Chapter 4

Competitive Solicitations

Table of Contents

[Chapter 4 4](#_Toc29282234)

[Competitive Solicitations 4](#_Toc29282235)

[Overview 4](#_Toc29282236)

[Introduction 4](#_Toc29282237)

[Section A 5](#_Toc29282238)

[The Basics of Competition 5](#_Toc29282239)

[Overview 5](#_Toc29282240)

[Introduction 5](#_Toc29282241)

[Topic 1 – General Requirements 5](#_Toc29282242)

[4.A1.0 Procurement standards 5](#_Toc29282243)

[4.A1.1 Supplier treatment 5](#_Toc29282244)

[4.A1.2 Per transaction thresholds 6](#_Toc29282245)

[4.A1.3 Maintaining confidentiality is paramount 6](#_Toc29282246)

[4.A1.4 Who should sign confidentiality statements 7](#_Toc29282247)

[4.A1.5 Confidentiality of data made available to the contractor 8](#_Toc29282248)

[4.A1.6 Supplier recrimination will not be tolerated 8](#_Toc29282249)

[4.A1.7 File documentation for competitive solicitations 8](#_Toc29282250)

[Topic 2 – Developing Supplier Resources 9](#_Toc29282251)

[4.A2.0 Mailing lists 9](#_Toc29282252)

[4.A2.1 Request for Interest 9](#_Toc29282253)

[4.A2.2 RFI components 9](#_Toc29282254)

[4.A2.3 Purpose of RFI 9](#_Toc29282255)

[4.A2.4 Request for Information 10](#_Toc29282256)

[Topic 3 – Advertising Requirements 11](#_Toc29282257)

[4.A3.0 California State Contracts Register 11](#_Toc29282258)

[4.A3.1 When advertising is required 11](#_Toc29282259)

[4.A3.2 Publish date versus solicitation release date 11](#_Toc29282260)

[4.A3.3 Publish date versus bid or proposal due date 11](#_Toc29282261)

[4.A3.4 SB/DVBE Option 11](#_Toc29282262)

[4.A3.5 Contract advertising exemption 12](#_Toc29282263)

[4.A3.6 Additional exemptions by statute or policy 12](#_Toc29282264)

[Section B 13](#_Toc29282265)

[The Solicitation 13](#_Toc29282266)

[Overview 13](#_Toc29282267)

[Introduction 13](#_Toc29282268)

[Topic 1 – Solicitation Approaches 13](#_Toc29282269)

[4.B1.0 Informal vs. formal 13](#_Toc29282270)

[4.B1.1 Phone quotes 13](#_Toc29282271)

[4.B1.2 Written solicitation 14](#_Toc29282272)

[4.B1.3 Negotiations 14](#_Toc29282273)

[4.B1.4 Supplier signatures 14](#_Toc29282274)

[Topic 2 – Developing the Competitive Solicitation 16](#_Toc29282275)

[4.B2.0 Solicitations should be clear and concise 16](#_Toc29282276)

[4.B2.1 Avoid writing restrictive requirements 16](#_Toc29282277)

[4.B2.2 Common elements of written solicitations 16](#_Toc29282278)

[4.B2.3 Faxing bid responses 17](#_Toc29282279)

[4.B2.4 Preference programs 17](#_Toc29282280)

[4.B2.5 DVBE Participation Program Requirement for Competitive Solicitations 17](#_Toc29282281)

[4.B2.6 Small Business Participation 18](#_Toc29282282)

[4.B2.7 Samples 18](#_Toc29282283)

[4.B2.8 Clarifications or changes to a solicitation (Addenda) 18](#_Toc29282284)

[4.B2.9 DVBE Incentive for Competitive Solicitations](#_4.B2.9_DVBE_Incentive) 19

[Topic 3 – Request for Quotation Specific to Non-IT Solicitations 20](#_Toc29282285)

[4.B3.0 Request for Quotation (RFQ) 20](#_Toc29282286)

[4.B3.1 Solicitation format 20](#_Toc29282287)

[4.B3.2 Required language 20](#_Toc29282288)

[4.B3.3 Elements of the solicitation 20](#_Toc29282289)

[4.B3.4 Documenting the results 20](#_Toc29282290)

[4.B3.5 Contract award 21](#_Toc29282291)

[Topic 4 – Invitation for Bid Specification to Non-IT Solicitations 22](#_Toc29282292)

[4.B4.0 Invitation for Bid (IFB) 22](#_Toc29282293)

[4.B4.1 Solicitation format 22](#_Toc29282294)

[4.B4.2 Required language 22](#_Toc29282295)

[4.B4.3 Documenting the results 22](#_Toc29282296)

[4.B4.4 Contract award 23](#_Toc29282297)

[Topic 5 – SB/DVBE Option 24](#_Toc29282298)

[4.B5.0 SB/DVBE Option 24](#_Toc29282299)

[4.B5.1 Making use of the option 24](#_Toc29282300)

[4.B5.2 Requirements 24](#_Toc29282301)

[4.B5.3 SB/DVBE Option Acquisition Method Solicitation Requirements 24](#_Toc29282302)

[Topic 6 – Bidder Instructions and Required Contract Language 25](#_Toc29282303)

[4.B6.0 Bidder Instructions 25](#_Toc29282304)

[4.B6.1 General Provisions 25](#_Toc29282305)

[4.B6.2 Required clauses for transactions less than $5,000 and supplier’s written acceptance 25](#_Toc29282306)

[4.B6.3 Obtaining seller’s permit 26](#_Toc29282307)

[Section C 27](#_Toc29282308)

[Rules for Achieving Competition 27](#_Toc29282309)

[Overview 27](#_Toc29282310)

[Introduction 27](#_Toc29282311)

[Topic 1 – Dollar Thresholds 27](#_Toc29282312)

[4.C1.0 27](#_Toc29282313)

[4.C1.1 Non-IT goods transactions valued from $10,000.00 to $50,000.00 27](#_Toc29282314)

[4.C1.2 Non-IT goods transactions valued in excess of $50,000.00 27](#_Toc29282315)

[Topic 2 - (moved 4/18) 29](#_Toc29282316)

[4.C2.0 29](#_Toc29282317)

[4.C2.1 29](#_Toc29282318)

[4.C2.2 29](#_Toc29282319)

[Topic 3 – Limit to Brand or Trade Name (LTB) 30](#_Toc29282320)

[4.C3.0 LTB contracting 30](#_Toc29282321)

[4.C3.1 Emergency purchases 30](#_Toc29282322)

[4.C3.2 $25,000.00 LTB contract purchasing authority dollar threshold 30](#_Toc29282323)

[4.C3.3 Acquisitions requiring LTB 30](#_Toc29282324)

[4.C3.4 LTB contract process 30](#_Toc29282325)

[4.C3.5 LTB contract Statement 33](#_Toc29282326)

[4.C3.6 LTB Statement document 33](#_Toc29282327)

[4.C3.7 Signature authority 33](#_Toc29282328)

[4.C3.8 File documentation list recommended 33](#_Toc29282329)

[Section D 34](#_Toc29282330)

[Supplier Selection 34](#_Toc29282331)

[Overview 34](#_Toc29282332)

[Introduction 34](#_Toc29282333)

[Topic 1 – Supplier Selection Basics 34](#_Toc29282334)

[4.D1.1 Bid/quote evaluations for phone quotes and RFQs 34](#_Toc29282335)

[4.D1.2 IFB evaluation documentation 34](#_Toc29282336)

[4.D1.3 Evaluation criteria revisions 35](#_Toc29282337)

[4.D1.4 (moved 4/18) 35](#_Toc29282338)

[4.D1.5 Public record 35](#_Toc29282339)

[4.D1.6 Bid response/award availability 35](#_Toc29282340)

[Topic 2 – Determining Responsive Bid and Responsible Bidder 36](#_Toc29282341)

[4.D2.0 Responsive and responsible definition 36](#_Toc29282342)

[4.D2.1 Determining effective competition 36](#_Toc29282343)

[4.D2.2 No responsive bids received from responsible bidders 36](#_Toc29282344)

[4.D2.3 Multiple bids received, only one responsive bid from responsible bidder 36](#_Toc29282345)

[4.D2.4 Non-participation due to concerns with bid specifications 37](#_Toc29282346)

[4.D2.5 Award to other than low bidder 37](#_Toc29282347)

[Topic 3 – Ineligible Businesses 39](#_Toc29282348)

[4.D3.0 Authority 39](#_Toc29282349)

[4.D3.1 Ineligible Businesses 39](#_Toc29282350)

[4.D3.2 CalRecycle Website 39](#_Toc29282351)

[4.D3.3 Check for Ineligible Businesses 39](#_Toc29282352)

[4.D3.4 Document the File 39](#_Toc29282353)

[4.D3.5 GC 12990 and non-discrimination 39](#_Toc29282354)

[4.D3.6 Credit card purchases 40](#_Toc29282355)

[Topic 4 – Material Deviations](#_Toc29282356) 41

[4.D4.0 Wording indicating a requirement or condition 41](#_Toc29282357)

[4.D4.1 Wording indicating desirable attributes and conditions 41](#_Toc29282358)

[4.D4.2 State options 41](#_Toc29282359)

[4.D4.3 Determining responsiveness 41](#_Toc29282360)

[4.D4.4 Waiving mandatory requirements is prohibited 42](#_Toc29282361)

[4.D4.5 Examples of deviation types 42](#_Toc29282362)

[Topic 5 – Evaluation and Award 43](#_Toc29282363)

[4.D5.0 Bid submissions 43](#_Toc29282364)

[4.D5.1 Submission of fax bids 43](#_Toc29282365)

[4.D5.2 Supplier faxes at his own risk 43](#_Toc29282366)

[4.D5.3 Procurement summary document 44](#_Toc29282367)

[4.D5.4 Intent to award 44](#_Toc29282368)

[4.D5.5 Tie bids 44](#_Toc29282369)

## Chapter 4

## Competitive Solicitations

#### Overview

##### Introduction

This chapter describes the requirements relative to conducting competitive solicitations under a department’s approved purchasing authority for non-IT goods.

Discussion points include supplier treatment, advertising requirements, procurement methodologies, and developing solicitations. Also included are descriptions of evaluation and selection methods and use of the SB/DVBE Option for acquiring non-IT goods.

Chapter 4 only addresses those solicitation methods for competitive bids and does not include achieving best value with LPA purchasing authority. Refer to Chapter 6 – Leveraged Procurement Agreements for purchasing authority requirements for using LPA.

This chapter also does not address non-IT service competitive solicitations, goods or IT services solicitations. Refer to the SCM, Vol. 1 for acquisitions of non-IT services outside of the LPA framework. Refer to SCM, Vol. 3 for acquisitions of IT goods and IT services.

### Section A

#### The Basics of Competition

#### Overview

##### Introduction

Competition is one of the basic tenets in State procurement and contracting. The acquired products cause the nature of effective competition to vary. Depending upon decisions made during the planning phase, the procurement may be informal or formal, and the selected competition method may be a phone call or a written solicitation document, distributed by fax, electronic mail or regular mail, depending on the procurement value. Unless otherwise provided by law, procurement activities must be conducted in an open and fair environment that promotes competition among prospective suppliers.

The competitive solicitation approaches described in this chapter are applicable to acquisitions of non-IT goods. Buyers are reminded to refer to the SCM, Vol. 1 for policies and procedures for conducting competitive non-IT services contracting solicitations and SCM Vol. 3 for IT goods and services.

#### Topic 1 – General Requirements

##### 4.A1.0 Procurement standards

Departments granted purchasing authority to conduct competitive procurements for non-IT goods 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 solicitation 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 may not exceed the dollar thresholds as authorized by DGS/PD to the individual department. Dollar thresholds exclude sales and use tax, finance charges, postage and handling.

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

When a transaction exceeds or expected to exceed a department’s approved authority threshold, the department must prepare and submit a Purchase Estimate (STD.66) to DGS/PD for processing.

Refer to Chapter 1 – Purchasing Authority to review purchasing authority scope.

##### 4.A1.3 Maintaining confidentiality is paramount

During the development of a competitive solicitation, information as to the development of the solicitation is confidential. Prior to the public opening of bids, any bids received are to remain confidential. During the evaluation of bids received in response to a competitive solicitation and prior to contract award information relating to bid evaluation is confidential.

Pursuant to Public Contract Code sections 10304 and 10305, bids received in response to a competitive solicitation are publicly opened at the time noted in the solicitation and are available for immediate inspection upon bid opening.

Although a rejected bid may have pages marked “Confidential” or “Proprietary”, the bid is a public record subject to release in response to a public records request. In order to prevent the release of bid documents that are marked “confidential” or “proprietary,” the bidder must obtain a court order enjoining the state from release of the document.

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.

Click here to access a sample confidentiality policy. [Word](https://www.dgs.ca.gov/-/media/44DE582ECFE344F8BD6A987476877B38.ashx)

Click here to access a sample confidentiality statement. [Word](https://www.dgs.ca.gov/-/media/73485667EC3A486CA8ED0119CB5B9E68.ashx)

#####

##### 4.A1.4 Who should sign confidentiality statements

Competitive solicitations can involve a team, internal and/or external to the department in addition to the buyer, 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. It is required that 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
* Understands that the information to be kept confidential includes, but is not limited to, specifications, administrative requirements, and terms and conditions, and 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 makes 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

Click here for [Sample Confidentiality Statement](https://www.dgs.ca.gov/-/media/73485667EC3A486CA8ED0119CB5B9E68.ashx)

##### 4.A1.5 Confidentiality of data made available to the contractor

Contracts and bid 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.

##### 4.A1.7 File documentation for competitive solicitations

Click here to access the [recommended file documentation list for non-IT goods competitive solicitations](https://www.dgs.ca.gov/-/media/CDDCFCAF9B6F4568B0D35152A2B1B5A2.ashx).

#### Topic 2 – Developing Supplier Resources

##### 4.A2.0 Mailing lists

Departments should establish mailing lists using a variety of means to locate potential suppliers. Departments should vary the use of suppliers they select competition to broaden their supplier base as well as solicit certified SB’s and certified DVBEs whenever possible. Resources available to departments to identify and/or establish mail lists are:

* Phone books
* Internet search
* Local trade unions
* Chamber of commerce
* Industry listings
* LPA databases
* Certified SB and DVBE firms database
* Recommendations from customers

##### 4.A2.1 Request for Interest

A Request for Interest (RFI) may be used to separate those suppliers who intend to participate in an upcoming solicitation from those who have no interest in participating. RFIs are typically used when there is an excessively large pool of interested suppliers.

##### 4.A2.2 RFI components

The RFI should:

* Be short, concise and to the point,
* Include the solicitation number and title,
* Include a general description of the equipment or services to be solicited,
* Include estimated quantities, features, general time frames, any pertinent geographic information, buyer’s name and telephone number, etc.
* Not provide or ask for any cost information as such information could create an unfair bidding environment,
* Provide space for interested bidders to provide contact name, address, telephone number and submittal date, and
* Include where and how to submit the response to the RFI.

##### 4.A2.3 Purpose of RFI

The RFI establishes the mailing list for buyers to use when distributing a solicitation. Buyers should provide a copy of the solicitation to all responding suppliers. The RFI and the bidders list must be retained in the procurement file.

##### 4.A2.4 Request for Information

A Request for Information may also be used to “survey” the marketplace to understand what products or services may be available and to approximate the dollars that may be needed for procurement.

#### Topic 3 – Advertising Requirements

##### 4.A3.0 California State Contracts Register

The California State Contracts Register (CSCR) was established to maximize competition through advertising State purchasing and contracting opportunities. See GC 14825 et seq.

The [California State Contracts Register web page](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx) can be accessed at https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx

##### 4.A3.1 When advertising is required

Departments must advertise solicitations in the CSCR. A copy of the published advertisement must be included within the procurement file. The table below describes the requirements for advertisements.

| If the purchase is classified: | And the dollar threshold is valued  | Then advertising is |
| --- | --- | --- |
| Non-IT goods | $10,000.00 - $50,000.00 | Recommended |
| Non-IT goods | In excess of $50,000.00 | Required |

##### 4.A3.2 Publish date versus 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.A3.3 Publish date versus bid or proposal due date

Bid opportunities must be advertised for at least 10 working days prior to the bid opening date per GC 14827.2. Agencies shall not release an Invitation for Bid (IFB) prior to publication in the CSCR.

##### 4.A3.4 SB/DVBE Option

GC section 14838.5(a) eliminates the advertising requirement for transactions valued from $5,000.01 to $249,999.99 awarded to a certified SB or a certified DVBE when conducting a SB/DVBE Option solicitation.

Refer to Section B, Topic 5 of this chapter for additional information.

##### 4.A3.5 Contract advertising exemption

Departments can be granted an exemption from advertising in the CSCR if a Contract Advertising Exemption Request (STD.821) is submitted to the DGS/PD for review and approval. This form is used for two purposes:

* When a competitive solicitation is requested to be exempted from advertising or,
* When a competitive solicitation is neither feasible nor possible.

ClickClick here to access the [STD.821](https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std821.pdf).

##### 4.A3.6 Additional exemptions by statute or policy

There are types and/or categories of purchases that may be awarded without advertising or competitive bidding because of being exempt by statute or policy. Transactions that are exempt from advertising or 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.

Refer to Chapter 5, Topic 6 for examples of documenting an exempted transaction.

For a list of these types and/or categories of purchases, refer to Chapter 5 of this manual.

###  Section B

#### The Solicitation

#### Overview

##### Introduction

The solicitation documents the procurement process and includes the solicitation and contract requirements. It is the guiding document to insure suppliers submit responsive bids and that the procurement is successful.

#### Topic 1 – Solicitation Approaches

##### 4.B1.0 Informal vs. formal

Solicitations are purchase documents used to request quotes, bids, or proposals from suppliers and characterized as either informal or formal. Informal solicitations are generally straightforward or uncomplicated and usually of lower dollar value and may be conducted using Request for Quotations (RFQ) or Invitation for Bids (IFB), depending on the degree of specific language needed. Formal solicitations are more complicated, higher in risk and usually of higher dollar value and are conducted using the IFB, depending on the degree of specific language needed. The following provides the dollar thresholds for distinguishing between informal and formal non-IT goods solicitations.

The following table provides the dollar thresholds for distinguishing between informal and formal solicitations.

| **Procurement Type** | **Informal Solicitation** | **Formal Solicitation** |
| --- | --- | --- |
| Non-IT goods | $100,000.00 and less | More than $100,000.00 |

##### 4.B1.1 Phone quotes

Informal solicitations of $50,000 or less (see info block 4.B3.3), may be conducted by phone. This solicitation method requires preparation of a “script” or narrative of the quote requirements so that each bidder is equally informed and quotes may 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.

**Note:** Phone quotes would not be an acceptable method for conducting solicitations if the service portion (set-up, installation, etc.) of the purchase exceeds $10,000.00 for non-IT goods or over $50,000 in all cases because of the advertising requirements.

Click here to access the Bid/Quote Worksheet. [Word](https://www.dgs.ca.gov/-/media/E40F3390C8FB438F89B376216B06C413.ashx) [PDF](https://www.dgs.ca.gov/-/media/B2E8EF7DAB8C4B54B4C7A3AD7B9628C7.ashx)

##### 4.B1.2 Written solicitation

Buyers may conduct informal solicitations using written solicitation formats. Any solicitations advertised in the CSCR must be written. See Section A, Topic 3 of this chapter for advertising requirements.

**Note:** 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 be documented in the procurement file.

See examples of the Request for Quotation (RFQ) and Invitation for Bid (IFB) found in this chapter. Also, refer to Section A, Topic 1 of this chapter for file documentation requirements.

##### 4.B1.3 Negotiations

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, Topic 6 for more information regarding negotiation.

##### 4.B1.4 Supplier signatures

For any written solicitation, supplier quote and/or bid responses regardless of dollar value, solicitation format or delivery method (i.e., fax, electronically, mailed or delivered in person) must include the signature of an authorized supplier representative of the bidder.

“Faxed” signatures are acceptable for solicitation as allowed by the pertinent delivery method. Faxing would not apply in a formal value-effective solicitation response that requires separate volumes for administrative/technical and cost (which must be separately sealed until the administrative and technical requirements are evaluated).

**Exception**: Supplier signatures are not required if the solicitation is conducted as a phone quote, although the buyer must document the supplier representative name providing the quote.

#### Topic 2 – Developing the Competitive Solicitation

##### 4.B2.0 Solicitations should be clear and concise

All solicitations regardless of format (phone quote, RFQ or IFB) 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 (essential) requirements within a solicitation. The words “should” and “may” identify optional requirements sometimes referred to as desirable requirements.

##### 4.B2.1 Avoid writing restrictive requirements

Departments may not include requirements in solicitations that restrict the bidding to a single supplier. Buyers can 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 to one manufacturer, except for reference purposes
* Not dictating detailed design solutions prematurely.
* Allowing sufficient time from the solicitation mail date to the bid due date or first key action date to provide suppliers time to review and consider the requirements, prepare a response, and mail the response back.

##### 4.B2.2 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:
* TACPA Preference program forms
* DVBE participation program forms
* Post-Consumer Content Form
* Administrative requirements, as applicable
* Technical requirements, as applicable
* Cost forms or clear indication of cost placement in the solicitation
* Evaluation information (basis for award)

The IFB model referenced in Section B, Topic 4 of this Chapter may be modified and used to suit departments’ needs.

##### 4.B2.3 Faxing bid responses

The following paragraph must be included in all written competitive solicitations when a department allows suppliers to fax their bids:

“Facsimile machine bids will be considered only if they are sent to (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 and the State assumes no responsibility if a supplier cannot transmit their bid via fax, if the entire bid is not received prior to the bid opening time.”

##### 4.B2.4 Preference programs

Departments must include the TACPA business participation program requirement in competitive solicitations with an estimated dollar value of $100,000.

It is strongly recommended that the solicitation language and preference forms be included in all competitive solicitations valued at $85,000 and greater. If the low responsive bid received from a responsible supplier is $100,000, and the preference requirements were not included in the solicitation, the solicitation must be canceled and re-issued.

Refer to Chapter 3, Topic 7 for further information.

##### 4.B2.5 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.B2.6 Small business participation

Departments are reminded to make every effort to seek out and include certified small businesses in procurement efforts and to include the 5% small business preference and non-SB subcontractor preference in all solicitations, except when soliciting CA certified SBs and DVBEs under the SB/DVBE Option. Refer to Chapter 3, Topic 2 for additional information and Topic 4 for information on how to apply these preferences in evaluations.

##### 4.B2.7 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.B2.8 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 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.

Example**:**

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

**Note**: An addendum to a solicitation shall be issued within a reasonable time before the bid opening date to allow prospective bidders sufficient time to prepare their bids. If, in the buyer’s judgment, 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 be extended in the addendum.

##### 4.B2.9 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, or phone quotes), delivery method, or dollar threshold.

Topic 3 – Request for Quotation Specific to Non-IT Solicitations

##### 4.B3.0 Request for Quotation (RFQ)

The most common written solicitation format used for conducting informal competitive solicitations is the Request for Quotation (RFQ). The RFQ is a straightforward procurement format identifying by item and quantity what is needed by item, quantity, and price.

##### 4.B3.1 Solicitation format

Click here to access the RFQ for Goods solicitation format. [PDF](https://www.dgs.ca.gov/-/media/A6D840A18D694D3089A3DD9AFA9A944E.ashx)

##### 4.B3.2 Required language

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

* Identify Bidder Instructions and applicable General Provisions for the solicitation
* Refer to Section B, Topic 2 of this chapter identifying requirements of faxing bid responses.
* Include language addressing the socioeconomic and environmental programs as applicable (SB, DVBE, TACPA, etc.). Refer to Chapter 3.

##### 4.B3.3 Elements of the solicitation

Click here to access the [Elements of a Competitive Solicitation for non-IT Goods](https://www.dgs.ca.gov/-/media/510A41F1A87C4196AFA60CB59E663952.ashx).

##### 4.B3.4 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.

Click here to access the Bid/Quote Worksheet. [Word](https://www.dgs.ca.gov/-/media/E40F3390C8FB438F89B376216B06C413.ashx) [PDF](https://www.dgs.ca.gov/-/media/B2E8EF7DAB8C4B54B4C7A3AD7B9628C7.ashx)

Refer to information block 4.A1.7 of this chapter to access the competitive solicitation file documentation recommendations.

#####

##### 4.B3.5 Contract award

Contract award resulting from the RFQ process will be to the responsible bidder that submits a responsive bid that is the lowest cost after application of any preference requirements (SB, TACPA, recycle, etc.) incentive (DVBE) or discounts, if applicable.

#### Topic 4 – Invitation for Bid Specification to Non-IT Solicitations

##### 4.B4.0 Invitation for Bid (IFB)

The Invitation for Bid (IFB) is a written procurement method used to solicit bid responses for non-IT goods exceeding $100,000.00.

##### 4.B4.1 Solicitation format

For non-IT goods procurements exceeding $100,000.00, the use of the IFB format is required. Refer to sample IFB document in the link below.

Click here to access the suggested IFB format for non-IT goods. [PDF](https://www.dgs.ca.gov/-/media/1F65DF4DCA5D43F08BFAB153065E5B18.ashx)

##### 4.B4.2 Required language

The following solicitation language must be considered and addressed as applicable in a buyer’s solicitation using the IFB format:

* Identifying Bidder Instructions and applicable General Provisions for the solicitation Refer to Section B, Topic 5 of this chapter
* Identifying requirements of faxing bid responses. Refer to Section B, Topic 2 of this chapter.
* Including language addressing the socioeconomic and environmental programs as applicable (SB, DVBE, recycled, TACPA, etc.). Refer to Chapter 3.

##### 4.B4.3 Documenting the results

Transactions exceeding $100,000.00, 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

Click here to access a Procurement Summary Document. [PDF](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/gspd300.pdf)

Refer to information block 4.A1.5 of this chapter to access the competitive solicitation file documentation recommendations.

#####

##### 4.B4.4 Contract award

Contract award resulting from this IFB process will be to the responsible bidder that submits a responsive bid that is the lowest cost after application of any preference (SB, TACPA, recycle, etc.) or incentive, if applicable.

#### Topic 5 – SB/DVBE Option

##### 4.B5.0 SB/DVBE Option

GC section 14838.5 (a) and (b) allows departments to solicit CA certified SB and DVBE suppliers and award purchase documents valued from $5,000.01 to $249,999.99, provided the department has obtained responsive bids from at least two responsible bidders.

##### 4.B5.1 Making use of the option

A department must have approved purchasing authority for non-IT goods to use the SB/DVBE Option.

**Note**: Buyers are reminded that supplier participation is limited to only CA certified SB or DVBE suppliers. This procurement approach does not provide for the inclusion of non-SB suppliers claiming SB subcontractor participation.

##### 4.B5.2 Requirements

Departments conducting solicitations using this procurement category must verify that participants are certified either SB or DVBE. This verification must be documented in the procurement file. Refer to Topic 2 and Topic 3 of Chapter 3 for additional information.

##### 4.B5.3 SB/DVBE Option Acquisition Method Solicitation Requirements

Departments granted SB/DVBE Option Acquisition Method purchasing authority are authorized to conduct SB/DVBE Option competitive solicitations under GC section 14838.5 (a) and (b) as follows:

* Create the solicitation as described in this chapter.
* Release the solicitation package only to certified SB or DVBE businesses.
* SB or DVBE certification status must be verified through the OSDS Internet site.
* Contract award may be made upon receipt of responsive price quotations from at least two (2) responsible certified SB or DVBE businesses 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, including copies of SB or DVBE business certification as printed from the OSDS search database.

#### Topic 6 – Bidder Instructions and Required Contract Language

##### 4.B6.0 Bidder Instructions

The State’s Bidder Instructions (GSPD-451) must be included or incorporated by reference in all competitive solicitations (written or verbal) for non-IT goods

The Bidder Instructions describe to potential bidders how to provide a responsive bid to the department.

Click here to access the [State’s Bidder Instructions (GSPD-451)](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/IT/GSPD451-110911.ashx?la=en&hash=9EED86E70D634F5F89087ACE5A3583FB0D79C347).

##### 4.B6.1 General Provisions

The State’s General Provisions (GSPD-401 non-IT commodities) shall be used or incorporated by reference in all competitive solicitations and purchase documents for non-IT goods (written or verbal) valued in excess of $4,999.99. A department may supplement the General Provisions with additional provisions tailored to a specific solicitation. There are to be absolutely no changes made to the General Provisions without prior approval of DGS/PD.

Click here to access the [State’s General Provisions (GSPD-401 non-IT commodities)](https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/Model-Language/Non-IT/GPnonIT060810.ashx?la=en&hash=EBD708B10804C33D083B134334E936F57A0EAD11).

##### 4.B6.2 Required clauses for transactions less than $5,000 and supplier’s written acceptance

DGS/PD recommends that departments use the State’s General Provisions on transactions valued less than $5,000.00.

If departments elect not to include and/or reference the General Provisions, then departments are required to obtain written confirmation, prior to award, 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
* Sweat free workshop
* Expatriate PCC10286

The procurement file must include this documentation.

##### 4.B6.3 Obtaining seller’s permit

A copy of the seller's permit or certification of registration is required to be obtained on any tangible personal property purchase regardless of the dollar value and regardless of whether or not a buyer has included either by reference to the PD web page or by attaching hard copies of the State’s Bidder Instructions (Article 8.d) and General Provisions (Article 53-GSPD 401non-IT) to a solicitation. This requirement does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($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

**Note**: In order to support a purchase based upon this exception, the director’s or his/her designee’s written finding must be included in a department’s procurement 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 provided at the link below and print the validation page to include in the purchase file documentation.

Click here to access the [CDTFA website](https://services.cdtfa.ca.gov/boewebservices/verification.jsp).

### Section C

#### Rules for Achieving Competition

#### Overview

##### Introduction

This section describes the dollar thresholds and the rules to be used by departments to determine whether competition has been achieved. Also described within this section is how to determine fair and reasonable pricing.

#### Topic 1 – Dollar Thresholds

### 4.C1.0

This section has been moved to Chapter 5.

### 4.C1.1 Non-IT goods transactions valued from $10,000.00 to $50,000.00

Achieving competition within this dollar range is defined as receiving responsive bids (each bid must meet all specifications and requirements) from at least two responsible bidders, if the solicitation is not advertised in the California State Contracts Register (CSCR).

Although advertising in the CSCR is not required within this dollar range; it is recommended. Solicitations advertised in the CSCR may result in only one bid response. If the sole bid response is responsible and responsive, then the contract may be awarded. The Buyer must document the procurement file with the justification to award to the sole bidder.

Refer to Section A, Topic 3 of this Chapter for advertising requirements.

### 4.C1.2 Non-IT goods transactions valued in excess of $50,000.00

Achieving competition within this dollar range requires that the solicitation be advertised in the California State Contracts Register (CSCR). Solicitations advertised in the CSCR may result in only one bid response. If the sole bid response is responsible (bid must meet all specifications and requirements) and responsive, then the contract may be awarded. The Buyer must document the procurement file with the justification to award to the sole bidder.

Refer to Section A, Topic 3 of this Chapter for advertising requirements.

#### Topic 2 - (moved 4/18)

### 4.C2.0

This section has been moved to Chapter 5.

### 4.C2.1

This section has been moved to Chapter 5.

### 4.C2.2

This section has been moved to Chapter 5.

#### Topic 3 – Limit to Brand or Trade Name (LTB)

##### 4.C3.0 LTB contracting

LTB contracts are limited by statute in accordance with PCC Sections 10301,10302, also for non-IT goods, to the following conditions:

* Emergencies, where immediate acquisition is necessary to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
* Proposed acquisition of goods which are the only goods that meet the State’s need.

##### 4.C3.1 Emergency purchases

Refer to Chapter 2 – Emergency Purchases detailing the process for executing emergency purchases.

##### 4.C3.2 $25,000.00 LTB contract purchasing authority dollar threshold

A department’s LTB contract purchasing authority dollar threshold will be authorized a maximum not to exceed $25,000.00 per transaction excluding sales and use tax, finance charges, postage and handling. Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as FOB Origin, Freight Collect, or FOB Destination.

##### 4.C3.3 Acquisitions requiring LTB

An LTB Statement is required for all competitive solicitations (formal and informal) and the SB/DVBE Option when a department believes that an article of a specified brand or trade name is the only article that will properly meet their need.

##### 4.C3.4 LTB contract process

Departments must follow the LTB process when executing a transaction that limits competitive bidding to a specified brand or trade name. The following chart describes the LTB Contract Statement process for non-IT goods.

| Stage | Who | Does What |
| --- | --- | --- |
| 1 | Department | Determines a need to acquire a specified brand or trade name product. Completes an LTB Statement (GSPD-08-001) form and secures the appropriate approval signature. |
| 2 | Department | Creates the purchase package as follows:1. If the purchase is within the department’s LTB contract purchasing authority dollar threshold and the department’s competitive purchasing authority, then the department will:
	* Retains the approved LTB Statement within the procurement file.
	* Conducts a competitive solicitation restricting to brand name or trade name
	* Executes the purchase document (STD.65)
2. If the purchase exceeds the department’s LTB contract purchasing authority dollar threshold but is within the department’s competitive purchasing authority, then the department will:
	* Submit the LTB Statement to DGS/PD for review and approval. Since this purchase is within the department’s approved purchasing authority, once the LTB Statement is approved, the DGS/PD will send it back to the department to conduct the procurement.
3. If the purchase exceeds both the department’s $25,000 LTB contract purchasing authority dollar threshold and the department’s competitive purchasing authority, then the department will:
	* Submit to DGS/PD for review, approval, and processing, the following:
		1. LTB Statement.
		2. Purchase Estimate (STD. 66)
4. If the purchase is requested by a department without non-IT goods purchasing authority, then the department will:
	* Submit the following to DGS/PD for review, approval, and processing:
		1. LTB Statement.
		2. Purchase Estimate (STD.66)
 |

**LTB contract process**

| Stage | Who | Does What |
| --- | --- | --- |
| 3 | DGS/PD | Processes the transaction as follows:1. If the purchase exceeds the department’s LTB contract purchasing authority dollar threshold but is within the department’s competitive purchasing authority, then the DGS/PD will
	* Review and approve or deny the LTB Statement.
	* If approved, return LTB Statement to the department for processing. Or
	* If denied, return LTB Statement to the department advising them to conduct a competitive solicitation not restricting the solicitation to a brand or trade name.
2. If the purchase exceeds both the department’s LTB contract purchasing authority dollar threshold and the department’s approved competitive purchasing authority, then DGS/PD will:
	* Review and approve or deny the LTB Statement and Purchase Estimate (STD.66).
	* If approved, conduct the appropriate procurement method and execute a purchase document on behalf of the department. Or
	* If denied, conduct a competitive solicitation not restrictive to trade name or brand and execute a purchase document on behalf of the department or cancel the request if directed by the department.
3. Requested by a department without non-IT goods purchasing authority, then DGS/PD will:
	* Review and approve or deny the LTB Statement and Purchase Estimate (STD.66).
	* If approved, conduct the appropriate procurement method and execute a purchase document on behalf of the department. Or
	* If denied, conduct a competitive solicitation not restrictive to trade name or brand and execute a purchase document on behalf of the department or cancel the request if directed by the department.
 |
| 4 | Department or DGS/PD | * Executes purchase document upon DGS/PD approval.
* If the LTB Statement is denied, the department may not limit the competitive bidding to the specified brand or trade name. The department will need to conduct a competitive solicitation.
 |

##### 4.C3.5 LTB contract Statement

The LTB Contract Statement is used for the purchase of goods of a particular brand or trade name or other specifications which have the effect of limiting bidding to one specified brand or trade name where a department has determined that for a specific category of goods there are unique performance factors necessary to achieve a department’s program objectives. An LTB solicitation requires more than one supplier. If there is only one known supplier, an NCB must be used to justify the purchase. See Chapter 5 for details regarding the NCB.

##### 4.C3.6 LTB Statement document

Departments must use the Limit to Brand (LTB) Statement (GSPD-08-001) when submitting an LTB request. No substitute format will be accepted.

Click here to access the LTB Contract Statement: Word PDF

##### 4.C3.7 Signature authority

Buyers executing LTB contract statements must secure their department director or designee’s signature, regardless of whether or not the justification is submitted to DGS/PD for approval. The department director may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer subject to DGS approval.

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

**Note:** All signatures must be originals.

##### 4.C3.8 File documentation list recommended

Click here to access the [file documentation list for LTB contracts](https://www.dgs.ca.gov/-/media/661E762DD63A4756850A9BEA9436823A.ashx). Use of this documentation list is highly recommended.

#### Section D

#### Supplier Selection

#### Overview

##### Introduction

This section describes the requirements for 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.D1.0 An evaluator’s responsibilityEvaluators are expected to:

* Be unbiased and to evaluate all bids fairly.
* Be State employees
* Withdraw from participating in an evaluation if the evaluator has a disqualifying interest.

Example:

Evaluator’s spouse is an employee of the bidder.

##### 4.D1.1 Bid/quote evaluations for phone quotes and RFQs

Buyers should use the Bid/Quote Worksheet 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.

Click here to access the Bid/Quote Worksheet. [Word](https://www.dgs.ca.gov/-/media/E40F3390C8FB438F89B376216B06C413.ashx) [PDF](https://www.dgs.ca.gov/-/media/B2E8EF7DAB8C4B54B4C7A3AD7B9628C7.ashx)

##### 4.D1.2 IFB evaluation documentation

Buyers using the IFB format for non-IT good solicitations exceeding $100,000.00 must use the evaluation and selection process for contract award as outlined in the Evaluation and Selection Report template. 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
* Analysis of all deviations discovered during bid evaluation.

Click here to access the Evaluation and Selection Report template. [Word](https://www.dgs.ca.gov/-/media/2A6BA939367D49D7B35BDE3B35EBDCA9.ashx)

##### 4.D1.3 Evaluation criteria revisions

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

##### 4.D1.4 (moved 4/18)

This section has been moved to Chapter 5.

##### 4.D1.5 Public record

Bids are public documents available to anyone for review after public bid opening. During evaluation, all evaluation information is confidential. Where the solicitation process requires posting a Notice of Intent to Award, the procurement file documents are public and available for anyone to review prior to the award of the contract. Refer to Public Records Act, GC 6250 for exemptions from disclosure. See also VCGC bid protest regulations.

##### 4.D1.6 Bid response/award availability

Where notices of intent to award are not used, departments shall make available to any requestor, bid response/award information after 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.D2.0 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.D2.1 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.

**Note:** A response of “no bid” or “no response” is not considered as receiving a bid.

##### 4.D2.2 No responsive bids received from responsible bidders

When competition results in no responsive bids from responsible bidders, the buyer has two options

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

OR

Option 2 If, in the opinion of the buyer, a second solicitation would not result in a different outcome, the buyer may cancel the solicitation and proceed with an NCB, following the requirements identified in Chapter 5 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.

##### 4.D2.3 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, a buyer may declare that competition has been achieved under the following conditions after carefully considering all factors of the situation (risk, urgency, and impact to their program):

Non-participation due to the State’s socio-economic requirements. The buyer must document the procurement file with the reasons why only one responsive bid was received. The buyer will likely have to request this information 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 or not responsible. Then, after carefully documenting the rationale, the buyer may proceed with the award.

##### 4.D2.4 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, the buyer may proceed with award 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 canceled 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 the department determines that only that product meets the department’s needs, the buyer must document the file that this solicitation has been determined to be an NCB and may proceed with the award, following the procedures outlined in Chapter 5.

##### 4.D2.5 Award to other than low bidder

If a buyer determines that the low bidder will not be awarded the contract and the solicitation is being conducted as a non-IT informal solicitation, (valued less than $100,000.00), 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.

For non-IT goods formal procurement evaluations (those valued more than $100,000.00) when the low bidder will not be awarded the contract, documentation explaining why the department recommends rejecting the lower bid must be forwarded to DGS/PD for concurrence prior to contract award. Departments may not make the award without DGS/PD concurrence. Departments must contact the PAMS to facilitate determination of award.

**Note**: 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 – Ineligible Businesses

##### 4.D3.0 Authority

Public Resources Code (PRC) section 42290 et seq. is collectively referred to as the “Recycled Content Plastic Trash Bag Law.” The law requires that plastic trash bag manufacturers and wholesalers certify their compliance with the law.

##### 4.D3.1 Ineligible Businesses

Those businesses (and any of its divisions, subsidiaries, or successors) found to not be in compliance are deemed to be ineligible for:

* Award of any State contract or subcontract
* Renewal, extension, or modification of an existing contract or subcontract

##### 4.D3.2 CalRecycle Website

A listing of compliant and noncompliant trash bag manufacturers and wholesalers is available on the [CalRecycle website](http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/) at http://www.calrecycle.ca.gov/BuyRecycled/TrashBags/ComplyList/.

##### 4.D3.3 Check for Ineligible Businesses

The State cannot solicit offers from, award contracts to, or renew, extend, or modify a current contract or subcontract with a business identified as noncompliant. Check the CalRecycle website for both primes and subcontractors (as applicable):

* When creating mail lists or prior to soliciting bids or requesting offers
* During the evaluation of competitive bids or assessment of offers
* Prior to creation of amendments or other purchase documents.

##### 4.D3.4 Document the File

If a supplier or bid is rejected due to ineligibility, the file must be documented identifying the reason with a printout of the CalRecycle web list included in the file.

##### 4.D3.5 GC 12990 and non-discrimination

Any employer who wishes to contract with the State for non-IT goods is subject to the provisions of GC Section12990 relating to discrimination in employment. Contractors that do not meet the provisions of GC 12990 are not eligible to contract with the State for non-IT goods. Ineligible contractors are found in the California Regulatory Notice Register. To access the California Regulatory Notice Register, use this [link](https://www.dgs.ca.gov/-/media/B1554E31CB1A4FB8A45B470C9AC5CB36.ashx).

##### 4.D3.6 Credit card purchases

The requirements of GC Section 12990 do not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

#### Topic 4 – Material Deviations

##### 4.D4.0 Wording indicating a requirement or condition

The State has established certain requirements with respect to bid language. The use of "shall," "must," or "will" (except to indicate simple futurity) in solicitations, indicates a mandatory requirement or condition from which a deviation may not 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.D4.1 Wording indicating desirable attributes and conditions

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

##### 4.D4.2 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.D4.3 Determining responsiveness

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

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

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##### 4.D4.4 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.D4.5 Examples of deviation types

Immaterial Deviation:

A bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders or, in other words if the variance is inconsequential.

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 so substantial that it affects the amount of the bid, or provides an advantage or benefit not allowed other bidders. A deviation so substantial that it affects the cost, quantity or quality of the product or services to be provided to the State.

Example:

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

Click here to access a Deviation Worksheet. [Word](https://www.dgs.ca.gov/-/media/7557601015DA4FE2AD5704917FEFCF3C.ashx)

#### Topic 5 – Evaluation and Award

##### 4.D5.0 Bid submissions

Generally, bid submissions will be handled as follows:

* Bids will 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 PST on the date indicated unless otherwise stated in the solicitation.
* When the sealed bids are required, each bid must be separately sealed inside an envelope, signed on all forms furnished by the department and received by the closing time and date specified to be considered for award
* Departmental buyers are advised to create a bidder response list by recording date and time. Bids are submitted along with the bidder’s company name, the bidder’s contact person submitting the bid response and the amount quoted.
* 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.

##### 4.D5.1 Submission of fax bids

Departments that receive and accept faxed bids must adhere to the following:

* Faxed bids will only be accepted when:
	+ The solicitation specifically states they will be allowed;
	+ Received on the fax machine at the phone number specified in the solicitation document; and,
	+ Completely received prior to the bid opening time indicated on the solicitation.
		- The internal clock of the receiving fax machine will be the time by which the official time of receipt will be determined.
		- Faxed bids will be determined to be complete only when they:
			* Contain all information necessary to evaluate the bid and
			* Meet all requirements of the solicitation
* Any solicitation that requires a sealed cost submission cannot be faxed.

##### 4.D5.2 Supplier faxes at his own risk

The State does not assume responsibility for a bidder’s inability to fully transmit their faxed bid. The bidder assumes full responsibility for timely transmission and receipt by the bid submission deadline. Inability to transmit a bid because of usage and/or possible mechanical problems of the receiving fax machine (which are unpredictable) will not relieve a bidder of this responsibility. This caution should be included in the solicitation whenever faxed bids are allowed.

##### 4.D5.3 Procurement summary document

The evaluation process and resulting source selection decision must be documented for every procurement effort and referenced as a procurement summary. The purpose of the procurement summary is to create a single document that provides the history of the particular procurement transactions 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 Bid/Quote Worksheet or the Evaluation and Selection Report

The buyer must evaluate solicitation responses in accordance with the evaluation methodology established in the solicitation.

Use of the Procurement Summary Document as established by DGS/PD is not required however, if this form or a similar form of this document is not used, then the procurement file must include the Bid/Quote Worksheet or the Evaluation and Selection Report to document how and why the award was made. Refer to Topic 1, Section D of this chapter for the Evaluation and Selection Report template.

Click here to access a Procurement Summary Document. [Word](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/gspd300.pdf)

##### 4.D5.4 Intent to award

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.

Click here to access a sample Letter of Intent to Award. [Word](https://www.dgs.ca.gov/-/media/C229D4811A8F4567B57B1913C0762A71.ashx)

##### 4.D5.5 Tie bids

Agencies should put a tiebreaker 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.

**Note:** In the event of a precise tie between suppliers claiming the incentive, the bid of an SB and the bid of a DVBE that is also a SB, the award shall go to the DVBE that is also an SB. (Reference Chapter 3 and GC section 14838 (f) and 2 CCR section 1896.8(f)).

**Note:** Recycled tire product contracts 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.)