



## **PP-04-13 NON-COMPETITIVE PROCUREMENT**

### **I. POLICY**

As noted in section 04-02, purchases of educational materials and food and cafeteria supplies do not require a competitive procurement process. Under California law, these purchases may be made without first soliciting multiple quotes, bids or any other form of competitive offer, regardless of whether the purchase is below or above the statutory bid threshold. Nonetheless, as with all procurements, purchasers should research market pricing to ensure that even items exempt from competition are being purchased at a reasonable cost.

Also exempt from the requirement for competitive procurement are emergency contracts, which are narrowly defined by the Public Contract Code and District's board rules and require a unanimous finding by the Board of Trustees.

As noted in section 04-10, purchases may be made through cooperative procurement transactions, which are purchases under the authority of contracts bid and awarded by other public agencies, also known as "piggyback" contracts. While such contracts are almost always awarded through competitive procurement methods undertaken by the awarding agencies, a cooperative purchase by LACCD is a non-competitive transaction for the District.

Finally, in some instances, a needed product or service may appear to be available from only one source. This is an extremely rare case and must be reviewed carefully by the College Procurement Specialist and the Contracts and Purchasing Section at the District Office.

### **II. PROCESS**

#### **A. Educational Materials**

Education Code section 81651 permits LACCD to purchase educational materials without taking estimates or advertising for bids. "Educational materials" are instructional materials or supplies utilized by students to support their instructional curriculum. This includes the purchase of supplementary textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software, or periodicals as long as these items are used by students in the instructional program at the college.



## **B. Food/Cafeteria Supplies**

Public Contract Code section 20660 permits LACCD to purchase perishable food stuffs and seasonal commodities needed in the operation of its cafeterias and food services. Board Rule 7102.14 authorizes College Presidents or their designees to negotiate directly with food suppliers for a cafeteria program without the need to engage in competitive procurement.

## **C. Emergency Contract**

In an emergency, as defined by Public Contract Code section 20654, a contract may be awarded on behalf of the District by the Chancellor, Deputy Chancellor, Executive Director of Facilities Planning and Development, Director of Business Services, or their designees, for the performance of repairs, alterations, work or improvement with the furnishing of materials or supplies for an emergency purpose without advertising for or inviting bids. The Board of Trustees, by unanimous vote, must approve the emergency contract. Such contracts shall be reported to the Board of Trustees at the earliest possible date and in all circumstances within thirty (30) days after issuance.

An “emergency” condition is defined by the Public Contract Code as a condition that presently disrupts the continuance of existing college classes or poses a danger to life or property. In addition, an emergency condition must be unexpected or unforeseeable in nature.

## **D. Cooperative Purchases**

As noted in section 04-10, purchases may be made through cooperative procurement transactions, which are purchases under the authority of contracts awarded by other public agencies. Such contracts are almost always the product of competitive methods undertaken by the awarding agencies; however, because a cooperative purchase by LACCD is typically made without collecting competitive offers from other vendors, it is a non-competitive transaction for the District.

Cooperative—or “piggyback”—purchases must be conducted in accordance with the requirements of section 04-08 of these procurement procedures.



## E. Single Source

“Single source” or “sole source” refers to the market condition in which only one supplier exists for a needed product or service and, therefore, a competitive process is impossible or highly impracticable for selecting a vendor. An example of a single source is a pharmaceutical company that makes a specific prescription drug or a manufacturer that makes a unique patented technology product.

**Currently, existing state law does not establish sole source as a justification for a noncompetitive purchase of equipment, materials, supplies or services.**

If a purchase is confronted with what appears to be a sole-source procurement exceeding the micro-purchase limit, the purchaser should consider the following:

- 1) Are there alternative products from other suppliers that are comparable in performance, features, quality, warranty, price and other key characteristics to the desired name brand product?
- 2) For the name brand desired, are there multiple distributors or dealers that may sell the product at different prices?

In most instances, the answer to one or both of these questions will be ‘yes,’ revealing that multiple suppliers for what is needed do, in fact, exist in the market and that a competitive process for choosing a vendor is warranted.

In those rare instances in which a product is believed to be available from only one source, in order to waive the requirement for a competitive process, a written finding, called a “sole-source justification,” must be made by the purchase initiator. The sole-source justification must: (1) declare that competition does not exist for the required product or service or competitive procurement would be impossible or highly impracticable, and (2) specifically answer the questions posed above, describing the efforts made to ascertain if competition exists under either category. Since District policy does not require competition for procurements under the micro-purchase limit, no sole-source justification is needed for such purchases. Any purchase beyond this limit, must require, in writing, a sole-source justification.

The sole-source justification must be signed by the College President or Vice President of Administrative Services for which the purchase is contemplated and submitted to the College Procurement Specialist (CPS) for the college. The CPS will respond in writing with one of the following actions: (1) concur in the finding and authorize the purchase to proceed, or (2) reject the finding, explain the reasons for the rejection and direct the college to conduct a competitive process before making a purchase. If a sole-source justification is rejected by the CPS, the college may appeal the decision to the Director of Business Services at the District Office.



**NOTE:** Except for the types of purchases noted above that are statutorily exempt from competitive bidding, no purchase above the micro-purchase limit can be made in the absence of competition unless a sole-source justification has been processed in accordance with this section.

Any sole source purchase requires prior approval by the Board of Trustees including a finding that such purchase is justified because a competitive procurement process would otherwise be impracticable. **NOTE:** The standard of “impracticability” is high and requires careful documentation of the conditions which resulted in this finding.

### **III. LEGAL AUTHORITY AND CITATIONS**

Education Code section 81651

04-02 Types of Transactions

04-08 Cooperative Purchases

Public Contract Code 20654, 20660

Board Rules 7102.13, 7102.14