The State Bar of California

General Procurement Manual

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The State Bar of California
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1.0 INTRODUCTION

This manual was developed under Business and Professions Code section 6008.6. It is the procurement policy and guidance document for the State Bar of California, including for those who are responsible for the procurement of goods and services on behalf of the State Bar. It also provides transparency into the State Bar's procurement processes for State Bar vendors or potential vendors and the public. This manual discusses procurement processes applicable to a wide variety of goods and services using a variety of tools.

State Bar procurement procedures, as set forth in this manual, are consistent with the general standards set forth in the applicable provisions of the Public Contract Code (PCC). In addition, the State Bar is required by statute to obtain approval from the Board of Trustees for contracts exceeding $50,000 for all goods and services other than information technology (IT) and $100,000 for IT goods and services, and to establish a request for proposal (RFP) procedure in accordance with Business and Professions Code section 6008.6.

1.1 USING THIS MANUAL

This manual is the State Bar's procurement policy and sets forth the guidelines to be applied in all State Bar procurements. The information herein is also intended to provide transparency to stakeholders and vendors in addition to supporting State Bar staff in making sound purchasing and contracting decisions that conform to all relevant policies, procedures, and statutory requirements.

For purchases using State Bar purchasing cards, please see the Purchasing Card Policy. Purchasing cards may not be used to circumvent the competition requirements contained in this manual.

For those contracts entered into prior to the implementation of this manual on November 1, 2026, the prior General Procurement Manual will govern. Where contracts governed by the prior General Procurement Manual are to be amended, the use of exemptions from competition found in the prior General Procurement Manual and not included in this manual requires approval by the Executive Director or their designee.

For unique situations or extenuating circumstances not specifically addressed in this manual, contact procurement staff at procurement@calbar.ca.gov for further assistance.

This manual does not apply to the provision of grant funds or grant agreements. For questions related to grants, please speak with the office that oversees the relevant grant program.

1.2 CONFLICTS OF INTEREST AND PROHIBITED CONTRACTS AND BIDS

1.2.1 Conflicts of Interest

State Bar Personnel: All State Bar personnel involved in the procurement process must adhere to and conduct business by high ethical standards. This means that State Bar personnel are expected to conduct themselves in a professional manner, refrain from mixing personal relationships with State Bar business, and not engage in incompatible activities, conflicts of interest, or unethical behavior. State Bar personnel are expected to comply with the applicable provisions of the State Bar's policy addressing conflicts of interest, incompatible activities, and

other ethical considerations (available on the State Bar's intranet) as well as all applicable provisions of law.

Vendors: There may be instances when the work that a vendor performed or is performing for the State Bar may preclude that same vendor from bidding on or performing certain future services because such arrangement may result in violation of Government Code section 1090 et seq. or applicable provisions of the Political Reform Act (Government Code section 87100 et seq.). Examples in which a vendor is precluded from bidding or performing further services include the following:

- A contract in which the scope of work includes assisting the State Bar in evaluating proposals or bids may not be awarded to a vendor that would be evaluating its own proposals, quotes, or bids, or those of its competitors.

- Where a vendor was contracted to engage in and advise the State Bar on its contracting (i.e., preparing or assisting the State Bar with drafting or developing a request for proposals, request for quotes or information, or bids), that vendor is generally precluded from bidding on the resulting contract and the State Bar is precluded from entering into such a contract. In limited instances, such a contract may be permissible if the vendor participated only in the planning, discussion, or drawing of plans or specifications during an initial stage of the project and the participation was (1) limited to conceptual, preliminary, or initial plans or specifications; and (2) all bidders or proposers for subsequent contracts have access to the same information, including conceptual, preliminary, or initial plans and specifications, as either a prime contractor or subcontractor. (See Government Code section 1097.6.)

If a Requesting Office has questions regarding this section, the Requesting Office should consult with Procurement and the Office of General Counsel (OGC) prior to awarding the contract.

1.2.2 Prohibited Bids and Contracts

Regardless of whether there is a conflict of interest as described above in Section 1.2.1, the following bids or contracts are prohibited.

Contracts Resulting from Consultant Recommendations: A person, firm, or subsidiary awarded a consulting services contract is not permitted to submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract or included in the consultant's recommendations to the State Bar. A person, firm, or subsidiary, however, may be awarded a subcontract of no more than 10 percent of the total monetary value of the services contract suggested by the consultant, if appropriate. (PCC 10365.5.)

To determine whether the above prohibition is applicable, the Requesting Office should consider first whether the original contract was for consulting and, if so, whether the subsequent contract is causally linked to the recommendations made pursuant to the original contract. Guidance for each analysis is below.

- Whether a contract is a consulting contract for purposes of this section is determined by the contract's function, not its title. In determining whether a contract is a consulting contract

within the bounds of this prohibition, Requesting Offices should consider: (1) whether consulting services are specifically within the scope of the contract; (2) whether the contract is advisory in nature, such that the vendor is making recommendations on courses of action to be taken or future acquisitions of goods or services; and (3) whether the contract requires an end product that transmits information that includes recommendations related to government functions or systems or any improvements thereto.

- If the original contract was a consulting contract, in reviewing the subsequent contract, Requesting Offices should consider the causal nature of the consulting contract vendor's recommendations. If there is a link between the end product of the original consulting contract and the goods or services being procured in the subsequent contract, the consulting contract vendor may be prohibited from being awarded the subsequent contract. Where this occurs, the Requesting Office should consult Procurement and OGC prior to removing the consulting contract vendor from award consideration for the subsequent contract.

This prohibition does not apply to incidental advice or suggestions made outside the scope of an IT consulting services contract or to IT contracts that are part of a single competitive procurement conducted in more than one stage (i.e., a single contract for design, development, and implementation).

Contracts for Examination Services: A vendor performing services to draft or develop exam questions for the California Bar Exam (CBX), First-Year Law Students' Exam (FYLSX), or Legal Specialist Exam (LSX) may not also perform services related to evaluating that same exam's development, validating that exam, or grading that exam.

1.3 PROCUREMENT CONSIDERATIONS

As further described in detail in Sections 2.0 and 2.1, three basic considerations provide the starting point for any procurement of goods or services.

Goods or Services Required	Budget	Lead Time
Accurately define exactly what goods and/or services are needed. For goods, a precise product description is essential, including make or model number (if applicable), quantities, and other technical specifications. For services, the work to be performed must be clearly documented so that the resulting contract can accurately reflect requirements.	If there is uncertainty about what the office budget will sustain, or if there are questions in relation to budget policy, seek guidance from the office director and Finance Office prior to seeking goods or services.	The time required to complete a procurement can be considerable, particularly for procurement processes requiring formal competitive bidding, contract negotiation, and, as needed, approval by the Board of Trustees. Contracts valued at $2 million or more are subject to the process described in Section 4.14. It is important to plan well in advance of when goods and services will be needed, including taking into account when renewals or extensions of existing contacts must be exercised.

1.4 OVERVIEW OF THE PROCUREMENT PROCESS

The procurement process generally consists of five steps:

1. **Planning:** Define the business need and establish the procurement objectives. What goods or services are needed? Is there a need to seek those goods or services from outside the State Bar? **Is this an approved expenditure?** What is the timeline for the purchase?

2. **Determining the Procurement Mechanism:** Identify the appropriate procurement mechanism (e.g., Purchasing Card, Purchase Order with Standard Terms and Provisions, Purchase Order with Custom Contract), identify potential vendors, and solicit bids.

3. **Selecting a Vendor:** Fairly and objectively select the vendor that provides the best value to the State Bar.

4. **Issuing an Award and Creating a Contract:** Ensure that the awarded contract complies with applicable procurement policies and contains provisions that achieve the procurement objectives.

5. **Managing the Contract:** Administer and enforce the terms of the contract, including delivery of specified goods or services as well as payment to vendors and tracking contract timelines and expiration dates.

At each step, the office requesting a procurement (Requesting Office), the Procurement Unit within the Office of Finance (Procurement Unit), and OGC, where and as appropriate, each play a unique role in ensuring a successful procurement. These roles are indicated in table 1.

Table 1. Procurement Steps and Staff Roles

Step	Requesting Office	Procurement Unit	Office of General Counsel (OGC)
Planning	Identifies the need, develops Statement of Work (SOW), estimates cost	Reviews SOW	Reviews SOW, if requested by Procurement Unit
Determining the Procurement Mechanism	Collaborates with Procurement Unit	Advises Requesting Office based on SOW and estimated cost	Advises Requesting Office and Procurement Unit, if requested
Issuing a Solicitation (RFP/IFB)	Collaborates with Procurement Unit, if requested	Drafts and publicizes solicitation	Advises Requesting Office and Procurement Unit, if requested
Selecting a Vendor	Conducts vendor evaluation and selection and selects winning bidder	Reviews vendor selection	Reviews best value determination for compliance with the RFP, if requested

Step	Requesting Office	Procurement Unit	Office of General Counsel (OGC)
Issuing an Award and Creating a Contract	After notice of intent to award has been provided, engages and, as needed, negotiates with vendor and collaborates with Procurement Unit to finalize contract	Issues notice of intent to award, and reviews and finalizes detailed contract provided by Requesting Office	Assists in contract drafting and review of contract provisions, as required, or, where not required, if requested
Managing the Contract	Provides oversight of performance, manages compliance, consults with Procurement Unit and OGC	Advises on contract enforcement, if requested	Advises on contract enforcement, if requested

1.5 PROCUREMENT MECHANISMS

The State Bar uses three primary procurement mechanisms: Purchasing Card (Pcard), Purchase Order with Standard Terms and Conditions, and Purchase Order with Custom Contract.

Purchasing Card

- Please refer to the Purchasing Card Policy.

Purchase Order – Standard Terms and Conditions

- Purchase Order utilizing Standard Terms and Conditions printed on the State Bar's form.
- Acceptance indicated by signatures of both parties, unless the Office Chief approves acceptance by the vendor through performance in lieu of vendor's signature.
- Best used for straightforward, noncomplicated goods and services that represent minimal exposure to risk or liability.
- May only be used to acquire goods or services under $50,000 (inclusive of the base period and any option periods) with a term no longer than one year. For example, it can include equipment purchases or services with simple scopes that are not recurring or subscriptions where the vendor accepts our PO Terms and Conditions without any alterations.
- Time frame: Onetime service, short-term services

Purchase Order with Custom Contract

- Must be used for any procurement in excess of $50,000 (inclusive of the base period and any option years).
- Terms should be based on either the State Bar's template Independent Contractor Agreement (ICA) or Master Services Agreement (MSA Shortform).
- Terms may be negotiated with selected vendor.
- Acceptance indicated by signatures of both State Bar and vendor.
- Used for professional services, complex goods, combinations of goods and services,

recurring needs, subscriptions, and anytime there may be significant exposure to risks or liabilities.

Additional information on the use of these differing mechanisms can be found in Section 2.5.1.

1.6 EXEMPTIONS TO PROCUREMENT MECHANISMS

Direct billing is an arrangement by which invoices for goods or services are submitted directly to the State Bar's Accounts Payable Unit. Purchase Orders are not required. Categories of expenses that can be appropriately procured through this mechanism include:

- **Utilities:** Services such as telephone, gas, water, and electricity. Routine monthly billings on master account.

- **Professional Membership Dues, Licensing Fees, Subscriptions (costing less than $5,000 per annum per person):** For organizations that do not accept purchasing cards, submit membership enrollment or renewal forms for payment.

- **State and Local Government Agencies:** Building permits, fire department inspections, elevator inspections, hazardous waste disposal fees, fines, and other payables not covered by existing contract.

- **Direct Mailing and Postage:** Replenishment of postage accounts, payable to the U.S. Postal Service (USPS), United Parcel Service (UPS), Federal Express (FedEx), or a third-party agent to maintain the State Bar postal account.

- **Litigation-Related Costs:** Trial- and subpoena-related document or other necessary costs, court filing fees or services, witness fees, interpreters, certificates, etc., including documents that must be copied at a local service (such as county registrars, police departments, or similar agencies). To pay for these services through direct billing, these costs may be charged to the Purchasing Card or paid out of pocket and reimbursed by submitting an Expense Report in Oracle. Routine document reproduction and on-call process server needs from repeat providers who bill for services should be addressed by contract or annual Blanket Purchase Order issued for anticipated litigation-support needs.

- **Other than Goods and Services:** Category limited specifically to refunds, salary withholdings, taxes, travel expense reimbursements, travel advances, relocation expenses, the State of California's Travel Management Service Provider, and Human Resources' benefits vendors.

This list of categories exempt from Purchase Orders will be reviewed periodically by the Director of Finance or designee and revised to include additional goods and services as required.

1.7 GOODS AND SERVICES SUBJECT TO ADDITIONAL POLICIES AND PROCEDURES

The following goods and services are subject to additional requirements and/or prohibitions:

- **Alcohol:** The purchase of or reimbursement for alcoholic beverages, regardless of funding source, is strictly prohibited.

- **On-Site Catering:** Procured only in collaboration with General Services.

- **Cell Phones:** Phones and cell phone service are procured only in collaboration with General Services.

- **Headsets:** Procured only in collaboration with General Services.

- **First Aid and Personal Protective Equipment:** Procured only in collaboration with General Services.

- **Furniture:** Procured only in collaboration with General Services, which is the only office authorized to make such purchases on behalf of the State Bar.

- **Business/Office Supplies:** Procured only in collaboration with General Services.

- **Information Technology:** Procured only in collaboration with IT.

- **Staffing Services, Recruiting Services, and/or Consulting Services:** Procured only in collaboration with Human Resources.

1.8 COMPETITIVE BIDDING

In most cases, State Bar offices are responsible for identifying qualified vendors for the goods and/or services they wish to procure, and for soliciting multiple competitive bids, unless a competitive bidding exemption is sought and applies.

For purposes of policy compliance in this manual, the total procurement value is determined by calculating the maximum total project cost over the life of the valid contract, including specified maximum renewal options and applicable taxes. Purchases may not be artificially divided into separate transactions to avoid competitive bidding.

All Goods and Services Except Information Technology:

- **Less than $5,000 (BID01):** Competitive bidding is not required.

- **From $5,000 to less than $15,000 (BID02):** Informal competitive bidding. Requesting Office shall obtain at least two verbal bids. Requesting Office shall document the bids received.

- **From $15,000 to less than $50,000 (BID03):** Informal competitive bidding. Requesting Office shall obtain at least three written bids.

- **Greater than or equal to $50,000 (BID05):** Formal competitive bidding is required, using the RFP process or comparable process (e.g., Invitation for Bid). This process is managed by the Procurement Unit. Appropriate approvals by the Board of Trustees (or its designated committee) are also required before a contract can be executed.

Information Technology:

- **Less than $5,000 (BID01):** Competitive bidding is not required.
- **From $5,000 to less than $15,000 (BID02):** Informal competitive bidding. Requesting Office shall obtain at least two verbal bids. Requesting Office shall document the bids received.
- **From $15,000 to less than $100,000 (BID04):** Informal competitive bidding. Requesting Office shall obtain at least three written bids.
- **Greater than or equal to $100,000 (BID06):** Formal competitive bidding is required, using the RFP process or comparable process (e.g., Invitation for Bid). This process is managed by the Procurement Unit. Approval by the Board of Trustees is also required before a contract can be executed.

1.9 EXEMPTIONS FROM COMPETITIVE BIDDING

Table 2 identifies exemptions from the competitive bidding process.

Table 2. Exemptions from Competitive Bidding

Exemption	Code	Statute
Sole Source: Sole source agreements. Requirements for which there is only one responsible source and no other good(s)/service(s) will satisfy the requirement. (See Section 1.9.2 Sole Source Procurement for details on the process for utilizing sole source.)	EXEMPT01	PCC 10348
Per Diem Travel Expenses: Contracts valued at less than $5,000 for which only per diem and travel expenses are paid and no payment for services is rendered.	EXEMPT02	PCC 10335
Existing Contract Time Extension, No Additional Funds: Contract amendments for time extension beyond the original contract term, with no additional dollars being added, can be up to one additional year.	EXEMPT03	PCC 10348
Existing Contract, Administrative Changes: Contract amendments where administrative details are being changed (e.g., point-of-contact change, key personnel change). No additional cost to the State Bar.	EXEMPT04	
Existing Contract Time Extension, Protest Coverage: Extension of an existing contract under the same terms and at the same or lower rates (see Section 5.6 Amending a Contract), or for up to six months during a protest or legal action that delays the award of a competitively bid contract (see Section 5.6.2 Amendments and Competitive Bidding Procedures).	EXEMPT05	PCC 10348

Exemption	Code	Statute
Existing Contract Time Extension, One Year, 30% Additional Funds: Amendment to an existing contract that will add one year or less time to the contract, or add value not more than 30% of the original contract value (see Section 5.6 Amending a Contract).	EXEMPT06	PCC 10348
Site Contracts for Bar Events and Meetings (Less Than $250,000): Services for conventions and conference facilities (including audiovisual services and furniture rental for the same) for events or meetings, including room rentals.	EXEMPT07	PCC 10348
Proprietary Software Contract (Less Than $1,000,000): Software, Software as a Service (SaaS), or Cloud Computing programs or services, including maintenance, upgrades, or renewals. This exemption should not be used where competition is possible (i.e., there are authorized resellers/maintenance providers of the proprietary software) unless other circumstances make competition impracticable.	EXEMPT08	PCC 10348
Proprietary Software Contract (Less Than $250,000): Computer programs that are the legal property of one party, the use of which is made available to second or more parties, usually under contract or licensing agreement.	EXEMPT09	PCC 10348
Proprietary Maintenance (Less Than $250,000): Maintenance agreements 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.	EXEMPT10	PCC 10348
Federal, State, or Local Contract: Contracts with federal, state, or local agencies for goods, services, or information exchanges.	EXEMPT11	PCC 10335; PCC 10340
Exam Administration, Testing, or Development: Contracts for development, maintenance, administration, grading, or use of psychometric/statistical analyses in connection with attorney licensing, certification, or proficiency examinations, testing accommodations (inclusive of audiovisual and furniture contracts for the same), or educational standards. This exemption may only be used as permitted by the policies of the Office of Admissions.	EXEMPT12	PCC 10340
Expert Witness Contract	EXEMPT13	PCC 10335.5
Legal Defense, Advice, or Services	EXEMPT14	PCC 10335.5
Emergency, Health, and Safety: Emergency contracts where a purchase is necessary for the immediate preservation of public health, welfare, or safety, or the protection of State Bar employees and property.	EXEMPT15	PCC 1102; PCC 10340
Leasing Agreement:	EXEMPT16	

Exemption	Code	Statute
Contracts for the leasing, in whole or in part, of State Bar–owned buildings or properties or subleasing of State Bar–leased buildings or properties.		
Seminars or Educational Activities (Less Than $50,000): Seminars or educational coursework that constitutes training for State Bar personnel.	EXEMPT17	PCC 10348
Leveraged Purchasing Agreement: Goods or services procured using a Leveraged Purchasing Agreement, in accordance with Section 2.4 of this manual.	EXEMPT18	PCC 10348
Banking and Financial Services: Contracts for integrated banking services, drop-box processing, inter-bank credit card processing, investment, and other financial services.	EXEMPT19	
Existing Insurance Affiliate Program: Contracts for preexisting insurance programs offered to licensees and administered by a third-party appointed by legislative mandate, where the programs generate revenue that is split between the State Bar and other organizations.	EXEMPT20	BPC 6141.3
Revenue-Neutral Contracts: Contracts for which the State Bar does not pay for services or receive pay for services, such as Non-Disclosure Agreements.	EXEMPT21	

1.9.1 Documenting Best Value

When using a bidding exemption, the Requesting Office must document the efforts taken to determine best value (e.g., market research, vendors solicited, evaluation criteria, determination, reasoning, etc.). The justification must be more than conclusory and must thoroughly document the process engaged in to establish that pricing is fair and reasonable and that the proposed contract represents the best value to the State Bar. The justification should be attached to the Procurement Requisition. Methods for determining whether proposed pricing is fair and reasonable and the vendor provides best value for purposes of an exemption fall broadly within the following categories:

- Comparable to other similar solutions;
- Online price check;
- Third-party analysis;
- Prior costs for the same or substantially similar services; or
- Trade source rate comparison.

Upon receipt of a Best Value Memo (BVM) documenting the justification for using an exemption from competition, the Procurement Unit will determine whether use of the requested exemption is permissible under this manual. The Procurement Unit may consult

with OGC to determine whether use of an exemption is permissible or a Best Value Memo adequately justifies the use of an exemption. The decision to utilize an exemption from competition lies within the discretion of the Director of Finance or their designee. The determination of the Director of Finance may only be superseded by the Chief Financial Officer or the Executive Director or, in their absence, their designee.

A Best Value Memo is similarly required for amendments to a contract if the original contract, or the contract as amended, relies on an exemption from formal competitive bidding. The best value analysis for amendments should focus on why it is fair and reasonable for the State Bar to continue with the given vendor and may take into account factors such as the efforts already invested in an ongoing project, the vendor's familiarity with the project, the quality of the services provided to date, and the costs associated with switching to a new vendor. Best Value Memos are not required for amendments to contracts that, as amended, have a total contract value below the formal competitive bidding thresholds or where the amendment was contemplated by the original agreement and evaluated as part of the original best value analysis (such as defined option periods).

1.9.2 Sole Source Procurement

If only one vendor is qualified to provide a certain product or service, that vendor may be selected without competitive bidding. This is known as a sole source procurement.

Example: The State Bar needs to purchase a replacement fuse. The State Bar's electrical system requiring the fuse is quite old, and only one entity currently manufactures the type of fuse that is needed. The State Bar may purchase the fuse from that entity as a sole source.

Example: The State Bar needs a piece of software customized. Only one entity has the intellectual property rights necessary to alter the software and license the resulting modifications to the State Bar. The State Bar may contract with that entity as a sole source.

A request to proceed with a sole source procurement requires written justification and must be approved by the Director of Finance or their authorized designee. The written justification should adequately demonstrate why no other vendors are capable of providing the needed goods or services. The following are possible factors that may be included in any written justification:

- A description of the goods or services.
- An explanation of why no other type of goods or services will satisfy the need.
- An explanation of why the contractor was selected; include such factors as particular capabilities, specialized facilities or equipment, substantial investment, continuation of previous work, or uniqueness of approach or capability.
- A detailed description of how the nature of the procurement meets the circumstances or requirements to justify sole source procurement. Note: Failure to timely undertake the procurement process does not, in and of itself, justify the use of a sole source procurement.

- A description of efforts made to identify all possible sources for the goods or services being procured.
- A statement regarding whether any other vendors were considered, identifying them by name and explaining why they are not capable of meeting the State Bar's needs.
- If the reason for sole source is that this is a continuation of work currently being performed by the contractor pursuant to a contract less than five years old, reference the previous Purchase Order number involved with the ongoing work.
- A statement regarding any action that may be taken in the future to permit subsequent procurement for the goods or services by competitive bidding.

Upon receipt of a Procurement Requisition seeking to use a sole source and the required justification, the Procurement Unit will review the Procurement Requisition. The Procurement Unit may consult with OGC in considering whether a sole source procurement is justified and the justification has been adequately documented. The Procurement Unit will thereafter provide its review to the Director of Finance. The decision to utilize a sole source procurement lies within the discretion of the Director of Finance. The determination of the Director of Finance may only be superseded by the Chief Financial Officer or the Executive Director or, in their absence, their authorized designee(s).

1.10 PROCUREMENT REVIEW

The Procurement Unit is the starting point and the final checkpoint in the procurement and contracting process. All contracts, other than contracts for legal services or other unique needs as determined by the Executive Director or General Counsel, must be initiated in the Procurement Unit, not OGC. The Procurement Unit will review all purchasing documents for policy compliance, including adherence to or exemption from competitive bidding, proper approvals, and any required documentation necessary for future audits. Based on standards for legal review determined by the Procurement Unit and OGC and documented in the Contract Procedures Memorandum, the Procurement Unit will either prepare the contract on its own, prepare the contract in coordination with OGC, or forward the contract request directly to OGC.

If, once no further negotiation is possible, OGC identifies provisions in the proposed contract that remain suboptimal given the State Bar's interests due to an increased risk profile or inclusion/exclusion of specific terms by the vendor, the Requesting Office must review the identified risks and, if they wish to move forward, provide an explanation for why they wish to move forward with the contract despite the identified risks or deficiencies to the relevant manager. To move forward, the Office Director must accept the identified risks in writing and approve the relevant contract terms prior to proceeding.

Risks identified related to the length of the contract term; choice of law; change in scope in any contract for services relating to examinations provided by the State Bar; use of the State Bar's marks, logos, or name; or any other risk identified as requiring such escalation by OGC must be escalated to the relevant Office Chief and the Executive Director of the State Bar and may only proceed with the Executive Director's approval (or, in the Executive Director's absence, the approval of their designee).

Contracts requiring approval of the Board of Trustees will be placed on the agenda at the next scheduled Board meeting.

1.11 AFTER-THE-FACT DOCUMENTATION

Requesting Offices should make every effort to submit requisitions in a timely manner. If goods or services are received before a Purchase Order is processed, additional documentation in the form of an After-the-Fact Memo must be submitted with the requisition, including Director approval from that office. Once the contract has been prepared, Procurement will route it for signature by the vendor and the State Bar, and will then issue the final executed contract and Purchase Order.

1.12 SIGNING AUTHORITY

Pursuant to Board of Trustees policy, the State Bar's authority to execute contracts is limited to the Executive Director or their written designees. The following designees are authorized to sign on behalf of the Executive Director, as indicated below:

- The Chief Financial Officer (CFO)
- The Deputy Executive Director (Deputy ED)
- The General Counsel for any legal services contracts, including investigations, or any contract deemed appropriate for origination in OGC by the Executive Director or their designee
- In case of emergencies and in the absence of the Executive Director, CFO, or Deputy ED, any Chief-level Executive may sign a contract on their behalf, as long as the Requesting Office does not directly report to the Chief-level Executive.

No other Executive or State Bar employee has the authority to sign any contract or to otherwise obligate State Bar resources, except as follows:

> Executive Staff, Managers, and Supervisors have the authority to sign documents and forms that do not involve formal contracts, per the Signature Authorization Form process used to establish, change, or cancel the authorization level to expend funds by approving a vendor invoice, check request, Procurement Requisition, Purchasing Card statement, travel expense report, journal voucher, and petty cash reimbursement voucher.

None of the above-authorized personnel can sign a contract until all reviews and approvals required have been completed, unless unusual and exigent circumstances are present and have been documented. All competitive bidding requirements must be met prior to negotiation of a contract.

1.13 NEW NOTICE REQUIREMENT (2026) - 60 DAYS

In conformity with California Government Code section 3504.1, prior to engaging in any procurement, if the services sought fall within the scope of any represented job classifications, the Requesting Office must notify both the Procurement Unit and the Office of Human Resources at least **60 calendar days before issuing the solicitation or entering a noncompetitive contract**. The notification should include:

- Anticipated duration of the contract
- Scope of work to be performed

- Anticipated cost of the contract
- Draft solicitation or similar information
- The reason the contract is necessary

The Office of Human Resources will provide formal notice to the Union. The solicitation (for competitive procurements) or contract (for noncompetitive procurements) must not be issued until 45 calendar days have elapsed from the date the initial notice is provided to the Union.

2.0 PROCUREMENT PROCESS

There are a variety of procurement mechanisms available to meet the State Bar's needs for products and services. The appropriate procurement mechanism for a particular purchase will depend on the type of product or service, dollar value, purchase time frame, risks, and other factors detailed below.

2.1 PRELIMINARY CONSIDERATIONS

The procurement process begins with the recognition of a need for goods or services. From this preliminary stage, the process can differ based on the type of goods/services required and the cost of obtaining the needed goods/services. At this preliminary stage, in order to assist in the determination of which process is most appropriate, the Requesting Office should consider:

- The goods or services required with a reasonable level of specificity. This should include, as relevant: quantities, deliverables, estimated timelines/schedules, necessary features or functions, and estimated minimum and maximum hours for completion;

- An estimated cost of purchasing the required goods or services. This estimate should be determined by the State Bar itself. An estimate can be based on prior expenditures by the State Bar for an identical need, price comparisons obtained through Leveraged Purchasing Agreements (i.e., the California Multiple Award Schedule, the Federal Supply Schedule, other government cooperative agreements), price comparisons obtained through independent research, analyses and estimates provided by independent contractors, and prices obtained through a Request for Information;

- Funding;

- Since the default posture of the State Bar is that contracts are subject to competition mandates, the Requesting Office should evaluate whether a determined need is based on subject matter and/or estimated cost of purchase, exempt from those competition mandates;

- Compliance with notice requirements to the Union as detailed in Section 1.13; and

- Timing. The Requesting Office should begin the procurement process with sufficient time to allow for any required review by the Union pursuant to Section 1.13, competition, any anticipated contract negotiation, and all required reviews and approvals. Failure to adequately plan for an anticipated need does not, in and of itself, constitute an exigent circumstance that would exempt a procurement from competition or the review and approval process.

Once the Requesting Office has, based on the above factors, determined its needs, the estimated costs, and a proposed procurement methodology, it can begin the next stage of the procurement process.

2.2 PURCHASING CARD (PCARD)

Please refer to the Purchasing Card Policy.

2.3 NONCOMPETITIVE PROCUREMENT

Where the Requesting Office determines that, based on the contract's estimated value and the goods or services being obtained, it is not subject to competition, either due to being below the competition threshold (less than $5,000) or due to the applicability of an exemption, it shall:

1. Select a responsible vendor;

2. Obtain a quote or proposal from the vendor;

3. Select a contract vehicle (e.g., Purchase Order with Standard Terms and Conditions, Purchase Order with Custom Contract). Such selection shall be reviewed by the Procurement Unit, which shall make a final determination as to contract vehicle;

4. If the contract is below the threshold for competition due to its value being less than $5,000, draft an Information Memo to be submitted with the Procurement Requisition detailing the goods or services being procured and the vendor selected;

5. If the contract is above the threshold for competition but is exempt from competition, draft a Best Value Memo as set forth in Section 1.9.1 or a Sole Source Justification as set forth in Section 1.9.2 detailing the goods or services being procured, the selected vendor and rationale for the vendor's selection, an analysis of the vendor's pricing and whether it is fair and reasonable, and the exemption that applies; and

6. Submit a Procurement Requisition in accordance with the procedures detailed in Section 2.5.

2.4 INFORMAL COMPETITION

Where the Requesting Office determines, based on the thresholds for competition and the goods or services to be procured, that a procurement is subject to informal competition, it shall follow the steps provided in Section 3.1 Informal Bidding.

2.5 FORMAL COMPETITION

Where the Requesting Office determines that a procurement is subject to formal competition, or decides in its discretion to utilize formal competition rather than informal competition or noncompetitive procurement, it shall follow the steps detailed in Section 3.2 Formal Bidding.

A Requesting Office's determination of whether a procurement is subject to formal competition, informal competition, or no competition is subject to the review of the Procurement Unit.

2.6 PROCUREMENT REQUISITION AND PURCHASE ORDERS

A Purchase Order is a standard form used to document the purchase of goods and services

from vendors or service providers. Purchase Orders document both stand-alone orders (Contract with Standard Terms and Conditions) and orders pursuant to additional terms and conditions drafted specifically for it (Custom Contract).

The process of Purchase Order–based procurement begins only after the receipt of a valid, completed Procurement Requisition in Oracle. The Procurement Requisition documents the goods or services needed, which office will pay for the resulting invoices, and who has approved the request. The Procurement Requisition documents that all steps required for processing Purchase Orders have been completed *prior* to the actual commitment to purchase goods or engage in services.

A completed Procurement Requisition includes all of the following information:

- Requester contact information, including name and office;
- Vendor (supplier) information, including business name, address, a primary vendor contact, and email address;
- Order summary information, including start/end dates and internal accounting instructions;
- Description of goods and/or services, including job or product details (part numbers, colors, finishes, etc.), services to be rendered and any deliverables, quantity requested, estimated per unit cost, and the total anticipated transaction amount (including delivery charges);
- Documentation of how the contract complied with this manual's competitive bidding requirements, including whether oral bids, informal bids, or formal bids were obtained; whether an exemption to the bidding requirements exists; and, if bids were obtained, a summary of those bids by listing the vendor's name, phone number, and bid amount on the Procurement Requisition;
- For procurements exempt from competition, documentation of best value selection (see Section 1.9.1 Documenting Best Value);
- Documentation of vendor (supplier) good standing (see Section 4.10 Corporate Qualification to Do Business in California). 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 unless such requirement has been waived by the Executive Director or designee. It is the responsibility of the Requesting Office to obtain from the corporate vendor a Certificate of Good Standing, or to verify corporate status by accessing the California Secretary of State's website. The State Bar shall not enter any contract with an entity listed as being within the top 500 tax-delinquent companies by the Franchise Tax Board; and
- All bidding documentation.

If the Procurement Requisition is being used to request a custom contract or amend an existing Purchase Order, additional information is required:

- Effective agreement/service start and end dates (or actual meeting dates for site or

hotel lodging agreements);

- Whether the request is for an amendment to an existing active, open custom contract; and
- If the Procurement Requisition is for a contract securing hotel/convention center space for a State Bar event, then the amount of liquidated damages, if any, should be noted.

The Procurement Requisition will be routed through Oracle for required approvals specific to the contract type (see Section 2.5.2 Approvals).

Purchase Orders are issued by the Procurement Unit at the conclusion of the procurement process. The Procurement Requisition must be submitted in Oracle Fusion with supporting documents attached. Purchase Orders will not be issued and contracts will not be signed until all requirements are met.

2.6.1 Contract Vehicles

A. Purchase Orders with Standard Terms and Conditions

The Purchase Order with Standard Terms and Conditions is used for routine, noncomplicated, low-risk procurement of goods and services, including but not limited to: office supplies, paper, office machines, personal computer equipment, furniture and equipment rentals, couriers, publications, equipment repair, printing, catering, design, and mailing services. It cannot be used for IT services, software, construction, or any contract with an aggregate cost of more than $50,000 over the life of the contract. The term of a Purchase Order with Standard Terms and Conditions may not exceed one year.

The goods ordered or services requested should be clearly itemized. Simple orders may be individually itemized by quantity and price. More complex orders may be summarized on the document and reference a quote, bid, or other detailed itemized listing of components needed. All purchases using a Purchase Order with Standard Terms and Conditions will be governed by the terms and conditions included on the Purchase Order; the vendor must accept all provisions of the Standard Terms and Conditions without exception or inclusion of additional terms to use the Purchase Order with Standard Terms and Conditions. The insurance provisions in the Purchase Order with Standard Terms and Conditions will be included as applicable based on the subject matter of the contract and its value. If the contract is a mix of goods and services, the highest insurance requirements applicable based on all the goods and/or services to be provided will prevail. Reduction or waiver of insurance will be reviewed further as necessary (see Section 4.0 Creating a Contract).

B. Purchase Order with Custom Contracts

The Purchase Order with Custom Contracts is used for more complex procurement of goods and/or services, including but not limited to: technology-related installations and implementations; professional consulting services; services requiring access to regulated data (e.g., Criminal Offender Record Information); enterprise software licenses; contracts related to any examination given by the State Bar; engineering, architectural, and construction management; leasing, marketing, and professional representation; legal services; and other major capital procurement. In general, any services that may expose the State Bar to potential

liabilities should be procured using a Custom Contract. Vendors may also request the State Bar utilize a Custom Contract based on their own business practices.

The Purchase Order with Custom Contracts is also used as a mechanism to document the review and approvals of any Custom Contracts and to allow the contract to be monitored in the State Bar's financial accounting system. The goods or services will be summarized on the document and reference a separate written and fully executed agreement (see Section 4.0 Creating a Contract).

2.6.2 Approvals

A final and significant step in the procurement process is obtaining all necessary approvals. Procurement Requisitions are routed through Oracle, as listed in table 3.

Table 3. Required Approvals for Purchase Order–Based Requisition

	Requesting Office's Supervisor/ Office Director	Chief Information Officer or Designee	Finance Director	Board of Trustees
Computer hardware, software, licensing, or consulting services up to $100,000	◆	◆		
Computer hardware, software, licensing, or consulting services ≥ $100,000	◆	◆	◆	◆
Non-IT requisitions < $50,000	◆			
Non-IT requisitions ≥ $50,000	◆			◆

All requisitions requesting sole source exemption will be routed through Oracle for approval by the Director of Finance. All contracts that include an auto-renewal or "evergreen" term require approval by the appropriate Office Chief and the Executive Director. All contracts that are subject to the laws or jurisdiction of any state other than California require approval by the appropriate Office Director, the General Counsel or authorized designee, and the Executive Director. Any contract that will last, inclusive of any options or extensions, for more than five years requires approval by the appropriate Office Chief and the Executive Director. Where the Requesting Office seeks to enter a contract with terms identified as requiring further review, additional approvals may be required, as indicated in Section 1.10.

All contracts, projects, and expenditures reasonably expected to exceed $2 million must be budgeted or approved by budget amendment.

2.6.3 Purchase Order Issuance

After all required approvals have been obtained, the Procurement Unit will release the Purchase Order. Vendor sets of Purchase Orders and their related Custom Contract documents will be emailed to the Requesting Contract Manager to forward to the vendor.

2.6.4 Purchase Order Change Orders

To request a change to a Purchase Order, the Requesting Office will submit a Procurement Requisition in Oracle with the requested changes clearly described. The Procurement Requisition will go through the approval process outlined above.

If a Purchase Order is associated with a Custom Contract, a Purchase Order Change Order may also necessitate an amendment to the Custom Contract.

Requests to add additional money to an existing Purchase Order will require a new authorized Procurement Requisition. Note that changes to time and/or money may require rebidding (see Section 5.6 Amending a Contract).

Any amendment or change that would extend a contract end date beyond that allowed by the original contract (inclusive of option exercises) or would extend the contract term beyond five years in total requires approval by the appropriate Office Director and the Executive Director.

Any amendment or change that would substantively change any contract related to the CBX, FYLSX, or LSX, including psychometric services related to such exams, requires approval of the Chief of Admissions or their designee.

2.7 LEVERAGED PROCUREMENT AGREEMENT (LPA)

Leveraged procurement typically involves consolidating the procurement needs of multiple entities and leveraging the entities' combined buying power to reduce prices, improve terms and conditions, or improve procurement efficiency. A leveraged procurement generally refers to the State Bar's procurement of goods or services using an agreement (the LPA) that is established by a third-party entity with a vendor and that enables the State Bar to procure goods/services from that vendor without competitive bidding on the same or substantially similar terms as in the LPA. The third-party entity that has established an LPA is often the State of California, but can also be other governmental, quasi-governmental, or private sector entities.

To launch an LPA purchasing effort, the Requesting Office and Procurement Unit staff must follow a modified purchasing process:

1. Identify an LPA for the desired goods/services and determine whether pricing is fair and reasonable;

2. Evaluate whether the State Bar can obtain better pricing or other terms through vendor negotiations or conducting competitive bidding. The mere existence of an LPA does not necessarily mean it will provide the best value for the State Bar's needs;

3. If the identified LPA in the first step was established by a California governmental entity and competitively bid, skip to the next step below;

4. Review the LPA documentation and confirm that the terms and conditions in the LPA documentation are acceptable to the State Bar and consistent with this manual;

5. Determine any maximum dollar limits (or other restrictions) that the LPA documentation

places on the State Bar's procurement;

6. If required by the LPA instructions or otherwise necessary (e.g., to reconfirm the current document version or communication protocols with the vendor), contact the entity that established the LPA with the vendor;

7. Review the LPA for any administrative fees that may be imposed by using the LPA. These fees may outweigh the benefits of the LPA;

8. The State Bar Requesting Office will issue a Request for Offer (RFO) to the potential LPA vendor(s) for a specific response or offer from the vendors to clarify or confirm the terms of the State Bar's procurement under the LPA. For RFOs above the thresholds for formal competition, such RFO will be publicly posted;

9. Finalize the Contract for Purchasing through the LPA. Discuss the contract with the vendor (and, if necessary, the entity that established the LPA), and make any mutually acceptable, final revisions to the contract; and

10. In all cases when using an LPA, the State Bar may make use of the LPA for the pre-selection of vendors and the use of pre-negotiated pricing, but may also seek better pricing from those vendors than is contained in the LPA, and may seek to use its own custom contract language in lieu of the LPA contract, if it is in the best interest of the State Bar and is acceptable to the vendor.

2.8 MASTER SERVICE AGREEMENTS (MSAs)

An MSA is a contracting method through which the State Bar may establish a standard set of terms for a specified set of services. An MSA may only be entered pursuant to a formal competitive process through which one or more vendors receive an award. MSAs are not subject to contracting exemptions regardless of estimated cost or the MSA's subject matter. Once an MSA is in place, the State Bar may issue Purchase Orders with either Standard Terms and Conditions or Custom Contracts in accordance with the MSA's terms and subject to the MSA's preestablished pricing. Such Purchase Orders may be exempted from further competition, informally competed among MSA contractors, or formally competed among MSA contractors in accordance with this manual's competition requirements based on subject matter and estimated total contract value. Purchase Orders issued under an MSA may not go beyond the scope of services established by the MSA or make substantive changes to the MSA's terms or increase pricing. MSAs may not last longer than five years unless a longer term is approved by the Executive Director or their designee.

Any Purchase Order issued under an MSA with a total value of $50,000 or more for non-IT contracts or $100,000 for IT contracts requires approval by the Board of Trustees. Any amendment to a Purchase Order issued under an MSA that brings the Purchase Order's total value to $50,000 or more for non-IT contracts or $100,000 or more for IT contracts requires approval by the Board of Trustees.

3.0 COMPETITIVE BIDDING

The State Bar seeks to obtain the best balance of quality, price, and performance in its purchases of goods and services. To do so, procurement must be conducted in a manner that that promotes open, fair, and equal competition among prospective bidders. Generally speaking, a procurement must be competitive unless it falls into one of the categories covered in Section 1.9 Exemptions from Competitive Bidding.

The policies and procedures outlined below ensure that prospective bidders have a fair opportunity to participate in the competitive solicitation process and are designed to stimulate competition in a manner conducive to sound fiscal practices. Table 4 summarizes the type of solicitation process appropriate for each type of procurement. The tables below dictate where competition, whether informal or formal, is mandated. A Requesting Office may, however, choose to use formal competitive bidding even when it is not required.

Table 4. Solicitation Process Required, by Dollar Value and Type of Procurement

Type of Procurement	Value	Informal Bidding	Formal Bidding
Non-IT Goods/Services	<$5,000	Not required	
	$5,000 to <$15,000	At least two verbal bids	
	$15,000 to <$50,000	At least three written bids	
	≥$50,000		RFP or IFB
IT Goods/Services	<$5,000	Not required	
	$5,000 to <$15,000	At least two verbal bids	
	$15,000 to <$100,000	At least three written bids	
	≥$100,000		RFP or IFB

3.1 INFORMAL BIDDING PROCESS (RFQ)

In an informal bidding process, a Request for Quotes (RFQ) may be used for purchases of goods or services defined in Table 4. With a Requesting Office's discretion or as required by the Requesting Office's policies, a Requesting Office may instead undertake a formal competitive process. If using an RFQ, depending on the cost threshold, the person responsible for the purchase solicits either a minimum of two verbal quotes or a minimum of three written quotes. This must be done before a Purchase Order is issued and prior to the event or shipment of goods or services rendered.

In soliciting quotes in an informal bidding process, the Requesting Contract Manager should:

- Identify a sufficient number of potential vendors to solicit so that at least two verbal quotes or three written quotes will ultimately be received;
- Detail the services or goods required and provide this description to all vendors solicited so that vendor responses can be adequately compared; and
- Document the quotes received and the vendors solicited in an informational memo.

Where the Requesting Office has solicited all known potential vendors, it may consider only the quotes received and must document its efforts to identify and solicit vendors in an informational memo.

Generally, in an informal bidding process, the lowest-priced response should be chosen. However, a higher-priced vendor may be chosen if their quotation and work or product samples demonstrate that they will be better able to provide the necessary product or services. When a higher-priced vendor is chosen at the informal bidding level, a written explanation of the factors leading to the decision, written by the Requesting Contract Manager, must be attached to the Procurement Requisition. In the Requesting Office's discretion, a procurement that is within the thresholds for informal bidding may go through the formal bidding process.

3.2 FORMAL BIDDING PROCESSES (IFB AND RFP)

The State Bar mainly uses two formal bidding processes—Invitation for Bids (IFB) and Request for Proposals (RFP). Both IFB and RFP processes use the same general procedure, but the wording of each document, the response to each, and the process determining the winning proposal vary with each mechanism.

Table 5 provides a quick comparison between IFBs and RFPs.

Table 5. Comparison of Primary Competitive Bidding Processes

Considerations	Invitation for Bid (IFB)	Request for Proposal (RFP)
When this mechanism is typically used	To obtain simple, common, or routine goods or services that may require personal or mechanical skills. Little discretion is used in performing the work.	To obtain complex and unique services in which professional expertise and methods may vary greatly. Creative or innovative approaches are needed.
Cost/value of services	$50,000 or more for non-IT goods or services/$100,000 or more for IT goods or services	$50,000 or more for non-IT goods or services/$100,000 or more for IT goods or services
Formal bidder Q&As with submission deadline	Optional	Standard

Considerations	Invitation for Bid (IFB)	Request for Proposal (RFP)
Bidders' conference	Seldom necessary; held only to clarify specifications or demonstrate actual components for bid	Optional; held if necessary to clarify service needs
How an award is made	Lowest-priced responsible bidder meeting the specifications	Highest-scored responsible bidder
Oral interviews	Not applicable	Optional; held if needed to clarify written proposals, meet account representatives, and pose additional questions regarding services
What information is submitted	Bid form and other material deemed necessary by the State Bar, including a cost component	Narrative proposal, including a cost component
Statement of Work (SOW) considerations	SOW is pre-developed, with rigid specifications, usually including product references, part numbers and other details, except price.	Goals and objectives are stated, including any deliverables. Proposer offers detailed work plans, approaches, and methods, as required by the RFP.

3.3 CREATING THE IFB OR RFP

Because the IFB or RFP very often becomes an integral part of the actual contract that is awarded through the bidding process, it is a formal document that is prepared together by the Requesting Office, the Procurement Unit, and, if required by the Contract Procedures Memorandum or otherwise requested, OGC.

The Requesting Office must first complete the IFB or RFP workbook, which consists of a set of worksheets designed for the Requesting Office to specify what goods and/or services are being sought.

If proceeding with an RFP, the workbook requires the Requesting Office to fill in specific information about the goods and/or services being sought, including timeline, contract parameters, award criteria, scoring, submission, and more.

In addition, the Requesting Office must prepare a detailed SOW and forward that along with the Solicitation Workbook to the Procurement Unit. The Procurement Unit, in consultation with the Requesting Office, prepares a draft RFP/IFB document and any custom attachments. If required by the Contract Procedures Memorandum or requested by either the Procurement Unit or Requesting Office, the Procurement Unit will submit the RFP/IFB to OGC for review. The Procurement Unit will return the draft documents to the Requesting Contract Manager for final review and date adjustments (if any) prior to posting.

Examples of current and past postings can be viewed on the State Bar's Business Opportunities page.

All competitive bid proposal packages (IFBs and RFPs) shall contain (as applicable):

- Date, time, and place bids are due;
- Statement of Work;
- Submission requirements (what bidders should include in their proposals to be deemed responsive), including qualifications to do business in California;
- Submission format(s) required (such as hard copy, electronic, custom forms, etc.);
- Evaluation process and weighted evaluation criteria;
- Date award will be made;
- Q&A procedures;
- Protest procedures; and
- Contracting requirements (see Section 4.0 Creating a Contract), including, for example:
    - Rights in work product;
    - Insurance obligations of vendor;
    - Termination procedures;
    - Confidentiality obligations; and
    - Staffing requirements.

3.4 GENERAL CONTENT OF AN INVITATION FOR BID (IFB)

An IFB must be exact and clear to ensure that all bids received will be competitive as the result of all bidders bidding on exactly the same goods or services, specifications, and contract obligations. An IFB provides the following information:

- Exactly what is needed; and
- Qualification requirements, performance specifications, time frames, and requirements that must be met.

And it asks:

- How much will it cost?

An IFB must indicate the specific requirements of the Requesting Office in an SOW. This will ensure that the bidding will be competitive because all bidders will have submitted bids on exactly the same work, specifications, or equipment.

When evaluating bids, for each specific requirement, a basic yes or no indicates whether or not a requirement has been met.

After identifying which bidders are responsive to all requirements stated in the IFB, a determination is made as to which responsive bidder is offering the lowest cost for its goods or services.

Bids may be rejected whenever the determination is made that the bids received are not truly competitive, when the cost is not reasonable, when the cost exceeds the amount expected, or when the bidding process demonstrates that the IFB is inadequate. No bid may be rejected arbitrarily or without reasonable cause. Late submissions shall be disqualified.

It is advisable to include a tiebreaker in the solicitation document indicating how the contract award will be made in the event of a tie. A coin flip or similar mechanism may be used in such instance. Such an event must be observed by witnesses that did not participate in the evaluation of the proposals or bids received and have no conflict of interest, and affected bidders should be invited. Otherwise, two competing responsible bids that contain the exact cost may force the bidding process to begin anew.

3.5 GENERAL CONTENT OF A REQUEST FOR PROPOSALS (RFP)

An RFP must be as precise as possible to ensure that all proposals are accomplishing the same goal. An objective evaluation procedure must be used to determine which bidders have complied with the RFP requirements and to whom the contract should be awarded. The RFP template is provided on the Procurement Resources page.

An RFP provides the following information:

- Work to be accomplished;
- Qualification requirements;
- Performance specifications;
- Time frames; and
- Other requirements that must be met.

And it asks:

- How would the bidder accomplish the job?
- How much will it cost?

The State Bar evaluates and scores bids using an evaluation committee, with the award made to the responsible bidder earning the highest score on evaluation criteria (see Section 3.6 Guidelines for Criteria and Considerations in Evaluating RFPs). The following are requirements for any evaluation pursuant to an RFP:

- All rating criteria to be used in evaluating and scoring the bidders' proposals must be included in the posted RFP;
- All proposals and the evaluation teams' summary score sheets must be available for public inspection upon request at the conclusion of the scoring process. Requests must be received in writing; and
- A copy of the scoring sheet(s) should be included with the Procurement Requisition when it is submitted through Oracle to start the contract preparation/drafting process.

The more thoroughly the Requesting Office communicates the office's specific goals and objectives in the RFP, the more complete, responsive, and acceptable the bids received will be. RFPs should include requirements captured in Section 3.5.1 .

3.5.1 Statement of Work

The SOW describes the scope of work, including deliverables, a timeline, milestones, and reports. These descriptions should be clear and limited to only what the State Bar's requirements are; they should not be vague. More specifically, an SOW includes:

- A clear, precise description of the project and the work to be performed, the product or services to be provided, the problem to be solved, or the goals and objectives to be met.
- An explanation in clear terms of what the bidder is expected to accomplish, including any desired approach to the problem and the specific functions, tasks, or activities that must be performed, in their order of importance and probable sequence.
- Practical and policy information, technological requirements or specifications, and legal limitations, if any.
- Specific questions to be answered or issues to be addressed.
- Performance timelines or completion dates.
- Required quality control standards to be met, if applicable.
- A description of the items, products, or results to be delivered.
- The extent and nature of the assistance and cooperation from the State Bar that will be available to the bidder.

No SOW should include language permitting unspecified "ad hoc" services. For example, an SOW may not include a provision authorizing the vendor to perform "other services" without specifying the nature of such services, such as including a line item for "any other services as requested by the State Bar" in a contract for software implementation.

3.5.2 Proposal Instructions

Proposal instructions should contain a description of the format that proposals must follow and

the elements they must contain. Revisions may not be made to the RFP prior to the date fixed for submission of proposals without adequate notice to all potential bidders.

RFPs should include the following, as appropriate:

1. Outlined decision process, including:
    a. Standards the State Bar will use in evaluating proposals.
    b. Information on how the State Bar will select the winning proposal.
2. Time schedules, including:
    a. Date to submit questions or seek clarification of the RFP.
    b. Date of Bidders' Conference, if applicable.
    c. Date on which the proposals must be submitted.
    d. Timetable the State Bar anticipates in reviewing and evaluating proposals.
    e. Date of anticipated Notice of Intent to Award and Final Award.
    f. Desired contract term, including commencement and completion dates. Generally, no contract term should exceed five years, inclusive of both the base period and any option years or extensions.
3. Notice of payment terms or restrictions, such as:
    a. Whether and to what extent progress payments will be allowed.
    b. Whether payments are subject to payment withholds. A 5 percent retainage is required for construction contracts.
    c. Penalties for late or inadequate performance.
    d. Known or estimated budgetary limitations on the contract price, if applicable.
4. Notice that the State Bar is subject to the California Public Records Act (CPRA) Government Code section 7920 et seq., the policy described for marking of confidential materials as set forth in Section 3.20.1, and that the State Bar will determine, in its sole discretion, what materials will or must be provided from bidders' proposals in response to a CPRA request or a bid protest.
5. Applicable contract provisions, including:
    a. Actual or sample contract provisions that will appear in the resulting contract.
    b. Any terms or provisions that will place a contingent liability on the contractor or

affect the contractor's operating costs.

c. If the subject matter involves web accessibility, assurances about compliance with federal and state web accessibility standards.

d. If the subject matter involves the furnishing of equipment, materials, or supplies, the statement that it is unlawful for any person engaged in business within the state of California to sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.

e. As applicable, a list of any contract terms not subject to negotiation.

f. Instructions for submitting proposed terms, deviations, or exceptions if such submission will be permitted.

6. Requirements that prospective bidders must address or include in their proposal, if applicable, such as the following:

    a. A description of the bidder's qualifications, including:

        i. Proof that the bidder (if a corporation) is in good standing with the California Secretary of State.

        ii. Copies of current business licenses, professional certifications, or other credentials.

        iii. Proof of financial solvency or stability (e.g., balance sheets and income statements for one year or more, SEC 10-k filings, etc.), as applicable.

        iv. A list of current or former references for whom the bidder has performed similar work.

    b. A brief list of similar types of contracts that were successfully concluded, with a sample of such work, if applicable.

    c. Identification of project manager.

    d. Résumés for each major contract participant who will exercise a major policy, administrative, or consultative role in carrying out the services ("Key Personnel").

    e. An overall description of the techniques, approaches, and methods to be used in performing the services.

    f. For cost reimbursement contracts:

        i. The total cost of the project, with a detailed breakdown showing

how the costs were determined, and the desired method of payment.

ii. Identification of position/classification titles funded and attendant hourly pay rates.

iii. Amount of time that personnel will devote to the work being proposed and the percentage of their total work time each week that would be spent on contract work.

iv. Fringe benefits.

v. Equipment, materials, and supplies.

vi. Details on costs directly attributed to project (e.g., type, quantity, and cost of goods consumed by or provided to the project).

vii. Subcontractors.

- Type of work to be subcontracted
- Name of subcontractor
- Detailed cost breakdown of costs indicated in this section for each subcontract

viii. Travel and per diem.

- Origins and destinations of each proposed trip/traveler
- Airfares, based on economy fare
- Cost of other modes of transportation (e.g., train, car, public transit)
- An attachment of the State Bar's Travel and Reimbursement Policy, and a statement that all relevant proposed costs comply with such policy

ix. Overhead/indirect costs as calculated by the bidder (showing cost and rate (%), and what it includes).

x. General and administrative costs as calculated by the bidder (showing cost and rate (%), and what it includes).

xi. Other direct costs.

g. If subcontractors are contemplated, identification of those persons or firms, the portions and monetary percentages of the work to be done by the

subcontractors, how they were selected and why, résumés of each major subcontract participant, and a description of how subcontracted work will be controlled, monitored, and evaluated.

3.5.3 Acceptance of RFP General Terms and Conditions

The general terms and conditions that are included in an RFP are intended to alert bidders to the State Bar's contractual requirements and, unless otherwise specified in the RFP, are not negotiable. Where negotiation is permitted, the RFP shall include a term permitting the submission of redlines, exceptions, or proposed additional terms with the bidders' proposals.

The bidder's proposal must include a statement as to whether the bidder accepts the general terms and conditions in the RFP or whether the bidder objects to those terms. The bidder will be deemed to have accepted such terms and conditions, except as expressly called out in the bid proposal, regardless of the State Bar retaining the right to add or negotiate terms following award. If the RFP permits the bidder to submit exceptions or proposed additional terms, the bidder must provide an explanation as to why the modification is required. The State Bar shall retain the right to negotiate terms, including proposing additional terms, in all RFPs.

In RFPs that do not permit negotiation of terms by the bidder, the bidder's objection to the State Bar's terms shall render the bidder's proposal nonresponsive. In RFPs that permit the bidder to take exception to the terms proposed by the State Bar, the bidder's willingness to accept the general terms and conditions, with minor clarifications, will be an affirmative factor in the evaluation of the bid proposal.

Although the State Bar will consider alternative language proposed by a bidder, the State Bar will not be bound by contract language received as part of a prospective bidder's response. If the bid proposal requires that the State Bar be bound by some or all of the bidder's proposed contract language, the proposal may be considered nonresponsive and may be rejected.

3.6 GUIDELINES FOR CRITERIA AND CONSIDERATIONS IN EVALUATING RFPS

3.6.1 Fair and Impartial Evaluations

The State Bar will conduct a comprehensive, fair, and impartial evaluation of all bids received in response to an IFB or RFP. Procurement Unit staff will manage the evaluation process and ensure that policy is consistently enforced. The Requesting Office should identify an evaluation team in advance and have the evaluation team in place to assess the bids received. Evaluation teams must have at least three voting members. It is recommended, but not required, that team members are both from the Requesting Office and include other, non-biased end users or technical subject matter experts from other offices. Procurement Unit staff may be a voting member of the evaluation team, or merely assist with the analysis, calculation, and tabulation of the bidders' scoring process. The team members should be free from any actual or apparent conflict of interest since they will be recommending the selection of a particular bidder (see Section 1.2). Each member of the evaluation team shall submit an attestation that they do not have any conflict of interest in evaluating the bids received for the procurement. Potential bidders will be asked to disclose any known business or financial relationships between themselves and members of the State Bar's Board of Trustees and State Bar staff, including the

evaluation team and Procurement staff. Firms with financial relationships may be disqualified from contracting with the State Bar.

Evaluation factors must be clearly stated in the RFP, and evaluators should not consider anything other than those factors in their evaluations.

In the case of a virtual tie (top two scores within two total points of each other), the Final Award may be decided by the Director of Finance.

3.6.2 Suitability of Proposals

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal meeting administrative requirements, technical requirements, the team's evaluation assessment of the quality and performance of the services, and cost.

The State Bar reserves the right to review proposals using a tiered evaluation system, with top candidates advancing as finalists and receiving a full evaluation. Circumstances where a tiered evaluation system could be used include:

- A large number of proposals are received;
- The cost of some proposals received are outside of a reasonably competitive range; or
- Site visits, live interviews, or other time- or cost-intensive measures are necessary to fully evaluate and score proposals.

3.6.3 Criteria for Evaluation

The following are suggested criteria that may be used in evaluating proposals. The actual criteria selected for evaluating proposals will be incorporated into the RFP and exclusively used to compare, rate, and document scores by category. The Procurement Unit will provide the evaluation materials necessary to evaluate and document the team analysis of each proposal received. Additional advice can be sought from OGC and the Office of Finance regarding the proper scoring of both the Legal Terms and Conditions acceptance category and the Financial Viability categories.

1. Does the bidder understand the State Bar's problem or needs?
2. Is the cost reasonable?
3. Is the approach to the problem, recommended method, and procedure reasonable, feasible, and timely?
4. Does the bidder have the organization, management and technical capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
5. Does the bidder have expertise and experience performing work of a similar nature, size, and scope?

6. Has the bidder addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
7. What are the professional qualifications of the personnel that the firm will commit to the project?
8. Has the proposer allocated sufficient staff resources?
9. Does the bidder appear able to handle and resolve unanticipated complications and delays without interrupting the delivery of services?
10. Did the bidder include plans that will show how performance will be monitored and measured to ensure that all services are successfully performed and that the objectives, goals, and requirements are met?
11. Does the bidder appear to have the capacity to manage fiscal resources responsibly, including having sound fiscal, accounting, and cost-monitoring or budget-monitoring procedures in place?
12. What is known about the character, integrity, reputation, judgment, past performance, experience, and efficiency of the bidder?
13. What was the quality of the bidder's performance on previous purchases by, or contracts with, the State Bar?
14. Has the bidder agreed to all key terms and conditions, if any have been identified and explicitly described as such, included in the RFP? If the terms are subject to negotiation, does the bidder seek to make material or substantive changes to the terms?

3.6.4 Requesting More Information

During the evaluation process, the State Bar may require a bidder's representative to answer questions with regard to its proposal. Failure of a bidder to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal nonresponsive or affect the scores bidders receive for the associated scoring category.

3.6.5 Weighing Cost Component

Any evaluation and scoring method resulting in an award to the highest-scored proposal must ensure that substantial weight (at least 30 percent) be given to the contract cost.

3.7 ERRORS IN AN RFP OR IFB

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in an RFP or IFB, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP or IFB be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals or bids by issuing an addendum to all vendors to whom the RFP or IFB was sent.

If, prior to the date fixed for submission of proposals or bids, a bidder submitting a proposal or bid knows of or should have known of an error in the RFP or IFB but fails to notify the State Bar of the error, the bidder bids at its own risk, and if the bidder is awarded the contract, it will not be entitled to additional compensation or time by reason of the error or its later correction.

3.8 QUESTIONS REGARDING THE RFP OR IFB

If a bidder believes that one or more of the RFP or IFB requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the bidder may submit a written request that the RFP or IFB be changed. The request must set forth the recommended change and the bidder's reasons for proposing the change. Any such request must be submitted to the State Bar no later than 10 business days before the submission deadline stated in the RFP or IFB.

3.9 ADDENDA

The State Bar may modify an RFP or IFB prior to the fixed date for submission by posting or emailing an addendum to the bidders known to be interested in submitting a proposal or bid. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than 10 business days before the deadline for submitting proposals or bids.

3.10 WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS OR BIDS

A proposal or bid may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder.

The bidder may thereafter submit a new or modified proposal or bid, provided that the State Bar receives it no later than the submission deadline. Modification offered in any other manner, oral or written, will not be considered. Proposals or bids cannot be changed after the submission deadline.

A proposal or bid may be withdrawn after the submission deadline by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder. Proposals withdrawn after the submission deadline in an RFP will not be scored.

3.11 REJECTION OF PROPOSALS OR BIDS

The State Bar reserves the right in its sole discretion to reject any or all proposals or bids without incurring any cost or liability whatsoever. All proposals and bids will be reviewed for completeness of the submission requirements. If a proposal or bid fails to meet a material requirement in the RFP or IFB, or is incomplete or contains irregularities, the proposal or bid may be rejected. A deviation is material to the extent that a response is not in substantial accord with requirements in the RFP or IFB.

Late submission is a material deviation and will result in rejection of a proposal or bid.

Immaterial deviations may cause a bid or proposal to be rejected (for example, submitting a proposal or bid with multiple deviations but that would provide the good/service). The State Bar may or may not waive an immaterial deviation or defect in a proposal or bid. The State Bar's waiver of a deviation or defect will in no way modify the RFP or IFB or excuse a bidder from full compliance with the RFP or IFB requirements.

Proposals or bids that contain false or misleading statements may be rejected if, in the State Bar's opinion, the information was intended to mislead the State Bar regarding a requirement of the RFP or IFB.

3.12 WITHDRAWAL OR CANCELLATION OF A BID SOLICITATION

Any bid solicitation document, including an RFP or IFB, may be withdrawn, canceled, and/or reposted at any time and for any reason.

3.13 TIME FOR COMPLETION OF COMPETITIVE BIDDING PROCESS

The bidding process could take a minimum of two months and up to six months from the time a decision is made to put a contract out for competitive bidding until the award is made. Where a specific procurement is complex, requires involvement by the Board of Trustees, or is otherwise unusual, the process could be longer. This anticipated time frame does not take into account delays caused by protests or other circumstances.

The time needed to complete a bid-proposal process will depend on the type of competitive bidding mechanism used, the complexity of the services required, the number of bids or proposals received, whether a bidders' conference is held, whether site visits or in-person interviews are necessary, whether protests are received, and other factors.

To help calculate lead times for a specific project, the Requesting Office should use the timeline worksheet in the RFP or IFB Workbook and test timelines using a combination of due dates and listed options.

3.14 CONTRACT AWARD, POSTING, AND NOTIFICATION REQUIREMENTS

The Procurement Unit will manage the scoring process, policy compliance, contract award, and all vendor and public notifications regarding the award. Formal solicitations and subsequent awards shall be posted publicly on the State Bar's website.

3.14.1 Invitations for Bid

When vendors are invited to bid through an IFB, the lowest-cost bid from a responsible bidder that meets the submission requirements and the requirements of the SOW shall be awarded the contract. If the lowest bidder is not being awarded the contract, the lowest bidder must be notified of that fact by the Procurement Unit at least five business days before making the award. The notification will be made by email. The notice should include the reason why the lowest bidder is not being awarded the contract.

A Notice of Intent to Award will be posted and emailed directly to bidders by the Procurement Unit five business days before the award is made. The contract cannot be awarded during this period. If awarding to the lowest-cost bidder and no protests are received within the five-day period, the contract may be awarded without delay.

If the Requesting Office's Director or designee deems it to be in the best interest of the State Bar, the Director of Finance may, on refusal or failure of the successful bidder to execute a tendered contract, award it to the next-lowest responsible bidder.

If prior to the award, any bidder files a protest with the State Bar protesting the award of this contract on the grounds that they were the lowest-priced responsible bidder meeting the specifications for the contract, the contract must not be awarded until either the protest has

been withdrawn or the State Bar has decided the matter.

Questions from vendors or outside bidders regarding the State Bar's award of any business on the basis of bids submitted in response to an IFB, or on any related matter, should be addressed by the Procurement Unit.

3.14.2 Requests for Proposals

When vendors are invited to submit proposals through the RFP process, the State Bar will award the contract to the highest-scored responsible bidder. If the Requesting Office's Director or designee deems it to be in the best interest of the State Bar, the Director of Finance may, on refusal or failure of the successful bidder to execute a tendered contract, award it to the second-highest-scored responsible bidder.

A Notice of Intent to Award will be posted and emailed directly to bidders by the Procurement Unit five business days before the award is made. The contract cannot be awarded during this period. If awarding to the highest-scored bidder and no protests are received during the five-day period, the contract may be awarded without delay.

If prior to the award, any bidder files a protest with the State Bar protesting the award of this contract on the grounds that they should be the highest-scored responsible bidder meeting the specifications for the contract, the contract must not be awarded until either the protest has been withdrawn or the State Bar has decided the matter.

Questions from vendors or outside bidders regarding the State Bar's award of any business on the basis of bids submitted in response to an RFP, or on any related matter, should be addressed by the Procurement Unit.

3.15 CONTRACT AWARD PROTESTS

The protester of a decision regarding competitive bidding bears the burden of proving that the decision should be overturned. A contract-award protest is any protest in which the protester is alleging:

- The State Bar materially deviated in the bid award process; that is, it failed to follow the provisions of its own bid solicitation (i.e., an RFP or IFB) and the outcome would have been different had the evaluation been done correctly; or

- The State Bar's decision is arbitrary and capricious.

3.15.1 Grounds for Protest

A bidder may protest the award under the following conditions:

- For IFBs, the bidder believes it is the responsible bidder that submitted the lowest-priced bid meeting the IFB's specifications; or

- For RFPs, the bidder believes that its proposal would have been eligible for the contract award if the State Bar had scored the proposal correctly or if the State Bar had correctly

followed the evaluation procedures described in the bid solicitation.

There is no basis for protest if all bids were rejected.

A bidder's opinion that scores should have been different or that different scores could have been awarded based on the same information is insufficient by itself to invalidate scoring decisions if such corrected scores would not have made them the highest-scored bidder.

The focus of the reviewing authority at the State Bar is whether the protester has met its burden of proof that the State Bar has committed a material error in the conduct of the bid process.

3.15.2 Protest Exclusions

A protest will not be considered under the following circumstances:

- The protester was not a bidder;
- The protesting bidder has not alleged that it should have been found the lowest-priced responsible bidder (IFB) or the highest-scored proposer (RFP);
- The protest was not submitted within five business days of issuance of the Notice of Intent to Award contract;
- The grounds for the protest do not meet the permissible grounds stated in Section 3.15.1 Grounds for Protest;
- The contract award is for a type of contract not subject to the protest procedures. Protest procedures are not applicable to sole source and other contracts exempt from competitive bidding; or
- The protesting bidder is unable to support its assertion that it was the lowest-priced responsible bidder (IFB) or should have been the highest-scored proposer (RFP).

3.15.3 Procedure for Protesting an Award

The solicitation document (IFB or RFP) should inform all bidders of the protest procedures, including the kinds of remedies the State Bar may select (see Section 3.15.4 Protest Remedy Considerations).

Inspection of bids or proposals is permitted as follows:

- After a Notice of Intent to Award has been posted, all nonconfidential portions of the bids will be available for public inspection (IFB process); or
- After proposals are evaluated and a Notice of Intent to Award has been posted, all nonconfidential portions of proposals will be available for public inspection (RFP process).

The State Bar has sole discretion to determine what portions of the bid or proposal are "nonconfidential" in accordance with the procedures set forth in Section 3.20.1.

A bidder who is qualified to protest should contact the Procurement Unit. If the Procurement Unit is unable to resolve the protest to the bidder's satisfaction, the bidder should file a written protest within five business days of the Notice of Intent to Award contract. Upon receipt of a written protest from a bidder, the Procurement Unit will provide to the protester via email all nonconfidential portions of the proposals received and all scoring sheets. A bidder protesting the award will have five business days after the Procurement Unit has emailed those documents to submit a written detailed statement of the grounds for protest.

The written protest and written detailed statement of the grounds for protest must be sent by either email to procurement@calbar.ca.gov or by certified or registered mail or delivered personally to:

Procurement Office
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

A receipt should be requested for hand-delivered mail.

Upon filing of a timely written protest, the Procurement Unit will immediately postpone the relevant contract award and provide such written protest to the Chief Financial Officer. The Chief Financial Officer, or their designee, will then notify the Award Protest Team that an award has been protested. The contract may not be awarded until the protest is withdrawn or the Award Protest Team has rendered a decision.

The Award Protest Team will consist of the Executive Director, the Deputy Executive Director, and the Chief Financial Officer or their designees. No member of the Evaluation Team can be designated to serve on the Award Protest Team. If the protest concerns an award within the purview of any member of the Award Protest Team, a member of the Leadership Team or their designee that is not directly involved in the protested procurement and with no previous involvement with either the protesting party or the potential awardee will be substituted for the affected Award Protest Team member. Designees cannot include staff with any known business or financial relationships with any of the participating bidders. Attorneys from OGC shall not service as members of the Award Protest Team; however, the Award Protest Team may consult with OGC for legal advice, as needed.

Within 48 hours of receiving the protest, the Chief Financial Officer must send the protesting bidder an acknowledgment letter stating that a decision on the protest will be rendered within 45 days from the date of the acknowledgment letter.

The Award Protest Team will take the following steps:

1. Ask the Requesting Office and the Procurement Unit to forward copies of pertinent

documents, including the IFB or RFP evaluation sheets, and scoring criteria.

2. Review the bid protest, together with the written statement of the grounds for protest and the bid documents.

3. If the protest is clearly insufficient on its face, deny the protest.

4. If the protest proceeds, send notices to the protester and the proposed awardee, stating that the protest will be decided following the Award Protest Team's review of written statements setting forth the position of each party. The notice should set the date for submission of written statements from both parties.

    - Decide on the protest **within 15 business days** after the date on which submission of the written statements are due; and

    - Provide copies of submissions of the written statements to other bidders upon request.

3.15.4 Protest Remedy Considerations

If the protest is upheld, the State Bar will consider all circumstances surrounding the procurement in selecting a fair and reasonable remedy, including:

1. The seriousness of the procurement deficiency;

2. The degree of prejudice to the protesting party during the proposal evaluations;

3. The integrity of the competitive procurement system;

4. The good-faith efforts of the parties;

5. The extent of performance;

6. The cost to the State Bar;

7. The urgency of the procurement; and

8. The impact of the recommendation(s).

3.15.5 Protest Remedies

The State Bar may select from among the following remedies:

1. Recompute the Proposal Scores. This remedy would be appropriate if the protestor's bid had been incorrectly scored, or if the State Bar had not followed the evaluation criteria described in the posted RFP;

2. Cancel the award and issue a New Solicitation. This remedy would be appropriate if there is a showing that there was a latent defect in the RFP or IFB that affected scoring

or pricing of the bids;

3. Award a contract consistent with statute or regulation; or

4. Other such remedies as may be required to promote compliance.

3.15.6 Minimizing Protest Exposure

To minimize protest exposure and enhance the likelihood of prevailing on a protest, the Procurement Unit will ensure that:

1. All solicitation packages are prepared with the appropriate clauses, phrases, and documents, and each is in compliance with all statutory and policy requirements.

2. All solicitation packages are written with clear and easily understood instructions.

3. The Evaluation Team is carefully instructed on the evaluation process to be used for each scoring category.

4. Sound decisions are made when determining a bidder's responsiveness to IFB or RFP requirements.

5. All bidders are treated fairly and impartially.

6. All bidders are given access to identical information and facts about the bid documents, statement of work, and qualification requirements.

7. The waiver of immaterial defects in any one bid or proposal does not unduly prejudice other bids or proposals or affect the price.

8. Immaterial omissions in bidders' proposals are not used to limit competition or artificially reduce prospective vendor pool.

9. Bidders are given timely and prompt access to all applicable IFB or RFP score sheets following the posting of a Notice of Intent to Award.

10. All inquiring bidders are informed of the reasons their bids or proposals are deemed nonresponsive or are not selected for the award.

11. Proper documentation is maintained with respect to all aspects of a solicitation and award. Final versions of required documents at each step of the procurement process should all be found within a single contract file.

3.16 MULTIPLE-CONTRACT AWARD

The State Bar may award multiple contracts through a single bidding process. Bid documents for multiple-contract/single-bid purchasing require:

- A clear, concise description of the work to be performed or goals to be reached;

- A clear statement that multiple awards may be made; and
- A clear, objective standard on how awards will be made.

Bidders should be given sufficient information to be able to understand what is to be accomplished and to be able to budget accordingly.

3.17 EXECUTION OF CONTRACTS

Subject to Board or Board Committee approval, the State Bar will make a reasonable effort to execute any contract awarded through formal competitive bidding within 30 days of awarding the contract. In situations where it is anticipated that execution of a contract may take longer than 30 days, the RFP should specify that vendors' bids will constitute irrevocable offers for a longer period (e.g., 60 days or more).

3.18 FILE COPIES

A fully executed contract must be filed with the Procurement Unit.

3.19 NEWS RELEASES

News releases pertaining to the award of a contract may not be made by the vendor without prior written approval of the Executive Director of the State Bar or their designee.

3.20 DISPOSITION OF MATERIALS

All materials submitted in response to an RFP (or IFB or any other solicitation) will become the property of the State Bar.

3.20.1 Confidential Materials

Bidders' Materials: When submitting a proposal or bid, bidders acknowledge that the State Bar is a public entity subject to the CPRA and that the State Bar's protest procedures require public disclosure of bids and protests. A bidder may mark as confidential those portions of a proposal or bid—not including proposed pricing, cost, and/or compensation—for which a bidder has a reasonable basis to believe an applicable CPRA exemption applies. Each such marking must be accompanied by an explanation from the bidder as to why the bidder believes the marked information is exempt from disclosure under the CPRA and must identify the specific CPRA exemption relied upon.

A bidder may not mark its entire proposal or bid as confidential. A proposal or bid that is marked in its entirety as confidential by the bidder may be deemed nonresponsive and disqualified from award.

Although a bidder may mark some portions of its proposal or bid as confidential as described herein, the State Bar will not be bound by a bidder's designations or markings. The State Bar will determine, in its sole discretion, whether any such information may be withheld from public disclosure pursuant to the CPRA, or any applicable law, regulation, judicial order, or State Bar policy.

By submitting a proposal or bid, a bidder agrees to these terms and waives any right to pursue

a cause of action for damages incurred as a result of the release of any information contained in a proposal or bid.

Where, due to the sensitive nature of the information requested by the State Bar (e.g., audit statements or reports, internal financial records), bidder requests a Non-Disclosure Agreement (NDA), such request shall be processed through the normal contract review process prior to acceptance.

State Bar Materials: Any time an SOW involves highly detailed specifications about the State Bar's current or future business requirements, IT security information, or nonpublic information related to any of the State Bar's exams, the State Bar should identify this information as confidential prior to and subsequent to the execution of the contract. Intentional disclosure of information designated as confidential is unlawful and punishable under the law. Additional protections may be provided by the use of a signed NDA. Any NDA will go through the standard contracting processes.

3.21 SMALL BUSINESS ENTERPRISE PROGRAM

3.21.1 Purpose

To promote the participation of a broad and diverse pool of prospective vendors, the State Bar has established a Small Business Enterprise (SBE) Program, with a goal of achieving a minimum of 25 percent procurement participation for small businesses, including microbusinesses, in the provision of goods and services. To effectuate this goal, a 5 percent bid preference, capped at $50,000, will be given to Certified Small Business (CSB)/Microbusiness vendors and, under certain circumstances, to non-CSB prime contractors who use CSB subcontractors.

The SBE Program will be applied to the competitive-bidding processes described in the subsections of Section 3.0 and is also encouraged for procurements that utilize an approved competitive-bidding exemption.

3.21.2 Small Business Certification

To receive the CSB bid preference, a vendor must have Small Business Certification from the California Department of General Services (DGS), or a comparable certification from a California municipality. Information about applying for DGS certification is available here. For reference, the current DGS eligibility requirements for certification as a small business are that the business must:

- Be independently owned and operated;
- Not be dominant in the field of operation;
- Have a principal office located in California;
- Have owners (officers, if a corporation) domiciled in California; and
- Including affiliates, be either,
    - A business with 100 or fewer employees and an average annual gross receipt of $16 million or less, over the last three tax years;

- A manufacturer with 100 or fewer employees; or
- A microbusiness (a small business will automatically be designated as a microbusiness if gross annual receipts are $5 million or less) or the small business is a manufacturer with 25 or fewer employees.

3.21.3 Identifying Small Businesses as Prospective Vendors

In identifying qualified vendors for the goods and services they wish to procure, as described in Section 1.8, State Bar offices should consult the State of California Certifications website (or comparable municipality websites) to determine whether there are CSBs that may be qualified. For informal competitive bids or competitive-bid exemptions, the Requesting Office should submit proof of certification with the procurement requisition. For formal competitive bids, information about the CSB bid preference and a request for proof of certification will be included by Procurement in the RFP or other procurement solicitation document.

3.21.4 Applying the CSB Bid Preference

Where responsive bids are received from both CSB vendors and non-CSB vendors, and the lowest responsive bid is from a non-CSB vendor, the responsive CSB vendors will receive a bid preference equal to 5 percent of the bid price of the lowest responsive non-CSB vendor, up to a maximum of $50,000. In other words, for the purpose of comparing and evaluating responsive bids, the bid price of the CSB vendors will be their original bid price minus the 5 percent CSB bid preference.

A non-CSB prime contractor that uses CSB subcontractors for at least 25 percent of its net bid price is eligible for the 5 percent CSB bid preference when competing against another non-CSB vendor.

The CSB bid preference shall not be applied when the lowest responsive bidder is a CSB vendor.

The CSB bid preference shall not exceed $50,000 for any bid.

The CSB bid preference shall not impact any other bid evaluation criteria described in this manual.

4.0 CREATING A CONTRACT

Contracts contain standard provisions and, in the case of Custom Contracts, may also contain special provisions specific to the goods and/or services as well as the contractor. All contracts must be in writing. Oral contracts are not proper from either a business or a legal perspective.

Every contract, whether a Purchase Order with Standard Terms and Conditions or a Purchase Order with Custom Contract, must contain all of the following information.

4.1 IDENTIFICATION AND RELATIONSHIP

All parties to the contract and their relationship must be identified.

4.2 DESCRIPTION OF THE WORK

A critical part of every contract is the description of the work to be performed or the problem to be solved by the vendor. It is important for the protection of the State Bar's interests that the work be described in detail, with desired specifications stated in full.

The contract must specifically identify in clear terms what the vendor is to accomplish, including any desired approach to the problem; practical, policy, technological, and legal limitations; specific questions to be answered; the manner in which the work is to be done; a description of the items to be delivered; the deadlines, format, and number of copies to be made of all completed reports; and the extent and nature of the assistance and cooperation that will be available to the vendor from the State Bar.

4.3 TERM

The contract must specify the term for the performance or completion of the contract (start and end dates, or duration of the contract) as well as any other general or unique terms and conditions of the agreement. Contracts should generally not exceed five years, inclusive of the base period and any options or extensions. No contract, inclusive of the base period and any options or extensions, may exceed five years without approval from the Executive Director or their designee. The State Bar generally does not enter contracts that do not have a clear end date, such as those that auto-renew or are "evergreen."

4.4 SCOPE AND DELIVERABLES

Scope and Deliverables specify the work, service, or product to be performed, rendered, and/or delivered. Clear and concise language must be used to describe the scope.

It is the responsibility of the Requesting Office to state what the work is and to ensure that all details of the work, merchandise, or equipment are adequately described in as nontechnical language as possible (see Section 3.5.1 Statement of Work for details on the statement of work included in the RFP or IFB). Where a contract was awarded through a competitive process, the contract language as to scope and deliverables should include the scope of the contract and any requirements related to deliverables and should not materially differ from the SOW provided in the RFP or IFB.

Contract modifications that impact the timing, price, or deliverables of a contract are permitted

only if done in writing and signed by both parties. Where a contract is related to the CBX, the LSX, or the FYLSX (including, but not limited to, contracts for development of exams, software for exam takers, and psychometric services), no changes to the scope, deliverables, or price of the contract can be made without the written approval of the Chief of Admissions or their designee.

For further information on contract changes and amendments, see Section 5.6.

4.5 PAYMENT TERMS AND PROVISIONS

Each contract should include a detail of the cost of the work or service, the rate of payment, and a payment schedule, preferably tied to the description of the work or delivery of goods and/or services. The contract should also specify:

- The maximum amount to be paid; and
- The basis on which payment is to be made (e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery).

The contract should include notice of payment terms or restrictions, including:

- Whether and to what extent progress payments will be allowed;
- Whether payments are subject to payment withholds;
- Penalties for late or inadequate performance;
- Known or estimated budgetary limitations on the contract price, if applicable; and
- In any contract for construction services to include any permanent improvements or alterations to real property, the contract shall contain a term withholding 5 percent retainage from each payment. The retainage shall only be disbursed to the vendor upon final closeout of the contract.

4.5.1 Invoicing

The payment provisions must require the vendor to submit an invoice showing the vendor's name and address and an itemized list of charges.

If the contract is for personnel services, the contract must require the invoice to reference the appropriate Purchase Order number and specify the hourly or daily rate per person, correlated to the description of the work to be performed, together with the dates and tasks each person performed. If travel or per diem is included, the contract should require supporting documents consistent with the State Bar travel reimbursement policy.

If the contract is for goods, the contract should require the invoice to include applicable Purchase Order number, model, and serial numbers of goods provided so they can be matched to goods received.

4.5.2 Availability of Funds

If the contract term is more than one fiscal year, the contract terms and conditions shall

account for the following:

- The contract is valid and enforceable only if sufficient funds are authorized by the Board of Trustees, the California State Legislature, and/or the Governor of the State of California.

- If funds to effect continued payment are not authorized, the contract may be terminated or amended. If the contract is terminated, the contractor will be expected to retrieve affected equipment, products, software, or hardware furnished under the contract; terminate services supplied to the State Bar under the contract; and relieve the State Bar of any further obligation, except the obligation to pay for services already performed and expenses already incurred subject to the contractor's duty to mitigate such expenses.

4.5.3 Prevailing Wage Provision

To the extent required by law or regulation, the Labor Code may require that vendors pay prevailing wage rates for crafts and trades classifications that are involved in contracted work with the State. Where applicable, notice to potential vendors will be incorporated into all RFPs that involve the use of these classifications. Language requiring the vendor to certify compliance with these provisions will be incorporated into all contracts that require the use of these classifications.

Inquiries regarding prevailing wage rates and compliance with the provisions should be referred to the Office of Human Resources. That office may, as appropriate, direct the inquiry to OGC and/or the Department of Industrial Relations.

4.6 CONTRACT PUBLICITY

4.6.1 Screen Proposals for Content and Context

Upon receiving a request from a vendor to publicize their work on a contract, the State Bar employee managing the contract for the Requesting Office (Contract Manager) should screen the draft proposal for the following issues:

- Do Communications or Procurement have concerns about the publicity? Does OGC need to review any concerns?

- Is there any reference to the State Bar's website, specific webpages, or news releases? Is the reference appropriate?

- Did the vendor include the State Bar seal or logo? Vendors are not permitted to use the State Bar seal or logo because it is a registered trademark.

- Does the vendor reference any State Bar personnel? If so, this should be removed.

- Is there any reference to confidential information? If so, this should be removed.

- Is the publicity accurate? Does it require any corrections or edits?

- Do the references to the State Bar imply a preference or endorsement for a particular vendor? Is a disclaimer necessary to clarify? (See Section 4.6.2 Disclaimer for Publicity.)

- Is the location and context of any references to the State Bar appropriate? Is there a potential for misunderstandings about what services were actually provided?

- Does the draft look professional, or are formatting changes required?

- Is the vendor planning to charge the State Bar for their time in developing the publicity? Vendors must fund the creation of their publicity because this is not an allowable expense under State Bar contracts.

- Has the vendor completed their deliverables? If not, could the publicity have an adverse impact on any remaining deliverables?

- Does the publicity advocate for any positions or actions that are inconsistent with the State Bar's mission? If so, this should be removed.

- Does the publicity concern ideological or political issues that are not germane to regulation of the legal profession or improving the quality of legal services? If so, this should be removed.

4.6.2 Disclaimer for Publicity

The Contract Manager should request that a vendor seeking to publicize their contract with the State Bar include the following disclaimer at the end of their publicity:

> "The content of this publication does not necessarily reflect the views or policies of the State Bar of California nor does mention of trade names, commercial products, or organizations imply endorsement by the State Bar of California. This publication is neither paid for nor sponsored by the State Bar of California."

4.6.3 Approval of Publicity

Following the Contract Manager's review, the Contract Manager shall submit their review and any concerns to the Executive Director or designee for their consideration. Only the Executive Director of the State Bar, or their designee, may approve vendor publicity or public releases. No vendor may issue publicity related to their contract with the State Bar without it having been first approved by the Executive Director or their designee.

4.7 RULE 2201 CONFLICT OF INTEREST

Any vendor, and any subcontractor to any vendor, who is a California-licensed attorney, regardless of whether they are performing legal work for the State Bar, must be entered into the Rule 2201 Conflict of Interest (COI) database. Where the vendor or subcontractor is an entity that employs any California-licensed attorney to perform work on State Bar matters, the

attorney employee(s) must be entered into the Rule 2201 COI database in accordance with the State Bar's 2201 policy. This includes the Special Deputy Trial Counsel.

Additionally, designated vendors are required to complete a limited Rule 2201 COI questionnaire, wherein they must disclose all related persons who are California-licensed attorneys. Designated vendors include, but are not limited to: outside counsel, retained experts, and outside auditors. Designated vendor responses to the limited Rule 2201 COI questionnaire must be added to the Rule 2201 COI database at the time the vendor is added. For more information, including applicable categories for vendors required to be entered into the Rule 2201 COI database, see the State Bar Policy Directive on Rule 2201 Requirements, Data Management, and Reporting.

4.8 FORM 700

Pursuant to the applicable provisions of the Political Reform Act (Gov. Code, § 81000 et seq.), the State Bar's Conflict of Interest Code (COI Code) for Designated Employees, and the applicable implementing regulations, vendors (including consultants and independent contractors) that (1) make or participate in making governmental decisions on behalf of the State Bar, (2) serve in staff capacity and make or participate in making a governmental decision on behalf of the State Bar, or (3) perform the same or substantially all the same duties for the State Bar that would otherwise be performed by an individual holding a designated position under the COI Code are required to file a Form 700 when assuming office, leaving office, and annually.

The Form 700 Filing Determination Checklist for Contractors/Consultants can be found on the State Bar intranet for submission to OGC for review.

4.9 ACCESS TO REGULATED INFORMATION

Contracts under which vendor employees, subcontractors, or other personnel may have access to Criminal Offender Record Information (CORI)—whether or not such access is required for their specific scope of work—must require that such personnel undergo fingerprinting and a background investigation conducted by the California Department of Justice (DOJ). This requirement applies to any vendor personnel who will have access to Odyssey, AIMS, or any other IT system that contains access to CORI—even where their specific scope of work does not require that they access CORI—and any vendor personnel who will have unsupervised access into areas of the State Bar containing physical copies of CORI. In addition to the DOJ background investigation, all vendor personnel subject to this requirement must complete the State Bar's CORI-related training. No vendor personnel may begin work on a contract where they will have access to CORI prior to the State Bar receiving the results of the DOJ's background investigation and verified completion of the required training.

4.10 CORPORATE QUALIFICATION TO DO BUSINESS IN CALIFORNIA

Both domestic and foreign corporations (i.e., those incorporated outside of California) must be registered with the California Secretary of State and in good standing with the Secretary of State and the Franchise Tax Board in order to be qualified to do business with the State Bar. All vendors must submit proof of good standing with the California Secretary of State. Where a contract is subject to a competitive process, submission of documentation of the bidder's good standing is

required as part of their proposal or bid (see Section 3.5.2). For noncompetitive procurements, it is the responsibility of the Requesting Office to obtain from the corporate vendor a Certificate of Good Standing, or to verify corporate status by accessing the California Secretary of State's website for all vendors. The proof of good standing should be submitted with the Procurement Requisition. If there is a question as to whether a particular vendor should be qualified to do business in California, please seek guidance from the Procurement Unit.

If the vendor is not in good standing with the California Secretary of State, the contract is subject to approval by the Executive Director or their designee.

4.11 SIGNATURES

The contract must be signed by a person for each party who is authorized to bind that party. See Section 1.12 for State Bar signatories.

4.12 LEGAL REVIEW

OGC's review of contracts, or preparation of contracts in the first instance, is detailed in the OGC Contract Procedures Memo.

4.13 APPROVAL BY BOARD OF TRUSTEES

Pursuant to Business and Professions Code section 6008.6, contracts for non-IT goods, services, or both, in excess of $50,000, or for IT goods, services, or both, in excess of $100,000, must be approved by the Board of Trustees. If approval for a particular contract by the Board is not feasible because approval of the contract is necessary prior to the next regularly scheduled meeting of the Board, the Executive Director may approve the contract after consultation with and approval by a designated committee of the Board (i.e., the Contracts Committee or Board Executive Committee), and subject to notification of the full Board at the Board's next regularly scheduled meeting.

4.14 CONTRACTS IN EXCESS OF $2 MILLION

All contracts, projects, and expenditures reasonably expected to exceed $2 million must be budgeted or approved by a budget amendment. In addition, staff must develop and present a written cost-benefit analysis to the Board of Trustees before committing to or making a binding agreement for the contract, project, or expenditure. The Board of Trustees, or the relevant Board committee, must then affirmatively approve the contract, project, or expenditure. All such cost-benefit analyses must discuss a recommended course of action and alternatives.

This policy is intended to supplement rather than supplant the RFP process conducted by staff. In cases of contracts, projects, or expenditures reasonably expected to exceed $2 million that necessarily involve an RFP, staff may determine whether the cost-benefit analysis is most usefully provided to the Board before or after the RFP issues.

4.15 CONTRACT NEGOTIATION

The Requesting Office is responsible for negotiating the contract, where appropriate, in consultation with the Procurement Unit and OGC.

5.0 MANAGING A CONTRACT

The process of managing a contract, that is, ensuring that the goods or services received from the vendor are the goods and services that were agreed to, is a critical process of contracting. It ensures that the State Bar gets what it is paying for. The Requesting Office is principally responsible for monitoring vendor performance under the contract and will designate a Contract Manager.

5.1 COMMENCEMENT OF CONTRACT WORK

It is the policy of the State Bar that no work on a contract should commence prior to the signing by both parties. Therefore, the Contract Manager responsible for the procurement should ensure there is sufficient time provided for the contract completion process (see Section 5.3.4 Advance Payments for special circumstances in which advance payment is permitted).

Vendors are not permitted to start work before contract execution except in an emergency. Note that, even in an emergency, verbal approval must be given by someone with authority to initiate such a contract on behalf of the State Bar (see Section 6.8 Emergency Issuance of a Contract for details and the definition of emergency).

5.2 MONITORING VENDOR PERFORMANCE

The Contract Manager shall monitor contract performance in order to ensure the work contracted for is being provided to the State Bar in conformity with all contract requirements.

Monitoring vendor performance can be facilitated by the following effective practices:

- Conducting status reviews of vendor compliance at regularly scheduled project meetings;
- Monitoring the contract balance, making sure that funds are available if work is not complete, and submitting an amendment prior to the invoices exceeding the Purchase Order balance;
- Reviewing that each milestone required by the contract is achieved in accordance with the SOW and any timelines therein;
- Monthly or quarterly written performance reviews;
- Requiring the vendor to propose and implement plans to cure unsatisfactory performance when contract goals are not met; or
- Performing a vendor evaluation at the conclusion of the contract and retaining the evaluation for future reference.

5.3 PAYMENT TO VENDORS

Every effort should be made to pay vendors in a timely manner according to the terms of the contract for goods provided and services rendered. Unresolved payment problems can put the State Bar in breach of contract or may damage vendor relationships and lead to unnecessary

administrative costs.

All valid invoices will be processed by the Office of Finance. Payments by the State Bar in advance of receiving goods or services should not occur, except in specific circumstances defined in Section 5.3.4 Advance Payments. Absent these special circumstances, contracts will specify that all payments will be made after the receipt of goods or services.

5.3.1 The Payment Process

Invoice

Vendors are to submit invoices for each order to the attention of the State Bar contact on the face of the Purchase Order at the address shown. Monthly account statement summaries are not acceptable substitutes for multiple invoices. Each invoice shall reference:

- Purchase Order number;
- Invoice number;
- Invoice date;
- Product ship date/service performance date;
- Complete vendor mailing address for remittance;
- Description of goods or services provided;
- Quantity, unit prices, and extensions;
- Discount terms;
- Taxes;
- Itemized shipping/handling charges; and
- Total invoice amount.

When Purchase Orders are not required and vendors do not issue written invoices, payment requests can be made by submitting a Check Request directly to Accounts Payable.

Cash on delivery (COD) orders will not be accepted.

Review

The first step in the payment process is the review and approval of all invoices. All invoices will be reviewed by the Contract Manager to determine that:

- Authority existed to obtain the goods or services;
- Invoices comply with provisions of Purchase Orders, Blanket Purchase Orders, contracts, leases, service agreements and similar documents, including agreement effective dates;

- Payment has not previously been made by check or by Purchasing Card;
- Items invoiced have been received or services invoiced have been performed in accordance with the terms of the contract, Purchase Order, or statement of work;
- Verification of the mathematical accuracy of invoices for correctness of price extensions, correctness of totals, and the calculation of discounts is evidenced; and
- Cash discounts or credits have been taken where appropriate.

Approval

The Contract Manager is responsible for ensuring that written office approval(s) are recorded on the invoice document face, with a confirmation of the billing cost center and account.

5.3.2 Payment Terms

Standard payment terms are net 60 days, which allows the State Bar up to 60 days from receipt of invoice to process payment and issue checks. Any questions concerning the scheduling and payment of an invoice should be directed to the Office of Finance.

5.3.3 Payment of Final Invoice

Where a contract contains a Not-To-Exceed amount or a total contract fixed price, in order to expend funds in any amount beyond that detailed in the contract, an amendment is required.

For usage-based contracts that do not contain a Not-To-Exceed amount, upon receipt of the final invoice, if the Purchase Order balance will exceed the Purchase Order limit by more than 10 percent, the Contract Manager must submit a memo explaining why the invoice total exceeds the Purchase Order limit along with an approved Procurement Requisition form.

If the final invoice exceeds the Purchase Order balance by less than 10 percent, no memo is required.

5.3.4 Advance Payments

Advance payments are payments made for goods or services before the vendor delivers the goods or services. Advance payments may only be made if necessary. Examples include lease costs, subscriptions, deposits on equipment purchases, retainer agreements for outside counsel, and maintenance contracts. A Contract Manager who receives approval from the Office of Finance for advance payments is responsible for:

- Ensuring that the vendor provides the good or service to the State Bar; and
- Pursuing appropriate legal remedies to recover the payment if the vendor fails to provide the good or service.

5.3.5 Payment Disputes

Payment issues that cannot be resolved quickly and informally should be elevated to the Contract Manager's Office Director before they lead to disputed claims or litigation. Vendors

should be kept aware of the effort to remedy the payment issue until a final resolution is reached.

- If a portion of an invoice is in dispute, only the disputed portion of the invoice may be withheld from payment.

- All correspondence related to a payment dispute must be kept by the Requesting Contract Manager, including a description of the problem and efforts made toward resolution.

5.4 PERFORMANCE PROBLEMS

5.4.1 Failure to Perform

If the vendor's failure to perform or inadequate performance endangers successful contract completion or increases expenses or liabilities for the State Bar, the State Bar may terminate the agreement and/or seek damages from the contracting party. The Contract Manager is responsible for documenting the failure to perform or inadequate performance as described in Section 5.2 and recommending, in writing, the appropriate action to be taken. This recommendation should be made to the Contract Manager's Office Director, who will consult with the Procurement Unit and OGC as appropriate.

5.4.2 Other Performance Problems

If other performance problems occur, the Contract Manager should not approve any interim or final payments under the agreement until the problems have been resolved to the satisfaction of the State Bar. Under no circumstances should a Contract Manager authorize payment of any invoice for that contract if the contracting party has failed to perform under the terms and conditions of the agreement.

5.5 LEGAL ACTIONS

5.5.1 Initiated by the State Bar

Any potential contract claims (e.g., breach of contract, breach of warranty, termination for cause) or performance failures that endanger contract completion or increase risks or liabilities of the State Bar that arise under the contract should be immediately brought to the attention of the Procurement Unit and OGC, which will work with the Contract Manager administering the contract to take appropriate action to resolve the problem. This action may include verbal or written notification to the vendor of a failure to perform under the terms and conditions of the contract, and a request for a response from the vendor as to what remedial action will be taken to comply with the contract.

5.5.2 Initiated by the Vendor

If the vendor threatens legal proceedings, the Contract Manager responsible for administration of the contract shall notify the Procurement Unit, the OGC inbox (OGC@calbar.ca.gov), the Deputy General Counsel, and the General Counsel.

5.6 AMENDING A CONTRACT

There are two types of contract amendments, administrative and substantive:

- **Administrative changes** occur within the scope of the contract. The changes do not affect or alter the terms of the contract or rights of the parties and can be executed via a unilateral amendment to the contract and/or change to the Purchase Order. Examples include a change in billing instructions or address, corrections of typographical errors not affecting the substance of the contract, or changes in State Bar personnel assigned to the contract.

- **Substantive changes** can be requested by either party to the contract, and after agreed upon, must be documented through a written amendment executed by both parties. Examples include changes in the price of the contract, changes in the schedule of deliverables, changes in the specifications of deliverables, or changes of key personnel by the vendor. Where a contract is related to the CBX, the LSX, or the FYLSX (including, but not limited to, exam development, examination software, and psychometric services), no amendment that makes any changes to the scope, deliverables, timing, or cost of the contract can be made without the written approval of the Chief of Admissions or their designee.

Note, however, that the fundamental character of a contract cannot be altered through the amendment process and will require a new contract. A change to the fundamental character of a contract occurs where the pool of potential vendors capable of performing the services would be significantly different had the proposed new work been included in the original RFP, IFB, RFQ, or SOW. For example, a catering contract cannot be amended to include provision of exam-proctoring services. For any questions regarding contract amendments, please reach out to the Procurement Unit.

5.6.1 Formal Modification to a Contract

An amendment containing substantive changes should contain the same degree of specificity for changes that the original contract contained for the same item.

When an amendment changes the contract price, the price changed by the amendment must be stated along with the new total contract price. Any amendment that increases the aggregate contract price to greater than $50,000 for non-IT goods or services or greater than $100,000 for IT goods or services requires approval by the Board of Trustees.

The Requesting Office will submit a Procurement Requisition in Oracle with copy of the original contract and any other prior amendments when seeking approval of the new amendment. In most cases, an amendment that relies on an exemption from formal competitive bidding will require a new BVM (see Section 1.9.1).

5.6.2 Amendments and Competitive Bidding Procedures

An amendment may not be used to circumvent the competitive bidding process. If a competitively

bid contract was evaluated and awarded with options to extend for time and/or money, the contract may be amended consistent with the terms of the original contract without rebidding, providing such options were evaluated as part of the bid evaluation process. If not, the amendment should be submitted to a sole source approval or exemption approval process (see Section 1.9) and will require a Best Value Memo (see Section 1.9.1) or a Sole Source Justification.

A competitively bid contract can be amended without a sole source or exemption approval if it does one, but not both, of the following: (1) only adds time to allow completion of the contract, not to exceed one year; or (2) adds value not more than 30 percent of the original contract. This time or money exemption can be used only once. Further amendments would require submission of the amendment to a sole source or exemption approval process.

Where a protest or other legal action delays the award of a competitively bid contract (see Section 3.15), an amendment to an existing contract is permitted without competition; however, the amendment should only last during the period the protest or legal action is pending and a new contract can be executed, but in no case will this exemption extend beyond six months.

6.0 SPECIAL CONSIDERATIONS

6.1 CONSULTING SERVICES CONTRACTS

Consulting services are services that, because of the required expertise, independence of judgment, or other specialized skills and knowledge, are not available from regular staff, and are of a time-limited or time-sensitive nature. These may include work described by the following:

- The work requires the application of specialized knowledge and skills to a specific issue or problem or independence of judgment to a specific issue or for a specific purpose not sufficiently regular in its occurrence to be within the expertise of regular State Bar staff;
- The work requires engagement by a person or firm independent of the State Bar to avoid a conflict of interest or to ensure independent and unbiased findings;
- The work as performed by consultants can be shown to be a cost-effective alternative to hiring permanent or temporary help; or
- Workshops, seminars, retreats, and conferences for which paid expertise is obtained by contract or other payment for services.

6.1.1 Reporting Consulting Services Is Required

Internal Revenue Code and the California Code of Regulations require the State Bar to report certain payments made under these contracts or otherwise to individuals and partnerships when such payments total at least $600 and $1,500, respectively. The State Bar is required by law to send each vendor an IRS Form 1099 and report independent contractor contracts that are over $600 in value per calendar year (EDD 542 filing).

6.1.2 Contracting Prohibited with Current State Bar Officers and Employees

The State Bar will not contract with a current State Bar employee, member of the Board of Trustees, or any sub-entity volunteers to provide consulting services as an independent vendor.

6.1.3 Terms of Consulting Services Contracts

Consulting services contracts should contain all required and/or applicable elements of standard contracts (see Section 4.0 Creating a Contract). In addition, consulting services contracts will include the following provisions, as applicable to the vendor and the subject matter of the contract.

Required Terms

- **Taxes:** The compensation stated in the contract's compensation section should include all applicable taxes and will not be changed as the result of the consultant's failure to include any applicable tax, or as the result of any change in the consultant's tax liabilities.
- **Assignment or Subcontracting:** The contract should specify that the consultant will not

assign or subcontract any of the consultant's rights under this agreement to any third party without the prior written consent of the State Bar.

- **Copyright:** The contract should specify that copyright ownership of any and all copyrightable works created by the consultant pursuant to the contract vest in the State Bar.

- **Proprietary Information or Property:** The contract should reflect the description and terms of any proprietary information or property utilized by the consultant, whether it is the property of the State Bar or the consultant.

- **Insurance:** The contract should specify that the consultant should provide documentation for and keep in full force insurance coverage in conformity with the State Bar's insurance guidelines for vendors.

- **Performance:** Detailed performance criteria and a schedule for performance (see Section 5.2 Monitoring Vendor Performance) as well as any performance milestones or any deliverables.

- **Evaluation:** A statement that the State Bar will evaluate the contractor's performance.

Optional Terms

- A provision for settlement of contract disputes, if the contract is for $5,000 or more;

- For cost reimbursement or time and materials contracts, a requirement that the contractor provide a detailed breakdown of claimed costs, including whether such costs are direct, indirect/overhead, reimbursable travel costs pursuant to State Bar policy, and, during performance, a requirement that the vendor submit any receipts or invoices evincing the claimed costs with the relevant invoices to the State Bar;

- A requirement that the contractor provide a résumé for each contract participant who will exercise a major administrative role or major policy or consultant role ("key personnel"), as identified by the contractor and a term prohibiting the substitution of key personnel during the contract term without the State Bar's written consent;

- Manner of progress payments, whether and to what extent they will be allowed;

- Final meeting requirements between the consultant and State Bar leadership and/or Board of Trustees, when the consultant is to present his or her findings, conclusions, and recommendations, when applicable; and

- Final report requirements that require the consultant to submit a comprehensive final report, when applicable.

6.1.4 Participation of State Bar Personnel

The State Bar receives the greatest benefit from consultants when the project is a joint undertaking and State Bar personnel are active participants. Participation provides the employees with training opportunities and knowledge of what the consultant has done, why it was done, and how the State Bar can benefit by it. The work often represents knowledge that could never be derived simply through the analysis of the consultant's formal report. Personnel working with the consultant can give the project continuity at the operating level in subsequent months. Teamwork between the consultant and State Bar personnel can also foster support for the project and enhance its chances for success.

Project Coordinator: Each contract should identify a person (or position) in the State Bar who will be the project coordinator. This person will have the overall responsibility to evaluate and follow up on the work of the contractor. Other staff time should be allotted for the project according to the nature and complexity of each engagement.

6.1.5 Prohibited Bids/Contract Participation

A person, firm, or subsidiary awarded a consulting services contract is not permitted to submit a bid or be awarded a contract for the services or goods suggested in that consulting services contract or be included in the consultant's recommendations to the State Bar. A person, firm, or subsidiary, however, may be awarded a subcontract of no more than 10 percent of the total monetary value of the services contract suggested by the consultant, if appropriate.

6.1.6 Independent Contractor/Consultant Considerations

Independent contractors are individuals, organizations, or businesses that provide analysis and advice, or services in their area of professional expertise. Incorrectly classifying an individual as an independent contractor/consultant can subject the State Bar to serious possible fines and penalties.

OGC should be consulted for assistance in determining whether an individual consultant meets the requirements of an independent contractor.

6.2 LEGAL SERVICES CONTRACTS

Contracts for legal services, defense, or advice include, but are not limited to: services performed by an attorney or an attorney's staff, services performed by consultants or expert witnesses in preparation for litigation or in anticipation of litigation, and services provided by investigators in preparation for litigation or in anticipation of litigation. This section provides guidance on the selection and retention of outside counsel. All other legal services, defense, and advice contracts are subject to the same requirements as other contracts exempted from competition in this manual.

To ensure that it contracts only for appropriate and necessary services from outside law firms, and that such services are obtained at a prudent rate, OGC will comply with the following requirements applicable to contracts with outside counsel. OGC will provide an annual report

to the Board of Trustees of all contracts with outside counsel. The report shall include, for each contract, a description of the services provided, the need for such contracts, and the value and length of the contracts.

6.2.1 Needs Assessment

Prior to engaging outside counsel, OGC will assess, as feasible:

- The specific legal knowledge, skills, or experience required;
- The anticipated duration of the matter and/or the required time commitment;
- An evaluation of whether existing resources within OGC have, in whole or in part, the required knowledge, skills, experience, or available time required;
- Whether there is any conflict with OGC handling the matter; and
- The anticipated cost of outside counsel.

6.2.2 Solicitation of Proposals

If the General Counsel or designee determines that outside counsel is required, OGC will solicit either formal or informal proposals from three or more outside attorneys or law firms if there are more than one in the relevant geographic area that possesses the requisite skill and knowledge. If OGC solicits proposals, OGC will evaluate those proposals based on, as applicable: the knowledge and skills of outside attorneys or firms; experience with similar matters; prior experience with the State Bar, if any; client references, if appropriate; reputation in the marketplace; proposed technique or strategy; cost, including willingness to offer discounted government agency rates; and any other relevant criteria. Where outside counsel is being requested for a matter related to one previously worked on by the same outside counsel, and the outside counsel's price was previously determined to be fair and reasonable, or where outside counsel's services will be provided pro bono, solicitation of additional proposals is not required.

OGC is not required to solicit proposals where there is an exigent need for outside counsel. In such case, OGC shall follow the procedures outlined in Section 6.8.

The General Counsel or designee will also conduct an ethics conflict and disciplinary check, and disqualify from consideration any attorney or firm that is found to have a conflict of interest or disciplinary history that includes negative findings. The General Counsel or designee will document the evaluation and the rationale for engaging the selected firm.

6.2.3 Staffing and Division of Labor

Prior to agreeing to engagement of outside counsel, the General Counsel or designee will require outside counsel to provide the staffing structure for the State Bar matter and OGC will negotiate with outside counsel to ensure it provides its services in an efficient and cost-effective manner. This may include utilization of State Bar internal resources to the extent feasible to reduce outside counsel costs. Outside counsel will comply with the State Bar's travel reimbursement policy. The State Bar shall pay a maximum of 50 percent of attorney

time billed for travel to the extent that such travel time is authorized to be billed to the State Bar in the applicable engagement letter.

6.3 EXPERT WITNESS CONTRACTS

When a consultant is retained by either OGC or the Office of Chief Trial Counsel as an expert witness in pending litigation or any disciplinary proceedings, the rate paid should be consistent with the complexity and difficulty of the testimony to be given, the going rate for similarly qualified consultants, and the qualifications and reputation of the particular consultant. The contract should detail exactly what the consultant is to do (e.g., provide reports, submit to depositions, testify in court, or make other appearances).

6.4 RISK MANAGEMENT

6.4.1 Contracts of a Hazardous Nature

Where the State Bar is entering into an agreement with a vendor for work that is of a hazardous nature, the State Bar should require such vendor to carry public liability insurance. It is the responsibility of the Requesting Office's Office Director, in consultation with the Procurement Unit and OGC, to determine whether provisions requiring the vendor to certify the retention of such insurance should be incorporated into any contract for work that may be deemed hazardous. Use the insurance guidelines to determine the amounts and types of insurance required for hazardous activities.

Hazardous activities are activities performed by the contractor that may result in substantial risk of serious injury to persons or damage to property. Such activities include, but are not limited to, the following types of work or service:

- Repairs or alterations (contracts in excess of $50,000), or new construction of buildings;
- Other repairs or alterations ($50,000 or less) determined to be hazardous based on the risk of damage or injury;
- Excavation, drilling, or demolition;
- Pest control, fumigation, or application of chemicals of any type;
- Elevator maintenance;
- Transporting of persons by any mode of transportation;
- Treatment, removal, storage, or any other handling of hazardous substances, including, but not limited to, toxic waste, petroleum waste, asbestos, and like substances; or
- Physical security services.

6.4.2 Insurance

All contracts, regardless of contract value or subject matter, should require the insurances specified in the Insurance Guidelines. Reduction or waiver of insurance requirements requires written approval from the Office Chief.

If the contract involves transporting persons, automobile liability insurance is required in addition to public liability insurance.

6.5 REVENUE AGREEMENTS

Revenue agreements are contracts in which the State Bar receives income. A revenue agreement is a contract between the State Bar and a public or private entity in which the public or private entity compensates the State Bar by paying the State Bar a portion of the income (revenue) it receives (e.g., royalty agreements, sponsorship fees).

6.5.1 Award

Revenue agreements typically must be competitively bid (or a sole source or exempt from competition approval obtained) and are subject to other standard contract requirements and approvals.

6.5.2 Revenue Neutral

Contracts that do not involve payment by the State Bar to the provider (for example, a service contract), or by a provider to the State Bar (for example, an affinity contract), but involve nonmonetary obligation of either or both parties, are revenue-neutral contracts. These contracts are not subject to the competitive bidding process.

6.6 CONTRACTS FOR MEETING, SLEEPING, TESTING ACCOMMODATIONS

Contracts and associated Purchase Orders are required for group meetings made in advance for multiple sleeping rooms or catering and meeting services. The State Bar enters into numerous contracts with hotels and convention centers for various State Bar events, including the General Bar Exam. Generally, hotels and convention centers have their own form of contract, which often does not contain provisions that the State Bar considers necessary for its protection. As a result, the State Bar will request that an addendum be added that contains the necessary provisions (see Section 4.0 Creating a Contract for details on the types of provisions that may be required).

6.7 CONTRACTING WITH FORMER TRUSTEES AND SENIOR MANAGERS

In conformity with the Board Book, Contracts, Article I, Section 6: For a period of 12 months following expiration of their term of office or termination of employment, members of the Board of Trustees and senior managers designated by the Executive Director shall not:

- Seek to do, or do, business with the State Bar for monetary gain; or
- Act as an agent or attorney for, or otherwise represent any person for compensation, by

making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

6.8 EMERGENCY ISSUANCE OF A CONTRACT

An emergency is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, such that immediate acquisition or procurement of goods or services is necessary to protect life, health, property, welfare, or essential public services.

When a contract is needed to respond to an emergency, as a general matter, the State Bar should respond to the emergency as circumstances demand and then obtain the formal approval(s) as soon as practicable. However, before the start of the work, any such contract must be (at a minimum) verbally authorized by the Executive Director, Director of Finance, or other Chief-Level Executive.

6.9 MULTIPLE-YEAR CONTRACTS

Contracts generally contain a base period of between one and three years, and may also contain a provision that permits the exercise of option terms (typically either one two-year term or two one-year terms) following the base period. Contracts generally should not continue for beyond five years, inclusive of the base period and any option terms.

- If the option terms are considered in the mechanism for selecting the contractor, an exemption is not necessary when amending the contract so long as all terms, conditions, and costs are those evaluated in the bidding procedure, and the extension options were included in the posted RFP solicitation.

- Contract Managers are responsible for ensuring that contractors do not continue to perform services after the effective agreement end date.