

Bid Law Exemptions Per RCW 39.04.280

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Outline

- Uniform Exemptions
- Sole Source Purchases
- Special Facility/Market Conditions
- Emergency Purchases
- Public Works Emergency Contracts



Uniform Exemptions

- RCW 39.04.280 provides uniform exemptions to municipal competitive bidding requirements when awarding contracts for equipment, supplies and material purchases and for public works projects.
- Since 1998, exemptions have been uniform.
- Statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements.
- This RCW supplements and does not limit other powers of any municipality that provide exemptions from competitive bidding requirements.

Exemptions

- Competitive bidding procedures may be waived by resolution of the governing body of the municipality for:
 - Purchases that are clearly and legitimately limited to a single (sole) source of supply
 - Purchases involving special facilities or market conditions
 - Purchases in the event of emergency
 - Purchases of insurance or bonds
 - Public works contracts in the event of an emergency

Exemptions

- Competitive bidding procedures may be waived under the preceding circumstances by adopting either:
 - a resolution at the time of contracting; or
 - by written policies beforehand.
- A resolution must state the factual basis for the exception.

Exemptions

- If written policies are used to waive competitive bidding requirements, the contract and a factual basis for the exception must be recorded and open to public inspection immediately after a contract is awarded under those policies.

Rock and Roll Moment

The City of Almost Nowhere, population 15,000 (or 25,000 when the moon is full), has a water pumping station with Widget pumps, sold in the Pacific Northwest only by Rolling Stone ("we guarantee Satisfaction") Pumps in Seattle. One of the pumps needs to be replaced, at a cost estimated at \$60,000. What sort of (additional) factual information would be needed to justify a sole source purchase without competitive bidding? Special market condition purchase without competitive bidding? Emergency purchase without competitive bidding?



Rock and Roll Moment



Chuck Berry, Parks and Recreation Director for the City of Almost Nowhere, population 15,000 (or 25,000 when the moon is full), has a problem. The City has a playground with all Ajax brand play structures. The Elk Grove Neighborhood Association has provided funds for additional play structures in the amount of \$30,000 to be spent within two weeks. Can Chuck justify a sole source purchase of Ajax brand equipment without competitive bidding? Special market condition purchase without competitive bidding? Emergency purchase without competitive bidding?



Possible Sole Source Purchase Rationales

- Licenses, copyrighted, or patented product or service that no other vendor provides. Questions include why is it mandatory to use this licensed or patented product and were efforts made to find other vendors (ie: web site search, contacting the manufacturer to see if other dealers are available to service this region, etc.)
- Existing City equipment, inventory, custom-built information system, custom-built data inventory system, or similar product or programs. Again, did were efforts made to find other vendors (ie: web site search, contacting the manufacturer to see if other dealers are available to service this region, etc.).
- A scarcity of supply in the market.



Possible Sole Source Purchase Rationales

- Compatibility with existing goods, equipment or services and there are no reasonable alternatives or substitutes.
- Formal standard has been adopted for this manufacturer, supplier or provider and there is only one vendor. Documentation from manufacturer to confirm that only one dealer provides the product is available.
- Factory-authorized warranty service available from only this single dealer or a need to avoid violating warranties and guarantees for service.

Sole Source Examples

- Installation of water system security equipment.
- Proprietary, customized software.
- Maintenance/repair of radio equipment and repeater site.
- Official newspaper where there is only one that meets statutory requirements.
- Water meters if only one dealer.



REQUEST FOR SOLE SOURCE

To: Purchasing Office

From: _____ / _____
Name of Department Head Dept./Division

Subject: Sole Source Request for the Purchase Of: _____

REQUESTED SUPPLIER: _____

REQUISITION NUMBER: _____ COST ESTIMATE: _____

Sole source purchases are defined as clearly and legitimately limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological grounds such as operational compatibility with existing equipment and related parts or upon a clearly unique and cost effective feature requirement. The use of sole source purchases shall be limited only to those specific instances which are totally justified to satisfy compatibility or technical performance needs.

STATEMENT OF NEED:

My department's recommendation for sole source is based upon an objective review of the product/service required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

Refer to the attached sole source justification as prepared by our department, to the attached review of available products/services and to my completed Purchase Requisition.

Requestor	Department Head
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected
_____ Signature of Requestor / _____ Date	_____ Signature of Dept. Head / _____ Date

If Purchase is \$10,000 or more:	If Purchase is \$50,000 or more:
Purchasing Manager	City Attorney
<input type="checkbox"/> Approved	<input type="checkbox"/> Rejected
<input type="checkbox"/> Rejected	<input type="checkbox"/> Approved
<input type="checkbox"/> Rejected	<input type="checkbox"/> Rejected
_____ Signature of Purchasing Manager / _____ Date	_____ Signature of City Attorney / _____ Date

SOLE SOURCE JUSTIFICATION

Requisition Item: _____

Requisition Number: _____

Prior Purchase Order Number (if item had been approved previously): _____

1. Please describe the item and its function:

2. This is a sole source* because:

- sole provider of a licensed or patented good or service
- sole provider of items that are compatible with existing equipment, inventory, systems, programs or services
- sole provider of goods and services for which the City has established a standard**
- sole provider of factory-authorized warranty service
- sole provider of goods or services that will meet the specialized needs of the City or perform the intended function (please detail below or in an attachment)
- the vendor/distributor is a holder of a used item that would represent good value and is advantageous to the City (please attach information on market price survey, availability, etc.)

3. What necessary features does this vendor provide which are not available from other vendors? Please be specific.

4. What steps were taken to verify that these features are not available elsewhere?

- Other brands/manufacturers were examined (please list phone numbers and names, and explain why these were not suitable)

- Other vendors were contacted (please list phone numbers and names, and explain why these were not suitable).

*Sole Source: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.

**Procurements of items for which the City has established a standard by designating a brand or manufacturer or by pre-approving via a testing shall be competitively bid if there is more than one vendor of the item.

Special Facilities or Market Conditions Rationales/Samples

- Really, really, really good deal that is only available for a very short time.
- Sand bags during a flood.
- Purchase of equipment at auctions, whether private or public.
 - RCW 39.30.045

Exemptions

- An emergency is defined, uniformly for all classes and types of municipalities, as unforeseen circumstances beyond the control of the municipality that either:
 - present a real, immediate threat to the proper performance of essential functions or
 - will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken

Emergency Public Works Contracts

○ Council/Commission Action:

- If the governing body elects to waive competitive bidding requirements in the event of an emergency by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

Emergency Public Works Contracts

- Mount Vernon Example:

.... and any such order shall at the earliest practicable time be presented to the city council for review and appropriate legislation including:

- 1. Findings by resolution with respect to actions taken;
- 2. Authorization of payment for services, supplies, equipment loans and commandeered property used during disaster response activities;

Emergency Public Works Contracts

- **Mount Vernon Example (cont.):**
 - 3. Approval of gifts, grants, or loans accepted or made by the mayor during the emergency;
 - 4. A finding of the existence of such emergency, and a direction to the city finance director, upon making such finding and ratification of any public works contract, that a description and estimate of the work be made and published, all as required pursuant to RCW 39.04.020.



Emergency Public Works Contracts

- Master Contracts?
 - Insurance
 - Bonds
 - Established Unit Prices
 - Force Account
- Prevailing Wages
- Project Closeout Items