

California Health Benefit Exchange/Covered California  
Business Services Branch  
Administrative Services Division  
Procurement and Contract Manual

---



January 2016

## Table of Contents

EXECUTIVE SUMMARY	7
CHAPTER 1: OVERVIEW	8
1.1 General Information:	8
1.2 Terminology:	8
1.3 Exchange/CC Board Involvement:	8
1.4 Legal Authority:	9
1.5 Signature Delegation:	9
1.6 Records Retention:	9
1.7 Public Records Act Requests:	9
CHAPTER 2: PROCUREMENT ROLES AND RESPONSIBILITIES	11
2.1 Procurement Principles:	11
2.2 Communication:	11
2.3 Roles and Responsibilities:	11
2.3.1 Procurement Specialist:	11
2.3.2 Contract Analyst:	11
2.3.3 Program Contract Manager:	11
2.3.4 Procurement Liaison:	13
2.3.5 Approvers:	13
2.3.6 Financial Management Division (FMD):	13
2.3.7 Information Technology Division (ITD):	14
2.3.8 Office of Legal Affairs (OLA):	14
2.3.9 Conduct:	14
CHAPTER 3: PROCUREMENT AND CONTRACT TYPES	15
3.1 Procurement Classification:	15
3.1.1 Selection Approach:	15
3.2 Leveraged Procurement Agreements (LPA):	17
3.2.2 California Multiple Award Schedules (CMAS):	18
3.2.3 Master Agreements (MA):	18
3.2.4 Cooperative Agreements (CA) (formerly Western State Contracting Alliance WSCA): CAs	18
3.3 Competitive Solicitations:	18
3.3.1 Invitation for Bid (IFB):	19

3.3.2 Request for Proposal (RFP):	19
3.3.3 Certification of Qualified Health Plans:	20
3.3.4 Request for Offers (RFO) for Information Technology Services:	20
3.3.5 Request for Quotes (RFQ) for Goods and Non-Personal Services:	20
3.3.6 Small Business/Disabled Veteran's Business Enterprise Request for Quotes (RFQ):	21
3.3.7 Preference Programs for Competitive Solicitations:	21
3.3.8 Commercially Useful Function and Procedure:	23
3.4 Fair and Reasonable:	23
3.5 Best Value:	24
3.6 Exempt from Bidding:	24
3.6.1 Statutory Exemptions	24
3.6.2 DGS Approved Exemptions	25
3.7 Interagency Agreements (IA):	26
3.8 Non-Competitive Bid (NCB) Contracts:	27
3.9 Emergency Contracts:	27
3.10 Non-Monetary Agreements (NMA):	28
3.11 California Prison Industry Authority (CALPIA):	28
3.12 CAL-Card:	28
3.13 Amendments:	29
CHAPTER 4: COMPETITIVE SOLICITATIONS	32
4.1 Process for Formal Competitive Solicitations and CMAS RFO's:	32
4.2 Evaluation:	35
4.3 Prospective Contractor's Conference and Walk Through:	35
4.4 Preparing an Addendum to the Solicitation:	35
4.5 Receiving Proposals:	36
4.6 Re-Solicitations:	36
4.7 Evaluation and Selection Report (ESR):	37
4.8 Prior to Notice of Intent to Award:	37
4.9 Release of Notice of Intent to Award:	38
4.10 Protest Process:	39
4.11 Agreement Award:	40
CHAPTER 5: FORMS AND DOCUMENTATION	41
5.1 Intra-Office Requisition (HBEX 008):	41

5.2 External Training and Conference Form (HBEX 800):	41
5.3 Business Card Order Form (HBEX 009):	41
5.4 Payee Data Record (Std. 204):	42
5.5 Contractor Certification Clause (CCC 307):	42
5.6 Drug-Free Workplace Certification (Std. 21):	42
5.7 Seller's Permit:	42
5.8 Purchase Order (Std. 65):	42
5.9 Office of State Publishing (OSP) Printing Requisition (Std. 67):	42
5.10 Stock Received Report:	43
5.11 Small Business (SB)/Micro-Business (MB)/Disabled Veterans Business Enterprise (DVBE) Certification:	43
5.12 New Contract/Amendment Approval Form (HBEX 011):	43
5.13 Justification for Contracting out Services Form (HBEX 011a/b):	43
5.14 Agreement Summary (Std. 215):	44
5.15 Standard Agreement (Std. 213):	44
5.16 Scope of Work (SOW) (Exhibit A):	45
5.17 Budget Detail and Payment Provisions (Exhibit B):	45
5.18 General Terms and Conditions (Exhibit C):	45
5.19 Optional Exhibits:	45
5.20 Non-Competitive Bid Justification (HBEX 029):	45
5.21 General Provisions:	45
CHAPTER 6: PROCUREMENT PROCEDURES	47
6.1 Purchase Request	47
6.2 Purchase Order (Std. 65) Creation:	47
6.2 Purchase Order Review and Approval:	47
6.3 Purchase Order Award and Distribution:	47
6.4 Receipt of Goods/Stock Received:	47
6.5 Receiving Definitions:	47
6.5.1 Receiving:	47
6.5.2 Inspecting:	47
6.5.3 Acceptance Testing:	48
6.5.4 Acceptance:	48
6.6 Inspection of Received Products:	48
6.7 Damaged Goods:	48

6.8 Under/Over Shipments:	48
6.9 Rejection of Goods:	49
6.10 Hidden Damage:	49
6.11 Returning Items:	49
6.13 Invoicing:	50
6.15 Office of State Publishing:	50
6.15.1 Business Cards:	50
6.16 Shredding Machines:	50
6.16.1 Procedure to Purchase Shredding Machines:	50
6.17 First Aid Kits:	51
6.18 Library Material and Information:	51
6.19 Memberships (Professional):	51
6.19.1 Legal Counsel State Bar Reimbursement:	51
6.20 Service Awards:	52
6.21 Postage and Postage Meter Replenishment:	52
CHAPTER 7: CONTRACT PROCEDURES	53
7.1 General Contract Procedure Information:	53
7.2 Bargaining Units and Employee Organizations Notification:	54
7.3 Personal Service Contracts:	55
7.4 Contractor/Consultant Conflict of Interest:	55
7.5 Background Check Requirements:	56
CHAPTER 8: PROCUREMENT RULES AND ETHICS	57
8.1 General Information:	57
8.2. Employee Conflict of Interest:	57
8.3 Incompatible Activities, Gifts and Gratuities:	57
8.4 Order Splitting:	57
8.5 Board Approval:	57
8.6 CAL-Card Compliance:	57
8.7 Accepting Free, Loaner, or Trial Equipment:	58
8.8 Personal Use of Information:	58
8.9 Misappropriation of State Property or Services:	58
8.10 Sales Tax:	59
8.11 Travel Provisions:	59
8.12 Prompt Payment Act:	59

8.13 Prohibited Bids/Contract Participation	59
CHAPTER 9: EMERGENCY SITUATIONS	60
9.1 General Information:	60
9.2 Types of Emergencies:	60
9.2.1 Natural Disaster Emergency:	60
9.2.2 Other Emergency:	60
9.3 After the Emergency:	60
9.4 Emergency Documentation:	60
APPENDIX A: DEFINITIONS	63
APPENDIX B: ABBREVIATIONS	71

## EXECUTIVE SUMMARY

The Business Services Branch (BSB) of California Health Benefit Exchange/Covered California (Exchange/CC) is responsible for the overall administration of the procurement and contract activities of Exchange/CC to ensure compliance with applicable state and federal laws, rules, regulations, and procedures. Divisions are responsible for managing contracts once executed to ensure compliance with applicable state and federal laws, rules, regulations, procedures, and contract terms (see *Program Contract Management Handbook*).

This Procurement and Contract Manual was developed pursuant to Government Code Section 100505 to provide a resource to clearly define the roles, responsibilities, and procedures for personnel involved in Exchange/CC's procurement and contracts processes. The manual contains guidelines on contract/agreement types, policies, procedures, forms and the solicitation process intended to protect and preserve the best interests of Exchange/CC, the public and the State of California.

## CHAPTER 1: OVERVIEW

### 1.1 General Information:

The California Patient Protection and Affordable Care Act (CA-ACA) provides Exchange/CC with the authority to administer and manage Exchange/CC in implementing the federal Affordable Care Act. As a part of its normal course of business, Exchange/CC procures goods and executes contracts.

Exchange/CC uses various methods to purchase goods and services, including: Purchase Orders (Std. 65), Standard Agreements (Std. 213), and CAL-Card. However, per Government Code (GC) Section 100505, Exchange/CC is exempt from Part 2 of Division 2 of the Public Contract Code (PCC), which addresses procurement processes.

Exceptions to the policies and procedures set forth in this manual require the written approval of the Exchange's Board memorialized in the form of a Board Resolution.

### 1.2 Terminology:

"Solicitation" refers to the bidding process common to State agencies. In this manual, "prospective Contractor" may be used in place of "bidder", and "quote" may be used in place of "bid".

The terms "contract" and "agreement" are used interchangeably in this manual. Additionally, the terms "vendor" and "Contractor" are used interchangeably.

Finally, contracting is a form or type of procurement, which is why the two concepts are included in one manual. Understanding the core concepts of procurement will enhance contract writing.

Please refer to the Appendix A: Definitions for additional terminology.

### 1.3 Exchange/CC Board Involvement:

Involving Exchange/CC's Board in the contracting process is an opportunity to both engage the Board and provide stakeholders and the general public a venue for input and feedback on procured services.

**Board review and approval is required for non-competitively bid contracts exceeding \$150,000 in value. Additionally, Board review and approval is required for all interagency agreements and competitively bid contracts exceeding \$1,000,000 in value.**

The Board's involvement and approval must be initiated at the beginning of the solicitation process for all competitively bid contracts exceeding \$1,000,000 in value. Exchange/CC is required to report to the Board the results of its acquisitions process. The Board will review staff recommendations on the need for contracting, a summary of goods and services being procured, the procurement method and a maximum dollar amount.

Approval by the Board will be memorialized in a resolution and provides the Executive Director the authority to administer a solicitation, select a winning bidder, and execute a contract.

#### **1.4 Legal Authority:**

Exchange/CC is exempt from Part 2 of Division 2 of the PCC, which addresses procurement processes (GC Section 100505). Exchange/CC is required to establish and use a competitive contracting process and to adopt a contracting manual in which the policies and processes are substantially similar to the policies and processes in the State Contracting Manual.

#### **1.5 Signature Delegation:**

The Board has as one of its powers and duties the responsibility to enter into any and all contracts. The Board has delegated its authority to the Executive Director, who has in turn delegated this authority for approving the following documents:

- Contracts
- Contract invoices
- Purchase orders

A Signature Delegation Memo is kept on file within Exchange/CC's BSB. Any revisions or updates to the Signature Delegation Memo shall replace all prior delegations of authority and shall be effective during the Executive Director's term of service or until withdrawn in writing. The Signature Delegation Memo may be amended through the execution of addenda as necessary.

#### **1.6 Records Retention:**

Exchange/CC must document and maintain complete files on all solicitations and contracts for goods and services.

Exchange/CC and Contractors must maintain files for the California State Auditor, Health and Human Services, or their designated representatives, to review and copy any records and supporting documentation directly pertaining to the performance of agreements. These records must be maintained for possible audits for a minimum of ten years after final payment, unless a longer period of records retention is stipulated (45 Code of Federal Regulations (CFR) sec. 155.1210, GC 8546.7, PCC 10115 et seq., California Code of Regulations (CCR) Title 2, sec. 1896).

#### **1.7 Public Records Act Requests:**

The fundamental principle of the California Public Records Act (CPRA) is that governmental records must be disclosed to the public upon request unless there is a specific, justifiable reason not to do so. However, certain Exchange/CC records are exempt from the CPRA pursuant to GC Section 100508, specifically, records that reveal any of the following, shall not be disclosed without appropriate authorization and review by the Office of Legal Affairs (OLA):

- The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with

Exchange/CC, entities with which Exchange/CC is considering a contract, or entities with which Exchange/CC is considering or enters into any other arrangement under which Exchange/CC provides, receives, or arranges services or reimbursement.

However, except for the portion of a contract that contains the rates of payment, contracts entered into shall be open to inspection one year after their effective dates. Additionally, if a contract entered into is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

## CHAPTER 2: PROCUREMENT ROLES AND RESPONSIBILITIES

### 2.1 Procurement Principles:

All staff involved in procuring goods and services must:

- Conduct themselves in a professional manner, refraining from mixing outside friendships with business; and,
- Accurately account for expenditures and property received.

Staff should always consult with the Exchange/CC procurement specialist or contract analyst if questions arise regarding acceptable or unacceptable behavior when dealing with vendors.

### 2.2 Communication:

Communication is a key factor in successful procurement/contract administration. It is important for procurement specialists, contract analysts, and program contract managers to understand the provisions of the purchase agreement, have the ability to communicate with both the vendor and Exchange/CC, and maintain control over the performance as stated in the purchase order/contract.

### 2.3 Roles and Responsibilities:

**2.3.1 Procurement Specialist:** The procurement specialist is the contact within Exchange/CC's BSB who prepares and manages purchase orders related to goods and non-personal services. The procurement specialist must be knowledgeable about procurement rules and provide guidance to those wishing to procure goods and non-personal services.

The procurement specialist shall create and maintain the procurement records, keeping in mind that the records may become part of a response to an audit or Public Records Act request. Records must be maintained in a professional manner, avoiding typos, scratch outs, personal notations and other materials not relevant to the procurement.

**2.3.2 Contract Analyst:** The contract analyst is the contact within Exchange/CC's BSB who systematically analyzes, drafts and ensures that contracts are properly executed. The contract analyst manages the contract working files, contract administration files, and delivers a copy of executed contracts to program contract managers.

The contract analyst shall create and maintain the contract records, keeping in mind that the records may become part of a response to an audit or public records request. Records must be maintained in a professional manner, avoiding typos, scratch outs, personal notations and other materials not relevant to the contract.

**2.3.3 Program Contract Manager:** The program contract manager is the authorized representative of Exchange/CC responsible for managing a contract and monitoring the Contractor's performance.

The program contract manager serves as Exchange/CC's liaison with the Contractor. The actual responsibilities of the program contract manager vary depending upon the size, complexity and terms of the contract. Program contract managers should refer to the Exchange/CC *Program Contract Management Handbook* for additional information about roles and responsibilities.

All staff who serve in the role of a program contract manager must ensure that they:

- Are aware of and comply with procurement principles as they relate to goods and services procurement processes on behalf of Exchange/CC;
- Communicate with the procurement and contract analyst on purchase-related issues;
- Maintain all appropriate documentation for future audit purposes; and,
- Understand and ensure all parties comply with the terms of the purchase order or contract.

Program contract managers shall:

- Attend Program Contract Management Training provided by BSB;
- Initiate solicitation and contract requests in a timely manner;
- Monitor the services to be performed by the Contractor, as identified in the contract;
- Monitor performance measures in accordance with the contract's and Exchange/CC standards;
- Communicate concerns to contract parties and take corrective action, as necessary, to ensure the successful completion of the contract in accordance with the terms of the contract;
- Ensure that Exchange/CC and the public receive the intended benefits from the contract;
- Evaluate and document the delivery of the contracted services;
- Review, approve, and process invoices for payment;
- Monitor availability of funds; and,
- Initiate amendments in a timely manner, if needed.

Typical responsibilities of the program contract manager include the following:

- Notification to the Contractor to commence work;
- Maintenance of contract documentation;
- Monitoring of the contract to ensure compliance with all contract provisions;
- Assessing the need for and requesting amendments, renewals, or new contracts as required;
- Reviewing invoices for payment;
- Monitoring contract expenditures;
- Encouraging the use of Small Business (SB), Micro-business (MB), and Disabled Veterans Business Enterprise (DVBE) subcontractors and suppliers when feasible;

- Contacting BSB for assistance with contract problems;
- Verifying that the Contractor has fulfilled all contract requirements before approving the final invoice; and
- Approving and accepting the final products or services.

Program contract managers may not:

- Instruct vendors to ship products or Contractors to provide services prior to the execution of a contract or purchase order;
- Change the terms of the contract or purchase order, including quantities and substitution of products, without going through the formal amendment process;
- Create or sign a purchase order or contract for goods or services;
- Sign any Contractor forms or documents; or
- Authorize payment to the Contractor for any work not performed satisfactorily.

**2.3.4 Procurement Liaison:** The Procurement Liaison is any Exchange/CC employee who works directly with the Procurement Unit to initiate the purchase process, generally using an Intra-Office Requisition Form (HBEX 008). Each program area shall assign a Procurement Liaison. The Procurement Liaison shall be responsible for providing BSB with all necessary information, paperwork and approvals as required, and will complete the Stock Received Report identifying receipt of goods.

**2.3.5 Approvers:** The approver is any Exchange/CC employee authorized to sign off on a procurement form, including, but not limited to:

- Intra-Office Requisition Form (HBEX 008)
  - Procurement Unit maintains a Signature Authority document for designated approvers
- Justifying Contracting Out Services Form (HBEX 011a/b)
- New Contract/Amendment Approval Form (HBEX 011)
- Std. 65
  - Only staff listed on the Signature Delegation Memo may sign these
- Std. 213
  - Only staff listed on the Signature Delegation Memo may sign these

**2.3.6 Financial Management Division (FMD):** FMD reserves the right to require budget approval for all procurements and contracts prior to the initiation of the procurement and contracting process. FMD policies, procedures and approvers shall be established by the Exchange/CC's Chief Financial Officer (CFO) or designee(s).

FMD provides funding pre-approval of contract/amendment requests. Once the contract/amendment is drafted, FMD verifies that funding is available and prepares a budget review form to be included with the Agreement Summary (Std. 215) document. FMD is also responsible for encumbrance processing and ensuring timely payment is made to all contractors and/or vendors.

**2.3.7 Information Technology Division (ITD):** ITD reviews and approves all IT contracts and procurements for goods and services ensuring that the proposed agreements are compatible with Exchange/CC's technology policies and infrastructure.

ITD implements and supports Exchange/CC's technology infrastructure. All contracts and/or procurement for products and services related to Exchange/CC technology and IT infrastructure must be approved by the Chief Technology Officer (CTO) or designee(s).

**2.3.8 Office of Legal Affairs (OLA):** OLA provides guidance on Exchange/CC's procurement and contracting policies. This includes assistance and review of the Exchange/CC's procurement and contracting standards; negotiating the terms of the contract, reviewing and approving the contract.

OLA also reviews Non-Competitive (NCB) justifications (HBEX 029).

In addition, OLA provides legal advice on Public Records Act requests; administration of the contract protest process; development and review of the Exchange/CC's Non-Monetary Agreements; and determination of Contractor Statement of Economic Interests Form 700 filers.

**2.3.9 Conduct:** Contract analysts, procurement specialists, program contract managers and all those who participate in the Exchange/CC's procurement activities are expected to:

- Know, understand and adhere to Exchange/CC procurement policies;
- Must comply with Exchange/CC's Conflict of Interest Policy, Incompatible Activities Statement and related policies ;
- Determine the estimated dollar value of the procurement;
- Determine the classification of the procurement (IT vs. Non-IT; Goods vs. Services);
- Correctly use the appropriate procurement approach (the approach determines what policies must be followed); and
- Determine the pre-procurement reviews and approvals which are necessary.

It is important to remember that these roles:

- Are necessary and important to safeguard the resources of Exchange/CC; and
- Are either directly or indirectly spending public funds and subject to public scrutiny.

## CHAPTER 3: PROCUREMENT AND CONTRACT TYPES

### 3.1 Procurement Classification:

It is the responsibility of the contract analyst or procurement specialist to properly classify the procurement upon initial receipt of the request from the Program, so as to ensure that the correct rules and policies are applied. This is one of the most important steps in the purchasing process as a misclassification may result in the entire purchase being null and void.

There are three types of procurement classifications utilized by Exchange/CC. In order to correctly classify a purchase, the contract analyst or procurement specialist must first determine the primary purpose of the purchase. If a purchase includes both goods and services, the majority of the purchase determines the appropriate classification. The three types of procurement classifications are:

1. Information Technology Goods and Services: Products or services used mainly for information technology. Generally, these items can be purchased through a Leveraged Procurement Agreement (LPA).
2. Non-Information Technology Goods: Products with little or no information technology functionality. These are generally purchased with a Std. 65 or CAL-Card (e.g. office supplies, furniture).
3. Non-Information Technology Services: Services that do not have any information technology purpose. These will generally be contracted using one of the following contracting methods: Statewide Contract, Competitive Solicitations, or Non-Competitive Bid (NCB).

Once a purchase has been classified, there are several approaches that can be used for procurement. None of these approaches can be used at the same time, i.e., they may not be combined, and each purchase must utilize an appropriate approach from the list below. BSB will work with program staff to determine the best approach for each purchase.

**3.1.1 Selection Approach:** The following tables can be used to assist in determining an appropriate procurement.

Competitive Solicitations Using SB/DVBE Option:

Classification	SB/DVBE Dollar Levels	Select Applicable Method	Written Document to Use
Non IT Goods	Under \$500	E-mail, No Advertising	Request for Quote (RFQ) (1 quote required)
	\$500.01 - \$249,999.99*	E-mail, No Advertising	RFQ (2 quotes required)
IT Goods	\$5,000.01 - \$249,999.99*	E-mail, No Advertising	RFQ (2 quotes required)

IT Services	\$5,000.01 - \$249,999.99*	E-mail, No Advertising	RFQ (2 quotes required)
Classification	SB/DVBE Dollar Levels	Select Applicable Method	Written Document to Use
Non IT Services	\$5,000.01 - \$249,999.99*	E-mail, No Advertising	RFQ (2 quotes required)

\*Solicitations above the dollar threshold require Board Approval.

Interagency Agreements:

Classification	Dollar Levels	Approval
Non IT and IT Good and Services	Up to \$1,000,000	No Board approval required
Non IT and IT Good and Services	Over \$1,000,000	Requires Board Approval

Competitive Solicitations Using CMAS:

Classification	Dollar Levels	Select Applicable Method	Written Document to Use
IT Services	Up to \$500,000*	E-mail or Written, No Advertising	Request For Offer (RFO) (Minimum of 3 vendors solicited, only 1 quote required)
Non IT Services	Up to \$250,000*	E-mail or Written, No Advertising	RFO (Minimum of 3 vendors solicited, only 1 quote required)

\*Solicitations above the dollar threshold require Board Approval. For other LPA's, solicitations will follow the thresholds outlined in the user instructions. Any excess of those thresholds require Board Approval (e.g. Information Technology Consulting Services Master Agreement).

Competitive Solicitations – Fair and Reasonable Services:

Classification	Dollar Levels	Select Applicable Method	Written Document to Use
Fair and Reasonable	Less than \$5,000	E-mail, No Advertising	Purchase Order (3 quotes required)

Competitive Solicitations – Informal:

Classification	Dollar Levels	Select Applicable Method	Written Document to Use
IT Services	Less than \$5,000	E-mail, No Advertising	RFQ (2 quotes required)
	\$5,000 - \$1,000,000	Written, Advertising Recommended	RFO (2 quotes required)
Non IT Services	Less than \$5,000	E-mail, No Advertising	RFQ (2 quotes required)
Non IT Goods	Under \$100	E-mail, No Advertising	RFQ (1 quote required)
	\$100 - \$150,000	E-mail, No Advertising	RFQ (2 quotes required)
IT Goods	Up to \$1,000,000	E-mail, No Advertising	RFQ (2 quotes required)

**Competitive Solicitations – Formal:**

Classification	Dollar Levels	Select Applicable Method	Written Document to Use
IT Services	Over \$1,000,000 <b>Requires Board Approval</b>	Written, Advertising Required	Request For Proposal (RFP) (3 quotes required)
Non IT Services	Over \$5,000 <b>(Over \$1,000,000 requires Board Approval)</b>	Written, Advertising Required	RFP (3 quotes required)
Non IT Goods	Over \$150,000	Written, Advertising Required	Information For Bid (IFB) (3 quotes required)
IT Goods	Over \$1,000,000 <b>Requires Board Approval</b>	Written, Advertising Required	IFB, RFP (3 quotes required)

**Non-Competitive Bids:**

Classification	Dollar Levels	Approval
Non IT and IT Good and Services	Up to \$25,000	No written justification memo required
Non IT and IT Good and Services	\$25,000 - \$150,000	HBEX 029 required signed by Program and Executive Director
Non IT and IT Good and Services	Over \$150,000 <b>Requires Board Approval</b>	HBEX 029 required signed by Program and Executive Director and requires Board Approval

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 (unless otherwise specified in the table above).

In the event responsive bids are not received from the minimum number of responsible bidders, the services may be awarded so long as the procurement specialist or contract analyst documents that competition has been achieved and was not limited by:

1. Non-participation due to the State’s socio-economic requirements.
2. Non-participation due to the State’s statutory requirements.
3. Non-participation due to bid specifications that are designed to limit bidding directly or indirectly to a particular bidder.

**3.2 Leveraged Procurement Agreements (LPA):**

LPAs are general agreements that take advantage of the buying power of the state and local agencies to negotiate lower prices. Examples of LPAs are: Statewide Contracts, State Price Schedules, California Multiple Award Schedules (CMAS), Master Agreements (MA) (purchase, service, or rental), Cooperative Agreements (CA) (formerly WSCA-NASPO) and Software Licensing Program (SLP). Exchange/CC has the flexibility to use these standard state LPAs for selecting vendors for procuring goods and services where appropriate.

LPAs include "user guides" or "ordering instructions" that are unique to a particular LPA program or contract. These instructions are commonly referred to as "user instructions" and should be reviewed within each LPA.

Procurement specialists and contract analysts using LPAs are still required to comply with all applicable Exchange/CC procurement requirements.

**3.2.2 California Multiple Award Schedules (CMAS):** CMAS is a standard state method for procurement. CMAS contracts are awarded and administered by the DGS, Procurement Division (DGS-PD). CMAS offers a wide variety of commodities, non-IT services and information technology products and services at prices which have been assessed to be fair, reasonable and competitive. DGS adds California specific contract terms and conditions, procurement codes and policies to establish totally independent California contracts.

DGS-PD creates all current CMAS agreements, which include the maximum amount the vendor can charge the state for covered goods and services. State and local agencies are free, however, to negotiate lower prices with the vendor when utilizing a CMAS agreement.

**3.2.3 Master Agreements (MA):** MAs are one of the state's main procurement vehicles for leveraging its buying power. "Master Agreements" is an all-inclusive name referring to Master Service Agreements (MSA), Master Purchase Agreements (MPA) and Master Rental Agreements (MRA).

**3.2.4 Cooperative Agreements (CA) (formerly Western State Contracting Alliance WSCA):** CAs establish cooperative multi-state contracts where participating states may join together to achieve cost effective and efficient acquisition of products and services. Purchasing utilizing CA contracts can achieve benefits from cumulative volume discounts. CA primarily contain information technology goods with limited availability of services.

### **3.3 Competitive Solicitations:**

Exchange/CC has adopted a policy that vendors/Contractors shall be selected using a competitive solicitation process when there is a need to contract for services that can be better provided by resources other than Exchange/CC staff.

There are two types of competitive solicitations: informal and formal. An informal competitive solicitation does not include a protest period or require advertising.

For formal competitive solicitations, Exchange/CC uses a model contract procurement method.

The formal competitive solicitation process used by Exchange/CC is as follows:

- Exchange/CC drafts a model contract with a detailed Scope of Work (SOW).

- Potential Contractors are asked to use the SOW as a baseline for developing their approach and bid for the project.

This is a dynamic competitive process through which Exchange/CC can evaluate and test, through a negotiation process, the strengths and weaknesses of the vendors and their proposals. Exchange/CC can then make a final selection based on a combination of vendor experience, the quality and originality of the vendor's approach and the overall value the vendor can bring to the project, including the price.

The ultimate goal of the process is to fairly and appropriately obtain the maximum level of services available for a competitive price, and for Exchange/CC to obtain the overall best value.

**3.3.1 Invitation for Bid (IFB):** An IFB is a formal competitive solicitation that may be used to obtain simple, common or routine goods and services that may require personal or technical skills. Work methods should be standard with little discretion in terms of how the work is performed. The Scope of Work (SOW) must be clearly stated and vendors are generally told what, how, when and where the work and services are to be performed. Vendor capabilities are not rated or scored as vendors either pass or fail the IFB requirements and the award is made based on the lowest bid from a responsible vendor/Contractor.

**3.3.2 Request for Proposal (RFP):** An RFP is a formal competitive solicitation that is used for Non-IT Services over \$5,000 and IT Services over \$1,000,000, unless an appropriate LPA is available that better meets Exchange/CC's needs. The Primary Method of the RFP process should be used when the services are complex, but not unique or uncommon. This method uses a committee to evaluate proposals and determine if the vendors meet the solicitation criteria. Exchange/CC awards the contract to the vendors with the overall lowest cost from among those that meet the criteria of the solicitation.

The Secondary Method of the RFP process is currently used most often by Exchange/CC. This method utilizes searches for the vendor who can provide specific complex and unique services and requires an evaluation by a committee utilizing a point system. Exchange/CC awards the contract to the responsible vendor with the overall highest points from among those that meet the criteria of the solicitation.

An additional Secondary Method of RFP, which has been used successfully by other state departments for their Marketing, Public Relations and Communications contracts, may be used by Exchange/CC's Marketing and Communications & Public Affairs Divisions to search for the vendor who can best provide specific, complex and unique services. These unique services must be related to media, communications, public relations, and marketing scopes of work only. This method requires evaluation of proposals by a skilled committee utilizing a qualitative scoring method instead of a point system. Qualitative scoring enables the evaluation team to make a business judgment that includes less tangible factors common to marketing and public relations scopes of

work, as to which vendor provides the best value to the Exchange/CC (price and other factors considered).

**3.3.3 Certification of Qualified Health Plans:** Exchange/CC uses an annual, competitive Qualified Health Plan Application process for the selection of contractors to offer Qualified Health Plans through the Exchange/CC. This Application process is unique to the selection of Qualified Health Plans and does not follow any of the standard contract procurement processes contained in this Manual. The Qualified Health Plan Application process may change from year to year depending on the unique product portfolio requirements of the Exchange/CC. Exchange/CC utilizes a complex evaluation process that applies the selection principles in Government Code Section 100503(c) and those identified in the Qualified Health Plan Application to select those Qualified Health Plans that offer the best combination of choice, value, quality, and service.

Qualified Health Plans are certified for participation in both the Individual Exchange and Covered California for Small Business. For participation in Covered California for Small Business, the Exchange/CC may accept Qualified Health Plan Application responses on a continuous basis depending on the status of the product portfolio at that time. The Qualified Health Plan Application will be posted on the Exchange/CC website and will specify the applicable deadlines for responses for the Individual Exchange and Covered California for Small Business. Exchange/CC may post, modify or remove a Qualified Health Plan Application at any time.

**3.3.4 Request for Offers (RFO) for Information Technology Services:** For IT Services up to \$1,000,000, an informal competitive solicitation via an RFO may be used. This is similar to an RFO used for CMAS procurements, but non-CMAS vendors can be solicited. This is considered an informal competitive solicitation, so advertising and a protest period is not required.

**3.3.5 Request for Quotes (RFQ) for Goods and Non-Personal Services:** This is an informal competitive solicitation used by procurement specialists where an email is sent to vendors, and vendor responses are returned on or before a specific date. Exchange/CC utilizes this method to obtain price quotes, creating a comprehensive paper trail and maintaining a healthy competition for the transaction. These are considered informal competitive solicitations so advertising and a protest period is not required.

The procurement specialist can choose the vendor or vendors that will be sent the RFQ. Vendor selection must be based on the provided quotes. To ensure competition, the minimum number of required quotes (dependent on the purchase classification, cost and whether a SB/DVBE is being solicited) shall be sought from a variety of vendors.

The selected vendor(s) must have all required procurement forms on file prior to completing the purchase.

### 3.3.6 Small Business/Disabled Veteran's Business Enterprise Request for Quotes

**(RFQ):** When a SB or DVBE can be used, the procurement specialist or contract analyst must seek the minimum number of required quotes from only SB/DVBE's. The minimum number of quotes required is dependent on the purchase classification and cost. When comparing quotes, a procurement specialist or contract analyst must only compare a SB to another SB or DVBE to another DVBE. These vendors must be DGS Certified in order to be considered a SB or DVBE.

**3.3.7 Preference Programs for Competitive Solicitations:** There are three preference programs applicable to Exchange/CC purchases:

- SB Preference;
- DVBE Participation Program; and,
- State Agency Buy Recycled Campaign (SABRC).

**Small Business Preference:** The SB Procurement and Contract Act (GC Section 14835) requires that a fair share of the State's purchases and contracts be placed with small business enterprises. For purchases, regardless of the dollar amount, Exchange/CC staff are strongly encouraged to seek and enlist participation of small business enterprises that have been certified by DGS' Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).

- The Exchange has established a 25% goal for purchases with SB or MB
- The Exchange has established a SB/DVBE advocate within BSB

When purchasing from a CMAS contract, staff are strongly encouraged to obtain one or more quotes from Certified SB CMAS vendors before placing an order with a non-SB certified CMAS vendor.

General Rules Relating to the SB Preference:

- In no event shall the SB preference or non-SB subcontracting preference exceed \$50,000 in any single bid.
- In no event shall the combined cost of available preferences exceed \$100,000.
- In the event of an exact tie between a SB/MB and a firm that is SB/MB and DVBE, the award shall be made to the firm that is SB/MB and DVBE per GC section 14838(f).
- A large business (non-small business) may subcontract 25% or more of the SOW to receive the 5% preference.
- Exception: The SB preference is not applicable when the solicitation is being conducted using the "SB/DVBE Option" procurement approach (See Section 3.6.1.8 of this manual) or if the acquisition is less than \$5,000.00 and price has been documented to be fair and reasonable.

Applying the small business preference formula is for evaluation purposes only and does not change the actual bids offered by any vendors.

**DVBE Participation Program:** Military Veteran’s Code (MVC) Section 999 et seq. established participation goals for state agencies of 3% annually for DVBEs when purchasing commodities and services. Exchange staff are strongly encouraged to seek and enlist participation of DVBEs.

When to apply the DVBE preference:

- Unless statutorily exempt, all procurement and contracts, regardless of amount, are subject to the DVBE requirement. Agencies may waive the requirement for an individual procurement; however, agencies are still expected to meet the overall DVBE goal attainment at the end of each year. When an agency decides to waive the DVBE requirement, this must be noted in the solicitation.
- Awarding agencies have sole discretion to exempt procurements from the DVBE participation requirements.
- Contracts with government agencies, including public colleges and universities, and joint power authorities, are exempt from the DVBE participation requirements.

**State Agency Buy Recycled Campaign (SABRC):** Exchange/CC staff must consider a product’s recycled content whenever purchasing IT or non-IT goods that fall into one of the recycled product categories shown below (PRC 4000 et seq.). A minimum of 50% of all funds expended on products in the five targeted categories must be for products meeting the applicable percentage of a Recycled Content Product (RCP).

<b>Product Categories</b>	<b>Minimum Content Requirements (Percent)</b>
Glass products (GL)	10% Post Consumer
Paper products (PP)	30% Post Consumer
Plastic products (PL)	10% Post Consumer
Printing and writing paper (PW)	30% Post Consumer
Metal products (M)	10% Post Consumer

All purchases of products in the targeted categories must include a certification by the vendor, under penalty of perjury, as to the recycled content percentage. The vendor may certify that the product contains zero recycled content.

**Exchange/CC Buy Recycled Products Campaign:** In addition to SABRC, Exchange/CC is required to utilize purchasing practices that ensure, to the maximum extent economically feasible, the purchase of materials, goods, and supplies that are recycled or have recycled material within their content. Fitness and quality being equal, purchase preference must be given to recycled products whenever such products are available and the cost of such products is no greater than that of their non-recycled counterparts.

**Non-Compliant Trash Bag Manufacturers and Wholesalers:** In addition to SABRC and pursuant to PRC Section 42297 (c)(1) and (2), any plastic trash bag vendor,

manufacturer or wholesaler, or any of its divisions, subsidiaries, or successors, is ineligible for any State contract, subcontract or renewal, extension or other State contract modification, if it is not in compliance with the certification requirements of the law.

To be compliant, manufacturers must adhere to the following requirements:

- Ensure that its plastic trash bags contain a quantity of recycled plastic post-consumer material (RPPCM) equal to at least 10% of the weight of the regulated bags; OR
- Ensure that at least 30% of the weight of material used in all of its plastic products intended for sale in California is RPPCM; AND
- Ensure that its plastic trash bag, when labeled as biodegradable or compostable, meets American Society for Testing and Materials D6400 standard for Compostable Plastics.

Exchange/CC is prohibited from contracting with manufacturers and wholesalers who are non-compliant with the Plastic Trash Bag Law, regardless of the product being provided in the contract (e.g., plastic trash bags, janitorial supplies or services, or any other products or services). Additional information, including a listing of compliant and non-compliant trash bag manufacturers and wholesalers, is available on CalRecycle's website.

**3.3.8 Commercially Useful Function and Procedure:** To be eligible for SB, MB, or DVBE status when bidding or contracting with Exchange/CC, the proposed Contractor/sub-Contractor must perform a commercially useful function in the performance of the contract. (GC Section 14837; MVC Section 999).

Whether or not the proposed Contractor/sub-Contractor will perform a commercially useful function must be determined prior to award of the contract

### **3.4 Fair and Reasonable:**

The Fair and Reasonable procurement type is limited to transactions valued at under \$5,000. There are five techniques a procurement specialist or contract analyst may use to determine if a price is fair and reasonable:

- Price Comparison: A procurement specialist or contract analyst has obtained and documented quotes or offers for the same items within the last 12-18 month period from at least three other responsible vendors, which indicate that a price obtained is 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 and/or through an established reputable forum. In addition, the pricing structure provided is one that a prudent procurement specialist or contract analyst would accept as a reasonable representation of existing market value.
- Controlled Pricing: The price offered is set by law or regulation.

- **Historical Comparison:** A procurement specialist or contract analyst is able to reference a previous procurement for the exact product requested. This method is for procurements awarded within an 18 month period where the product's cost has not increased more than 15%.
- **Cost/Benefit Analysis:** The procurement specialist or contract analyst has a demonstrable level of experience in the procurement field substantiates a sufficient current knowledge base to validate that the acquisition cost is so low that the cost to the state of verifying the pricing fairness would most likely be more than any potential benefit that could be reasonably gained by seeking comparable acquisitions at a lower price.

**3.5 Best Value:** Best value refers to the concept of making value-effective acquisitions. Best value relates to requirements and vendor selection criteria or other factors for a particular transaction that is established by Exchange/CC to ensure that its business needs and goals are effectively met. Considered criteria can include, but are not limited to, a vendor's reliability, delivery turnaround, understanding and approach to the project, corporate qualifications, project team qualifications, past projects performed, and project management experience. Regardless of criteria used, cost must always be a factor.

### 3.6 Exempt from Bidding:

DGS has identified certain key exemption categories for contract types that do not have to be competitively bid. Exchange/CC uses these exempt from bidding categories as a best practice. This manual contains exemptions from the State Contracting Manual that Exchange/CC uses most frequently. Additional exemptions from the State Contract Manual not included in Sections 3.6.1 and 3.6.2 below may be use by Exchange/CC and documented on the Std. 215.

Contracts that meet the following exemptions are not required to be competitively bid:

#### 3.6.1 Statutory Exemptions

1. Contracts of less than \$5,000.
2. Contracts of less than \$5,000 where only per diem or travel expenses, or a combination thereof, are to be paid.
3. Emergency contracts. The work or service is for the immediate preservation of the public health, welfare, safety, or protection of State property.
4. Interagency agreements. Contracts with other California State agencies, and California State University (CSU) and University of California (UC) campuses (GC § 11256).
5. Contracts with other public entities, including contracts with another state, local, or Federal agency, auxiliaries of CSU or the California community colleges; or an organization acting as a governmental agency under a joint powers agreement .
6. Contracts solely for the purpose of obtaining expert witnesses for litigation.
7. Contracts for legal defense, legal advice, or legal services by an attorney or the attorney's staff.
8. SB/DVBE Option (GC §§ 14838.5).
  - a. This option allows for an award under the following conditions:

- i. The contract is awarded to a certified SB, MB or DVBE;
    - ii. The contract award is greater than \$5,000 and less than \$250,000; and
    - iii. Quotes were received from at least two certified SBs or MBs; or two certified DVBEs.
  - b. An award based on receiving only one quote is not permitted under this method.
  - c. Mixing quotes (e.g. one SB and one DVBE) is not permitted under this method.
  - d. The code does not expressly require award to the low quote, however, if award will be made by other than low quote, the agency must document the business reasons and cost reasonableness basis for selecting the other quote.
  - e. No particular format or timing is required under this option. Agencies have discretion as to how to obtain the quotes. Agencies should provide vendors sufficient information about the services on which the vendors can formulate a quote, including copy of the proposed contract (e.g. scope, payment provisions, and terms).
  - f. The small business preference is not applicable under this method.
  - g. There is no protest right for this method. (GC § 14838.5.) Therefore agencies should not cite protest provisions when soliciting quotes.
  - h. Use of this method is capped at \$250,000 for the entire contract term, including any option years and/or amendments. If an agency believes the contract may exceed \$250,000, they should use a different solicitation method, such as an IFB or RFP. If quotes come in over \$250,000, the agency would need to re-solicit, either scaling down the project to lower the quotes or using a different solicitation method.
9. Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations.

### 3.6.2 DGS Approved Exemptions

1. DGS Categorical Exemptions (historical references: SAM 1233, MM 03-10).
  - a. Services contracts using a DGS LPA;
  - b. Subvention and local assistance contracts as defined in SCM, Vol. 1, section 3.17. This exception applies only when services are provided to the public and not specifically to a State agency;
  - c. Maintenance agreements under \$250,000 per year for equipment that is under documented warranty, or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services under \$250,000.00 per year;
  - d. Contracts where the state is unable to compete and select a different Contractor because a Contractor has already been selected by a federal, state, city, county, or other regulatory entity to perform a service in a specific geographical area (e.g., refuse and/or sewage disposal contracts where there is an exclusive franchise agreement that has no exception for the state);

- e. Public entertainment contracts for State-sponsored fairs and expositions;
- f. Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed \$250,000;
- g. Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to \$250,000. This includes access to pre-existing proprietary research data through a non-IT services contract, however subscription is not intended to include the performance of any personal services (such as, but not limited to, consulting, advice, research);
- h. Rental of proprietary postage meters if they are interfaced and inter-membered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services are less than \$100,000;
- i. Departmental memberships in professional organizations, provided it is solely a membership and does not include the performance of any personal services. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for non-represented employees are governed by the California Department of Human Resources (CalHR) rules;
- j. Contracts for training for state personnel if the cost of the training contract does not exceed \$50,000 and the cost of multiple training contracts with a single Contractor does not exceed \$50,000 cumulatively in any 12-month period. (Historical reference: MM 11-05.) The exemption is for pre-existing training courses; it does not cover development of training or other personal or consulting services. Agencies shall not split contracts to avoid competitive bidding or other contract requirements. Agencies with recurring training needs should assess the cumulative amounts departmentally and generally should go out to bid if there are ongoing and/or department-wide needs.

### 3.7 Interagency Agreements (IA):

An IA for non-IT goods is a contract between two California state agencies or a California State University campus. An IA can also be put in place with a California local governmental entity, such as a county, city, district or joint powers authority, or another State's or a federal government agency. IA agreements are exempt from competitive solicitation requirements and advertising. Procurements for non-IT goods from county and local governments and California State University campuses must be made using the process outlined in the SCM Vol. 1, Section 3.03.

Interagency agreements include:

1. A California State agency, State college or State university;
2. A state agency, state college or state university from another state;

3. A California local governmental entity or agency, including those created as a Joint Powers Authority;
4. An auxiliary organization of the California State University or a California community college.

To avoid the appearance that such an agreement is being utilized to circumvent competitive bidding or other requirements, services to be provided by the above entities that are not the result of a competitive bid should be performed primarily with the staff of the public entity or, in the case of the educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular educational institution.

Services may be subcontracted without limitation only when the subcontracting is justified, not for the purpose of circumventing competitive bidding requirements and:

1. The total of all subcontracts does not exceed 25% of the total contract; or
2. All subcontracts are with entities listed above.

### **3.8 Non-Competitive Bid (NCB) Contracts:**

Also referred to as “sole source”, an NCB is a contract that does not follow the competitive solicitation process. NCBs are not allowed except for the situations in this section 3.8.

Exchange/CC may enter into a contract without competitive solicitation if the immediate purchase of services is necessary for the protection of health, welfare, or safety. The definition of “emergency” is a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. ‘Emergency’ includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident or sabotage.

NCBs may be used during non-emergencies when: 1) Only one Contractor is available with the requisite qualifications to perform the needed services or 2) emergencies, where immediate acquisition of goods or services is necessary for the protection of the public health, welfare, or safety.

For contracts valued at \$25,000 or more, the program contract manager must fully justify the NCB process by filling out the NCB Justification (HBEX 029), which must be approved by the Executive Director or designee.

In addition to the HBEX 029, all NCB contracts exceeding \$150,000 also require a signed Board Resolution documenting Board approval.

### **3.9 Emergency Contracts:**

Emergency contracts are agreements for services needed immediately to avert, alleviate, or repair damage or destruction to State property, or to protect the public health, safety, or welfare. Emergency Contracts are exempt from solicitation and advertising.

### 3.10 Non-Monetary Agreements (NMA):

A NMA is defined as a contract without monetary value. These agreements are created to protect the State's interests to complete projects or comply with regulations, but do not require the exchange of funds. As such, the normal procurement process and forms do not apply. Types of NMAs include, but are not limited to, the following:

1. Business Associate Agreements
2. Trading Partner Agreements
3. Software License Agreements
4. Non-disclosure Agreements
5. Confidentiality Agreements
6. Trademark and License Agreement
7. Memorandum of Understanding/Agreement

These contracts do not require the HBEX 011a/b Justification for Contracting out Services or HBEX 011 New Contract/Amendment Approval form, but they do require Program and OLA approval. This approval can be captured on a Route Slip with an initial and date.

Once approved, these contracts can be routed to the appropriate Exchange/CC signatory. Only Exchange/CC staff that have authority to sign contracts per the Signature Delegation Memo are allowed to sign NMAs.

### 3.11 California Prison Industry Authority (CALPIA):

The California Penal Code (PC), Section 2807 and SAM, Section 3505 mandate that state agencies purchase items available through CALPIA from them.

CALPIA carries a large stock of commonly used items, which can be found in the CALPIA catalog. The CALPIA product line includes, but is not limited to:

- Furniture
- Printing Services
- Metal Signs and Decals
- Digital Services Enterprises
- Binders
- Metal shelving
- Cabinets
- Toner

### 3.12 CAL-Card:

CAL-Card is a payment mechanism that is subject to all procurement laws and rules as set forth by Exchange/CC and applicable agreements. Quotes, Payee Data Record (Std. 204), and Contract Certification Clauses (CCC 307) are required for a CAL-Card purchase.

Additional information and current rules and guidelines are contained in the Exchange/CC *CAL-Card Handbook*.

### 3.13 Amendments:

If the original solicitation did not include an option to amend the contract, then the amendment must comply with the process outlined below, or it will be considered an NCB. This includes amendments for increases and decreases to quantity, dollar amount and time.

**Procurements:** An amendment is any modification to a purchase order and must be entered into before the expiration of the original Std. 65. Amendments to existing purchase orders are not subject to the NCB requirements if the following occurs:

1. They were competitively bid and:
  - a. Which included an option for changes (e.g., quantity or time) may be amended consistent with the terms of the original Std. 65 providing for such amendment and such changes were included in the solicitation. Or,
  - b. Which included options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the solicitation process.
2. The amendment is for administrative errors, including, but not limited to, the following:
  - a. Transposition of numbers from the solicitation bid response or solicitation response to the purchase document, or for inadvertent failures to include such things as contact names or for incorrect addresses. This does not apply to changes in quantity or time.

**Contracts:** An amendment is any modification to a contract and must be executed within 30 days after the expiration of the original contract. Competitive bidding requirements and exemptions should be evaluated when contemplating an amendment.

1. A competitively bid contract can only be amended without NCB approval if the amount of the amended contract does not exceed the total contract amount approved by the Board and one of the following applies:
  - a. The contract provides for the particular type of amendment and:
    - i. The additional years or additional tasks were anticipated and evaluated in the solicitation (i.e. exercise of an option to renew that was included in the solicitation); or
    - ii. The amendment does one, but not both, of the following, and there is no change in the SOW:
      1. Adds time only to complete performance, not to exceed one year. Note: time only means time to complete performance

of the original agreement, such as extending the due date for a final report on a fixed-fee agreement. An amendment adding time only does not require Board approval even if the extension of the contract extends beyond the time specified in the Board resolution authorizing the contract. An amendment that provides for additional as-needed services (such as extended use of hourly fee or pay-per-service type arrangements) is not time only within the meaning of this exemption; or

2. The amendment adds not more than 30% (not to exceed \$250,000) of the original contract. Note: this increase must be supported by specific business reason, such as in a unit rate contracts (e.g. per test, per sample, etc.) usage was higher than the original good-faith estimates/multipliers used in the solicitation. This permits flexibility when exceptional unanticipated circumstances warrant; but it should not be used in circumstances such as paying a Contractor more on a fixed fee bid, and should not be standard operating procedure.
  3. This time-or-money amendment exemption can only be used once. Further amendments would require NCB approval or a new bid for services. For example, a program cannot amend for time, then attempt to amend to add money.
- b. Amendments to existing contracts under the same terms and the same or lower rates where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending until a new contract can be executed, but in no case shall the amendment extend beyond six (6) months.
  - c. Amendments to an existing contract to correct incidental errors such as: State's clerical error in transposition of numbers from bid response to contract, typographical errors in a contract number, name, or address, or change in or omission of a contact name or phone number.
  - d. Amendments to an existing contract that makes clarifying changes to the scope of work or the terms of the contract, but does not increase or decrease the scope of work or add additional funding to the contract.
2. Amendments to NCB contracts. An amendment to an NCB contract will require a new NCB justification; the only exception is a time extension. Amendments to NCB contracts that exceed Board Approval thresholds require Board Approval before the amendment can be executed; the only exception is a time extension.



## CHAPTER 4: COMPETITIVE SOLICITATIONS

### 4.1 Process for Formal Competitive Solicitations and CMAS RFO's:

As previously noted, the competitive solicitation process for Exchange/CC follows a model contract procurement method of competitive solicitation to provide Exchange/CC with the most cost effective means of obtaining necessary goods and services. To accomplish this, the following high-level process must be followed. More detailed information is provided in the remaining sections of this chapter:

1. Program contract managers will justify contracting out the services using the HBEX 011a and HBEX 011b (when applicable) to request a competitive solicitation. Once pre-approved and routed to BSB, Program will work with BSB contract analysts to develop a solicitation package. A solicitation package should include at least the following basic information:
  - a. General information about the solicitation for the vendor
    - i. Purpose
    - ii. Period of performance
    - iii. Solicitation process
    - iv. Questions
    - v. Key Action Dates
    - vi. Protest Process
  - b. Scope of Work
    - i. Project objectives
    - ii. Vendor responsibilities
    - iii. Work products or deliverables
  - c. Proposal preparation instructions
  - d. Evaluation criteria
  - e. Minimum requirements
  - f. Desirable requirements
  - g. A model contract
  - h. Sample Exhibits
  - i. Cost proposal
  - j. Budget pre-approval
  - k. Contacts at Exchange/CC for questions

2. The solicitation package must go through Exchange/CC's internal review process prior to release and posting online.
3. Managers (working with a BSB contract analyst) will develop a list of potential vendors and send the vendors the Solicitation Posting Announcement. The posting announcement should include a brief summary of the services being requested and where the request is available online.
4. The solicitation will be posted on Exchange/CC's website in the Solicitation area.
5. Question and Answer (Q/A) Process: All questions from potential vendors/Contractors will be sent to the Exchange/CC solicitation e-mail account.
  - a. The solicitation should include a deadline for all questions.
  - b. The BSB contract analyst will track the e-mails daily and schedule meetings with project managers to walk through questions and responses.
  - c. After the deadline has passed, no more questions will be accepted or answered. However, new e-mails received after the deadline will be responded to using standard language that informs the vendor/Contractor that the deadline has passed.
  - d. All questions and answers will be posted on Exchange/CC's website.
6. Program contract managers will create an Evaluation Team who will work with the BSB contract analyst to develop evaluation criteria. The *Evaluation Team Handbook* will be given to each Evaluation Team member as a guide on the rules and their responsibilities.
7. Screening Process: The BSB contract analyst will review every submitted proposal to ensure that all required administrative components of the proposal are included.
8. Release of Proposals to the Evaluation Team: Proposals cannot be released to the Evaluation Team until the Evaluation Team Certification of Confidentiality and Conflict of Interest form (HBEX 027) is filled out and signed by each of the evaluators.
9. The Evaluation Team needs to be mindful of the original timeline in the solicitation package. If there is not enough time to review the proposals, an amendment to the solicitation package may need to be prepared to adjust key dates.
10. Evaluation Process: Using the criteria previously prepared, the Evaluation Team will score the proposals.

- a. The BSB contract analyst will prepare evaluation packets for the Evaluation team and facilitate the final vendor/Contractor selection meeting.
- b. Some competitive solicitations will include interviews or presentations from the bidders. Program will coordinate these as necessary.
- c. The Evaluation Team will rate and rank the proposals and draft an Evaluation and Selection Report (ESR). BSB will provide the Evaluation Team with the ESR template. The ESR must include:
  - i. A list of all proposals received in order of their score.
  - ii. The strengths and weakness of the top proposals (at least the top three (3), if three (3) or more are timely received).

Once the ESR is finalized, the ESR will be reviewed and approved by BSB before the Notice of Intent to award is posted.

11. Negotiation Process: Program contract managers will determine who will participate in the negotiation process. Program is responsible for negotiating the SOW and budget for the contract. Legal provides assistance with negotiating the standard terms and conditions of contracts.
  - a. Program contract managers will forward any concerns or issues to the BSB contract analyst.
    - i. The BSB contract analyst will prepare a draft contract with information from the model contract the winning vendor/Contractor submitted. This draft contract will be used during the negotiation process.
    - ii. Program must provide the BSB contract analyst with all final negotiated changes to the standard model contract.
12. Prior to Releasing the Notice of Intent to Award: The BSB Contract analyst will ensure that the prospective vendor/Contractor is eligible to receive the contract award.
13. Notice of Intent to Award: This announces the winner of the contract and is posted on the front door of Exchange/CC and on Exchange/CC's website for five working days, which is the protest period. Constant communication between the evaluation team and the contract analyst is required to ensure the contract is timely prepared.

14. Kick-Off Meeting: After the contract is approved, but prior to commencement of work, the program contract manager should arrange for a kick-off meeting. The kick-off meeting enables the program contract manager to meet with key representatives of the Contractor, clarify roles and expectations and review all contract provisions.

#### **4.2 Evaluation:**

The Evaluation Team will be responsible for developing the criteria for considering the submitted proposals and should be selected before releasing the solicitation. The Evaluation Team will prepare a comprehensive evaluation plan that includes rating and scoring factors to be considered. Criteria for considering costs must be developed, and the evaluation plan must provide for a fair and equitable evaluation of all proposals. All proposals and evaluation scoring sheets must be returned to BSB, along with the signed ESR.

All proposals and all final evaluation and scoring sheets are confidential and not available for public inspection pursuant to GC 100508(a)(1).

Proposals cannot be evaluated on criteria not listed in the solicitation or with a different level of importance than stated in the solicitation. Evaluations based on unstated criteria or in a manner bearing more significance than was set out in the solicitation will result in rejection of the ESR by the BSB contract analyst.

If it is determined that the selected bidder who will be awarded the contract is not responsible (see definitions for criteria on Responsible Bidder), the evaluation packet must be documented with sufficient details to justify the determination and may award the purchase to the next bidder.

#### **4.3 Prospective Contractor's Conference and Walk Through:**

The purpose of conducting a conference is to clarify or explain the goods and services being sought, qualifications, DVBE or other requirements contained in the solicitation package.

The purpose of conducting a Walk Through is to allow potential Contractors an opportunity to examine the work site before preparing a bid to obtain full knowledge of the area(s) and specific equipment affecting the work which may not be fully described in the solicitation. The Conference and Walk Through is recommended for new services, or if the service is complicated and questions are anticipated. A mandatory conference is highly recommended when issuing an RFP.

#### **4.4 Preparing an Addendum to the Solicitation:**

The purpose of sending an addendum to all potential Contractors who originally requested or were provided a solicitation package is to notify potential Contractors of any material changes to the original solicitation prior to the solicitation proposal due date. Examples of causes for an addendum include:

- Extended solicitation proposal due date
- Required provision clarification
- Inadvertently omitted provision
- Revised Exhibits

#### **4.5 Receiving Proposals:**

Proposals are received either through the mailroom or by hand delivery, and the BSB contract analyst will keep a receipt log to keep track of every proposal.

##### Proposals Received After Deadline

Proposals received after expiration of the deadline specified in the solicitation, regardless of the means of delivery, will not be opened and will not be considered by the Evaluation Team. However, the Chief Deputy Executive Director, or authorized designee, may accept a late proposal if he or she determines that good cause exists to consider such late proposal. If a late proposal is accepted, the Chief Deputy Executive Director, or authorized designee, must specify in writing the reason(s) for acceptance.

##### Delivery of Proposals to the Evaluation Team

The BSB contract analyst shall maintain all proposals received in response to a solicitation until expiration of the deadline for receipt of proposals. Once the deadline for receipt has passed, the BSB contract analyst shall deliver all timely-received proposals to the Evaluation Team.

If the Chief Deputy Executive Director or designee accepts proposal received after the deadline specified in the solicitation, the BSB contract analyst shall immediately notify and deliver such proposals to the Evaluation Team.

#### **4.6 Re-Solicitations:**

A re-solicitation occurs when the original competitive solicitation cannot be awarded, usually due to problems during or after the solicitation process. Typical reasons for re-solicitation include:

- No responses were received;
- All prospective vendor/Contractor proposals were non-responsible and/or non-responsive;
- All proposals exceeded Exchange/CC's maximum estimated budget;
- Problems were discovered after the solicitation submission or solicitation opening date; or
- Contract award is determined not to be in the best interests of Exchange/CC.

The following outlines the step-by-step procedures for initiating a re-solicitation:

1. BSB contract analyst obtains the program's concurrence for re-solicitation, and notifies BSB management of the need for re-solicitation with a narrative including the following:
  - a. Details of the solicitation;
  - b. Problems encountered; and
  - c. Recommendation with options.
2. Upon management approval for re-solicitation, the Program Contract Manager will work with the BSB contract analyst to develop the Solicitation Package Revision, including the following:
  - a. Project timetables;
  - b. Submission requirements;
  - c. Estimated amount of the agreement;
  - d. Model Contract; and
  - e. Solicitation/Budget Proposal Sheets.
3. Advertisement: Re-advertising is strongly recommended, but not required if the following conditions are met:
  - a. The original advertisement is within 90 days of the re-solicitation;
  - b. The re-solicitation package is provided to all persons who requested or received the original solicitation package; and
  - c. There are no material changes to the solicitation.

#### **4.7 Evaluation and Selection Report (ESR):**

The Evaluation Team will complete a final ESR to document the evaluation and selection process used for contract award. The ESR contains the Evaluation Team's consensus, summarization of the evaluation results, and rationale for the recommended bidder. The report must be approved and on file in BSB prior to releasing the Notice of Intent to Award.

#### **4.8 Prior to Notice of Intent to Award:**

BSB Contract analyst will ensure that the prospective vendor/Contractor is eligible to receive the contract award by ensuring the following as applicable:

**Suspended and Debarred Contractors**

Solicitations, consideration of bids, or award of contracts using State funds shall not be provided to any firm that has been suspended from State procurement and contracting as listed on the DGS-PD "Suspended and Debarred Contractor" list. Solicitations, consideration of bids, or award of contracts using federal grant funds shall not be provided to any firm that has been suspended from federal procurement and contracting.

**SB/DVBE Program Violations**

OSDS has legal responsibility and authority to impose sanctions on firms that violate the SB or DVBE programs. These sanctions (suspensions) can extend to the certified firms, non-certified firms and principals of the firms. If the selected prospective Contractor is listed, the prospective vendor/Contractor is considered "non-responsive" and must be rejected.

**Tax Delinquents**

Exchange/CC will adhere to PCC 10295.4, which prohibits the State from entering into contracts for non-IT goods and services with vendors/Contractors identified as being most delinquent on their tax obligations. The Franchise Tax Board (FTB) and the Board of Equalization (BOE) are each required to maintain a list of prohibited persons and companies. The procurement specialist or contract analyst must check the FTB and BOE lists prior to award of any procurement or contract for non-IT goods and services. If the selected prospective Contractor is listed, the prospective vendor/Contractor is considered "non-responsive" and must be rejected.

**Corporate Qualifications**

When agreements are to be performed in the State by corporations, Exchange/CC must verify that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

"Doing business" is defined in Revenue and Taxation Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Exchange/CC will determine whether a corporation is in good standing by verifying with the Office of the Secretary of State.

**4.9 Release of Notice of Intent to Award:**

After selecting a vendor/Contractor for possible agreement award under an RFP, and verifying that the vendor/Contractor is eligible to receive the contract award:

1. Exchange/CC shall post, in the designated area accessible to the public, a Notice of Intent to Award.

2. The agreement cannot be awarded for a period of five (5) working days starting the day after the posting.

#### **4.10 Protest Process:**

For formal competitive solicitations, any protest properly submitted within five working days of the posting of the Notice of Intent to Award must be considered. All protests are reviewed and decided by the Executive Director or designee.

The following protest procedures must be followed and included in all formal competitive solicitations:

##### General

An unsuccessful bidder may protest the proposed award to another bidder by following the terms and conditions outlined below. The protestant challenging Exchange/CC's proposed award bears the burden of proof.

##### Grounds

Protestant must cite the grounds for the protest and provide facts and citations of law sufficient to support the protest. Exchange/CC will determine, in its sole discretion, if the protestant has demonstrated sufficient grounds to allow the protest to be heard. Abuse of the protest process by unsuccessful bidders solely for the purpose of securing confidential information about other bidders will be rejected by Exchange/CC. The only grounds for a protest are:

1. Protestant reasonably believes that Exchange/CC has acted in an arbitrary and capricious manner; or
2. Protestant reasonably believes that Exchange/CC committed an error in its bid process, as stated in the solicitation that is sufficiently material to justify invalidation of the proposed award.

There is no basis for protest if Covered California rejects all bids or proposals, based on its best interests.

##### Requirements for Protest

Protests will be heard and resolved by the Covered California Executive Director or his or her designee. Protests must be submitted in writing, signed by an individual who is authorized to contractually bind the Bidder and contain a statement asserting the grounds for the protest including citations of law, rule, regulation or procedures on which the protest is based. The protestant must allege facts and evidence in support of their claim. A protest must be delivered to Exchange/CC by certified or registered mail or in person, in which case the protestant should obtain a delivery receipt. Protests must be received by Exchange/CC no later than the close of business five days after the Notice of Intent to Award has been posted.

The Executive Director's or designee's decision is final.

### Terms of Protest

Scoring documents, evaluation and selection documents, other bidders' submissions or any other record created during the review of bids submitted in response to the RFP are not public records and are exempt from disclosure as public records pursuant to Government Code Section 100508(a).

A protestant who has demonstrated a legitimate ground for protest as described above may have access to certain relevant, non-public information regarding the RFP and Covered California's consideration of submissions in response to the RFP upon the protestant's execution of a Non-Disclosure Agreement provided by Covered California. Trade secret, proprietary and confidential information will be redacted from documents disclosed to protestant as part of the protest process.

#### **4.11 Agreement Award:**

Once all requirements (e.g., posting, etc.) are met and the protest period and process are completed, the agreement can be awarded.

## CHAPTER 5: FORMS AND DOCUMENTATION

### 5.1 Intra-Office Requisition (HBEX 008):

The HBEX 008 is required to initiate a request to purchase goods and non-personal services. The HBEX 008 form is completed by the procurement liaison providing all necessary information, including: quantity, product description and specifications, and estimated cost.

The HBEX 008 requires the following approvals:

- The Approver reviews the HBEX 008, approves the purchase and expenditure of the program's budget.
- If a purchase exceeds \$2,000, FMD must review and approve.
- If the purchase is for non-routine IT equipment, ITD must review and approve.

The approved HBEX 008 is submitted to BSB for processing by a procurement specialist.

### 5.2 External Training and Conference Form (HBEX 800):

The HBEX 800 is required to initiate a request for an employee to attend an off-site training class or conference/seminar when the vendor requires a Std. 65 or pre-payment on a CAL-Card. After approval from Covered California University, BSB shall accept the HBEX 800 in lieu of the HBEX 008 for procurement documentation purposes. The HBEX 800 is completed by an employee providing all necessary information, including: employee contact information, event dates and times, event descriptions, and estimated cost.

The HBEX 800 requires the following approvals:

- The Approver reviews the HBEX 800, approves the registration and expenditure of the program's budget.
- If the training or conference exceeds \$2,000, FMD must review and approve.
- If the training or conference is for non-routine IT training, ITD must review and approve.

The approved HBEX 800 is submitted to BSB for processing by a procurement specialist.

### 5.3 Business Card Order Form (HBEX 009):

The HBEX 009 is required to initiate a request to purchase business cards from the Office of State Publishing (OSP).

The HBEX 009 requires the following approvals:

- The requestor is required to sign the HBEX 009 certifying that the information is accurate.
- The Approver reviews the HBEX 009, approves the purchase of a requestor's business cards and that the spending of their program's budget is valid.

The procurement specialist will process the HBEX 009 according to the OSP WebStore process.

#### **5.4 Payee Data Record (Std. 204):**

The Std. 204 is used to prepare Information Returns (1099) from non-governmental entities. Each vendor who provides goods or services to Exchange/CC must have a current and accurate Std. 204 on file with Exchange/CC's BSB and FMD prior to execution of any purchase (except for a State or other governmental entity).

#### **5.5 Contractor Certification Clause (CCC 307):**

The CCC 307 contains contractual clauses required by statute or Exchange/CC policy, and are included in all Std. 65's. For contracts, the CCC 307 clauses are included in Exhibit C of Standard Agreements and are approved by the Contractor on the Std. 213. The CCC 307 is not required for LPAs, IAs or NMAs.

Except as specified in Section 5.6 for Std. 65's, the CCC 307 must be provided to the vendor by the procurement specialist and a signed CCC 307 must be kept on file within BSB.

#### **5.6 Drug-Free Workplace Certification (Std. 21):**

The drug-free language is included in the CCC 307. If the vendor refuses to complete the CCC 307 and no other vendor is available for the purchase of goods, a completed Std. 21 can be accepted in lieu of the CCC 307. A copy of the signed Std. 21 must be kept on file within BSB.

#### **5.7 Seller's Permit:**

A copy of the vendor's Seller's Permit or Certification of Registration must be obtained by the procurement specialist for any purchases of tangible personal property, regardless of the dollar value. The permit/certification allows the vendor to sell products within the State of California and is obtained by the vendor from the State Board of Equalization (BOE). It is acceptable to obtain the seller's permit number only.

The procurement specialist and contract analyst must verify a vendor's good standing with the BOE using the BOE website. A copy of the Seller's Permit must be kept on file within BSB.

#### **5.8 Purchase Order (Std. 65):**

The Std. 65 is used to purchase goods (non-IT and IT), non-personal services, and personal services using LPAs. The procurement specialist or contract analyst processes the Std. 65. The Approver reviews the Std. 65 and approves the validity of the purchase. Only Approvers listed on the Signature Delegation Memo may sign a Std. 65. The Signature Delegation Memo is kept on file within BSB.

#### **5.9 Office of State Publishing (OSP) Printing Requisition (Std. 67):**

The Std. 67 is used in lieu of the Std. 65 when placing orders for services such as printing, typesetting, presswork, binding and fulfillment with OSP. The procurement specialist processes the Std. 67 according to the OSP process. These files are kept on file within BSB.

**5.10 Stock Received Report:**

The stock received report is a copy of an approved Std. 65 or Std. 67 that verifies all goods are received from a vendor as ordered.

As orders may come in multiple shipments, the stock received report can be marked as “Partial” if the order is not received in full. Upon the receipt of all the items orders, the stock received report is marked “Complete” and the procurement liaison signs and dates the form acknowledging their receipt of all goods. This form is kept within each procurement file within BSB.

**5.11 Small Business (SB)/Micro-Business (MB)/Disabled Veterans Business Enterprise (DVBE) Certification:**

While not a form, this is documentation collected by a procurement specialist or contract analyst to verify SB/DVBE certification. If applicable, a copy of an individual business’ SB/MB/DVBE certification must be verified and printed out from the OSDS section of DGS-PD’s website. This verifies that an SB/MB/DVBE certification is in good standing at the time of purchase.

A copy of the SB/MB/DVBE Certification for the winning vendor/Contractor is kept within each procurement file within BSB.

**5.12 New Contract/Amendment Approval Form (HBEX 011):**

Contracts or amendments shall be approved via the New Contract/Amendment Approval Form (HBEX 011). Contract analysts complete this form for new contracts, and Program Contract Managers update this form for requesting amendments.

**5.13 Justification for Contracting out Services Form (HBEX 011a/b):**

New solicitations and contracts are requested by the Program Contract Manager using the Justification for Contracting out Services forms. The HBEX 011a requires Program to select one (1) of the ten (10) exemptions per GC 19130 that allows the services requested to be performed by non-civil service staff. Program must provide specific and detailed, factual information that demonstrates how the solicitation or contract meets the applicable exemption. Program is responsible for filling out the HBEX 011a and for addressing any issues with contracting out for services.

If Program relies on GC 19130(b)(3) as the exemption for contracting out services, Program must also complete the HBEX 011b form. Program must select one (1) of two (2) options on the HBEX 011b form:

1. Option 1: The services are not available within civil service, or
2. Option 2: The services are highly specialized or technical in nature.

If option 1 is selected, Program must document that they completed the following steps:

1. Searched the CalHR website for job descriptions that might be able to do the work;
2. Contacted other programs within Covered California that might have staff to do the work; and,

3. Contacted other Departments and Agencies in the state government to determine if they have staff to do the work.

If option 2 is selected, Program must document that they completed the following steps:

1. Specifically described what skills and education are required to perform the services that are highly specialized and technical in nature;
2. Searched the CalHR website for job descriptions that might be able to do the work;
3. Contacted other programs within Covered California that might have staff to do the work; and,
4. Contacted other Departments and Agencies in the state government to determine if they have staff to do the work.

Program must document which agencies were contacted, which civil service classifications were considered, and if it would be practical for civil service employees to perform the services to be contracted.

Notice of proposed contracts shall be provided to bargaining units and organizations that represent state employees as soon as a fully developed contract is available to enable reasonable time for review. Exchange/CC shall not execute a contract or amendment until notice to the unions has been provided.

#### **5.14 Agreement Summary (Std. 215):**

The Agreement Summary, Std. 215 form is required for all agreements (except when using the Std. 65). The Std. 215, which is prepared by BSB's contract analyst, is used to summarize specific information relevant to the agreement, including:

1. Contractor information;
2. Fiscal information;
3. Description of services;
4. Need for the agreement;
5. Contracting method; and
6. Other relevant information necessary to understand the proposed transaction.

A reviewer of the Std. 215 should be able to understand the agreement without having to refer to the supporting documents. The Std. 215 should contain brief, but complete information about the agreement, including any problems with, or special circumstances regarding, the agreement, bids, process, etc.

#### **5.15 Standard Agreement (Std. 213):**

The Std. 213 form is prepared by the BSB contract analyst for new agreements (not used for amendments or if a Std. 65 is used) and IAs.

The Std. 213 is the cover of the agreement and incorporates the Exhibits, including the Scope of Work, Budget Detail and Payment Provisions, and the General Terms and Conditions.

To amend an existing agreement, the Std. 213A form must be used.

#### **5.16 Scope of Work (SOW) (Exhibit A):**

The SOW defines the service, quality, standards, tasks, and specifications of the work to be performed by the Contractor. Exact specifications and detail must be provided to ensure that all Contractors have all the information they need to provide an accurate and fair bid, and to avoid any discrepancies in the performance of the agreement.

The Contractor may not be directed or authorized to perform work or tasks that are not included in the SOW for the contract (often referred to as “ad hoc” work or tasks). BSB Contract staff should be consulted if work or tasks not included in the current contract SOW are needed.

#### **5.17 Budget Detail and Payment Provisions (Exhibit B):**

The budget will include and define the invoice and payment process and budgetary contingencies, and address prompt payment requirements. Budgets must include compensation rates, such as hourly rates or rates for completion of specified deliverables.

#### **5.18 General Terms and Conditions (Exhibit C):**

Exhibit C contains the standard terms and conditions that must be included in each agreement. However, OLA may modify, remove, or add to its standards terms and conditions depending on the particular agreement.

#### **5.19 Optional Exhibits:**

Optional Exhibits may also be required and include, one or more of the following exhibits, and should be reviewed to determine their applicability to each agreement being processed.

- Travel Reimbursement (must be approved by Deputy Chief Operations Officer, or designee)
- Privacy Addendum
- Definitions

#### **5.20 Non-Competitive Bid Justification (HBEX 029):**

If the contract request is for a Non-Competitive Bid or “sole source”, then HBEX 029 must be prepared, approved, and signed by the Division Chief and Executive Director, or designee. OLA review is required for this justification.

#### **5.21 General Provisions:**

The applicable General Provisions Form (GSPD-401 or GSPD-401IT) must be included or incorporated by reference on the Std. 65 for procurements, when the Std. 65 is used. These provisions are designed to ensure the public and Exchange/CC’s interests are protected. However, OLA may modify, remove, or add terms to the General Provisions Form depending on the particular procurement.

GSPD-401 and GSPD-401IT provisions are not required for purchases made via a LPA, as those contracts have their own General Provisions. LPA General Provisions are incorporated on the Std. 65 by reference.

For contracts (Std. 213), the General Provisions applicable to Exchange/CC are included in Exchange/CC's Exhibit C. Please refer to the current version of Exhibit C developed by OLA for the General Provisions that pertain to Exchange/CC contracts.

## CHAPTER 6: PROCUREMENT PROCEDURES

### 6.1 Purchase Request

All purchase requests are initiated with the completion and approval of either an HBEX 008 or HBEX 800.

### 6.2 Purchase Order (Std. 65) Creation:

After quotes are solicited and received, the procurement specialist will select a vendor that provides the best value to Exchange/CC. Once a vendor is selected, the procurement specialist completes a Std. 65. All required information, such as line item information, subtotal, applicable sales tax, shipping costs, and final total must be identified on the Std. 65. Once complete, the Std. 65, along with all supporting documentation, is submitted for review and approval.

### 6.2 Purchase Order Review and Approval:

An Approver reviews and approves the Std. 65. After the Std. 65 is signed, the Approver returns the form to the procurement specialist for processing and award to the vendor.

### 6.3 Purchase Order Award and Distribution:

When ready to award, the procurement specialist will follow the procedures outlined in the *Procurement Specialist Desk Procedures*. A copy of the Std. 65 is made and stamped as the stock received report. The original Std. 65 is forwarded to FMD for encumbrance. Once FMD has encumbered the original Std. 65, it will be returned to BSB to be placed in the procurement library.

### 6.4 Receipt of Goods/Stock Received:

All products received must be inspected for overages, shortages, damage, and compliance with specifications. The procurement specialist and procurement liaison work together to verify all goods or services ordered from a vendor were received. Together they complete the stock received report either as "Partial" or "Complete" based on how the goods or services are delivered by the vendor. In both instances, the procurement liaison will sign and date the stock received report acknowledging their receipt of the goods and/or services.

If there are missing items, these will be identified by the procurement specialist. The procurement specialist will contact the vendor to find out why a delivery is partial and make arrangements for delivery, exchange and/or credits, as appropriate. .

### 6.5 Receiving Definitions:

**6.5.1 Receiving:** The act of taking possession of goods in order to stage them for inspections or place them into inventory.

**6.5.2 Inspecting:** The act of examining goods that have been delivered to determine conformance to what was ordered via the Std. 65 or Std. 67. In some cases, the

purchase may require specialized skills or expertise in examining the goods to determine conformance.

**6.5.3 Acceptance Testing:** The act of testing what is purchased, either all items delivered, or the first item delivered, or by random sampling of some or all items delivered. Testing determines whether what is purchased is in substantial accord with the contract and vendors and/or manufacturers published technical specifications and performs at a satisfactory level.

**6.5.4 Acceptance:** The legal act of documenting that the goods and/or services conform to the requirements of the purchase document terms and conditions. This is the goods receipt stage.

### **6.6 Inspection of Received Products:**

Inspection of all purchased products must be made within a reasonable amount of time after receipt. Personnel receiving goods must verify all incoming shipments against a copy of the original purchase document and packing slip. Materials received via common carrier must be verified against the driver's shipping documents.

In addition, receiving staff must ensure that the correct goods were received and that substitutions have not been made. If an inspection will occur upon receipt of the goods, the purchase document must specify when the inspection will occur and how it will be accomplished.

Exchange/CC staff shall, at a minimum, perform the following when conducting an inspection:

- Verify that the product ordered conforms to purchase order documentation;
- Verify the quantity ordered against the quantity shipped or delivered;
- Inspect for damage or breakage;
- Check for operability/functionality;
- Confirm instructions regarding special handling or packaging were followed;
- Verify the unit of measurement count is correct;
- Verify that delivery documentation is acceptable; and,
- Verify that packaging integrity is preserved.

Once it is determined that no issues exist and all items are accounted for, the person receiving the goods must complete the stock received report.

### **6.7 Damaged Goods:**

If an item is found to be faulty or damaged, the procurement specialist will resolve the problem with the vendor.

### **6.8 Under/Over Shipments:**

The procurement specialist receiving the goods may, if appropriate, accept any unit of measure and reject the rest. If, for example, the shipper sends 150 cases of paper

when only 50 were ordered, the shipment can be rejected in total, or 50 cases can be received and 100 cases rejected. The procurement specialist must timely notify the vendor of the under/over of shipment and action taken.

### **6.9 Rejection of Goods:**

If the requestor or the procurement specialist are rejecting the goods, they must immediately communicate the problem and rejection to the BSB Procurement Manager.

The procurement specialist must notify the vendor, make arrangements to hold the rejected goods somewhere protected from damage, and ensure protection of any rejected goods until the vendor can take possession and remove them from the site.

The procurement specialist must also provide a written notice of rejection to the vendor describing the defect that renders the delivery as non-conforming to the purchase document, what the delivery and inspection criterion were, and how the delivered product does not conform.

If the vendor, within a reasonable time period, does not remove the rejected goods, the procurement specialist may:

- Ship the products back to the vendor at the vendor's expense;
- Store the rejected goods with reimbursement required from the vendor for any incurred costs.

The procurement specialist must always contact the vendor prior to returning goods to determine the best way to handle the returns.

### **6.10 Hidden Damage:**

If hidden damage is discovered, the requestor or procurement specialist receiving the order shall as soon as practical:

- Notify the procurement specialist and BSB Procurement Manager for inspection of damages. They will then:
  - Notify the shipper and stop processing the order;
  - Take pictures of the damage if a camera is available;
  - Place the material on "hold" for instructions, or return to vendor all damaged materials by preparing an inventory adjustment document;
  - Negotiate with vendor on material to be returned to vendor in exchange for money or like item of equal or greater value.

### **6.11 Returning Items:**

The procurement specialist is responsible for returning items. To return items, take control of the items, a copy of the purchase order, and all other information regarding the return. Prepare the necessary packaging and shipping of any product being returned to the vendor. Note the return and let the appropriate FMD personnel know of the return. Retain copies of invoices marking the items that were returned. If an invoice

has already been issued by the vendor, the procurement specialist will also request a credit memo to document the return.

### **6.13 Invoicing:**

In order for vendors to be paid for goods or services provided, a complete and accurate invoice must be received by Exchange/CC for payment. The invoice is received by the Exchange/CC from a vendor either via regular mail or email. The invoice is processed by the procurement specialist and forwarded to the Approver. The Approver will review the invoice for accuracy and cross reference with the purchase documents. If the invoice is approved, the Approver will sign and return the procurement packet to the procurement specialist for further processing.

### **6.15 Office of State Publishing:**

OSP offers various services to State Agencies including, but not limited to, digital printing (including Business Cards), traditional printing, mass mailing services and fulfillment services. Solicitations for quotes from the OSP must be directed to the OSP Customer Service Representative for Exchange/CC.

OSP must be given the opportunity to provide all printing services the Exchange/CC may require. The Exchange/CC's OSP customer service representative must be contacted for a quote and to see if they can meet the required order specifications and delivery deadline. Should OSP not be able to meet the Exchange/CC's requirements, OSP shall issue a waiver. The Exchange/CC must require any union printer who is awarded a contract for printing services to affix the union label to all print materials resulting from that contract.

The procurement specialist processes all requests using a Std. 67 following OSP's processes.

#### **6.15.1 Business Cards:**

The Exchange/CC has a standard template for all business cards; deviations from the template are not allowed. Requestors wishing to order business cards must complete the Business Card Order Form (HBEX 009) with all the required information.

The procurement specialist processes all requests according to the OSP WebStore process.

### **6.16 Shredding Machines:**

The State Records Management Act contained in GC Sections 14740-14774 describes the duties and responsibilities in managing the state's records. The Director of DGS is required to: "Establish and administer, in the executive section of government, a records management program which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records."

**6.16.1 Procedure to Purchase Shredding Machines:** The requestor must:

- Substantiate the need for the equipment;
- Consider the amount of space available;
- Consider the layout of the office; and,
- Consider the activity of the records.

Substantiation should comply with Guidelines for Purchase or Rental of Document Shredding Equipment issued by CalRIM.

#### **6.17 First Aid Kits:**

First aid kits must be provided and readily available to all employees. Exchange/CC can purchase first aid kits pursuant to CalHR definitions for first aid supplies. Any additions to this list must be approved by Exchange/CC resident physician or designee.

#### **6.18 Library Material and Information:**

Education materials and information access resources may be purchased without advertising, or soliciting quotes. Such materials and resources include books, periodicals, computerized information for library use, educational films, audiovisual materials, test materials, workbooks and instructional computer software.

#### **6.19 Memberships (Professional):**

Memberships in professional organizations for represented employees are governed by the 21 collective bargaining agreements and payment is on a reimbursement basis (through a travel claim).

Memberships in professional organizations for non-represented employees are governed by CalHR rules and payment is on a reimbursement basis (through a travel claim).

These memberships, for both represented and non-represented employees, are not to be purchased via a Std. 65.

Departmental memberships in professional organizations are considered a service and therefore, must be procured via a Std. 213.

Departmental memberships are not to be purchased via a Std. 65.

**6.19.1 Legal Counsel State Bar Reimbursement:** In accordance with Bargaining Unit 2 labor agreement, Exchange/CC will either reimburse or pay directly to the State Bar the cost of bar dues for each Exchange/CC employee for whom bar membership is required as a condition of employment.

In the event Exchange/CC elects to pay the State Bar directly, each affected employee must provide the original remittance portion of their bar dues statement to the person designated by Exchange/CC at least four (4) weeks before the last day upon which the dues become delinquent.

If an employee has not received his/her bar statement at least four (4) weeks before the last day upon which the dues become delinquent, Exchange/CC, in its sole discretion, may:

1. Make an exception and directly pay the employee's dues; or
2. Reimburse the employee for paying the dues himself or herself.

Exchange/CC shall not be liable for or reimburse employees for penalties or fines incurred because of the late payment of dues, except where Exchange/CC is responsible for the late payment.

#### **6.20 Service Awards:**

In accordance with GC Section 19849.9, Exchange/CC may present to an employee who has completed 25 or more years of state service a certificate, plaque, or other suitable memento and charge the cost against the support budget of Exchange/CC or the office in which the employee serves. The cost of any certificate, plaque, or memento may not exceed ninety dollars (\$90) or such adjusted sum that has been approved in accordance with statute.

A presentation may likewise be made to a retired employee who as of the date of his or her retirement has completed 25 or more years of state service.

The procurement specialist processes all requests following the Exchange/CC's procurement procedures.

#### **6.21 Postage and Postage Meter Replenishment:**

Normal business operations require the Exchange/CC to utilize postage meters for regular outgoing mail through the United States Postal Service (USPS). The postage meters will be procured using a Cooperative Agreement LPA.

The Exchange/CC shall purchase replenishment postage funds through the procurement process using a STD. 65 and/or Revolving Fund Check. As the Exchange/CC is required to purchase funds through the postage meter vendor, postage procurement and/or postage meter replenishment is categorized as an exemption from bidding.

## CHAPTER 7: CONTRACT PROCEDURES

### 7.1 General Contract Procedure Information:

The Program Contract Manager is the liaison with the vendor/Contractor and is responsible for monitoring progress, approving payments and invoices, and addressing disputes. A contract analyst cannot assume these duties.

Exchange/CC BSB has staff dedicated to contract administration who work closely with Program Contract Managers who need to procure services and goods. Program Contract Managers should work with contract staff to develop SOWs, evaluation criteria, and the selection of potential Contractors. Program Contract Managers should also assist in responding to vendor/Contractor questions during the solicitation phase, and participate on the evaluation team.

The table below identifies the necessary forms and staff responsible for each contract type.

Solicitation Process	Required Information and Forms	Individual Responsible
Competitive Solicitations (Invitation for Bid, or Request for Proposal)	<input type="checkbox"/> GC 19130 Justification (HBEX 011a/b) <input type="checkbox"/> Scope of Work <input type="checkbox"/> Budget (pre-approval) <input type="checkbox"/> Contractor's List - Minimum 3 vendors/contractors (include current phone numbers, fax numbers and addresses) <input type="checkbox"/> Board Approval (if over \$1 million)	Program Contract Manager
	<ul style="list-style-type: none"> <li>• Procurement documents (RFP, etc.)</li> <li>• Notice of Intent to Award</li> <li>• Request for Contract Services (HBEX 011)</li> <li>• Agreement Summary (Std. 215)</li> <li>• Standard Agreement (Std. 213)</li> <li>• Budget Detail</li> <li>• General Terms and Conditions</li> <li>• Special Terms and Conditions</li> <li>• Additional provisions</li> <li>• Privacy Addendum, if applicable</li> <li>• Payee Data Record (Std. 204)</li> <li>• Certificate of Insurance</li> <li>• Background Clearance, if applicable</li> <li>• Form 700, if applicable</li> </ul>	Contract Analyst
Non-Competitive Solicitation (Sole Source)	<input type="checkbox"/> GC 19130 Justification (HBEX 011a/b) <input type="checkbox"/> Scope of Work <input type="checkbox"/> Budget (pre-approval) <input type="checkbox"/> Non-Competitive Bid Justification Form (HBEX 029) <input type="checkbox"/> Board Approval (if over \$150,000)	Program Contract Manager

Solicitation Process	Required Information and/ or Forms	Individual Responsible
Non-Competitive Solicitation (Sole Source)	<ul style="list-style-type: none"> <li>• Request for Contract Services (HBEX 011)</li> <li>• Agreement Summary (Std. 215)</li> <li>• Standard Agreement (Std. 213)</li> <li>• Budget Detail</li> <li>• General Terms and Conditions</li> <li>• Special Terms and Conditions</li> <li>• Additional provisions</li> <li>• Privacy Addendum, if applicable</li> <li>• Payee Data Record (Std. 204)</li> <li>• Certificate of Insurance</li> <li>• Background Clearance, if applicable</li> <li>• Form 700, if applicable</li> </ul>	Contract Analyst
LPA (Master Agreements, Multiple Award Schedules [CMAS])	<ul style="list-style-type: none"> <li><input type="checkbox"/> GC 19130 Justification (HBEx011 a/b)</li> <li><input type="checkbox"/> Scope of Work</li> <li><input type="checkbox"/> Minimum of Three Vendors to solicit quotes from (only one need respond)</li> <li><input type="checkbox"/> Budget (pre-approval)</li> <li><input type="checkbox"/> Board Approval (if over LPA threshold)</li> </ul>	Program Contract Manager
	<ul style="list-style-type: none"> <li>• Solicitation Document (RFO)</li> <li>• Request for Contract Services (HBEX 011)</li> <li>• Standard Agreement (Std. 213) or Purchase Order (Std. 65) (Note: See applicable user instructions.)</li> <li>• Budget Detail</li> <li>• General Terms and Conditions</li> <li>• Special Terms and Conditions</li> <li>• Additional provisions</li> <li>• Additional forms provided on the applicable LPA website</li> <li>• Payee Data Record (Std. 204)</li> <li>• Certificate of Insurance</li> <li>• Background Clearance, if applicable</li> <li>• Form 700, if applicable</li> </ul>	Contract Analyst
Interagency Agreement (IA)	<ul style="list-style-type: none"> <li><input type="checkbox"/> GC 19130 Justification (HBEx011 a/b)</li> <li><input type="checkbox"/> Scope of Work</li> <li><input type="checkbox"/> Budget (pre-approval)</li> <li><input type="checkbox"/> Board Approval (if over \$1 million)</li> </ul>	Program Contract Manager
	<ul style="list-style-type: none"> <li>• Request for Contract Services (HBEx011)</li> <li>• Agreement Summary (Std. 215)</li> <li>• Standard Agreement (Std. 213)</li> <li>• Budget Detail</li> <li>• General Terms and Conditions</li> <li>• Special Terms and Conditions</li> <li>• Additional provisions</li> <li>• Background Clearance, if applicable</li> <li>• Form 700, if applicable</li> </ul>	Contract Analyst

**7.2 Bargaining Units and Employee Organizations Notification:**

Except in extremely unusual or urgent, time-limited circumstances, or under other circumstances where contracting out is recognized or required by law, Federal

mandate, or court decisions or orders, Exchange/CC must make every effort to hire, utilize and retain bargaining unit employees before releasing competitive solicitations. Exchange/CC will provide notice to the bargaining union's designated representative with copies of RFPs and IFBs for personal services contracts provided the resulting contract will be for services found in bargaining unit class specifications. BSB will not release a competitive solicitation until notice has been provided to the appropriate bargaining union's designated representative.

### **7.3 Personal Service Contracts:**

In order to enter into a personal services contract: 1) Program must complete the Justification for Contracting out Services forms (HBEX 011a/b) and obtain approval from the Office of Legal Affairs (OLA), and 2) the Labor Relations Officer (LRO) must notify the appropriate bargaining units and employee organizations that represent the state employees who perform the type of work being contracted out and provide them with a complete copy of the proposed contract. However, if the personal services contract is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, notice is not required to be made by the LRO prior to the execution of the contract.

These requirements pertain to personal services contracts only, and not IAs, NMAs, Grants, or Reimbursable Agreements.

### **7.4 Contractor/Consultant Conflict of Interest:**

The Conflict of Interest Policy is covered under Exchange/CC Administrative Policy 14-100. The Political Reform Act (Act) of 1974 (GC Sections 81000 et seq.), prohibits state employees from participating in decisions that may materially affect their financial interests. The law also requires employees in designated positions, including consultants/Contractor employees, to complete and file a Statement of Economic Interests (Form 700) and comply with state ethics training requirements.

Designated consultants and Contractor employees shall complete and file their Form 700 and proof of completion of the Ethics Training Course for State Officials in accordance with these policies and applicable law.

Failure to timely and accurately comply with the Act, other applicable law and these policies may result in disciplinary or other appropriate action, including contract termination and civil and criminal sanctions (GC Sections 91000 et seq.).

Consultants, including contractor employees, who meet the definition in the regulations cited above are covered by the Act, Conflict of Interest laws, Form 700 filing requirements, and related restrictions to the same extent as designated employees of Exchange/CC. Consultants, including Contractor employees, shall file their Form 700 with BSB, as follows:

1. Prior to commencing work under the contract;

2. Annually thereafter while remaining a consultant as defined in the regulations cited above (usually by April 1 of each subsequent year); and
3. Within 30 days of ceasing to be such a consultant to Exchange/CC.

The Disclosure Category for all consultants/Contractor employees required to file a Form 700 shall be deemed to be Category 1 unless otherwise determined, in writing, by the Executive Director or the General Counsel of Exchange/CC.

All such consultants/Contractor employees shall also complete the Attorney General's Ethics Training Course for State Officials, unless they have previously taken an equivalent ethics training course through another state agency or the Legislature during the required time period, as follows:

1. Prior to commencing any work under the contract; and
2. At least once every two calendar years thereafter during which he/she remains a consultant/Contractor employee, as defined above, to Exchange/CC.

#### **7.5 Background Check Requirements:**

Prior to accessing any confidential information, personal identifying information, personal health information, federal tax information, or financial information contained in the information systems and devices of the Exchange, or any other information as required by federal and state law or guidance, all staff, including employees, contract or sub-contract personnel, vendors or volunteers, who perform services under an agreement, must comply with the criminal background check requirements set forth in GC Section 1043, and its implementing regulations set forth in CCR, Title 10, Section 6456.

## CHAPTER 8: PROCUREMENT RULES AND ETHICS

### 8.1 General Information:

California law requires state officials to complete an ethics training course within six months of their hiring, and every two years thereafter. Exchange/CC policy requires that the initial training be completed within 30 days of hiring unless it has previously been completed within the applicable time period.

It is the responsibility of all applicable staff to complete the required training course and to understand and comply with all applicable rules and ethics, and of their supervisors and managers to ensure the training has been completed and a Certificate of Completion filed in accordance with Exchange/CC's Conflict of Interest Policy.

### 8.2. Employee Conflict of Interest:

Within 30 days of employment with Exchange/CC and by April 1<sup>st</sup> of each year thereafter, each designated staff member must complete and submit a then current FPCC Form 700 – Statement of Economic Interests to Exchange/CC Human Resources Office.

### 8.3 Incompatible Activities, Gifts and Gratuities:

All staff must familiarize themselves with and comply with Exchange/CC's Incompatible Activities Statement and Conflict of Interest Code.

In addition, no staff member may provide or approve payment to vendors for services or goods before the work has been performed or the goods received. Such payments may be considered a gift of public funds and are strictly prohibited.

### 8.4 Order Splitting:

Procurements, including contracts and CAL-Card purchases, may not be split into multiple transactions for the purpose of evading purchase limit restrictions or bidding or approval requirements.

**For example:** If a non-competitively bid purchase's total cost exceeds \$25,000, a HBEX 029 must be completed and approved prior to the purchase being made. A purchase totaling \$30,000 cannot be split into two separate purchases of \$15,000 each - doing so would be order splitting. In this instance, either the HBEX 029 must be completed and approved or the purchase must be competitively bid through the normal procurement process.

### 8.5 Board Approval:

Procurements and contracts may not be split into multiple transactions or contracts for the purpose of evading Board approval requirements.

### 8.6 CAL-Card Compliance:

Unauthorized or otherwise improper purchases made with the CAL-Card are the responsibility of the individual Cardholder and may result in cancellation of the card and

the Cardholder's authorization to use it, mandatory reimbursement to Exchange/CC and disciplinary action.

In addition, failure by an Approving Official or Program Administrator to comply with his or her responsibilities and applicable policies, procedures and this Manual may result in the following:

- Reassignment of responsibilities;
- Financial liability for inappropriate purchases; and
- Disciplinary action.

### **8.7 Accepting Free, Loaner, or Trial Equipment:**

A Purchase Order (Std. 65) or Standard Agreement (Std. 213) must be completed prior to the acceptance of donated, loaned or trial equipment.

For donated equipment, the Std. 65 or Std. 213 shall state that by accepting the equipment at no cost, Exchange/CC assumes no further obligation or cost associated with the acceptance.

For loaned or trial equipment, the Std. 65 or Std. 213 shall specify the term for which the equipment will be on loan and that:

1. Exchange/CC may, in its sole discretion, terminate the loan or trial period at any time;
2. Exchange/CC does not carry insurance covering the equipment, and shall not be obligated to repair, replace or otherwise reimburse the vendor or any other party should the equipment be damaged, destroyed, lost or stolen;
3. At the end of the loan or trial period, the equipment shall be returned;
4. The vendor bears sole responsibility for any and all costs associated with the delivery and return of the equipment; and
5. If Exchange/CC determines that the equipment meets all needed requirements and wishes to procure such equipment, a competitive solicitation and quotes must be obtained to procure the equipment in accordance with all existing Exchange/CC policies and procedures.

### **8.8 Personal Use of Information:**

Unless specifically authorized within the terms and conditions of the applicable employment or contractual relationship with Exchange/CC, it is unlawful for any person to utilize any information that is not a matter of public record, or that is learned in the course of, or as a result of such employment or contract, for personal financial gain. This prohibition applies whether or not the person is employed or under contract with Exchange/CC at the time the gain is realized.

### **8.9 Misappropriation of State Property or Services:**

No Exchange/CC employee may acquire any goods from Exchange/CC unless the goods are offered to the general public in the regular course of Exchange/CC's business on the same terms and conditions as those applicable to the employee.

Misrepresentation to vendors or Contractors that personal acquisitions are for Exchange/CC when they are not is prohibited, and may result in termination or other adverse action, and/or criminal prosecution.

#### **8.10 Sales Tax:**

Sales tax rates are determined by the location where the products are physically received. Sales tax rates change from time to time and can be verified on the Board of Equalization website.

#### **8.11 Travel Provisions:**

All contracts that include payment for travel must be limited to official state business and within contract parameters. Travel and per diem rates may not exceed the rate for state employees as set by the CalHR. Contractors must complete and timely submit travel expense claims and receipts when submitting claims for payment.

#### **8.12 Prompt Payment Act:**

Exchange/CC is required to pay properly submitted, undisputed invoices within 45 calendar days of receipt. Exchange/CC may dispute an invoice submitted for reasonable cause if Exchange/CC notifies the Contractor within 15 working days of receipt of invoice or delivery of the goods or services, whichever is later. (See GC Section 927 et seq.)

If the invoice is not disputed, Exchange/CC must file a claim schedule for payment of the invoice with the State Controller's Office (SCO) within 30 calendar days of receipt, or pay the invoice directly using the Revolving Fund within 45 calendar days of the invoices' receipt. The SCO has 15 calendar days to issue a warrant. Interest penalties begin accruing on the 46th calendar day following receipt of an undisputed invoice.

Exchange/CC is required to pay qualifying interest penalties automatically without the need for businesses to request them. Interest penalties stop accruing the day a warrant is issued.

#### **8.13 Prohibited Bids/Contract Participation**

A person, firm, or subsidiary awarded a consulting services contract shall not submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract except that a person, firm, or subsidiary may be awarded a subcontract of no more than 10% of the total monetary value of the consulting services contract.

## CHAPTER 9: EMERGENCY SITUATIONS

### 9.1 General Information:

An emergency, for procurement purposes, is defined by Exchange/CC as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Deputy Chief Operations Officer and the Chief of BSB or their designees will determine if the situation is an emergency.

### 9.2 Types of Emergencies:

Emergency procurements are divided into one of two classifications:

1. An emergency purchase in response to a natural disaster, e.g., fire, flood, earthquake; or
2. Any other emergency purchase not in response to a natural disaster.

**9.2.1 Natural Disaster Emergency:** The contract analyst or procurement specialist must document the circumstances of the emergency purchase and issue any appropriate forms (e.g., Purchase Order [Std. 65]). All required documentation must be maintained in the procurement file.

**9.2.2 Other Emergency:** The contract analyst or procurement specialist must document the circumstances of the emergency purchase as well as the names and quotations of vendors contacted.

### 9.3 After the Emergency:

An emergency is considered over when the immediate concern for life, health, property, or essential public services is under control and the situation is stabilized. All purchases or contracts entered into after an emergency is considered over must follow the normal purchasing and contracting processes.

### 9.4 Emergency Documentation:

The requestor, contract analyst, or procurements specialist must document the procurement file after an emergency purchase, which must include:

- A description of the emergency;
- An explanation of why the circumstances that warranted an emergency purchase;
- An explanation of the potential consequences of making the purchase through normal procurement processes;
- A description of the goods and the price; and
- The names of vendors contacted and quotes from each vendor.

## **APPENDICES**

## **APPENDIX A**

## **DEFINITIONS**

## APPENDIX A: DEFINITIONS

**Acceptance of Offer:** In contract law, the act of accepting an offer to provide goods/services and creating contractual liabilities for both the offeror and the offeree.

**Acceptance of Performance (Goods/Services):** The legal act by which Exchange/CC assumes ownership of goods or approves specific services rendered as partial or complete performance of the contract.

**Amendment:** A document used to effect a change or modification in one or more provisions of an existing contract or purchase document.

**Award:** Exchange/CC's acceptance of an offer to provide goods or services by issuance of a contract/order.

**Best Value:** Any factor or criterion related to requirements and vendor selection for a particular transaction that is established by Exchange/CC to ensure business needs and goals are effectively met and that Exchange/CC obtains the best value. Synonymous with value effective.

**Business in Good Standing:** A vendor/Contractor who is qualified to do business in the State of California and is verified by Exchange/CC as not being listed with the BOE and FTB as a tax delinquent entity and/or which has a valid certification from DGS as a SB/MB/DVBE.

**CAL-Card:** A payment mechanism (VISA payment card). It can have flexible spending limits, is issued in the name of the cardholder, and is billed to Exchange/CC.

**California Multiple Award Schedules (CMAS):** A program that establishes leveraged contracts based upon an existing federal General Services Administration Multiple Award Schedule or some other competitively bid or assessed multiple award contracts.

**Certified Small Business:** A business that has been certified by the Office of Small Business and DVBE Services (OSDS), Department of General Services, as a small business as defined in GC Section 14837 and 2 CCR Section 1896. OSDS issues the business a letter of certification that allows the business to claim the small business preference when submitting bids and to obtain statutory penalties for late payments on contracts.

**Competition:** All vendors are permitted to compete for a contract. Vendors/Contractors are evaluated on the same fixed criteria.

**Competitive Approach:** An acquisition approach where the dollar-value of the transaction guides use of procedures for full and open competition, competition based

on fair and reasonable evaluation, or use of the SB/DVBE option. This approach is contrasted with use of existing sources or a non-competitive approach.

**Competitive Solicitation Process:** A process conducted when using a competitive approach. The solicitation method (phone, fax, written, etc.), solicitation document, and procedures vary based upon transaction type, approach (formal, informal, SB/DVBE option) and estimated dollar value of the acquisition.

**Contract:** A legally binding obligation or agreement by whatever name known or in whatever format used (including purchase orders), between Exchange/CC and another entity, public or private, for the provision of goods or services.

**Contractor:** The business entity with whom Exchange/CC enters into a contract. Contractor is sometimes used interchangeably with vendor or other similar term.

**Cooperative Agreements:** A consortium of multiple states that establishes cooperative contracts using a competitive process. Participating state governments join together in order to achieve cost-effective and efficient acquisition of quality products and services through volume discounts (formerly known as WSCA).

**Deliverables:** Contracted goods, services, other items (e.g. reports), or results a vendor agrees to produce/provide in the performance of a contract.

**Disabled Veteran Business Enterprise (DVBE):** A business that meets all of the following criteria: at least 51 percent of the business is owned by one or more disabled veterans, or in a business whose stock is publicly held, at least 51 percent or more of the stockholders are disabled veterans; the management and control of the business are exercised by one or more disabled veterans; the business is domestically owned and its home office is in the United States; and the business has been certified as a DVBE by OSDS.

**Emergency:** A sudden, unexpected occurrence that creates a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services (PCC Section 1102).

**Evaluation Team:** The Evaluation Team is the group that works with the BSB contract analyst to develop solicitation evaluation criteria, review the solicitation proposals, and develop the Evaluation and Selection Report. The team includes the Program Contract Manager and may include the Program Project Manager, Program staff, and consultants acting as subject matter experts. However, consultants acting as subject matter experts may not award scores to proposals or be present at the meeting where final scores are documented.

**Evaluation and Selection Report:** The report documenting the strengths and weaknesses of the solicitation offers reviewed by the Evaluation Team. The Evaluation

and Selection Report shall explain why the selected vendor provides the best overall value to the Exchange/CC.

**Executed:** The state of a Contract when it is signed by both parties, and approved by the appropriate entities as required by any statute, regulation, and policy.

**Existing Sources:** An acquisition approach. Existing sources include, but are not limited to, leveraged procurement agreements, Community-based Rehabilitation Programs (CRPs), and State programs (such as property reutilization, Prison Industry Authority programs, and use of State resources through Interagency Agreements). This approach is contrasted with use of a competitive approach or a non-competitive approach.

**Fair and Reasonable:** An evaluation methodology that can be used for acquisitions less than \$5,000 that is either objective or subjective. It is used to determine if the price paid is reasonably close to that price which would be paid by another prudent procurement specialist or contract analyst under similar circumstances.

**Fiscal Year:** A fiscal year is a period used for calculating annual financial statements, and planning the use of funds in businesses and other organizations. The State's fiscal year runs from July 1st through June 30th of the following year.

**General Provisions (GP):** Terms and conditions applicable to a contract. A document that is required to be included with certain contracts.

**Good Standing:** See Business in Good Standing.

**Goods:** As defined by PCC Section 10290(d), goods are all types of tangible personal property, including but not limited to materials, supplies, and equipment.

**Government Code (GC):** A compilation of statutes prescribing how State and local governments will function.

**Invoice:** A document received by Exchange/CC from the Contractor. It is a bill for contract execution, generally for services rendered or for goods delivered.

**Leveraged Procurement Agreement (LPA):** A leveraged procurement is the method used to combine State departments' requirements for the same items or for families of similar items, thus providing standardization and "leveraging" the State's buying power to: achieve lower prices, better terms/conditions, and/or improved service through volume purchasing; and minimize the administrative costs associated with individual departments having to undergo the acquisition process repetitively to fulfill their individual, ongoing requirements for the same item(s).

- Examples of the State's leveraged procurement agreements include Master Agreements (such as cooperative agreements for the Western States

Contracting Alliance [WSCA] contracts), California Multiple Award Schedules (CMAS), Statewide Contracts (including strategically sourced contracts), Software Licensing Program (SLP) contracts, and the State Price Schedules.

**Market Research:** The process used for collecting and analyzing information about capabilities within the market to satisfy a department's needs.

**Master Agreement:** An agreement entered into by the Department of General Services resulting in set prices for a specific period of time that can be used by other government entities within California to obtain the listed goods/services.

**Master Service Agreement (MSA):** Similar to Master Agreement as it relates to acquiring services. May also be an agreement for non-IT services for use by divisions of Exchange/CC.

**Micro-business:** A subset of certified small business that together with any affiliates is either: a service, construction, or non-manufacturer with 25 or fewer employees, and average annual gross receipts of \$2,500,000 or less over the previous three years, or a manufacturer with 25 or fewer employees.

**Non-Competitive Bid (NCB):** A non-competitive transaction adhering to a specific approval process in which only a single vendor is afforded the opportunity to offer the State a price for the specified goods or services.

**OLA:** Exchange/CC's Office of Legal Affairs.

**Parties:** Two entities who enter into a contract. The Contractor and the State (Exchange/CC) are both parties relevant to contracts executed at Exchange/CC.

**Price:** The cost of goods and/or services plus any fee or profit.

**Price Analysis:** An evaluation of a vendor's proposed price to examine its reasonableness without evaluating its separate cost elements and proposed profit.

**Procurement:** A process to obtain goods/services, through purchase or lease, for the benefit of Exchange/CC. The process begins with identification of a need and consists of three phases: Acquisition Planning, Acquisition Phase, and Post Award Administration. Sometimes referred to as contracting, purchasing, or acquisition.

**Program:** For purposes of this manual, Program refers to a particular organizational unit or area, or group of units or areas, responsible for closely related and interdependent activities relative to specific objectives of Exchange CC. Examples of Programs within Exchange/CC: Administration, Program Integrity, Marketing, and SHOP.

**Prompt Payment Act:** Statutory provisions that establish contract payment timelines and set interest penalties on late payments for State contracts.

**Proposal:** An offer made in response to a Request for Proposal (RFP). May also be used to refer to an offer or quote, made in response to a request to perform a contract for work/labor or to supply services at a specified price, whether or not it is the result of competition or a non-competitively solicitation contract.

**Public Contract Code (PCC):** A compilation of statutes prescribing how State and local agencies will contract for goods and services.

**Public Records Request:** The Public Records Act, California Government Code, Section 6253, provides that every person has a right to inspect any public record, except those exempted from public disclosure by statute. Requests to inspect public records may be made either in person or by written request.

**Purchase Order:** A contractual document which formalizes Exchange/CC's acceptance of an offer to buy goods and/or services from a vendor. Upon acceptance of the offer by Exchange/CC, an enforceable contract for the sale of goods and/or the performance of services is formed.

**Quote:** An offer, made in response to a request to perform a contract for work/labor or to supply goods at a specified price, whether or not it is the result of competition or a non-competitively solicitation contract. Also known by other names such as proposal or quote.

**Reasonable Price:** See fair and reasonable.

**Requisition:** A general term for an official written request to acquire goods and services that is sent to a purchasing department or entity. The type of written request varies by acquisition approach or Exchange policy and may include use of a standard Purchase Order, service request document, request memo or other format. For example within Exchange/CC: Intra-Office Requisition (HBEX 008).

**Responsible Bidder:** A vendor/Contractor who is fully capable of performing the contract. Considerations include a vendor deemed to satisfactorily demonstrate some or all of the following, pertinent to the specific transaction: adequate financial resources or the ability to obtain the resources required to perform the contract; an adequate cost accounting system; the capability to comply with the required or proposed delivery or performance schedule considering all existing commitments; a satisfactory record of performance; a satisfactory record of integrity; qualified and eligible to receive an award under all applicable laws and regulations; necessary organization, experience, operational controls and technical skills (or the ability to obtain them); necessary production and technical equipment and facilities; the ability to satisfy special capability standards when required by a unique procurement or class of procurements; and an adequate quality assurance program.

**Responsive Bidder:** A Contractor whose solicitation response is compliant with solicitation requirements and indicates performance without material deviation from the terms and conditions of the proposed contract.

**SB/DVBE Option:** A competitive acquisition allowed per GC Section 14838.5 (a) & (b). It can be used for transactions within specified dollar range and targets participation from only small businesses or disabled veteran business enterprises.

**Scope of Work:** For some Leveraged Procurement Agreements (LPA), a scope of work is the part of the Request for Offer (RFO) where departments detail the services they are seeking. See Statement of Work (SOW).

**Services:** Non-IT services: A contract in which the Contractor provides a duty or labor, as opposed to commodities or goods. IT services: IT contracts for personal labor, effort, or time, including services for computer hardware and software maintenance or repair; programming and analysis of IT systems; IT training or other IT consulting service.

**Small Business:** See certified small business.

**Solicitation:** The process, by whatever name known or in whatever format used, of notifying prospective Contractors or vendors that Exchange/CC wishes to receive quotes for furnishing goods and/or services.

**State Administrative Manual (SAM):** A manual governing State functions published by the Department of General Service, Office of State Publishing. Provides uniform guidance to State agencies in their fiscal and business management affairs, relative to statewide policies, procedures, law or regulations.

**State Contracting Manual (SCM):** A resource manual which provides uniform guidance to State agencies for the acquisition of goods and services.

**Statement of Work (SOW):** A written description of work to be performed under a contract to satisfy Exchange/CC's needs. It can include what is to be done, when, where, and how; defines the roles and responsibilities of Exchange/CC and the Contractor. Sometimes referred to as scope of work.

**Statewide Contract:** A contract based on a competitive process providing various goods for a specified period of time at a fixed price. While some of these contracts may be restricted to use by a specific agency, most are available for use by all State and local government agencies.

**Terms and Conditions:** Provisions, qualifications or clauses in a contract which create, suspend, or terminate the obligations of the contracting parties. It is a document with standardized language commonly referred to as "boilerplate" which is used in a

uniform context in contracts without variation. A document that is required to be included with certain non-IT service or other contracts.

**Transaction:** Acquisition or procurement transaction. An undertaking to acquire goods/services as part of a specific project. It can take various forms such as a new contract, amendment, etc.

**Transaction type:** An acquisition's classification. Examples include classifying an acquisition as goods, services, or information technology.

**Vendor:** See Contractor also. An individual, sole proprietorship, firm, partnership, corporation, or any other business venture that responds to a solicitation.

**Western States Contracting Alliance (WSCA):** See Cooperative Agreements.

## **APPENDIX B**

### **ABBREVIATIONS**

## APPENDIX B: ABBREVIATIONS

Board – California Health Benefit Exchange Board  
BOE – Board of Equalization  
BSB – Exchange/CC’s Business Services Branch  
CA – Cooperative Agreements (formerly WSCA)  
CA-ACA – California Affordable Care Act  
CalHR – California Department of Human Resources  
CALPIA – California Prison Industry Authority  
CalRIM – California Records and Information Management Program  
CCC – Contractor Certification Clauses  
CCR – California Code of Regulations  
CDED – Chief Deputy Executive Director with the California Health Benefit Exchange  
CFR – Code of Federal Regulations  
CMAS – California Multiple Award Schedules  
CPRA – California Public Records Act  
DCOO – Deputy Chief Operations Officer with the California Health Benefit Exchange  
DGS – Department of General Services  
DGS-PD – Department of General Services Procurement Division  
DVBE – Disabled Veterans Business Enterprise  
ESR – Evaluation and Selection Report  
Exchange/CC – California Health Benefit Exchange/Covered California  
FMD – Exchange/CC’s Financial Management Division  
FTB – Franchise Tax Board  
Form 700 – Statement of Economic Interests  
GC – Government Code  
GSA – General Services Administration (federal)  
GSPD-401 – General Provisions for non-IT contracts  
GSPD-401IT – General Provisions for IT contracts  
HBEX – California Health Benefit Exchange Form Prefix  
HBEX 800 – Training Request Form  
HBEX 008 – Intra-Office Requisition Form  
HBEX 011 – New Contract/Amendment Approval Form  
IA – Interagency Agreement  
IFB – Invitation for Bid  
IRS – Internal Revenue Service  
IT – Information Technology  
ITD – Information Technology Division  
LPA – Leveraged Procurement Agreement  
MA – Master Agreement  
MB – Micro-business  
MCP – Model Contract Procurement  
MM – Management Memo  
MOU – Memorandum of Understanding  
MPA – Master Purchase Agreement  
MRA – Master Rental Agreement

MSA – Master Service Agreement  
MVC – Military Veterans Code  
NCB – Non-competitive bid  
NMA – Non-Monetary Agreement  
OLA – Office of Legal Affairs  
OSDS – Office of Small Business and Disabled Veterans Business Enterprise Services  
OSP – Office of State Publishing  
PC – Penal Code  
PCC – Public Contracting Code  
PRC – Public Resources Code  
RCP – Recycled Content Product  
RFO – Request for Offer  
RFP – Request for Proposal  
RFQ – Request for Quote  
RPPCM – Recycled Plastic Post-Consumer Material  
SABRC – State Agency Buy Recycled Campaign  
SAM – State Administrative Manual  
SB – Small Business  
SCM – State Contracting Manual  
SCO – State Controller’s Office  
SLP – Software Licensing Program  
SOS – Secretary of State  
SOW – Statement/Scope of Work  
STD – Standard  
STD 204 – Payee Data Record Form  
STD 213 – Standard Agreement Form  
STD 215 – Agreement Summary Form  
STD 65 – Purchase Order Form  
STD 67 – Office of State Publishing Printing Requisition  
STD 21 – Drug-Free Workplace Certificate  
TACPA – Target Area Contract Preference Act  
TIN – Taxpayer Identification Number  
WSCA – Western State Contracting Alliance (see CA - Cooperative Agreements)