Judicial Council of California

COMPETITIVE SOLICITATION OVERVIEW

CHAPTER 4

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INTRODUCTION

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

DEFINED TERMS

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

4.1 THE BASICS OF COMPETITION

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

A. General Requirements

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

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

B. Developing Prospective Bidder Resources

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

- Recommendations from customers;
- Local trade unions;
- Chambers of commerce;
- Industry listings;
- Leveraged Procurement Agreement (LPA) databases;

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

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

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

An RFI should:

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

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

C. Confidentiality

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

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

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

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

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

D. Advertising

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

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

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

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

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

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

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

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

[1] DGS's Cal eProcure system currently uses FI$Cal technology. JBEs may be required to register with FI$Cal to use certain features of DGS's Cal eProcure system.

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

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

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

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

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

After registering with FI$Cal, a JBE may post an advertisement to the CSCR (without fees) via the FI$Cal website.

E. Samples

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

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

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

4.2 SOLICITATION DOCUMENTS GENERALLY

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

A. Developing the Solicitation Document

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

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

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

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

3. Generative Artificial Intelligence: Please refer to chapter 2, section 2.4, of this Manual regarding additional procurement and contracting policies and procedures relating to Generative Artificial Intelligence.

B. Required Provisions

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

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

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

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

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

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

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

5. Bidder signatures: For any written solicitation, regardless of dollar value, solicitation format, or delivery method (i.e., faxed, mailed, or delivered in person), Bids should include the signature of an authorized representative of the Bidder. Faxed or

electronic signatures are acceptable if allowed by the Solicitation Document. Of course, a faxed or electronic signature could not be used in any solicitation requiring a sealed bid as such bids must be delivered to the JBE in a sealed envelope.

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

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

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

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

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

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

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

- Request for Offers (RFOs) for acquisitions from LPAs;
- Procurements using the SB/DVBE option; and
- Non-competitively bid procurements.

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

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

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

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

12. Conflict Minerals: PCC 10490 places restrictions on procurements that include goods or services that involve certain “conflict minerals.” These minerals include cassiterite, columbite-tantalite, gold, and wolframite—minerals found in many technological products such as mobile telephones, laptop computers, and digital video recorders.

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

[2] PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not

C. Amending a Solicitation Document

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

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

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

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

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

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

D. Multiple Awards for Services

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

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remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement." Section 13(p) of the Securities Exchange Act of 1934 requires certain entities to make disclosures concerning conflict minerals.

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

4.3 BID HANDLING

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

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

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

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

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

Any solicitation that requires a sealed Bid cannot be faxed.

4.4 VENDOR SELECTION

A. Vendor Selection Basics

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

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

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

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

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

B. No Bids

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

> **Option 1:** The Buyer may cancel and reissue the solicitation, modifying any possible restrictive requirements. The Buyer should also consider methods to broaden the number of Bidders.
>
> **Option 2:** If, in the opinion of the Buyer, a second solicitation would not result in a different outcome, the Buyer may cancel the solicitation and proceed with a sole source purchase following the requirements in chapter 5, section 5.9 of this Manual. If possible, the JBE should select as the sole source a responsible Bidder whose Bid was substantially technically compliant/responsive with the specifications.

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

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

C. Required Certifications or Permits

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

1. Darfur Contracting Act: All procurements 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

- A California seller's permit issued under Revenue and Taxation Code section 6066 and following; or

- A certificate of registration issued under Revenue and Taxation Code section 6226.

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

There are two exemptions to this requirement:

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

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

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

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

D. Deviations

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

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

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

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

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

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

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

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

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

E. Tax Delinquents

Pursuant to PCC 10295.4, a JBE shall not enter into any contract with a person or entity identified by the Franchise Tax Board (FTB) or the Board of Equalization (BOE) as one

of the 500 largest tax delinquents. Any contract entered into in violation of PCC 10295.4 is void and unenforceable.

Before executing any contract or renewal, the JBE should verify that the contractor is not on either of the following lists:

FTB list: www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html

BOE list: www.cdtfa.ca.gov/taxes-and-fees/top500.htm

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

4.5 REVERSE AUCTIONS

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

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

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

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

4.6 FOLLOW-ON CONTRACTING

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

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

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

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

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

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

2. IT contracts typically not considered as consulting services contracts:

- Design development and implementation;
- Project management;
- Independent validation and verification; and
- Independent project oversight consultant.

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

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

4.7 SUMMARY DOCUMENT

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

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

Procurement summary information includes but is not limited to:

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

APPENDIX A

DARFUR CONTRACTING ACT CERTIFICATION

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

To submit a bid or proposal to the [JBE], the proposer/bidder must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

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

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

OR

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

OR

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

CERTIFICATION FOR PARAGRAPH 3:

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

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

APPENDIX B

IRAN CONTRACTING ACT CERTIFICATION

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

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

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

OR

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

CERTIFICATION FOR PARAGRAPH 1:

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

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

APPENDIX C

UNRUH CIVIL RIGHTS ACT AND CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION

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

CERTIFICATIONS:

1. We are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);

2. We are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);

3. We do not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**

4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

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

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