

5.8.1P

SOLE AND SINGLE SOURCE PURCHASES;
OBTAINING EQUIPMENT ON A TRIAL BASIS;
FILING PRE-AWARD BID PROTESTS.

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SOLE AND SINGLE SOURCE PURCHASES

Policy and Definitions

Sole and single source purchasing is an exception to State statutes and purchasing policies. The final determination as to whether such an exception request is valid will be made by the Purchasing Department and rest on the existence of a valid supportable requirement which is adequately documented.

Sole source and single source purchases may be segregated in definition and use. The common thread, however, through each type of purchase is that a justification to procure from a sole or single source cannot be solely based on quality or price; "quality" can be a subjective evaluation and "pricing" subject to the level of competition.

"Sole Source" applies where it can be substantiated that a requirement involves commodity or service provided by only one vendor or contractor which has exclusive rights (e.g., rights to data, patent or copy rights, proprietary interests or secret processes) to the manufacturing of the product or service.

"Sole Source" requirements must withstand the questions of (1) is the commodity or service the only of its kind which can fully satisfy the requirement, and (2) the commodity is available from one, and only one, source. In this context, "sole" means "the only one."

"Single Source" applies where it can be substantiated that a commodity or service can be obtained only from one vendor or contractor which often is the "single" representative of the manufacturer or principle company. "Single Source" purchases frequently involve a vendor or contractor whose product or service is discernibly distinguishable from all others in the market and singularly meets all significant elements of the District's requirement.

In this context, "single" means, "the one among others." "Brand Name" specificity does not necessarily equate to a "Sole Source" nor a "Single Source" purchase. "Brand Name" requirements typically are peculiar to one manufacturer, but not one supplier. Accordingly, "Brand Name" requirements may not satisfy the criteria of either "Sole Source" or "Single Source" practices as several vendors or contractors may be able to provide the product or service and, therefore, the requirement can be competitively awarded. Purchasing specifications, in this instance, will provide for "Brand Name or Equal" specification; which identify the salient features of the requirement in a non-restrictive manner.

"Comparable" is defined as equal in those specific areas of specification or performance which must be provided to allow the commodity's use or service to be provided as it is intended or unequivocally required. That is, a product or service may be argued as "comparable" when it meets the key specific levels of function although it does not explicitly meet all specifications. In this context, "comparable" may be "acceptable."

"District Standard" determinations may apply and support a "Sole Source" or a "Single Source" purchase where it can be clearly demonstrated that the District has formally adopted the particular commodity or

service for campus-wide required use and standardization. Such a "standard" is typically published in some form of District document.

"Performance Specifications" are to be used, whenever feasible, to describe requirements. "Performance Specifications" detail an expected outcome or result rather than the processes required to arrive at the outcome or result and, as such, contribute to competition.

State purchasing policy provides that exclusionary purchasing practices can be avoided by writing specifications which invite maximum reasonable competition and are not unduly restrictive. Accordingly, requirements submitted for purchasing are to be accompanied by specifications which encourage competition, consistent with the particular need.

Request for Exception

Both "Sole Source" and "Single Source" purchases must be able to withstand the scrutiny of the test of "no alternatives." As such, the submittal of such a request and its documentation represents a good faith certification on behalf of the campus department and the signator as well as the ability to substantiate the request and sustain any inquiries.

The determination as to whether to accept and act upon a "Sole Source" or "Single Source" request relies on the reasonability of the request and the clear demonstration that the campus department has completed a comprehensive market survey where the investigation, evaluation and documentation of alternative sources and products or services leaves no doubt as to the course which the District has elected in the purchase. Key to this research is: the use of specifications which only state the salient aspects of the requirement and can provide for the purchase of the minimally acceptable quality necessary to perform a given task or function satisfactorily at the lowest fair and reasonable cost.

"Sole Source" and "Single Source" requests are not to be submitted when:

1. Personal preference for a product, brand or vendor exists.
2. Cost, vendor performance and delivery are the justification; these elements are considered in the evaluation for award factors.
3. The statement of "no substitution" is the only rationale.
4. Lack of planning exists on behalf of the requiring department.
5. The justification is solely based on quality or price, and immediate availability for delivery.
6. Offers of trade-in allowances, no cost options or accessories, or special "package" or "deals" are made.

Documentation of Request

Where there is a reasonable basis to conclude that the minimum needs of the District can be met by unique commodities or services only from a "Sole Source" or "Single Source," the campus department will accompany its submittal with a memorandum which addresses the following items:

1. A statement to the fact that the campus department/individual recognizes that State purchasing practices require the use of competitive means whenever practicable; however, an exception is requested for the reasons recorded in the memorandum.
2. A thorough explanation as to how it has been determined that the criteria of "Sole Source" or "Single Source" apply to the requirement. The definitions of these conditions provide the baseline for this narrative as well as the description of the market survey and its results.

3. An explanation as to whether the requirement can or cannot be purchased from another vendor or contractor. Identify all other vendors or contractors included in the "market survey" and their commodities or services as well as explicitly specify their reason(s) for unacceptability.
4. An explanation as to those features of the requirement which are considered unique and essential to the mission and in the operations of the campus department. Relate these features to and describe the mission or operation and the item's use.
5. Describe any performance features and address their availability otherwise in the market. Discuss "comparable" products or services and detail why these are not acceptable.
6. Describe any integral nature of the requirement which lends it to being compatible with existing equipment or practices.
7. Specifically address requisite technical specifications and any associated research protocol, instructional goals, etc.
8. Describe how the specified purchase will contribute to any issue of commonality and standardization.
9. Discuss any appointment of a "sole regional manufacturer's/company's representative" and evidence such with the manufacturer's/company's statement to this effect on its letterhead.
10. Attach any and all copies of correspondence, including any vendor quotations received in the selection of requirement.

When a "Single Source" requirement entails the purchase of a commodity or service from a vendor who has been appointed as the manufacturer's sole regional representative, the purchase must be documented by the manufacturer's own signed certification and statement of such fact on its letterhead. This statement must be issued by the manufacturer's corporate headquarters, not a regional office, and be secured by the requiring department.

OBTAINING EQUIPMENT ON A TRIAL BASIS

Equipment requested by departments from Vendors on a trial, loan, demonstration or evaluation basis does not constitute a commitment to purchase said equipment. The Purchasing Department shall be informed by the requesting department before any equipment with a fair market value exceeding \$1,000 is to be tested and/or evaluated for an appropriate period of time.

Vendors who desire to make arrangements for demonstrations of their product or equipment must coordinate these plans with the appropriate Purchasing Department personnel. The individual receiving the equipment must submit a completed "Equipment on Loan or Demonstration Agreement Form" to the Purchasing Department prior to accepting the equipment for demonstration/testing/evaluation.

User department personnel should not indicate to Vendors that the loan, demonstration, testing or evaluation of equipment constitutes a preference for that equipment or will result in an order to purchase said equipment. Competitive purchasing processes shall be used as required by District policies and procedures. If the Vendor who loaned the equipment is the successful Vendor, new equipment must be supplied unless alternate quotations were allowed for or requested in the competitive purchasing process.

All moving, handling, transportation and applicable installation costs associated with the equipment of this nature are the sole responsibility of the Vendor. The District will not incur any costs associated with equipment on trial, loaned, demonstrated, tested or evaluated.

In the event of a loss, the department shall contact Vice President of Business Services for instructions and claim forms.

FILING PRE-AWARD BID PROTESTS

Prior to submission of a protest, all parties shall use their best efforts to resolve concerns raised by a bidder at the Purchasing Director level through open and frank discussions. Should the protest not be resolved through discussions the bidder shall submit a written protest to the Purchasing Director. Protests shall include the following information:

1. Name, address, fax number and telephone number of the protestor.
2. Project name or contract number.
3. Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
4. Copies of relevant and supporting documents.
5. Request for a ruling by the Board of Trustees.
6. Statement as to the form of relief requested.
7. All information establishing that the protestor is an interested party for the purpose of filing a protest.
8. Protests based on alleged apparent improprieties shall be filed before bid award or no later than 10 days after bid opening.

Action upon receipt of protest

1. Upon receipt of a protest prior to award, a contract may not be awarded, pending resolution of the protest, unless contract award is justified, for urgent and compelling reasons or is determined, to be in the best interest of the Sonoma County Junior College District. Such justification or determination shall be made in writing, and shall be approved by the Vice President of Business Services or by an individual designated by the Vice President of Business Services.
2. Upon receipt of a protest prior to award, the Purchasing Director shall submit all documentation to the Sonoma County Junior College District Legal Counsel for review and recommendation.
3. If award is withheld pending resolution of the protest, the Purchasing Director will inform the bidders whose offer may become ineligible or eligible for award of the contract. If appropriate, the bidders should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for re-solicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (1) of this section.
4. Upon legal counsel recommendation, Purchasing Director shall submit suggested protest recommendations to the Santa Rosa Junior College Board of Trustees for a final decision on the protest.
5. The protestor will be provided written notice(s) of the Board meeting where the protest will be brought before the Board; when available, this will include a copy of the recommendation to be presented.
6. The protest decision shall be provided to the protestor using a method that provides evidence of receipt.