

Chapter 5

Non-Competitively Bid (NCB) Contracts

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Chapter 5

Non-Competitively Bid (NCB) Contracts

Overview

Introduction

[\(rev 5/11\)](#)

The State is committed to a policy of competitive procurement and contracting that promotes and provides for open and fair competition when competition is known to exist. This section describes the process departments must follow when executing a transaction where no known competition exists, i.e., a NCB transaction. Also described is the purchasing authority necessary before executing an NCB contract, the requirements that shall be followed at the various dollar thresholds, the necessary forms, and what is involved when a department has a significant number of repeat NCB contracts for a particular category of goods or services. When executing a transaction that limits competitive bidding to a specified brand or trade name (LTB) and more than one supplier is available, departments are required to follow the LTB process in Chapter 4, info block 4.C3.0.et seq.

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

5.1.0 NCB contracting

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

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

5.1.1 NCB contract purchasing authority

If a department elects to only apply for non-IT goods purchasing authority, then NCB authority will be granted only for non-IT goods and Leveraged Procurement Agreement (LPA) non-IT goods and non-IT services.

5.1.2 NCB contract approval threshold of \$25,000.00 maximum

A department's NCB contract approval threshold will typically be authorized a maximum dollar threshold not to exceed \$25,000.00 per transaction excluding sales and use tax, finance charges, postage, and handling. However, the NCB contract approval threshold will not exceed the department's approved competitive purchasing authority dollar threshold.

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

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

Shipping charges are also excluded from the dollar threshold limits unless the shipping charge is included in the evaluation such as Free On Board (FOB) Origin, Freight Collect, or FOB Destination.

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

5.1.3 NCB contract justification methods

There are two methods for justifying NCB contracts as follows:

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

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

5.1.4 NCB justification documents

Departments must use the following forms when submitting NCB contract justification documents. No substitute format will be accepted.

Click here to access the NCB Contract Justification [Word](#) [PDF](#)

5.1.5 Less than \$5,000

Departments with Purchasing authority may solicit a bid from a single source for transactions less than \$5,000 when pricing is determined to be fair and reasonable. In this case, no NCB justification is required if fair and reasonable pricing is established and documented. Examples of fair and reasonable pricing methods are described in Chapter 4. Documentation to support fair and reasonable pricing must be retained in the procurement file.

5.1.6 Signature authority

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

- **Signature Instructions for Agencies with an Agency Secretary**
The NCB Contract Justification form requires approval by Agency Secretary or Agency Undersecretary and the department director or designee. The Agency Secretary may designate one person, in addition to Agency Undersecretary, to sign on his/her behalf, of cabinet officer level (e.g., Assistant Undersecretary, Deputy Secretary, etc., the actual title is dependent upon the Agency's organizational structure). The department director may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer. The director's designee shall send ratification notification to their director upon the designee's approval of the NCB transaction. The typed name and signature must match for both signatures.
- **Signature Instructions for Agencies that do not have an Agency Secretary**
This form requires approval by the highest ranking executive officer or designee. The highest ranking officer may designate one person to sign on his/her behalf subject to the DGS approval. The highest ranking officer may delegate review and approval authority to his/her deputy directors and/or the Procurement and Contracting Officer. The designee shall send ratification notification to their highest ranking executive officer upon their approval of the NCB. The typed name and signature must match.

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

5.1.7 File documentation

Click here to access the [file documentation list for NCB contracts](#).

5.1.8
[\(deleted 6/11\)](#)

Topic 2 – NCB Contract Justification Process

5.2.0 NCB contract process

The following chart describes the non-IT goods NCB contract justification process. This process is also applicable to NCB purchases processed as an LPA and when executing amendments to purchase documents.

Stage	Who	Does What										
1	Department	Determines a need to acquire a product from a supplier who is the only known source. Completes an NCB contract justification, securing approval signature(s).										
2	Department	Creates the purchase package for non-IT goods as follows: <table border="1"> <thead> <tr> <th>If the purchase is</th> <th>Then the department</th> </tr> </thead> <tbody> <tr> <td>Within the department's non-IT goods purchasing authority for NCB contract approval threshold.</td> <td> <ul style="list-style-type: none"> Retains the approved NCB contract justification within the procurement file. Executes the applicable purchase document </td> </tr> <tr> <td>Exceeds the department's non-IT goods NCB contract approval threshold <u>but is within the department's approval limits for the purchasing authority type and category.</u></td> <td> <ul style="list-style-type: none"> Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Executes the applicable purchase document upon the DGS/PD approval of the NCB contract justification. </td> </tr> <tr> <td>Exceeds both the department's non-IT goods NCB contract approval threshold and the approval limits for the non-IT goods purchasing authority type and category.</td> <td> Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Purchase Estimate (STD.66). </td> </tr> <tr> <td>Requested by a department without purchasing authority.</td> <td> Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Purchase Estimate (STD.66). </td> </tr> </tbody> </table>	If the purchase is	Then the department	Within the department's non-IT goods purchasing authority for NCB contract approval threshold.	<ul style="list-style-type: none"> Retains the approved NCB contract justification within the procurement file. Executes the applicable purchase document 	Exceeds the department's non-IT goods NCB contract approval threshold <u>but is within the department's approval limits for the purchasing authority type and category.</u>	<ul style="list-style-type: none"> Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Executes the applicable purchase document upon the DGS/PD approval of the NCB contract justification. 	Exceeds both the department's non-IT goods NCB contract approval threshold and the approval limits for the non-IT goods purchasing authority type and category.	Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Purchase Estimate (STD.66). 	Requested by a department without purchasing authority.	Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Purchase Estimate (STD.66).
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Requested by a department without purchasing authority.	Submits to the DGS/PD for review and approval the following: <ul style="list-style-type: none"> NCB contract justification. Purchase Estimate (STD.66). 											

5.2.0 NCB contract process (continued)

Stage	Who	Does What	
3	DGS/PD	Processes the transaction as follows:	
		If the purchase	Then the DGS/PD will
		Exceeds the department's NCB contract approval threshold <u>but is within the department's approval limits for the purchasing authority type and category.</u>	<ul style="list-style-type: none"> Review and approve NCB contract justification. Return approved NCB to department for purchase document execution.
		Exceeds both the department's NCB contract approval threshold and purchasing authority.	<ul style="list-style-type: none"> Review and approve the NCB justification. Conducts the appropriate procurement method. Process and execute a purchase document on behalf of the department.
		Requested by a department without any type of purchasing authority.	<ul style="list-style-type: none"> Review and approve the NCB justification. Conducts the appropriate procurement method. Process and execute a purchase order on behalf of the department.

5.2.1 NCB denied

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

When the purchase	Then the DGS/PD will
Exceeds the department's NCB purchasing authority <u>but is within the department's approved competitive purchasing authority threshold.</u>	<ul style="list-style-type: none"> Advise the department to conduct a competitive solicitation or, Cancel the request.
Is requested by a department without any type of purchasing authority.	<ul style="list-style-type: none"> Conduct a competitive solicitation to acquire the same or equivalent product or, Cancel the request.

5.2.2 LPA transactions and NCB

As a general rule LPAs would not require NCBs. Departments granted LPA purchasing authority must adhere to the NCB contract approval process if only one supplier is known to sell the products and/or services needed and offers cannot be obtained within the LPA contracts available.

Exception: The NCB contract justification process is not required if an individual LPA user instructions state that the contract is exempt from obtaining 3-offers or if the value of the transaction is under \$5,000.00 and fair and reasonable pricing has been established and documented.

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

5.2.3 Known suppliers outside LPAs

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

If only one LPA source is known (competing offers cannot be obtained), the NCB contract approval process must be followed.

5.2.4 Review LPA user instructions

Departments must carefully review individual LPA user instructions to determine if the LPA is exempt from competitive bidding.

Topic 3 – Purchase Document Amendments and the NCB Contract Justification

5.3.0 When NCB process is applicable

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

5.3.1 When an amendment does not require an NCB

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

- Competitively bid contracts:
 - Which included option(s) for changes (e.g., quantity or time) may be amended consistent with the terms of the original contract providing for such amendment(s) if such options were evaluated during the solicitation process.
 - LPAs for non-IT goods or non-IT services: Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offer (RFO) process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments.
 - Competitive contracts and LPA orders amended for incidental omissions such as:
Transposition of numbers from the solicitation bid response or Request for Offer (RFO) response to the purchase document, or for inadvertent failures to include such things as contact names or for mistyped addresses. This does not apply to changes in quantity or time.
-

5.3.2 Amendment requirements based on cumulative dollar value

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

Example:

A \$200,000.00 contract plus a \$60,000.00 amendment shall be considered a \$260,000.00 contract. The processing of an amendment through the NCB approval cycle is based upon the amended total value of the contract.

5.3.3 Original transaction valued less \$5,000.00

The NCB process must be followed if an amendment will cause the original transaction amount to exceed \$5,000.00 and above and the original transaction was awarded using fair and reasonable methodology. This also applies to LPAs unless otherwise instructed by individual user instructions.

Topic 4 – Special Category NCB Contract Request (SCR)

5.4.0 Special Category NCB Contract Request definition

A Special Category NCB Contract Request (SCR) represents categories of contracts for the purchase of goods or services necessary to achieve a department's program objectives in a timely manner, where the DGS has determined in advance and in writing, that for a specific type of category of goods or services there is no viable competition, or that due to critical time requirements such competition cannot be completed by the exercise of reasonable efforts prior to the time such goods or services are required.

All SCRs must use the Special Category NCB Request form.

Click here to access the SCR. [Word](#) [PDF](#)

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

5.4.1 Individual SCR for each category

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

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

5.4.2 SCR dollar threshold and duration

All SCRs have a maximum authorized dollar limit and a maximum "window of approval" not to exceed three (3) calendar years from the date of the DGS/PD approval unless renewed by submission of a new SCR 30 days prior to expiration. The expiration date is identified in the box labeled "For the DGS Use Only" on the SCR form.

5.4.3 SCR reference number assigned

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

5.4.4 Executing the purchase

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

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

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

**5.4.5
Tracking
purchases**

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

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

- Special Category (SCR) approval number issued by the DGS/PD.
- Purchase order number issued by the DGS, (GSOP-1) and/or agency order number (STD.65, PINDEL.65 or any version of PINDEL.65 generated from the PIN system, etc.).
- Dates of transactions.
- Dollar amounts of transactions.
- Supplier names.

**5.4.6 SCR
usage
oversight**

Purchase documents executed under an approved SCR may be reviewed during the department's purchasing authority renewal process.

Topic 5 – Purchases Exempt from the NCB Contract Process

5.5.0 Purchases exempt by statute

Purchases may be awarded without advertising or competitive bidding as a result of being exempt by statute.

Purchases that exceed a department's purchasing authority, or for departments without any type of purchasing authority, must be submitted to the DGS/PD for review, approval, and execution. The following purchases may be awarded without advertising or competitive bidding and without seeking NCB approval subject to the restrictions noted:

- Emergency contracts, which are necessary for the immediate preservation of life or state property, are exempt from the Non-Competitive Bid Contract (NCB) justification process. Contracts issued as a result of an emergency may be entered into immediately. However, such contracts are subject to otherwise applicable statutory approval requirements and the reporting requirements.
 - Goods and services for which the state has entered into an LPA. Note: This is limited to those LPAs which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered.
-

**5.5.1
Purchases
exempt by the
DGS policy**

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

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

- Proprietary subscriptions, proprietary publications, and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format, up to \$250,000.00.
- Contracts with business entities operating Community Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to GC section 19130(a).
- Amendments to existing purchase documents under the same terms and the same or lower rates, where a protest or other legal action delays the award of a new contract. These amendments should only last during the period the protest or legal action is pending and a new purchase document can be executed, but in no case shall this exemption extend beyond six (6) months for a particular amendment.

**5.5.2
Supporting
statement**

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

Example #1

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

Example #2

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

**5.5.3 Cost
reason-
ableness**

Purchases although exempt by statute or policy, must still be reasonable in cost and justification. It is recommended that procurement files include documentation to support fair and reasonable pricing.

Topic 6 – Procurement Approach for Exempt and NCB Contract Activities

5.6.0 Obtaining pricing

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

5.6.1 Creating a solicitation

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

- Date and time the response is due
- Details of the purchase, including quantities, description, support coverage, coverage dates, etc.
- Fill-in space or a cost sheet for the supplier to provide pricing
- Request for the signature of the authorized supplier representative that can bind the company contractually
- Reference or hardcopy the applicable state General Provisions and any additional contract modules (specific to non-IT goods and service) or special provisions applicable to the department

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

5.6.2 Supplier contracts and forms

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

Buyers shall seek department legal advice and may contact PAMS at PAMS@dgs.ca.gov for assistance.
