

The following information is excerpted from the State Contract Manual, available at: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/State-Contracting-Manual>

## **Purchasing Authority Goods & Services\***

Statutory authority for purchasing non-information technology (non-IT) goods and information technology (IT) goods and services for State government resides with the Department of General Services (DGS), Procurement Division (PD). The California Department of Technology (CDT) has statutory authority to conduct acquisitions for reportable IT projects. This chapter addresses acquisitions conducted under DGS authority only.

DGS also has statutory authority to grant purchasing authority to state departments. Those departments must meet requirements provided by law, demonstrate the capability to make purchases adhering to all other policies and procedures, and make decisions that are in the best interest of the State. DGS is responsible for the purchasing authority it grants. Within DGS/PD, the Purchasing Authority Unit (PAU) is the entity responsible for the delegating and monitoring of purchasing authority granted to state departments.

\*Purchasing Authority for non-IT services is only applicable under the Leveraged Procurement Agreement (LPA) program and is in addition to the contract approval required under PCC 10335(a) and 10295. For all other Non-IT services, refer to SCM Volume 1.

Unless stated otherwise in statute, state departments that are subject to DGS oversight and functioning without approved purchasing authority are prohibited from the following:

- Non-IT goods purchases exceeding \$100.00 (PCC10308).
- IT goods and services of any dollar value, including IT Inter-Agency Agreements (IAA)
- Purchases made against any Leveraged Procurement Agreement.
- Participation in the CAL-Card Purchase Card Program.

State departments may conduct the following purchasing activities under other authorities (outside of DGS/PD purchasing authority):

- Non-IT goods under \$100.00 (PCC 10308) (except those executed under a LPA).
- Telecommunications goods and services pursuant to PCC 12120.
- Non-IT services pursuant to SCM Volume 1.
- IT goods and services pursuant to PCC 12100 that are related to a reportable IT project, as defined by the State Administrative Manual (SAM) section 4800.
- Non-IT goods over \$100.00 that are exempt from DGS oversight pursuant to specific laws and/or executive orders that exempt certain state departments and/or certain types of contracts from DGS/PD purchasing authority.

## **NON-IT GOODS AND SERVICES Competitive Levels Characteristics**

### **Minimum**

Between \$100.00 and \$4,999.99

- Lowest dollar threshold of authority available.
- Low risk.
- Advertising in the California State Contracts Register (CSCR) is not required.
- No formal protests are available to suppliers.
- The Fair and Reasonable procurement method is commonly used at this level.
- Phone quotes are acceptable.
- Appropriate for state departments with a small procurement office and that conduct very few, low dollar value procurements.

### **Standard 1**

Between \$4,999.99 and \$50,000.00

- Informal level.
- Phone quotes are acceptable in certain circumstances.
- Written solicitations are advisable but not required in certain circumstances.
- Advertising in the CSCR is not required.

### **Standard 2**

Between \$50,000 and \$100,000

- Informal level.
- Written solicitation is required.
- Advertising in the CSCR is required.
- Departments must be granted Standard 1 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct at Standard 2 level.

### **Formal**

Above \$100,000.00

- Formal level.
- Written solicitation (Invitation for Bid) is required.
- Advertising in the CSCR is required.
- Protest provisions are required.
- Award to Other Than Low Bidder procedures apply.
- Departments must be granted Standard 2 level of authority and have experience conducting procurement activities at this level prior to applying for authority to conduct formal procurement activities.

### **Exceeding Purchasing Authority Thresholds**

State departments may not execute a Non-Competitively Bid (NCB) contract, release a solicitation (such as an Invitation for Bid, Request for Quote, or Request for Offer), nor execute any other type of contract that exceeds or is expected to exceed the state department's approved purchasing authority.

## CONSULTANT SERVICES CONTRACTS

A consultant services contract is a services contract of an advisory nature that provides a recommended course of action or personal expertise. (PCC §10335.5.)

### CONTRACT REQUIREMENTS

- A. Consultant services contracts have certain requirements that do not apply to other contracts. (PCC § 10371.)
1. Consultant services contracts of \$5,000 or more shall contain detailed performance criteria and a schedule for performance.
  2. The contractor must provide a detailed analysis of the costs of performance of the contract.
  3. Consultant services contracts of \$5,000 or more shall have attached as part of the contract, a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor.
- B. A consultant contract should contain:
1. A clear description of the work to be done or the problem to be solved.  
The contract must specifically identify in realistic terms what the consultant is to accomplish, including:
    - a. any desired approach to the problem;
    - b. practical, policy, technological, and legal limitations;
    - c. the manner in which the work is to be done;
    - d. a description of the items to be delivered;
    - e. the format and number of copies to be made of the completed reports; and
    - f. the extent and nature of the assistance and cooperation that will be available from the State.
  2. Time schedules, including dates for commencement of performance and submission of progress reports, if any, and date of completion.
  3. Manner of progress payments, whether and to what extent they will be allowed, and, if appropriate, known or estimated budgetary limitations on the contract price.
  4. The dispute resolution clause should outline the steps to be taken by each party in the event a dispute arises. (PCC §10381.)
  5. Final meeting requirements between the contractor and agency management, when the contractor is to present his or her findings, conclusions, and recommendations, when applicable.
  6. Final report requirements that require the consultant to submit a comprehensive final report, when applicable.
- C. Review of Technical Qualifications
1. Does the proposing firm understand the agency's problem? Oral presentations may be arranged, if necessary.
  2. Is the approach to the problem reasonable and feasible?
  3. Does the firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?

4. Has the firm submitted sufficient information to establish that the personnel it has committed to the assignment have the appropriate professional qualifications, experience, education, and skill to successfully complete the assignment?

#### D. Review of Prior Performance Evaluations

Before awarding a consulting services contract of \$5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS. (PCC §10371.)

#### E. Participation of Agency Personnel

1. Each contract should identify a person (or position) in the agency who will be the project coordinator.
2. The contract shall provide a progress schedule and milestones, such as a series of progress reports or meetings on a regular basis to allow the agency to determine whether the consultant is on the right track and whether the project is on schedule, to provide communication of interim findings, and to afford opportunities for resolving disputes so that remedies can be developed quickly (PCC §10381(c)).

### **INTERAGENCY CONTRACTS**

An interagency agreement (I/A) is a contract between two or more California State agencies. (GC §11256.)

Requirements are as follows:

1. An Interagency Agreement STD 213 must be used.
2. Under the State's standard contracting process, the contract should reference the State's standard current interagency terms and conditions by reference to the DGS/OLS website (e.g., GIA 610).
3. I/As shall include a provision that the charges have been or will be computed in accordance with State requirements as noted in State Administrative Manual (SAM) §§ 8752, and 8752.1 unless there is a legal reason for not doing so. The reason should be noted. SAM §§ 8752 and 8752.1 are included in the State's current standard terms and conditions (GIA 610).
4. I/As involving the expenditure of public funds in excess of \$10,000 shall contain a provision that the agreement is subject to the examination and audit by the State Auditor for a period of three (3) years after final payment under the agreement (GC § 8546.7). This provision is included in the State's current standard terms and conditions (GIA 610).
5. DGS/OLS approval is required for I/As in accordance with SCM I, sections 4.03 and 4.04. (GC § 11256; SCM 1, chapter 4.)

## **LEVERAGED PROCUREMENT/MASTER AGREEMENTS FOR SERVICES AND CONSULTING SERVICES**

Leveraged Procurement Agreements (LPAs) are statewide agreements awarded by DGS, including services and consulting services agreements that can be used by other departments. DGS has unique statutory authority to award such agreements (PCC § 10298.) There are various types of LPAs, including but not limited to: master contracts, CMAS, and WSCA/NASPO contracts.

1. LPAs take advantage of the State's buying power. Prices are often less than those a single agency could obtain on its own. A Standard Agreement Form (STD 213) must be used.
2. LPAs take care of the bidding process and other administrative details. Depending on the particular agreement, Civil Service justification (GC §19130), and DVBE goals may or may not have been dealt with. Agencies using LPAs should ensure these requirements are documented in their own contract files.
3. LPAs allow an agency to obtain needed services quickly and easily, avoiding the delay and uncertainty of the bid process. Most LPAs, especially those with multiple vendors, have User Guides that explain how the contracts are to be used. User Guides for different agreements have varying requirements. It is the responsibility of the using agency to follow the requirements in the User Guide for that particular LPA and to adhere to all other applicable code and SCM requirements.
4. Some subscription contracts to LPAs cannot exceed certain amounts also known as "caps." Before developing a subscription contract, check with the LPA User Guide, Contract Manager, and/or SCM volumes 2 and 3 regarding caps, in addition to adhering to delegated purchasing authority rules.
5. Subscription agreements (i.e. contracts from an LPA) for services require DGS approval, just like other services contracts. (See SCM I, section 4.03.) Such approvals are done through DGS/OLS, except CMAS which is done through DGS/PD.

## COMPETITIVE BIDDING METHODS

### FUNDAMENTAL RULES

- 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.)

### COMPARISON CHART OF BIDDING METHODS

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.)

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. Examples: 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. Examples: professional services such as auditing, specialized data collection	To obtain very complex and/or unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed. Examples: public relations and advertising, complex research projects
Cost/value of services	\$5,000 or more	\$5,000 or more	\$5,000 or more
CSCR advertising	Yes	Yes	Yes
Formal bidder Q&As with submittal deadline	Optional	Optional	Optional
Bidders' conference	Optional	Optional	Optional
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

<b>Considerations</b>	<b>Invitation for Bid</b>	<b>Primary RFP</b>	<b>Secondary RFP</b>
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	5% reduction in cost bid of the lowest cost bid offered by a noncertified small business for evaluation purposes	5% reduction in cost bid of the lowest cost bid offered by a noncertified small business for evaluation purposes	Points increased by 5% of the total points awarded to the highest scored non-small business bidder.
DVBE participation required?	Determined by Agency	Determined by Agency	Determined by Agency

**Responsive Bid:** A bid is considered responsive if it indicates compliance without material deviation from the requirements of the solicitation and the terms and conditions of the proposed contract.

**Responsible Bidder:** A bidder is responsible if they possess the experience, facilities, reputation, financial resources and are fully capable of performing the contract.

## **INVITATION FOR BIDS**

- 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.

## REQUEST FOR PROPOSALS

- 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.
  - 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.
- 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.



## LEGAL SERVICES CONTRACTS

Legal services contracts are not subject to competitive bidding or advertising. They must be authorized by the Attorney General unless specifically exempted by statute. In general, the law requires agencies to use the Attorney General as their legal counsel; however, with written consent by the Attorney General, agencies may contract for legal services. This consent must be obtained before seeking DGS/OLS approval (GC §11040, et seq.).

- A. State agencies must provide written notification of the request to the AG to the designated representative of State Employees Bargaining Unit 2 within five (5) business days of the request to the AG. Those State agencies not required to obtain the consent of the AG per GC § 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five (5) business days prior to the execution of the contract by the State agency.
- B. A copy of the contract and any amendments must be sent to the designated representative for State Employees Bargaining Unit 2 at or before the time of submittal to DGS/OLS for approval. (GC §11045(c).)
- C. Consent to amend the contract need not be obtained from the Attorney General if the amendment merely alters the length of the contract or involves terms related to the agency's choice of, or fiscal relationship with, the outside counsel. If the contract scope of work is to be amended, consent must be obtained from the Attorney General.
- D. Legal services contracts must contain the following provisions. The contractor shall:
  - 1. Agree to adhere to legal cost and billing guidelines designated by the agency.
  - 2. Adhere to litigation plans designated by the agency.
  - 3. Adhere to case phasing of activities designated by the agency.
  - 4. Submit and adhere to legal budgets as designated by the agency.
  - 5. Maintain legal malpractice insurance in an amount not less than the amount designated by the agency.
  - 6. Submit to legal, bill audits and law firm audits if so requested by the agency. The audits may be conducted by employees or designees of the agency or by any legal cost-control provider retained by the agency for that purpose.
- E. A certification effective January 1, 2003, and pursuant to Business and Professions Code §6072, must be included in legal services contracts of \$50,000 or more if they are to be performed within California:

“Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm’s offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State. Failure to make a good faith effort may be cause for non-renewal of a State contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.”