includes a reference to the California State Contracts Register and states that it may be accessed through the DGS’s BidSync system.</p>
4.	Superior Court of California, County of Sacramento	NI	This email is in response to the invitation to comment sent by Mary Roberts on July 15 <sup>th</sup> .	

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Response</b>
	<p>Chuck Robuck Director of Facilities &amp; General Services</p>		<p>Fred Cabrera, our Court’ Contracts Manager, has been working with the statewide Court group that has been assisting AOC in developing a new Judicial Branch Contracting Manual to address changes that will be implemented in Contracting Procedures as a result of SB 78.</p> <p>I asked Fred to put together his assessment of these changes as well as the potential impact on our Court. Below is a brief narrative he provided me and attached is a spreadsheet which summarizes these impacts [Attachment 1].</p> <p>I have two major concerns regarding the new contracting manual:</p> <p>The new procurement requirements will add additional workload and increased costs when compared to the current Trial Court Financial Policies and Procedures that we’re currently operating under. I believe that these will have a tremendous impact on court operations, especially in light of the massive staffing reductions we’re looking at in the near future. Increased workload, higher prices, reduced staffing all add up to a prescription for failure in the near future.</p> <p>While the purported purpose of this legislation</p>	<p>Staff acknowledge the operational and financial challenges imposed by the new requirements of the JBCL on all judicial branch entities. The Trial Court Budget Working Group is surveying the trial courts to ascertain the likely workload associated with complying with the JBCL. The working group has also created a subcommittee to provide information and assess survey responses, and to develop a Budget Change Proposal to be submitted to the Department of Finance this fall to request resources to address the fiscal impact associated with these new requirements.</p> <p>Staff agree. The stated intent of the Legislature in</p>

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Response
			<p>is to make judicial branch procurement more effective, we would argue that it does just the opposite – by requiring more complexity, increased documentation and reporting, and levying more onerous restrictions on the procurement process, which reduce the Court’s flexibility in seeking the “best value” in goods and services we procure.</p> <p>While reviewing the new requirements, I came across the “<i>California Performance Review Report</i>” from 2007 [note that the Report is attached], which laid out a scathing indictment of the State’s Procurement System at the time. I’ve attached a copy of the section of the report on Procurement for your info [Attachment 2].</p> <p>Because of the severe potential impacts of these requirements on our court operations, I find it difficult to understand why the legislature would impose these additional burdens, which will likely result in increased costs and longer procurement delays, on a court system already reeling from massive budget reductions.</p>	<p>enacting the JBCL is to achieve the objectives set forth in PCC sections 100, 101, and 102. (PCC 19202) These objectives are: 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; to eliminate favoritism, fraud, and corruption in the awarding of public contracts; and that public contract law be efficient and the product of the best of modern practice and research.</p> <p>Staff are familiar with the referenced report.</p> <p>Staff agree.</p>
5.	Superior Court of California, County of San Diego	AM	Although the specific number of additional FTE positions needed to comply with the rules	Staff acknowledge the operational and financial challenges imposed by the requirements of the

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Response</b>
	by Mike Roddy, Court Executive Officer		<p>specified in the Judicial Branch Contracting Manual (hereinafter “Manual”) is still being determined, our court will definitely need to add several administrative staff positions and an attorney in order to meet the new requirements set forth in the manual.</p> <p>The contracting manual states that it applies to contracts entered into “or amended” after October 1, 2011.</p> <ul style="list-style-type: none"> <li>o Do all the rules apply to contracts being amended?</li> <li>o Applying all the rules would require major work on contracts when the amendment may affect only a small item.</li> <li>o Applying all the rules to amendments may be problematic because JBEs may not have bargaining power at the time of an amendment to force the other side to agree to all of the requirements of the new rules. An example is our County MOU that may need to be amended during the year. We would not have the bargaining power to impose widespread changes to conform to the new rules.</li> <li>o We suggest that the new requirements apply to new contracts, those extended upon the freely exercisable option of the JBE, and/or those that expand materially the scope of the contract.</li> </ul> <p>The manual states that JBEs must employ written solicitations for Non-IT services over</p>	<p>JBCL. See above response regarding efforts of the Trial Court Budget Working Group to ascertain the likely workload associated with complying with the JBCL and to seek necessary additional resources.</p> <p>At a minimum, the Manual’s requirements on amendments apply to contracts amended after October 1, 2011. See section 8.3.G for more information on amendments. The application of other requirements of the Manual depend on the facts of the situation, including nature, extent, purpose, and effect of the amendment. AOC/OGC is available to work with JBEs in connection with issues as they arise. Note, however, that the Manual provides that procurements from government entities are not subject to the requirements of the competitive bidding requirements of the JBCL.</p> <p>This suggestion is inconsistent with the specific requirement of PCC 19203 that the JBCL apply to “all contracts initially entered into or amended” on or after October 1, 2011.</p> <p>These services are subject to special legislation or processes that would affect how they are</p>

**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	Commentator	Position	Comment	Response
			<p>\$5,000.00. How and will this apply to ongoing services like per-diem interpreters, probate investigators, and court reporters?</p> <p>The new rules in various provisions require certain JBE contracts be submitted to BSA for “review and recommendations.” JBEs must notify the state auditor of these contracts within 10 business days after entering into them.</p> <ul style="list-style-type: none"> <li>○ What is the scope of this review?</li> <li>○ How long is this review going to take, and will this review delay implementation of contracts?</li> <li>○ If BSA makes “recommendations,” how can they be acted on since the contract is already binding on the parties?</li> <li>○ Do we need to make all contracts subject to BSA review contingent upon BSA approval and changes? Contracting parties will surely object to this type of contingency.</li> </ul> <p>The new rules also provide that certain IT</p>	<p>obtained.</p> <p>PCC 19204 provides that contracts with total estimated costs at more than \$1 million (unless covered by GC 68511.9) are “subject to the review and recommendations” of the BSA and requires JBEs to “notify” BSA of the existence of such contracts within 10 business days of entering the contract. The scope of review by BSA is unclear and has not yet been addressed with BSA, as the initial focus of BSA has been on planning to meet its new audit obligations under the JBCL. The JBCL does not provide, however, for action by the BSA to delay implementation of contracts.</p> <p>PCC 19204 provides for notification to BSA <i>after</i> contracts are entered into. Any recommendations BSA may have would be recommendations.</p> <p>No, as there is no requirement under the JBCL that BSA actually review all contracts over \$1 million—as opposed to such contracts being “subject to” review—and the JBCL does not require BSA approval of or changes to contracts.</p> <p>Although the California Technology Agency</p>



**List of All Commentators, Overall Positions on the Proposal, and General Comments**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Response</b>
			<p>projects are subject to review and recommendations of the California Technology Agency. That agency must consult with and provide recommendations to the Judicial Council or the court, and must submit a copy of its review and recommendations to the Joint Legislative Budget Committee. Many of the same questions set forth in comment 4 apply here.</p> <ul style="list-style-type: none"> <li>○ What is the scope of this review?</li> <li>○ When is the review going to happen?</li> <li>○ How long is this review going to take, and will this review delay implementation of contracts?</li> <li>○ When do the recommendations go to the Judicial Council and when do they go to the JBE? Is that dependent on whose contract it is? Our court would like clarification that the Judicial Council should not get involved in individual JBE’s contracting.</li> <li>○ Is the JBE required to implement the recommendations, and how can they be acted on if the contract is already binding on the parties?</li> <li>○ Do we need to make all contracts, subject to this review, contingent upon the review and recommendations? As stated in reference to comment 4, contracting parties would surely object to this type of contingency.</li> </ul> <p>See comments on specific provisions below.</p>	<p>(CTA) review and recommendation requirement under GC 68511.9 predates the JBCL, the AOC has interacted with the CTA regarding such requirement only with respect to the California Court Case Management System (CCMS). The AOC will work with the CTA to obtain clarification as to the scope and impact of the review and recommendation requirement on other JBE “administrative and infrastructure information technology projects of the Judicial Council or the courts” that are subject to GC 68511.9. Note that, in contrast to the requirement to notify BSA of certain <i>contracts</i> entered into by JBEs, the requirements under GC 68511.9 pertains to <i>projects</i>; presumably, review of covered projects would occur before contracts to implement such projects are entered into.</p>
6.	Superior Court of California, County of San Mateo By Timothy Gee, Court Planning &	AM	See comments on specific provisions below.	

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Response</b>
	Development			
7.	Superior Court of California, County of Solano by Terry Quadros, Sr. Management Analyst	NI	See comments on specific provisions below.	

**Judicial Branch Contracting Manual - Introduction**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Should the Courts notify the BSA when the Courts utilize an LPA and spend over one million dollars (\$1,000,000) throughout the course of the fiscal year? The Courts should not be required to send LPAs to the BSA where the Courts spend more than one million dollars (\$1,000,000) throughout the fiscal year.</p> <p>Timing for notifying the BSA: The term “enter” needs to be revised to say “contract execution date” to avoid confusion. The OCSC requests that the AOC change the term “enter” to “contract execution date” so that all courts understand when to notify the BSA.</p> <p>Courts should be able to submit the contract to the BSA via email. The OCSC requests that the AOC include email as an acceptable method of notifying the BSA with regard to this requirement.</p>	<p>Yes, if by utilizing an LPA the court enters into a contract with “total cost” estimated at more than one million dollars, notice to BSA is required. While such contracts are “subject to” review and recommendations by BSA, there is no requirement to send such contracts to BSA unless and until BSA initiates such review.</p> <p>Staff agree. Chapter 12.2 has been modified to add a clarifying statement that the date of “entering into the contract” is the date on which the contract is fully executed.</p> <p>There is no requirement to submit contracts to the BSA unless and until BSA initiates review. Notice to the BSA as required under PCC 19204 may be by email.</p>

**Judicial Branch Contracting Manual Chapter 1- Purchasing Authority**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Butte Kimberly Flener Court Executive Officer</p>	<p>Ethics Training (Chapter 1, page 8) This section references that JBE personnel should receive ethics training. We suggest that more specificity should be listed regarding the type and recurrence of the ethics training.</p> <p>Local Contracting Manual (Chapter 1, page 11) This section provides general instruction on the creation of a local contracting manual in bullet format. Additional local contracting manual narratives are interspersed throughout the draft of the manual in various chapters. We suggest that, for ease of implementation and clarity, that this additional information could be organized in one location (or referenced in Chapter 1 under the existing section).</p>	<p>The type and recurrence of the ethics training are within the discretion of each JBE. JBEs may choose to adopt more specific requirements in their local contracting manual (LCM).</p> <p>Staff have modified the Introduction to include a subsection on Local Contracting Manuals. The AOC will develop its own LCM, as required, and will also develop a model LCM that JBEs may adopt or use as a basis for their own LCM.</p>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>If the PCC part 2.5 states that the Courts are to be substantially compliant with the JBCM not completely consistent with the JBCM. The OCSC reads this sentence to be stricter than the PCC requirement and requests that this sentence be revised. The Courts should have the flexibility provided by the PCC.</p> <p>Waiver of requirements: JBCM should state that Courts have the ability to utilize trial court general counsel to approve waivers of JBCM requirements. The OCSC defines this requirement to mean that Courts may waive JBCM requirements with the approval of the trial court’s general counsel.</p> <p>Waiver of JBCM requirements: Examples of acceptable waivers. The OCSC would like examples of acceptable waivers.</p>	<p>Staff agree that all JBEs should have whatever flexibility is provided by the PCC. PCC 19206 states that the JBCM “must be followed” by all JBEs.</p> <p>The Manual has been modified to clarify that a JBE’s legal counsel may approve waivers of the Manual’s requirements.</p> <p>The Manual has been modified to clarify what a JBE must consider in determining whether waiver of the Manual’s requirements is appropriate. Because any waiver would be fact-specific and would require</p>

**Judicial Branch Contracting Manual Chapter 1- Purchasing Authority**

Commentator	Comment	Response
		consideration of the nature, extent, purpose, and effect of the waiver, examples are not included in the Manual. AOC/OGC is available to work with JBEs in connection with issues as they arise.
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>In the Purchasing Authority section of the Manual, Chapter 1, Page 6 of 11, under the Roles and Responsibilities of the “Buyer”, it states the buyer “[e]nsures the needs of <i>customers</i> are met within Applicable Procurement Laws.” Who are the “customers” being referred to in this section? This needs to be clarified.</p> <p>In the Purchasing Authority section of the Manual, Chapter 1, Page 7 of 11, under the Roles and Responsibilities of the “Protest Appeals Officer,” the Note states: “If a Protest Appeals Officer is not designated by a JBE, the Approving Authority will act as the Protest Appeals Officer.” Who is the “Approving Authority” referred to in this section? The “Approving Authority” is not defined.</p> <p>In the Purchasing Authority Section, the manual requires JBE personnel involved in the “procurement activities” to receive ethics training related to their duties. Who is going to provide this training and is the AOC going to develop a program to meet these new requirements?</p> <p>Various provisions refer to personnel not being involved in procurements where they have a “financial interest.” How is such an interest defined? Does it include things like holding a tiny amount of stock in a publicly held company; having shares in a mutual fund that is invested in a publicly held company; etc.?</p> <p>The new rules require each JBE to adopt a “Local Contracting Manual.” What is the expected timeline for courts to develop</p>	<p>The provision referenced in the comment has been modified to clarify that the Buyer ensures that the needs of <i>the JBE</i> are met within applicable procurement laws.</p> <p>The definition of “Approving Authority” is located in the glossary.</p> <p>The AOC’s Education Division will offer training courses on the Judicial Branch Contracting Law, including related ethics issues.</p> <p>The Manual does not create new restrictions regarding financial interests. Consistent with the SCM and SAM, the Manual is intended to alert JBE personnel to existing obligations under GC 1090. The standard for “financial interest” is accordingly the same as under GC 1090.</p> <p>There is no specified deadline for JBEs to adopt their LCMs. The AOC will develop its own LCM and a</p>

**Judicial Branch Contracting Manual Chapter 1- Purchasing Authority**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>these manuals and will the AOC be providing more specific guidelines and/or required contents for these manuals, including a model manual for the courts to use? Due to the limited resources available in the trial courts, development of a custom manual by each court may be very difficult and cost prohibitive.</p>	<p>sample LCM that JBEs may adopt or use as a basis for developing their own LCMs.</p>

**Judicial Branch Contracting Manual Chapter 2 – Procurement Planning**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Classifying mixed purchases: Courts should be able to purchase non-IT services in the same procurement where those non-IT services are a component of a non-IT goods procurement. Buyers should not have the responsibility to determine whether an exemption applies. This requirement is confusing, inefficient, and not cost effective. If this is not a specific PCC requirement, then this rule should be removed from the JBCM.</p> <p>Where services and goods are a part of one project, those goods and services should be procured at the same time. This is especially important since the Courts would benefit from:</p> <ul style="list-style-type: none"> <li>• overall cost savings in the form of labor hours expended and managing one vendor for a project as opposed to two</li> <li>• leveraging procuring equipment &amp; services at the time of procurement (e.g. equipment &amp; maintenance required upon the completion of the warranty period.)</li> <li>• minimizing the labor costs associated with the procurement process by completing it one time rather than twice (and should not be completed in a vacuum for cost analysis for the cost to the Court.)</li> </ul> <p>Additionally, this is an example of too much detail in the JBCM. Buyers have a lot of responsibility to ensure compliance with the JBCM. An abundance of detailed requirements in the procurement of goods and services put both Buyers and Courts at risk for non-compliance. Policies, procedures, rules, and exceptions should be clear, easy to understand, and easy to remember.</p>	<p>PCC 19206 requires that the Manual contain provisions that are “consistent with” the PCC and “substantially similar to the provisions contained in” the SCM and SAM. The requirements in Chapter 2 are substantially similar to the requirements in the SCM. See, e.g., Volume 2, chapter 2, section 1.A2.1; Volume 2, Chapter 2, section 2.B1.6. Although the SCM does not allow for the possibility of an exemption, the Manual includes a process whereby a JBE may obtain an exemption and thus mitigate the possible negative effects of this requirement.</p> <p>The JBCL requirement that JBEs “comply with” the PCC exists independently of the requirement to adopt a judicial branch contracting manual and LCMs. The Manual provides guidance on the PCC sections with which JBEs must comply. SCM and SAM provisions were included in the JBCM after an analysis determined that those provisions were based on a PCC provision that was made applicable to JBEs by the JBCL. If the provision in the SAM or SCM codified a specific PCC requirement or a fundamental aspect of the SAM/SCM (such as a threshold dollar amount for written solicitations), the provision was made mandatory. Otherwise, the provision was generally made optional,</p>

**Judicial Branch Contracting Manual Chapter 2 – Procurement Planning**

Commentator	Comment	Response
	Appendix A: missing from JBCM.	<p>which the Manual reflects by use of the term “should” or “may.”</p> <p>Staff will provide an Appendix A before the 10/01/11 operative date of the JBCL’s requirements and proposed effective date of the Manual. Appendix A will be substantially similar to SAM 3700 et seq.</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>In the Procurement Planning section, Chapter 2, Section 2.1 (D), dealing with requests for reasonable accommodation purchases, the Manual states that a purchase request for “reasonable accommodation” is not exempt from the procurement laws, but “Buyers must be mindful of the need to expedite the purchase.” Given all the additional requirements, how can JBEs be expected to follow these rules and still expedite requests in the time required? Requests for accommodation should fall under the emergency exemption classification of the Manual.</p>	<p>If a specific purchase qualifies as an emergency purchase, the procurement may be conducted under the emergency exemption. See chapter 5 for additional details regarding emergency purchases.</p>



**Judicial Branch Contracting Manual Chapter 3 – Socioeconomic and Environmental Programs**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>DVBE: Do the Courts have to comply with these requirements? Since there are various aspects of the PCC that have been deemed to not apply to the Judicial Branch, are the Courts obligated to comply with the DVBE program?</p> <p>DVBE certifications. The OCSC is not clear what those certifications might be. The OCSC requests that the AOC provide some clarification on this matter.</p> <p>Broker or Agent status: Need clarification on the requirements set forth on page 7. The OCSC is not clear as to the intent of this section.</p> <p>Supplier Certification: The JBCM states that JBE’s must require all businesses to certify...the percentage of recycled content in the products...sold to the JBE. The paragraph then states that certification can be waived. The OCSC requests that the AOC revise to say that the Courts must do one or the other with respect to certification and waiver of certification.</p>	<p>Yes, to the same extent as the requirements apply to state agencies and departments related to the procurement of goods and services, as required by PCC 19204.</p> <p>The referenced sentence has been modified to clarify that the certifications required are those listed in California Military and Veterans Code (MVC) 999.5(d). The AOC will establish its own guidelines for implementing a DVBE program, which will include certifications, and will make them available to other JBEs to adopt or adapt for their own use.</p> <p>The “broker/agent status” section explains the definition of a DVBE “broker” and “agent” under MVC 999.2(b), and also explains that for contracts between a JBE and a DVBE broker or agent, 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.</p> <p>The referenced section of the Manual (3.3C) provides that JBEs must require a certification, which may 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. Staff do not agree that the requested revision is necessary.</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>With respect to DVBE Procurements, the rules provide:</p> <p>[A] A vendor can qualify as a DVBE “by use of a plan” submitted to DGS. Such plans are considered approved on the</p>	<p>The Manual (at 3.1.G.1) provides that a plan is considered approved by DGS on the date of submission</p>

**Judicial Branch Contracting Manual Chapter 3 – Socioeconomic and Environmental Programs**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>date of submission “provided the Plan meets requirements set forth in PC 10115.15.” Who determines whether the Plan meets those requirements?</p> <p>[B] All the vendor gives a JBE is a written certification that it has submitted its Plan. Is that enough?</p> <p>[C] Benefits of DVBE status are not allowed to “brokers” or “agents” and the JBE cannot “count” a broker’s or agent’s participation toward the annual DVBE goal. Who determines status and when?</p> <p>[D] A JBE may not award any contract to a vendor suspended for violating PCC 10115.10. How will the JBE know if the vendor is suspended?</p> <p>[E] Also, if they have such a suspension for DVBE purposes but are otherwise acceptable, can the JBE still contract with them but not count their work toward the JBE’s DVBE goal?</p> <p>[F] Will the AOC be providing specific written guidelines on the Implementation of the DVBE Program that need to be followed by JBEs?</p> <p>[G] The Manual requires each JBE to appoint a DVBE Advocate who will be responsible for identifying potential DVBE prime contractors or subcontractors and potential contracting opportunities. Is the AOC going to provide guidelines and resources to assist the DVBE Advocate in performing these duties?</p>	<p>as long as the plan meets the requirements set for in PCC 10115.5. The Manual has been modified to provide that DGS may audit the plan and later disapprove it.</p> <p>Consistent with PCC 10115.5 and the SCM, written certification is sufficient to show that a Vendor has submitted a Plan.</p> <p>As set forth in the Manual (at 3.1.G.1), a DVBE that is a “broker” or “agent” is required to inform the JBE of its status at the time of submission of its Bid. The Manual has been modified to clarify that any denial of DVBE benefits because of “broker” or “agent” status will be based on the information provided by the Vendor.</p> <p>The Manual (at 3.1.G.3) provides that DGS maintains a list of suspended Vendors on its website.</p> <p>The Manual (at 3.1.C) provides that suspended Vendors may not be contracted with for the period of the bidder’s suspension. This requirement is in PCC 10115.10(6)(c).</p> <p>Yes.</p> <p>The Manual has been modified to provide that the AOC will establish its own guidelines for implementing a DVBE Program, and will make them available to other JBEs to adopt or adapt for their own use.</p>

<b>Judicial Branch Contracting Manual Chapter 3 – Socioeconomic and Environmental Programs</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
Superior Court of California, County of Solano Terry Quadros Sr. Management Analyst	Page 58/278; Letter A & C, I could not locate the link to access the referred information.	The web address for the DGS Procurement Division has been added to the Manual. A link to DGS Procurement Division’s website will be added to the electronic version of the Manual.

<b>Judicial Branch Contracting Manual Chapter 4 - Competitive Solicitations</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Butte Kimberly Flener Court Executive Officer</p>	<p>Solicitation Documents (Chapter 4, page 8) This section provides an overview of the solicitation process. We suggest that bidders submit communication regarding the solicitation to a single point of contact during the procurement process and that unauthorized communication with other JBE personnel regarding the procurement should be restricted.</p> <p>Steps (Chapter 4B, page 13, and Chapter 4, page 10) This section describes the steps used to conduct procurement for non-IT services. No step is mentioned for clarifying comments from bidders during the initial solicitation phase. We suggest that any clarifying comments from the JBE must be made publically available to all bidders so as not to provide an unfair advantage to any specific bidder.</p>	<p>The Manual was written to accommodate the preferences of some JBEs to allow for different points of contact for different types of communications. Each JBE has discretion to adopt more restrictive policies or procedures in its LCM.</p> <p>The list of steps referenced in the comment is intended to represent the minimum steps in the procurement process, to allow JBE’s maximum flexibility in the procurement process. Each JBE has discretion to adopt additional steps in its LCM.</p>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Advertising: JBCM procedure of having the Courts advertise bids “for at least 10 days” is too strict and is not workable for all types of procurements. The OCSC requests that this section be revised to state that certain types of procurements may be advertised for shorter periods of time; e.g. of the types of procurements that should apply: simple, low-risk quick quotes.</p> <p>Solicitation Document Required Provisions: There seem to be required provisions in various sections of various chapters. The OCSC requests that the AOC create a matrix delineating what provisions are required in the various types of Solicitation</p>	<p>Chapter 4, section 4.1.D has been modified to include the following: “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.”</p> <p>The referenced provision uses the word “should,” which signifies that it is an optional requirement that does not need to be followed if there is a valid business reason not to do so. A table labeled “Use of Word Signifying Requirements or Discretion” is provided in the introduction.</p> <p>The AOC will create sample solicitation documents that include the various required provisions, which JBEs may adopt or adapt for their own use.</p>

<b>Judicial Branch Contracting Manual Chapter 4 - Competitive Solicitations</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>Documents for various types of procurements: non-IT goods, non-IT services, IT goods and services. As the chapters are currently drafted, the OCSC does not have a clear idea of what provisions are required and in what situations they are required. An easy-to-read, easy-to-understand list or matrix would provide clarity.</p> <p>Bidder Signatures: The JBCM discusses faxed signatures but does not discuss electronic signatures obtained via electronic procurement services, such as, BidSync. OCSC requests that the AOC add language in this section to allow for electronic bidder signatures as the OCSC utilizes BidSync to obtain proposals and bids.</p> <p>Plastic Trash Bag Law: This section is unclear with regard to the types of procurements that must comply with this law. Further, this section is unclear as to the types of contractors who must meet this requirement stated in the JBCM. Does this requirement truly apply to all forms of procurements? If so, the OCSC requests that the AOC create a list or matrix of the various lists that buyers must review prior to awarding a contract</p> <p>Darfur Contracting Act and other required bidder certifications: The Courts should be able create one certification document whereby bidders and proposers certify to all required certifications. The OCSC proposes that the AOC allow for one certification form for bidders where bidders can certify, or not certify, to all of the JBCM's required certifications.</p>	<p>This section of the Manual has been modified to allow for faxed or electronic signature.</p> <p>The Manual has been clarified to address the kinds of procurement to which the Plastic Trash Bag Law applies.</p> <p>The Manual does not prohibit a JBE from creating one or many certification forms as its business needs require. The Manual (at 4.4.C) states that “[t]he JBE may use the certification form contained in Appendix A, or develop its own form.”</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>The Request for Interest section contained within the Competitive Solicitation Overview of the Manual appears to be inconsistent. In Chapter 4, section 4.1 (B), on page 5 of 19, the Manual states that the RFI is not to “provide or ask for any cost information as such information could create an unfair bidding</p>	<p>The Manual has been modified to correct this inconsistency.</p>

<b>Judicial Branch Contracting Manual Chapter 4 - Competitive Solicitations</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>environment;” however, it states later in the section that one purpose of the RFI is also “to approximate the amount of money that may be needed for procurement.” You cannot approximate the amount of money needed without obtaining information related to cost.</p> <p>The Manual, in the Confidentiality section of the Competitive Solicitation Overview, Chapter 4, on page 5 of 19, should be amended to state a bid is subject to a court administrative records request pursuant to CRC rule 10.500, which could require a “full or partial” release of the information contained therein. Rule 10.500 specifically allows non-disclosure of certain contract related information for JBEs.</p> <p>The Manual, in the Confidentiality section of the Competitive Solicitation Overview, Chapter 4, on page 6 of 19, states that all personnel involved in preparing the solicitation documents must sign a confidentiality/conflict statement that, in part, requires the JBE employee to “[c]ertify that he/she has no personal or financial interest in a Prospective Bidder.” How is the person going to know and/or certify this fact before bids are solicited and/or received?</p> <p>The Manual, in the Confidentiality section of the Competitive Solicitation Overview, Chapter 4, on page 7 of 19, should be amended in the Timing of Advertising section to exempt emergency purchases from the minimum 10 working day advertisement requirement.</p> <p>Chapter 4, Section 4.2 (A) of the Competitive Solicitation Overview states in part that “JBEs must not include requirements in competitive solicitations that restrict the bidding to a single Prospective Bidder.” While this may be true in almost all cases, there may be occasions where solicitations</p>	<p>The Manual contains language reflecting the suggested edit. Specifically, the Manual states: “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.”</p> <p>The Manual has been modified to remove the prospective certification.</p> <p>The Manual has been modified as suggested.</p> <p>The mandatory requirement has been changed to “should.” Brand names are allowed for reference purposes.</p>

<b>Judicial Branch Contracting Manual Chapter 4 - Competitive Solicitations</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>have to be written in such a way that only one bidder may respond. The language should be amended to state that “JBEs should, if possible, avoid including requirements...” This would include amending the bullet points to provide JBEs not “unnecessarily” specify a brand name or “unnecessarily” make the delivery requirements too restrictive.</p> <p>The portion of the Competitive Solicitation Overview section of Chapter 4, on page 11 of 19, dealing with tie bids should be amended to clarify what is meant by a tie. Is a tie considered to be cost only or are other differences to be considered?</p> <p>Chapter 4, Section 4.4 (D) of the Competitive Solicitation Overview, on page 16 of 19, sets forth examples to assist the court in determining whether a material deviation from the bid has occurred. What about a material exception to a minimum term? Is this a consideration for the court in determining if a material deviation has occurred?</p> <p>Chapter 4, Appendix A provides that a company that has not had business activities or other operations outside the U.S. in the previous three years doesn’t have to fill out the certification in this appendix. However, our court has had vendors forget to fill out forms. How do we know if they have forgotten or it does not apply? Our suggestion is that Option #1 be that the business certifies that it has no business activities or other operations outside the U.S., in the previous three years, and that the current options 1 and 2 be changed to 2 and 3.</p>	<p>The Manual has been modified to clarify what constitutes a tie.</p> <p>Yes, a deviation from a minimum term would render a bid non-responsive. See, e.g., chapter 4B, step 6.D.</p> <p>Appendix A reflects the form used by the executive branch. The Manual (at 4.4.C) provides that each JBE has discretion to develop a form that is more appropriate for its business needs.</p>

**Judicial Branch Contracting Manual Chapter 4A – Procurement of Non-IT Goods**

Commentator	Comment	Response
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>PCC 10301: OCSC interprets this PCC code different than the AOC interpretation. OCSC reads PCC section 10301 to mean that non-IT goods valued at \$50,000 or less must be procured using a “lowest responsible bidder” method. The OCSC requests that AOC counsel review this code section and determine if the legislature intended to have large dollar procurements procured using a “best value approach” rather than a “lowest responsible bidder” approach.</p> <p>IFB public openings: Is this a PCC requirement or is this a SCM procedure? The OCSC would like to know if this is a PCC requirement or a SCM procedure.</p>	<p>As background, PCC 10301 provides that “all contracts for the acquisition or lease of goods in an amount of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, shall be made or entered into with the lowest responsible bidder meeting specifications.”</p> <p>As authorized by PCC10301 and codified in the SCM, the director of DGS has increased the threshold in this provision to \$50,000. The higher threshold provided in the SCM has been incorporated into the Manual.</p> <p>PCC 10301, as modified by the SCM, requires contracts over \$50,000 to be awarded to the lowest responsible bidder meeting specifications. Because the PCC is silent with regard to how procurements lower than that value must be awarded, staff interpret this provision to allow for other methodologies to be used, including the “best value” methodology, in such procurements.</p> <p>As with many provisions of the Manual, the source of this provision is both PCC and SCM.</p> <p>For non-IT goods, see PCC 10304. (“All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read.”)</p> <p>For non-IT services, see: 1) PCC 10341. (“Whenever a contract subject to the provisions of this article is awarded under a procedure which provides for competitive bidding, the bids shall be publicly opened at the time stated in the invitation for</p>



**Judicial Branch Contracting Manual Chapter 4A – Procurement of Non-IT Goods**

Commentator	Comment	Response
	<p>The OCSC believes that using BidSync as a means of conducting a public opening complies with the SCM and the PCC. Additionally, because the DGS uses BidSync, which is the same online procurement website used by the OCSC, it may be that the DGS itself has already done away with public bid openings. Is it possible these clauses requiring public bid openings are actually out of date with respect to current DGS practices and procedures?</p> <p>Exceptions taken to any of the JBE’s terms and conditions deemed non-responsive: Is this a PCC requirement or is this a SCM procedure? What does a Court do in the instance that all bidders take exceptions to the terms and conditions? Throw out all bids? The OCSC believes this procedure is too restrictive and could make the process of procuring goods and services more cumbersome. Bidders / Proposers who read this language could choose not to participate in the procurement process with the Courts. Bidders could also choose to increase their cost proposals as a result of this requirement.</p>	<p>bids and the dollar amount of each bid shall be read.”); and                  2) 10344(b)(2). (“The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.”)</p> <p>For IT goods and services, see PCC 12102(b)(2). (“Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals.”)</p> <p>Neither the PCC nor the SCM specifically mentions BidSync. If a JBE wishes to use BidSync for bid openings, it should specify in its solicitation document that the public opening of bids will occur via BidSync.</p> <p>To make this procedure less restrictive, this section of the Manual has been modified to state that “material exceptions” taken to a JBE’s terms and conditions are deemed non-responsive and that “JBES have discretion to determine materiality.”</p>

**Judicial Branch Contracting Manual Chapter 4A – Procurement of Non-IT Goods**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>The OCSC would like clarification as to why this is part of the JBCM: PCC requirement or solely an SCM requirement.</p> <p>Further, the OCSC would like clarification as to how to handle the situation where all bidders take exception to the terms and conditions.</p> <p>Notice of Intent to Award: Requirement to post “notice of intent to award” on the OCSC’s website is burdensome. OCSC believes that posting notice of intent to award on BidSync complies with this requirement as the notice goes out to all bidders. Further, any individual from the public may use the site to view the winning bidder.</p>	<p>This provision is included based on best practices and language in the SCM. See, e.g., SCM volume 2, chapter 4, section 4.D2.0.</p> <p>If all bids are determined to be non-responsive, the JBE may proceed as specified in chapter 4, section 4.4.B.</p> <p>This section of the Manual has been modified to state the following (new language in <b>bold</b>)</p> <p>“The JBE must post a ‘notice of intent to award’ on its website, <b>on a publicly-accessible bidding system</b>, or in a public place in the offices of the JBE at least 24 hours before the contract is awarded.”</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>In Chapter 4A, dealing with Procurement of Non-IT Goods and Step 10—Evaluation of Bid, the “Note” indicates for purposes of determining the lowest bid that the amount of sales tax must be excluded from the total amount of the bid. Why is sales tax being excluded? Sales tax varies greatly within California municipalities and this could make a big difference on large purchases.</p>	<p>Under PCC 10301, the amount of sales tax must be excluded from the total amount of the bid for purposes of determining the lowest bid. The JCBL requires JBEs to comply with PCC provisions that are applicable to “state agencies” and PCC 10301 is such a provision.</p>
<p>Superior Court of California, County of Solano Terry Quadros Sr. Management Analyst</p>	<p>Page 86/278; Chapter 4A; Step 6-Prepare Advertisement: A JBE should advertise any solicitation of non-IT goods in excess of \$50,000, by posting an announcement in print media, on DGS's BidSync, or in any other place reasonably likely to be seen by a potential bidder. But on page 105; Chapter 4B-Prepare Advertisement: A JBE must advertise any solicitation of non-IT services of \$5,000 or more by posting an announcement: on its own website, in print media, on DGS's BidSync system or in any other place reasonably likely to be seen by potential bidders. Must a JBE advertise the solicitation in print media or will posting the solicitation on the</p>	<p>Posting a notice on the JBE’s website is sufficient. See chapter 4, section 4.1.D. The Manual has been modified to clarify the advertising requirements.</p>

<b>Judicial Branch Contracting Manual Chapter 4A – Procurement of Non-IT Goods</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	Court website suffice?	

**Judicial Branch Contracting Manual Chapter 4B – Procurement of Non-IT Services**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Flexibility of Non-IT service procurements: The OCSC would like to see the PCC sections that state the Non-IT services are less restrictive than Non-IT goods. The OCSC would like to apply the less restrictive value based evaluations to non-IT goods procurements.</p> <p>IFB for non-IT services: Courts should be able to independently determine when to use IFBs for non-IT services. The OCSC would like to be able to independently determine when to use IFBs for non-IT services.</p> <p>RFPs and non-IT services: The Exceptions section stated in the JBCM concerning deeming a proposer non-responsive for taking exception to any term and condition is confusing. The top of page 12 states that exceptions to minimum terms and conditions will be deemed non-responsive. However, midway through the page the JBCM states that exceptions to terms and conditions are evaluated and given substantial weight in the score assigned. The OCSC would like to know if either of these requirements are PCC requirements or SCM procedures. Further, the OCSC requests that the AOC provide clarity on this matter and revise this section of the JBCM.</p>	<p>PCC 10334(c)(3) allows state agencies to award contracts for non-IT services using a best-value methodology. (“The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.”) PCC 10301, which deals with non-IT goods, requires that contracts over \$25,000 (or such other limit designated by the director of DGS) be awarded to the lowest responsible bidder. As noted in the SCM, the director of DGS has raised this \$25,000 limit to \$50,000. Accordingly, JBE contracts for non-IT goods over \$50,000 must be awarded to the lowest responsible bidder. Because the statute is silent as to how contracts under that limit are awarded, JBEs may use a best-value methodology for such smaller contracts.</p> <p>The Manual does not preclude a JBE from using an IFB for any type of procurement. See the chart for step 5 of chapter 4B.</p> <p>These requirements come from the SCM, Volume 1, Chapter 5, section 5.11 and reflect best practices.</p> <p>The provision on the top of the page 12 of chapter 4B refers to IFBs. The provision on the bottom of page 12 of chapter 4B refers to RFPs. Because IFBs are evaluated only on price, any material exception to the JBE’s terms renders a bid non-responsive. (The materiality threshold was added in response to the commentator’s earlier comment.)</p> <p>In contrast, an RFP is evaluated on many criteria and exceptions to a JBE’s terms may not necessarily render</p>

**Judicial Branch Contracting Manual Chapter 4B – Procurement of Non-IT Services**

Commentator	Comment	Response
	<p>RFP and non-IT services: JBEs must state the date of oral interviews in the RFP document. This requirement is burdensome on the Evaluation Committee and the Buyer because it takes away any flexibility for the Evaluation Committee to change directions during the Evaluation portion of the procurement. The OCSC would prefer to give tentative dates for interviews whether oral or written to give the Evaluation Committee and the Buyer flexibility.</p> <p>References to Bids and Proposals: The JBCM references these terms interchangeably even though these two terms are different. OCSC noticed that Bids were referenced in conjunction with RFPs when Proposals should be referenced.</p> <p>Non-IT services RFPs: Why put the Buyer in the position to review and determine which RFP proposals meet the format requirements and filter out proposals that do not meet the format requirements. This puts a lot of responsibility on the Buyers as opposed to letting the Evaluation Committee review all proposals that were submitted prior to the RFP closing date. This puts a lot of responsibility and risk on the Buyer. This puts risk on a Buyer who mistakenly believes that a proposer should be disqualified because the proposer did not meet the</p>	<p>the bid non-responsive. This approach allows for more flexibility as the JBE may consider the impact of exceptions and assign a score for that category. Under this approach, a JBE must reject a Bid if it contains an exception to a “minimum term.” Because JBEs have discretion to decide which terms are “minimum terms,” JBEs have discretion to determine that no terms are minimum terms.</p> <p>This section of the Manual has been modified to include the following sentence: “The date for oral interviews may be tentative.”</p> <p>To avoid wordiness in areas which would otherwise require references to “bids, proposals, and quotes,” the term “Bid” is defined to include any response to a solicitation document.</p> <p>This section of the Manual has been modified to state: “A JBE staff member must review all Bids to determine which meet the format requirements specified in the RFP.”</p>

<b>Judicial Branch Contracting Manual Chapter 4B – Procurement of Non-IT Services</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	format requirements; when in fact the proposer did meet the format requirements. To mitigate this risk, the OCSC requests that this responsibility is shared with the Evaluation Committee.	
Superior Court of California, County of San Diego Mike Roddy Court Executive Officer	<p>Chapter 4B, Step 10 in the Guide for the Procurement of Non-IT Services, on page 14 of 20, requires bids pursuant to an IFB to be publicly opened. This should be revised to state in the first sentence: “The unsealed portions of all bids must be publicly opened...”?</p> <p>Also, the Manual goes on to state: “Once opened, the Bids must be made available to public inspection.” We believe there is California Supreme Court case law that says public inspection while the Bid process and negotiations are ongoing may not be in the entity’s best interest, and that bids may be exempt from disclosure during the bargaining process under the Public Records Act, incorporated by reference into Rule 10.500. See also, Rule 10.500 (f)(10). This section should be revised to coincide with California case law so that the interests of the JBEs are not injured during the negotiation process.</p> <p>Chapter 4B, Step 14 in the Guide for the Procurement of Non-IT Services, on page 15 of 20, provides a definition of responsive bid by indicating it is one that “indicate[s] compliance without material deviation from the requirements of the Solicitation Document. Is there a difference for purposes of this definition between “material deviation” and “material exception?” The responsive bid must also be defined as one that does not take material exception to a minimum term.</p>	<p>The Manual has been modified accordingly.</p> <p>The Manual has been modified accordingly.</p> <p>A “deviation” is used to indicate noncompliance with a solicitation document requirement generally. An “exception” is used to indicate an objection or a proposed change to the JBE’s proposed terms and conditions.</p>
Superior Court of California, County of Solano Terry Quadros	Page 111/278; Chapter 4B, Letter A; IFBs: 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	

**Judicial Branch Contracting Manual Chapter 4B – Procurement of Non-IT Services**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
Sr. Management Analyst	<p>contract is awarded. Once the notice has been posted, the time for submitting a protest begins to count down.</p> <p>Page 89/278; Chapter 4A, Step 11; Notice of Intent to Award: 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 awarded, the time for submitting a protest begins to count down. Please clarify; is the difference in the amount of notification time do to the fact that one posting is for non-IT goods and the other posting is for non-IT services?</p> <p>Page 106/278; Step 10-Open Bids for IFBs, Letter A: Once opened, the bids must be made available for public inspection. Must the JBE include in its solicitation "open bid" information? Is the JBE required to perform an open bid process if the JBE does not include it on the solicitation? Does the proposer's financial statements, which are included in their proposal packet become public information as well, or is this protected information?</p> <p>Page 108/278; Step 13; Optional: Hold Oral Interviews/Clarifications: If a JBE conducts oral interviews, are these interviews open to the public?</p> <p>Is the JBE required to post the results of the oral interviews or document the discussions that occurred during the oral interviews?</p> <p>Page 109/278; Letter B; RFPs: May the JBE staff member who reviews the bids to determine which bids meet the format requirements of the RFP, also be part of the Evaluation Team?</p>	<p>Yes, the difference in the amount of notification time is due to the fact that one posting is for non-IT goods and the other posting is for non-IT services.</p> <p>IFBs for non-IT services must state the time and place for public opening of bids. Bids responding to IFBs for non-IT services must be publicly opened. Depending on its specific contents, a bidder's financial information may be exempt from disclosure under rule 10.500. JBEs should seek the advice of legal counsel when responding to 10.500 requests for bid information so that information exempt from disclosure can be addressed appropriately.</p> <p>No.</p> <p>Posting is not required. Information related to the oral interviews should be included in the procurement file.</p> <p>Yes.</p>

**Judicial Branch Contracting Manual Chapter 4B – Procurement of Non-IT Services**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>And please clarify: "The JBE must make all evaluation and scoring sheets available for public inspection at the conclusion of the scoring process." Is this accurate, or should the JBE make the scoring and evaluation sheets available after the contract is awarded? And is the JBE required to use evaluation sheets or can the JBE use just the scoring sheet only?</p>	<p>This text as quoted is accurate. There is no requirement to use evaluation sheets unless a JBE incorporates such a requirement in its LCM.</p>



**Judicial Branch Contracting Manual Chapter 4C – Procurement of IT Goods and Services**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>The SCM allows for IFBs, Quick Quotes, etc when conducting IT goods and services procurements. JBCM only allows for only value based procurements for IT goods and services. The OCSC requests that the JBCM be modified to allow for flexibility in the method of procurement for IT procurements. It is beneficial for all Courts to be able to conduct IFBs, Quick Quotes, etc, for IT procurements.</p> <p>IT goods and services RFPs - Terms and Conditions: Need additional clarification as to the intended meaning of “minimum terms and conditions” that need to be identified in the RFP document. Do Minimum terms = boilerplate terms? The OCSC is not clear on the requirement for this portion of the JBCM and requests that the AOC provide some examples of “minimum terms and conditions”.</p> <p>Exception to JBEs using value based awards for IT goods and services procurements: If the JBE is acquiring hardware independently of a system integration project the JBE may award to the lowest responsible bidder. The OC finds this exception confusing. Could the AOC provide guidance as to why this is an exception and why other forms of IT procurements may not take advantage of lowest responsible bidder procurement methods? It is more efficient and cost</p>	<p>The mandatory provisions of the Manual codify specific PCC requirements or fundamental aspects of the SAM/SCM (such as a threshold dollar amounts for written solicitations). The PCC allows for cost-only evaluation for hardware acquired independently of a system integration project. See PCC 12102(c). In general, however, the PCC requires a value based evaluation for IT goods and services. (See PCC 12102(b), which states: “Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.”) Note that neither the PCC nor the Manual preclude JBEs from assigning different weight to criteria in the evaluation of IT goods and services allowing cost to be a determining factor.</p> <p>“Minimum terms and conditions” are the terms that the JBE in its sole discretion considers to be essential to the contract. They may include terms such as license or indemnification. Alternatively, a JBE may decide that no terms are “minimum terms” for a given procurement.</p> <p>This exception stems from PCC 12102(c).</p> <p>PCC 12102(b) states: “Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.”</p>

<b>Judicial Branch Contracting Manual Chapter 4C – Procurement of IT Goods and Services</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>effective for the Courts to have flexibility in choosing the method of procurement.</p> <p>RFP evaluation: This is very different than the way the OCSC conducts evaluations. The OCSC would like to publish results and conduct public openings via BidSync. The OCSC believes that the public has easy access to BidSync and that publishing cost evaluations would reach the widest amount of contractors / constituents. BidSync has the capability to send out notices via email.</p>	<p>PCC 12102(c), however, provides this exemption: “The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.”</p> <p>The referenced sentence has been deleted from the Manual.</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>The Manual provides in the Step-by-Step Guide for Procurement of IT Goods and Services, Chapter 4C, Page 15 of 31, that all RFPs that include a consulting services component include specific language related to the consultant’s financial interest. Specifically, the clause must state that when a consultant obtains a financial interest that will jeopardize the objectivity of the recommendations, the JBE has the option of terminating the contract. It goes on to state that if the consultant fails to disclose a relevant interest, the contract can be terminated “with all associated costs to be borne by the consultant.” However, the clause does not state who bears any costs associated with a termination due to a consultant obtaining a financial interest that will jeopardize the objectivity of his or her recommendations. Does the consultant bear those costs? Does the JBE just pay for services provided to date?</p> <p>The Manual provides in the Step-by-Step Guide for Procurement of IT Goods and Services, Chapter 4C, at page 17 of 31, that the JBE can hold confidential discussions with bidders. If the intent is to allow the JBE to meet separately with</p>	<p>The suggested clause may be modified by each JBE to address any additional concerns or to provide additional requirements, such as who bears costs and whether the JBE must pay for services provided to date.</p> <p>Step 9(B) of chapter 4C has been modified to clarify that JBEs have discretion to meet separately with each bidder.</p>

**Judicial Branch Contracting Manual Chapter 4C – Procurement of IT Goods and Services**

Commentator	Comment	Response
	<p>each bidder, that should be clarified in Step 9 (B).</p> <p>Also, this section expressly states the discussions are confidential, but does not address documents related thereto. Does the omission mean the Judicial Council believes the related documents are not confidential? This should also be clarified, especially in light of the provisions of Rule 10.500.</p> <p>The Manual provides in the Step-by-Step Guide for Procurement of IT Goods and Services, Chapter 4C, at page 18 of 31, that at the conclusion of the confidential meeting “the JBE may prepare a memorandum documenting the clarified items and how the Bidder proposes to correct the noted defects.” Would this document and all communications made during the evaluation period be subject to being produced pursuant to a court administrative records request under CRC 10.500? If so, what is the practical meaning of the term “confidential” in this context?</p> <p>The Manual provides in the Step-by-Step Guide for Procurement of IT Goods and Services, Chapter 4C, at page 25 of 31, that New IT equipment should always be procured “unless budget priorities dictate otherwise.” This exception should be expanded to allow for cases where, for other legitimate business reasons, prior models must be purchased, i.e., equipment is no longer being manufactured new for the system being used.</p>	<p>The Manual does not alter the application of rule 10.500 to procurement-related documents. JBEs should seek the advice of their legal counsel regarding the disclosability of specific records. The AOC/OGC is available to advise on the disclosability of specific records.</p> <p>The Manual does not alter the application of rule 10.500 to procurement-related documents. Rule 10.500 allows JBEs to exempt from disclosure records that contain trade secrets or privileged or confidential commercial and financial information and records the disclosure of which would not be in the public’s interest. (CRC, rule 10.500(f)(10) and 10.500(f)(12) Whether a record is disclosable under rule 10.500 depends on the specific facts and circumstances of the request and the record at issue. JBEs should seek the advice of their legal counsel regarding the disclosability of specific records. The AOC/OGC is available to advise on the disclosability of specific records.</p> <p>Purchasing prior models for legitimate business reasons is not precluded by the existing language.</p>

<b>Judicial Branch Contacting Manual Chapter 5 – Non-Competitively Bid (NCB) Contracts</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Butte Kimberly Flener Court Executive Officer</p>	<p>Sole Source Purchase (Chapter 5, page 8) This section describes the process for sole source authorization. The bullet at the top of page 8 appears to be incomplete.</p> <p>Repeat Sole Source Purchase (Chapter 5, page 8) This section describes the process for repeat sole source authorization. Another factor for repeat sole source procurement for IT goods may be the compatibility of existing IT infrastructure and the subsequent difficulty/impracticality of integrating lower priced goods into an existing IT system.</p>	<p>The Manual has been modified accordingly.</p> <p>The criteria as drafted reflect the criteria included in the SCM. JBEs may add additional criteria in their LCMs.</p>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Sole Source: Sole Source request should be drafted and submitted by the Requestor not the Buyer. The OCSC requests that the Requestor submit the Sole Source justification and not have the Buyer submit the justification.</p> <p>Second and fourth paragraphs of page 8 has typos.</p> <p>Trial Courts - Public Input Requirement: Does the exemption of Court-County agreements apply to agreements with other government entities as well? The OCSC would like to apply the exemption to all government agreements.</p>	<p>The Manual has been modified to state that the “The JBE employee requesting the procurement must submit a sole source request to the sole source approver.”</p> <p>The Manual has been modified to correct these typos.</p> <p>The exemption comes from CRC, rule 10.620, and is limited to contracts entered into between a court and a county that are provided for by statute. See CRC, rule 10.620(d)(2).</p>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>The Manual provides in the Non Competitively Bid Procurements section, Chapter 5, at page 5 of 9, that JBEs may purchase non-IT goods, non-IT services and IT goods and services from other governmental entities without conducting a competitive procurement process. Does this include the use of third-parties like janitors?</p> <p>The Manual provides in the Non Competitively Bid Procurements section, Chapter 5, at page 5 of 9, that Legal</p>	<p>Yes, JBEs may procure janitorial services from other governmental entities, which in turn contract with third parties, without conducting a competitive procurement process.</p> <p>The Manual has been modified accordingly.</p>

<b>Judicial Branch Contacting Manual Chapter 5 – Non-Competitively Bid (NCB) Contracts</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>Services may be purchased without competitive bidding. The second bullet of the definition for legal services should be amended to read: “Services performed by consultants and expert witnesses in connection with pending or anticipated legal proceedings.”</p> <p>It also should provide for payment of costs, including transcripts, filing fees, etc., that must be purchased related to the legal representation.</p> <p>Section 5.8 of Chapter 5, Non Competitive Bid Procurements, should be amended to clarify in the first paragraph that it is the “court’s <i>current fiscal year</i> budget” that must be used to determine whether public input is required.</p>	<p>Chapter 5 discusses the types of contracts that are exempt from competitive procurement, not the type of incidental expenses that may be reimbursed in connection with legal representation.</p> <p>This section of the Manual addressing public input on trial court budgets (now renumbered section 5.9) reflects the requirements of only CRC, rule 10.620. The language referenced in the comment reflects the language used in CRC, rule 10.620 and does not address its interpretation.</p>

**Judicial Branch Contracting Manual Chapter 6 - Leveraged Procurement Agreements**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer	Procedures stated in this chapter concerning LPAs are burdensome. The JBCM lays out many steps for Courts to follow when choosing to use an LPA. While the Courts do need to be careful about making sure that they are getting the best price, it seems that the procedures stated in this chapter could be simplified for Buyers.	The Manual has been modified to remove complex requirements for all LPAs except DGS's LPAs. The remaining requirements are required by DGS with respect to its LPAs.

**Judicial Branch Contracting Manual Chapter 7 – Protes and Post Award Disputes**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Protest Timeline: Is the two step process that is laid out on page 8 a PCC requirement or a SCM requirement? Courts should be able to implement a one step process. The OCSC would like to continue to use a one step process for protests unless this is a PCC requirement. (“One step” meaning that all protest documents must be submitted by a certain date; rather than having a date by which protest notice must be submitted, and then a later date by which protest documents must be submitted.)</p> <p>Non-IT goods solicitation protests: The Note on page 9 adds confusion to the protest process. It would be easier for the Courts if the rules were simple and uniform across all types of procurements. The OCSC would like to remove this requirement and have uniform requirements for all forms of protests.</p> <p>Protests – Appeals: Appeals timelines should be uniform for all forms of protests. Spec protests should have the same timeline as contract award protests. This will prevent confusion from buyers and bidders / proposers. In light of all of the requirements and procedures stated in the JBCM, the OCSC requests that the AOC have one timeline for all forms of protests.</p> <p>Section 7.5 in Chapter 7 seems to fit more appropriately in the Contract Administration chapter. Post-award disputes fit more appropriately in the Contract Administration chapter.</p>	<p>The requirement comes from the PCC and is therefore mandatory under the JBCL. See PCC 10306, 10345(a)(3) and (b)(2), and 12102(h).</p> <p>This section of the Manual has been modified to include the following sentence (new language in <b>bold</b>): “For protests of non-IT goods solicitations, the Bidder must assert that it is the lowest responsible bidder meeting specifications <b>unless the JBE waives this requirement. A JBE may include a general waiver of this requirement in its LCM.</b>”</p> <p>This section of the Manual regarding specifications protests has been modified to include the following sentence: “The JBE may adopt in its Local Contracting Manual a different deadline for the filing of an appeal, provided it is not less than two court days.” The new language enables JBEs to harmonize the two different appeals deadlines as needed.</p> <p>Staff agree. Chapter 7 has been modified to include a reference to chapter 11. Further modifications will be considered based on feedback from JBEs about implementation of the Manual.</p>

<b>Judicial Branch Contracting Manual Chapter 7 – Protes and Post Award Disputes</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of San Diego Mike Roddy Court Executive Officer</p>	<p>Chapter 7, Section 7.2 (C), in the final paragraph states “the JBE <i>will</i> not consider the new grounds or new evidence.” The mandatory nature of the term “will” is not specified; therefore, “will” should be replaced with “shall.”</p> <p>In all cases where the Manual states a protest can be personally delivered, if allowed by the solicitation documents, the Manual should be amended to require personal delivery of the protest documents to the Protest Hearing Officer and not generically to the JBE. If the Protest Hearing Officer is not specified, the documents could become lost and this would cause a problem in the protest hearing process.</p> <p>The Manual provides in Chapter 7, Section 7.5 (B), that all post award disputes, “regardless of magnitude,” be documented in the procurement file. This terminology is overbroad. What if the vendor calls upset about a late payment; does that need to be documented in the procurement file? Should be limited to disputes where formal action is taken.</p>	<p>The Manual has been modified accordingly.</p> <p>The Manual has been modified to clarify that personal delivery must be made as specified in the solicitation document.</p> <p>The quoted language is a direct quote from the SCM provision that is the basis of this provision. (See SCM, Volume 2, Chapter 7, Section 7.4.5)</p>



<b>Judicial Branch Contracting Manual Chapter 8 – Purchase Documents (including MOUs and IBAs)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Legal Review: Courts should be able to rely on trial court counsel to provide legal review for all situations requiring legal review. This specifies that local legal review meets the requirement of “Legal Review” particularly as to Contract Templates. Therefore OCSC interpretation is that trial court counsel review shall satisfy the “Legal Review” requirement at other places in the manual.</p> <p>Execution of Contracts: In addition to accepting originally signed contracts, the Courts should have the option of accepting electronic signatures and scanned signatures. The OCSC would like the AOC to consider including electronic signatures and scanned signatures as alternatives to original signatures.</p> <p>Clarification: How is the term MOU defined? Do MOUs only apply to government entities? The OCSC would like clarification on the definition of MOU.</p> <p>Appendix A: Where did the Legal Review and Approval chart come from: the PCC or the SCM? Why are contracts not being required to have legal review based on risk? Why is legal review based on dollar thresholds?</p> <p>The OCSC would like to understand what constitutes Legal Review.</p>	<p>Chapter 8 is intended to address legal review in circumstances specified in chapter 8 only.</p> <p>The Manual has been modified to allow for electronic signatures and scanned signatures as alternatives to original signatures.</p> <p>An MOU is another name for an Inter-Governmental Contract (IGC) and is the commonly used name for certain IGCs, especially those for county services. The Manual has been modified for clarity.</p> <p>This chart is based on the AOC’s Legal Review and Approval chart. It replaces a requirement for legal review and approval by DGS’s Office of Legal Services under the SCM. Legal review and approval are also required based on a contract’s specific risk profile. See, e.g., 8.3 B.1(b). Dollar thresholds are used consistent with best practices because they represent a JBE’s exposure to loss, and to satisfy requirements of the JBCL requiring the Manual to be “substantially similar” to the SAM.</p> <p>Legal review requires consideration of applicable legal requirements (if any) and the purpose and effect of the waiver. In connection with a particular waiver, a JBE’s</p>

Judicial Branch Contracting Manual Chapter 8 – Purchase Documents (including MOUs and IBAs)		
Commentator	Comment	Response
	Under IGCs with Local Public Entities: Court-county/city agreements should be executed either by the Presiding Judge or her/his delegate. The OCSC requests that this sentence be rephrased to allow for the PJ’s delegate.	counsel must apply counsel’s professional judgment on the basis of the specific facts  The sentence stating that only a Presiding Judge may enter into a court-county memorandum of understanding has been deleted from the Manual.
Superior Court of California, County of San Diego Mike Roddy Court Executive Officer	<p>In Chapter 8, Section 8.3 (B) on Legal Approval, in the portion dealing with Legal Templates, on page 7 of 44, the Manual states that “[w]hen applicable, contracts should include space on the signature page for counsel to indicate approval as to legal form.” What is the meaning of such an approval and potential consequences to the attorney who signs?</p> <p>In Chapter 8, Section 8.5 (H) on Substance of Contracts and Amendments, the Manual states: “An amendment to extend a contract must be processed <i>before the contract expiration date</i> and retain the same start date.” This cannot always be done. There are times when there are multiple parties involved and/or multiple approval agencies and the approval process to extend goes beyond the original expiration date. This should be re-written to state: “An amendment to extend a contract <i>should</i> be processed...” This amendment would give some discretion if a business reason dictates it be processed after.</p> <p>In Chapter 8, Appendix C, in the portion dealing with Union Activities, on page 31 of 44, the Manual refers to “state contracts,” “state funds,” and “state property.” Is “state” the appropriate agency to be referred to in this section?</p> <p>In Chapter 8, Contracts and Contract-Related Documents, Item 4 – Interagency Agreements, on page 35 of 44, the Manual states a contract with a state agency, as defined, “must follow</p>	<p>Requiring an attorney’s signature imposes an internal process requirement for attorney review before documents are finalized. The requirement does not signify approval of substantive, bargained contract terms. An attorney’s duty of care is governed by the California Rules of Professional Conduct and applicable law.</p> <p>If a contract has expired before a JBE has had a chance to enter into an amendment to extend it, the JBE would need to reinstate the contract. While possible, the process for reinstating an expired contract is beyond the scope of chapter 8. AOC/OGC is available to work with JBEs in connection with issues as they arise.</p> <p>Appendix C to chapter 8 has been modified to remove references to “state.”</p> <p>The Manual has been modified to clarify the reasons for this requirement and to remove the section in chapter 8 addressing contracting for students.</p>

<b>Judicial Branch Contracting Manual Chapter 8 – Purchase Documents (including MOUs and IBAs)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>the requirements for whichever type of contract the agency uses.” Why is this requirement set forth in the manual? Do we have to use the agency agreement provided for all such contracts, including those related to student intern agreements from state colleges and law schools?</p> <p>In Chapter 8, Contracts and Contract-Related Documents, Item 11 – Contracts Requiring Insurance, on page 40 of 44, the Manual states in subsection (a) that the contractor must certify they have “liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability.” This amount could be excessive for some smaller contractors. Should the amount be allowed to vary based upon potential liability?</p> <p>In Chapter 8, Contracts and Contract-Related Documents, Item 12 – Janitorial/Building Maintenance Contracts: Additional Requirements, on page 41 of 44, the Manual states that the contract with the contractor for these services must retain the current employees as specified. Is this required for contracts that JBEs may have with a County, where the County provides such services through a contract it has with a third party to which the JBE is not a party. JBEs may not have the ability to require the County to comply with these provisions with regard to their contract with their janitorial contractor.</p> <p>In Chapter 8, Contracts and Contract-Related Documents, Item 14 – Contracting for Students, on page 43 of 44, the Manual states when contracting for students, the contract must require the work be related to the student’s field of study. This provision is inconsistent with the court’s ability to hire student workers, Justice Corps. Workers, etc.... Also, it states the</p>	<p>Although liability insurance of at least \$1million is standard in state contracting, the Manual has been modified to provide JBEs leeway regarding this requirement.</p> <p>Yes, this requirement, which comes from Government Code section 71626.1, applies to contracts that JBEs may have with a county, including janitorial service agreements, where the county provides the service through a contract with a third party. Depending on circumstances, if a court and county agree that the requirement is for the benefit of the county and its employees, the county has the discretion to waive that benefit.</p> <p>Staff agree with the comment. The Manual has been modified to remove the section in chapter 8 addressing contracting for students.</p>

<b>Judicial Branch Contracting Manual Chapter 8 – Purchase Documents (including MOUs and IBAs)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
	<p>contract must provide students cannot accrue “civil service” status, but no court workers have civil service status; therefore, the sections dealing with civil service should be deleted. In addition, the limitation on days of work per year should not apply and is inconsistent with many of the court’s current programs, including, but not limited to, the Justice Corps. Program and Judicial Fellowship Program. Finally, our court believes that the Contracting for Students section should be omitted entirely from the manual as Government Code section 19133 by its terms only applies to state agencies and is unworkable under the programs currently being successfully implemented by JBEs.</p>	
<p>Superior Court of California, County of San Mateo Timothy Gee Court Planning &amp; Development</p>	<p>Very comprehensive Manual however I do have a couple of issues that may need to be addressed in the Manual.</p> <ol style="list-style-type: none"> <li>1. Chapter 8, section F on pages 19 &amp; 20 - In the discussion on IGC, discussion of mutual indemnity clauses should be included since this occurs frequently.</li>   <li>2. Do you may want to discuss how to address when a county may have contract requirements of contractors doing business in the county that are not standard AOC provisions. Does a court adopt those provisions also or not?</li> </ol>	<p>A discussion of mutual indemnity involves providing legal advice, which should be provided on a privileged and confidential basis by a JBE’s legal counsel rather than in the Manual. The AOC/OGC is available to provide legal advice to JBEs. This may also be addressed in training to be provided regarding implementation of the JBCL.</p> <p>Staff interpret the comment to be asking about contract provisions when a county is performing procurement service for a court. Whether a court should adopt these provisions depend on the specifics of the provision. AOC/OGC is available to work with JBEs in connection with issues as they arise. If a court is having the county perform procurement services for it, it should have the county include the additional requirements under state law.</p>

<b>Judicial Branch Contracting Manual Chapter 9 – Disputes, Financing and Payment Programs</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer	P-Cards: May travel be an acceptable use of P-Cards? The OCSC requests that this policy be revised to include the ability for the Courts to use the P-Card for the procurement of travel. The OCSC specifically implemented the P-Card program to provide a more efficient process for travel related activities.	<p>The reference in the comment to the “P-Card program” appears to be to the state-administered procurement card program (also known as CAL-Card). Section 9.B3.7 in vol. 2, chapter 9 of the SAM specifically prohibits the use of a CAL-Card for state travel-related expenses. In addition, under the <i>Trial Court Financial Policies and Procedures Manual</i> (TCFPPM), the P-Card would only be able to be used for the procurement of goods (FIN 6.01, page 27). Because the JBCL requires the Manual to be “substantially similar” to the SAM, staff cannot comply with this request.</p> <p>However, under FIN 6.01 (page 28) of the TCFPPM, individual court employee travel expenses may be purchased with a court credit card that is used only for travel expenses (or centrally purchased using a court travel account). The Manual includes the foregoing provision. See section 9.2(B).</p>
Superior Court of California, County of San Diego Mike Roddy Court Executive Officer	In Chapter 9, Disbursements and Payment Programs, in section 9.1 (F), on page 9 of 11, the Manual states, related to travel expenses, that “[a]ll travel expenses must be related to official <i>state</i> business.” This should be amended to state “...expenses must be related to official <i>JBE</i> business.”	The Manual has been modified accordingly.

**Judicial Branch Contracting Manual Chapter 11 – Contract Administration**

<b>Commentator</b>	<b>Comment</b>	<b>Response</b>
<p>Superior Court of California, County of Orange By Alan Carlson, Court Executive Officer</p>	<p>Record Keeping and Files – Supplier / Contractor Lists: This section should include electronic procurement systems, such as, BidSync. Electronic procurements systems, such as, BidSync, maintain lists of Supplier / Contractors for ease and efficiency to the procuring entity. The OCSC requests that the AOC revise this statement to include electronic procurement systems.</p> <p>Maintenance of contract files: The JBCM should allow for files to be maintained electronically. For example, files could be maintained by a Court in an electronic contract management system. The OCSC requests that the AOC consider allowing the Courts to maintain electronic files in a contract management system, such as, Sharepoint.</p> <p>Contractor Performance and Payment – Performance and Delivery Control: This section should reflect a team environment where project managers, cost center managers, AP, Materiel Management work together to ensure that goods, performance, services meet contract requirements. The OCSC would like to see this section reflect more of a team environment where responsibilities are not placed solely on the buyer/contract administrator but rather on a network of Court personnel.</p> <p>Contractor Payment Section: Some of these duties appear to be more appropriate to have Accounts Payable (AP) be the main source of responsibility and have the buyer be the secondary source of responsibility. The OCSC requests that the AOC</p>	<p>The Manual has been modified to allow for the use of electronic procurement systems.</p> <p>A footnote has been added to clarify the sentence “Files must be established and maintained for every procurement action.”<sup>[1]</sup> The added footnote reads as follows:</p> <p align="center">An electronic file system may be used for this purpose, as part of a contract management system, so long as file integrity and security are adequately maintained.</p> <p>This section of the Manual has been modified to include the phrase “or other authorized JBE staff.” As modified, the section provides for JBE discretion to determine which “authorized JBE staff” is appropriate to reflect a team environment; this could be specified in the JBE’s LCM.</p> <p>Staff understand this comment to refer to section 11.7.B. (Vendor Payment Issues) and not to section 11.7.A. (Performance and Delivery Control). Section 11.7.B. is general direction to the JBE regarding how to deal with</p>

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	<p>consider revising this section to re-delegate duties so that some of these responsibilities can be shared with AP.</p> <p>Part d under Contract Options: The OCSC believes that this paragraph requires clarification. The OCSC requests that the AOC provide clarification as to this paragraph.</p>	<p>payment issues. JBE staff who are responsible for payment (such as Accounts Payable) are required to follow the general direction in section 11.7.B. Therefore, it appears that the commentator’s concern has been addressed already.</p> <p>Section 11.8 has been substantially rewritten and no longer contains language relating to trial court exercise of options. The following paragraph is now contained in section 11.8.B:</p> <p align="center">“Trial courts are responsible for updating the Phoenix Statewide Financial System (Phoenix) so that it accurately reflects amendments. Trial courts should coordinate with the AOC Trial Court Administrative Services Division (TCAS), as appropriate, to ensure accurate updating of Phoenix.”</p> <p>In the near future, TCAS will be coordinating with trial courts as to how to input contract amendments into Phoenix to comply with the JBCL’s reporting requirements.</p>

Summary of Impacts of SB 78 -- Judicial Branch Contracting Law

Current Procedure/Practice	New Requirement	Impact on Sac Court
1. Procurements governed by Judicial Council's <b><u>Trial Court Financial Policies &amp; Procedures (TCFPP)</u></b>	Must comply with the provisions of the <b><u>Public Contract Code (PCC)</u></b> that are applicable to state agencies and departments related to the procurement of goods and services.	<b><u>Longer lead times</u></b> will be necessary to meet additional mandated requirements imposed by the PCC. We won't know specifically how much longer until we've implemented.
2. <b><u>One set of policies and procedures</u></b> applies regardless of the type of good or service being procured, i.e., IT vs. non-IT goods & services	Procurement is divided into 3 basic categories: non-IT services, non-IT goods, and IT goods and services. <b><u>Different policies and procedures govern each category.</u></b>	(see below for specifics)
3. TCFPP requires <b><u>full competitive procurement</u></b> with a written solicitation document when value of <i>services</i> being sought total <b><u>\$25,000 or more.</u></b>	Written competitive procurement <b><u>required for</u></b> services valued at <b><u>\$5,000 or more.</u></b>	Majority of service contracts will require going out to bid -- a time consuming process taking 2 to 3 months. <b><u>Longer lead times</u></b> needed for service contract requests.
4. <b><u>Reports to the Legislature not</u></b> required	<b><u>Court must supply Judicial Council with data needed for JC's semi-annual, mandatory reporting</u></b> requirements to Legislature (re all contracts, including contracts resulting from non-competitively bid procurements)	<b><u>Additional workload on IT, Facilities, and Purchasing staff</u></b> to maintain and generate data needed by AOC to report to the Legislature.
5. Reports to <b><u>Bureau of State Audit (BSA) and State Technology Agency (STA) not</u></b> required.	<b><u>Court must notify the State Auditor of certain contracts with total costs estimated at more than one million dollars.</u></b> State Technology Agency must be notified of IT contracts over 5 million.	<b><u>Potential delays in implementing service agreements</u></b> should BSA and STA require contractual amendments that are consistent with their comments and recommendations. This could have <b><u>significant negative impacts on court operations.</u></b>
6. <b><u>Leasing equipment: no</u></b> lease vs. buy analysis required.	Prior to initiating an equipment lease, <b><u>court must complete a "lease versus purchase analysis"</u></b> and document in procurement file.	<b><u>Additional workload</u></b> on IT, Facilities, and Purchasing staff. <b><u>Delays in the acquisition</u></b> of needed leased equipment.
7. Meeting <b><u>Disabled Veterans Business Enterprise (DVBE)</u></b> goals <b><u>not</u></b> required	Court must meet or exceed the disabled veteran business enterprise participation goals of a <b><u>minimum of 3 percent of all contracts.</u></b> DVBE's bid must be reduced by set percentage or its RFP given higher points even though bid is not truly the lowest. <b><u>Must develop rules and procedures to implement DVBE requirements</u></b>	<b><u>Additional workload on IT, Facilities, and Purchasing staff</u></b> to meet DGS documentation requirements, even though court is not required to report to DGS. <b><u>Higher costs for goods and services</u></b> when DVBE is not truly the "lowest responsible bidder."
8. <b><u>CRC rule 10.503</u></b> require use of recycled <b><u>PAPER for all purposes</u></b> "except for uses for which recycled paper is not practically available."	Must ensure that <b><u>at least 50% of reportable purchases - NOT JUST PAPER - are recycled products.</u></b> This requirement applies to paper products, office supplies, office products, and a wide range of other products.	<b><u>Additional workload on IT, Facilities, and Purchasing staff</u></b> to locate vendors who meet this requirement. <b><u>Higher costs (5-20%) for goods containing post-consumer recycled content.</u></b> <b><u>Increase in copier jams and maintenance</u></b> due to paper dust generated from recycled paper.



Summary of Impacts of SB 78 -- Judicial Branch Contracting Law

Current Procedure/Practice	New Requirement	Impact on Sac Court
9. Vendors who provide court the best value are selected with no "strings attached."	Court <b><u>must require the businesses with which it contracts to use recycled content products.</u></b> Court also must <b><u>require businesses to certify in writing,</u></b> under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the court.	<b><u>Vendors who can otherwise provide court with good value and best pricing but cannot meet the recycle mandate will not do business with the court.</u></b> Court may have to <b><u>pay more for goods/services</u></b> from a vendor who can meet recycled content requirement.
10. Recycled <b>product reporting is <u>not</u> required</b> under the TCFPP.	<b><u>Court must report annually, by October 31 of each year,</u></b> to the Integrated Waste Management Board regarding its progress in meeting the recycled purchasing requirements. <b><u>Reports must identify the total dollar amounts</u></b> of all products purchased within the <b><u>eleven reportable categories</u></b> and the total amount spent on recycled content products in each reportable category.	<b><u>Additional workload for IT, Facilities, and Purchasing staff</u></b> to locate products with recycled content and to track and record data needed for annual reporting to the Waste Management Board.
11. Procurements for <b><u>non-IT goods or services need not address the requirements of the Darfur Contracting Act.</u></b>	Procurements for non-IT goods or services must address the requirements of the Darfur Contracting Act. <b><u>Court must require all vendors to certify under penalty of purjury whether they are a "scrutinized company" doing business in the African nation of Sudan</u></b> (of which the Darfur region is a part)	<b><u>Additional documentation requirements for IT, Facilities, and Purchasing</u></b> staff.
12. <b><u>Formal competitive bids (RFB) required</u></b> for purchase of <b><u>non-IT services over \$35,000</u></b>	Formnal competitive bids (RFB) required for purchase of non-IT services <b><u>over \$5,000</u></b>	Lower threshold will <b><u>increase workload for IT, Facilities, and Purchasing</u></b> staff who will have to go out to bid more frequently. <b><u>Expect delays in the competitive procurement of Non-IT services</u></b> as staff wait for proposals to be submitted by deadline and for "protest period" to lapse (i.e., 5 days)
13. <b><u>Formal competitive bid proposals (RFP) required for purchase of IT services over \$50,000</u></b>	Formnal competitive bids (RFB) required for purchase of <b><u>IT services over \$5,000</u></b>	Lower threshold will <b><u>increase workload for IT and Purchasing</u></b> staff who will have to go out to bid more frequently. Explect <b><u>delays in the competitive procurement</u></b> of IT services as staff wait for proposals to be submitted by deadline and for "protest period" to lapse (i.e., 5 days)

# California Performance Review

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## Chapter 7: D. Procurement

**California should drastically modernize its present procurement system that adds additional cost to its purchases and often does not deliver, in a timely fashion, goods and services needed to serve the people of California.**

State purchases range from simple to complex, from a few dollars to millions of dollars, from low risk to high risk. However, one common thread applies to all procurements, whether they are goods, services or Information Technology (IT). They are essential to the work of state government. Without them, civil servants—janitors, engineers, educators, law enforcement, nurses and other employees—cannot serve the public needs.

It has long been recognized that the **state's procurement process is complicated, costly, time consuming and unable to ensure that quality goods and services are obtained for state programs**. Each year the state uses this process to acquire billions of dollars in goods and services essential for the state to provide service to the public.

Except for minor improvements made in past decades, the need to modernize California's procurement system has been well documented. **Today, the state's purchasing system remains fragmented, subject to delays and unable to deliver cost effective purchases**. The system needlessly taxes the time of users, suppliers, and procurement professionals with laws, policies and procedures in such a patchwork fashion that they conflict in many areas. This **labyrinth of codes and statutes no longer facilitates a system that ensures quality products are obtained in the most efficient and cost effective manner**. Even during a weak economy with few opportunities, the cost of providing bids discourages suppliers from doing business with the state, and hampers state employees from initiating innovations and process improvements.

The following **examples** illustrate the need to modernize the state's procurement system:

- **Suppliers with records of poor performance remain eligible to bid;**
- **Non Competitive Bid (NCB) process problems interfere with programs and their ability to provide services to the state;**
- **IT procurement is over burdened with process approvals and the process can take more than a year to award a contract;**
- **Delegations are slow to increase** and little training is offered to increase user competency;
- **Costs of procurement (cents per dollar spent or cost or cost of purchase order) are unknown but likely are above the national average;** and
- California pays millions of dollars **in late payment fees due to the slow procurement payment process**. The state is also unable to take advantage of prompt payment discounts offered by suppliers.

Since California's statutes and codes have been patched together over the years, the current procurement process has become **overly complicated for suppliers, costly to taxpayers, time consuming for state employees, and has delivered less than acceptable quality goods and services.** Since the 1970s, the State of California has recognized the need to streamline and innovate the procurement process (California Public Contract Project 1978, 31 recommendations). Again in the 1990s, several reports highlighted the need to restructure the state procurement process and bring it up to date with current best practices (Little Hoover Commission Report 1993, 26 recommendations, and DGS "Procurement 2000"). In all cases, **only limited improvement has occurred.** More recent studies exemplify the need for a major overhaul of procurement for the state agencies.

The State of California can no longer afford an archaic and expensive procurement system that does not effectively manage the state's contracting of billions of dollars in goods and services per year. The recommendations outlined in this report will provide the state with various opportunities to reduce costs as well as improve the business climate for suppliers seeking the state's business.

## The Modern Approach

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The intent of modernizing the state's procurement system through a fundamental redesign is to produce major improvements in momentum, cost and value. Many other states are benefiting from these same significant advancements in both modern procurement process and the use of technology in place of complex and time-consuming practices.

The key focus areas of California Performance Review's (CPR) modernization approach to procurement are as follows:

**Establish a central procurement unit at a level that removes core Department of General Services (DGS) resources from the role of single transaction mode to the level of strategic sourcing, and central oversight with a greater emphasis on user enablement.** The Department of General Services has not fully achieved the vision of a decentralized, knowledge-based strategic partner in procurement. Recent studies, however, evidence the need for centralization in a progressive and technology-driven purchasing environment. The **National Association of State Procurement Officers (NASPO)** advocates in "State Procurement: Strategic Positioning for the 21st Century," the grand strategy of moving from a process-based to knowledge/ accountability-based organization. **In its 1993 report "Procurement Reengineering Project: Final Report," the State of Texas recommends that the role of the central purchasing organization should be of a service provider, standard setter, and procurement planning consultant. California's, efforts have focused on transactions and control.** According to NASPO, "The next step is to demystify the process through simplification and delegation of the routine processes where value cannot be added. This allows the central procurement office the opportunity to function as a knowledge/management-based organization, a strategic player in the business management of the state. The professional procurement managers serve as consultants, instructors, business process designers and problem-solvers. The central office retains control of complex, high risk, high-dollar transactions where trained experts add value." California needs to take this step.

**Review and change statutes and regulations to facilitate a modern procurement system and enable the appropriate management of the state's acquisition of goods and services.** California's procurement statutes are **needlessly complicated, sometimes contradictory, and are interspersed throughout various codes.** According to the **2002 Governor's Task Force on Contracting and Procurement Review**, "there are laws governing one or more aspects of contracting and procurement in nearly every one of California's 29 Codes," and ". . . at least 140 known exemptions from (1) the provisions of the Public Contract Code, (2) competitive bidding, (3) DGS review and approval, and (4) any possible combination of the first three." **Developed in piecemeal fashion over the years, California's complex maze of statutes are inconsistent, conflicting, and require tremendous effort to manage. This translates into a costly and lengthy process to acquire even the simplest of goods and services** as stated in the "1996 Senate Commission on Cost Control in State Government." The failed California Acquisition Reform Act (CARA) attempted to address this, however the proposed legislation proved to be so lengthy and detailed that it could not pass the legislature. Statute changes should reorganize, simplify and streamline state statutes into a single, uniform and understandable code.

**Implementation of a single statewide electronic procurement system that collects all state procurement and contracting information will facilitate a greater ability for the state to strategically source its procurement and contracts.** An integrated statewide procurement system would capture transaction detail on all purchases, and automate and streamline requisitioning, receiving, and payment activities. This must be a complete system that encompasses all areas of the procurement process: sealed bids, reverse auctions, requisitions, purchase orders, contracts, supplier performance ratings, workflow management, business rules enforcement, auditing tools, and connect to the State Controller's Financial System for prompt payment.

**Utilize progressive procurement strategies to increase value like strategic sourcing, performance-based contracts.**

The state should develop innovative procurement vehicles that maximize the state's buying power and facilitate life cycle procurement techniques.

**Develop a shared service of procurement resources to centralized locations within each department to further facilitate the efficiency of processing and training.** According to NASPO, "Purchasing should occur as close to the point of need and use as feasible. The dilemma is often in determining what is "feasible". Strategic decentralization means extending the reach of feasibility—decentralizing the purchasing process, while maintaining centralized procurement authority and management." The modernization approach depends heavily on shared services of procurement professionals and vested procurement authority in state agencies. CPR recommends vesting virtual procurement authority in state agencies, increasing the accountability to make the most appropriate purchasing decisions, increasing the technical and automation support for agencies and decreasing state-imposed bureaucracy and DGS involvement in individual procurements.

**Redefine supplier relations and develop vendor-rating, vendor-certification and vendortracking programs.** A new concept of "fairness" is the foundation for many of CPR's recommendations regarding supplier relations.

The State of California has traditionally strived to achieve a "level playing field" for all suppliers. In pursuit of that goal the state has placed the supplier's interest ahead of the taxpayers. This environment obligates the state to do business with entities it knows little about and encourages suppliers to maximize short-term profits rather than invest in long-term business relationships. The state does not certify its vendors or effectively track their performance. In the event of problems with a vendor, agencies have no central entity to submit complaint notices to maintain or catalog complaints. While DGS has a Dispute Resolution Unit that addresses vendor problems on a case by case basis, it does not have an entity that tracks overall vendor performance. The number of complaints against a vendor remains unknown and there is no system in place that prevents awards to substandard vendors. Subsequently, DGS does not rate vendors or evaluate them for their past performance on state contracts even though it has been provided statutory authority to do so.

California should create an environment where suppliers are encouraged to participate but are also encouraged to provide the timely delivery of quality goods and services. The most effective way to accomplish this is to develop a program that evaluates and screens vendors for their product offerings and their record of past performance. CPR recommends that the state implement a program that will develop a rating system to motivate vendors to provide on-time deliveries of the best products and services. The state should develop criteria to evaluate vendors based on the quality, delivery, service, past performance, financial capability, technical competence and other non-price factors to determine their capability.

**Improve programs designed to increase Small Business and Disabled Veteran Business (DVBE) participation in state contracting and procurements.** In the 1980s the Legislature enacted statutory changes to enable California Certified Small Businesses the ability to have greater participation in the state competitive bid process by allowing a 5 percent bidding preference over large businesses. In 1999, the legislature also enacted AB 1933 to establish a 3 percent goal for the participation of DVBE in state contracts. While both the bidding preference and the goal have facilitated DVBE sub-contracting and allowed small business to be competitive in the bid process, it has also created an environment in which the state has paid higher prices, received less competition, and in some cases allowed businesses to fraudulently represent themselves in order to achieve the preference or DVBE standing.

CPR recommends that legislation be adopted to eliminate any preferences or goals and develop set-a-side programs that requires all state agencies, departments, boards, and commissions to maximize the opportunity offered to them under Government Code Section 14838.5 and competitive bid contracting opportunities to certified Small Business firms and certified DVBE firms for the acquisition of goods, services, IT and construction.

**Eliminate Preference Programs (Target Areas, Enterprise Zones and Military Base Recovery Area, etc.).** In the 1980s and 1990s the Legislature enacted statutory changes to enable California businesses the ability to have greater participation in the state competitive bid process by allowing up to 15 percent or \$100,000 in bidding preferences if their businesses were located in economically distressed areas, local military base recovery areas, or if they employed high risk employees. These programs were established as a partnership between state government and businesses to improve California's overall economy. While the intent behind the statutes is well intentioned in improving the contracting participation of California businesses, the impact of these programs has been fiscally detrimental by driving up state contracting costs. Although the programs have created a focus on supporting the participation of California businesses, the existing benefits of the programs provide ample tax incentives and rewards that will allow them to operate and provide a business service in the state.

CPR recommends that legislation be adopted to eliminate incorporating these bidding preferences in formal bid solicitations.

**Eliminate the state's current protest processes and replace it with a more streamlined and simplified process.** The state procurements system's current dispute resolution process is complex, protracted, and not responsive to the interests of state agencies and the suppliers of goods and services. It is very disruptive to the delivery of essential state services and produces significant unwarranted costs to state agencies.

CPR recommends that legislation be adopted to reform and streamline the protest process.

Improve the state's receiving and accounts payable process. In Fiscal Year 2002–2003 the state paid almost \$5 million dollars in late payment penalties. While several of these late payment penalties were attributed to delays in the approval of the state budget, state agencies need to improve the invoice payment process by streamlining the paper payment process, reduce late payment penalties paid to vendors, increase vendor rebates received, and improve the overall business climate. Although late budgets have been common over the years, some state agencies have not adjusted their budgeting or payment processes to create sufficient funding sources to pay contractors during the critical time between fiscal years. Instead this burden of inefficiency has been passed on to the taxpayers.

CPR recommends the state streamline the invoicing process by incorporating a statewide eprocurement system and a statewide accounting system to process payments.

**Expand the Software Licensing Program to achieve greater savings in the acquisition of software products.** As a large purchaser of computer software products and applications the state needs to leverage its buying power to achieve the best possible costs for all state entities. CPR recommends that the state expand site licensing/strategic sourcing opportunities for software and renegotiate where possible existing software licensing programs for potential price breaks. Any software used by state, cities, counties and other government entities should where feasible be strategically sourced, and where the state can co-op with other states and or the federal government the state should review those options. In addition, the State should reduce limitations to the requirement for the purchase of state used software.

## **Report Organization and Recommendations**

The recommendations that follow in this report outline specific issues, background and recommendations needed to modernize California's procurement system.

The CPR Procurement Team recommendations will require a multi-year commitment to ensure all links in the chain are complete. Substantial time, resources and resolve will be require

# California Judicial Branch Contract Law

Public Contract Code Sections 19201–19210

Part of Senate Bill 78; approved by Governor March 24, 2011

Effective March 24, 2011

*As amended by SB 92<sup>1</sup>*

## **19201. [Name of Part]**

This part may be cited as the California Judicial Branch Contract Law.

## **19202. [Legislative Findings and Declarations]**

The Legislature finds and declares that placing all public contract provisions for judicial branch entities in one part will make that law clearer and easier to find. Further, it is the intent of the Legislature in enacting this part to achieve the objectives as set forth in Sections 100, 101, and 102.

## **19203. [Applicability]**

This part shall apply to all contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.

## **19204. [Compliance Requirements; Exceptions; Interim Provisions]**

(a) All judicial branch entities shall comply with the provisions of this code that are applicable to state agencies and departments related to the procurement of goods and services, including information technology goods and services. All contracts with total cost estimated at more than one million dollars (\$1,000,000), except contracts covered by Section 68511.9 of the Government Code, shall be subject to the review and recommendations of the Bureau of State Audits to ensure compliance with this part. All judicial branch entities shall notify the State Auditor, in writing, of the existence of any such contracts within 10 business days of entering the contract. In addition, all administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than five million dollars (\$5,000,000) shall be subject to the reviews and recommendations of the California Technology Agency, as specified in Section 68511.9 of the Government Code.

(b) Except as provided in subdivision (c), procurement and contracting for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of court facilities shall be conducted by judicial branch entities consistent with the relevant provisions of this code applicable to state agencies.

(c) Notwithstanding any other provision of law, this part does not apply to procurement and contracting by judicial branch entities that are related to trial court construction, including, but

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<sup>1</sup> Pub. Contract Code, §§ 19201–19210 (Sen. Bill 78, Stats. 2011, ch. 10, effective March 24, 2011; amended by Sen. Bill 92, Stats. 2011, ch. 36, effective June 28, 2011) (Judicial Branch Contract Law). Amendments are shown with new language underlined and deleted language ~~stricken~~.

not limited to, the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities. However, this part shall apply to contracts for maintenance of all judicial branch facilities that are not under the operation and management of the Department of General Services.

(d) Only until the Judicial Council adopts the Judicial Branch Contracting Manual required pursuant to Section 19206, judicial branch entities 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.

#### **19205. [Covered Entities]**

(a) As used in this part, "judicial branch entity" means 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.

(b) Where there is a reference in this code to an officer or employee of a state agency, for purposes of this part, these terms shall refer to a member, judicial officer, officer, employee, or other person of a judicial branch entity, as applicable.

#### **19206. [Mandatory Judicial Branch Contracting Manual]**

The Judicial Council shall adopt and publish no later than January 1, 2012, a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that must be followed by all judicial branch entities subject to this part. The policies and procedures shall include a requirement that each judicial branch entity shall adopt a local contracting manual for procurement and contracting for goods or services by that judicial branch entity. The policies and procedures in the manuals shall be consistent with this code and substantially similar to the provisions contained in the State Administrative Manual and the State Contracting Manual.

#### **19207. [No Other State Entities to be Involved; Exceptions]**

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 or services.

#### **19208. [Inapplicability of Other Code Provisions]**

Nothing in this part is intended, nor shall it be construed to permit, the application of provisions of this code that do not apply to state agencies and departments.

**19209. [Mandatory Reporting of Judicial Branch Contracting Information]**

(a) ~~Beginning~~ Notwithstanding Section 10231.5 of the Government Code, beginning in 2012, twice each year, the Judicial Council shall provide a report to the Joint Legislative Budget Committee and the State Auditor that provides information related to procurement of contracts for the judicial branch. One report shall be provided no later than February 1 of each year, covering the period from July 1 through December 31 of the prior year, and the second report shall be provided no later than August 1 of each year, covering the period from January 1 through June 30 of the same year.

(b) Each of the two annual reports shall include a list of all vendors or contractors receiving payments from any judicial branch entities. For each vendor or contractor receiving any payment during the reporting period, the report shall provide a separate listing for each distinct contract between that vendor or contractor and a judicial branch entity. For every vendor or contractor listed in the report, including for each distinct contract for those contractors or vendors with more than one payment during the period, the report shall further identify the amount of payment to the contractor or vendor, the type of service or good provided, and the judicial branch entity or entities with which the vendor or contractor was contracted to provide that service or good.

(c) Each of the two annual reports shall include a list of all contract amendments made during the report period. For each amendment, the report shall identify the vendor or contractor, the type of service or good provided under the contract, the nature of the amendment, the duration of the amendment, and the cost of the amendment.

**~~19210. [Audits by State Auditor of Implementation of Part 2.5]~~**

~~The audits required pursuant to subdivisions (h) and (i) of Section 77206 of the Government Code shall include an audit and report by the State Auditor on his or her assessment of the implementation of this part by the judicial branch. The State Auditor shall be reimbursed by the judicial branch entity that is the subject of the audit for all reasonable costs associated with conducting the audit required by this section.~~

**19210. [Audits by State Auditor of Implementation of Part 2.5]**

(a) Commencing not earlier than July 1, 2011, and not later than December 15, 2012, the State Auditor shall establish a pilot program to audit six trial courts. That entity shall select the trial courts using the following criteria:

(1) Two trial courts selected from counties with a population of 200,000 or less.

(2) Two trial courts selected from counties with a population greater than 200,000 and less than 750,000.

(3) Two trial courts selected from counties with a population of 750,000 or greater.

The audits shall assess the implementation of this part by the judicial branch.

(b) Based on the results of the pilot program audits described in subdivision (a), the State Auditor shall, on or before December 15, 2013, commence an audit of the trial courts, provided that every trial court is audited in the manner prescribed by this section at least once every four years. The audits shall assess the implementation of this part by the judicial branch. The audits required by this paragraph shall be in addition to any audit regularly conducted pursuant to any other provision of law.



(c) Notwithstanding Section 10231.5 of the Government Code, the State Auditor shall compile the trial court audit findings and report the results of these audits to the Legislature, the Judicial Council, and the Department of Finance no later than April 1 of each year. An audit report shall not be considered final until the audited entity is provided a reasonable opportunity to respond and the response is included with, or incorporated into, the report.

(d) The reasonable and necessary contracted cost of the audits conducted pursuant to this section shall be paid from funds of the local trial court being audited.

(e) (1) On or before December 15, 2013, and biennially thereafter, the State Auditor shall perform an audit of the Administrative Office of the Courts, the Habeas Corpus Resource Center, and the appellate courts to assess their implementation of this part.

(2) The State Auditor shall provide a copy of the final audit report of the Administrative Office of the Courts to the Legislature, the Judicial Council, and the Department of Finance upon issuance. An audit report shall not be considered final until the audited entity is provided a reasonable opportunity to respond and the response is included with, or incorporated into, the report.

(3) Any reasonable and necessary contracted costs incurred by the auditing entity pursuant to this subdivision shall be reimbursed by the Administrative Office of the Courts.

(f) The State Auditor shall conduct the audits required pursuant to this section in accordance with Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of the Government Code.

(g) If the State Auditor is selected as the auditing entity pursuant to subdivision (j) of Section 77206 of the Government Code, then the State Auditor may combine the results of any audit of a trial court conducted pursuant to that section with an audit of the same trial court conducted pursuant to this section. The State Auditor may also combine the results of an audit of the Administrative Office of the Courts pursuant to Section 77206 of the Government Code with the results of an audit of the Administrative Office of the Courts pursuant to this section.

(h) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.



# Judicial Branch Contracting Manual

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EFFECTIVE OCTOBER 1, 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*

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## TABLE OF CONTENTS

<b>Introduction</b>	<b>1</b>
1. Statutory Basis for this Judicial Branch Contracting Manual	2
2. Guiding Principles in the Development of this Manual	3
3. Local Contracting Manual	3
4. Content and Exclusions	3
5. Effect of the Manual on Preexisting Judicial Branch Policies and Procedures	5
6. Access to the Judicial Branch Contracting Manual	5
7. Use of Words Signifying Requirements or Discretion	6
8. Interpretation of the Manual	7
<b>Chapter 1 Purchasing Authority</b>	<b>1</b>
Introduction	3
Defined Terms	3
1.1 Purchasing Authority of Judicial Branch Entities	3
A. Purchasing Authority Basics	3
B. Scope of Authority	4
C. Purchasing Roles and Responsibilities	5
1.2 Local Contracting Manual	10
<b>Chapter 2 Procurement Planning</b>	<b>1</b>
Introduction	3
Defined Terms	3

2.1 Formulating the Procurement Approach _____	3
A. Competitive or Non-Competitive Procurement _____	3
B. Classifying the Purchase _____	3
C. Initial Review _____	7
D. Other Considerations Affecting The Planning Process _____	9
E. Statement Of Work (SOW) _____	10
F. Emergency Purchases _____	11
G. Negotiation Process _____	12
2.2 External Notices and Reviews _____	15
A. CRC rule 10.620 _____	15
B. Information Technology (IT) Procurements Over \$5 Million _____	15
C. Other Procurements over \$1 Million _____	15
2.3 Creating the Procurement File _____	16
Appendix A – Lease Versus Purchase Analysis [RESERVED] _____	17
<b>Chapter 3 Socioeconomic and Environmental Programs _____</b>	<b>1</b>
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 DVBE Program _____	5
E. Appointing a DVBE Advocate _____	5



F. Waiver of a DVBE Incentive _____	6
G. General Requirements for DVBE Procurements _____	6
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 Certifications _____	11
D. Printer Cartridges _____	11
<b>Chapter 4 Competitive Solicitation Overview _____</b>	<b>1</b>
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 _____	7
4.2 Solicitation Documents Generally _____	8
A. Developing The Solicitation Document _____	8
B. Required Provisions _____	9
C. Amending A Solicitation Document _____	11
4.3 Bid Handling _____	12
4.4 Vendor Selection _____	13
A. Vendor Selection Basics _____	13

B. No Bids _____	13
C. Ineligible Businesses _____	14
D. Deviations _____	16
4.5 Follow-On Contracting _____	17
4.6 Summary Document _____	18
Appendix A – Darfur Contracting Act Certification _____	20

## **Chapter 4A Step-by-Step Guide for the Procurement of Non-IT Goods \_\_\_\_ 1**

Introduction _____	3
Defined Terms _____	3
Step 1 – Determine The Procurement Value _____	3
Step 2 – Develop List Of Potential 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 _____	7
Step 9 – Determining if Competition has been Achieved _____	8
Step 10 – Bid Clarification _____	8
Step 11 – Evaluate the Bid _____	8
Step 12 – Notice of Intent to Award _____	9
Step 13 – Create the Contract _____	10
Step 14 – Create the Procurement Summary Document _____	10

Step 15 – Notify BSA of Large Contracts _____	10
Selected Topics Relevant to Solicitations of Goods _____	10
A. Incidental Services _____	10
B. California Seller’s Permit _____	11
C. Motor Vehicles _____	11
D. Solicitation of Printer or Copier Cartridges _____	12

## **Chapter 4B Step-by-Step Guide for the Procurement of Non-IT Services \_\_ 1**

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 _____	12
Step 10 – Open Bids _____	12
Step 11 – Determine if Competition has been Achieved _____	13
Step 12 – Check for Ineligible Bidders _____	14
Step 13 – Optional: Hold Oral Interviews/Clarification _____	14
Step 14 – Evaluate Bids _____	14
Step 15 – Notice of Intent to Award _____	17

Step 16 – Create the Contract _____	18
Step 17 – Create the Procurement Summary Document _____	18
Step 18 – Notify BSA of Large Contracts _____	18

<b>Chapter 4C Step-by-Step Guide for the Procurement of IT Goods and Services _____</b>	<b>1</b>
Introduction _____	4
Defined Terms _____	4
Step 1 – Perform Preliminary Analysis _____	4
Step 2 – Development 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 _____	15
Step 8 – Optional: Hold Bidders’ Conference _____	16
Step 9 – Optional: Complete Phased Approach Steps _____	16
Step 10 – Receive Bids _____	18
Step 11 – Open Bids _____	18
Step 12 – Determine if Competition has been Achieved _____	18
Step 13 – Check for Ineligible Bidders _____	19
Step 14 – Optional: Hold Oral Interviews / Clarification _____	19
Step 15 – Evaluate Bids _____	20
Step 16 – Notice of Intent to Award _____	22
Step 17 – Create the Contract _____	23

Step 18 – Create the Procurement Summary Document _____	23
Step 19 – Mandatory Reporting _____	23
Selected Topics Relevant to the Solicitation of IT Goods and Services _____	24
A. New IT Equipment _____	24
B. Performance-Based or Share-In Savings Contracts _____	24
C. Solicitations of Printer or Copier Cartridges _____	25
Appendix A – Sample Method for Assigning Cost Points When Evaluating RFPs ____	26
Appendix B – Sample Cost Proposal Certification _____	28
<b>Chapter 5 Non-Competitively Bid (NCB) Procurements _____</b>	<b>1</b>
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 _____	5
5.6 Community Rehabilitation Programs _____	6
5.7 Sole Source _____	6
A. Sole Source Purchase _____	7
B. Repeat Sole Source Authorization _____	8
5.8 Amendments _____	8
5.9 Trial Courts: Public Input Requirement _____	10

<b>Chapter 6 Leveraged Procurement</b>	<b>1</b>
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 IT and non-IT Goods and Services Through an LPA	11
C. Amendment of an LPA	17
 <b>Chapter 7 Protest and Post-Award Disputes</b>	 <b>1</b>
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	4
D. Submission of the Protest	5

E. Evaluation _____	5
F. Written Determination _____	6
G. Appeal _____	6
7.3 Award Protests _____	6
A. Who May Submit an Award Protest _____	7
B. Deadline for Receipt of Protest _____	7
C. Required Information _____	8
D. Submission of the Protest _____	9
E. Evaluation _____	9
F. Written Determination _____	10
G. Appeal _____	10
7.4 Appeals _____	11
7.5 Post-Award Disputes _____	12
A. Deal in Good Faith _____	12
B. Resolving Disputes _____	12
<b>Chapter 8 Contracts and Contract-Related Documents _____</b>	<b>1</b>
Introduction _____	4
Terminology _____	4
8.1 Preparation, Approval, and Execution of Contracts _____	4
A. Review and Approval of Commercial Terms _____	4
B. Legal Review and Approval _____	5
C. Review of Certain IT Contracts _____	8
D. Execution of Contracts _____	8

8.2 Types of Contracts; Typical Contract Documents	9
A. Contracts Used with Private Entities	9
B. Contracts Used with Public Entities	11
C. Contract Modifications	12
D. Ancillary Documents	13
8.3 Substance of Contracts	14
A. All Contracts	14
B. Standard Agreements and Purchase Ordes	15
C. Short Form Agreements	21
D. Short Form POs	21
E. IGCs	21
F. IBAs	22
G. Amendments	22
8.4 Ancillary Contract Documents	23
A. Contractor Certification Clauses	23
B. Certificates of Insurance	24
C. Certificates of Participation (Judicial Council Litigation Management Program)	24
D. Payee Data Record	24
Appendix A – Contract Dollar Thresholds Above Which Legal Review and Approval Are Required	25
Appendix B – Standard Contractor Certification Clauses	26
Appendix C – Certain General Terms and Conditions	30
Appendix D – Special Terms and Conditions	36



<b>Chapter 9 Disbursements and Payment Programs</b>	<b>1</b>
Introduction	3
Defined Terms	3
9.1 Disbursements	3
A. Payment Fundamentals	3
B. Advance Payments	3
C. Progress Payments	4
D. Periodic Payments	7
E. Payee Data Record	7
F. Payment of Invoices	7
G. Additional Payment and Invoice Considerations	8
9.2 Purchase Card Programs	9
A. Use of Purchase Cards Generally	9
B. Use of Purchase Cards by the Superior Courts	9
C. Use of Purchase Cards by Other JBEs	10
<b>Chapter 10 Receiving, Inspection, and Acceptance or Rejection of Goods and Services</b>	<b>1</b>
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. Timely Release of Purchasing Documents	4
D. 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. Control Over Assets _____	8
B. Lost, Stolen, or Destroyed Equipment _____	9
10.7 Receiving Services _____	9
A. Acceptance or Rejecting Services _____	9
B. Maintenance Services _____	9
<b>Chapter 11 Contract Administration _____</b>	<b>1</b>
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 _____	11
D. Communication _____	13
11.9 Contract Disputes, Vendor Demands, and JBE Complaints _____	14
A. Contract Disputes _____	14
B. Vendor Demands _____	14
C. JBE Complaints Regarding Vendor Performance _____	15
11.10 Contract Termination _____	17
A. Termination for Convenience _____	17
B. Termination Due to Nonavailability of Funds _____	17
C. Termination for Cause _____	18
D. Contract Work Suspensions _____	18
11.11 Warranties _____	19
11.12 Filing Practices _____	20
11.13 Contract Closeout _____	21
11.14 Disclosure of Contract Documentation _____	22
<b>Chapter 12 Reporting Requirements _____</b>	<b>1</b>
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

## **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:  
October 1, 2011

Revision Date:

## 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).<sup>1</sup> With certain exceptions,<sup>2</sup> 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 [ INSERT DATE ], 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.

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<sup>1</sup> SB 78 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 10). The California Judicial Branch Contract Law is at PCC 19201–9210. The law was amended by SB 92 (Comm. on Budget and Fiscal Review, Stats. 2011, ch. 36), effective June 30, 2011.

<sup>2</sup> 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 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 Manual also supersedes the remainder of the TCFPPM to the extent sections of the TCFPPM are inconsistent with the requirements set out in this Manual.

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 [\[actual link to be inserted following adoption\]](#).

## 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 are:  “must,” “shall,” “mandatory,” “required,” “must not,” and “may not”	Words signifying where a JBE has reasonable discretion:  “should” and “should not”	Words signifying full discretion:  “may,” “guidelines,” “recommended,” “examples,” “encouraged,” and “will” <sup>3</sup>
When used→	To reflect obligations under state or federal law (e.g., statutes, rules, regulations, case law) or under mandatory policies, standards, or other authority	To urge use of highly favored but not mandated business or accounting practices	To provide helpful guidance
Compliance→	Mandatory unless there is an applicable legal exemption	Not mandatory, but required unless there is a good business reason for variance	Optional
Documenting Noncompliance→	Documentation required	Include justification for variance in the appropriate file <sup>4</sup>	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

<sup>3</sup> “Will” signifies a future contingency or predicts action by a JBE or person in the ordinary course of events. It does not signify a recommendation or requirement.

<sup>4</sup> If specific to a particular procurement, the procurement file is the appropriate file.

interests of the JBE and the public, and, in the opinion of the JBE's legal counsel, consistent with applicable law.<sup>5</sup> 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.<sup>6</sup>

## **8. INTERPRETATION OF THE MANUAL**

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

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<sup>5</sup> 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.

<sup>6</sup> 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:

<b>JBE</b>	<b>Source of Purchasing Authority</b>
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 courts.

Under GC 69204 and GC 70391, the Judicial Council is responsible for the construction, acquisition, and operation of court facilities. 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(d), 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. 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. In some JBEs, especially smaller trial courts, one individual may perform several of these roles. However, JBEs should maintain sufficient separation of duties to reduce the risk of error or fraud in the JBE’s purchasing program.<sup>1</sup>

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

- 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.

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<sup>1</sup> 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.



<b>Assignment</b>	<b>Roles and Responsibilities</b>
Procurement and Contracting Officer (PCO)	<ul style="list-style-type: none"> <li>• Is responsible for all procurement and contracting within the JBE</li> <li>• Ensures that all procurement and contracting activities within the JBE comply with Applicable Procurement Laws</li> <li>• Provides the necessary resources to ensure that all staff are properly qualified and trained in all aspects of the procurement process</li> <li>• Oversees development of the Local Contracting Manual</li> </ul>
Buyer  <b>Note:</b> 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"> <li>• Performs day-to-day purchasing and contracting activities</li> <li>• Is knowledgeable about Applicable Procurement Laws and best practices</li> <li>• Ensures that the needs of the JBE are met within Applicable Procurement Laws</li> <li>• Maintains the procurement file and related documentation</li> </ul>
ADA Coordinator  <b>Note:</b> 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.	<ul style="list-style-type: none"> <li>• Assists and responds to questions or concerns regarding procurement-related reasonable accommodation needs</li> </ul>

<p>DVBE Advocate</p> <p><b>Note:</b> 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"> <li>• Identifies potential DVBE prime contractors or subcontractors and potential contracting opportunities</li> <li>• Makes information regarding pending solicitations available to certified DVBE firms capable of meeting the JBE's business needs (MVC 999.12)</li> </ul>
<p>CAL-Card Coordinator</p> <p><b>Note:</b> A JBE may elect not to designate a CAL-Card Coordinator. If the JBE does not do so, then the CAL-Card Coordinator role reverts to the PCO.</p>	<ul style="list-style-type: none"> <li>• Ensures compliance with relevant CAL-Card procedures and contract terms</li> <li>• Adds, deletes, and alters card restrictions/limits</li> <li>• Reviews billing reports to monitor payments and disputes</li> </ul>
<p>Receiving Staff</p> <p><b>Note:</b> 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"> <li>• Receives or acknowledges deliveries</li> <li>• Inspects goods</li> <li>• Completes required reports, as required by the Local Contracting Manual or another JBE policy</li> </ul>
<p>Protest Hearing Officer</p> <p><b>Note:</b> If a Protest Hearing Officer is not designated by a JBE, the Buyer will act as the Protest Hearing Officer.</p>	<ul style="list-style-type: none"> <li>• Evaluates protests</li> <li>• Issues written determinations regarding protests</li> </ul>

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

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

Financial Interest in Contract: GC 1090 is applicable to members of Evaluation Teams, as they are responsible for evaluating Bids. GC 1090 requires that state

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

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

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

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

**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.

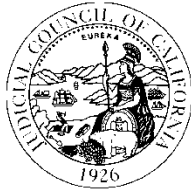
Contents: The Local Contracting Manual must include:

- 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 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;
- 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 .....	3
C. Initial Review .....	7
D. Other Considerations Affecting the Planning Process.....	9
E. Statement of Work (SOW).....	10
F. Emergency Purchases .....	11
G. Negotiation Process .....	12
2.2 External Notices and Reviews.....	15
A. CRC rule 10.620.....	15
B. Information Technology (IT) Procurements over \$5 Million .....	15
C. Other Procurements over \$1 Million .....	15
2.3 Creating the Procurement File .....	16
Appendix A – Lease Versus Purchase Analysis.....	17



## **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 on determining whether a purchase qualifies as an emergency purchase, see section F below.

### **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:

- 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.

Internal review and approvals: Consider the following:

- Have the proper approval signatures been obtained?
- 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.?

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?

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

Seeking legal participation: Buyers should seek JBE legal participation as necessary. 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.

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.

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 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 determine shipping terms during the procurement-planning phase. 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.

Term purchases: JBEs may 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:

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

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

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

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

#### 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 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 a SOW: A JBE should include a SOW for all services transactions and all goods transactions that involve a services component. A SOW



protects the JBE and the Vendor by identifying and documenting the details of the work to be performed.

What to include in a 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.

## **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 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.

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' rankings following 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.
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.

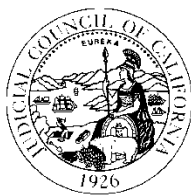
Take notes: Buyers should make notations of meetings held and decisions made, and create a phone log to record phone conversations impacting the procurement effort. Consistent, high quality file documentation helps the transaction be easily understood by a reader who is unfamiliar with it and makes documents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

Judicial Branch Contracting Manual	<b>Procurement Planning</b>	Chapter 2 Page: 17 of 17 (Appendix A)
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**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.<sup>1</sup>

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

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

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](http://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,<sup>2</sup> then:

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

## ***2. Determining if a DVBE Performs a Commercially Useful Function***

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

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<sup>2</sup> 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](http://www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx).

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

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

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

Contractor 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.<sup>3</sup>

### **3.2 AMERICANS WITH DISABILITIES ACT CONSIDERATIONS**

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<sup>3</sup> MVC 999.7 and PCC 10115.5, which required state agencies to provide annual reports to the Governor and DGS with respect to meeting DVBE goals, were repealed effective January, 1, 2007.



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](http://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](mailto:SABRC@CalRecycle.ca.gov) for information on qualifying SABRC reusable and recycled content products.

### **C. Supplier Certification**

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](http://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/](http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/).

### **D. Printer Cartridges**

No JBE may purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person (PCC 12156). Each JBE must print a statement on the cover of its 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 .....	7
4.2 Solicitation Documents Generally.....	8
A. Developing the Solicitation Document.....	8
B. Required Provisions .....	9
C. Amending a Solicitation Document .....	11
4.3 Bid Handling.....	12
4.4 Vendor Selection .....	13
A. Vendor Selection Basics .....	13
B. No Bids .....	13
C. Ineligible Businesses.....	14
D. Deviations .....	16
4.5 Follow-On Contracting.....	17
4.6 Summary Document.....	18
Appendix A – Darfur Contracting Act Certification.....	20

## **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 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. 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, however, 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 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](http://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](mailto: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 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.

Common elements of written solicitations: 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 using an RFQ, although the Buyer should 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.

### **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 once Bids have been submitted.

### **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.

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

- The Solicitation Document specifically states they will be allowed; and
- They are received on the fax machine at the 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 Date, a JBE may cancel a solicitation for any or no reason. After the Bid Closing Date, all Bids may be rejected if the JBE determines that:

- The Bids received are not really competitive;
- 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 awarded to 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](http://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,<sup>1</sup> regardless of the

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<sup>1</sup> Public Resources Code section 42290 and following.

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 (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/](http://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 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 are those required by applicable law. Material deviations of mandatory requirements cannot be waived, and any Bid containing 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 deviation in the Bid that affects the amount of the Bid, or provides an advantage or benefit not allowed other Bidders. A deviation that 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 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. 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.

## **4.6 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. 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**

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.

<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>

**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 .....	7
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.....	9
Step 13 – Create the Contract.....	10
Step 14 – Create the Procurement Summary Document .....	10
Step 15 – Notify BSA of Large Contracts .....	10
Selected Topics Relevant to Solicitations of Goods .....	10
A. Incidental Services .....	10
B. California Seller’s Permit.....	11
C. Motor Vehicles .....	11
D. Solicitations of Printer or Copier Cartridges .....	12

## **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 \$50,000 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 \$50,000 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 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 2, section 2.1.C for more information on seeking legal participation).

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

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 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 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 exception to the JBE's terms and conditions will render a Bid non-responsive.

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 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 document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, email, or other writing) should 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 time/date stamp Bids as they are received.

### **STEP 8 – OPEN BIDS**

All Bids must be publicly opened at the time and place specified in the 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 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.

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.

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 \$50,000 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**

### **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.

**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 protest, the JBE must not make an award until either the protest has been withdrawn or the JBE 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 memorialize the purchase using a contract. Negotiations should 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 4.6.

**STEP 15 – NOTIFY BSA OF LARGE CONTRACTS**

If the total cost of the purchase is \$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 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 not exceed \$4,999.99, and
- Should 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**

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 .....	12
Step 10 – Open Bids .....	12
Step 11 – Determine if Competition has been Achieved .....	13
Step 12 – Check for Ineligible Bidders .....	14
Step 13 – Optional: Hold Oral Interviews/Clarifications .....	14
Step 14 – Evaluate Bids .....	14
Step 15 – Notice of Intent to Award.....	17
Step 16 – Create the Contract.....	18
Step 17 – Create the Procurement Summary Document .....	18
Step 18 – Notify BSA of Large Contracts .....	18

## 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. 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 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 2, section 2.1.C for more information on seeking legal participation).



If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C 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	Used for very small purchases.	Lowest Responsible Bidder
IFB	Any size	Used 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
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An RFP 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 be solicited using an IFB, not an RFP.

**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**

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 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.

## **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.

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 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 will render a Bid non-responsive. 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 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 14 regarding assignment of cost points).

The evaluation plan should 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 to the JBE's terms and conditions are evaluated and given substantial weight in the score assigned to the Bid.
- If a material exception is taken to a minimum term, the Bid will be deemed nonresponsive.

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

Other Procurement-Related Information: The RFP should state the date of oral interviews, if any. The date for oral interviews may be tentative. 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 document all Bids received and retain the documentation in the procurement file. In addition, the RFQ (script, email, or other writing) should be retained in the procurement file.

IFBs and RFPs: Bids must be submitted as specified in the IFB or RFP. A JBE 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:** 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 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);
- The JBE could have completed the transaction without a competitive solicitation (e.g., procurements of legal services); or
- 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 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 13 – 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 contact the Bidder that submitted the affected Bid.

### **STEP 14 – EVALUATE BIDS**

The JBE should evaluate the Bids in accordance with chapter 4, section 4.4 and this step. The JBE will 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 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.

### B. RFPs

A JBE staff member 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 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 cost points set forth in chapter 4C, appendix A. Alternately, JBEs may adopt their own processes for awarding cost points.

## **STEP 15 – 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:** This step is inapplicable to solicitations using RFQs.

### **A. 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 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 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 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.

### **B. RFPs**

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

If any Bidder submits a valid protest before award of the contract, the JBE will not award the contract until either the protest has been withdrawn or the JBE 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 16 – CREATE THE CONTRACT**

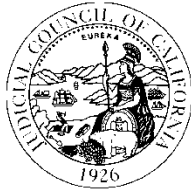
The Buyer should memorialize the purchase using a contract. Negotiations should be limited to finalizing the form of agreement and non-substantive terms. The contract must be signed by an authorized representative of the Bidder that can bind the Bidder contractually.

**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 4.6).

**STEP 18 – NOTIFY BSA OF LARGE CONTRACTS**

If the total cost of the purchase is \$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 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 .....	15
Step 8 – Optional: Hold Bidders’ Conference.....	16
Step 9 – Optional: Complete Phased Approach Steps.....	16
Step 10 – Receive Bids.....	18
Step 11 – Open Bids .....	18
Step 12 – Determine if Competition has been Achieved .....	18
Step 13 – Check for Ineligible Bidders .....	19
Step 14 – Optional: Hold Oral Interviews/Clarification.....	19
Step 15 – Evaluate Bids .....	20
Step 16 – Notice of Intent to Award.....	22
Step 17 – Create the Contract.....	23
Step 18 – Create the Procurement Summary Document .....	23
Step 19 – Mandatory Reporting .....	23
Selected Topics Relevant to the Solicitation of IT Goods and Services .....	24
A. New IT Equipment.....	24
B. Performance-Based or Share-In Savings Contracts .....	24
C. Solicitations of Printer or Copier Cartridges .....	25
Appendix A – Sample Method for Assigning Cost Points When Evaluating RFPs.....	26



Judicial Branch Contracting Manual	<b>Step-by-Step Guide for the Procurement of IT Goods and Services</b>	Chapter 4C Page: 3 of 28
------------------------------------	--	-----------------------------

Appendix B – Sample Cost Proposal Certification ..... 28

## **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 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 2, section 2.1.C for more information on seeking legal participation.

If required by the Local Contracting Manual, the Buyer should have these personnel sign confidentiality/conflict statements. See chapter 4, section 4.1.C 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*	IT goods
	Up to \$5,000	IT services
RFP	Any size	IT goods, IT services, and any combination of IT goods and services

\* 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 Solicitation Document. 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 useful in drafting the two types of Solicitation Documents.

### **A. RFQs**

An RFQ is used for straightforward procurements where Bids are 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 will render a Bid non-responsive. 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 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 are evaluated and given substantial weight in the score assigned to the Bid.
- If a material exception is taken to a minimum term, the Bid will be deemed non-responsive.

**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 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 <b>or</b> the services portion of the procurement is \$5,000 or more

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

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 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 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 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 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 non-responsive 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 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 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 time/date stamp Bids as they are received.

Bids received pursuant to a 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 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 14 – 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 contact the Bidder that submitted the affected Bid.

### **STEP 15 – EVALUATE BIDS**

The process of evaluating Bids differs significantly for RFQs and RFPs. The JBE should evaluate the Bids in accordance with chapter 4, section 4.4, 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 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 cost points set forth in appendix A. Alternately, JBEs may adopt their own processes for awarding cost points.

**Note:** There are additional cost evaluation requirements 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 a Bidder's best financing alternative (including lease or purchase alternatives) if any Bidder so requests 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.

**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 16 – NOTICE OF INTENT TO AWARD**

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.

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 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 17 – CREATE THE CONTRACT**

The Buyer should memorialize the purchase using a contract. Negotiations should 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 18 – 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 4.6.

### **STEP 19 – 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 \$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 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 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. New IT Equipment**

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

### **B. Performance-Based or Share-In Savings Contracts**

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

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

- Contract terms that specify business outcomes to be achieved, not the solution to be provided;
- Contract terms that structure the contract to maintain maximum Vendor commitment to project success and minimize risk to the JBE by sharing risk with the private sector;
- Utilization of "best value" evaluation methods, which means to select the solution that will achieve the best result based on business performance measures, not necessarily the lowest price; and
- Contract terms that base payments to the Vendor primarily on achieving predefined performance measures.

**C. Solicitations of Printer or Copier Cartridges**

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

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

**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 the maximum 60 cost points.

Bidder A is awarded 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 49 cost points, as shown below:

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

**APPENDIX B  
SAMPLE COST PROPOSAL CERTIFICATION**

**Cost Proposal Certification  
For  
RFP # \_\_\_\_\_**

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

\_\_\_\_\_  
**[Buyer's name]**

\_\_\_\_\_  
**[date]**

Executed in \_\_\_\_\_ [city], \_\_\_\_\_ [state]



# Judicial Council of California

Judicial Branch Contracting Manual

Chapter 5  
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 .....	5
5.6 Community Rehabilitation Programs (CRPs) .....	6
5.7 Sole Source.....	6
A. Sole Source Purchase .....	7
B. Repeat Sole Source Authorization .....	8
5.8 Amendments .....	8
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 approve an emergency procurement only if he or she determines that 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 (PCC 10340(b)(3)).

### **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.

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 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 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.

**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**

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 conduct the procurement as proposed. If the sole source approver denies the sole source request, the Buyer will either cancel the procurement or conduct a competitive solicitation to acquire the same or equivalent non-IT goods, non-IT services, or IT goods and services.

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

in the Local Contracting Manual, the sole source request may take the form of a memorandum.

### **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.

## **5.8 AMENDMENTS**

The JBE must 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 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 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:

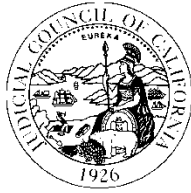
- Description of the contract terms to be changed;
- Documentation that the pricing of the amended contract is fair and reasonable; and
- Why the Buyer has determined that the amendment is in the JBE's best interest.

**5.9 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 purchaser, 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, 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 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 procure goods and services under a DGS LPA, either by piggybacking or tagging on, *if 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 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 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 maximums<sup>1</sup> 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
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.

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

- 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.<sup>2</sup> JBEs are cautioned that a potential supplier's published LPA pricing may already incorporate LPA administrative fees that the supplier must 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*

\* 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

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

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](http://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 entity, 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,<sup>3</sup> and list them for comparison

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<sup>3</sup> A listed DVBE must perform a commercially useful function.

against one another.<sup>4</sup> 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.<sup>5</sup>

**If using DGS LPAs:** For purposes of identifying at least three LPAs, a JBE may 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 be mixed when executing a single order; and
- LPA types (e.g., CMAS or master agreement) may 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 chapter 2, chapter 4, and chapter 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:

- The procurement is for goods or services estimated to cost less than \$5,000;

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<sup>4</sup> 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.

<sup>5</sup> 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 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.

Step 4—Obtain LPA documentation<sup>6</sup> for the listed LPAs, and review it for applicable terms and conditions of use, including pricing<sup>7</sup> and the term of the LPA. Using the documentation:

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

<sup>7</sup> 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 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;<sup>8</sup> and
- Obtain 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)<sup>9</sup> 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 save time and expense of negotiations after award, a written RFO may include the JBE's general terms and conditions, as modified to comply with the LPA user instructions or applicable law or policy.

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

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<sup>8</sup> 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.

<sup>9</sup> 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.

- 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 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 explanation<sup>10</sup> 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.

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<sup>10</sup> 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 a DGS LPA 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 modify the DGS form so that terms and conditions are consistent with law and policy applicable to the JBE.

Step 10—After obtaining appropriate internal approvals, use the JBE’s standard procedures under its Local Contracting Manual to sign and date the JBE’s PO, and deliver it to the supplier.

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

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 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.

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<sup>11</sup> A contract (instead of a PO) must be used to obtain the supplier’s commitment to deliver the goods or perform the service.

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)).

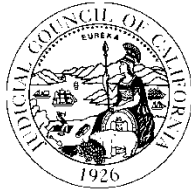
### **C. Amendment of an LPA**

An NCB process is required to amend an LPA, except:

- A JBE may amend an LPA executed under the terms of any option in the LPA 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, amendments may also be executed for contractor name changes or to increase the original transaction amount by \$4,999 or less.
- A JBE may amend an LPA if pricing and other terms and conditions of the LPA as amended are substantially similar to, or improve upon, the terms and conditions of the original LPA, or to correct incidental errors or omissions.

**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:

- This exception applies only to the first amendment;
- The time for performance may not be extended for more than one year; and
- The amendment must not add more than 30 percent of the transaction amount under the LPA, not to exceed \$250,000.



# Judicial Council of California

Judicial Branch Contracting Manual

Chapter 7  
Page 1 of 13

## **PROTEST AND POST-AWARD DISPUTES**

### **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.....	4
D. Submission of the Protest .....	5
E. Evaluation .....	5
F. Written Determination .....	6
G. Appeal.....	6
7.3 Award Protests.....	6
A. Who May Submit an Award Protest .....	7
B. Deadline for Receipt of Protest .....	7
C. Required Information.....	8
D. Submission of the Protest .....	9
E. Evaluation .....	9
F. Written Determination .....	10
G. Appeal.....	10
7.4 Appeals .....	11
7.5 Post-Award Disputes.....	12
A. Deal in Good Faith .....	12
B. Resolving Disputes .....	12

## **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. This chapter also provides basic information for handling post-award disputes with Vendors.

## **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. 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 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 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 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 7.4 for the handling of appeals.

## **7.3 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 is before the contract is awarded. For solicitations using a written Solicitation Document, 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
<p>The JBE must receive the award protest within <b>24 hours</b> after the JBE issues the intent to award.</p> <p>The Bidder will have <b>10 calendar days</b> after the JBE receives the protest to submit all information in section C below to the JBE.</p>	<p>The JBE must receive the award protest within <b>5 court days</b> after the JBE issues the intent to award.</p> <p>The Bidder will have <b>5 calendar days</b> after the JBE receives the protest to submit all information in section C below to the JBE.*</p>	<p>The JBE must receive the award protest within <b>5 court days</b> after the JBE issues the intent to award.</p> <p>The Bidder will have <b>10 calendar days</b> after the JBE receives the protest to submit all information in section C below to the JBE.</p>

\* 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 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 implementation of the contract. See section 7.4 for the handling of appeals.

#### **7.4 APPEALS**

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

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

The appeal must include:

- Contact information of the Protester or its representative (this must include name, address, and telephone number, and should include 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 will review the appeal and issue a written determination. 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 49

## **CONTRACTS AND CONTRACT-RELATED DOCUMENTS**

### CHAPTER 8

Original Release Date:  
October 1, 2011

Effective Date:  
October 1, 2011

Revision Date:

**Table of Contents**

- Introduction..... 4
- Terminology..... 4
- 8.1 Preparation, Approval, and Execution of Contracts ..... 4
  - A. Review and Approval of Commercial Terms..... 4
  - B. Legal Review and Approval ..... 5
  - C. Review of Certain IT Contracts ..... 8
  - D. Execution of Contracts..... 8
- 8.2 Types of Contracts; Typical Contract Documents..... 9
  - A. Contracts Used with Private Entities..... 9
  - B. Contracts Used with Public Entities ..... 11
  - C. Contract Modifications ..... 12
  - D. Ancillary Documents ..... 13
- 8.3 Substance of Contracts ..... 14
  - A. All Contracts ..... 14
  - B. Standard Agreements and Purchase Orders ..... 15
  - C. Short Form Agreements..... 21
  - D. Short Form POs..... 21
  - E. IGCs..... 21
  - F. IBAs ..... 22
  - G. Amendments..... 22
- 8.4 Ancillary Contract Documents..... 23
  - A. Contractor Certification Clauses ..... 23
  - B. Certificates of Insurance ..... 24
  - C. Certificates of Participation (Judicial Council Litigation Management Program)  
..... 24
  - D. Payee Data Record..... 24

Appendix A – Contract Dollar Thresholds Above Which

Judicial Branch Contracting Manual	<b>CONTRACTS AND CONTRACT-RELATED DOCUMENTS</b>	Chapter 8 Page: 3 of 49
------------------------------------	---	----------------------------

Legal Review and Approval Are Required ..... 25

Appendix B – Standard Contractor Certification Clauses ..... 26

Appendix C – Certain General Terms and Conditions ..... 30

Appendix D – Special Terms and Conditions ..... 36

## INTRODUCTION

This chapter identifies processes applicable to preparing and approving contracts, typical contracts and contract-related documents, and certain provisions required by law or recommended for inclusion in a contract or contract-related document.<sup>1</sup> This chapter includes appendixes containing certification clauses, general terms and conditions, and special terms and conditions that a JBE may use in its contracts.

## TERMINOLOGY

California law provides that a “contract” is “an agreement to do or not to do a certain thing.”<sup>2</sup> The basic elements of a contract are:

- There must be two or more parties to the contract;<sup>3</sup>
- Each of the parties must promise something of value to the other; and
- The promised value must be legal, and not involve an illegal or fraudulent act.

Specific types of contracts and contract-related documents are identified in section 8.2.

## 8.1 PREPARATION, APPROVAL, AND EXECUTION OF CONTRACTS

To protect the public, California law does not recognize oral agreements of state entities. All contracts entered into by Judicial Branch Entities (JBEs) must be in writing.

### A. Review and Approval of Commercial Terms

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 must be prepared, negotiated, and amended in the best interests of the JBE

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<sup>1</sup> This chapter does not address contracts and contract-related documents that apply solely to public works and facility maintenance contracting, which topics will be addressed in the AOC’s Local Contracting Manual.

<sup>2</sup> Code of Civil Procedure section 1549.

<sup>3</sup> In the case of a purchase order (PO) that is signed only by the purchaser, the PO becomes a contract that is binding on the vendor after the vendor accepts the terms and conditions by performing some act, for example by delivering the goods referenced in the PO. When the term “contract” is used in this chapter, it refers to a PO unless POs are expressly excluded or context dictates otherwise.

by persons with appropriate skill and experience who are free from prohibited conflicts of interest.

Each Local Contracting Manual must establish processes and levels of approval authority to ensure responsible stewardship of public funds and guard against prohibited conflicts of interest. Consideration must be given to applicable legal requirements, financial and accounting standards, and best practices associated with contracting and procurement responsibility. Each JBE may consider its size and resources when establishing processes and levels of approval authority for entering into, extending, amending, terminating, or transferring contracts.

## **B. Legal Review and Approval**

All contracts to which a JBE is a party must conform to requirements of applicable law. Sources of applicable law may include the U.S. and state constitutions; international treaties (and tribal law); the U.S. Code and federal regulations; the California Judicial Branch Contract Law (JBCL); the Commercial Code, the Government Code (GC) and other state codes; judge-made (common) law; California Rules of Court (CRC); and this Manual.

1. Criteria: Contracts entered into by JBEs are not subject to review or approval by the Department of General Services (DGS) or its Office of Legal Services (OLS).<sup>4</sup> It is customary, however, to provide for legal review and approval of contracts as a matter of risk management, and each JBE must establish criteria under which legal review and approval of contracts are required. The Local Contracting Manual must address the following items:
  - (a) Dollar Value of Contract: Legal review and approval are required before executing a contract whenever the dollar value of the contract is above a certain dollar threshold. The applicable threshold should not be higher than the threshold set forth in the table attached as appendix A to this chapter.
  - (b) Performance of High-risk Activities: Legal review and approval are required before a JBE executes a contract providing for the performance of high-risk activities as defined in its Local Contracting Manual. High-risk activities should include, for example:

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<sup>4</sup> See PCC 19207.

- 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.
- (c) Certain Substantive Provisions Affecting Legal Risk: Legal review and approval are required before a JBE incorporates into a contract terms or conditions not previously approved by an attorney, or substitutes a contractor's terms or conditions for the JBE's own, if the proposed terms or conditions involve:
- Assuming a risk or contingent liability not under the direct control of the JBE;
  - Indemnifying any contractor or third party;
  - Narrowing any limitation of liability that favors the JBE as set forth in the JBE's standard terms and conditions;
  - 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.
- (d) Revenue Agreements; Finance Agreements: Legal review and approval are required before a JBE enters into any revenue agreement or finance 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 public or private entity, under which the JBE provides services and receives payment for the services.

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



- (e) Contract Templates: Legal review and approval of a contract template are required before a JBE adopts the contract template. For purposes of this chapter, a contract template is a standardized form of contract that is intended for use with multiple contractors or on multiple occasions as an initial draft of contract with the JBE.
- (f) Amendments: Legal review and approval are required before a JBE executes a contract amendment if:
- Legal review and approval of the underlying contract were not required, but would have been required if the contract were initially proposed as modified by the amendment; or
  - Legal review and approval of the underlying contract were required, and either (i) modification is due to a material failure of performance by a party, or (ii) the terms and conditions of the amendment itself (considering the amendment as a separate contract from the underlying contract) give rise to a requirement for legal review and approval.

The terms “modified” and “modification” refer to a change to one or more provisions of an executed contract, or to an extension, reinstatement, termination, or assignment of the contract, but **not** to the exercise of an option already in the contract.

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

Sufficient time must be allowed for legal review. The actual amount of time required will depend on factors such as the nature and complexity of the transaction and contract, how soon the work is required, and the scope of review.<sup>5</sup> When total costs under a contract are expected to be \$1 million or more (or such other reasonable threshold as may be established in any Local Contracting Manual), early involvement by counsel is required so that counsel can effectively advise procurement staff during the contracting process, including

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<sup>5</sup> The scope of review may be limited in legal counsel's reasonable discretion. For example, if the reason for legal review is the risk of handling a hazardous chemical and the dollar value of the contract does not exceed the thresholds set out in appendix A (or as otherwise provided in the Local Contracting Manual), legal counsel may reasonably decide to limit review to liability, indemnity, and insurance provisions.

the drafting of solicitation documents and contract terms and conditions, negotiations with potential contractors, and evaluation of proposals. When applicable, contracts should include space on the signature page for counsel to indicate approval as to legal form.

### **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)).

### **D. Execution of Contracts**

Contracts may be executed only by persons authorized to do so and in accordance with levels of authority established in each JBE's Local Contracting Manual. Contracts executed by persons without authority are void.

Contracts must be complete before they are executed, and may be either manually signed or digitally signed:

- If manually signed, at least two originally signed counterparts of each contract are required, one for the JBE and one for each contractor. Other than purchase orders, contracts should first be provided to the other party for signature and then delivered back to the JBE for countersignature and return to the contractor. Contracts may be executed in multiple counterparts if the contract so provides. If a manually signed document is electronically delivered (e.g., by fax or .pdf attached to an email), receipt should be confirmed and the originally executed counterparts exchanged promptly.
- If digitally signed, 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.

## 8.2 TYPES OF CONTRACTS; TYPICAL CONTRACT DOCUMENTS

Contract documents have various labels that identify in a shorthand way what the particular document accomplishes and whether its use is appropriate in a particular circumstance. Labels typically used in state government for contracts and contract-related documents are described in the table below. The table does not list specific types of solicitation documents (covered in chapters 2 - 4), any type of leveraged procurement agreement (LPA) (covered in chapter 6), contract administration documents (covered in chapter 11), or reporting documents (covered in chapter 12).

### A. Contracts Used with Private Entities

The contracts identified in the chart below are used primarily when contracting with private entities, including non-profit organizations (NPOs).<sup>6</sup>

Name of Contract Document	Subject Matter of Contract Document	Description and Comment
Standard Agreement	Appropriate for the purchase of services, software, or goods, and <i>should</i> be used to purchase services, customized goods, customized software, and services and goods purchased together. <b>Exceptions:</b> Certain routine and low risk purchases for which a Short Form Agreement may be used.	A typical Standard Agreement may consist of a “coversheet” executed by the parties and appendices incorporated by reference into the contract. <sup>7</sup> Examples of typical appendices include (i) “Statement of Work,” “Description of Goods;” “Description of Software,” or “Scope of Agreement”; (ii) “Pricing and Payment Provisions” or “Cost of Work”; (iii) “General Terms and Conditions”; and (iv) “Special Terms and Conditions,” which are applicable only to specific programs or services. For efficiency, a

<sup>6</sup> An NPO is a privately chartered organization that does not distribute its profits or other surplus funds to owners or shareholders, but instead uses them to pursue its stated goals. Examples of NPOs include charitable organizations, trade associations, and special purpose vehicles created to issue tax-exempt debt to build or maintain public infrastructure.

<sup>7</sup> An alternative to the coversheet and appendices format is a single, fully integrated agreement. In selecting a format, JBEs are encouraged to consider drafting conventions specific to the subject matter of the contract, processes that are not under a JBE’s direct control (e.g., requirements imposed by the State Controller’s Office or other entity in connection with issuing warrants to a vendor), and requirements applicable to the other parties to the contract.

		JBE may wish to incorporate General and Special Terms and Conditions into a contract by reference to terms and conditions a JBE publishes on its website.
Purchase Order	May be used to procure commodity goods and off the shelf software when an advance commitment from the prospective supplier to deliver the goods or software is not required by the JBE. May also be used to procure routine, low-risk services ancillary to commodity goods or off the shelf software being purchased.	A PO is different from a Standard Agreement in that a PO omits certain substantive terms and conditions that are imputed by law through Division 2 of the California Commercial Code. Also, the Standard Agreement coversheet is replaced by a form labeled "purchase order," which includes description of goods, and pricing and payment terms and conditions. <b>Note:</b> When a PO is appropriate, a Blanket Purchase Order (BPO) can be used to authorize multiple orders over a specified period of time, as long as the total dollars on the BPO are not exceeded.
Short Form Agreement	May be used in place of a Standard Agreement for contracts under \$5,000 used to purchase routine and low-risk services, goods, and software.	To simplify contracting, a Short Form Agreement uses fewer terms and conditions than the Standard Agreement. A Short Form Agreement should not be used when (i) there is any significant risk of non-performance or liability, or (ii) any "Special Provisions" are required (as described in section 8.3.B.4).
Short Form Purchase Order	May be used in place of a standard PO, for contracts under \$5,000 to purchase routine and low-risk commodity goods and off the shelf software.	To simplify contracting, a Short Form PO uses fewer terms and conditions than the standard PO. A Short Form PO should not be used, when (i) there is any significant risk of non-performance or liability, or (ii) any "Special Provisions" are required (as

		described in section 8.3.B.4).
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### B. Contracts Used with Public Entities

The contracts identified in the chart below are used primarily when contracting with public entities, including public benefit organizations (PBOs).<sup>8</sup>

Name of Contract Document	Subject Matter of Contract Document	Description and Comment
Intergovernmental Contract (IGC)	May be used to purchase or sell goods, services, or software, to provide or receive funding, to address issues of jurisdiction and governance, or for other purposes.	An IGC is a contract among public entities or between a JBE and a PBO, <sup>9</sup> but not a contract between JBEs only (which are referred to as Intra-branch Agreements, or IBAs). An IGC is another variation on the Standard Agreement tailored for use with public entities and PBOs.  <b>Note:</b> Executive branch entities use the term “interagency agreement” (IA) in narrower circumstances. <sup>10</sup>
Memorandum of Understanding (MOU)	May be used in lieu of an IGC.	As typically used by JBEs, MOU is another name for an IGC. <sup>11</sup>

<sup>8</sup> A PBO is an organization chartered by a public entity and designed to perform some public benefit such as building or maintaining public infrastructure, or raising bond money for those purposes.

<sup>9</sup> A JBE may elect to use a Standard Agreement when contracting with other non-JBE public entities or PBOs when circumstances warrant doing so.

<sup>10</sup> The SCM uses the term “IA” solely to refer to contracts among state entities specified in GC 11270.

<sup>11</sup> A JBE’s intent in using the term MOU may be misunderstood because “MOU” has different meanings depending on who is using it. For example, the term is used by some government entities to refer to any binding IGC, and others to a non-binding “agreement in principle;” the term is used by some private entities to memorialize a binding agreement with something less formal than a traditional contract, or a non-binding “agreement in principle” as a precursor to developing a binding contract. When references in this chapter are to an IGC or MOU, the term “IGC” is used.

	Most often used by JBEs when the object of the contract is the purchase of county services.	
Joint Powers Authority Agreement (JPA)	Used to address the joint exercise of common powers.	A JPA is a contract between two or more public entities for the purpose of jointly exercising any power common to them.
Intra-branch Agreement (IBA)	Used to procure goods, services, software, and funding.	An IBA is a contract between JBEs. IBAs generally involve the movement of previously appropriated funds from one entity to another as permitted by the applicable Budget Act for programs or services to be performed by a JBE.  <b>Note:</b> Even though JBEs are in the same branch of government, if ownership of goods is transferred or licenses of intellectual property are granted, care must be taken to ensure appropriate provisions are included.

### C. Contract Modifications

The documents identified in the chart below are used to modify a contract following execution.

Name of Contract Document	Subject Matter of Contract Document	Description and Comment
Change Order	A change order may be issued under circumstances described in chapter 11.	
Amendment	An amendment must be used to modify an executed contract to make changes that exceed the scope of changes that may be made by change order.	An amendment is a contract that modifies the existing terms and conditions of a previously executed contract. Before contracts are executed, they should be carefully planned and structured to control both project cost and scope without amendment. An amendment may be appropriate, however, when in the best

		interests of the JBE. <sup>12</sup>
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### D. Ancillary Documents

The chart below identifies typical documents used in connection with execution and delivery of a contract.

Name of Document	Use in What Types of Contract Documents	Description and Comment
Contractor Certification Clauses (CCC)	All	Used to document a contractor’s legal status and compliance with applicable law. When used as a separate document, the contractor must complete the CCC as part of the standard contract package. Alternatively, the substance of CCC may be included as “representations and warranties” in the contract document.
Certificate of Insurance; Certificate of Self-Insurance	Proves insurance has been obtained within limits provided by the contract. May also include an endorsement proving certain entities and persons are additional insureds under the policy.	Applicable if a contract requires <sup>13</sup> coverage for which insurance certificates are issued by insurers (see section 8.4, below) or to certify the existence of a program of self-insurance. (JBEs typically do not maintain insurance for various risks. In lieu of a Certificate of Insurance, JBEs (other than HCRC) can provide a Certificate of Participation in the Judicial Council’s Litigation Management Program. <sup>14</sup> )
Certificate of Participation	Applicable if requested by the	See “Certificate of Insurance,” above.

<sup>12</sup> 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 those contractually required procedures.)

<sup>13</sup> See “Contracts Requiring Insurance” in appendix D.

<sup>14</sup> A duly signed certificate may be obtained by contacting AOC/OGC, or a person who has responsibility for judicial branch risk management. Alternatively, any JBE may prepare and execute its own Certificate of Participation if that arrangement is acceptable to the receiving party.

(Judicial Council's Litigation Management Program)	contractor	
Payee Data Record	Tax withholding	Used primarily in connection with tax withholding. Must be completed and signed by private entity contractors as part of the standard contract package. May be required for a limited purpose in connection with contracts with public entities (e.g., for the purpose of properly issuing warrants, or recordkeeping).

### 8.3 SUBSTANCE OF CONTRACTS

Substantive requirements and recommendations vary according to the type of contract used by the JBE. Considering the following questions can help inform decisions about the provisions to include in a particular contract:

- Is the object of the contract goods, services, information technology, or funding?
- Does the contract require the JBE to undertake large or small legal risks (e.g., low versus high risk activities) and commercial risks (e.g., the expenditure of small or large sums of public money)?
- Is the other party a private entity, which has a basic legal duty to maximize profits, or another public entity, which shares with the JBE a duty to maximize public benefits? If a private entity, what is its reputation for acting in the best interests of its customers? If a public entity, does that entity share the JBE's primary mission or source of funding?
- Is the other party subject to a code of professional standards or conduct?
- To what extent do legal requirements apply equally to the JBE and the contractor, regardless of the substance of specific contract terms and conditions?

#### A. All Contracts

1. Overview of Substantive Provisions: Provisions typically fit within one or more of the following subject matter categories found in a contract:



- “Statement of Work,” which is a detailed description or reference to the object of the contract (e.g., goods, services, information technology);
- “Pricing and Payment”;
- “General Terms and Conditions”;
- “Special Terms and Conditions,” which are provisions applicable specifically to the particular object of, parties to, or funding source for a contract and may be expressed separately or as part of a Statement of Work; and
- “Definitions” or “Glossary,” which is sometimes added to more complex or longer contracts for ease of reference to defined terms that are capitalized in the contract.

2. Types of Contract Provisions: The types of provisions typically found in all contracts are:

- Recitals (or background): These provisions, though not necessarily expressed as terms and conditions of a contract, may be used to provide context and are given legal effect under California law. (Use past tense verbs or words expressing purpose, such as “intent.”)
- Conditions: These provisions provide for an event to take place before a promise must be performed. (Use words such as “if.”)
- Covenants (or promises): These provisions establish the contractors’ promises to be performed during the term or, if contained in a “survival” clause, following expiration of the contract. (Use “shall” or “must” to impose an obligation on the subject of the sentence.)
- Certifications (or representations and warranties) and acknowledgments: Because these provisions are effective only as of the time the contract initially takes effect, a covenant is also necessary to assure that they remain true during the term of the contract. (Use present tense verbs, e.g., “complies.”)
- Product warranties (or service level agreements): These provisions provide assurances of the quality of the goods or work product and are accompanied by remedies for nonconformance. Consequently, they should be included as appropriate in any “survival” clause.

JBEs should draft contract provisions so it is clear which type of provision is intended.

## **B. Standard Agreements and Purchase Orders**

Following are non-exhaustive lists identifying some typical standard provisions. Provisions signified by an asterisk (\*) are required in certain contracts, as further specified in appendix C. Other provisions are listed as examples of provisions a JBE may include in its Standard Agreement or PO templates. The organization of provisions under specific headings below is intended as guidance to facilitate establishment of contract templates that include general terms and conditions that are broadly applicable to multiple transactions without modification. (A JBE may find that one or more provisions it has included previously as part of general terms and conditions appear below in the Statement of Work (SOW) or Payment Provisions because the provision's terms and relevance/application often vary from transaction to transaction). It may also be helpful to have a set of general terms and conditions for preparation of solicitation documents as well as contracts. (See references in chapter 4 to the preparation of solicitation documents that include contract terms and conditions.)

1. Statement of Work (SOW):

a. Any of the following provisions may be part of the SOW, as applicable:

- Overview, background, and purpose of contract (may also be part of a separate section sometimes entitled “Background” (or “Recitals” or “Background and Purpose”);
- Detailed description of goods, information technology, services to be performed, and other contract subject matter, including, for example:
  - Specifications, requirements;
  - Results, deliverables;
  - Optional items and modifications, if any, that may be effected by change order; and
  - Timelines, progress reports;
- Personnel and staffing (e.g., making reference to attached resumes of contractor personnel);
- Location for performance;
- Coordination;
- Terms of shipping, packaging requirements;
- Delivery, inspection, evaluation, acceptance;
- Product warranties, detailed service level agreements or performance criteria;

- Performance bonds;
- Term and any option period;
- Identification of the parties' representatives;
- Where notices should be directed; and
- If establishing an LPA, LPA options, terms, and conditions.

b. Related Policies and Recommendations:

- The contract must specifically describe services to be performed, deliverables, and other related contract obligations. Any inclusions or exclusions should be listed. Details such as supervision, labor, equipment, or materials to be supplied by either party should also be specified. Additional descriptive information may be attached to the contract as an appendix to help define the work and the terms and conditions by which services are to be performed.
- The term of the contract must be clearly stated. The contract must also state the start date and end date for the work to be performed. If applicable, dates for the completion of contract milestones should also be set forth.

2. Pricing and Payment:

a. The following provisions may be part of the Pricing and Payment provisions, as applicable:

- Invoicing and payment provisions, for example:
  - Not to exceed amount of fees, prices, and costs;
  - Basis of pricing such as fee schedules;
  - Allowable and unallowable expenses;
  - Cost substantiation, as applicable;
  - Payment frequency, and Progress Payments, as applicable;
  - Retentions, withholding; and
  - Optional items and modifications, if any, that may be effected by change order;
- Budget contingency clauses; and
- Entire compensation clause.

b. Related Policies and Recommendations:

- Any cost payable may be expressed as a lump sum (i.e., one-time payment), firm fixed price, unit price, labor rate, or other specific basis for establishing and/or allocating costs.
- Except in lump sum or fixed price contracts, the contract must establish the basis on which costs will be determined. For example, the contract must include a schedule listing the hourly, daily, weekly, or monthly cost for each person or job classification if a JBE is contracting for labor.
- Any lump sum or firm fixed price contracts should include a schedule of billing rates if the schedule was used to establish the fixed or lump sum price of authorized work.
- The contract must include a payment schedule and procedures to be followed in making payments. Payments may be made based on delivery, or on completion of specified milestones. Payments may also be withheld (“retention”) until particular disputes are resolved, or specified goods or services that are acceptable to the receiving party are provided.
- Respecting IGCs only, JBEs must assure that all administrative fees are reasonable considering the services being provided. JBEs may only pay overhead charges on the first \$25,000 for each subcontract.

3. General Terms and Conditions:<sup>15</sup>

a. The following provisions are typically part of the General Terms and Conditions, as applicable:

- Representations and warranties, or incorporation by reference of any contractor certification clause (CCC). (See 8.4 A and appendix B for a list of mandatory representations/warranties.) The JBE should include a covenant whereby the contractor promises to take any action necessary to keep representations/warranties/CCCs true during the contract term (such a clause is required with respect to mandatory representations/warranties/CCCs);
- Non-discrimination clause;\*
- Loss leader;\*
- Antitrust claims, if applicable;\*

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<sup>15</sup> Refer to appendix C for sample language or comments on provisions marked with an asterisk (\*).

- Recycling;\*
- Priority hiring considerations;\*
- DVBE (if a DVBE or a DVBE prime contractor (see chapter 3));\*
- Union activities;\*
- Indemnity of judicial branch entities and judicial branch persons, as defined, against negligence or breach by contractor;<sup>16\*</sup>
- Contractor insurance (employer's liability coverage to the extent required under Labor Code section 3700, plus any other required insurance);<sup>17\*</sup>
- Default and remedies provisions (including, contractor continuation of performance during dispute);
- Suspend and stop work;
- Termination for default, non-appropriation, or convenience of the JBE;
- Effect of expiration or termination; survival clauses;
- Prohibition on assignment and subcontracting;
- Successors;
- Independent contractor clause;
- Personnel and background checks;
- GAAP compliance;
- Audit and records provisions;
- Ownership of results, rights in work product;
- Confidentiality, publicity;
- Choice of law—California;
- Amendment, modification, changes;
- Waiver;
- Authority and binding effect;
- Unenforceable provisions (or severability clause);
- Construction of agreement (or negotiated agreement and headings clause);
- Time of the essence;
- Entire agreement; and
- Counterparts.

#### b. Related Policies and Recommendations

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<sup>16</sup> A JBE's duties to a vendor or other private contractor are typically limited to paying for the contractor's goods or services, and the JBE should therefore not be required to indemnify a Vendor.

<sup>17</sup> See "Contracts Requiring Insurance" in appendix D.

- In addition to required insurance specified in appendix D, insurance provisions of contracts (other than short form contracts and IGCs) should provide for coverage specified in the sample insurance provision included in appendix C.
  - Audit and records provisions must 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.
  - California law should be specified as the governing law unless a contract is with another state or a foreign government (in which case this term may be negotiated in the best interests of the JBE).
4. Special Terms and Conditions: Certain contracts, listed below, require the addition of “special terms and conditions.” Special terms and conditions can be included in a separate “Special Terms and Conditions” appendix or section, or an existing appendix or section, as appropriate, such as “Statement of Work,” “Pricing and Payment,” or “General Terms and Conditions.” If a single contract fits into more than one category of contract below, then it must contain special terms and conditions applicable to each of them. The substance of special terms and conditions is set forth in appendix D.
- Credit Card Issuer Contracts
  - Consulting Services Contracts
  - IGCs with California Public Entities (Excludes IBAs)
  - IGCs with Local Public Entities
  - IGCs with Local Public Entities for County Services
  - IGCs (with All Public Entities)
  - Legal Services Contracts
  - Amendments
  - Federally Funded Contracts
  - Contracts Requiring Insurance
  - Janitorial/Building Maintenance Contracts
  - Subvention And Local Assistance Contracts
  - Equipment Purchase Contracts
  - Commercial Office Moving Services
  - Elevator Maintenance Contracts
  - Information Technology Contracts

5. Definitions or Glossary: Do not place a promise or representation within a definition.

**Note:** The above list of provisions 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.

### **C. Short Form Agreements**

A Short Form Agreement may omit provisions inapplicable to contracts of \$5,000 or more, as set forth in this chapter. Other provisions that may be *excluded* or considered for exclusion, except as otherwise required by applicable law, are:

- Certain representations and warranties that are specified in appendix B as not applicable to contracts of less than \$5,000, or not applicable to the subject matter;
- Antitrust claims;
- Priority hiring considerations;
- Detailed insurance requirements (except employer's liability insurance or self-insurance to the extent required under Labor Code section 3700);
- Termination for default;
- Confidentiality; and
- Counterparts.

Consideration may be given to drafting remaining provisions with less detail or combining them to the extent the particular language or detail is not expressly required by law or included for policy reasons.

### **D. Short Form POs**

See Short Form Agreements, above, for a description of provisions that may be shortened or omitted when preparing Short Form POs.

### **E. IGCs**

IGCs do not include provisions that are inapplicable to contracts between public entities. Also, provisions found in Standard Agreements with a private entity may be excluded or considered for exclusion for policy reasons. Typical provisions sometimes *excluded* in IGCs are:

- Representations and warranties, and certification requirements that are identified in appendix B as not being applicable to public entities;
- Indemnity;
- Insurance;
- Default and remedies provisions, except provisions requiring a contractor's continuation of performance during disputes;
- Termination for default or convenience;
- Successors;
- Independent contractor clause;
- Publicity; and
- Counterparts (if the contract is not executed in counterparts).

Consideration may also be given to drafting remaining provisions with less detail or combining them to the extent the particular language or detail is not expressly required by law or included for policy reasons. JBEs must assure that all administrative fees are reasonable considering the services being provided. JBEs may pay overhead charges only on the first \$25,000 of each subcontract.

## **F. IBAs**

IBAs are between judicial branch entities only, and typically serve as funding agreements for programs or other uses approved by the Judicial Council. An IBA should describe the permitted uses of any funding or payment under the IBA, and prohibit other uses. Dispute resolution is by informal means, and most General Terms and Conditions and Special Terms and Conditions may be omitted, unless desired for policy reasons. Following are provisions that a JBE may wish *not* to omit:

- Prohibition on assignment and subcontracting;
- Audit and records provisions;
- Ownership of results, rights in work product;
- Dispute resolution by informal means and waiver of per capita allocation under GC 895.6;
- Amendment and waiver;
- Authority and binding effect; and
- Entire agreement.

## **G. Amendments**



An amendment to original contracts is necessary when there is any modification to the original. Examples of modifications typically found in amendments include:

- A change in shipping terms;
- An assignment of rights or duties;
- A substitution of permitted subcontractors;
- The addition or subtraction of work or goods, or a change in specifications or a schedule of requirements;
- An increase or decrease in pricing, allowable costs, or change to other payment provisions;
- An extension of the contract except upon exercise of options in the original; and
- A mutually agreed cancellation or termination of the contract.

Contract changes must be formally documented in a mutually executed written amendment. Emails, letter correspondence, and oral notification between parties are insufficient to amend a contract. Certain additional requirements apply to amendments, as follows:

- An amendment must be within the original scope of the contract solicitation. If it is not, it must be analyzed as an NCB procurement before it is executed (changes to quantity, pricing, products, etc. are treated as scope changes);
- An amendment must be effective as of a date before the time for performance or delivery of the affected goods or services; and
- An amendment must be executed before the contract expiration date and retain the same start date (but an expired contract may be reinstated in connection with any amendment, subject to applicable budget and procurement-related restrictions).

## **8.4 ANCILLARY CONTRACT DOCUMENTS**

### **A. Contractor Certification Clauses**

CCCs are set forth in appendix B. The clauses may be attached as an appendix to a contract, posted on a public website and incorporated by reference, or included in the body of the contract as representations and warranties.

**B. Certificates of Insurance**

If a contract requires a contractor to purchase and maintain insurance (see appendix D—Contracts Requiring Insurance), it must also require the contractor to submit to the JBE before starting work a Certificate of Insurance or Certificate of Self-insurance (if acceptable to the JBE) as proof of any required automobile and commercial general liability coverage. The contract should also require the contractor to submit proof of other insurance required under the contract to be obtained.

**C. Certificates of Participation (Judicial Council Litigation Management Program)**

A contractor may appropriately request a certificate of insurance from a JBE under circumstances similar to those when a JBE would request one of a contractor. For example, a request is sometimes made when a JBE rents a room for an event. Because JBEs do not typically maintain commercial general liability insurance, AOC/OGC makes available a certificate stating that the JBE participates in the Judicial Council Litigation Management Program in lieu of maintaining insurance.<sup>18</sup> AOC/OGC or the JBE can complete and deliver the certificate.

**Note:** Participation in the Judicial Council Litigation Management Program is not the same as maintaining self-insurance, which typically involves accruing funds for risk management purposes. JBEs should not certify that they are self-insured.

**D. Payee Data Record**

This form must be completed by all private entity contractors, and by public entity contractors if necessary or appropriate for reasons other than taxation (for example, for purposes of properly issuing warrants, or recordkeeping)

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<sup>18</sup> Not applicable to HCRC.



**APPENDIX B****STANDARD CONTRACTOR CERTIFICATION CLAUSES**

Contractor represents and warrants that the following statements are true:

- 1. No Gratuities:** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any JBE personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 2. No Conflict of Interest:** Contractor has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with JBEs.
- 3. Authority:** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms.

FOR PRIVATE ENTITIES ONLY: Contractor is qualified to do business and in good standing in the State of California.

FOR PUBLIC ENTITIES ONLY: Attached is a true copy of the code, rule, resolution, order, motion, or ordinance authorizing Contractor to enter into or execute this Agreement.<sup>19</sup>

- 4. No Interference with Other Contracts:** To the best of Contractor's knowledge, this Agreement does not create a conflict of interest or default under any of Contractor's other contracts.
- 5. No Litigation:** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not

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<sup>19</sup> When performance by a local government entity will be completed before any payment by the JBE (e.g., for room rental or one-time event), a resolution or other authority is not required to be attached.

or would not have a material adverse affect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.

6. **Compliance with Laws:** Contractor is in compliance in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
7. **Work Eligibility:** All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
8. **Drug Free Workplace:** Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
9. **No Harassment:** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
10. **Employment Laws:** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (California Government Code sections 12990 et seq.) and associated regulations (California Code of Regulations, title 2, sections 7285 et seq.).
11. **Non-discrimination:** Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Each subcontract in effect and authorizing work under this Agreement contains this provision.
12. **National Labor Relations Board** [not applicable to public entities]: No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. (PCC 10296)

**13. Sweatfree Code of Conduct** [applicable only to contracts for equipment, materials, or supplies other than public works, and contracts for the laundering of apparel, garments or corresponding accessories]:

- A.** No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the judicial branch under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code section 6108. *This declaration is made under penalty of perjury.*
- B.** Contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting JBE, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (A).

**14. Child Support Compliance Act** [not applicable to public entities; not applicable to contracts of \$100,000 or less]:

- A.** Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- B.** Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**15. Discharge Violation** [not applicable to public entities]: Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and

Judicial Branch Contracting Manual	<b>CONTRACTS AND CONTRACT-RELATED DOCUMENTS</b>	Chapter 8 Page: 29 of 49 (Appendix B)
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desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

**16. Electronic Waste Recycling Act of 2003** [applicable only to contracts for the purchase or lease of covered electronic devices]: Contractor complies with the requirements of the Electronic Waste Recycling Act of 2003, Public Resources Code section 42460 et seq., relating to hazardous and solid waste. Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

**17. Jury Duty:** For actual jury service, Contractor’s regular employees receive the amount of their regular pay and benefits for no fewer than five days annually, except to the extent Contractor’s policies on jury service provide for that amount to be reduced (i) by any juror fees and costs actually reimbursed, and (ii) pro rata for employees who work less than on a full-time basis.<sup>20</sup>

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<sup>20</sup> As there is no general requirement that employers provide paid time off for jury service, a JBE may elect to delete this certification.

**APPENDIX C****CERTAIN GENERAL TERMS AND CONDITIONS**

1. **Loss Leader:** Contractor shall comply with the Public Contract Code section set out below.

Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

2. **Antitrust Claims:** If services or goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of the Government Codes sections set out below.
  - A. The Government Code chapter on antitrust claims contains the following definitions:
    - "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - "Public purchasing body" means the state or the subdivision or agency making a public purchase. (GC 4550)
  - B. Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. (GC 4552)
  - C. If a JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but



were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)

- D.** Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action. (GC 4554)
3. **Recycling Certification:** If products, materials, goods, or supplies are offered or sold to the JBE under this Agreement, Contractor shall comply with the requirements of the Public Contract Code sections set out below.

Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200, in products, materials, goods, or supplies offered or sold to the JBE regardless of whether the product meets the requirements of Public Contract Code section 12209.<sup>21</sup> With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply. (PCC 12205)

4. **Priority Hiring Considerations:** If this Agreement includes services in excess of \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with Public Contract Code section 10353.
5. **DVBE Participation Certification:** If for this Agreement Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the judicial branch entity: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE

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<sup>21</sup> The foregoing promise may be excluded if the percentage of the Contractor's postconsumer material in the products, materials, goods, or supplies can be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website.

received from the prime Contractor; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military & Veterans Code section 999.5(d); Government Code section 14841)

6. **Union Activities:** As required under Government Code sections 16645-16649, Contractor shall:
- A. Include with any request for cost reimbursement from the state's or a JBE's funds a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing;
  - B. Not assist, promote, or deter union organizing by employees performing work under state or JBE contracts;
  - C. Not use the state's or JBE's funds received under this Agreement to assist, promote or deter union organizing;
  - D. Not, for any business conducted under this Agreement, use any property of the state or JBE to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or JBE property is equally available to the general public for holding meetings; and
  - E. If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, maintain records sufficient to show that no reimbursement from the state's and JBE's funds has been sought for these costs, and provide those records to the Attorney General upon request.
7. **Insurance:**<sup>22</sup> If insurance is required:
- A. **Basic Coverage:** Contractor shall provide and maintain at the JBE's discretion and Contractor's expense the following insurance during the term of this Agreement:

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<sup>22</sup> The insurance market changes rapidly; standard insurance provisions should be reviewed regularly and may require modification from time to time to accommodate market changes.

1. **Employer’s Liability:** The policy is required only if Contractor has employees. It must include workers’ compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer’s liability bodily injury at minimum limits of \$1 million per accident or disease.
  2. **Commercial General Liability:** The policy must cover bodily injury and property damage liability, including coverage for products, operations hazard, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.
  3. **Professional Liability:** This policy is required only if Contractor performs consulting or professional services under this Agreement. This policy must cover liability resulting from errors or omissions committed in Contractor’s performance of Work under this Agreement, at minimum limits of \$1 million per claim.
  4. **Commercial Automobile Liability:** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. This policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor’s performance of this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.
  5. **Commercial Crime Insurance:** This policy is required only if Contractor performs this Agreement regularly on the JBE’s premises, or handles or has regular access to the JBE’s funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; damage to JBE buildings, and property; and fraudulent transfer of money, securities, and property.
- B. “Claims Made” Coverage:** If any required insurance is written on a “claims made” form, Contractor shall maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for three years beyond the termination or expiration of this Agreement and the JBE’s acceptance of work provided under this Agreement. The retroactive date or “prior acts inclusion

date” of any “claims made” policy must be no later than the date that work commences under this Agreement.

- C. Umbrella Policies:** Contractor may satisfy required coverage limits through any combination of basic coverage and umbrella insurance.
- D. Aggregate Limits of Liability:** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- E. Deductibles and Self-Insured Retentions:** Contractor shall declare to the JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to JBE approval. Deductibles and self-insured retentions do not limit Contractor’s liability.
- F. Additional Insured Status:** Contractor shall require Contractor’s commercial general liability insurer, Contractor’s commercial automobile liability insurer, and, if applicable, Contractor’s commercial umbrella liability insurer to name judicial branch entities (as defined in Government Code sections 900.3 and 940.3) and their respective members, judges, subordinate judicial officers, officers, employees, agents, and volunteers (“Judicial Branch Personnel”) as additional insureds with respect to liability arising out of Contractor’s work.
- G. Certificates of Insurance:** Before Contractor begins performing work, Contractor shall give the JBE certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 days’ prior written notice to the JBE. Certificates of each the following policies used to satisfy coverage requirements must contain an additional insured endorsement:
- Commercial general liability insurance;
  - Commercial automobile liability basic coverage insurance; and
  - Commercial umbrella liability insurance.

- H. Qualifying Insurers:** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- I. Required Policy Provisions:** Each policy must provide, as follows:
- **Insurance Primary; Waiver of Subrogation:** The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by judicial branch entities (as defined in Government Code sections 900.3 and 940.3) and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against judicial branch entities (as defined in Government Code sections 900.3 and 940.3) and Judicial Branch Personnel; and
  - **Separation of Insureds:** The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability.
- J. Partnerships:** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
- **Separate:** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
  - **Joint:** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- K. Consequences of Lapse:** If required insurance lapses during the term of this Agreement, the JBE is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

**APPENDIX D****SPECIAL TERMS AND CONDITIONS**

Refer to section 8.3 B.4 for an explanation of this appendix. Contracts identified below should include the substance of the provisions set forth in this appendix.

1. Credit Card Issuer Contracts
2. Consulting Services Contracts
3. IGCs with California Public Entities (Excludes IBAs)
4. IGCs with Local Public Entities
5. IGCs with Local Public Entities for County Services
6. IGCs (with all Public Entities)
7. Legal Services Contracts
8. Amendments
9. Federally-Funded Contracts
10. Contracts Requiring Insurance
11. Janitorial/Building Maintenance Contracts
12. Subvention and Local Assistance Contracts
14. Equipment Purchase Contracts
15. Commercial Office Moving Services
16. Elevator Maintenance Contracts
17. Information Technology Contracts

## 1. CREDIT CARD ISSUER CONTRACTS

GC 6159(c) 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 trial courts: additional information regarding credit card payments is set forth in the *Trial Court Financial Policies and Procedures Manual*, Policy Nos. FIN 10.01 Revenue Collection and Distribution, and FIN 10.02 Cash Handling.

## 2. CONSULTING SERVICES CONTRACTS

**a. Definition.** A consulting services contract (a.k.a. “consultant services contract”) is a services contract of an advisory nature that provides a recommended course of action or personal expertise, for example contracts calling for a product of the mind rather than the rendition of mechanical or physical skills. The product may include anything from answers to specific questions to the design of a system or plan. 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 do not include:

- Contracts between JBEs and the federal government (PCC 10335.5);
- 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).

### **b. Contract Provisions.**

- **REQUIREMENTS.** The following are requirements:
  - The contract must require the contractor to provide a detailed analysis of the costs of performance of the contract.

- Consulting services contracts of \$1,000 or more must contain detailed performance criteria and a schedule for performance. The contract must also require progress reports or meetings on a regular basis to allow the JBE to determine whether the contractor is on the right track and the project is on schedule, to provide communication of interim findings, and to afford opportunities for airing difficulties or special problems encountered so that remedies can be developed quickly.
- Consulting services contracts of \$5,000 or more must:
  - Have attached as part of the contract a completed resume for each “contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor”; and
  - State that the JBE shall evaluate the contractor’s performance.<sup>23</sup> (PCC 10367, 10369)
- 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;
  - A dispute resolution clause that outlines the steps to be taken by each party in the event a dispute arises (PCC 10381);

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<sup>23</sup> Evaluations and any contractor responses on file with a JBE are not public records and should be maintained in a separate file.



- Final meeting requirements between the contractor and JBE management (only if the contractor is to present findings, conclusions, or recommendations);
- Final report requirements that require the contractor to submit a comprehensive final report (only if applicable); and
- The identity of the project coordinator or manager.

### **3. IGCs WITH CALIFORNIA PUBLIC ENTITIES (excludes IBAs)**

JBEs should include the following provision, or a similar waiver 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.

### **4. INTERAGENCY AGREEMENTS**

A contract with a state agency, defined for purposes of this section consistent with GC 11256 as a state agency, department, California State University campus, or University of California campus (UC) (excluding campus foundations) must follow the requirements for whichever type of contract the agency uses. The agency may choose to use an Interagency Agreement (IA).

- IAs must include a provision that the charges have been or will be computed in accordance with state requirements as noted in SAM 8752, and 8752.1 unless there is a legal reason for not doing so. Such a reason might be the transfer of federal funds. The reason should be noted.
- IAs involving the expenditure of public funds in excess of \$10,000 must contain a provision that the contract is subject to examination and audit by the State Auditor for a period of three years after final payment under the agreement (GC 8546.7).

### **5. IGCs WITH LOCAL PUBLIC ENTITIES**

When a JBE contracts with a county, city, district, or other local public entity, the JBE should receive, together with the signed contract, a copy of the resolution or other document authorizing 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, such as a room rental or a one-time event, the JBE does not have to obtain this document.

## **6. IGCs WITH LOCAL PUBLIC ENTITIES FOR COUNTY SERVICES<sup>24</sup>**

If a trial court and its respective county or a city agree that the county or city will provide or continue to provide services to the court that were provided in 1997, GC 77212 requires the trial court and county or city to enter into a contract regarding the services. The parties must cooperate in developing and implementing the contract. An MOU is frequently used to document this agreement.

- 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 trial 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/city 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/city agreement for services should also contain appropriate provisions applicable to other IGCs under this chapter.
- In addition to the general requirements on costs, GC 77212 includes further specific requirements related to costs:
  - Costs charged to the court may not exceed the costs of providing similar services to county departments or special districts (GC 77212(a)).
- The Board of Supervisors or equivalent governing bodies of counties and other local government entities periodically approve countywide (or other applicable) “cost allocation plans.” The cost allocation plan details the actual expenditures of departments that provide indirect services to county departments, and identifies

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<sup>24</sup> These contracts may include all county or city-provided services, or certain services may be covered by individual contracts. For example, trial courts frequently enter into “general” services agreements, and into contracts with counties for specific services (e.g., collections).

the specific cost allocation methods that are used to distribute those costs. The cost allocation plan follows the requirements for charging direct and indirect costs (among other items) from the Office of Management and Budget (OMB) Circular A-87. The trial court should be permitted to review the specific charges in the cost allocation plan including the data elements provided by each county department that were used to complete the plan.

- For trial court-county/city agreements entered into after January 1, 2002, GC 77212 (d) requires that the amount of any indirect or overhead costs be individually stated, together with the method of calculation of the indirect or overhead costs.
- The Judicial Council may audit the county or city figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the trial court.
- CRC rule 10.810 defines the division of responsibility between the state and county for funding the trial court. Costs payable by a trial court under any IGC, including agreements covered by GC 77212, may not contain items that are not otherwise allowable court operations.
- On occasion, a trial court may experience cash flow shortages. With approval by the Judicial Council, a trial court may arrange with the county for short-term loans to cover temporary cash flow needs so that it may meet its financial obligations in a timely manner. The trial court must comply with GC 77009.1 with respect to such a loan.

## **7. IGCs (with all public entities<sup>25</sup>)**

The contract must contain the substance of the following provisions:

- a. Services and Work under this Agreement:** All services and work must be performed primarily by the staff of Contractor, or in the case of educational institutions, auxiliaries or foundations, by faculty, staff, or students associated with the educational institution.
- b. Restrictions on Subcontracting** (applicable only if subcontracting is otherwise permitted under the contract): Contractor shall not use a subcontract or purchase goods for sale to the JBE unless this Agreement is a subvention agreement or any of the following apply:

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<sup>25</sup> Including an auxiliary organization of the CSU or a California community college of the Student Aid Commission established under Education Code section 69522, or; a foundation organized to support the Board of Governors of the California Community Colleges. (See PCC 10340.)

- Contractor, as prime contractor, certifies that the subcontractor or vendor has been selected by Contractor under a bidding process requiring at least three bids from responsible bidders;
- The subcontract or purchase order is with a public entity or foundations or auxiliary organization that supports it, and the subcontractor is subject to the same restrictions on subcontracting as Contractor is subject to under this Agreement;
- The subcontract or purchase order would be exempt from competitive procurement requirements applicable to the JBE if the JBE were contracting with the subcontractor;
- The total of all subcontracts and purchase orders does not exceed \$50,000 or 25% of the total amount under this Agreement (excluding amounts subcontracted to or purchased from public entities or foundations or auxiliary organizations that support them), whichever is less, and subcontracting or third-party purchasing is not done for the purpose of circumventing competitive bidding requirements; or
- The JBE's highest executive officer has certified that the selection of the subcontractor or vendor without competitive bidding was necessary to promote the JBE's program needs and was not done for the purpose of circumventing competitive bidding requirements.

## **8. LEGAL SERVICES CONTRACTS**

Legal services contracts must contain, in substance, the following provisions. The contractor shall:

- a. Agree to adhere to legal cost and billing guidelines designated by the JBE.
- b. Adhere to litigation plans designated by the JBE.
- c. Adhere to case phasing of activities designated by the JBE.
- 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.
- g. Comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003 (if applicable). Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by

the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of this Agreement. 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.

**Note:** The contractor may be required to submit to a legal cost and utilization review as determined by the JBE (PCC 10353.5).

## **9. AMENDMENTS**

- a. When an amendment changes or corrects contract terms by "striking out" contract terms, both parties signing the agreement must initial the "strikeout."
- b. When an amendment changes the contract amount, the amount changed by the amendment must be stated, along with the new total contract amount. Example: "This amendment adds \$1,000 to the contract. The total amount of the contract will not exceed \$(new contract total)."
- c. Extension of the contract cannot be used to circumvent the termination of availability of funds. (See GC 16304.)

## **10. 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 clause and the following provisions:

- a. 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.
- b. This contract is valid and enforceable only if sufficient funds are made available to the state by the United State Government for the fiscal year \_\_\_\_ for the purpose of this program. 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.

- c. 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.
- d. The parties may invalidate this Agreement under the 30-day termination for convenience or cancellation clause or amend the contract to reflect any reduction in funds.

Exemptions from these requirements may be granted 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 that all grant conditions are complied with.

## **11. CONTRACTS REQUIRING INSURANCE**

Contractors must agree to purchase and maintain commercial general liability insurance that covers at least bodily injury and property damage liability, with minimum limits of \$1 million per occurrence, combined single limit, in connection with any contract that involves high-risk activities, and any of the following contracts:

- Any contract with a provision whereby the JBE agrees to indemnify or save harmless any party to the contract or any third person against or on account of any claim, liability, or matter arising out of, or connected with the contract.
- Any contract with a provision whereby the JBE agrees to assume responsibility for matters beyond its control (e.g., in rental contracts, a promise to assume full responsibility for damage to rented equipment, regardless of the cause of damage).
- Any contract with a provision calling for payment of rental or other services in advance.
- Any contract with a provision creating a contingent liability against the JBE (e.g., contractor's printed rental contracts frequently contain clauses obligating the user of rented equipment to contingent liabilities).
- Any contract with a provision for rental of equipment imposing any financial obligation or liability on a JBE other than the payment of rent, transportation costs, and costs of maintenance and repairs.
- Contracts for micrographics (any type of microform such as microfilm, microfiche, etc.) and/or optical disk services, storage, or hardware rental that have not been

certified by the state Office of Information Services (OIS) as complying with applicable micrographics requirements.

Contracts containing required insurance provisions must contain, in substance, the following:

- Contractor shall furnish to the JBE before commencement of work a certificate of insurance stating that the insurance is presently in effect.
- Bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Agreement. If the insurance coverage expires at any time during the time of this Agreement, Contractor shall provide, at least 30 days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of the JBE, and, without prejudice to the JBE, Contractor shall not perform work before such approval. The JBE may, in addition to any other remedies it may have, terminate this Agreement should Contractor fail to comply with these provisions.

## **12. JANITORIAL/BUILDING MAINTENANCE CONTRACTS**

The contract must provide that contractor or any subcontractor providing janitorial or building maintenance services in California, which is awarded a contract to provide such services at a new site must retain for 60 days the current employees employed at that site by the previous contractor/subcontractor. It must also require the contractor 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.

## **13. 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.<sup>26</sup> Because subvention aid or local assistance contracts are generally not awarded to a low bidder through competitive bidding, these contracts must contain adequate control language and should address the necessity and reasonableness of the cost.

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<sup>26</sup> The JBE's budget would have to allow for this assistance.

- 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 must 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:
- 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 must specify that the rates of reimbursement for necessary traveling expenses and per diem 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 must specifically reserve title to the JBE for JBE-purchased or JBE-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 must include a detailed inventory of any JBE-furnished property, and the JBE must comply with the policies and procedures regarding state-owned property accounting set forth in SAM 8600, et seq. Provisions must 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 are not 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. The contractor should be required to acknowledge the support of the JBE when publicizing the work under the contract in any media.
- e. The contract must 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 three years.

#### **14. EQUIPMENT PURCHASE CONTRACTS**

Contracts providing for the purchase of equipment using JBE funds must provide 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. (Refer to SAM section 2625.)

Contracts providing for the purchase of equipment using state or JBE funds should also include a provision in substance as follows:

Contractor shall maintain an inventory record for each piece of equipment purchased or built with funds provided under this Agreement, except for a piece of equipment that (i) has a normal life expectancy of less than one year, or (ii) costs less than \$5,000 and is not easy to steal. The inventory record must include the date acquired, total cost, serial number, model identification, and any other information or description necessary to identify the piece of equipment. Contractor shall submit to the JBE upon request a copy of the inventory record.

### **15. COMMERCIAL OFFICE MOVING SERVICES**

Contracts exceeding \$2,500 with a carrier for commercial office moving services must conform to the requirements contained in SAM 3810, which provides for such contracts to be with a carrier whose drivers and supporting personnel are operating under current collective bargaining agreements or who are maintaining the prevailing wages, standards, and conditions of employment for its driver and supporting personnel. (See GC 14920.) JBEs must include such requirements in contracts.

### **16. ELEVATOR MAINTENANCE CONTRACTS**

Contracts for elevator maintenance must include the following provision:

**Commencement and termination of contract:** The service to be performed under this contract shall begin on the date specified and continue for a period of five years. The JBE may terminate this contract at any time by giving the contractor at least 30 days written notice of its intention to do so.

### **17. INFORMATION TECHNOLOGY CONTRACTS**

The contract must be strictly for IT services or in instances where the IT goods being purchased are subordinate to the value of the IT service. The executive branch has prepared the following, which may assist the JBE in the development of appropriate contracts:

- Information Technology Maintenance Special Provisions
- Information Technology Personal Services Special Terms and Conditions
- Information Technology Software Special Provisions

At the time of publication, it is not known, however, how or whether the executive branch maintains these documents, and they are identified for reference only. In addition, a JBE may wish to refer to and include appropriate terms and conditions DGS

Judicial Branch Contracting Manual	<b>CONTRACTS AND CONTRACT-RELATED DOCUMENTS</b>	Chapter 8 Page: 49 of 49 (Appendix D)
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form GSPD-401IT (General Provisions—Information Technology) in connection with preparation of any IT contract template or statement of work for IT goods and services.



# 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 .....	7
E. Payee Data Record.....	7
F. Payment of Invoices.....	7
G. Additional Payment and Invoice Considerations .....	8
9.2 Purchase Card Programs.....	9
A. Use of Purchase Cards Generally.....	9
B. Use of Purchase Cards by the Superior Courts .....	9
C. Use of Purchase Cards by Other JBEs .....	10

## **INTRODUCTION**

This chapter describes payment practices including when payments should be released, what is required before making invoice payments, and what are acceptable and unacceptable payment practices. Also included in this chapter is information about the use of purchase cards.

## **DEFINED TERMS**

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

## **9.1 DISBURSEMENTS**

### **A. Payment Fundamentals**

Payments should not be processed or released by a Judicial Branch Entity (JBE) to a Vendor for any goods or services unless the JBE possesses all of the following:

- A properly authorized contract;
- Documentation verifying the goods/services were satisfactorily received and/or performed; and
- An accurate, properly submitted Vendor invoice.

### **B. Advance Payments**

Advance payments are payments made to a Vendor before the Vendor performs its obligations under the contract. Advance payments 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 \$400,000<sup>1</sup> and provided that the advance payment does not exceed 25%<sup>2</sup> 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,<sup>3</sup> 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.

### **C. Progress Payments**

A Progress Payment is a partial payment following the completion of a deliverable, milestone, or stage of progress under a contract.

#### **When Progress Payments are Allowed**

##### Non-IT Services

For a Progress Payment under a contract for non-IT services:<sup>4</sup>

- 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
- 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.

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<sup>1</sup> This amount may be increased by the Department of Finance; any future increases will be posted on Serranus.

<sup>2</sup> 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.

<sup>3</sup> 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).

<sup>4</sup> These requirements are based on PCC 10346.

**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.

#### 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:<sup>5</sup>

- The goods are specially manufactured for the state, 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.

#### IT Goods and Services

Progress Payments for IT goods or services may be made for work performed and costs incurred at the Vendor's shop or plant if:<sup>6</sup>

- The goods or services are especially manufactured or performed by the Vendor for the state, 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.

**Note:** If, however, the JBE determines that lower withholding levels are appropriate based upon its own risk analysis, which may include consideration of financial

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<sup>5</sup> These requirements are based on PCC 10314.

<sup>6</sup> These requirements are based on PCC 12112(a).



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;
- 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 are often complex, so JBEs are encouraged to consult with the AOC's Office of the General Council.

#### **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 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 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 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 be promptly forwarded to the JBE’s accounts payable department (or other appropriate department or personnel); and
- Should be date stamped or have the receipt date written on the front of the invoice when first received by the JBE’s accounts payable department (or other appropriate department or personnel).

Invoice dispute notification: If there is a dispute about a submitted invoice, the JBE should promptly notify the Vendor. Buyers and contract administrators 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 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: 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 be related to official JBE business. Reimbursement for such expenses should only be permitted if provided for in the contract.

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 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 personal credit cards and offers a number of streamlining advantages over traditional procurement methods. JBEs should establish internal controls to monitor their use of purchase cards.

Purchase cards may not be used to circumvent established procurement procedures. All procurements executed using a purchase card should be initiated by an approved purchase requisition. Purchase cards may be used only for official JBE business; personal use is prohibited.

### **B. Use of Purchase Cards by the Superior Courts**

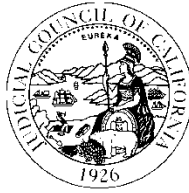
1. The state-administered procurement card program, CAL-Card, is available to all trial courts. The AOC's Business Services Procurement Supervisor can be contacted at (415) 865-7978 for assistance.
2. Purchase cards may be used only for the procurement of goods. Examples of items that may be purchased 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.

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 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 provide some other form of documentation for the charge. At a minimum, a written explanation for what the purchase card was used to purchase should be provided.
7. Individual court employee travel expenses may be 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 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. Timely Release of Purchasing Documents ..... 4
  - D. 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..... 9

**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 should determine 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.

Term	Definition	Example
Receiving	The act of taking possession of goods or receiving services. <b>Caution:</b> 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. <b>Note:</b> goods/services could also be deemed accepted if the JBE fails to make an effective rejection of the goods/services.	After completing an acceptance test, a JBE notifies the Vendor in writing, confirming that the equipment passed the test and the JBE accepts the product.

## **B. Packaging and Shipping**

JBEs should include packaging and shipping requirements/instructions (if applicable) in the solicitation document and 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. So that the JBE's receiving staff can verify receipt of goods, the Vendor should provide at least the following information on the packing slip:

- Contract number as issued by the JBE;
- Description of the goods;
- Quantity and unit of measure; and
- Item/part number.

## **C. 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.

#### **D. 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's receiving staff 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?

Receiving staff 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 receiving staff should notify the Buyer if the contract did not state whether or not partial deliveries are acceptable. The receiving staff should provide partial delivery documentation to the Buyer on a timely basis to facilitate any necessary communications with the Vendor.

Judicial Branch Contracting Manual	<b>RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES</b>	Chapter 10 Page: 6 of 10
------------------------------------	---	-----------------------------

## **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 receiving staff at such locations of their responsibilities, which should be consistent with the policies and procedures in this chapter. Buyers should provide receiving staff with contracts in a timely manner. Receiving 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's receiving staff 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 and provide the results to its procurement office. At a minimum, the documentation should identify the scope of the inspection, name/title of JBE and Vendor personnel in attendance, when and where the inspection occurred, and the inspection results. The documentation should be retained in the procurement file.

After determining that goods received and inspected are either in conformance with the terms of the contract or are to be rejected, receiving staff should document the delivery and inspection. Receiving staff should provide the following to the JBE's accounting and purchasing offices:

- The invoice or packing slip (and related documents such as the bill of lading, delivery receipt, etc.);
- A copy of the contract; and
- Documentation by receiving staff on the delivery (e.g., confirmation that the delivery is in accordance with the contract).

Failure to provide documentation and follow related policies and procedures could delay payments to the Vendor. Receiving staff 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**

To the extent necessary to protect the JBE's interests and comply with applicable policies, 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 contracts on Acceptance Testing, acceptance criteria, and related matters.

#### **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 promptly notify the Vendor in writing. The notice should describe the non-conformity to the contract (including any applicable acceptance criteria).

Judicial Branch Contracting Manual	<b>RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES</b>	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 should make 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.

## **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 policies and procedures to secure and safeguard their assets. JBEs should implement sufficient security controls for goods considered vulnerable to loss or unauthorized use. Inventory should be periodically taken and compared to control records.

The following items purchased by JBEs should be tagged:

- An item with a value of more than \$1,000 and an anticipated useful life of more than one year; or
- An item with a value less than \$1,000 but which is particularly subject to loss or theft, such as small office equipment, cellular phones, printers, monitors, etc.

JBEs should record the following information when property is acquired:

- Date acquired and name of contractor from which the property was acquired;

Judicial Branch Contracting Manual	<b>RECEIVING, INSPECTION, AND ACCEPTANCE OR REJECTION OF GOODS AND SERVICES</b>	Chapter 10 Page: 9 of 10
------------------------------------	---	-----------------------------

- 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 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**

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 22

## **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.....	11
D. Communication .....	13
11.9 Contract Disputes, Vendor Demands, and JBE Complaints.....	14
A. Contract Disputes .....	14
B. Vendor Demands.....	14
C. JBE Complaints Regarding Vendor Performance .....	15
11.10 Contract Termination.....	17
A. Termination for Convenience.....	17
B. Termination Due to Nonavailability of Funds .....	17
C. Termination for Cause .....	18

D. Contract Work Suspensions .....18

11.11 Warranties .....19

11.12 Filing Practices .....20

11.13 Contract Closeout.....21

11.14 Disclosure of Contract Documentation .....22

## **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, loan of money or equipment, meal, lodging, transportation, 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. Favors 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.<sup>1</sup> 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 ensure that Vendors perform according to the terms, conditions, and specifications of their contracts;
- **Two:** Sound business judgment must be 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.

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<sup>1</sup> 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 that service 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 the goods or 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. 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.”<sup>2</sup> Because a JBE could become unintentionally bound to perform for an extended term due to inaction, the use of an evergreen clause is discouraged. Instead, an option to extend the term of the contract should require 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 option<sup>3</sup> 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**

A change to the original contract’s terms may 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

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<sup>2</sup> Contracts containing evergreen clauses are often referred to as “evergreen contracts.”

<sup>3</sup> This applies regardless of whether the option is exercised by action or inaction.

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 updating the Phoenix Statewide Financial System (Phoenix) so that it accurately reflects 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).

## **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. 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. 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 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.

## **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.<sup>4</sup> 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 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.

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<sup>4</sup> 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. Contracts should 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.<sup>5</sup>

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

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<sup>5</sup> 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.

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.

### **11.12 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;<sup>6</sup>
- Establish and follow a procedure for making copies and releasing files to the public to avoid losing files and records;
- Establish and follow a system such as the use of “out cards” to control accountability and mark the locations of files removed from the filing area. Depending upon the JBE's staffing capability, the assignment of a file administrator who has sole responsibility to pull files and file out cards is recommended;
- Return original file folders to their designated file locations at the end of the workday. An assigned file administrator should be responsible for assuring that files that leave the designated area are retrieved within a reasonable time; and
- Discard duplicate files and working papers.

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<sup>6</sup> 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.

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.

### **11.13 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.

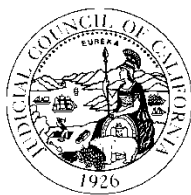
If the JBE conducts an evaluation, the JBE must notify and send a copy of the evaluation to the Vendor within 15 days. The Vendor must have the right, within 30 days after receipt, to submit to the JBE a written response statement that must be filed with the evaluation in the procurement file.

**11.14 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.

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 Supreme Court is responsible for providing to the AOC Finance Division the information relating to payments to, and contracts with, the Supreme Court's Vendors in the form and format as required by the AOC Finance Division for Judicial Council reporting purposes.

Courts of Appeal: Each Court of Appeal is responsible for providing to the AOC Finance Division the information relating to payments to, and contracts with, Vendors 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 inputting into Phoenix the information relating to payments to, and contracts with, that Superior Court's Vendors as required for Judicial Council reporting purposes.

Habeas Corpus Resource Center (HCRC): The HCRC is responsible for providing to the AOC Finance Division the information relating to payments to, and contracts with, the HCRC's Vendors 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 the information relating to payments to, and contracts with, Vendors of the Judicial Council and the 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 must have the appropriate training, experience, level of responsibility, and accountability as is necessary to ensure the accuracy, completeness, and consistency of the information maintained and provided.

#### **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 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,

Judicial Branch Contracting Manual	<b>REPORTING REQUIREMENTS</b>	Chapter 12 Page: 6 of 6
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these contracts are subject to the review and recommendations of the California Technology Agency).

## ABBREVIATIONS AND ACRONYMS

The following abbreviations and acronyms are used in this Manual:

<b>ADA</b>	Americans with Disabilities Act
<b>AOC</b>	Administrative Office of the Courts
<b>AOC/OGC</b>	Administrative Office of the Courts/Office of the General Counsel
<b>BPO</b>	Blanket Purchase Order
<b>BSA</b>	Bureau of State Audits
<b>CARI</b>	California Alliance of Rehabilitation Industries
<b>CCC</b>	Contractor Certification Clauses
<b>CMAS</b>	California Multiple Award Schedule
<b>CRC</b>	California Rules of Court
<b>CRP</b>	Community Rehabilitation Program
<b>CSCR</b>	California State Contracts Register
<b>CTA</b>	California Technology Agency
<b>DGS</b>	Department of General Services
<b>DVBE</b>	Disabled Veterans Business Enterprise
<b>GC</b>	Government Code
<b>GSA</b>	General Services Administration
<b>HCRC</b>	Habeas Corpus Resource Center
<b>IA</b>	Interagency Agreement
<b>IBA</b>	Intra-branch Agreement
<b>IFB</b>	Invitation for Bids
<b>IGC</b>	Intergovernmental Contract
<b>IRS</b>	US Internal Revenue Service
<b>IT</b>	Information Technology
<b>JBCL</b>	California Judicial Branch Contract Law
<b>JBE</b>	Judicial Branch Entity
<b>JPA</b>	Joint Powers Authority Agreement
<b>LPA</b>	Leveraged Purchase Agreement
<b>MOU</b>	Memorandum of Understanding
<b>MVC</b>	Military and Veterans Code
<b>NASPO</b>	National Association of State Procurement Officials
<b>NCB</b>	Non-Competitively Bid
<b>NPO</b>	Non-profit organization
<b>NSP</b>	Not specifically priced
<b>OSDS</b>	Office of Small Business and Disabled Business Enterprise
<b>PCC</b>	Public Contract Code
<b>PCO</b>	Procurement and Contracting Officer

<b>PO</b>	Purchase Order
<b>RFI</b>	Request for Interest
<b>RFO</b>	Request for Offer
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Quote
<b>SABRC</b>	State Agency Buy Recycled Campaign
<b>SAM</b>	State Administrative Manual
<b>SCM</b>	State Contracting Manual
<b>SLP</b>	Software Licensing Program
<b>SOW</b>	Statement of Work
<b>TCAS</b>	Trial Court Administrative Services Division
<b>U.S.</b>	United States, or federal
<b>WIC</b>	Welfare and Institutions Code
<b>WSCA</b>	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, regardless of the Solicitation Document used by the JBE (e.g., RFQ, IFB, or RFP).

**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.

**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.