



## Judicial Council of California

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# INVITATION TO COMMENT

SP26-02

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## Judicial Administration: Revisions to Judicial Branch Contracting Manual

### Invitation to Comment Details

**Proposed Rules, Forms, Standards, or Statutes**

None

**Action Requested**

Review and Submit Comments by 5 p.m.,  
July 14, 2026, to [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Proposed by**

Advisory Committee on Audits and Financial  
Accountability for the Judicial Branch  
Hon. Ann C. Moorman, Chair

**Proposed Effective Date**

January 15, 2027

**Contact**

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*(This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.)*

### Executive Summary and Origin

Under rule 10.63(c) of the California Rules of Court, the Advisory Committee on Audits and Financial Accountability for the Judicial Branch (Audit Committee) proposes revising the *Judicial Branch Contracting Manual* (JBCM) to increase the threshold below which a competitively bid procurement is not required, and to make other conforming edits, improvements, and corrections.

### Background

With certain exceptions,<sup>1</sup> the California Judicial Branch Contract Law (Judicial Branch Contract

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<sup>1</sup> Pub. Contract Code, §§ 19204(c), 19207, and 19208.

Law or JBCL),<sup>2</sup> enacted March 24, 2011,<sup>3</sup> requires that California judicial branch entities comply with the provisions of the Public Contract Code (PCC) applicable to state agencies and departments related to the procurement of goods and services.<sup>4</sup> The JBCL applies to all covered contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.<sup>5</sup>

The JBCL also requires the Judicial Council of California (Judicial Council or council) to adopt a judicial branch contracting manual that (1) contains policies and procedures applicable to judicial branch entities related to the procurement of goods and services, and (2) is consistent with the PCC as well as substantially similar to the *State Contracting Manual* (SCM) and the *State Administrative Manual* (SAM).<sup>6</sup>

At the council's business meeting on August 26, 2011, the council adopted the *Judicial Branch Contracting Manual*, effective October 1, 2011, the operative date of substantive requirements of the JBCL. The council adopted revisions to the JBCM in December 2011, April 2012, August 2012, December 2013, June 2015, June 2016, July 2017, July 2018, September 2019, September 2020, October 2021, October 2022, October 2023, October 2024, and December 2025.

The version of the JBCM adopted at the council's regular business meeting on December 12, 2025, remains in effect as of the date of this invitation to comment. The current version of the JBCM became effective on January 1, 2026, and can be viewed at [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf).

Under rule 10.63(c) of the California Rules of Court, the duties of the Audit Committee include (1) advising and assisting the council in performing its responsibilities and exercising its authority under the JBCL, and (2) reviewing and recommending to the council proposed updates and revisions to the JBCM.

## **The Proposal**

Pursuant to rule 10.63(c), the Audit Committee proposes that the JBCM be revised. The Audit Committee plans to recommend JBCM revisions to the council, and invites public comment on the JBCM revisions proposed below.<sup>7</sup> It is anticipated that the next revision of the JBCM will be

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<sup>2</sup> *Id.*, §§ 19201–19210. The JBCL is posted at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.5.&chapter=&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.5.&chapter=&article=).

<sup>3</sup> Sen. Bill 78 (Stats. 2011, ch. 10).

<sup>4</sup> Pub. Contract Code, § 19204(a).

<sup>5</sup> *Id.*, § 19203.

<sup>6</sup> *Id.*, § 19206. The SCM is posted at [www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual](http://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual), and the SAM is posted at [www.dgs.ca.gov/Resources/SAM](http://www.dgs.ca.gov/Resources/SAM).

<sup>7</sup> The JBCM Working Group provided input during the development of the proposed JBCM revisions.

considered by the council at its meeting scheduled for December 10-11, 2026; if adopted by the council, the effective date of the revised JBCM would be January 15, 2027.

Summary of proposed revisions:

- Dollar amount threshold for non-competitively bid procurements: Revisions have been made to SCM, volume 1 (covering non-IT services) and SCM, volume 2 (covering non-IT goods, and IT goods and services) to raise the dollar amount threshold below which a competitively bid procurement is not required. The threshold in the SCM was increased from \$10,000 to \$20,000 for non-IT goods and services as well as IT goods and services.<sup>8</sup> Therefore, to reflect this SCM revision, edits are proposed for the JBCM, in chapter 5, section 5.1, to raise the dollar amount threshold (below which a competitively bid procurement is not required) from \$10,000 to \$20,000 for non-IT goods and services as well as IT goods and services.<sup>9</sup>
- Fair and reasonable pricing methodology: The JBCM provides, in chapter 5, section 5.1, that JBEs may purchase goods and services below the dollar amount threshold without conducting a competitive procurement “so long as the Buyer determines that the pricing is fair and reasonable.” The current version of the JBCM does not have provisions on how to determine fair and reasonable pricing. Therefore, a new section 5.16 (“Fair and Reasonable Methodology”) in Chapter 5 of the JBCM is proposed, to provide guidance to judicial branch entities on techniques for determining fair and reasonable pricing.<sup>10</sup>
- Dollar amount threshold for advertising of a solicitation (non-IT services only): Revisions have been made to the SCM, volume 1 (covering non-IT services) to raise the dollar amount threshold at which advertising of a solicitation is required. The threshold in SCM, volume 1 was increased from \$10,000 to \$20,000 (for non-IT services).<sup>11</sup> Therefore, edits are proposed for the JBCM, to raise the advertising threshold for non-IT services from \$10,000 to \$20,000.<sup>12</sup>
- Improvements, updates and corrections: Additional, miscellaneous revisions are proposed to make improvements, updates and corrections in the JBCM. For example, to implement

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<sup>8</sup> SCM, volume 1, section 5.80(B)(2)(p); SCM volume 2, section 1501.

<sup>9</sup> In addition to JBCM chapter 5, section 5.1, conforming edits are proposed for JBCM chapters 4A, 4B, 4C, 5, and 6.

<sup>10</sup> The proposed revisions are based on the SCM’s description of fair and reasonable pricing techniques (SCM, volume 2, section 1510) as well as the Judicial Council Branch Accounting and Procurement office’s guidance on fair and reasonable pricing methodologies.

<sup>11</sup> SCM, volume 1, section 5.75(A).

<sup>12</sup> JBCM chapter 4B, step 7.

gender neutral language,<sup>13</sup> to update references to the SCM and the PCC,<sup>14</sup> and to reflect updated nomenclature (e.g., updates regarding Judicial Council office names).

### **Alternatives Considered**

No alternatives were considered because under the JBCL, only the Judicial Council has the authority to revise the JBCM. The JBCM is itself required by law, and the proposed revisions will make the manual more effective and workable for judicial branch entities.

### **Fiscal and Operational Impacts**

No significant costs or operational impacts result from implementing the proposed revisions to the JBCM.

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### **Request for Specific Comments**

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

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

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### **Attachments**

Attachment A: Proposed revisions to the JBCM.

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<sup>13</sup> Please see conforming edits below in Chapters 3, 4, 4A, 4C, 5, 8, and 11. The proposed edits to implement gender neutral language are consistent with Assembly Concurrent Resolution No. 260 (Stats. 2018, ch. 190), which stated that state agencies should engage in efforts to use gender-neutral pronouns and avoid the use of gendered pronouns when drafting policies, regulations, and other guidance.

<sup>14</sup> Please see conforming edits below in the JBCM's Introduction and in Chapter 8.

## Attachment A

<b>JBCM Chapter</b>	<b>Proposed revisions to:</b>
Introduction	Pages 3 and 8
Ch. 2	Page 4
Ch. 3	Pages 5 and 6
Ch. 4	Pages 14, 17, and 19
Ch. 4A	Pages 5, 7, 9, and 11
Ch. 4B	Pages 5 and 11
Ch. 4C	Pages 5 and 20
Ch. 5	Pages 3, 4, 9, 10, 11, and 12
Ch. 6	Page 4
Ch. 8	Page 18 and 22
Ch. 9	Page 9
Ch. 10	Page 7
Ch. 11	Pages 6 and 10

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Manual is October 1, 2011, and the effective date of the last revision to each chapter of the Manual is reflected on the first page of each chapter.

## 2. GUIDING PRINCIPLES IN THE DEVELOPMENT OF THIS MANUAL

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

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

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

Development of this Manual was complicated by the inapplicability of the SAM and SCM to the organization and operations of JBEs. The SAM and SCM were written for use by executive branch agencies, with the Department of General Services (DGS) as the entity charged with administering those agencies’ procurement and contracting activities. In contrast, management in the judicial branch is decentralized; for the superior courts, by way of example, the presiding judge of each court is responsible for approving procurements and contracts and the court executive officer is responsible for contract negotiations.<sup>3</sup> In addition, PCC 19207 acknowledges that neither DGS nor any other state entity is involved in approval or review of judicial branch procurement, except as specifically required by law. As a result, much of the material in the SAM and SCM either does not apply to JBEs or is incompatible with judicial branch organization

<sup>3</sup> CRC 10.603(c)(6)(D) and 10.610(c)(3); GC 77009(e). Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., SCM, volume 2, section [4.A1-0100](#)). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). In light of the decentralized structure of the judicial branch, and the fact that each JBE possesses its own purchasing authority, certain PCC provisions granting authority to DGS or the Director of DGS have been interpreted as granting equivalent authority to each JBE, or the Approving Authority of each JBE.

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## County and other Local Agency Procurement Policies

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

### 7. ACCESS TO THE JUDICIAL BRANCH CONTRACTING MANUAL

This Manual is available on the Internet at [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf) ~~[www.courts.ca.gov/finance.htm](http://www.courts.ca.gov/finance.htm)~~.

### 8. USE OF WORDS SIGNIFYING REQUIREMENTS OR DISCRETION

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

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

- Applying the appropriate laws, regulations, policies, and procedures to the specific purchase; and
- Completing external notices and reviews as applicable.

Improperly classifying a purchase may result in:

- Delaying a JBE's program or project;
- Waste of time and effort, ultimately wasting taxpayer money;
- Loss of funding; and
- Disputes, protests, or lawsuits.

2. Purchase classification: The first step in classifying a purchase is determining whether:

- The purchase involves goods or services; and
- The purchase is for IT or non-IT goods or services.

In most cases, a Buyer will be able to classify a purchase quite simply. If the purchase involves only the purchase of ladders, furniture, or office supplies, the purchase is a non-IT goods purchase. If the purchase involves only the purchase of legal services, the purchase is a non-IT services purchase. If the purchase involves only computer equipment and software, the purchase is an IT goods purchase. In other cases, a single purchase may involve the purchase of both goods and services, or both IT and non-IT goods and services. The sections below provide guidance to Buyers in classifying mixed purchases.

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

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

- If the main value is the **goods**, the transaction should be treated as a goods purchase. In procurements of non-IT goods, however, if the value of incidental non-IT services is \$120,000 or higher, the non-IT services must be procured separately unless an exemption is obtained. For more information on this topic, see chapter 4A of this Manual.

- Upon completion of the contract term, requiring each prime contractor with DVBE subcontractors to submit to the JBE certain certifications under MVC 999.5(d).

#### **D. Adoption of Rules and Procedures for a DVBE Program**

Each JBE must develop or adopt a set of rules and procedures for the implementation of a DVBE program. DGS has established a system of rules and regulations for managing the DVBE program that includes forms that may be adopted and modified by JBEs that wish to establish their own program. The Judicial Council's [Business Services unit-Branch Accounting and Procurement office](#) and ~~the~~ Legal Services office are available to assist courts in establishing a program.

Rules and procedures for the following must be established:

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

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

#### **E. Appointing a DVBE Advocate**

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

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

#### **F. Waiver of a DVBE Incentive**

Although all competitive procurements are subject to the DVBE incentive, a JBE, through its Procurement and Contracting Officer (PCO) or designee, has the discretion to waive inclusion of the DVBE incentive in an individual solicitation or a number of solicitations, including but not limited to where the following determining factors exist: (i)

few or no DVBE subcontracting opportunities exist, (ii) subcontracting a portion of the work is not normal for the industry, (iii) the work is so specialized that there are few or no DVBEs that can perform the work themselves without subcontracting it, or (iv) the work is a procurement pursuant to Government Code §§ 14838.5(a).<sup>2</sup> Note, however, that the overall DVBE participation goal of 3 percent of annual total contract value still applies. The JBE's PCO or designee must document the procurement file whenever the DVBE requirement has been waived, using a DVBE form that will include a signature from the PCO (or designee) authorizing the DVBE waiver, along with the reason(s) for waiving the DVBE incentive for the individual solicitation.

## G. General Requirements for DVBE Procurements

### 1. *Verifying Bidder Status as a DVBE*

Verifying certification status: For competitive solicitations that include the DVBE incentive, JBEs must verify California DVBE certification status before a contract award regardless of the procurement approach. Status can be verified by accessing the DVBE services certified firm inquiry database, currently available at <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>

If this database is used in support of DVBE certification, a printout can simply be placed in the procurement file.

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

A plan is a Bidder's written commitment to contract with certified DVBEs for at least 3 percent of its business's total contract dollars expended in California during the next year (i.e., the year after the year in which the contract is awarded). This 3-percent commitment applies to all business done by the Bidder in California, not just contracts with the State of California. The DGS procurement division provides plan approval. A plan is considered approved by the DGS on the date of submission

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<sup>2</sup> A JBE may determine that a fiscal emergency exists necessitating the temporary suspension of the JBE's DVBE program. If a JBE suspends its program due to a fiscal emergency, the JBE should have the Approving Authority, or [his/her/their](#) appointee, document the extent of and reasons for the suspension.

- Be unbiased and able to evaluate all Bids fairly; and
- Withdraw from participating in an evaluation if ~~he or she has~~they have 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.

- 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~~ their 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.

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](http://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html)

CDTFABOE list: [www.cdtfa.ca.gov/taxes-and-fees/top500.htm](http://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.

Solicitation Document	Procurement Size	Description
RFQ	Up to \$50,000 <sup>2</sup>	Used for straightforward, uncomplicated, and low-risk procurements.  <i>Note: Cannot be used if incidental services included in the purchase (e.g., set-up, installation) exceed \$19,999.99, unless an exemption is granted. See section A in the “Selected Topics Relevant to Solicitations of Goods” section below for additional information.</i>
IFB	Any size	Used for more complicated, higher risk, and higher value procurements.

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

## STEP 5—DRAFT SOLICITATION DOCUMENT

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

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

- Product specifications must not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California (see PCC 10302.6).

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

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

## STEP 6—PREPARE ADVERTISING

A JBE must advertise any solicitation of non-IT goods **in excess of \$50,000**.<sup>3</sup> See chapter 4, section 4.1.D of this Manual for advertising methods.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

**Note:** If incidental services included in the purchase (e.g., set-up, installation) exceed \$19,999.99, the solicitation must be advertised even if the total estimated value of the solicitation is under \$50,000. See section A in the “Selected Topics Relevant to Solicitations of Goods” section below for information regarding exemptions to this requirement.

## STEP 7—RECEIVE BIDS

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

### A. RFQs

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

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

### B. IFBs

Bids must be submitted in sealed envelopes. A JBE should time/date stamp Bids as they are received.

Bids received pursuant to an IFB solicitation remain confidential until the Bids are publicly opened.

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<sup>3</sup> All solicitations of non-IT goods in excess of \$50,000 must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than \$50,000.

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

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

**Note:** For purposes of determining the lowest Bid, the amount of sales tax must be excluded from the total amount of the Bid (PCC 10301). See chapter 3 of this Manual for more information regarding preferences, incentives, and discounts. See chapter 4, section 4.4.D of this Manual for guidance on determining whether a deviation is material.

## A. RFQs

Under PCC 10301, JBEs must award contracts for non-IT goods above a threshold amount to the lowest responsible bidder. The default threshold amount is \$25,000, but the Approving Authority may establish a higher threshold amount for [his or her](#)their JBE.<sup>4</sup> If the Approving Authority establishes a higher threshold amount, the JBE should document this higher threshold amount in its Local Contracting Manual.

RFQs less than the threshold amount: JBEs are not statutorily required to award the contract to the lowest responsible bidder if the JBE has a valid business reason to do otherwise.

RFQs equal to or above the threshold amount: The JBE must award the contract, if at all, to the **Responsible Bidder** that submitted the lowest **Responsive Bid** after application of any preference, incentives, or discounts, if applicable.

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<sup>4</sup> PCC 10301 allows the director of the Department of General Services (DGS) to establish a higher threshold amount applicable to procurements of non-IT goods by state agencies. Within the executive branch, purchasing authority resides primarily with DGS (see, e.g., *State Contracting Manual*, volume 2, section 1.A1.0). Within the judicial branch, however, each JBE possesses its own purchasing authority (see chapter 1, section 1.1.A of this Manual). Accordingly, the authority to establish a higher threshold amount for a JBE resides in the Approving Authority of that JBE. If the Approving Authority establishes a higher threshold amount, the Approving Authority must ensure that (i) the higher threshold amount is reasonable and appropriate, and (ii) the JBE provides adequate oversight for procurements conducted pursuant to the higher threshold amount.

has responded to the protest. For more information regarding protest procedures, see chapter 7 of this Manual.

### **STEP 13—CREATE THE CONTRACT**

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

### **STEP 14—CREATE THE PROCUREMENT SUMMARY DOCUMENT**

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

### **STEP 15—NOTICES OR REVIEWS**

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

## **SELECTED TOPICS RELEVANT TO SOLICITATIONS OF GOODS**

### **A. Incidental Services**

Unless an exemption is granted, incidental services included with the purchase of non-IT goods:

- May not exceed \$19,999.99, and
- Should be directly related to the purchase of non-IT goods, such as setup or installation.

Unless an exemption is granted, the solicitation must be advertised if the value of incidental services included in the purchase exceeds \$19,999.99, even if the total estimated value of the solicitation is under \$50,000.

The Approving Authority, or ~~their~~ delegee, may grant an exemption to these requirements if ~~they~~ determines, in ~~their~~ sole discretion, that the cost of complying with the requirement will likely exceed the savings generated by complying with the requirement.

## STEP 5—SELECT SOLICITATION DOCUMENT TYPE

Three types of Solicitation Documents are used in the procurement of non-IT services:

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

The table below provides guidance on when the various types of Solicitation Documents are typically used.

Solicitation Document	Procurement Size	Description	Awarded to:
RFQ	Less than \$ <del>20</del> 20,000 <sup>2</sup>	Used for small purchases.	Lowest Responsible Bidder or Highest Scored Bid, at the JBE's discretion
IFB	Any size	Used for simple, common, or routine services that may require personal or mechanical skills.	Lowest Responsible Bidder
RFP	Any size	Used for complex or unique non-IT services in which professional expertise and methods may vary greatly, and creative or innovative approaches are needed.	Highest Scored Bid

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

The evaluation plan must provide for a fair and equitable evaluation of all Bids. The evaluation plan must include:

- Rating and scoring factors that will be considered; and
- Criteria for assigning cost points (see step 13 regarding assignment of cost points).

The evaluation plan should include the following:

- Price is given substantial weight in relationship to all other criteria used. JBEs should seek legal counsel before issuing an RFP where cost points are less than 30 percent of the total points.
- Exceptions (additions, deletions, or other modifications) to the JBE's terms and conditions may be considered as part of the evaluation process.
- If a material exception (addition, deletion, or other modification) is taken to a minimum term, the Bid is nonresponsive. Note that the JBE, in its sole discretion, will determine what constitutes a material exception.

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

Other Procurement-Related Information: The RFP should state the date of oral interviews, if any. The date for oral interviews may be tentative.

## **STEP 7—PREPARE ADVERTISING**

A JBE must advertise any solicitation of non-IT services of **\$420,000 or more**.<sup>3</sup> See chapter 4, section 4.1.D of this Manual for advertising methods.

Because the advertisement should be released before or simultaneously with the Solicitation Document, the Buyer should prepare any necessary advertisement in conjunction with the Solicitation Document.

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<sup>3</sup> All solicitations of non-IT services of \$420,000 or more must be advertised, even if the JBE adopts a threshold for use of RFQs that is higher than \$420,000.

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

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

#### **STEP 4—SELECT SOLICITATION DOCUMENT TYPE**

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

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

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

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

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

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 ~~their~~<sup>his or her</sup> 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.

## INTRODUCTION

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

The following are the categories of allowed NCB procurements:

- Purchases under certain dollar amounts;
- Emergency purchases;
- Purchases from governmental entities;
- Legal services;
- Certain Leveraged Procurement Agreements (LPAs);
- Purchases from a business entity operating a Community Rehabilitation Program (CRP);
- Licensing or proficiency testing examinations;
- Subvention and local assistance contracts; and
- Sole source.

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

## DEFINED TERMS

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

### 5.1 PURCHASES UNDER CERTAIN DOLLAR AMOUNTS

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

JBEs may purchase non-IT goods, non-IT services, or IT goods and services that cost less than \$420,000 without conducting a competitive procurement so long as the Buyer determines that the pricing is fair and reasonable ([please see chapter 5, section 5.16 for guidance on fair and reasonable methodologies](#)).

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

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

**Note:** Although not required to do so, JBEs may competitively solicit Bids for purchases under the foregoing dollar amount limits. An RFQ is usually used for such procurements.

## 5.2 EMERGENCY PURCHASES

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

An emergency procurement must be approved in writing by the Approving Authority or ~~their~~<sup>his or her</sup> delegee. The Approving Authority (or delegee) may approve an emergency procurement only if ~~he or she~~<sup>they</sup> determines that immediate acquisition is necessary for the protection of the public health, welfare, or safety.<sup>1</sup>

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

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

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<sup>1</sup> For purchases of non-IT services, the Approving Authority (or delegee) may also approve an emergency procurement if ~~they~~<sup>he or she</sup> determines that immediate acquisition is necessary for the protection of state property.

procurement is limited to pre-existing training courses; it does not cover the development of training or other personal or consulting services. A JBE shall not split contracts to avoid competitive bidding or other contract requirements. A JBE with recurring training needs should assess the JBE's cumulative amounts spent on training, and generally should go out to bid if there are significant ongoing and/or JBE-wide training needs.

## 5.12 AMENDMENTS

The JBE should submit certain amendments to the NCB process outlined below. The NCB process ensures that the amendment is in the best interest of the JBE.

### A. Amendments Covered

The types of amendments covered are those that affect the competitive basis on which the contract was awarded, including amendments that increase or decrease quantity, dollar amounts, or time. Specifically:

- Amendments to a competitively-solicited contract where the type of change contemplated in the amendment was not evaluated in the selection process;
- Amendments to an LPA purchasing document where the type of change contemplated in the amendment was not evaluated during the LPA review process; and
- Amendments to a small purchase (originally under [the dollar amount threshold in section 5.1 above](#)) ~~\$10,000~~ which increase the value of the purchase ~~to \$10,000 or more~~ [above the dollar amount threshold in section 5.1 above](#), if the original purchase was completed pursuant to section 5.1 above.

**Example:** The JBE has a services contract that is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, but renewal terms were not addressed in the Solicitation Document and were not considered by the Evaluation Team. Before extending the term of this contract using an amendment, the JBE should submit the amendment to an NCB process.

**Example:** The JBE has a contract that grants the JBE the option to extend the term of the contract for one year. The contract is nearing expiration, and the JBE wishes to extend the term of the contract using an amendment. The contract was competitively solicited, and the extension term was evaluated during the solicitation process. There is no need to submit the amendment to an NCB process.

**Example:** The JBE purchases 80 chairs, each costing \$100. The value of the purchase (\$8,000) is below \$240,000, and the purchase was completed as an NCB procurement pursuant to section 5.1 above. The JBE wishes to purchase an additional 130 chairs, each costing \$100, through use of an amendment. Because the new value of the contract (\$241,000) will be over \$240,000, the JBE should submit the amendment to an NCB process.

**Note:** Amendments correcting incidental omissions or mistakes (not affecting quantity, dollar amounts, or time) do not require an NCB process. For example, an amendment correcting or updating contact information would not require an NCB process.

## B. NCB Process for Amendments

The Buyer submits an NCB amendment request to the sole source approver.

The NCB amendment request should include the following information:

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

### 5.13 TRIAL COURTS: PUBLIC INPUT REQUIREMENT

A trial court must seek input from the public at least 15 Court Days before execution of an NCB contract in an amount that exceeds the greater of \$400,000 or 10 percent of the total trial court budget.

This requirement does not apply to a contract between a trial court and a county that is provided for by statute (e.g., court-county MOUs under GC 77212).

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

### 5.14 CERTIFICATION AND OTHER REQUIREMENTS IN NCB PROCUREMENTS

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

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

- Iran Contracting Act certification for purchases of goods or services of \$1,000,000 or more (see chapter 4, section 4.4.C.2 of this Manual);
- Darfur Contracting Act certification (see chapter 4, section 4.4.C.1 of this Manual); and
- seller's permit requirement for purchases of tangible personal property (see chapter 4, section 4.4.C.3 of this Manual).

In addition, any contract for the purchase of goods or services with a contractor identified by the Franchise Tax Board or the Board of Equalization as one of the 500 largest tax delinquents is void and unenforceable (see chapter 4, section 4.4.E of this Manual).

### 5.15 GENERATIVE ARTIFICIAL INTELLIGENCE (GENAI)

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

### 5.16 FAIR AND REASONABLE METHODOLOGY

When determining whether pricing is fair and reasonable, the methodology used should be included in the procurement file. Examples of techniques to determine fair and reasonable pricing include the following:

<b>Technique</b>	<b>Description</b>
<u>Price comparison</u>	<u>Obtain quotes, proposals, bids or offers from other responsible suppliers (e.g., within the prior 18-month period), which provides evidence that a price obtained is deemed fair and reasonable.</u>
<u>Catalog or market pricing</u>	<u>The price offered is supported by an established and verifiable catalog or market pricing media issued by a responsible supplier and/or through an established reputable forum. In addition, the pricing structure provided is one that a prudent buyer would accept as a reasonable representation of existing market value.</u>
<u>Use of cost-estimating or parametric</u>	<u>Estimates generated by appropriately calibrated and validated parametric models or cost estimating relationships demonstrate reasonableness of cost. Include documentation</u>

<u>application detailing basis of estimate</u>	<u>of the premise or basis from which critical aspects of a project estimate were developed including cost and labor estimates, material availability, any assumptions or deviations, any studies or analysis used as a reference and any other details which impacted the estimate.</u>
<u>Controlled pricing</u>	<u>The price offered is set by law, regulation, competitively bid master agreement or leveraged procurement agreement, etc.</u>
<u>Historical pricing</u>	<u>Demonstrate that other transactions occurring within a prior 18-month period show historical prices for same or similar acquisitions have yielded no material change in cost.</u>
<u>Cost/benefit analysis</u>	<u>A Buyer can demonstrate that their level of experience in the procurement field provides a sufficient knowledge base, which clearly indicates that the acquisition cost is low. The cost to the JBE of verifying the pricing fairness would most likely be more than any potential benefit that could be reasonably gained from searching the marketplace for lower price comparable acquisitions.</u>

**STEP 1—Business Requirements**

Define the JBE’s business requirements. Estimate in good faith the total cost of what will be procured.

**STEP 2—Identify an LPA**

Identify an LPA for the desired goods/services and determine whether pricing is fair and reasonable.

**Note:** Use of an LPA may not necessarily promote the efficient use of public funds. For example, in some LPAs, the published pricing and other contract terms may represent only a starting point, and do not necessarily reflect volume discounts that Vendors may be willing to provide to JBEs. Any cost savings associated with the LPA could be undercut by paying the published price or accepting unfavorable LPA terms. Therefore, JBEs should consider whether they can obtain better pricing or other terms through Vendor negotiations or conducting competitive bidding.

**STEP 3—Identify Multiple LPAs**

If the identified LPA in Step 2 was established by a California governmental entity<sup>1</sup> and competitively bid, skip to Step 4.

If a JBE wants to use an LPA that is either (i) not established by a California governmental entity, or (ii) established by a California governmental entity but not competitively bid by such entity, then the JBE should identify at least *three* LPAs for the desired goods/services whenever multiple suppliers are known to exist, and compare the LPAs on a “best value” (also known as “value effectiveness”) basis.<sup>2</sup>

The LPAs that the JBE identifies should be similar enough that work, pricing, and terms and conditions are subject to reasonable comparison. If multiple LPAs cannot be identified, and the JBE ~~is procuring goods or services estimated to cost \$10,000 or more~~cannot procure the goods and services through the procurement procedures in chapter 5, section 5.1 of this Manual, then: (i) the JBE should consider conducting a competitive solicitation if it knows there are Vendors of the desired goods/services other

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<sup>1</sup> For the purposes of this chapter, a “California governmental entity” includes, for example: (i) a California state or local governmental agency or entity; or (ii) a public college or state university established by California.

<sup>2</sup> If using an LPA established (and competitively bid) through the Western States Contracting Alliance (WSCA)/National Association of State Procurement Officials (NASPO) (or similar multi-state, established LPA programs), or if using a DGS LPA and its instructions state that comparison of multiple LPAs (or obtaining multiple offers from Vendors) is not required, then the JBE may consider not identifying/comparing multiple LPAs.

Vendor is a corporation, limited liability company, or limited partnership in good standing in order to be qualified to do business in California, as set forth above.

- Note 3: Applies only to contracts for \$100,000 or more. This CCC may be omitted if, after the JBE has taken all reasonable measures to find a contractor that complies with this CCC, the JBE determines that: (i) there is only one prospective contractor willing to enter into a specific contract with the JBE; (ii) the contract is necessary to respond to an emergency, as determined by the JBE, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this CCC capable of responding to the emergency is immediately available; or (iii) the requirements of this CCC violate, or are inconsistent with, the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the JBE to change the terms or conditions of any grant, subvention, or agreement to authorize application of this CCC.
- Note 4: Not applicable to purchases of goods by credit card for an amount less than \$2,500 from any one Vendor, not to exceed in the aggregate \$7,500 per year from the Vendor.
- Note 5: Not applicable to purchases of goods by credit card for an amount of \$2,500 or less from any one Vendor, not to exceed in the aggregate \$7,500 per year from the Vendor. In addition, the Approving Authority, or ~~his or her~~their designee, may waive this requirement upon a written finding that the contract is necessary to meet a compelling public interest. “Compelling public interest” includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in PCC 1102.
- Note 6: Mandatory only if the contract provides (i) for furnishing equipment, materials, or supplies (except related to the provision of public works), or (ii) for the laundering of apparel, garments, or corresponding accessories. Not applicable to purchases by credit card for an amount less than \$2,500 from any one Vendor, not to exceed in the aggregate \$7,500 per year from the Vendor.
- Note 7: Mandatory only if the contract is in excess of \$100,000.
- Note 8: Mandatory only if (i) the JBE is entering into a contract for \$1,000,000 or more and the JBE did not receive an Iran Contracting Act certification as part of the solicitation process, or (ii) the JBE is renewing a contract for \$1,000,000 or more. For additional information, including a sample certification form, see chapter 4, section 4.4.C.2 of this Manual.
- Note 9: Under PCC 2010, a person proposing to enter into or renew a contract \$100,000 or more with a JBE must provide a certification regarding compliance with the Unruh Civil Rights Act and the California Fair Employment and Housing Act. For additional information, including a sample certification form, as well as PCC 2010 requirements regarding the submission of bids or proposals, see chapter 4, section 4.4.C.3, and Appendix C of chapter 4.

	Provision	PO	Standard Agreement	Short Form Agreement (under \$50,000)	MOU	IBA
<b>34.</b>	Suspension of work		R (see note 10)			

- Note 1: Mandatory unless the JBE has the right to terminate the contract for convenience.
- Note 2: Mandatory in any contract under which goods are provided to a JBE.
- Note 3: Mandatory only if a contract was obtained by means of a competitive bid.
- Note 4: Mandatory if the contract provides for the purchase of goods specified in PCC 12207 (paper products; printing and wrapping papers; ~~mulch, compost, and cocompost products~~[soil amendments and soil toppings](#); [erosion control products](#); glass products; lubricating oils; plastic products; paint; antifreeze; [retread](#) tires and tire-derived products; ~~and metal~~; [building finishes](#); [carpet](#); [and textiles](#)). Also mandatory in janitorial/building maintenance contracts, and printing contracts, as described in appendix C of this chapter.
- Note 5: With certain exceptions, mandatory if a contract includes services in excess of \$200,000. Exceptions: this provision should not be included in (i) consulting services contracts, or (ii) contracts for services related to public works, if the contract value exceeds the amount set from time to time, pursuant to PCC 10105. For information regarding consulting services contracts, see appendix C, section 1 of this chapter.
- Note 6: Mandatory only if a Vendor received a DVBE incentive in connection with the agreement.
- Note 7: Mandatory only if a Vendor received a small business preference in connection with the agreement; applicable only to procurements of IT goods and services.
- Note 8: Certain language is mandatory in any contract that allows for reimbursement of Vendor expenses. Other language is mandatory in contracts if the amount is above \$50,000.
- Note 9: Strongly recommended for IT agreements or other agreements where there is valuable work product.
- Note 10: Recommended if temporary delay is a possibility, particularly in large-scale or complex services agreements.

Prompt payment discounts: Some Vendors may offer discounts for prompt payment. A JBE may elect to accept these payment terms when it is in the best interests of the JBE, after considering all financial and Vendor performance factors.

Separation of duties: JBEs should have policies and procedures in place to ensure a clear separation of duties in order to reduce the risk of error or fraud in the JBE's contracting and procurement programs. See chapter 1 of this Manual on purchasing roles and responsibilities for more information.

Travel provisions: All travel expenses should be related to official JBE business. Reimbursement for such expenses should only be permitted if provided for in the contract. If the JBE will be reimbursing the Vendor for travel expenses, the contract should include appropriate travel-related provisions, including travel expense reimbursement limits that are in accordance with the judicial branch travel guidelines.

## 9.2 PURCHASE CARD PROGRAMS

### A. Use of Purchase Cards Generally

Purchase cards are a method of payment that works similar to personal credit cards. JBEs should establish internal controls to monitor their use of purchase cards.

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

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

1. The state-administered procurement card program, CAL-Card, is available to all superior courts, and has usage limitations defined by the program. The Judicial Council's [Branch Accounting and Procurement office Business Services unit](#) is available to assist with answering questions about this program.
2. Purchase cards typically are used only for the procurement of goods. Examples of items that may be purchased using purchase cards include library purchases, subscriptions, office supplies, and minor equipment. Although purchase cards should not be used to procure services, if a superior court purchases goods that have ancillary services associated with them, the entire transaction may be

related matters. JBEs are also encouraged to consult with the Judicial Council's [Business Services unit Branch Accounting and Procurement office](#) on nonlegal, business-related issues.

## 10.5 REJECTING NONCONFORMING GOODS

If the goods do not conform to the requirements of the contract (including technical specifications) and the JBE decides to reject the goods, then the JBE should notify the Vendor in writing as specified in the contract or, if not specified, in a timely manner. The notice should describe the nonconformity to the contract (including any applicable acceptance criteria).

To preserve its legal rights, the JBE is responsible for making arrangements to hold the rejected goods, protect them from damage, and take reasonable care of rejected goods until the Vendor can take possession of the goods.

**Note:** Acceptance/rejection of goods can involve complex legal requirements and considerations. JBEs are encouraged to consult with the Judicial Council's Legal Services office as needed (as well as with the Judicial Council's [Business Services unit Branch Accounting and Procurement office](#), as needed, on nonlegal, business-related issues).

## 10.6 ASSET MANAGEMENT

**Note:** Superior courts should refer to FIN 9.01 (Fixed Asset Management) of the *Trial Court Financial Policies and Procedures Manual* regarding asset management in lieu of the information below.

### A. Controls Over Assets

JBEs are responsible for safeguarding their assets, and should implement sufficient security controls for goods considered vulnerable to loss or unauthorized use. Inventory should be periodically taken and compared to control records.

The following items purchased by JBEs should be tagged:

- An item with a value of more than \$1,000 and an anticipated useful life of more than one year; or

- Involve the JBE's procurement and legal staff or, alternatively, the Judicial Council's Legal Services office, when questions arise regarding acceptable or unacceptable behavior when dealing with Vendors.

No Contract Administrator may accept, directly or indirectly, any gift, money, loan of money or equipment, meal, lodging, transportation, gratuity, favor, entertainment, service, or any other item of value from any person who is doing or seeking to do business of any kind with the Contract Administrator's JBE. Such circumstances could be construed as intent to influence the Contract Administrator in ~~their~~<sup>his or her</sup> official duties or as a reward for official action performed by the Contract Administrator and such items must be declined.

Other ethical issues include the following:

- Contract Administrators must not purchase goods or services from any business entity in which they have a financial interest;
- Contract Administrators are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship; and
- Even the appearance of questionable or unethical practices is detrimental to both the Contract Administrator and the judicial branch.

## 11.5 RECORD KEEPING AND FILES

### A. Vendor Lists

The JBE should develop and maintain a list of Vendors<sup>1</sup>. The JBE may use an electronic procurement system for this purpose. For each Vendor, the following information should be included:

- Vendor name;
- Tax identification number;
- Vendor address;
- Point of contact information including telephone and fax numbers, e-mail addresses, etc.;
- Vendor's valid seller's permit number, if applicable;
- Licenses required for the Vendor to perform the contracted services;

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<sup>1</sup> The list may be maintained in multiple record-keeping systems.

2. A contract may be drafted to include an option that is exercised upon the inaction of a party. The contract may call for the extension for an additional term or multiple additional terms if a party does not issue a notice of termination of the contract by a certain time prior to the end of the then-existing term. This is known as an “evergreen clause.”<sup>4</sup> Because a JBE could become unintentionally bound to perform for an extended term due to inaction, the use of an evergreen clause should be carefully considered and contracts containing this clause will need to be carefully managed. An alternative practice would be to use an option to extend the term of the contract requiring written election to exercise an option.
3. The appropriate person in the Judicial Council’s [Branch Accounting and Procurement office](#)~~Business Services unit~~ should be notified upon the exercise of a contract option by the Judicial Council, the HCRC, or an appellate court,<sup>5</sup> including an extension of time or an increase or decrease in the contract value. In the event of an option exercised by a notice of exercise of option or other form of communication, the Judicial Council’s [Branch Accounting and Procurement office](#)~~Business Services unit~~ should receive a copy of the notice of exercise of option or other form of communication.

## B. Change Orders

1. A change order is a modification to the terms of the original contract that is permitted by the original contract. Change orders may affect any term of the original contract such as the Statement of Work (SOW), delivery point, date of delivery, contract period, price, or quantity as long as the change is anticipated and permitted by the original contract. The resulting modified contract has the full force and effect of the original contract. Change orders do not prejudice or limit any of the Vendor’s rights to make claims or appeal disputes under other provisions of the contract.
2. Provisions for change orders are usually found in construction and large scale software development agreements where the SOW may be defined but the specifics as to how that scope will be fulfilled may not be known until the project is underway. A change order may take the form of a unilateral written order by the JBE directing the Vendor to change the contract’s service and/or materials requirements that may affect contract price and time of contract completion. Such

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<sup>4</sup> Contracts containing evergreen clauses are often referred to as “evergreen contracts.”

<sup>5</sup> This applies regardless of whether the option is exercised by action or inaction.