

1000.16 SUBJECT: PROCEDURE – ACQUISITION OF SUPPLIES AND SERVICES: NON-COMPETITIVE PURCHASES

:1 OBJECTIVE:

To establish criteria and procedures for non-competitive purchases.

:2 AUTHORITY:

This procedure amended by City Council September 15, 2003.

:3 DIRECTION:

The Director of Purchasing and Materials Management, as an appointed official, serves at the pleasure of, and receives direction from the Mayor through the General Administration Department Director.

:4 METHOD OF OPERATION:

A. Introduction

There are circumstances which require a noncompetitive purchase, and there is a prescriptive method for accomplishing it: noncompetitive negotiation. There are other circumstances, such as emergency conditions, small purchases and geographic purchases, which warrant limited competition. This procedure discusses noncompetitive purchases.

Aspects of these purchases place special burdens on Purchasing and Materials Management to establish responsibility and provide safeguards against abuse. The approval authority with respect to all sole source purchases and other non-competitive purchases shall be as stipulated in Policy and Procedure 191.7, Section 4.B.

Competition is the central thrust of public purchasing. However, competition is not always feasible or practicable. In such cases, the Purchasing Agent has the authority to award a contract for supplies, services or construction items without competition.

B. Waiver of Competition

The following are conditions under which competitive solicitations may be waived:

- A needed product or service is available from only one supplier.
- A particular product or service is wanted for experiment or trial.
- Additional products or services are required to complete an ongoing task.
- The amount of purchase is too small to justify the expense of soliciting quotations.
- A purchase is made in response to an unsolicited offer.
- A purchase is made from, or a sale made to, another unit of government.
- The purchase of a used item is advantageous and the time is available only on short notice and subject to prior sale.
- Products are bought for over-the-counter resale.

C. Sole Source Purchases

Definition of *Sole Source Purchases*: An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

Sole source purchases arise from a number of circumstances, ranging from the absolute to the feasible, practicable, or advantageous. Among them are:

- The purchase of equipment for which there is no competitive product, such as one-of-a-kind oscilloscope, and which is available only from one supplier.

- The purchase of electricity, natural gas, and other public utility services which are natural or regulated monopolies.
- The purchase of a component or replacement part for which there is no (commercially available) substitute, and which can be obtained only from the manufacturer or his designated franchisee/representative.
- The purchase of an item where compatibility is the overriding consideration, such as dictation transcriber for an existing system.
- The purchase of a used item, such as a television transmitter tower, which additional needs develop during the course of a project which becomes immediately available and is subject to prior sale. Other related conditions involve the purchase of items for resale, the purchase of a particular product for trial and testing, and circumstances under

It is important to emphasize that sole source refers to the supplier, not a product or service. Thus, the ability to meet a necessary delivery date or to make on-call repairs at a particular location can create a sole-source that is a single supplier condition.

D. Very Small Purchases

Some purchases are too small to justify the time and expense of soliciting competition, or sufficient information is at hand to make it unnecessary, such as a recent similar purchase or a well-established catalog price discount. The purchase may be so small that payment is authorized from a petty cash fund. In these instances, competition is waived solely for practical reasons.

E. Non-Competitive Negotiation

In its broadest sense, negotiation occurs in making any purchase. Non-competitive purchases, however, imply a need for conducting a definite form of negotiation.

In preparing for non-competitive negotiation, the buyer or contract administrator should have a list of specific objectives relating to price, delivery, performance standards, warranty, and contractual terms and conditions. This is particularly necessary for sole source purchases where the purchaser's bargaining position is weakened by the lack of alternatives normally afforded by competition. To compensate for this absence, the purchaser needs to make the business attractive to the seller and display good faith at all times, but to rely on withholding the business if possible in the face of any unreasonable demands on the seller's part. These guidelines apply whether the negotiations are conducted in person or by correspondence or telephone. Whatever the manner and outcome, the negotiation must be supported by adequate documentation.

:5 FORMS:
None.

:6 COMMITTEE RESPONSIBILITIES:
None.

:7 REFERENCE:
Procedure adopted by City Council November 3, 1986, Item 17, A-1; amended August 15, 1988, Item 14, A-13; amended July 26, 1993, Item 5-SS; amended November 13, 1995, Item LL; amended April 17, 2000, Item 3-D; amended September 15, 2003; policy section # changed from 191.16, April 2004.

:8 EFFECTIVE DATE:

This procedure effective September 15, 2003.