

## Methods for Soliciting Bids to Establish a Contract\*

Time begins once there is an approved Proposal or Statement of Work or Request for Offer ready to post.

Method	Proposal	Review by DGS or Off. Of Legal Services (OLS)	How posted & how long	Protest period?	How awarded and when	Contract Review by OLS	Estimated Total Time
Fair & Reasonable Under \$10k	Y	N	SOW sent to vendor	N	Based on acceptance of terms/cost	No	10-14 days
Small Business (SB) \$250k cap	Y	DGS - Y 1-2 wks if add'l review needed	RFO sent to 3 SB's; 5-10 days to respond	No, but bidders can file protest with DGS for hearing	Lowest responsible bidder	No	Up to 3 weeks
MSA Master Services Agreement Up to \$500k	Y	DGS - Y 1-2 wks if add'l review needed	RFO sent to 3 vendors; 5-10 days to respond	No, but bidders can file protest with DGS for hearing	Lowest responsible bidder	OLS –up to 30 days	Up to 60 days
CMAS CA Multi-Award Schedule	Y	DGS - Y Up to 30 days	RFO sent to 3 vendors; 5-10 days to respond	No, but bidders can file protest with DGS	Lowest responsible bidder	DGS - Y Up to 30 days OLS –up to 30 days	Up to 90 days
Invitation For Bid (IFB)	Y, specific, aimed at Y/N responses Not scored	DGS - Y 1-2 wks if add'l review needed	State contract site 10 days	5 days starting with notice of intent to award; 5 days to submit protest; Hearing set	Lowest responsible bidder: public bid opening	OLS –up to 30 days	6 weeks or more
Request for Proposal 1	Y, focus on outcome, requirements; aimed at a how accomplish for how much?	DGS - Y 1-2 wks if add'l review needed	State contract site 10 days	5 days starting with notice of intent to award	Lowest qualified responsible proposer; public bid opening	OLS –up to 30 days	6 weeks or more

Method	Proposal	Review by DGS or Off. Of Legal Services (OLS)	How posted & how long	Protest period?	How awarded and when	Contract Review by OLS	Estimated Total Time
Request for Proposal 2	Y, focus on outcome, requirements; how accomplish for how much?	DGS - Y 1-2 wks if add'l review needed	State contract site 10 days	5 days starting with notice of intent to award	Highest-scored responsible proposer	OLS –up to 30 days	6 weeks or more
Request for Information (RFI)		OLS does not allow an RFI as basis for a contract	Used to identify those suppliers who intend to participate in an upcoming solicitation from those who have no interest in participating. Also used to “survey” the marketplace to ID what products or services may be available and approx. cost				
Request for Quotation/Qualification (RFQ) \$50-100k range	item, quantity, and price of <u>goods</u>	OLS does not allow an RFQ as basis for a contract	State contract site 7 days	1 day starting with notice of intent to award	Lowest net cost	OLS –up to 30 days	4 weeks or more
Non-Competitively Bid		Initial 45 day review	NCB purchases are limited by statute in accordance with PCC section 10301 and 10302 for goods to the following conditions:				

\* As per current Sate Contracts Manual.

**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.

### Determining responsiveness

Departments should evaluate bid responses by first determining that each response is clearly responsive to the bid requirements. If a response does not appear to be responsive, the following questions will assist in the determination of the materiality of the requirement:

- Is the response in substantial accord with the requirement? If “no”, the deviation may be material.
- Does the response provide the bidder an advantage over other bidders? If “yes”, the deviation may be material.
- Does the response have a potential significant effect on the delivery, quantity, or quality of the items bid? If “yes”, the deviation may be material.
- Does the response have a potentially significant effect on the amount paid to the supplier or cost to the state? If “yes”, the deviation may be material.

## **CONTRACT REQUIREMENTS**

In addition to the competitive acquisition methods recognized by the State Contracting Manual (SCM), there are specific requirements and exemption related to different contracts:

### **CONSULTING SERVICES CONTRACTS**

Consultant services contracts have certain requirements that do not apply to other contracts. (PCC § 10371.)

1. Consultant services contracts of \$5,000 or more must 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 must 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.

In addition, a consultant contract should contain:

1. A detailed statement of work specifically identifying in realistic terms what the consultant is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is to be done; a description of the items to be delivered and measurable results they are required to achieve; the format and number of copies to be made of the completed reports; and the extent and nature of the assistance and cooperation that will be available to the consultant from the State.
2. Relevant time schedules, methods of progress payments and dispute resolution
3. Final reports: content, copies, and format

### Review of Technical Qualifications

The following criteria should be covered in the evaluation of technical qualifications presented in response to an RFP or IFB:

1. Does the proposing firm understand the problem to be solved (Oral presentations may be arranged if necessary)?
2. Is the proposed approach (when called for) reasonable and feasible?
3. Does the proposing firm have the organization, resources, and experience to perform the assignment? Has the firm had experience in similar problem areas?
4. Has the proposing 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?
5. 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.)

### **INTERAGENCY AGREEMENTS**

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

1. I/As may not be used for contracts with campus foundations, the federal government, local entities, JPAs, or other states.
2. I/As are exempt from advertising in the CSCR.
3. I/As are exempt from competitive bidding.

## **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. They include MSAs (Master Services Agreements) and CMAS (CA multiple Award Schedule).

1. 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.
2. Some subscription contracts to LPAs cannot exceed certain amounts also known as “caps.”
3. Subscription agreements (i.e. contracts off an LPA) for services require DGS approval through DGS Office of Legal Services (OLS) except CMAS which requires DGS Procurement Division (PD) approval.

## **CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES AND PUBLIC UNIVERSITIES**

Agreements for services and consultant services do not require competitive bids or proposals if the contract is with:

1. A California State agency, State college or State university.
2. A state agency, state college or state university from another state
3. A local governmental entity, including those created as a Joint Powers Authority (JPA), and including local government entities from other states.
4. An auxiliary organization of the CSU, or a California community college.
5. The Federal Government
6. A foundation organized to support the Board of Governors of the California Community Colleges
7. An auxiliary organization of the Student Aid Commission established under Education Code § 69522.

## **LEGAL SERVICES CONTRACTS**

- Legal services contracts are not subject to competitive bidding or advertising.
- Agencies are required to use the Attorney General as their legal counsel; however, with written consent by the Attorney General, agencies may contract for legal services (GC § 11040, et seq.).
- 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).)

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.

Contracting firms are required 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 (B&P Code § 6072).

## **EXPERT WITNESS CONTRACTS**

Contracts solely for the purpose of obtaining expert witnesses for litigation are exempt from advertising and bidding requirements (PCC § 10335.5).

## **EMERGENCY CONTRACTS**

- Emergency is defined in PCC § 1102 as “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” To qualify as an emergency, a contract must meet all elements of this statutory definition.
- Emergency contracts are exempt from advertising and competitive bidding, and do not require an NCB.

## **CONTRACTS WITH NONPROFIT ORGANIZATIONS**

Contracts may be made between the State and a private entity that is a nonprofit corporation. (Int. Rev. Code § 501(c).) Bidding requirements would apply unless exempt by statute or the contract is for subvention or local assistance.

## **CONTRACTING FOR STUDENTS**

When contracting for students, GC section 19133 requires that:

1. Work must be related to the student’s field of study.
2. Students cannot accrue civil service status.
3. Students cannot be employed for more than 194 days in the 365 days beginning with the day of initial employment.
4. Use of students cannot cause displacement of civil service employees.

GC section 19133 provides: “Any State agency may enter into an agreement with any public or private institution of higher education in California, nonprofit campus foundation, or State higher education foundation to provide part-time employment to students attending a public or private institution of higher education that contracts with the State agency, or to students attending a public or private institution which is affiliated with a nonprofit campus foundation, or a State higher education foundation that contracts with a State agency, in work related to the field of study of the student.”

## **RESPONSIBILITY FOR CONTRACT APPROVAL**

- A. Each State agency is responsible for making sure that its contracts comply with applicable legal requirements and are based on sound business practices. DGS/OLS provides the final approval if required by law.
- B. In some instances additional approvals may be needed, such as those from the Attorney General, State Personnel Board, State Fire Marshal, DGS/ORIM, DGS/OSP, or other DGS offices. (See SCM I, section 4.11.)
- C. Contract approval by DGS serves to assist State agencies by:
  1. Ensuring effective compliance with applicable laws and policies.
  2. Conserving the fiscal interests of the State and preventing improvident acts.
  3. Applying contract knowledge and legal expertise prior to final approval.
- D. Remedies and Penalties:
  1. PCC § 10420 - Every contract or other transaction entered into in violation of Chapter 2 of the PCC is void, unless the violation is technical or nonsubstantive.
  2. PCC § 10421 - Civil action may be brought in Superior Court to determine a violation of Chapter 2 of the PCC. If a violation is found the contract shall be void.
  3. PCC §§ 10422 - 23 - Any State employee or person contracting with the State who corruptly performs an official act or corruptly permits the violation of any contract made under Chapter 2 of the PCC is guilty of a felony.
  4. PCC §10424 - provides that a violation of PCC §§ 10422 or 10423 may make the employee or the person contracting with the State liable to the State for double the amount the State may have lost.
  5. PCC § 10425 - Willful violation of any other provision of Chapter 2 of the Public Contract Code shall constitute a misdemeanor.