

## **Sole Source Procurements (New Regulations)**

*Excerpts from the Mississippi Procurement Manual*

### **3.101.03 Exemptions Requiring Approval**

Unless otherwise ordered by regulation of the Public Procurement Review Board (PPRB), the following listed items are exempt from the competitive bid process provided they follow 3.109.02; however, these purchases do require P-1 approval of the Office of Purchasing, Travel and Fleet Management.

- (1) Non-competitive items that are available from only one source;
- (2) Items purchased for research that are available from only one source

### **3.109.02 Conditions for Use of Sole-Source / Research Procurement(s)**

Sole-source procurement (including any item purchased for research that is available from only one source) is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify sole-source procurement if there is more than one potential bidder or offerer for that item. The following are examples of circumstances which could necessitate sole-source procurement:

- (1) Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration (and manufacturer is sole supplier).
- (2) Where a sole supplier's item is needed for trial use or testing.
- (3) Where a sole supplier's item is to be required when no other item will serve the need of the user entity.

Any agency seeking sole source procurement authority for commodities shall advertise in the same manner provided in Section 31-7-13(c), Mississippi Code of 1972, Annotated. Such advertisement shall direct vendors to the procurement portal website established by Sections 25-53-151 and 27-104-165, where the agency shall publish for a minimum of fourteen (14) days the terms of the proposed sole source procurement. The portal publication shall include, but is not limited to, the following information:

1. A description of the commodity that the agency is seeking to procure;
2. An explanation of why the commodity is the only one that can meet the needs of the agency;
3. An explanation of why the source is the only person or entity that can provide the required commodity;
4. An explanation of why the amount to be expended for the commodity is reasonable;

5. The efforts that the agency went through to obtain the best possible price for the commodity; and
6. Procedures for any person or entity that objects and proposes that the commodity published on the procurement portal is not sole source and can be provided by another person or entity. These procedures shall direct the objecting person or entity to notify the agency that published the proposed sole source procurement request with a detailed explanation of why the commodity is not a sole source procurement. If such an objection has been raised, the agency shall follow the following steps:
  - a. If the agency determines after review that the commodity in the proposed sole source request can be provided by another person or entity, then the agency must withdraw the sole source request publication from the procurement portal website and submit the procurement of the commodity to an advertised competitive bid or selection process.
  - b. If the agency determines after review that there is only one (1) source for the required commodity, then the agency may appeal to the Public Procurement Review Board. The agency has the burden of proving that the commodity is only provided by one (1) source.
  - c. If the Public Procurement Review Board has any reasonable doubt as to whether the commodity can only be provided by one (1) source, then the agency must submit the procurement of the commodity to an advertised competitive bid or selection process.

Once the procedures listed above have been followed, and an item has been certified as a single source item, the item may be purchased without complying with provisions for competitive bidding. Authority must be granted by the Office of Purchasing, Travel and Fleet Management prior to acquisition of the item by using the electronic P-1 process. A letter must be accompanied as an attachment to the P1 request outlining the results of the procedures that have been detailed above.

Following the approved purchase, per 31-7-13 (m) (viii) the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased when submitting the applicable payment request as more particularly prescribed in the DFA MAAPP Manual. In the case of Institutions of Higher Learning, this can be done by adding an attachment to the university's previously approved P1 request.

### **3.109.03 Negotiation in Sole-Source Procurement**

Once an item has been certified as sole source, the head of the purchasing agency or his/her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.