

SOLE SOURCE REQUEST FORM

Purchasing goods and services at the University is driven by state law and, where federally funded, by federal requirements. Several key requirements addressing competition, price reasonableness, use of small businesses, and conflicts of interest are excerpted below, and are followed by questions to validate whether or not a sole source request can be supported.

Federal Requirements: For purchases funded by federal funds, federal purchasing requirements apply. For federal grant funding, the relevant provisions stem from OMB Circular A-110. For federal contract funding, Federal Acquisition Regulations (FAR) apply. Based on findings in the Office of Naval Research's (ONR) 2005 audit of federally-funded purchasing activity at UCM, we need to emphasize these two areas on purchases funded by federal funds:

OMB A-110 __.43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

52.244-5 -- Competition in Subcontracting (a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

52.219-9 -- Small Business Subcontracting Plan (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating –

- (A) Whether small business concerns were solicited and if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and if not, why not;
- (F) Whether women-owned small business concerns were solicited and if not, why not;
- (G) If applicable, the reason award was not made to a small business concern.

State Requirements: Relevant background information excerpted from BUS-43, Part 3, Purchase Transactions: <http://www.ucop.edu/ucophome/policies/bfb/bus43e.html>

General Requirements - The Public Contract Code of the State of California (Public Contract Code Section 10507, et seq.) requires that all purchase contracts involving an expenditure of more

than \$100,000 shall be awarded to the lowest responsible bidder meeting specifications, or else all quotations shall be rejected. The lowest responsible quoter shall be determined on the basis of one of two methods: (1) cost alone or (2) on a cost per quality point basis*.

Competition - Competition must be sought, as herein prescribed, for any transaction expected to involve an expenditure of \$100,000 or more for goods or services, other than (1) personal or professional services, unless it is determined that a brand or trade name article, thing or (2) product, or proprietary service is unique, (3) available only from a sole source, or is (4) designated to match others used in or furnished to a particular installation, facility, or location. Requirements shall not be artificially divided into separate transactions to avoid competition.

Reasonable Price - Purchase contracts shall be entered into only after it has been determined by the Materiel Manager that prices to be paid are reasonable. Prices shall be considered reasonable when it has been determined by the Materiel Manager that competition secured has resulted in a reasonable market test, or when prices are set by applicable law or regulation. Lacking these assurances, reasonableness shall be determined by appropriate price or cost analysis.

Brand or Trade Names - These should be used in specifications for descriptive purposes only. When it is believed that no other brand, trade name, item, or proprietary service will properly satisfy the needs of the University, specifications should include a description of the technical features necessary to determine if other, available items or services are equivalent to those specified.

* In the cost per quality point method, points are awarded for factors other than cost. To determine the lowest cost per quality point, the proposed cost of the goods, materials, or services is divided by the quality points assigned to the proposal. Typically, there are several categories in which a bidder will be evaluated, and a certain number of points may be awarded per category, depending on the relative importance of the category.

Conflict of Interest: Please be aware of 3 issues that may affect UCM's ability to enter into an agreement to acquire goods or services, as a sole source purchase or not:

Public Contract Code / SB 1467: (1) A supplier is not able to enter into a "follow-on contract" to implement the recommendations that supplier made in a prior consulting engagement. (2) A UC employee is not able to enter into an independent contractor agreement to sell goods or services to the University; an exception does exist for people with teaching or research responsibilities. (3) A former UC employee cannot enter into a contract in which he/she engaged in any part of the decision-making process, for a period of 24 months after leaving the University. (4) A former UC employee cannot enter into a contract with a University department if he/she was employed by that department in a policymaking position in the same general subject area within the prior 12 months, for a period of 12 months after leaving the University.

BUS-43 Employee-Vendor Relationship: It is University policy to separate an employee's University and private interests, and to avoid the appearance of favoritism in awarding contracts. The University cannot enter into a contract to acquire goods or services if an Employee-Vendor relationship (including near relatives as suppliers) exists, unless the goods or services are not available commercially, as determined by the Director of Procurement Services.

Political Reform Act: UC employees are not able to participate in the making of a decision if they have a financial interest in the outcome of the decision. By definition, an employee has a financial interest in the contracts of his/her spouse or registered domestic partner. Other factors requiring an employee to disqualify him/herself from participating in a decision-making process include investments, gifts, loans, or other financial ties to suppliers.

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Department / Req # _____

Requestor / Date _____

Signature _____

Goods or service _____

Dollar amount _____

Federal Funds? No ___ Contract ___ Grant ___ Cooperative Agreement ___

(If “No”, Responses to Questions #5 & #6 not required)

Q1. Under which exception to the **State of California** requirement for competition is this Sole Source Request made? You may select one or more.

___ (1) Personal or professional services

___ (2) Product or proprietary service is unique

___ (3) Available only from a sole source

___ (4) Designated to match existing

Q2. Please explain how your purchase of goods or services meets one or more of the above **State of California** criteria for a valid Sole Source Request. (Note: for this question, price cannot be a part of the justification.)

Q3. If ‘product or proprietary service is unique’, why is your chosen supplier the only viable solution?

Q4. What information do you have on any previous competitive bids for this good or service?

Q5. What other suppliers and products/services did you consider before you arrived at your conclusion that the one(s) requested are the only one(s) that meet your needs? Federal regulations require source and price validation documentation on orders in excess of \$2,500. Please describe the documentation you can provide to us to help us meet Federal requirements for documentation on **federally-funded** purchases (whether contract or grant).

Q6. For **purchases over \$100,000 funded by federal contracts**, please identify, for the suppliers identified in Q5 as well as your requested supplier, (a) whether small businesses were solicited, and if not, why not; (b) (ask your suppliers) whether each supplier is a small business, a veteran-owned small business, a service-disabled veteran-owned small business, a HUBZone small business, a small disadvantaged business, or a woman-owned small business; and (c) if your recommendation is not to award a contract to a small business, why not?

(a)

(b)

(c)

Q7. If 'designated to match existing', please describe the quantity, age, value and useful life remaining of the installed base relative to the quantity and value of the proposed addition.

Q8. If Procurement Services agrees that your Sole Source Request meets one or more of the criteria, what other information do you have that can help us validate price reasonableness?

Q9. Are there any Conflicts of Interest to be disclosed related to this proposed acquisition, whether related to SB 1467, Business & Finance Bulletin (BUS)-43, or the Political Reform Act?

() No

() Yes If yes, please describe.