STANDARD OPERATING PROCEDURE

SOP Number: Purchasing and AP 23-02

SOP Title: Waiver of Competition Criteria and Sole Source Purchases

Effective Date: 2/1/23

1. PURPOSE

This policy describes the circumstances under which sole source purchases and waivers of competition are allowed.

1. SCOPE

This SOP applies to Western Carolina University employees, departments, and divisions.

1. RESPONSIBILITIES
   1. Director of Business Operations - The Director of Business Operations is responsible for ensuring compliance and biennial review of the policy.
2. DEFINITIONS
   1. Single Source: When an item or Service is available from only one source of supply
   2. Sole Source: A procurement method utilized when procuring goods or services where one or more of the “waiver of competition” defined under North Carolina Administrative Codes 01 NCAC 05B.1401 and 09 NCAC 06B.0901 policies are met.
3. SPECIFIC PROCEDURE
   1. There are items and services that may legitimately have only one source of supply and require a purchase order sent to that specific vendor. Any time it is requested that competition requirements be waived, a justification must be documented and provided to the Purchasing Department when the request is submitted. This justification must clearly state how this item or service is unique, why it is only available from the requested vendor, and why that specific item or service is needed at the University. Orders that exceed any maximum quantity shall be forwarded to P&C for processing. Formal justification memo or email from the department is also an acceptable method for justifying the request if all pertinent points are included; assistance with these justifications can always be provided by Purchasing Department staff. Each submitted justification will be reviewed and a decision will be rendered by the Purchasing Director as to whether the State’s competition requirements may be waived to make the purchase.
   2. A sole source request 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 requesting department 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 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 University 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.

A sole source request is not to be submitted when:

* Personal preference for a product, brand or vendor exists.
* Cost, vendor performance and delivery are the justification; these elements are considered in the evaluation for award factors.
* The statement of “no substitution” is the only rationale.
* Lack of planning exists on behalf of the required department.
* The justification is solely based on quality or price, and immediate availability for delivery,
* Offers of trade-in allowances, no cost options or accessories, or special “package” or “deals” are made.
  1. Conditions permitting a waiver of competition include:
* *Where performance or price competition is not available.*
* *Where a needed product or service is available from only one source of supply.*
* *Where emergency action is indicated.*
* *Where competition has been solicited but no satisfactory offers are received.*
* *Where standardization or compatibility is the overriding consideration.*
* *Where a donation predicates the source of supply.*
* *Where personal or particular professional services are required.*
* *Where a particular medical product or service, or prosthetic appliance is needed.*
* *Where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use.*
* *Where additional products or services are needed to complete an ongoing job or task.*
* *Where products are bought for “over the counter” resale.*
* *Where a particular product or service* *is desired for educational, training, experimental, developmental or research work.*
* *Where equipment is already installed, connected and in service, and it is determined advantageous to purchase it.*
* *Where items are subject to rapid price fluctuation or immediate acceptance.*
* *Where there is evidence of resale, price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies, which thwarts normal competitive procedures.*
* *Where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract.*
* *Where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s).*
* *Where a used item(s) is available on short notice and subject to prior sale.*
  + 1. A [Waiver](file:///H:\Purchasing%20&%20AP\NEW%20WAIVER%20OF%20COMPETITION%20FORM%20_%20Sole%20Source.doc) of Competition must be submitted and signed by the requesting department along with a written memo with accompanying justification to the Purchase Department for review.

1. RESOURCES

North Carolina Procurement Manual:

<https://files.nc.gov/ncdoa/documents/files/NC-Procurement-Manual-2022-with-TOC.pdf>

NC Administrative Code 05B .1102

[http://reports.oah.state.nc.us/ncac/title%2001%20 %20administration/chapter%2005%20 nc sta%20purchase%20and%20contract/subchapter%20b/01%20ncac%2005b%20.1102.pdf](http://reports.oah.state.nc.us/ncac/title%2001%20%20%20administration/chapter%2005%20%20nc%20sta%20purchase%20and%20contract/subchapter%20b/01%20ncac%2005b%20.1102.pdf)