Judicial Council of California

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

CHAPTER 4C

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INTRODUCTION

In light of the unique aspects of information technology (IT) and its importance to Judicial Branch Entity (JBE) programs, the Public Contract Code (PCC) allows for a flexible and expeditious approach to IT procurements. The most significant difference between IT and non-IT procurements is that IT procurements may be awarded on the basis of "value effectiveness" within a competitive framework. When procuring IT goods and services, JBEs must consider factors other than price, except when acquiring hardware independently of a system integration project. (See PCC 12102.2(b).) In addition, JBEs may use a phased approach of Bid development.

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

DEFINED TERMS

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

STEP 1—PERFORM PRELIMINARY ANALYSIS

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

Procurement Value

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

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

[1] This step-by-step guide may be superseded in whole or in part if a JBE uses a special negotiation process.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

JBEs may not split a single transaction into a series of transactions for the purpose of evading procurement requirements. In particular, a series of related services that would normally be combined and bid as one job cannot be split into separate tasks, steps, phases, locations, or delivery times to avoid adhering to competitive solicitation requirements.

IT-Specific Issues

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

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

STEP 2—DEVELOP LIST OF PROSPECTIVE BIDDERS

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

STEP 3—ASSEMBLE PROCUREMENT TEAM

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

- Technical experts;
- Personnel to help develop the Solicitation Document;
- Evaluation Team members; and

- Legal counsel, if applicable. (See chapter 8, section 8.4.B of this Manual for more information on legal review of contracts.)

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

STEP 4—SELECT SOLICITATION DOCUMENT TYPE

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

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

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

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

[2] A JBE may adopt a higher or lower threshold for the use of RFQs in its Local Contracting Manual. If the JBE adopts a higher threshold, the JBE must ensure that (i) the higher threshold is reasonable and appropriate, and (ii) the JBE provides adequate oversight for the use of larger-value RFQs. Also, note that procurements under $10,000 may be conducted without a competitive solicitation; see chapter 5, section 5.1 of this Manual.

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

STEP 5—CONSIDER PHASED APPROACH

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

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

A phased approach includes one or more of the following:

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

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

Detailed technical proposal: The detailed technical proposal may be included to allow each Bidder to provide a detailed technical description of its Bid to determine at an early stage whether the Bid is totally responsive to all the requirements of the IFB or RFP,

and if not, which elements are not responsive and what changes would be necessary and acceptable.

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

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

STEP 6—DRAFT SOLICITATION DOCUMENT

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

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

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

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

A. RFQs

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

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

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

The RFQ should:

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

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

B. IFBs

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

[4] See PCC 12102.2(b): “The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.”

IFBs must include:

1. Time schedules relating to the procurement, including:
   - Date to submit questions or seek clarification (as applicable);
   - Date of Bidders' conference (as applicable);
   - Due date for the conceptual proposal (as applicable);
   - Due date for the technical proposal (as applicable);
   - Due date for the draft Bid (as applicable);
   - Bid Closing Time;
   - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
   - Anticipated contract term, including start and end dates.
2. Time and place where the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
3. Where the intent to award notice will be posted (e.g., website address);
4. The JBE's contact person for administration of the solicitation; and
5. The JBE's standard terms and conditions for the acquisition of IT goods and services.

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

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

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

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

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

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

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

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

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

C. RFPs

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

Information about the Procurement Process:

RFPs must include:

1. The standards the JBE will use in evaluating Bids;
2. Time schedules relating to the procurement, including:
    - Date to submit questions or seek clarification (as applicable);
    - Date of Bidders' conference (as applicable);
    - Due date for the conceptual proposal (as applicable);
    - Due date for the technical proposal (as applicable);
    - Due date for the draft Bid (as applicable);
    - Bid Closing Time;
    - Timetable that the JBE will follow in evaluating Bids and awarding the contract; and
    - Anticipated contract term, including start and end dates.
3. Time and place where the sealed cost portions of the Bid will be opened (the place must be accessible to Bidders and other members of the public, and may be at the JBE's facilities);
4. Where the intent to award notice will be posted (e.g., website address);
5. The JBE's contact person for administration of the solicitation; and
6. The JBE's standard terms and conditions for the acquisition of IT goods and services.

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

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

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

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

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

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

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

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

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

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

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

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

1. A description of the Bidder's qualifications, which may include at the JBE's discretion:
   - Copies of current business licenses, professional certifications, or other credentials;
   - Proof of financial solvency or stability (e.g., balance sheets and income statements);
   - Proof that the Bidder, if a corporation, is in good standing and qualified to conduct business in California; and
   - For Bidders that are nonprofit organizations, proof of nonprofit status.
2. A list of references for whom the Bidder has provided similar goods or performed similar work; and
3. If subcontractors are contemplated:
   - Identification of those persons or firms;
   - The portions and monetary percentages of the work to be done by the subcontractors;
   - How and why these subcontractors were selected;
   - Resumés of each major subcontract participant; and
   - Description of how subcontracted work will be controlled, monitored, and evaluated.
4. Required certifications (e.g., Iran Contracting Act and Darfur Contracting Act)

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

- A list of similar services successfully completed by the Bidder, with samples if applicable;
- A description of the lead personnel and anticipated supporting personnel to be employed during performance (by classification or title) and their qualifications to perform the work;
- Identification of a project coordinator;
- Resumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services;

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

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

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

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

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

- Quality of the IT goods or services.
- Technical competency of Bidder's personnel.
- Reliability of delivery and implementation schedules.
- The maximum facilitation of data exchange and systems integration.
- Warranties, guarantees, support, and return policy.
- Bidder's understanding of the JBE's problem or needs.

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

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

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

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

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

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

> This procurement will follow a phased approach designed to increase the likelihood that Bids will be received without disqualifying defects. The additional step(s) will (1) ensure that the Bidders clearly understand the JBE's requirements before attempting to develop their final solutions; (2) ensure that the JBE clearly understands what each Bidder intends to propose before those Bids are finalized; and (3) give the JBE and each

Bidder the opportunity to discuss weaknesses or potentially unacceptable elements of a Bid and give the Bidder the opportunity to modify its Bid to correct such problems.

As part of the phased approach, the JBE may review a Bidder's submissions for errors, defects, or other problems. **The JBE makes no warranty that all errors, defects, or other problems will be identified. The Bidder is solely responsible for submitting a Bid that is free of errors and defects, and complies with all RFP requirements.**

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

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

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

STEP 7—PREPARE ADVERTISING

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

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

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

Procurement for	Advertising required
IT Services	If total procurement value is $10,000 or more
IT Goods and Services	If the total procurement value is $100,000 or more ***or*** the services portion of the procurement is $10,000 or more

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

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

STEP 8—OPTIONAL: HOLD BIDDERS' CONFERENCE

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

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

STEP 9—OPTIONAL: COMPLETE PHASED APPROACH STEPS

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

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

Review Conceptual Proposal and Detailed Technical Proposal

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

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

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

Confidential Discussions with Bidder

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

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

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

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

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

Evaluate Draft Bids

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

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

STEP 10—RECEIVE BIDS

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

A. RFQs

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

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

B. IFBs and RFPs

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

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

STEP 11—OPEN BIDS

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

A. IFBs

The Buyer must publicly open the sealed Bids.

B. RFPs

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

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

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

STEP 12—DETERMINE IF COMPETITION HAS BEEN ACHIEVED

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

A. RFQs

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

B. IFBs or RFPs

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

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

STEP 13—OPTIONAL: HOLD ORAL INTERVIEWS/CLARIFICATION

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

Note: Oral interviews are not held for RFQ solicitations.

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

STEP 14—EVALUATE BIDS

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

A. RFQs

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

B. IFBs

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

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

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

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

C. RFPs

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

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

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

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

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

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

Note: There is an additional cost evaluation requirement for IT goods solicitations that are required to be advertised (see the table in step 7 for which solicitations must be advertised). For those solicitations, the JBE must consider a Bidder's "best financing alternative" (including lease or purchase alternatives) if any Bidder timely requests such consideration. If the solicitation is posted more than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE at least 30 days before the Bid Closing Time. If the solicitation is posted less than 30 days before the Bid Closing Time, the Bidder's request must be received by the JBE by the day that is halfway between the posting date and the Bid Closing Time. However, the JBE does not need to consider a particular financing alternative if, in the judgment of the Approving Authority, that financing alternative should not be considered. (See PCC 12102.2(d).)

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

Certification: The JBE's contact person for administration of the solicitation (who should have been identified in the RFP) must execute a certificate under penalty of perjury that

the cost portions of all Bids received by the JBE were maintained sealed and secured until the time all cost portions of Bids were opened. The signed certificate should be included in the procurement file.

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

STEP 15—NOTICE OF INTENT TO AWARD

A. RFQs

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

B. IFBs and RFPs

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

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

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

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

STEP 16—CREATE THE CONTRACT

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

STEP 17—CREATE THE PROCUREMENT SUMMARY DOCUMENT

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

STEP 18—NOTICES OR REVIEWS

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

SELECTED TOPICS RELEVANT TO THE SOLICITATION OF IT GOODS AND SERVICES

A. New IT Equipment

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

B. Performance-Based or Share-In Savings Contracts

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

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

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

- Contract terms that base payments to the Vendor primarily on achieving predefined performance measures.

C. Solicitations of Printer or Copier Cartridges

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

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

D. SB/DVBE Option

For procurements of IT goods and services greater than $5,000 but less than $250,000, a JBE may use a streamlined competitive solicitation that targets only Small Businesses or DVBEs. This streamlined competitive solicitation is known as the SB/DVBE option.[7]

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

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

Step 2

- The list of Prospective Bidders must consist of Small Businesses or DVBEs. The JBE may locate eligible entities using the DGS database located at *www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx*.

Step 6

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

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

Step 7

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

Step 10

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

Step 11

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

Step 12

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

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

Step 14

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

Step 15

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

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

APPENDIX A
SAMPLE METHOD FOR ASSIGNING COST POINTS WHEN EVALUATING RFPs

STEP ONE:

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

STEP TWO:

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

Line 1	Enter the maximum number of cost points……	_____
Line 2	Enter the dollar amount of the lowest bid……..….	$_____
Line 3	Enter the dollar amount of the bid you are evaluating.	$_____
Line 4	Divide the number in line 2 by the number in line 3, and enter the resulting number ……..…….	_____
Line 5	Multiply the number in line 1 by the number in line 4, and enter the resulting number……..….	_____
Line 6	Round the number in line 5 to the nearest whole number and enter that number……..….	_____

<u>Example</u>:

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

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

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

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

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

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

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

APPENDIX B
SAMPLE COST PROPOSAL CERTIFICATION

Cost Proposal Certification
For
RFP #_____

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

_____ _____

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

Executed in _____ [city], _____[state]