

Purchasing Policy 19 - Revised

DATE: July 31, 2003

REVISED: June 11, 2015

TO: Agency Heads

FROM: Brian J. Lamb Commissioner

SUBJECT: Single Source Procurement Policy

Background:

In a January 2003 report on “Professional/Technical Contracting,” the Office of the Legislative Auditor (OLA) cited Admin data showing that 23 percent of professional/technical contracts are approved as single source contracts – i.e., awarded without open competition. That percentage is as high as 47 percent in some agencies. Based on its review, the OLA concluded that many single source contracts were appropriate, but that there were “several instances where agencies used a single source process to select a contractor when it did not seem warranted.”

The 2003 legislature increased its expectations for administrative oversight of non- competitive procurements. For certain professional/technical contracts, agency heads must prepare a report for the Department of Administration (Admin) and the Legislative Reference Library. The report is to include a performance evaluation of the contractor and – when applicable – an explanation of why the contract was not competitively awarded. New legislation also requires Admin to track the number of single source contracts awarded.

Policy objectives:

- To ensure a more consistent application of the statutory single source requirements.
- To provide agency contract and procurement staff with helpful guidance and direction regarding appropriate use of the single source exception to the solicitation process.
- To assure the legislature, vendors, and others that Admin is providing the level of oversight expected and that the single source exception is not being misused.

Relevant statutes and definitions:

Minn. Stat. 16C.02, subd. 18: “Single source” means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item. Minn. Stat. 16C.10, subd. 1: The solicitation process described in this chapter is not required when there is clearly and legitimately only a single source for the goods and services and the commissioner [of Administration] determines that the price has been fairly and reasonably established.

Scope of policy:

This policy applies to all state procurements including contracts for goods, services, utilities, building construction and professional/technical services where the use of the single source exception to the competitive procurement process is being requested. Single source justification is not required for interagency agreements.

Policy:

Executive and legislative branch policy supports fair and open competition as a foundation of public procurement. Although single source procurements are entirely appropriate and reasonable in certain circumstances, they must be avoided when other reasonable options exist. Before an agency asserts that the intended procurement is a single source, it must conscientiously attempt to identify multiple vendors or multiple brands. Even when the agency believes that there is only a single source, it can be beneficial to undertake a competitive solicitation process. Going through that process will automatically ensure that all statutory elements of single source procurement have been met (the search, one supplier available, a fair price). Competition, whether real or perceived, can help control prices and result in more favorable terms for the state.

If the competitive process is not used to validate the single supplier and fair price, alternative methods are available to document the statutory elements of single source. The burden of proof is on the requesting agency to justify single source procurements.

Examples of situations where the single source exception is likely to be approved with minimal documentation:

- Legislative or an appropriation dictating who must perform a service or provide a product;
- Specific expert witnesses required in writing by the Office of the Attorney General for litigation purposes;
- Mailing lists, subscriptions (but not subscription services) or media advertising; and
- Warranties voided if others provide service.

Examples of situations where the single source exception is likely to be approved with thorough documentation:

- Software license renewals/additions and software upgrades when available from only one source;
- Equipment that legitimately requires brand compatibility with existing equipment when available from only one manufacturer or sole authorized distributor;
- Other proprietary situations based on patents, copyrights, etc.;
- Legitimate critical situations involving severe adverse consequences not brought on by lack of advance planning; and
- All other situations where a search fails to identify viable alternatives.

Examples of situations where the single source exception is unlikely to be approved:

- Personal or agency preference for a product, brand or vendor;
- Agency perception that the vendor is the best qualified (this should be determined through a competitive process);
- Lack of planning by the agency resulting in limited time available for a competitive solicitation;
- Special incentives or deals offered by one vendor;
- Past or existing relationship with the proposed vendor or past performance by the vendor; and
- Convenience for the agency.

Procedure for determining whether statutory elements have been met:

Agencies seeking approval to enter into a single source contract without going through a formal competitive process must adequately document having met the statutory requirements. The attached forms are intended to assist agencies in doing so:

- Professional/technical contract single source request form; and
- Goods/non-P/T services single source request form.

Use of these forms is recommended but not mandatory. The key is fully addressing the statutory requirements – which, alternatively, could be accomplished in a form customized by the requesting agency or in a written description.

Requests for single source approvals must be signed by either the agency head or by an individual with specific delegated authority to sign single source requests on behalf of the agency head.

Documentation of the basis for a single source determination shall be retained in the contract file. It is public information. An agency may be required to justify its single source procurement in cases of audits, vendor protests, media or legislative inquiries and litigation. For professional/technical contracts over \$50,000, agency heads are required by statute to explain the basis for any single source contracts in post-contract reports and performance evaluations.

Revised 6/11/2015: If you have any questions concerning this policy, please contact Office of State Procurement Director, at 651.201.2400.

Attachments