Chapter 5

Non-Competitively Bid (NCB) Purchases

Table of Contents

[Chapter 5 3](#_Toc12963714)

[Non-Competitively Bid (NCB) Purchases 3](#_Toc12963715)

[Overview 3](#_Toc12963716)

[Introduction 3](#_Toc12963717)

[Topic 1- Non-Competitively Bid (NCB) Purchases and Purchasing Authority 4](#_Toc12963718)

[5.1.0 NCB Purchasing 4](#_Toc12963719)

[5.1.1 NCB Purchasing Authority 4](#_Toc12963720)

[5.1.2 NCB Purchasing Authority Threshold 4](#_Toc12963721)

[5.1.3 Purchases Under $10,000 5](#_Toc12963722)

[Topic 2 – NCB Justification Process 6](#_Toc12963723)

[5.2.0 NCB Justification Methods 6](#_Toc12963724)

[5.2.1 NCB Justification Documents 6](#_Toc12963725)

[5.2.2 Signature Authority 7](#_Toc12963726)

[5.2.3 File documentation 7](#_Toc12963727)

[5.2.4 NCB Submission Timeline 7](#_Toc12963728)

[5.2.5 Examples of Appropriate and Inappropriate Justifications 8](#_Toc12963729)

[5.2.6 NCB Submission Exceptions 9](#_Toc12963730)

[5.2.7 NCB Fiscal Year Deadline Dates 9](#_Toc12963731)

[5.2.8 NCB Process 10](#_Toc12963732)

[5.2.9 NCB Denied 10](#_Toc12963733)

[5.2.10 NCB Corrective Action Plan 10](#_Toc12963734)

[5.2.11 Escalation Process 11](#_Toc12963735)

[5.2.12 LPA Transactions and NCB 12](#_Toc12963736)

[5.2.13 Known Suppliers Outside LPAs 12](#_Toc12963737)

[Topic 3 – Purchase Document Amendments and the NCB Justification 13](#_Toc12963738)

[5.3.0 When NCB Process is Applicable 13](#_Toc12963739)

[5.3.1 When an Amendment Does Not Require an NCB 13](#_Toc12963740)

[5.3.2 Amendment Requirements Based on Cumulative Dollar Value 13](#_Toc12963741)

[5.3.3 Exceeding the Fair & Reasonable Acquisition Method Dollar Threshold 14](#_Toc12963742)

[5.3.4 SCPRS Reporting Responsibilities 14](#_Toc12963743)

[5.3.5 Reporting Amendments in SCPRS 14](#_Toc12963744)

[Topic 4 – Special Category NCB Request (SCR) 16](#_Toc12963745)

[5.4.0 Special Category NCB Request Definition 16](#_Toc12963746)

[5.4.1 Individual SCR for Each Category 16](#_Toc12963747)

[5.4.2 SCR Dollar Threshold and Duration 16](#_Toc12963748)

[5.4.3 SCR Reference Number Assigned 17](#_Toc12963749)

[5.4.4 Executing the Purchase 17](#_Toc12963750)

[5.4.5 Tracking Purchases 17](#_Toc12963751)

[5.4.6 SCR Usage Oversight 17](#_Toc12963752)

[Topic 5 – Purchases Exempt from the NCB Process 18](#_Toc12963753)

[5.5.0 Purchases Exempt by Statute 18](#_Toc12963754)

[5.5.1 Purchases Exempt by DGS policy 18](#_Toc12963755)

[5.5.2 Amendments Exempt from Advertising and Competitive Bidding by DGS Policy 19](#_Toc12963756)

[5.5.3 Purchasing Authority Thresholds 19](#_Toc12963757)

[5.5.4 Supporting Statement 19](#_Toc12963758)

[5.5.5 Cost Reasonableness 19](#_Toc12963759)

[Topic 6 – Procurement Approach for Exempt and NCB Contract Activities 20](#_Toc12963760)

[5.6.0 Acceptance of State Terms and Conditions 20](#_Toc12963761)

[5.6.1 Creating a Solicitation 20](#_Toc12963762)

[5.6.2 Supplier Contracts and Forms 20](#_Toc12963763)

[Topic 7 – Fair and Reasonable (F&R) Acquisition Method Purchases 21](#_Toc12963764)

[5.7.0 Fair and Reasonable Acquisition Method 21](#_Toc12963765)

[5.7.1 Techniques to Determine Fair and Reasonable Pricing 21](#_Toc12963766)

[5.7.2 Compare Identical Situations 22](#_Toc12963767)

[5.7.3 Exceptions 22](#_Toc12963768)

[5.7.4 File Documentation 22](#_Toc12963769)

## Chapter 5

## Non-Competitively Bid (NCB) Purchases

#### Overview

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##### Introduction

The state is committed to a policy of competitive procurement and contracting that promotes and provides for open and fair competition when competition is known to exist. This chapter describes the process that must be followed when executing a transaction where no known competition exists, i.e., an NCB transaction.

Also described is the purchasing authority necessary before executing an NCB purchase, the requirements that shall be followed, the necessary forms, and potential consequences when a department has a significant number of repeat NCB purchases.

When executing a transaction that limits competitive bidding to a specified brand or trade name (LTB) and more than one supplier is available, departments are required to follow the LTB process in Chapter 4, Section 4.C3.0.et seq.

#### Topic 1- Non-Competitively Bid (NCB) Purchases and Purchasing Authority

##### 5.1.0 NCB Purchasing

NCB purchases are limited by statute in accordance with PCC section 10301 and 10302 for goods to the following conditions:

* Proposed acquisition of goods and services are the only goods and services that meet the state’s need, or;
* Emergencies, where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

##### 5.1.1 NCB Purchasing Authority

Departments are granted purchasing authority on acquisition methods for which they have applied. If a department elects to apply for Non-IT Goods purchasing authority, NCB authority will be granted only for Non-IT Goods and Leveraged Procurement Agreement (LPA) Non-IT Goods and Non-IT Services.

A department’s Purchasing Authority Approval Letter (PAAL) designates NCB thresholds for both the justification and contract. There is a distinction between both, since the justification must be approved prior to a contract being approved and executed.

Departments should reference their PAAL for pre-procurement requirements.

##### 5.1.2 NCB Purchasing Authority Threshold

A department’s NCB purchasing authority will typically have a maximum dollar threshold not to exceed $25,000.00 for an NCB Justification (per transaction excluding sales and use tax, finance charges, postage, shipping and handling). While this threshold is for the pre-procurement requirement, it is not necessarily the same threshold for execution of the contract. To that end, the contract threshold for NCBs will always be identical to the department’s Non-IT Goods competitive threshold. See the example below.

Example: Department of Horse Racing has $25,000 threshold for NCB Justification and $100,000 threshold for Non-IT Goods for an NCB contract. The department could execute a contract on their own up to the contract threshold ($100K); however, any contract over $25,000 would require an NCB justification to be submitted to and approved by DGS. A contract up to $25,000 would require the department to complete an NCB Justification and retain it in the procurement file; it would not need to be submitted to and approved by DGS.

Departments without approved purchasing authority for Non-IT Goods must submit the required NCB request forms and purchase documents to DGS/PD for processing.

NCB request forms and purchase documents for purchases exceeding the department’s approved NCB purchasing authority for a justification and contract must be submitted to DGS/PD for review and approval.

**Note:** See Chapter 1 for the requirements of applying for IT purchasing authority.

##### 5.1.3 Purchases Under $10,000

Departments with purchasing authority may solicit a bid from a single source for transactions under $10,000 when pricing is determined to be fair and reasonable. In this case, no NCB justification is required if fair and reasonable pricing is established and documented. Examples of fair and reasonable pricing methods are described in Topic 7 of this Chapter. Documentation to support fair and reasonable pricing must be retained in the procurement file.

#### Topic 2 – NCB Justification Process

##### 5.2.0 NCB Justification Methods

There are two methods for justifying NCB purchases as follows:

* NCB justifications executed on an individual basis.
* Special Category NCB Request (SCR), where a department determines that a significant number of repeat NCB purchases for a particular category of goods and/or services will occur during a specified period of time.

Refer to Topic 4 of this chapter for additional details regarding SCR.

##### 5.2.1 NCB Justification Documents

Departments must use the following DGS/PD-approved form when submitting NCB justification documents. Click here to access the NCB Justification:

[Word](https://www.dgs.ca.gov/-/media/0F93C99D7E5B454DADFB295FABE4A076.ashx)

Click here to search for the [Contract Advertising Exemption Request (STD.821)](https://www.dgsapps.dgs.ca.gov/osp/StatewideFormsWeb/Forms.aspx). (https://www.dgsapps.dgs.ca.gov/osp/StatewideFormsWeb/Forms.aspx)

When completing the NCB Justification form, departments must respond to all questions clearly and concisely and must fully justify:

* why a particular good is restricted/unique
* how the background of events prompted the request
* what the consequences are if the good is not purchased
* that no competition exists, based on market research efforts

In addition, departments must document how the price is fair and reasonable. This includes providing a basis of the comparison used such as current market rates, historical pricing, LPA pricing, contracts for similar services, etc. Examples of fair and reasonable pricing methods are described in Topic 7 of this Chapter.

Finally, departments must describe any cost savings realized or avoided when selecting a particular good. Departments must quantify and substantiate their response.

The NCB Justification form is a set of consistent questions required for all NCBs, however, DGS reserves the right to ask additional questions that would serve to strengthen and clarify the unique circumstance, which has prompted the NCB. Additional questions may not always be consistent since no NCB is identical.

Example: An NCB for a Non-IT Good will generate different questions from an NCB for IT Goods or Non-IT Services. All three (3) will have very unique characteristics, therefore requiring additional questions depending on the circumstance.

##### 5.2.2 Signature Authority

Buyers must secure the proper signature approvals on the NCB Justification. The NCB Justification requires the specified signatures(s) regardless of whether or not the justification is submitted to DGS/PD for approval. All signatures must be originals.

* **Signature Instructions for Agencies with an Agency Secretary**

The NCB Justification form requires approval by Agency Secretary or Agency Undersecretary and the department director or designee. The Agency Secretary may designate one person, in addition to Agency Undersecretary, to sign on his/her behalf, of cabinet officer level (e.g., Assistant Undersecretary, Deputy Secretary, etc., the actual title is dependent upon the Agency’s organizational structure). The department director may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer. The director’s designee shall send ratification notification to their director upon the designee’s approval of the NCB transaction. The typed name and signature must match for both signatures.

* **Signature Instructions for Agencies that do not have an Agency Secretary**

This form requires approval by the highest-ranking executive officer or designee. The highest-ranking officer may designate one person to sign on his/her behalf subject to DGS approval. The highest-ranking officer may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer. The designee shall send ratification notification to their highest-ranking executive officer upon their approval of the NCB. The typed name and signature must match.

DGS/PD will maintain a file of the names and titles of designees.

##### 5.2.3 File documentation

Click here to access the [file documentation list for NCB contracts](https://www.dgs.ca.gov/-/media/F4E9E9FC597840C28C6515B66BB79D0A.ashx)

##### 5.2.4 NCB Submission Timeline

NCB’s require thorough review and analysis and as such, require a minimum of 45 days to process (justification portion only). If an NCB is received by DGS less than the minimum 45 days for review and approval, the submitting agency or department will be notified that goods are not to be purchased prior to determination of NCB approval or non-approval. Any goods purchased prior to the approval or non-approval date will require a claim to be submitted to the DGS Government Claims Program.

In addition, to ensure the state’s interests are adequately protected, NCBs

are not to be approved when the identified start date of the contract or

effective date of the amendment has passed, except under exceptional

circumstances as described below (Section 5.2.5). If there is no exceptional circumstance, the agency or department will be advised to notify the business entity to file a claim with the DGS Government Claims Program for compensation for goods already received.

##### 5.2.5 Examples of Appropriate and Inappropriate Justifications

Departments should refer to the examples below when submitting an NCB Justification request.

A department has identified during their quarterly review that a specific good is needed:

| Appropriate | Inappropriate |
| --- | --- |
| * Needs are clearly identified well in advance. * Market survey reveals no competition other than a single vendor. * NCB is submitted to DGS no less than 45 days in advance of the contract start date. * Consequences are fully explained and impacts identified if unable to contract with proposed supplier. * Respond to the questions in the NCB Justification with clarity and detailed responses. * Cost breakdown with deliverables are clearly identified and explained on how funds will be expended. | * Inadequate contract planning that would prevent competition. For example: A contract expiring in 15 days. * Justification responses lack enough detail to substantiate request. * NCB submittal to DGS is less than 45 days of the contract start date. * Insufficient information to establish cost reasonableness. * Unwillingness to provide clarification to substantiate the request. |

Departments are reminded that poor procurement planning **does not** justify an NCB request.

Repetitive submission of NCBs for products and services by a department (particularly within a condensed time period) is highly discouraged. Such a practice could indicate a serious flaw in the department’s ability to properly manage contracts and acquisitions; thus, potentially putting at risk their purchasing authority and triggering an escalation process to alert their leadership. Repetitive submission of NCBs should not be confused with the Special Category Request, which is an approved acquisition method.

##### 5.2.6 NCB Submission Exceptions

NCBs for purchases where goods have already been procured or for amendments that have already been executed may be accepted on an exceptional basis only if the contracting agency or department certifies in writing that there is good cause for lateness. A late justification letter is required, which provides a statement of detailed facts and demonstrates it is in the state’s best interest to approve the NCB at the time submitted. Examples of good causes are limited to:

* The underlying purchase is necessary to avoid an unexpected and emergent risk to persons or property and the NCB was processed expeditiously upon discovery of the risk;
* The underlying purchase or amendment is the subject of a judicial order.

**Note:** In no case will an approval be given for goods that have been purchased for a period greater than 30 days.

Urgent risk and good cause late submittals will be evaluated on a case-by case basis upon a review of the facts and the written justification provided by the agency or department. In some cases, an NCB request may be approved prospectively, but not approved for the period that preceded the submittal of the NCB.

The NCB late justification letter must be signed by the Agency Secretary or Agency Undersecretary and the Department Director or Chief Deputy Director.

##### 5.2.7 NCB Fiscal Year Deadline Dates

In order to comply with fiscal year deadlines, NCB, LTB, and SCR requests must be submitted to the Dispute Resolution Unit (DRU) as follows:

Non-IT Goods Requests

| First business day in February | NCBs, LTBs, and SCRs |
| --- | --- |

Non-IT Service Requests

| Requesting agencies and departments should allow 45 days prior to the contract or amendment start date for the review of NCBs or SCRs. | NCBs and SCRs |
| --- | --- |

##### 5.2.8 NCB Process

The department determines a need to acquire a product from a supplier who is the only known source.

The department completes an NCB justification form, securing appropriate approval signature(s), and submits original form to DGS/PD/Dispute Resolution Unit (DRU) for review.

DGS/PD/DRU will:

* Acknowledge receipt of the request.
* Review requests within 45 days.
* Request additional information as required.
* Notify the department when their request has been approved or denied.

If the NCB justification is approved and the NCB contract:

* Is within the department’s delegated dollar threshold for NCB contracts, the department may execute the contract. The approved NCB justification shall be maintained in the procurement file.
* Is above the department’s delegated dollar threshold for NCB contracts, the department shall submit a Purchase Estimate (STD.66) to DGS/PD/One Time Acquisitions (OTA) to process the contract on behalf of the department.

##### 5.2.9 NCB Denied

If the NCB justification is denied, DGS/PD will contact the department and discuss the following options:

| **When the purchase** | **Then DGS/PD will** |
| --- | --- |
| Exceeds the department’s NCB purchasing authority but  is within the department’s approved competitive purchasing authority threshold. | * Advise the department to conduct a competitive solicitation or, * Deny the request. |
| Is requested by a department without any type of purchasing authority. | * Conduct a competitive solicitation to acquire the same or equivalent product or, * Deny the request. |

##### 5.2.10 NCB Corrective Action Plan

A Corrective Action Plan (CAP) is a tool that aims at reducing the use of NCBs when other acquisition methods could have been used. A CAP also allows a department to plan accordingly and seek other competitive acquisition methods to meet their program needs. The CAP will require departments to commit to specific actions within a timeline. Departments are required to fully answer the CAP question in the Justification form if the NCB is being submitted due to the following reasons:

* insufficient time to complete the competitive acquisition process,
* the goods could have been competitively bid or are available through an LPA, or
* is being submitted outside the required NCB Submission Timeline as identified in section 5.2.3 above.

Departments failing to adhere to the CAP actions required by DGS, run the risk of jeopardizing their purchasing authority. Departments are strongly encouraged to fulfill commitments outlined in their CAP.

##### 5.2.11 Escalation Process

The escalation process serves as a tool to manage NCBs being submitted to DGS. The tool aims at encouraging departments to utilize the NCB acquisition method appropriately. While the NCB acquisition method is a valid method for acquiring goods, it is not intended to circumvent the competitive process.

Step 1- If a Department submits 20% or more non-compliant NCBs within a quarter.

Step 2- If a Department submits 35% or more non-compliant NCBs within a quarter.

Step 3- If a Department submits 50% or more non-compliant NCBs within a quarter.

| Non-Compliance | Consequence |
| --- | --- |
| Step 1 (20%) | Letter sent to Manager & PCO\*\* |
| Step 2 (35%) | Letter sent to Deputy Director and cc Manager, PCO\* |
| Step 3 (50%) | Letter sent to Agency Secretary & cc Manager, PCO, Deputy Director, PAU\* |

\*DGS will require departments to complete our Basic Acquisition Certification class provided by CalPCA.

\*\*DGS will require or suggest completion of NCB, Contract Management, and Statement of Work workshops provided by CalPCA.

NCB CAP tracking analysis will be done on a quarterly basis. Quarters will begin on the first day of the fiscal year (July 1). DGS will use the intake date to determine which quarter an NCB is recorded. For percentages to be utilized as a metric, a department must have submitted a minimum of 5 NCBs within a quarter. Departments submitting less than 5 NCBs in a quarter will be handled on a case-by-case basis.

##### 5.2.12 LPA Transactions and NCB

State agencies must use the NCB Acquisition Method when only one supplier is known to sell the goods and/or services needed, and offers cannot be obtained through available LPA contracts.

The NCB Acquisition Method must be used for amendments to previously approved LPA transactions when the amendment requires an NCB Justification. These amendments must be executed using the NCB Acquisition Method and adhere to the NCB Justification and NCB contract approval process.

The NCB Justification and NCB contract approval process is not required if an individual LPA User Instructions state that the contract is exempt from obtaining offers. This exemption typically applies when DGS/PD has competitively bid an LPA, obtained a statewide NCB Justification and NCB contract when creating an LPA, or where DGS has approved a categorical exemption to competition.

Buyers are reminded to always refer to individual LPA User Instructions and all LPA supplements prior to initiating an LPA purchase. Refer to Chapter 6 and Topic 2 of this chapter for further information.

##### 5.2.13 Known Suppliers Outside LPAs

Departments must conduct a competitive solicitation if suppliers are known outside of CMAS contractors or Master Agreement (MA) contracts that can meet the department’s requirements.

#### Topic 3 – Purchase Document Amendments and the NCB Justification

##### 5.3.0 When NCB Process is Applicable

If the original transaction, either competitive or LPA, did not evaluate option(s) for changes, then the amendment must comply with the NCB process. This includes amendments for increases and decreases to quantity, dollar amount, and time.

##### 5.3.1 When an Amendment Does Not Require an NCB

Amendments to existing purchase documents are not subject to the NCB requirements if the following has occurred:

* Competitively bid contracts:
  + Which included option(s) for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such amendment(s) if such options were evaluated during the solicitation process.
* LPAs for Non-IT Goods or Non-IT Services:
  + Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offer (RFO) process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments.
* Competitive contracts and LPA orders amended for incidental omissions, for example:
  + Transposed numbers
  + Missing contact names
  + Mistyped addresses

##### 5.3.2 Amendment Requirements Based on Cumulative Dollar Value

The requirements for amending existing purchase documents are based on the cumulative dollar value of the purchase after including the amendment.

Example:

A $200,000.00 contract plus a $60,000.00 amendment shall be considered a

$260,000.00 contract. The processing of an amendment through the NCB approval cycle is based upon the amended total value of the contract.

**Note:** If your amendment and original contract amount (total contract amount) surpasses your purchasing authority threshold, the contract will be executed by DGS PD.

##### 5.3.3 Exceeding the Fair & Reasonable Acquisition Method Dollar Threshold

The NCB process must be followed if an amendment will cause the original transaction amount to exceed $10,000.00 and the original transaction was awarded using the Fair and Reasonable Acquisition Method. The amendment shall be processed using the NCB Acquisition Method and adhere to the NCB process described herein.

##### 5.3.4 SCPRS Reporting Responsibilities

Effective July 2016, departments are required to report all transactions regardless of the dollar amount, into FI$Cal SCPRS. This reporting requirement applies to Non-IT Goods.

##### 5.3.5 Reporting Amendments in SCPRS

Purchase document amendments must be recorded in the SCPRS.

In SCPRS, amendments are NOT reported as separate transactions independent of the original transaction, unless there is a change in the Acquisition Method (e.g., from CMAS to NCB).

In FI$Cal SCPRS to report an amendment, buyers will be utilizing the “Change Order” functionality.

If there is NO change between the acquisition method of an amendment and the original transaction:

Amendments to increase or decrease the total amount of a transaction registered in FI$Cal SCPRS, require the user to create a new line on the reported transaction, for the change amount. The new line will contain the following additional information:

* The item description will also include a brief explanation for what is being added or taken away
* For decreases the line will be a negative amount where users must maintain an accurate Quantity and Unit Price amount
* For increases the line will be a positive amount where users must maintain an accurate Quantity and Unit Price amount

When the acquisition method for the amendment is different than the original transactions, buyers will be required to create a new procurement reporting transaction in FI$Cal SCPRS meeting the following conditions:

* The new “Purchase Document #” must mirror the original agreement number where the suffix end in “- A” (dash A) for the new entry
* Buyers will enter the previous transaction ID in either the “Comments” field
* Buyers will attach a copy of all the original procurement documents in the “Add Comments and Attachments” link
* Buyers will also include a brief description of the amendment again utilizing the “Add Comments and Attachments” link

Each time an Amendment/”Change Order” is made to an existing FI$Cal transaction prior to “Save” user will need to select the appropriate value from the “Change Order Reason” table and be given the option to add in the comments section a description of what amendment/change is being executed.

#### Topic 4 – Special Category NCB Request (SCR)

##### 5.4.0 Special Category NCB Request Definition

A Special Category NCB Request (SCR) represents categories for the purchase of goods or services necessary to achieve a department’s program objectives in a timely manner. DGS has determined in advance and in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required. In essence, an SCR could be viewed as a blanket (with parameters) for multiple NCBs approved all at once and utilized as necessary over a specified timeframe, instead of submitting repetitive stand-alone NCBs for the goods and services.

All SCRs must use the Special Category NCB Request form.

Click here to access the SCR:

[Word](https://www.dgs.ca.gov/-/media/F2B43E4B94F3409EADD29CD0556924D5.ashx)

Refer to Topic 1 of this chapter for approval signature requirements.

##### 5.4.1 Individual SCR for Each Category

An SCR must be completed and approved for each category of non-IT Goods, being requested and submitted to DGS/PD for consideration and approval.

**Note**: The SCR form is not to be used for emergencies, nor is it to be used to aggregate requests on behalf of other departments.

##### 5.4.2 SCR Dollar Threshold and Duration

All SCRs have a maximum authorized dollar limit and a maximum “window of approval” not to exceed three (3) calendar years from the date of DGS/PD approval unless renewed by submission of a new SCR. The expiration date is identified in the box labeled “For DGS Use only” on the SCR form.

Example: A department submits an SCR for eight (8) $1,000.00 purchases per year over a three (3) year period for a maximum of $24,000.00. The SCR cannot exceed $24,000.00.

**Note:** SCRs must be re-requested 45 days prior to expiration, as they cannot be amended.

##### 5.4.3 SCR Reference Number Assigned

Each approved SCR will be assigned an SCR reference number by DGS/PD. This SCR number must be recorded on any purchase order executed under the SCR approval. This is in addition to the department’s approved purchasing authority number.

##### 5.4.4 Executing the Purchase

Departments with purchasing authority may proceed with execution of purchase documents in accordance with an approved SCR.

DGS/PD must execute all approved SCR purchase documents for departments without purchasing authority and for transactions exceeding a department’s purchasing authority. In these instances, the requesting department will submit purchase requests on a Purchase Estimate (STD.66) for non-IT goods and by submitting a memo to DGS/PD/OTA.

**Note:** Unless otherwise required by a department’s internal process, transactions placed against an approved SCR do not require approval signature on the purchase document by the Department’s Director and Agency Secretary or immediate next ranking official since these signatures are obtained during the initial SCR approval process.

##### 5.4.5 Tracking Purchases

Departments must track all SCR purchase documents executed under an approved SCR authority, including transactions processed on a purchase estimate by DGS, and provide reports to DGS/PD as requested.

Information to be tracked will include, at a minimum, the following:

* Special Category (SCR) approval number issued by DGS/PD,
* Purchase order number issued by DGS and/or agency order number (STD.65),
* Dates of transactions,
* Dollar amounts of transactions.
* Supplier names.

##### 5.4.6 SCR Usage Oversight

Purchase documents executed under an approved SCR may be reviewed during the department’s triennial accreditation process.

#### Topic 5 – Purchases Exempt from the NCB Process

##### 5.5.0 Purchases Exempt by Statute

Purchases may be awarded without advertising or competitive bidding because of being exempt by statute.

Purchases that exceed a department’s purchasing authority, or for departments without any type of purchasing authority, must be submitted to DGS/PD/OTA for review, approval, and execution.

The following purchases may be awarded without advertising or competitive bidding, and without seeking NCB approval, subject to the restrictions noted:

* Emergency contracts, which are necessary for the immediate preservation of life or state property, are exempt from the NCB justification process. Contracts issued because of an emergency may be entered into immediately. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements.
* Goods for which the state has entered into an LPA and which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods offered.

##### 5.5.1 Purchases Exempt by DGS policy

There are purchases that may be awarded without advertising or competitive bidding and without an NCB, because of being exempt by policy. Although exempt by statute or policy, the purchasing authority dollar thresholds still apply. For purchases that exceed a department’s purchasing authority or for departments without any type of purchasing authority, purchase requests must be submitted to DGS/PD for review, approval, and execution of the purchase.

Purchases that exceed departments purchasing authority or departments without any type of purchasing authority must submit these purchases to DGS for review, approval, and execution. The following purchases may be awarded without advertising or competitive bidding subject to the restrictions noted:

* Proprietary subscriptions, proprietary publications, and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to $250,000.00.
* Contracts with business entities operating Community-Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to GC section 19130(a).

##### 5.5.2 Amendments Exempt from Advertising and Competitive Bidding by DGS Policy

Amendments where a protest or other legal action delays the award of the new contract are exempt from advertising and competitive bidding, when the same terms at equal or lower rates apply.

**Note:** These amendments should only apply during the protest period, or while legal action is pending. A new purchase document can be executed, but in no case shall this exemption extend beyond six (6) months for a particular amendment.

##### 5.5.3 Purchasing Authority Thresholds

Although exempt from advertising and competitive bidding by policy, purchasing authority dollar thresholds still apply. See Chapter 1 for purchasing authority dollar thresholds.

##### 5.5.4 Supporting Statement

Procurement files must include a statement indicating the basis for exemption from advertising or competitive bidding either by policy or statute. Documentation must be provided in sufficient detail to support how the exemption is authorized.

Example #1

“This purchase is exempt from advertising and/or competitive bidding based on the DGS policy as identified in SCM Volume 2, item 5.5.1.

Example #2

“This purchase is exempt from advertising and/or competitive bidding based upon the use LPA # .

Example #3

“This purchase is exempt from advertising and/or competitive bidding based upon the use of existing law.” Departments shall specify the law being utilized for this exemption within the justification.

##### 5.5.5 Cost Reasonableness

Purchases although exempt by statute or policy, must be reasonable in cost and justification. Departments must provide the basis of the comparison to include items such as market rates, contract pricing, historical pricing, cost breakdown, etc. Procurement files must include documentation to support fair and reasonable pricing.

#### Topic 6 – Procurement Approach for Exempt and NCB Contract Activities

##### 5.6.0 Acceptance of State Terms and Conditions

Buyers conducting Non-IT Goods purchasing activities for transactions that are exempt from competitive bidding or advertising or that are NCB purchases shall obtain a written offer and acceptance of the state’s terms and conditions when transacting business with the only known supplier.

##### 5.6.1 Creating a Solicitation

The written offer and acceptance may be obtained by having the supplier respond to a solicitation document that is only provided to the one supplier. Buyers should use the Request For Quotation (RFQ) format as provided in Chapter 4, Section B, Topic 3. Conversely, a buyer also has the option to develop their own solicitation document that contains the following elements:

* Date and time the response is due,
* Details of the purchase, including quantities, description, support coverage, coverage dates, etc.
* Fill-in space or a cost sheet for the supplier to provide pricing, purchasing standard, EPP and SABRC (see chapter 3 for - Socio-Economic),
* Request for the signature of the authorized supplier representative that can bind the company contractually,
* Reference or hardcopy the applicable state General Provisions and any additional contract modules (specific to Non-IT Goods and Service) or special provisions applicable to the department.

When conducting business with the only known supplier, buyers must provide the supplier with an opportunity to review and accept the state’s terms and conditions prior to the State executing a purchase document. This practice avoids the possibility of a dispute with suppliers once the purchase document is executed.

##### 5.6.2 Supplier Contracts and Forms

Contract forms, license agreements, or ordering documents provided by suppliers **shall** **not** be signed by state employees. These most often contain terms and conditions inconsistent with the state’s contract terms and conditions and can result in conflict.

Buyers shall seek department legal advice and may contact PAMS via email at: [PAMS@dgs.ca.gov](mailto:PAMS@dgs.ca.gov) for assistance.

#### Topic 7 – Fair and Reasonable (F&R) Acquisition Method Purchases

##### 5.7.0 Fair and Reasonable Acquisition Method

State agencies may conduct acquisitions and execute contracts using the Fair and Reasonable Acquisition Method for transactions valued less than $10,000.00. An NCB is **not** required when using the F&R acquisition method.

When using this acquisition method, it is required that the pricing be evaluated and determined fair and reasonable by following one of the techniques outlined in 5.7.1 below.

##### 5.7.1 Techniques to Determine Fair and Reasonable Pricing

Buyers must use one of the following five techniques to determine whether or not a supplier’s price can be determined to be fair and reasonable:

| **Technique** | **Description** |
| --- | --- |
| Price comparison | A buyer has obtained and documented quotes or offers within the prior 18-month period from other responsible suppliers, which provides evidence that a price obtained is deemed fair and reasonable. |
| Catalog or market pricing | The price offered is supported by an established and verifiable catalog or market pricing media issued by a responsible supplier and/or through an established reputable forum. In addition, the pricing structure provided is one that a prudent buyer would accept as a reasonable representation of existing market value. |
| Controlled pricing | The price offered is set by law or regulation; competitively bid master agreement or statewide contracts, etc. |
| Historical pricing | A buyer is able to demonstrate that other transactions occurring within a prior 18-month period, which shows historical prices for similar acquisitions, have yielded no material change in cost.    **Note:** The definition of “material change” for this technique is deemed greater than a 15% increased difference between current and historical pricing. |
| Cost/benefit analysis | A buyer can demonstrate that their level of experience in the procurement field provides a sufficient knowledge base, which clearly indicates that the acquisition cost is low. The cost to the state of verifying the pricing fairness would most likely be more than any potential benefit that could be reasonably gained from searching the marketplace for lower price comparable acquisitions. |

##### 5.7.2 Compare Identical Situations

When evaluating fair and reasonable pricing using price comparisons, catalog/market price, and/or historical pricing, buyers must base the comparisons on identical situations or those with small variations that do not affect pricing.

##### 5.7.3 Exceptions

State agencies shall not use the F&R Acquisition Method to purchase customized non-IT good requiring detailed specifications. Below are examples:

* Vending Machines
* Wood Chippers

##### 5.7.4 File Documentation

By using the F&R Acquisition Method, state agencies shall document the technique used to support the F&R pricing. Documentation shall be maintained within the procurement file.