

## **5. COMPETITIVE BIDDING METHODS**

### **5.00 INTRODUCTION**

This chapter provides recommended guidelines and procedures that should be used when seeking vendors and contractors to perform services and for consultant service contracts. Most of these guidelines are based on existing State policy and established practices; some are also based on statutory requirements.

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(Rev 11/12)

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## **5.02 STATUTORY AND REGULATORY REFERENCES** **(Rev 1/14)**

### **A. Public Contract Code Sections**

1. DVBE participation and incentives. (PCC § 10115 see also Mil & Vet code § 999, et seq.)
2. Service contracts. (PCC §§ 10295, and 10335 et seq.)
3. Consultant services contracts. (PCC §§ 10295, and 10335 et seq.)
4. Conflict of interest by current and former State employees. (PCC §§ 10410 – 10411.)

### **B. Government Code Sections**

1. Target Area Contract Preference Act (TACPA) (GC §§ 4530 – 4535).
2. Antitrust claims (GC §§ 4550-4554).
3. Small business bidder preference (GC § 14838).
4. Nondiscrimination compliance programs (GC § 12990).
5. California State Contracts Register advertising (GC §§ 14825 - 14829.2).
6. SB and DVBE quotes (GC §§ 14838.5, 14838.7)

### **C. Title 2, California Code of Regulations**

1. Contract protest procedures (section 1195).
2. Application of small business, TACPA, and DVBE regulations (section 1896 et seq.).

## **5.03 FUNDAMENTAL RULES**

**(Rev 10/98)**

- A. An agency may not draft any competitive bidding document (i.e., IFB or RFP) in a manner that limits bidding directly or indirectly to any one bidder. (PCC § 10339.)
- B. Services may not be split to avoid the need to advertise or obtain competitive bids. 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 a State law, policy, or departmental procedure. (PCC § 10329.)
- C. Sealed bids must be received at the place and by the time stated in the IFB or RFP. Bids received after the time stated in the solicitation document is not valid regardless of the circumstances causing the late submittal. (PCC § 10341.)
- D. The sealed cost bids for an IFB and RFP primary must be publicly opened. (PCC §§ 10341 and 10344.)

## **5.04 PRELIMINARY CONSIDERATIONS AND DECISIONS**

**(Renumbered and revised 11/12)**

Many of the questions and decisions needed to establish a sound basis for a final contract must be addressed by the contract users. They are the individuals most concerned with both quality and usability of what will be produced under the contract. They are the individuals best equipped to ask and to answer the main questions about the performance leading to the final service or product that prompts the need for the contract.

Primary Contracting Considerations:

1. What type of service is needed and why and when is it needed?
2. Can services be provided within the agency?
3. Can another State agency provide the service through an Interagency Agreement? (If agency staff cannot provide the services, a justification consistent with GC § 19130 is required.)
4. If an outside contractor is to be used, how will the contractor be obtained? Will it be necessary to competitively bid, or does one of the exemptions to bidding apply?
5. What type of contract is involved? Goods, IT goods, IT services, IT consulting services, non-IT services, non-IT consulting services?

Note: The Scope of Work is the key to a satisfactory contract. The level of satisfaction depends on fully assessing and defining the contract need. The determination of a level of quality sufficient to meet the need and guarantee the

desired outcome and identification of the capability and qualifications required of a contractor to accomplish the outcome will produce a successful contract.

## 5.05 COMPETITIVE BIDDING REQUIREMENTS AND ALTERNATIVES (New 11/12)

Contracts must be competitively bid using the Public Contract Code process, unless there is a legally authorized basis for bid exemption. (PCC §10340(a).) Basic grounds for exemption include:

- A. Statutorily Exempt.
- B. Non-competitively bid exemption (NCB) or Special Category (SCR) approval.
  - 1. DGS Approved Exemptions (PCC § 10348)
  - 2. Categorical Exemptions

See SCM I, section 5.80 for more information regarding exemptions and alternative methods for award.

## 5.06 COMPARISON CHART OF BIDDING METHODS (Rev 04/22)

There are three basic types of services contract solicitations: Invitation for Bid, Primary Request for Proposal, and Secondary Request for Proposal. (See PCC§§ 10340-10345.)

**Table 5.1**

CONSIDERATIONS	INVITATION FOR BID	PRIMARY RFP	SECONDARY RFP
When this method is typically used	To obtain simple, common, or routine services that may require personal or mechanical skills. Little discretion is used in performing the work.  <b>Examples:</b> routine pest control, equipment maintenance, uniform rentals	To obtain complex services in which professional expertise is needed and may vary. Where different methods and approaches may be applied during performance.  <b>Examples:</b> professional services such as auditing,	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly.  Creative or innovative approaches are needed.  <b>Examples:</b> public relations and advertising, complex research

		specialized data collection	projects
Cost/value of services	\$10,000 or more	\$10,000 or more	\$10,000 or more
CSCR advertising	Yes	Yes	Yes
Formal bidder Q&As with submittal deadline	Optional	Optional	Optional
Bidders' conference or site inspection	Optional, but bidders' conference is rarely needed for an IFB.	Optional. Held if needed to clarify service needs.	Optional. Held if needed to clarify service needs.
How award is made	Lowest responsible bidder: public bid opening	Lowest qualified responsible proposer; public bid opening	Highest-scored responsible proposer
Oral Interviews	Not applicable.	Optional. Held if needed.	Optional. Held if needed.
What information is submitted	Bid form and other material deemed necessary by the awarding agency.	Narrative proposal and a separate envelope containing cost information.	Narrative proposal, including a cost component, in one envelope
Statement of Work (SOW) considerations	SOW contains all contract requirements except price.	Objectives, major tasks, and timelines are identified.  Proposer offers detailed work plans, methods, etc.	Goals and objectives are stated. Proposer offers detailed work plans, approaches, methods, etc.

How small business preference is applied	The cost bid of a certified small business is reduced for evaluation purposes by 5 % of the lowest cost bid offered by a noncertified small business.	The bid of a certified small business is reduced for evaluation purposes by 5% of the lowest cost offered by a noncertified small business.	Certified small business will have its points increased by 5% of the total points awarded to the highest scored non-small business bidder.
Is TACPA applied?	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 and the work site is not fixed.	If the total contract is more than \$100,000 the work site is not fixed.
DVBE participation required?	Determined by Agency	Determined by Agency	Determined by Agency

## 5.07 DIFFERENCES BETWEEN IFBs AND PRIMARY RFPs (Rev 1/18)

The general differences are indicated in Table 5.2. To easily distinguish the two methods, different terminology is used. Generally, in IFBs the terms Bid and Bidder are used, and in RFPs the terms Proposal and Proposer are used, although the PCC uses them interchangeably.

**Table 5.2**

<b>INVITATION FOR BID</b>	<b>PRIMARY REQUEST FOR PROPOSAL</b>
Bidders may need to certify only that they meet the IFB requirements. Bidders acknowledge that they meet the IFB requirements.	Narrative proposals containing varying amounts of proposer information are usually required to be submitted.
Sealed bids or price quotes are submitted. A single-envelope or two-envelope process may be used.	Sealed cost proposals are submitted in separate envelopes from the narrative proposals.
A pass/fail determination is made for responsiveness to IFB requirements. This can be accomplished after bids are opened and read aloud.	Proposals are reviewed for responsiveness to RFP format requirements. Proposals may be rated or scored. Cost/price offerings of

	qualified proposers are opened and read aloud for responsible proposers.
Bidders' conferences are optional but are rarely needed.	Bidders' conferences are optional but are often held to clarify the services being sought.
To obtain services valued at \$10,000 or more.	Same as for IFB.
IFBs are used to secure simple services calling for routine personal or mechanical skills. Work methods are standard, or little discretion exists in terms of how the work is performed.	RFPs secure complex services calling for technical and/or professional skills and expertise. The proposer uses discretion in applying various approaches or methods.
Bidder capabilities are not rated or scored. Bidders either pass or fail IFB requirements.	Proposer qualifications, capability, and experience may be scored on evaluation criteria stated in the RFP.
The statement of work (SOW) is clearly stated. Bidders are generally told what, how, when, and where work and services are to be done.	The SOW contains as much detail/depth as possible but may include an agency's needs, goals, and objectives. Proposers are relied on to recommend methods or approaches to meet an agency's needs.
Award is made to the lowest responsible bidder.	Same as for IFB.

## 5.08 PRIMARY RFP AND SECONDARY RFP DIFFERENCES (Rev 6/17)

Table 5.3 outlines the differences between primary and secondary RFPs.

**Table 5.3**

PRIMARY RFP	SECONDARY RFP
<p>Services are complex, but not uncommon or unique.</p> <p><b>Examples:</b> Complex data collection, auditing</p>	<p>Services are complex, uncommon, or unique.</p> <p><b>Examples:</b> Public relations and advertising, complex research and consulting</p>

<p>Performance requires varying methods or approaches but not innovation or creativity.</p> <p>The methods and approaches used may not differ significantly from one proposer to another, which allows costs to be used as the deciding factor for making the award.</p>	<p>Performance requires unusual, innovative, or creative techniques, methods and approaches.</p> <p>The quality of expertise and approaches, methods, and innovation used may differ significantly from one proposer to another.</p>
<p>The statement of work (SOW) is fairly well defined in terms of services or functions that must be performed, as are the time frames that are required.</p>	<p>The SOW is less precisely defined and may contain only the agency's business needs, goals or objectives that must be met.</p>
<p>Costs proposals are submitted in a separate sealed envelope apart from the narrative proposal.</p>	<p>Price may appear as a section within the narrative proposal and must be a significant factor. Price does not mean cost effectiveness.</p>
<p>Narrative proposals are reviewed, evaluated, and scored for compliance with format, content, and qualification requirements.</p>	<p>Narrative proposals are evaluated and scored. Oral interviews are optional.</p> <p>Passing points may be set to determine the finalists.</p>
<p>Cost proposals are not scored.</p>	<p>The cost component is either scored against criteria stated in the RFP or subjected to a formula to convert the quoted cost into score or point values.</p>
<p>Qualified proposals that are responsive to the RFP requirements will have their cost/price proposals publicly opened and read.</p>	<p>Cost proposals are not announced or publicly read.</p>
<p>Following the opening and reading of cost proposals, cost proposals are then adjusted for applicable small business, TACPA, and DVBE Incentives.</p>	<p>Cost proposals are adjusted for applicable small business, TACPA, and DVBE Incentives.</p>
<p>A certified small business receives an amount equal to 5 % of the lowest cost proposal submitted by a non-certified small business reduced from its cost proposal.</p>	<p>A certified small business will have its total points increased by 5% of the total points awarded to the highest scored non-small business bidder.</p>
<p>Award is to the responsible proposer offering the lowest cost for its services.</p>	<p>Award is to the responsible proposer earning the highest overall score.</p>

## **5.09 RESERVED** (Rev 11/12)

[Former content of 5.09 has been merged into 5.30.]

## **5.10 RESERVED** (Rev 11/12)

[Former content of 5.10 was moved to 5.70.]

## **5.11 INVITATION FOR BIDS** (Rev 11/12)

- A. An Invitation for Bids (IFB) must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same work or equipment, specifications, and contract obligations.

An IFB seeks an answer to the following:

“Here is exactly what we need to have done. Here are the qualification requirements, performance specifications, time frames, and requirements that must be met. How much will you charge us?”

- B. An IFB must indicate the specific requirements of the State. Timely bids are reviewed to determine which bidders meet the requirements indicated in the IFB.

For each specific requirement, a basic yes or no answer is required. There is no “fully,” “barely,” “almost,” or “exceeded” level of evaluation. After identifying which bidders are responsive to all requirements stated in the IFB, it is then a matter of determining which bidder is offering the lowest cost for its services.

- C. All bids may be rejected whenever the agency determines that the cost is not reasonable, the cost exceeds the amount estimated, or otherwise in the best interest of the State. Although many agencies reserve the right to reject all bids, no bid may be rejected arbitrarily or without reasonable cause.

## **5.15 REQUEST FOR PROPOSALS** (Rev 10/05)

- A. A Request for Proposals (RFP) must be as precise as possible to ensure that all proposals are accomplishing the same goal. An objective evaluation procedure must be used to determine which proposers have complied with the RFP requirements and to whom the contract should be awarded.

- B. An RFP seeks an answer to the following:

“Here is what we wish to accomplish. Here are the qualification requirements, performance specifications, time frames, and other requirements that must be met. How would you accomplish the job for us and for how much?”

- C. An RFP should not be used when the service or equipment to be hired is standard, routine, or common, or when there is a standard associated with the service or equipment to be hired. For example, the hiring of a pest-control firm to do routine exterminations should be accomplished through an IFB, not an RFP.
- D. There are two (2) methods for evaluating proposals and awarding contracts (PCC § 10344):
  - 1. Primary Method: By this method, the contract is awarded to the responsible and qualified proposer offering the lowest cost for its services. For more information on the primary RFP method, see SCM I, section 5.20.
  - 2. Secondary Method: This method requires evaluation of proposals by an evaluation committee with the award made to the responsible proposer earning the highest score. For more information on the secondary RFP method, see SCM 1, section 5.25.
- E. Before soliciting proposals, agencies must determine which method of evaluation will be used in order to include the appropriate information in the RFP, as follows:
  - 1. A comprehensive evaluation plan must be developed and finalized. All rating and scoring factors which are to be considered must be included, criteria for considering costs to the State must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals (PCC § 10344).
  - 2. All proposals and all evaluation and scoring sheets must be available for public inspection at the conclusion of the scoring process (PCC § 10342).
- F. When an evaluation committee is appointed:
  - 1. The voting members used in the selection process shall be from the agency soliciting the proposals or awarding the contract.
  - 2. Private consultants may not be voting members of the committee and may only be used to provide clarification or subject matter expertise to the committee members.
  - 3. If the contract is awarded by a State board or commission, the recommendations of an evaluation committee shall be considered advisory in nature, and the board or commission must make the ultimate decision unless statute expressly permits the board or commission to delegate that responsibility.

## **5.20 REQUEST FOR PROPOSALS: PRIMARY METHOD** (Rev 3/03)

- A. In addition to the requirements identified elsewhere in this chapter, an RFP primary must include a requirement that each proposer submit its proposal with the cost proposal and all cost information in a separate, sealed envelope (PCC § 10344).
- B. Proposals received as a result of the primary RFP method must be evaluated and the contract awarded in the following manner:
  - 1. Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Proposal standards should be set so that every proposer deemed to meet the standards specified in the RFP could perform at the required level.
  - 2. The sealed envelopes containing the cost proposal for those proposals that meet the format requirements and standards shall then be publicly opened and read. The contract must be awarded to the lowest-cost responsible proposer.

## **5.25 REQUEST FOR PROPOSALS: SECONDARY METHOD (POINT COUNT OR HIGH SCORE)** (Rev 11/12)

- A. Use of the secondary RFP method should be limited to those instances in which agencies are seeking a unique solution to a problem or situation that cannot necessarily be resolved by the lowest bidder (i.e., when the methods, approaches, and procedures to be used in performing the work are of primary importance).
- B. When scoring a proposal, cost/value effectiveness and cost adequacy may be judged, evaluated and awarded points as part of the technical score, but this must be in addition to the cost points (PCC § 10344). Agencies should discuss the RFP with their assigned DGS/OLS attorney if considering developing a solicitation where cost points (dollars/actual price component) are less than 30% of the total points, or risk non-approval of the resulting contract.

The following formula may be used for the award of cost points:

Lowest cost proposal is awarded the maximum cost points. Other proposals are awarded cost points based on the following calculation:

Lowest Proposer's Cost = (factor) X maximum cost points = cost points for other proposer

Other Proposer's Cost

EXAMPLE: Lowest cost proposal = \$ 75,000

Other proposal = \$100,000

30 cost points available

(Lowest cost proposal)  $\frac{\$75,000}{\$100,000} = \frac{3}{4} \times 30 = 22.5$  cost points awarded to

\$100,000 other proposal

- C. Proposals received as a result of the secondary RFP method must be evaluated and the contract awarded in the following manner (PCC § 10344):
1. Review all eligible proposals (i.e., those that are received in the time and manner prescribed) to determine which ones meet the format requirements specified in the RFP.
  2. Those proposals that meet the format requirements shall then be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

### **5.30 REQUIRED LANGUAGE IN COMPETITIVE BIDDING DOCUMENTS (Rev 06/24) [\*\* Pending Update to TACPA 5.30.A.10 To Be Released Soon \*\*]**

- A. All competitive bid proposal packages (IFBs and RFPs) shall contain (as applicable):
1. Date, time, and place bids are due (PCC §§ 10341, and 10344)
  2. Small Business Preference Program information (GC § 14835) (SCM 1, chapter 8)
  3. DVBE participation goals (PCC § 10115 et seq.) (SCM 1, chapter 8)

Each State agency is required to have DVBE participation goals in contracts for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement (PCC § 10115 et seq.) except those services subject to Chapter 6 commencing with GC § 16850. Participation goals apply to the overall dollar amount expended each year by the awarding agency. Each agency is allowed to determine the dollar level and types of contracts that are subject to or exempt from DVBE goal participation. If the contract is of a type or total dollar amount subject to DVBE participation in accord with departmental procedures or regulations, the bid document used to procure such services, should contain applicable DVBE participation instructions and forms and DVBE audit language. For information on DVBE participation goals, refer to applicable State agency policies, procedures, or regulations or the statutes on this topic. (See SCM 1, chapter 8.)

4. DVBE Incentive or Documentation of Incentive Exemption (GC §§ 14600, 14615; 2 CCR § 1896.99.100) (SCM 1, chapter 8).

5. Conflict of Interest provisions (PCC §§ 10410, 10411); these provisions are now in the CCCs, available on the DGS/OLS website.
6. Corporate qualifications to do business in California (R&TC § 23101); these provisions are now in the CCCs, available on the DGS/OLS website.
  - a. When contracts are to be performed in the State by corporations, the contracting agencies should obtain verification that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
  - b. “Doing business” is defined in Revenue and Taxation Code § 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing services within the State not be subject to the franchise tax.
  - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies may determine whether a corporation is in good standing by accessing the Office of the Secretary of State’s web site at [www.sos.ca.gov](http://www.sos.ca.gov).
  - d. Contracting and approving agencies may obtain assistance from the Franchise Tax Board in evaluating a contractor’s claim of exemption. Inquiries should be directed to the Exempt Organizations Unit desk, telephone (916) 845-4171.
7. Drug-free requirements (GC § 8350 et seq.); these provisions are now in the GTCs available on the DGS/OLS website
8. Statement of Compliance (GC § 12990(a - f), 2 CCR § 11109); this provision is now in the CCCs, available on the DGS/OLS website
9. Antitrust claims (GC §§ 4552, 4553, and 4554); this provision is now in the GTCs, available on the DGS/OLS website
10. TACPA preference, if applicable (GC § 4530, et seq. and 2 CCR § 1896.30); **[\*\* Pending Update to be Released Soon \*\*]**

Each IFB or RFP for goods or services, in which the cost is estimated to be in excess of \$100,000, except when the work site is fixed by the terms of the contract, should contain a provision applying work site and hiring preferences, as applicable, to eligible California-based firms. Bidders and proposers may apply for such preferences by means of a Target Area Contract Preference Request - STD 830S (for services) or STD 830G (for goods) (2 CCR § 1896 et seq., see also SCM 1, chapter 8). Contact DGS/Dispute Resolution/Preference Program Section for information on TACPA at (916) 375-4604 or (916) 375-4600.

11. Protest procedures (SCM 1, chapter 6);
12. Loss leader provisions (PCC § 10344).
13. Darfur Certification (PCC § 10475 et seq.)
14. Iran Contracting Act Certification (PCC § 2202)
15. Insurance requirements (see SCM 1, §§ 3.12, 7.40)
16. Priority Hiring Considerations for Contracts with a Value in Excess of \$200,000; these provisions are now in the GTCs available on the DGS/OLS website.)

Every contract for services in excess of \$200,000 shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code § 11200 (PCC § 10353).

17. Civil Rights Certification PCC § 2010 (see SCM 1, § 3.33)
  18. Generative Artificial Intelligence disclosure notification and form (see SCM 1, §7.12)
- B. The general terms and conditions of the contract and any unique provisions should be included in the bid document to inform bidders of these requirements. See also 5.35.4.

### **5.35 DRAFTING AN RFP (Renamed 11/12)**

In addition to other requirements set forth in this chapter, further consideration should be given to effective drafting of RFPs. The more thoroughly that a State agency communicates its specific needs, requirements, goals, and objectives in the RFP, the more complete, responsive, and acceptable the proposals received will be.

- A. RFPs should include:
1. A statement of work that contains:
    - a. A clear, precise description of the work to be performed, services to be provided, problem to be solved, or the goals and objectives to be met.
    - b. An explanation in realistic terms of what the proposer is expected to accomplish including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence.
    - c. Practical and policy information, technological requirements or specifications, and legal limitations, if any.
    - d. Specific questions to be answered or issues to be addressed.

- e. Performance timelines or completion dates.
  - f. Required quality control standards to be met, if applicable.
  - g. A description of the items, products, or results to be delivered.
  - h. The format and number of copies of the completed progress reports and final report, if applicable.
  - i. The extent and nature of the assistance and cooperation from the State that will be available to the proposer.
2. Proposal instructions should contain a description of the format that proposals must follow and the elements they shall contain. The factors to be used in proposal evaluation and contractor selection may not be changed or added after the RFP has been distributed without adequate notice to all potential proposers through an addendum. RFPs must provide:
- a. Specifications, including:
    - Standards the agency will use in evaluating proposals.
    - Information on how the State will select the winning proposal.
  - b. Time schedules, including:

Date to submit questions or seek clarification of the RFP

    - Date of Proposers' Conference, if applicable.
    - Date on which the proposals must be submitted.
    - Timetable the agency will follow in reviewing and evaluating proposals.
    - Date of cost proposal opening.
    - Date of award.
    - Anticipated contract term, including commencement and completion dates.
3. Notice of payment terms or restrictions, including:
- a. Whether and to what extent progress payments will be allowed.
  - b. Whether payments are subject to payment withholds.
  - c. Penalties for late or inadequate performance.
4. Known or estimated budgetary limitations on the contract price, if applicable. Applicable contract provisions, including:
- a. Actual or sample contract language or boilerplate contract provisions that will appear in the resulting contract.

- b. It is important to include any terms or provisions that will place a contingent liability on the contractor or affect the contractor's operating costs.
5. Requirements those prospective proposers must address or include in their proposal, if applicable, such as the following:
  - a. A description of the proposer's qualifications, including:
    - Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California.
    - For proposers that are nonprofit organizations, proof of nonprofit status.
    - Copies of current business licenses, professional certifications, or other credentials.
    - Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more), as deemed applicable.
    - A list of current or former references for whom the proposer has performed similar work.
  - b. A brief list of similar types of contracts that were successfully concluded, with a sample of such work.
  - c. 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.
  - d. Identification of a project coordinator (recommended for all bid documents but required when consultants are sought).
  - e. Résumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services (required by law for consultant contracts).
  - f. An overall description of the techniques, approaches, and methods to be used in performing the services. For cost reimbursement contracts with consultants, the amount of time and manpower to be expended and the equipment and facilities to be utilized, if applicable.
  - g. 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 they were selected and why, résumés of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated
  - h. The total cost of the project, 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.
  - Other costs.
6. Identification of services provided on a flat fee, lump sum, or unit rate basis.

#### **5.40 GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPs**

The following are suggested criteria that may be used in evaluating proposals:

1. Does the proposing firm understand the agency's problem or needs?
2. Can the proposer fit this work into its existing obligations?
3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
6. Has the firm had experience performing work of a similar nature, size, and scope?
7. Does the proposer's past experience complement the services being sought, or is the proposer's past experience appropriate to qualify the proposer to perform these services?
8. What are the professional qualifications of the personnel that the firm will commit to the project?
9. Has the proposer allocated sufficient staff resources?
10. Has the proposer addressed all goals, objectives, service demands, and required deliverables specified in the RFP?

11. Does the proposer appear to be capable of handling and resolving unanticipated complications and delays without interrupting the delivery of services?
12. Are any proposed timelines for performance presented by the proposer feasible?
13. Did the proposer include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?
14. Does the proposer appear to have the capacity to manage fiscal resources responsibly?
15. Does the proposer have sound fiscal, accounting and cost-monitoring or budget-monitoring procedures in place?

#### **5.45 TIE BIDS** (Rev 11/12)

Agencies should provide for a tiebreaker in the solicitation document setting forth how the contract award will be made in the event of a tie. An example of permissible tiebreaker is a coin toss.

Such event must be observed by witnesses and ideally the affected bidders would be invited. See SCM 1, section 8.21.C for ties between certified small businesses and DVBEs.

#### **5.60 TIME FOR COMPLETION OF THE COMPETITIVE BIDDING PROCESS** (Rev 11/12)

- A. The bidding process often takes three to eight months from the time the advertisement is placed until the award is made. Resolution of protests may add a delay of one to three months.
- B. The time needed to complete a bid proposal process will depend on the type of competitive bidding method used, the complexity of the services required, the number of bids or proposals received, whether a bidders'/proposers' conference is held, whether DVBE participation is required, whether protests are received, and other factors.

#### **5.65 POSTING AND NOTIFICATION REQUIREMENTS** (Rev 4/15)

- A. RFP. After selecting a bidder for possible contract award under an RFP (Primary or Secondary):
  1. The agency must post, in an area accessible to the public, a letter of intent to award (PCC § 10345).

Note: Agencies may post the letter of intent on their Internet Homepage in addition to, but not in lieu of, the public posting.

2. The contract cannot be awarded for a period of 5 working days (starting the day after posting), during which time the agency must allow all bidders access to all the bid information including all responses and score sheets used in the evaluation (PCC § 10345).
- B. IFB. After selecting a bidder for possible contract award under an IFB:
1. The agency must post, in an area accessible to the public, including any Internet site identified in the IFB, for at least 5 working days prior to awarding the contract, a letter of intent to award if requested in writing by any bidder who has submitted a bid (PCC § 10345(a)(1)).
  2. If the lowest bidder is not being awarded the contract, the low bidder must be notified of that fact 5 working days prior to contract award. The notice should also include the reason why the lowest bidder is not being awarded the contract.
  3. If the agency is awarding to the lowest responsible bidder, and no requests have been made to publicly post a letter of intent, the agency may award the contract without delay.

## **5.70 COMPETITIVE BIDDING ISSUES**

**(Rev 04/22)**

- A. Advertising. Potential bidders must be formally notified of the bid opportunity through CSCR advertisement, unless an advertising exemption (approved Std 821) has been received. (Govt. Code § 14827.2.)
- B. Less than three bids. If three (3) competitive bids are not received, the State agency will prepare a complete explanation as to why less than three (3) competitive bids were received; provide a justification as to the reasonableness of the price; provide the names and addresses of the firms, or individuals specifically notified of the contracting opportunity; and retain this document in the agency's contract file (PCC § 10340).
- C. Preferences for certified small businesses, microbusinesses and non-small businesses subcontracting preference. There are preferences to be applied to eligible certified small businesses, microbusinesses and non-small businesses, which subcontract with at least 25% certified small businesses (See SCM 1, sections 8.20 and 8.21). Additional preferences under TACPA shall be granted as applicable when cost of the service will exceed \$100,000 and the work site will not be fixed by the terms of the contract.

Exceptions for IT services, architectural and engineering services and situations involving multiple contract awards are noted in the cited regulations. Additional information on TACPA can be obtained from the DGS Dispute

Resolution/Preference Program section (See 2 CCR § 1896 et seq. and SCM 1, chapter 8).

- D. DVBE Participation Requirements and Incentive (See SCM 1, chapter 8).
- E. There is no requirement to award a contract if, in the opinion of the State agency, no bids or proposals were received containing a reasonable contract price or if there is another business-based reason not to make an award.
- F. Rejection of non-responsible bidder. Under very specific circumstances, after identifying the first-ranked bidder in a solicitation and before issuing an intent to award, an agency may decline to award a contract to the first-ranked bidder upon a finding that the first-ranked bidder is not “responsible” under the statutorily-based standard and as interpreted by case law. An agency cannot make a unilateral finding of non-responsibility and proceed with an alternative award. Instead, the law requires that the agency provide the winning bidder with due process including notice of the specific documented reasons that the winning bidder is not responsible and provide the winning bidder with a meaningful opportunity to be heard and to refute those reasons. As this requires an agency to develop a process conforming with legal due process requirements the agency should consult its legal division for guidance and to promulgate regulations as appropriate. See *City of Inglewood v. Superior Court* (1972) 7 Cal.3d 861; *Taylor Bus. Service Inc. v. San Diego Board of Education* (1987) 195 Cal.App.3d 1331; *Boydston v. Napa Sanitation District* (1990) 222 Cal.App.3d 1362; *Advanced Real Estate Services, Inc. v. Superior Court* (2011) 196 Cal.App.4th 338

## **5.75 ADVERTISING STATE-CONTRACTING OPPORTUNITIES** **(Rev 1/18)**

- A. Contracts of \$10,000 or more must be advertised in the CSCR for at least 10 working days, unless exempt from bidding. Agencies cannot release solicitations prior to publication in the CSCR. Contracts awarded as an NCB and amendments that require an NCB approval, will be published in the CSCR by DGS/PD as part of the NCB approval process. No agency action is required to publish the NCB approval. (GC §§ 14827.1 -14827.3; PCC § 10335(a).)
- B. CSCR advertising procedures are as follows:
  - 1. Advertising in the CSCR is now done through the DGS eProcurement system. Agencies should submit advertisements using the DGS Procurement Division’s Internet Web page: <https://www.caleprocure.ca.gov/pages/index.aspx>. Agencies may contact CSCR eProcurement help desk at (916) 375-2000 or [eprocure@dgs.ca.gov](mailto:eprocure@dgs.ca.gov) for additional information.
  - 2. DGS charges a fee for each ad that appears in the CSCR.
- C. Under appropriate circumstances, agencies may obtain an exemption from advertising. This is done on a STD 821 submitted to DGS/Procurement Division. An exemption from advertising eliminates the CSCR advertising requirement

only; it is not an exemption from bidding. If DGS/Procurement Division approves a form STD 821 for an advertising exemption, DGS will publish a notice of exemption in the CSCR.

- D. Re-bids: Agencies conducting a re-bid need not obtain an approved Exemption from Advertising or re-advertise the contract opportunity in the CSCR, if:
1. The re-bid occurs within three (3) months of the publication of the original CSCR advertisement;
  2. Notice of rebid is provided to persons who are a UNSPSC match in eProcurement in addition to anyone who otherwise notified the contracting agency of their interest in the original solicitation; and
  3. No material change to the solicitation.

## **5.80 CONTRACTS EXEMPT FROM ADVERTISING IN THE CSCR AND COMPETITIVE BIDDING**

**(Rev 06/24)**

As noted in section 5.05, competitive bidding is required unless there is a legally authorized basis for bid exemption. Key exemption categories are identified below.

A. Statutory Exemptions

1. Contracts of less than \$5,000 (PCC §§ 10335(a), 10335.5(c)(5)).
2. Contracts of less than \$5,000 where only per diem or travel expenses, or a combination thereof, are to be paid (PCC § 10335(a)).
3. Emergency contracts. The work or service is for the immediate preservation of the public health, welfare, safety, or protection of State property (PCC §§ 1102, 10340).
4. Contracts with other California State agencies, and California State University and University of California campuses (PCC §§ 10335(a), 10340(b)(3); GC § 11256; see also SCM 1, sections 3.03 and 3.18.).
5. Contracts with other public entities, including contracts with another state, local, or Federal agency; a state agency, state college, or state university of another state; a local government entity of another state; auxiliaries of CSU or the California community colleges; or an organization acting as a governmental agency under a joint powers agreement (PCC §§ 10335(a), 10340(b)(3); see also SCM 1, section 3.06.A).
6. Contracts solely for the purpose of obtaining expert witnesses for litigation (PCC § 10335.5(c)(3)).
7. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff (PCC §10335.5(c)(4)).

8. Community Based Rehabilitation Program (CRP). Contracts with business entities operating Community Based Rehabilitation Program (CRP), that are justified under one of the exceptions in GC § 19130(b), and that meet the criteria established by Welfare and Institutions Code §19404 (PCC §10340). Note: Contracts with CRPs that are justified under GC § 19130(a) are required to be competitively bid.
9. Small Business/DVBE Option (GC §§ 14838.5; PCC §§ 10335.5(c)(6), 10340(b)(6)).
  - a. This option allows for an award under the following conditions:
    - 1) The contract is awarded to a certified small business, micro-business or disabled veteran-owned business;
    - 2) The contract award is greater than \$5,000 and less than \$250,000; and
    - 3) Quotes were received from at least two certified small businesses or micro-businesses; or two certified disabled veteran-owned businesses.
  - b. An award based on receiving only one quote is not permitted under this method.
  - c. Mixing quotes (e.g. one SB and one DVBE) is not permitted under this method.
  - d. The code does not expressly require award to the low quote, however, if award will be made by other than low quote, the agency must document the business reasons and cost reasonableness basis for selecting the other quote.
  - e. No particular format or timing is required under this option. Agencies have discretion as to how to obtain the quotes. Agencies should provide vendors sufficient information  
  
about the services on which the vendors can formulate a quote, including copy of the proposed contract (e.g. scope, payment provisions, and terms).
  - f. The small business preference is not applicable under this method.
  - g. There is no protest right for this method. (GC § 14838.5.) Therefore agencies should not cite protest provisions when soliciting quotes.
  - h. Use of this method is capped at \$250,000 for the entire contract term, including any option years and/or amendments. If an agency believes the contract may exceed \$250,000, they should use a different solicitation method, such as an IFB or RFP. If quotes come in over

\$250,000, the agency would need to resolicit, either scaling down the project to lower the quotes or using a different solicitation method.

- i. For public works, the dollar range for which this two-quote method can be used is \$5,000 to \$461,000 (or other project cost limit amount as may periodically be issued by the Director of Finance pursuant to PCC § 10105). (GC § 14838.7.)
10. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations (PCC § 10340(b)(7)).
11. Other Specific Statutory Exemption. The STD 215 should identify the statutory citation supporting the exemption.

#### B. DGS Approved Exemptions (PCC § 10348)

The State is committed to promoting fair and open competition whenever it is required or otherwise feasible. There are, however, circumstances under which a department may award a contract or amendment to a vendor on a non-competitive basis even though there is no express statutory exemption from bidding. Under Public Contract Code section 10348, DGS is authorized to determine when an award can be made without competition. DGS may do so on a case-by-case basis for a department's application (NCB/SCR) as described in section B.1 below, and on a pre-approved categorical basis as described in section B.2 below.

1. Non-Competitive Bid (NCB) or Special Category Request (SCR).
  - a. An NCB transaction is a contract for goods or services or both when only one vendor is afforded the opportunity to provide the specified goods or services.
  - b. An SCR is similar to an NCB but involves a group of related contracts rather than a single contract. (For example: the need for several types of physician medical specialty services at a remote prison.) All SCRs have a maximum authorized dollar limit and a maximum "window of approval" not to exceed 3 calendar years from the date of the DGS/PD approval.

Departments must track all SCR transactions to ensure they remain within the approved limit.

- c. NCBs/SCRs for non-IT services should be used only when a department can establish the circumstances necessitating a no-bid contract or amendment. Poor planning should not be the reason for seeking an NCB/SCR.
- d. NCB/SCR application forms and instructions are located on DGS/PD's website.

When submitting an NCB/SCR request, departments should address all questions on the form to establish the

basis for restricting the goods or services to one supplier (e.g., the consequences of not receiving NCB/SCR approval, price analysis), and obtain required signatures.

Departments should submit NCB/SCR applications to DGS/PD for review and approval. A department should not execute an NCB/SCR contract or amendment unless and until DGS approves the NCB/SCR application.

2. DGS Categorical Exemptions (PCC § 10348; historical references: SAM 1233, MM 03-10).
  - a. Services contracts using a DGS LPA;
  - b. Subvention and local assistance contracts as defined in SCM 1, section 3.17. This exception applies only when services are provided to the public and not specifically to a State agency;
  - c. Maintenance agreements under \$250,000 per year for equipment that is under documented warranty, or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services under \$250,000.00 per year;
  - d. Contracts where the state is unable to compete and select a different contractor because a contractor has already been selected by a federal, state, city, county, or other regulatory entity to perform a service in a specific geographical area (e.g., refuse and/or sewage disposal contracts where there is an exclusive franchise agreement that has no exception for the state);
  - e. Public entertainment contracts for State-sponsored fairs and expositions;
  - f. Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code § 605(b);
  - g. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000;
  - h. Contracts for ambulance services (including but not limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region; (historical reference: MM 05-04.)
  - i. Contracts for emergency room hospitals, and medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb and there is no competition because the emergency room hospital is designated

by a local emergency medical services agency and medical staffing is designated by the hospital.

This exemption covers only those services provided in response to the emergency room transport; (historical reference: MM 05-04.)

- j. Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety;
- k. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to \$250,000. This includes access to pre-existing proprietary research data through a non-IT services contract, however “subscription” is not intended to include the performance of any personal services (such as, but not limited to, consulting, advice, research);
- l. Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer’s branch or qualified dealer representative providing services for a manufacturer in a specified geographical area.

This exemption applies only in circumstances where annual postage meter rental services are less than \$100,000;

- m. Departmental memberships in professional organizations, provided it is solely a membership and does not include the performance of any personal services. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by CalHR rules; (See SCM 1, section 3.23.)
- n. Contracts for non-IT services training for state personnel if the cost of the training contract does not exceed \$50,000 and the cost of multiple training contracts with a single contractor does not exceed \$50,000 cumulatively in any 12-month period. (Historical reference: MM 11-05.) The exemption is for pre-existing training courses; it does not cover development of training or other personal or consulting services. Agencies shall not split contracts to avoid competitive bidding or other contract requirements. Agencies with recurring training needs should assess the cumulative amounts departmentally and generally should go out to bid if there are ongoing and/or department-wide needs.
- o. The cost paid to a publication to place a solicitation advertisement, when advertisement is required by law, such as public works solicitation ads in a local newspaper and trade paper, or an A & E solicitation ad in a professional society publication. (See SCM I § 10.20.)

- p. Contracts valued under \$10,000. These contracts may be but are not required to be advertised or competitively bid. State agencies may obtain one price quotation from a responsible supplier that provides a reasonable price; if, however, there is reason to believe a response from a single supplier is not fair and reasonable, then the state agency must obtain at least two price quotations from responsible suppliers. State agencies should retain documentation establishing how the price was determined to be fair and reasonable. Contracting entities should consider the information in SCM Volume II for additional guidance. Contracting entities are encouraged to consider obtaining price quotes from certified Small Businesses and Disabled Veteran Business Enterprises (SB/DVBE) for these contracts.

## **5.81 AMENDMENTS**

**(Rev 04/22)**

Competitive bidding requirements and exemptions should be evaluated when contemplating an amendment (PCC § 10335).

- A. Amendments to competitively bid contracts. A competitively bid contract can only be amended without NCB approval under the following circumstances:
  - 1. The contract provides for the particular type of amendment (not merely a generic statement about the parties being able to amend) and:
    - a. The additional years or additional tasks were anticipated and evaluated in the IFB/RFP (i.e. exercise of an option to renew that was included in the IFB/RFP); or
    - b. The amendment does one, but not both, of the following, and there is no change in the scope of work:
      - i. Adds time only to complete performance, not to exceed one year. Note: “time only” means time to complete performance of the original agreement, such as extending the due date for a final report on a fixed-fee agreement. An amendment that provides for additional as-needed services (such as extended use of hourly fee or pay-per-service type arrangements) is not “time only” within the meaning of this exemption; or
      - ii. The amendment adds not more than 30% (not to exceed \$250,000) of the original contract. Note: this increase must be supported by specific business reason, such as in a unit rate contracts (e.g. per test, per sample, etc.) usage was higher than the original good-faith estimates/multipliers used in the solicitation. This permits flexibility when exceptional unanticipated circumstances warrant; but it should not be used in circumstances such as paying a contractor more on a fixed fee bid, and should not be standard operating procedure.

This time-or-money amendment exemption can only be used once. Further amendments would require NCB approval or a new bid for services. For example, a department cannot amend for time, then attempt to amend to add money.

2. Amendments to existing contracts under the same terms and the same or lower rates where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending until a new contract can be executed, but in no case shall the amendment extend beyond six (6) months. (See SCM § 6.05.)
  3. Amendments to an existing contract to correct incidental errors such as: State's clerical error in transposition of numbers from bid response to contract, typographical errors in a contract number, name, or address, or change in or omission of a contact name or phone number.
- B. Amendments to statutorily exempt contracts. Determine if the statute supporting the original award also supports exemption of the amendment.
- C. Amendments to NCB contracts. Generally, an amendment to an NCB contract will require a new NCB. An NCB contract can only be amended if the amendment is within scope of the original NCB application and approval (e.g. amount, term, scope of work, reason for not bidding, etc.). If the amendment changes information originally described in the NCB, or is based on grounds other than those described in the original NCB, a new NCB approval is needed for the amendment. As a general rule: "Once an NCB, always an NCB." Thus, for example, if an agreement or amendment is awarded by NCB, agencies cannot then add additional time or money using 5.81.A.1.

## **5.85 MULTIPLE AWARDS**

**(Rev 11/12)**

Most agencies do not have statutory authority to make master contract/multi-vendor type awards. In certain limited circumstances, agencies may develop multi-vendor awards, provided the awards still follow the PCC methodology (i.e. IFB or primary RFP award to low cost bidder or secondary RFP award to high point count proposal).

For example, if services are needed in several regions, an agency might develop a consolidated solicitation to award multiple contracts, one per region. Alternatively, in unique circumstances such as for essential services where a back-up contractor is needed, an agency might develop a solicitation to award a primary and secondary contract, with work going primarily to the first ranked contractor, and only then to the back-up vendor(s) in order of next-best cost/score rankings, under specified conditions.

Absent express statutory authority, departments cannot award to a list of vendors and then assign work through informal quotes or other rotational process. All work must be directed to 1st rank (IFB low bid or RFP Secondary high point) vendor, before moving to 2nd ranked.

The solicitation must identify the number of awards to be made, how awardees will be selected, and how work will be distributed (e.g. by region or by low bid or high point count ranking). Any agency wishing to explore these options due to exceptional circumstances requiring backup ranked contractors should first consult their assigned DGS/OLS attorney.

## **5.90 CONTRACTS UNDER TEN-THOUSAND DOLLARS – PRICE QUOTATION(S)** **(Rev 04/22)**

Contracts under \$10,000 are not required to be advertised or competitively bid. State agencies may obtain one price quotation from a responsible supplier that provides a reasonable price; if, however, there is reason to believe a response from the single supplier is not fair and reasonable, then the state agency must obtain at least two price quotations from responsible suppliers. State agencies should retain documentation establishing how the price was determined to be fair and reasonable. (Gov. Code, § 14827.3; Pub. Contract Code, § 10348.) Contracting entities are encouraged to consider obtaining price quotes from certified Small Businesses and Disabled Veteran Business Enterprises (SB/DVBE) for these contracts.