Chapter 4

**Competitive Acquisition Methods**

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## Chapter 4

## Competitive Acquisition Methods

### Overview

### Introduction

This chapter describes the requirements relative to conducting competitive acquisition methods for:

* Non-IT Goods
* IT Goods
* IT Services

Discussion points include supplier treatment, advertising requirements, acquisition methods, and developing solicitations. Also included are descriptions of evaluation and selection methods and use of the Small Business (SB)/Disabled Veterans Business Enterprise (DVBE) Option for acquiring non-IT goods and IT goods and/or services.

Chapter 4 only addresses solicitation methods for competitive bids.

This chapter does not address competitive acquisition methods for non-IT services. See State Contracting Manual (SCM), Vol. 1 for acquisitions of non-IT services outside of the Leveraged Procurement Agreement (LPA) framework.

# Section A

# The Basics of Competition

**Overview**

### Introduction

Competition is one of the basic tenets in State procurement and contracting. The nature of effective competition varies with the goods and services being acquired. Depending upon decisions made during the planning phase, the procurement may be informal or formal; the selected competition method may be a phone call, or a written solicitation document. Depending on the procurement value, solicitations may be distributed by fax, electronic mail, United States Postal Service mail, or via the California State Contracting Register (CSCR) in FI$Cal. Unless otherwise provided by law, procurement activities must be conducted in an open and fair environment that promotes competition among prospective suppliers.

The competitive acquisition methods described in this chapter are applicable to acquisitions for non-IT goods and IT goods/services.

## Topic 1 – General Requirements

### 4.A1.0 Procurement standards

Departments granted purchasing authority to conduct competitive procurements for non-IT goods and IT goods and services will do so in a manner that promotes open, fair and equal competition among prospective suppliers.

### 4.A1.1 Supplier treatment

Buyers conducting competitive procurements shall provide qualified suppliers with a fair opportunity to participate in the competitive acquisition process, stimulating competition in a manner conducive to sound State fiscal practices emphasizing the elimination of favoritism, fraud, and corruption in awarding contracts.

### 4.A1.2 Per Transaction Thresholds

Competitive procurements conducted under purchasing authority for non-IT goods or IT goods and services may not exceed the dollar thresholds as authorized by DGS/PD to the individual department, as identified on the department’s Purchasing Authority Approval Letter (PAAL) (refer to Chapter 1, Section C, [Resources](#Resources4), for access to the PAALs).

With the exception of the SB/DVBE Option, dollar thresholds exclude sales and use tax, finance charges, postage and handling.

Shipping charges are included in the dollar threshold limits during the evaluation when the freight terms are FOB Origin, Freight Collect, FOB Destination, or Freight Prepaid/Add.

When a transaction exceeds or is expected to exceed a department’s approved authority threshold, the department will send a requisition to DGS/One-Time Acquisitions Unit (OTA) through workflow in FI$Cal for processing. Refer to Section F, [Resources](#Resources4), for assistance with how to submit a requisition to OTA. For more information on Purchasing Authority, see Chapter 1.

### 4.A1.3 Confidentiality of Information

The general premise for confidentiality is that all information must remain confidential and secured during the development and management of the competitive acquisition, through the evaluation, and up to the award.

When there is a public bid opening, the price portion of the proposal becomes public. In some cases, such as the Alternative Protest Process (APP), final proposals are made public when the intent to award is published (see Chapter 7 of this manual for information on the APP). In these cases the contents of all bids, proposals, draft bids, correspondence, agenda, memoranda, working papers, or any other medium which discloses any aspect of a bidder’s proposal or bid shall be held in the strictest confidence **until** the notice of intent to award is issued.

A proposal marked “Confidential” or “Proprietary” may be rejected, and marking it as such does not keep the document(s) from being released as part of the public record following issuance of the notice of intent to award for formal solicitations or award of informal solicitations. In order to prevent the release of documents marked “confidential” or “proprietary,” it is the bidder’s responsibility to obtain a court order that directs the State not to release the document(s).

Any disclosure of confidential information by the bidder during the procurement process is a basis for rejecting the bidder’s proposal and finding the bidder ineligible. Any disclosure of confidential information by a state employee during the procurement process is a basis for disciplinary action, including dismissal from State employment, as provided by Government Code (GC) Section 19570 et seq. Total confidentiality during the procurement process is vital to preserve the integrity of the process. It cannot be over emphasized.

### 4.A1.4 Who Should Sign Confidentiality Statements

Procurement officials and bidders should be aware that any information submitted, may be subject to the Public Records Act at any point during the procurement process.

During the development, Procurement Officials are not to provide and unfair advantage to suppliers.

In addition to the buyer, competitive acquisitions can involve a team that may be internal and/or external to the department, in the solicitation development, evaluation, and selection process, as well as other personnel on a “need to know” basis. All of these personnel must sign confidentiality statements. The signed statements must be retained within the procurement file.

A confidentiality statement should include statements that the person signing the confidentiality statement:

* Certifies that he/she has no personal or financial interest and no present or past employment or activity which would be incompatible with my participation in any activity related to the planning or procurement processes for the project or procurement
* Agrees that no gift, benefit, gratuity or consideration will be accepted, or a personal or financial interest in a party who is bidding/proposing, or associated with a bidder/proposer initiated on a project or procurement
* Certifies that all information concerning the planning, processes, development or procedures of the project or procurement will be kept confidential and secure
* Certifies that no copy or disclosure of information will be made to any other party who has not signed a copy of this confidentiality agreement with the exception of DGS/OLS and oversight agencies
* Understands that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, and terms and conditions. This includes concepts and discussions as well as written or electronic materials
* Understands that if he/she leaves the project or procurement before it ends, that all project or procurement information must still be kept confidential
* Agrees that any instructions provided by the project or procurement relating to the confidentiality of Project information will be followed
* Fully understand that any unauthorized disclosure I make may be a basis for civil or criminal penalties and/or disciplinary action (including dismissal for State employees)
* Agrees to immediately advise the buyer in the event that he/she either learns or has reason to believe that any person who has access to confidential project or procurement information has or intends to disclose that information in violation of this agreement

The person signing the confidentiality statement should also provide the following information:

* Date
* Signature
* Printed Name
* Title
* Organization
* Telephone Number
* Fax Number
* Email address

Refer to Refer to Section F, [Resources](#Resources4), at the end of this Chapter for sample Confidentiality Statement.

### 4.A1.5 Confidentiality of Data Made Available to the Contractor

Contracts and solicitation documents may include a version of the following paragraph customized as appropriate to the situation.

“All financial, statistical, personal, technical, and other information relating to the State's operations, which are designated confidential by the State and made available to the contractor in order to carry out this contract, shall be protected by the contractor from unauthorized use and disclosure by the observance of the same or more effective procedural requirements as are applicable to the State.  The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure will be provided by the State in writing to the Contractor.  If the methods and procedures employed by the Contractor for the protection of the contractor’s data and information are deemed by the State to be appropriate, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information that is or becomes publicly available, is already rightfully in the Contractor’s possession, is independently developed by the contractor outside the scope of this Contract, or is rightfully obtained from third parties”.

### 4.A1.6 Supplier Recrimination Will Not Be Tolerated

Departments shall not condone recriminations against suppliers who request information regarding a bid response or who request information regarding specifications required in any contract.

**Topic 2 – Advertising Requirements**

### 4.A2.0 California State Contracts Register

The California State Contracts Register (CSCR) was established to maximize competition through advertising State purchasing and contracting opportunities. See GC Sections 14825 et seq. The CSCR is used for the following solicitation functions:

* Posting Solicitations
* Posting of contractor ads to seek prime or sub-contractors.

### 4.A2.1 When advertising is required

Solicitations must be advertised in the CSCR. A copy of the published advertisement must be included within the procurement file. The following describes the requirements for advertisements. Advertising is required if the purchase is classified as follows:

| **If the purchase is classified:** | **And the dollar threshold is valued:** |
| --- | --- |
| Non-IT Goods | In excess of $50,000.00 |
| IT Goods | In excess of $50,000.00 |
| IT Services | In excess of $4,999.99 |
| IT goods and/or services | If the service portion is in excess of $4,999.99 and/orthe goods portion is in excess of $50,000.00 |

### 4.A2.2 Solicitation Release Date

Solicitations shall not be released prior to publication in the CSCR and must be released after or simultaneously with the contract advertisement publication.

### 4.A2.3 Publish Date vs. Bid or Proposal Due Date

Bid opportunities must be advertised (published in the CSCR) for at least 10 working days prior to the bid due date, per GC 14827.2. and PCC 10302. Requests for a shorter timeframe for the advertisement of the solicitation of goods, shall be submitted in writing as follows:

* Departments with delegated purchasing authority must submit written justification signed by their Purchasing Authority Contact to the CSCR staff.
	+ - * DGS/PD One Time Acquisitions (OTA) buyers making purchases on behalf of other State Agencies requesting a shorter timeframe must submit a written justification signed by their respective Branch Chief to the CSCR staff.

### 4.A2.4 Contract Advertising Exemption for Services

An exemption from advertising in the CSCR for services may be obtained if a Contract Advertising Exemption Request (STD.821) is submitted to DGS/PD for review and approval through FI$Cal (refer to chapter 6 for more information on the STD 821 process). This form is used when a competitive acquisition is requested to be exempted from advertising or is neither feasible nor possible.

When a competitive acquisition will be conducted, but an advertising exemption is being requested, a Non-Competitive Bid (NCB) contract justification is not required. However, a written statement must be submitted with the STD.821 that:

* + - * Explains why an exemption is being requested
			* Provides supporting information such as why the services cannot be advertised, and
			* Includes a list of the contractors that will be solicited.

An NCB contract justification must be submitted with the STD.821 when a competitive acquisition will not be conducted and the department is requesting an advertising exemption. See Chapter 6 of this manual for information on NCB Contracts.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for a link to the STD 821.

### 4.A2.5 Additional Exemptions by Statute or Policy

There are types and/or categories of purchases that may be awarded without advertising or competitive bidding as a result of being exempt by statute or policy. Transactions that are exempt from both advertising and competitive bidding either by statute or policy do not require an NCB contract justification and/or a STD. 821. A statement must be documented in the procurement file to identify the basis of the exemption.

For a list of these types and/or categories of purchases and examples of documenting an exempted transaction see Chapter 6 of this manual.

**Section B**

**The Solicitation**

**Overview**

**Introduction**

This section contains information on the solicitation documents and the procurement process, and includes the solicitation and purchase document requirements. It provides guidance to ensure suppliers submit responsive bids and that the procurement is successful.

**Topic 1 – Developing the Open Competition Solicitation**

### 4.B1.0 Solicitations Should be Clear, Concise and Consistent

All solicitations regardless of format (phone quote, RFQ, IFB, RFP) must clearly state the needs or business requirements of the department in order for a supplier to weigh the risks and price the purchase.

Concise, logical wording in precise terms, stating the supplier’s obligations as well as those of the department should be used. Use clear, simple English as much as possible.

The words “shall” and “must” identify mandatory requirements within a solicitation. The words “should” and “may” identify optional or desired requirements sometimes referred to as desirable requirements.

### 4.B1.1 Avoid Writing Restrictive Requirements

Requirements restricting the bidding to a single supplier may not be included in competitive acquisitions. Avoid restrictive requirements by:

* Including only essential requirements
* Avoiding restrictive or impractical requirements such as those that are nonessential or obsolete
* Carefully checking delivery requirements to ensure the turnaround time from supplier’s receipt of order to delivery is not too restrictive or limiting
* Defining requirements to promote and encourage bidders to bid standard items or standard service where possible
* Not specifying a particular brand name, product or a feature of a product that is peculiar restrictive to one manufacturer, except for reference purposes. Try to use words like equal and comparable when a brand, model, or style is specified.
* Not dictating detailed design solutions prematurely
* Try using Performance vs. Designed based requirements.
* Allowing sufficient time from the solicitation mail release date to the bid due date or the first key action date to provide suppliers time to review and consider the requirements, prepare a response, and mail the response back

### 4.B1.2 Common Elements of Written Solicitations

All written solicitations must contain the following elements:

* + - * The date and time suppliers’ responses are due
			* Space for the signature of an authorized supplier representative that can bind the company contractually
			* Information on how the bid responses are to be submitted (i.e., sealed envelope with the solicitation number and due date and time on the outside of the sealed package
			* Any attachments which are included and are required to be returned by bidders such as:
* Preference program forms (i.e., Target Area Contract Preference Act (TACPA)
* DVBE participation program and DVBE utilization reporting forms
* Post-Consumer Content Form
	+ - * Statement of Work
* Administrative requirements, as applicable
* Technical requirements, as applicable
	+ - * Cost forms or clear indication of cost placement in the solicitation
			* Evaluation information (basis for award)

### 4.B1.3 Preference Programs

The TACPA business participation program requirement must be included in competitive acquisition with an estimated dollar value of $100,000 and over

It is strongly recommended that the solicitation language and preference forms be included in all competitive acquisitions valued at $85,000 and greater. If the low responsive bid received from a responsible supplier is $100,000 or more, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued. For more information on preference programs, see Chapter 3 of this manual.

### 4.B1.4 DVBE Participation Program Requirement for Competitive Solicitations

Unless a solicitation is exempt, state departments must include DVBE participation language in solicitations pursuant to the DVBE Participation Program requirements identified in Chapter 3.

Whenever the DVBE Participation Program language is not included in a solicitation pursuant to an approved DVBE Exemption Request (STD 816), the department must note within the solicitation that the DVBE Participation Program requirement has been exempted.

California Code of Regulations (CCR) Section 1896.70 exempts the DVBE Participation Program language requirement from applying to solicitations when the SB/DVBE Option Acquisition Method is used.

### 4.B1.5 DVBE Incentive for Competitive Solicitations

Pursuant to the DVBE Incentive requirements identified in Chapter 3, unless a solicitation is exempt, the DVBE Incentive applies to all competitive solicitations regardless of format (RFQ, IFB, RFP or phone quotes), delivery method, or dollar threshold.

###

### 4.B1.6 SB Participation

Every effort must be made to seek out and include certified small businesses in procurement efforts and to include the 5% SB preference and non-SB subcontractor preference in all solicitations, except when soliciting California certified SBs and DVBEs under the informal SB/DVBE Option acquisition method. See Chapter 2, Topics 2 and 4, of this manual for additional information on SB participation and how to apply these preferences in evaluations.

### 4.B1.7 EPP Consideration

State Departments are required to purchase goods and services meeting Environmentally Preferable Purchasing (EPP) Policy. See Chapter 3, Section B, Topics 1 and 2. If the purchase is within the category specified then departments are to apply the EPP criteria within the solicitation and identify these items individually within the cost worksheets. Reports can be generated for those purchases identified as EPP or SABRC within the FI$Cal system.

### 4.B1.8 Obtaining Samples

The practice of obtaining samples from suppliers prior to contract award is not recommended, unless it is a requirement of the solicitation process. If items are needed for review prior to award for demonstration or pre-purchase testing, the solicitation must so state and be noted with the information that the State is not obligated for the cost of the items or for their return. Extreme caution should be taken to ensure that the solicitation response does not contain terms or conditions that would result in the automatic purchase of the item(s) being tested.

### 4.B1.9 Clarifications or Changes to a Solicitation (Addenda)

Clarifications or changes to a solicitation must be transmitted to all participating bidders by an addendum. An addendum documents all changes or revisions to the solicitation and shall include at a minimum the following information:

* Addendum number, (must be numbered consecutively), solicitation title and solicitation number
* Indication of where the revision or change is occurring in the solicitation. This may include deleting and inserting changed solicitation pages.
* Revised or unchanged quote/bid opening date;

A solicitation may be modified prior to quote/bid response due date. The addendum may be accomplished verbally (for phone quotes only) or written to coincide with the original solicitation format.

**Example:**

If a RFQ solicitation is conducted by phone then the modification may also be conducted by phone. The addenda information must be documented as part of a phone script and must become part of the procurement file.

**Incorrect example:**

An addendum to a written solicitation cannot be conducted by phone. If the solicitation was released in written format then any addendum to the solicitation must be in writing.

An addendum to a solicitation shall be issued a minimum of five days prior to the final bid due date to allow prospective bidders sufficient time to prepare their bids. Otherwise the due date must be extended in the addendum. If the addendum is significant and bidders will need more time to submit a responsive bid, then the date and time for the bid opening must also be extended in the addendum.

In addition to communicating in writing to all suppliers that have expressed an intent to bid, addenda for formal RFPs must be posted in a public location.

### 4.B1.10 Cloud Computing Considerations

Additional considerations must be addressed when acquiring Cloud Computing services. Guidance has been developed to assist with identifying the special requirements and service level expectations.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for access to the Cloud Computing Contract Checklist for (SaaS) and helpful tools.

**Topic 2 – Invitation for Bid**

### 4.B2.0 Invitation for Bid (IFB)

The Invitation for Bid (IFB) is a written acquisition method used to solicit bid responses for non-IT goods or for IT goods and/or services where suppliers are asked to provide a bid to the State’s known and detailed*,* clearrequirements.

An IFB can be used for solicitations within the informal dollar range when the acquisition is complex or of elevated risk. Formal IFBs are solicitations more complex or elevated risk acquisitions and of a higher dollar value.

The risk assessment process is completed in the planning stage of the procurement. Risk evaluation guidelines and financial protection measures for formal solicitations are established in TOPIC It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process as conditions change.

### 4.B2.1 Types of IFB Formats

There are three (3) IFB formats available: one (1) for non-IT goods and two (2) for IT purchases. The characteristics of the purchase will determine which format best suits the purchasing activity. The following bullets describe the elements to consider in determining which IFB format to use.

* For **non-IT goods** procurements exceeding $100,000.00, the use of the IFB for non-IT goods format is required.
* For **IT goods only** (i.e., Hardware and/or Software containing straightforward requirements, considered to be a low risk or less complex purchase) and the evaluation selection criteria is low net cost meeting all other bid specifications, then the solicitation will be developed using:
* IFB for IT goods only format must include contract award and protest language.
* Bidder Instructions\* (GSPD-451)
* IT General Provisions
1. For **IT goods and/or services** (i.e., Hardware, Software, and/or Services) then the solicitation will be developed using the:
* Formal IFB solicitation format, including all ten (10)-sections
* Use Section II instead of the Bidder Instructions (GSPD-451)
* IT General Provisions

\*Bidder Instructions in lieu of Section II – Rules Governing Competition may be used if the procurement is straight-forward, and evaluation and selection is based on lowest net cost meeting all other bid specification.

High risk purchases such as large scale integration projects are usually conducted using the formal RFP format.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for sample solicitation templates and to obtain Elements of the Solicitation.

### 4.B2.2 Phased Approach

The IFB solicitation format using the multi-step procurement procedure is more structured than the RFQ and allows requirements to be organized by type such as administrative/technical specifications, evaluation methodology, bid preparation instructions and includes contract language.

This IFB format also allows phases to the procurement effort by establishing dates for suppliers to provide specified required documents, such as Intent to Bid letter, Draft Bid, and Final Bid. The IFB specifies the state’s minimum acceptable functional, technical, and contractual requirements.

When using this IFB format, the evaluation and selection team procedures results will be documented using an Evaluation and Selection Report.

### 4.B2.3 Documenting the results

The evaluation and selection may be documented using the Procurement Summary form or the department may develop its own format as long as the pertinent facts are included. This document must provide a chronology of the events that occurred during the solicitation process such as:

* Date of advertisement
* Names of bidders responding
* Date solicitation released

Refer to Section F, [Resources](#Resources4), at the end of this chapter to access a Procurement Summary form and information regarding file documentation recommendations.

### 4.B2.4 Award Methodology Types

The evaluation criteria governing contract award may be based on the highest evaluated points for value effective evaluations that include services or may be based on lowest cost if the IFB is for goods alone.

If the IFB evaluation criteria is based upon a value effective methodology then cost is required to be submitted in a separately sealed envelope and requires the technical and administrative evaluation to occur prior to opening the cost envelope. Cost envelopes will not be opened for bid responses containing material deviations.

The IFB contract award process is determined by the evaluation criteria. For the:

* + - * Lowest net cost meeting all other bid specifications criteria, the contract award, if made, will be to the responsible bidder submitting a responsive bid that is the lowest cost after application of any preference requirements (SB/DVBE, TACPA, recycle, etc.) or discounts, if applicable.
			* Value effective criteria, then the contract award if made, will be the responsible bidder submitting a responsive bid that scores the highest points in accordance with the evaluation methodology as described in the solicitation.

### 4.B2.5 Evaluation and Selection Team Procedures

When using the IFB phased approach format, an Evaluation and Selection Team procedures document is to be used. This document provides information on how the IFB evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation and includes templates of letters and transmittal documents to bidders including the Intent to Award letter.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for a sample Evaluation and Selection Team Procedure document.

### 4.B2.6 Evaluation and Selection Report

When using the IFB format, an Evaluation and Selection Report must be used to document the evaluation and selection process used for contract award.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for the Evaluation and Selection Report template.

**Topic 3 – Bidder Instructions and Required Contract Language**

### 4.B3.0 Bidder Instructions

Bidder Instructions (GSPD-451) describe to potential bidders how to provide a responsive bid. The Bidder Instructions must be included or incorporated by reference in all competitive acquisition methods (written or verbal) for non-IT goods and IT goods and/or services, except when conducting formal solicitations where the evaluation is based on value effective using the 10 section format criteria.

Complex, formal solicitations typically use DGS/PD developed IFB/RFP Section II, Rules Governing Competition, in place of the State’s Bidder Instructions. Other solicitations, where the procurement is straight-forward and the evaluation and selection is based on lowest net cost meeting all other bid specifications may use the Bidder Instructions.

Refer to Section F, [Resources](#Resources4), at the end of this chapter to obtain the Bidder Instruction document.

### 4.B3.1 General Provisions

The State’s General Provisions (GSPD-401IT) shall be incorporated by reference in all competitive acquisitions and purchase documents for IT goods and/or services (written or verbal) valued in excess of $4,999.99.

The State’s General Provisions (GSPD-401 non-IT commodities) shall be incorporated by reference in all competitive acquisitions and purchase documents for non-IT goods (written or verbal) valued in excess of $4,999.99.

The General Provisions may be supplemented with additional provisions tailored to a specific solicitation. Except where the General Provisions refer to specifics in the Statement of Work, there are to be absolutely no changes made to the General Provisions without prior approval of DGS/PD.

Refer to Section F, [Resources](#Resources4), at the end of this chapter to obtain the General Provisions.

### 4.B3.2 Contract Modules

You may include additional terms and conditions to meet your specific procurement needs. The Agency Special Provisions, such as facility security requirements or federal funding requirements or a Statement of Work may be attached as applicable to the solicitation.

### 4.B3.3 Obtaining Seller’s Permit

A copy of the seller's permit or certification of registration must be obtained on any tangible personal property purchase regardless of the dollar value and regardless of whether it is included either by reference to the PD web page. This requirement does not apply to a credit card purchase of goods of $2,500 or less. The total amount of exemption authorized herein shall not exceed $7,500 per year for each company from which a state agency is purchasing goods by credit card. See PCC 10295.1 for details.

Another exception to this requirement is identified in PCC 10295.1 where a department director or his designee makes a written finding that the purchase is necessary to meet a compelling State interest.  A "compelling state interest" includes, but is not limited to, the following:

* Ensuring the provision of essential services
* Ensuring the public health, safety and welfare
* Responding to an emergency, as defined in PCC section 1102

In order to support a purchase based upon this exception, the director’s or his/her designee’s written finding must be included in the purchase file documentation.

Seller’s permits or certification of registration or a department’s written exception to this requirement must be retained in the procurement file. It is good practice to verify that the seller’s permit is active by going to the California Department of Tax and Fee Administration (CDTFA) website, print the validation page, and uploading it as part of the purchase file documentation.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for the CDTFA website.

### 4.B3.4 Cloud Computing Special Provisions SaaS

The State’s Cloud Computing Special Provisions for Software as a Service (SaaS) must be used in addition to the General Provisions (GSPD-401IT), where applicable. These Special Provisions shall be incorporated by reference in all competitive and proprietary solicitations and purchase documents for Cloud Computing SaaS.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for the State’s Cloud Computing SaaS Special Provisions.

**Section C**

**Supplier Selection**

**Overview**

**Introduction**

This section describes the requirements for impartial and comprehensive evaluation and selection processes, ensuring impartiality and comprehensive evaluation of responses as warranted by the complexity of the transaction.

**Topic 1 – Supplier Selection Basics**

### 4.C1.0 Evaluator’s Responsibility

Evaluators are expected to:

* Be unbiased and to evaluate all bids fairly
* Be State employees
* Excuse themselves from participating in an evaluation if the evaluator or a family member has a personal involvement with the bidder or firm

Example:

Evaluator’s spouse is an employee of the bidder.

### 4.C1.1 Evaluation Criteria Revisions

Evaluation criteria may not be changed once bids have been submitted.

### 4.C1.2 Negotiation

The Department of General Services (DGS) can use a negotiation process under certain circumstances when procuring or contracting for goods, services, information technology, and telecommunications. See Chapter 2 for more information regarding negotiation.

### 4.C1.3 Public Record

During the evaluation, solicitation and bid information are kept confidential. Once bids are opened, evaluated and awarded, they become public records available to anyone requesting to review the file. Where the solicitation process requires posting a Notice of Intent to Award, procurement documents become public and bidders may request a review of the procurement file after the Notice of Intent to Award is posted. Refer to Public Records Act, GC 6250 for exemptions from disclosure.

For value effective acquisitions the results of the administrative and technical score shall be made available before the cost proposal opening (see PCC 12102.2 (a)(2); for the rule on solicitations under the Alternative Protest Process, see 1 CCR [California Code of Regulations] section 1404).

### 4.C1.4 Bid Response/ Award Availability

Where notices of intent to award are not used, bid response/award information shall be made available to any requestor after the award is complete. This information is to be retained in the procurement file and is subject to public inspection.

**Topic 2 – Determining Responsive Bid and Responsible Bidder**

### 4.C2.0 Responsive and Responsible Definition

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.

### 4.C2.1 Determining Effective Competition

Competition requires the act of seeking responses from qualified suppliers consistent with the size and nature of the procurement. To determine that “competition” has been effective, responsive bids must be received from at least two responsible bidders, unless the solicitation is advertised. A response of “no bid” or “no response” is not considered as receiving a bid.

### 4.C2.2 No Responsive Bids Received from Responsible Bidders

When competition results in no responsive bids from responsible bidders, there are three options that may be taken:

Option 1 The solicitation may be cancelled and re-bid, modifying any possible restrictive requirements. In addition, methods to broaden the number of potential suppliers should be considered.

**OR**

Option 2 If a second solicitation would not result in a different outcome, the solicitation may be canceled and procurement made with an NCB, following the procedures outline in Chapter 6 of this manual. To determine which supplier should be selected as the source, the proposed supplier’s bid must be substantially technically compliant/responsive with the specifications and the supplier must be deemed responsible.

**OR**

Option 3 During the multi-step solicitation process, in the event that Final Bid Proposals from all bidders contain material deviations, the buyer may declare the Final Bid Proposals as an additional draft and call for a new final bid proposal in order to continue the bid process. If this occurs, an addendum shall be issued and a confidential discussion should be held with each bidder that submitted a flawed final proposal.

### 4.C2.3 Multiple Bids Received, Only One Responsive Bid from Responsible Bidder

When competition results in only one responsive bid from a responsible bidder even though multiple bids were received, competition may be declared as being achieved if the solicitation was advertised or under the following conditions after carefully considering all factors of the situation (risk, urgency, and impact to the program):

Non-participation due to the State’s socio-economic requirements. The procurement file must be documented with the reasons why only one responsive bid was received. The information will likely need to be requested from bidders who initially responded to the solicitation announcement.

Non-participation due to the State’s statutory requirements. If non-participation was due to the State’s statutory requirements, such as DVBE, Small Business, etc., this information shall be incorporated into the documentation. The file must also be documented with the evaluation of other bidders who were determined to be non-responsive/responsible.

After carefully documenting the rationale, the award may be made.

### 4.C2.4 Non-participation Due to Concerns with Bid Specifications

If non-participation occurs due to concerns with the bid specifications, the buyer must consider three options:

Option 1 If the specification(s) in question are not unnecessarily restrictive, award may be made after documenting the file with the rationale used for determination.

**OR**

Option 2 If the specification(s) in question is determined to be unnecessarily restrictive to one supplier’s product, the solicitation may be cancelled and a new solicitation developed modifying the specification(s) as necessary to facilitate fair competition.

**OR**

Option 3 If the specification(s) and or requirement(s) in question is determined to be unique to one supplier’s product and it is determined that only that product meets the department’s needs, then an NCB is required the procurement file must be documented that the solicitation has been determined to be an NCB and then an award may be made, following the procedures outlined in Chapter 6 of this manual.

### 4.C2.5 Award to other than low bidder for Non-IT Goods

Informal:

If a buyer determines that the low bidder will not be awarded the contract and the solicitation is being conducted as an informal solicitation, the buyer will document the procurement file in sufficient detail to justify the determination of the lowest bidder being non-compliant then award the purchase to the next lowest bidder.

Formal:

Per Public Contract Code 10306, formal procurement evaluations, when the low bidder will not be awarded the contract, the displaced bidder shall be notified 24 hours prior to awarding the contract or purchase. The procurement official must include documentation explaining why the department recommends rejecting the lower bid must be forwarded/Ad hoc to DGS/PD One-Times Acquisitions Unit (OTA) for concurrence prior to contract award, and for posting in a public place within the offices of the department. Departments may not make the award without DGS/PD approval/concurrence.

This does not apply if any bidder submits a lower bid that is compliant, but will not receive the award because another bidder (i.e. small business) has a lower bid after application of a preference.

**Topic 3 – Material Deviations**

### 4.C3.0 Wording That Indicates a Requirement or Condition

The State has established certain requirements with respect to bids to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in solicitations, indicates a requirement or condition from which a deviation, if not material, may be waived by the State. A deviation from a requirement is material if the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one bidder over other bidders or has a potentially significant effect on the delivery, quantity or quality of items bid, amount paid to the supplier or on the cost to the State. Material deviations cannot be waived.

### 4.C3.1 Wording That Indicates Desirable Attributes and Conditions

The words "should" or "may" in solicitations indicate desirable attributes or conditions, but are non-mandatory in nature. A deviation from or omission of a desirable attribute or feature will not in itself cause rejection of the bid.

### 4.C3.2 State Options

The State may reject any or all bids and may waive any immaterial deviation or defect in a bid. The State's waiver of any immaterial deviation or defect shall in no way modify the solicitation documents or excuse the bidder from full compliance with the solicitation specifications if awarded the contract.

### 4.C3.3 Determining Responsive-ness

Bid responses should be evaluated 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 help to determine the materiality of the requirement:

* Is the response in substantial accord with the requirement? If no, the deviation is material.
* Does the response provide the bidder an advantage over other bidders? If yes, the deviation is material.
* Does the response have a potential significant effect on the delivery, quantity, or quality of the items bid? If yes, the deviation is 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 is material.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for a sample Deviation Worksheet.

### 4.C3.4 Waiving Mandatory Requirements is Prohibited

Material deviations of mandatory requirements cannot be waived and the bid must be rejected. All such deviations must be thoroughly documented in the procurement file to support the rejection.

### 4.C3.5 Examples of Deviation Types

**Immaterial Deviation:** A deviation can be accepted by the State when it is determined to be of such a minor concern that it carries little or no importance, has not affected the amount of the bid, has not given the bidder an advantage or benefit not allowed to other bidders. In other words the variance is inconsequential, and by accepting it, it doesn’t provide the bidder with any material advantage over other bidders.

Example:
A bidder referenced the wrong page in their supporting technical literature. The bidder directed the evaluator to page 4 and the correct page should have been page 5.

**Material Deviation:** A deviation in the bid response that is so substantial it cannot be accepted by the State because by accepting it, the response will provide the bidder with an advantage not allowed to other bidders; or the deviation is so significant it may affect the cost, quantity or quality of the proposed goods or services to be provided to the State.

Example:
The solicitation required a system that would serve 500 users and the bidder only offered a system that would serve 250 users.

**Topic 4 – Evaluation and Award**

### 4.C4.0 Procurement Summary Document

The evaluation process and resulting source (supplier) selection decision must be documented for every procurement effort and referenced as a procurement summary\*. The purpose of the procurement summary is to provide a single document that specifies the history of those particular procurement transactions by explaining the significant facts, events and decisions leading up to the contract award.

Procurement summaries should be written clearly, concisely and convincingly to support the soundness of the purchasing decision.

Procurement summary information includes but is not limited to:

Documenting the offered prices

Determining that the selected supplier is responsible and the bid is responsive.

Attaching the Procurement Summary Document, Bid/Quote Worksheet or the Evaluation and Selection Report

**\***The Procurement Summary Document is not required, however if this form or a similar form is not used, then the procurement file must include the Bid/Quote Worksheet or the Evaluation and Selection Report as required by the solicitation method conducted (RFQ, RFP, IFB, SB/DVBE Option, etc.).

Refer to Section F, [Resources](#Resources4), at the end of this chapter for samples and templates of the:

* Procurement Summary Document
* Bid/Quote Worksheet
* Evaluation and Selection Procedures
* Evaluation and Selection Report

### 4.C4.1 Tie Bids

Tiebreaker language should be included in the solicitation document, indicating how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are a coin toss or other similar objective method. Such event must be observed by witnesses and the affected bidders should be invited.

In the event of a precise tie between two SB suppliers in which one is also a DVBE, the award shall go to the SB that is also a DVBE.

Example:

* Supplier-A and Supplier-B are tied.
	+ Supplier – A is a SB
	+ Supplier – B is a SB and a DVBE
	+ Supplier – A claiming the DVBE incentive by subcontracting to a DVBE
	+ Supplier-B is a SB claiming the DVBE incentive by being a DVBE
* The award shall be made to Supplier-B that is a SB and also a DVBE

(Reference Chapter 3 and GC section 14838 (f) and 2 CCR section 1896.8(f)).

In the event of tie for recycled tire product contracts, the contract will be awarded to the bidder whose product has the greatest percentage of recycled tire content if the fitness, quality, and price are equal. (PRC section 42894) "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires. (PRC section 42890.)

**Topic 5 – Evaluation and Award Specific to IT Value Effective Evaluations**

### 4.C5.0 Value Effective Acquisitions

For IT goods and/or services transactions valued at over $100,000, bids should be evaluated based on a value‑effective methodology, where factors other than cost are of considerable value to the department, unless the procurement is straight-forward and requirements are known, detailed, and clear such that the evaluation and selection can be based on lowest net cost meeting all other bid specifications.

All requirements must be clearly identified associated points clearly identified in the evaluation section of the solicitation (or denoted non-scorable). The method for determining the winning bid must be clearly stated.

Example

 “Award may be made to the supplier achieving the highest cumulative number of points from the administrative requirements, technical requirements, and cost proposal evaluation phases.”

### 4.C5.1 Two-envelope evaluation procedure

Whenever a value-effective evaluation methodology is used to evaluate IT goods and/or services bids, the following process must be followed:

1. Cost proposal must be sealed in its own envelope and clearly labeled as “Cost.”
2. The Administrative and Technical proposals must be submitted together in a sealed envelope and clearly labeled as “Administrative and Technical.”
3. Administrative and Technical proposals will be evaluated to determine responsiveness of the bidder. (Cost proposals are not to be opened. See step 5 for when cost proposals are opened.)
4. All bidder responses will be kept sealed and under lock and key until evaluation of all technical and administrative criteria is completed and the results published.
5. The sealed cost proposals for responsive proposals shall then be opened at the time and place designated in the solicitation and the remainder of the evaluation completed. (Cost proposals of non-responsive bids/proposals will not be opened.)

Evaluators must verify all mathematical calculations.

Example:
Verify that line extensions are computed correctly and when all lines are added together, they total the final bid total.

**4.C5.2 Purpose of the Cost Proposal Certificate**

The Cost Proposal Certificate is the State’s confirmation that all proposals have been maintained sealed and under lock and key until the time cost proposals are opened. This certification is retained within the procurement file and certified by the buyer that the information is correct.

**Section D**

**Informal Open Competition**

**Overview**

**Introduction**

**Topic 1 – Solicitation Approaches**

**4.D1.0 Informal vs. Formal**

Solicitations are documents used to request quotes, offers, bids, or proposals from suppliers and are characterized as either informal or formal.

Informal solicitations are generally straightforward or uncomplicated and usually of lower dollar value and may be conducted using a solicitation vehicle such as the Request for Quotations (RFQ) or Invitation for Bids (IFB), depending on the degree of specific language needed.

The following table provides the dollar thresholds for identifying the informal dollar thresholds:

| **Procurement Type** | **Informal Solicitation** |
| --- | --- |
| Non-IT goods | $100,000.00 and less |
| IT Goods | $1,000,000.00 and less |
| IT Services | $1,000,000.00 and less |

**Warning:** IT goods and/or services informal solicitations valued from $100,000.01 to $1,000,000 require specific solicitation language for protest and award procedures. See Topic 2 of this section for additional information.

**4.D1.1 Phone Quotes**

Informal solicitations for goods valued less than $50,000.00 or for services valued less than $4,999.99 may be conducted by phone.

The phone quote solicitation method requires preparation of a “script” or narrative of the requirements so that each bidder is informed equally and quotes can be evaluated fairly. The “script” must include referring bidders to the PD web page to read the current bidder instructions and applicable general provisions associated with the purchase. The quotes received over the phone are documented using the recommended Bid/Quote Worksheet. Both the script and the bid/quote worksheet must be retained in the procurement file.

A phone quote would **not** be an acceptable method for conducting a solicitation if the service portion (set-up, installation, etc.) of the purchase exceeds $4,999.99 or if the combined purchase amount (goods and services) exceeds $50,000.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for a sample Bid/Quote Worksheet.

**4.D1.2 Written Solicitations**

Informal solicitations may be conducted using written solicitation formats. There are instances where an informal solicitation must be written such as:

Any solicitation that is advertised in the CSCR.

Any goods transaction that exceeds $50,000.00.

Any IT service transaction that exceeds $4,999.99.

Written solicitations may be distributed by fax, mail, electronically or by other means such as a supplier picking up the solicitation in person. It is recommended that whatever delivery method is used, the activity is documented in the procurement file.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for sample templates of the RFQ.

**4.D1.3 Mailing List**

Mailing lists may be established using a variety of means to locate potential suppliers. The selection of suppliers should be varied to broaden the supplier base and increase competition. Certified SB’s and certified DVBEs should be solicited whenever possible. Resources available to identify and/or establish lists are:

* Phone books
* Referenced supplier/manufacturer
* Other agencies who uses similar products
* Federal, State, Counties, Cities SB and DVBE databases
* Request for Information (RFI)
* Internet search
* Local trade unions
* Chamber of commerce
* Industry listings
* LPA databases
* Certified SB and DVBE firms database
* Recommendations from customers

Lists are generally used for informal solicitations. However, mailing lists may be used in addition to advertising for formal solicitations.

**4.D1.4 Faxing Bid Responses**

The following paragraph must be included in all written competitive acquisition methods when suppliers are allowed to fax their bids:

“Facsimile machine bids will be considered only if they are sent to (insert office fax number) for solicitations originating from the (department office location). Bids sent to any other (department unit name) fax number will not be considered. To be considered, all pages of the faxed bid that are received prior to the bid opening time specified in the bid will be considered “the complete bid”. Please be advised that there is a heavy demand placed on the fax machine receiving bids. The State assumes no responsibility if a supplier cannot transmit their bid via fax or if the entire bid is not received prior to the bid opening time.”

When a buyer receives a faxed bid, the buyer must directly enter the information into the FI$Cal System.

**Topic 2 – Request for Quotation**

**4.D2.0 Request for Quote (RFQ)**

The most common written solicitation format used to conduct informal competitive acquisitions is the Request for Quotation (RFQ). The RFQ is a straightforward procurement format that identifies what is needed or requests a proposed solution and tends to be low in risk.

Formal, Invitation for Bid (IFB) format should be used for informal IT competitive acquisitions that tend to be higher in risk.

**4.D2.1 RFQ Solicitation Formats and Elements of the RFQ**

Refer to Section F, [Resources](#Resources4), at the end of this chapter for sample solicitation templates and to obtain Elements of the RFQ.

When conducting a RFQ solicitation that has both goods and services use the RFQ Goods solicitation format.

**4.D2.2 Required Language**

The following solicitation language must be considered and addressed as applicable in a solicitation using the RFQ format:

* Bidder Instructions and applicable General Provisions for the solicitation.
* Identify requirements of faxing bid responses.
* Include language addressing the socioeconomic and environmental programs as applicable (SB, DVBE, EPP, TACPA, etc.)

**Required Language Specific to IT Solicitations**

When using the RFQ format for IT solicitations over $100,000, use the language specified below for protest and contract award.

**Award of Contract**Award of contract, if made, will be in accordance with the RFQ information on Evaluation to a responsible bidder whose bid complies with all the requirements of the RFQ documents and an addenda thereto, except for such immaterial defects as may be waived by the State. Award, if made, will be made within forty-five (45) days after the scheduled date for Contract Award as specified in the RFQ; however, a bidder may extend the offer beyond 45 days in the event of a delay of contract award.

The State reserves the right to determine the successful bidder(s) either on the basis of individual items or on the basis of all items included in its RFQ, unless otherwise expressly provided in the State’s RFQ. Unless the bidder specifies otherwise in its bid, the State may accept any item or group of items of any bid. The State reserves the right to modify or cancel in whole or in part it’s RFQ.

Written notification of the State’s intent to award will be made to all bidders. If a bidder, having submitted a bid, can show that its bid, instead of the bid selected by the State, should be selected for contract award, the bidder will be allowed five (5) working days to submit a Notice of Intent to Protest, according to the instructions contained in the paragraph titled “Protests” of this RFQ.

**Protests**Any bidder’s issues regarding solicitation requirements must be resolved (or attempts to resolve them must have been made) before a protest may be submitted according to the procedure below. These issues will first be resolved by the contact for the solicitation or if they result in a protest, the protest will be submitted to DGS Procurement Division Deputy Director to hear and resolve issues and whose decision will be final.

If a bidder has submitted a bid which it believes to be responsive to the requirements of the RFQ and to be the bid that should have been selected according to the evaluation procedures in the solicitation and the bidder believes the State has incorrectly selected another bidder for award, the bidder may submit a protest of the selection as described below. Protests regarding selection of the “successful bidder” will be heard and resolved by the Victim Compensation and Government Claims Board whose decision will be final.

All protests of award must be made in writing, signed by an individual authorized to bind the bidder contractually and financially, and contain a statement of the reason(s) for protest; citing the law, rule, regulation or procedure on which the protest is based. The protester must provide facts and evidence to support the claim. Protests must be mailed or delivered to:

 **Street and Mailing Address:**
 Deputy Director
 Procurement Division
 707 Third Street, Second Floor South
 West Sacramento, CA 95605
 Facsimile No.: (916) 375-4611

All protests to the RFQ or protests concerning the evaluation, recommendation, or other aspects of the selection process must be received by DGS Procurement Division Deputy Director as promptly as possible, but not later than the date indicated in the Notification of Intent to Award. Certified or registered mail must be used unless delivered in person, in which case the protester should obtain a receipt of delivery

**4.D2.3 Documenting the results**

The buyer must document quotes received by using the recommended Bid/Quote Worksheet or using a document containing similar information. The bid/quote worksheet or similar document must be retained in the procurement file.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for the Bid/Quote Worksheet.

**4.D2.4 Contract award**

Contract award resulting from the RFQ process will be to the responsive, responsible bidder with the lowest cost or highest score (as defined in the evaluation portion of the solicitation) after application of any preference requirements (SB, TACPA, recycle, etc.) incentive (DVBE) or discounts, if applicable.

**Topic 3 – SB/DVBE Option**

**4.D3.0 SB/DVBE Option**

The SB/DVBE Option is allowed by GC section 14838.5 (a) and (b). When using the SB/DVBE Option, contracts may be awarded for goods, services or IT valued from $5,000.01 to $249,999.99 to a certified SB, including microbusiness or a DVBE, without advertising as long as price quotations are obtained from two or more certified SB/MBs or two or more DVBEs.

**4.D3.1 Using the SB/DVBE Option**

Competitive acquisitions using the SB Option or the DVBE Option are to be conducted as follows:

* Create the solicitation (verbal or written)
* Verify SB or DVBE certification status through FI$Cal (certification status is maintained in “real-time” in FI$Cal).
* Release the solicitation only to California certified SBs/MBs or DVBEs.
* Contract award may be made upon receipt of responsive price quotations from at least two (2) responsible California certified SB/MBs **or** DVBEs and award must be made based upon the solicitation format used.

The procurement file must be documented to support the contract award and the action taken.

**Topic 4 – Bidder Instructions and Required Contract Language**

**4.D4.0 Required Clauses for Transactions Less than $5,000 and Supplier’s Written Acceptance**

The State’s General Provisions should be used on transactions valued less than $5,000.00.

If an election is made not to include and/or reference the General Provisions, then written confirmation must be obtained before award is made that the supplier will abide by the following required contract provisions:

* Americans with Disabilities Act (ADA)
* Non-Discrimination and Statement of Compliance
* Drug-Free Workplace Certification
* Forced, Convict & Indentured Labor
* National Labor Relations Board Certification
* Darfur certification (Non-IT only)
* Sweat Free Code (see the General Provisions)
* Expatriate PCC 10286
* Recycling
* Electronic Waste
* Use tax

This documentation shall be uploaded in FI$Cal and maintained as part of the procurement file.

**4.D4.1 Non-IT Goods and IT Goods and Services Transactions Valued from $10,000 to $50,000.00**

Achieving competition within this dollar range is defined as receiving responsive bids from at least three (3) responsible bidders, if the solicitation is not advertised. See Section A, Topic 2, of this chapter for advertising requirements and dollar requirements by classification.

Whenever solicitations are advertised and distributed amongst interested bidders, bidder participation is not controlled, thus the solicitation may result in only one bid response. If the sole bid response is considered responsible and responsive, then the contract may be awarded. If not, then the solicitation must be canceled and re-issued.

**4.D4.2** **Non-IT Goods Transactions Valued from $50,000.01 to $100,000.00** **And IT goods and/or services Transactions Valued from $100,000.01 to $1,000,000**

Competitive acquisitions conducted for non-IT goods and IT goods and/or services valued in this dollar range are considered “informal” but must:

* Be a written document
* Include a provision for notice of Intent to Award
* Provide language regarding protest procedures
* Be advertised

For RFQs required to be advertised (see Section A, Topic 2) Award of Contract and Protests language must be included (see Section B, Topic 3 of this chapter).

Whenever solicitations are advertised (see Section A, Topic 2) and distributed amongst interested bidders, there is no control over bidder participation, thus the solicitation may result in only one bid response. If the sole bid response is considered responsible and responsive, then the contract may be awarded. If the sole bid response is not considered responsible and responsive then the solicitation must be canceled and re-issued

**Topic 5**

### 4.D5.0

This section has been moved to Chapter 6.

### 4.D5.1

This section has been moved to Chapter 6.

### 4.D5.2

This section has been moved to Chapter 6.

**Topic 6 – Supplier Selection Basics**

**4.D6.0 Bid/Quote Evaluations for Phone Quotes and RFQs**

The Bid/Quote Worksheet should be used to document the bids received resulting from informal phone quotes and RFQs. The worksheet provides a means to easily compile and evaluate the bids received and assists in final selection. This worksheet must be retained in the procurement file.

The evaluation and selection process for contract award as outlined below must be used for the RFQ solicitations format for IT transactions exceeding $100,000.00 and for non-IT transactions exceeding $50,000.00.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for templates and sample form.

### 4.D6.1 (moved 4/18)

This section has been moved to Chapter 6.

**Section E**

**Formal Competitive Acquisition Methods**

**Overview**

**Topic 1 – Solicitation Approaches**

**4.E1.0 Informal vs. Formal**

Solicitations are documents used to request quotes, bids, or proposals from suppliers and are characterized as either informal or formal.

Formal solicitations are typically more complicated, higher in risk and usually of higher dollar value and may be conducted using the Invitation for Bid (IFB) or Request for Proposal (RFP), depending on the degree of specific language needed.

The following table provides the dollar thresholds for identifying the formal dollar thresholds:

| **Procurement Type** | **Formal Solicitation** |
| --- | --- |
| Non-IT goods | More than $100,000.00 |
| IT Goods | More than $1,000,000.00 |
| IT Services | More than $1,000,000.00 |

**4.E1.2 Written Solicitations**

All formal solicitations must be written and posted on the CSCR.

Written solicitations may be distributed by fax, mail, electronically or by other means such as a supplier picking up the solicitation in person. It is recommended that whatever delivery method is used, the activity is documented in the procurement file.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for sample templates of the IFB and RFP.

**4.E1.3 Key Action Dates for Solicitations**

Most formal, written solicitations, such as IFBs and RFPs, containing phased approaches leading to final bid submittal will include key action dates. Key action dates provide suppliers with a schedule for required actions during the solicitation process.

Examples of key action dates include:

* + - * Intent to Bid letters
			* Last day to submit questions for clarifications of IFB or RFP
			* Last day to protest requirements
			* Technical Proposal or Conceptual Proposal submittal due date (RFP only)
			* Draft bid due date
			* Final bid due date

The interval between each key action date must provide enough time to establish a sufficient supplier pool and provide suppliers with sufficient opportunity to act or respond.

**4.E1.4 Faxing Bid Responses**

The following paragraph must be included in all written competitive acquisitions when suppliers are allowed to fax their bids:

“Facsimile machine bids will be considered only if they are sent to (insert office fax number) for solicitations originating from the (department office location). Bids sent to any other (department unit name) fax number will not be considered. To be considered, all pages of the faxed bid that are received prior to the bid opening time specified in the bid will be considered “the complete bid”. Please be advised that there is a heavy demand placed on the fax machine receiving bids. The State assumes no responsibility if a supplier cannot transmit their bid via fax or if the entire bid is not received prior to the bid opening time.”

When a buyer receives a faxed bid, the buyer must directly enter the bid information into the FI$Cal System.

Faxing is not allowed for formal IT solicitations when using the two envelope approach. The individual solicitation shall identify if faxing is a viable option.

**4.E1.5 Risk Guidelines for IT**

Risk guidelines and financial protection measures to protect the best interests of the State are to be applied to all information technology (IT) goods and services solicitations valued more than $1,000,000. Solicitations valued $1,000,000 or less may comply with the risk evaluation guidelines and financial protection measures.

Any contract that allows for progress payments when the IT goods or services are manufactured or performed by a contractor, specifically for the State and are not suitable for sale to others in the normal course of the contractor’s business operations, shall have a withhold of no less than 10% until final delivery and acceptance of said goods or services.

Departments are to submit documentation of each risk analysis and the rationale for the selection of appropriate risk protection to the Department of General Services, Procurement Division (DGS-PD) Deputy Director or his designee for written approval. Should a department determine that the risk protection methods identified in the guidelines do not meet the needs of a particular transaction, DGS-PD must be contacted.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for more information about risk evaluation guidelines and financial protection measures.

**Topic 2 – Request for Proposal for IT Solicitations**

**4.E2.0 Request for Proposal (RFP)**

The Request for Proposal (RFP) is a written solicitation document required for IT goods and/or services acquisitions complex in nature or of elevated risk The RFP format is structured like the IFB to allow organization of requirements by type such as administrative/technical specifications, evaluation methodology, bid preparation instructions and contract language.

The RFP states the solicitation requirements or specifications in a more general nature describing the problem to be solved or the goal to be achieved. Suppliers “propose” a business solution to the State’s described needs, free of any precise imposed mix of hardware, software, etc.

The risk assessment process is completed in the planning stage of the procurement. It is important to re-evaluate risk and revise the risk assessment plan, as warranted, during the procurement process as conditions change.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for sample solicitation templates and to obtain Elements of the solicitation.

**4.E2.1 Changes to RFP Rules and Requirements**

Pursuant to Public Contract Code (PCC) section 12104.5, any changes to the rules and requirements governing that RFP shall be communicated in writing to all vendors that have expressed intent to bid and shall be posted in a public location.

**4.E2.2 Documentation of IT Project Information Pertinent to Creation of an RFP**

Information technology purchases for which it is determined that an RFP is appropriate, if the following information is not already identified and documented in the Project Approval Lifecycle (PAL) document the department shall identify and document the following, with respect to IT procurements, prior to releasing the RFP.

* Legislative mandate, State business, or operational reason for the IT procurement
* Existing business processes currently used to accomplish the legislative mandate, State business, or operational reason.
* Most important priorities for the IT project to accomplish
* What current technology is being used and how it is being used
* If the data used in a proposed IT system comes from multiple sources, the existing business processes or technical systems that produce and maintain the source data to ensure interoperability
* How the new IT project leverages existing technology investments while accomplishing its business objectives

**4.E2.3 Availability of Pertinent IT RFP Project Information**

To ensure prospective bidders have access to Information related to IT projects/procurements during the procurement process, departments shall post the related PAL or SPR with the RFP Bid Package to the California State Contracts Register (CSCR). If the IT project/procurement is to be conducted by DGS/PD, the department for which the IT project/procurement is being conducted shall ensure that the most current approved PAL/SPR is provided to DGS/PD.

Information on an PAL/SPR that could impact the department or the State’s security shall be censored on the copy placed on the CSCR.

If there is no related PAL or SPR, a statement indicating this shall be included in the RFP.

**4.E2.4 DGS/Office of Legal Services (OLS) Review of RFPs**

Effective January 1, 2011, pursuant to PCC section 12104(c) all IT RFPs shall be reviewed by the California Department of Technology (CDT) prior to release to the public.

Upon request of any department or as deemed necessary by DGS/PD, DGS’ Office of Legal Services (OLS) will review RFP documents.  In these cases,

RFPs shall be submitted to DGS/OLS a minimum of 10 working days prior to anticipated release of the RFP to allow DGS/OLS sufficient time for review and information exchange with the department as needed in the review process. However, for complex RFPs, departments are strongly encouraged to submit the RFP well in advance of the planned release date to allow sufficient time for review and to correct any problems.

**4.E2.5 Contract Award**

The evaluation criteria governing contract award is based on value-effective factors that includes cost. These factors are weighted; generally the administrative and technical requirements equal 50% and cost equals 50%.

If a weighting other than 50/50 is chosen, it must be approved by DGS/PD before the solicitation is released. All factors for evaluation must be detailed in the evaluation section of the RFP.

Contract award if made, will be to the responsive/responsible supplier who scores the highest points in accordance with the evaluation methodology as described in the solicitation document. Contact DGS/PD for advice on preparation of value effective acquisition methodologies.

**4.E2.6 Evaluation and Selection Report Team Procedures**

When using the RFP format, an Evaluation and Selection Report Team procedures document is to be used. This document provides information on how the RFP evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation and selection process used for contract award. The Evaluation includes templates of letters and the Selection Report. These items, along with all RFP transmittal documents to bidders, including the Intent to Award Letter, must be completed and uploaded in FI$Cal.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for the sample Evaluation and Selection Report Team Procedure document.

**4.E2.7 Evaluation and Selection Report**

When using the RFP format, an Evaluation and Selection Report must be used to document the evaluation and selection process used for contract award. The Evaluation and Selection Report must be completed in FI$Cal for all RFPs.

**4.E2.8 Review of IT goods and/or services for Solicitations Exceeding $1,000,000**

Per ITPL 11-03, all solicitations (IFB/RFP) for IT goods and/or services exceeding $1,000,000 must be submitted to the CDT for review no later than 45 business days prior to the planned date for release to the public. Review of informal IT solicitations (less than $1million) is delegated to the department. Review and approval is in addition to and done concurrently with DGS review and approval of procurement documents.

**Topic 3 – Supplier Selection Basics**

**4.E3.0 IFB/RFP Evaluation Documentation**

Buyers using the IFB or RFP format non-IT goods or IT goods and/or services must use the Evaluation and Selection Team Procedures for contract award. This document provides information on how the RFP evaluation procedure is to be carried out. The document may be modified to fit the particular solicitation.

This document will also provide a chronology of the events that occurred during the solicitation process such as:

* Date of advertisement,
* Names of bidders responding,
* Date solicitation released, etc and
* Refer to Section F, [Resources](#Resources4), at the end of this chapter for access to the Evaluation and Selection Team Procedures.

**Topic 4 – Evaluation and Award**

**4.E4.0 Bid Submissions**

Generally, bid submissions will be handled as follows:

* Bids will be submitted electronically whenever possible. If not possible, bids may be hand-delivered or sent by mail unless the solicitation stated another method, i.e., fax
* Bids are due by the close of the business day, which is considered 5:00 pm Pacific Standard/Daylight Time on the date indicated unless otherwise stated in the solicitation
* To be considered for award, when sealed bids are required:
* The “cost” portion must be sealed in a separate envelope and contained inside the bid envelope (for point based bids only, such as value-effective RFPs when using the 10 section format RFPs)
* It must be received at the location and by the closing time and date specified
* Any forms required to have a signature should be signed by the bidder
* Electronic bids will be date and time stamped upon receipt by the system.
* Buyers are advised to create a bidder response list:
* Record the date and time bids are submitted
* Include the bidder’s company name
* Include the bidder’s contact person (if listed on the exterior of the envelope or obtained from an in-person submission, or from within the bid if opened publicly)
* Record the cost amount (only if this is a low-cost based bid with a public opening, otherwise this information should not be contained in the initial bidder response list
* Bids must be kept in a secured area and remain confidential until bid opening
* Bids submitted after the closing time and date will be considered non-responsive

Solicitations using the value effective evaluation for contract award require a cost submission and require evaluation and scoring of all submissions prior to opening the cost envelope to determine the overall score of the bid responses. Only the cost factors of responsive bids are to be viewed.

**4.E4.1 Submission of Fax Bids**

Any solicitation that requires a sealed cost submission cannot be faxed.

**4.E4.2 Intent to Award**

For IT goods and/or services solicitations over $1,000,000.00, all bidders must be notified of intent to award a contract at least 5 working days prior to award. This notification period may be shorter when the Alternative Protest Process is used – see Chapter 7, of this manual.

For non-IT goods formal solicitations (those exceeding $100,000.00) departments are required, upon receiving a written request from a bidder or when the lowest bid is rejected, to notify the bidder of the proposed award 24 hours prior to award of the contract.

Refer to Section F, [Resources](#Resources4), at the end of this chapter for a sample Letter of Intent to Award.

**Section F**

**Resources**

**4.F1.0 Chapter 4 Resources**

**B**

Bidders Instructions (GSPD-451)...………………………………………. [Link to Webpage](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language)

Bid/Quote Worksheet ……………………………………... …………….... [Word](https://www.dgs.ca.gov/-/media/E40F3390C8FB438F89B376216B06C413.ashx)

**C**

California Department of Tax and Fee Administration (CDTFA) Webpage [Link to Webpage](https://efile.boe.ca.gov/boewebservices/verification.jsp)

California State Contracts Register (CSCR) [Link to Webpage](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx)

CalRecycle Webpage……………………………………………………….. [Link to Webpage](http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/)

Cloud Computing Checklist………………………………………………… [Link to Webpage](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Cloud-Computing-Policy)

Cloud Computing SaaS Special Provisions

[Cloud SaaS Special Provisions](http://www.dgs.ca.gov/pd/Resources/ModelLanguage.aspx)

Cloud Computing Webpage (DGS/PD)…………………………………… [Link to Webpage](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Cloud-Computing-Policy)

Confidentiality Policy………………………………………………………... [PDF](https://www.dgs.ca.gov/-/media/44DE582ECFE344F8BD6A987476877B38.ashx)

Confidentiality Statement (sample) .………………………………………. [Word](https://www.dgs.ca.gov/-/media/73485667EC3A486CA8ED0119CB5B9E68.ashx)

Contract Advertising Exemption Request (STD.821) …………………… [Link to Webpage](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std821.pdf)

**D**

Deviation Worksheet…………………………………………. ………………[Word](https://www.dgs.ca.gov/-/media/7557601015DA4FE2AD5704917FEFCF3C.ashx)

DVBE Exemption Request Form (STD 816)……………………….[Link to Forms Directory](https://forms.dgs.ca.gov/content/DGSFormsPortal/california-state-forms-directory.html)

**E**

Elements of the RFQ Solicitation for: ……………………………...[IT Goods](https://www.dgs.ca.gov/-/media/711A9FA9E6CD46D7AB3E7851BDF1ACD6.ashx) or [IT Services](https://www.dgs.ca.gov/-/media/711A9FA9E6CD46D7AB3E7851BDF1ACD6.ashx)

 [Non-IT Goods](https://www.dgs.ca.gov/-/media/510A41F1A87C4196AFA60CB59E663952.ashx)

Evaluation and Selection Team Procedures………………………………[Word](https://www.dgs.ca.gov/-/media/5FED90413B644E1592718BEB7E936BF6.ashx)

**F**

File Documentation list for: ………………………………………… [IT Goods](https://www.dgs.ca.gov/-/media/DA08C511FBAA4390A7CB7BF04BDC6B68.ashx)

 [IT Services](https://www.dgs.ca.gov/-/media/9EC3611F92DA4080A03621DC4F2B2334.ashx)

 [Limited to Brand (LTB)](https://www.dgs.ca.gov/-/media/FE8E5E361BFF4FA6A4F8BD0AFAEC8EFF.ashx)

**G**

General Provisions (IT and Non-IT)………………………….. [Link to Webpage](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language)

**I**

Information Technology (IT) Policy Letter…………………………… [ITPL 11-03](https://cdt.ca.gov/wp-content/uploads/2017/03/ITPL_11-03_Formal_Solicitation_Review_Final_03142011.pdf)

Invitation for Bid (IFB)……………………………………. [IT Goods Only Format](https://www.dgs.ca.gov/-/media/AE07AAD4CB8844708850490731421F31.ashx)

 [IT goods and/or services Format](https://www.dgs.ca.gov/-/media/5B42E34271524637AC7B066D07BFAB49.ashx)

 Non-IT goods: [PDF](https://www.dgs.ca.gov/-/media/1F65DF4DCA5D43F08BFAB153065E5B18.ashx)

**L**

Letter of Intent to Award……………………………………… [Word](https://www.dgs.ca.gov/-/media/C229D4811A8F4567B57B1913C0762A71.ashx)

Limited To Brand (LTB) Contract Statement………………. [PDF](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/gspd08-001.pdf)

**P**

Procurement Summary Document…………………………. [PDF](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/gspd300.pdf)

**R**

Request for Proposal (RFP) for IT Goods Services……………………… [PDF](https://www.dgs.ca.gov/-/media/5B42E34271524637AC7B066D07BFAB49.ashx)

Request for Quote (RFQ) for: …………………………. [IT goods and/or services](https://www.dgs.ca.gov/-/media/BC8D41D1334B4205B87590171E32B26D.ashx)

 [IT Goods Only](https://www.dgs.ca.gov/-/media/A6D840A18D694D3089A3DD9AFA9A944E.ashx)

 Non-IT Goods: [Word](https://www.dgs.ca.gov/-/media/1C7FF1B66179482184B4CF91C161C1D4.ashx)

Risk Evaluation Guidelines and Financial Protection Measures………… [Word](https://www.dgs.ca.gov/-/media/6EE39B76CED44AFCA9CE4F2B0211F9EF.ashx)