



The State University
of New York

Office for Capital Facilities Guidance Document

CLC-7

Revised: December 2013

Issued: January 2013

Single and Sole Source Procurements and Specific Allowances

A reference guide

Contents

- Definitions
- Approvals – Campus Let and Campus Funded Projects
- Approvals – Fund Managed Projects
- Question and Answer
- Resources

There may be occasions where a campus wishes to pursue the use of a particular product on a construction or renovation project. This guidance document provides definitions of the types of purchases that may be used, and what approvals are required for contracts greater than the following purchasing limits.

SUNY's Discretionary Purchasing Limits

- \$20,000 for Construction
- \$25,000 for Construction Related Consultants
- \$125,000 for Commodities and Services*
- \$200,000 for Commodities and Services awarded to New York State Certified MWBEs, small businesses and for recycled or remanufactured purchases.

** Non construction related service contracts over \$250,000 require OSC and AG approval. In addition, single and sole source awards of non construction related services over \$125,000 require OSC and AG approval.*

Definitions

Single Source

A single source procurement is where, although two or more vendors or contractors can supply the required product or service, the campus selects one vendor or contractor over another based on a written justification. The campus places a contract directly with the vendor or contractor for that single source product. Single source procurements at values greater than SUNY's discretionary purchasing limits require campus approval.

The justification includes the material and substantial reasons that a single source is appropriate including the circumstances leading to the selection, the alternatives considered and the rationale for the selection. It is important to note that State Finance Law §163 limits the use of single source procurements to circumstances where a formal competitive process is not feasible, and requires the term of the single source contract be only for a period of time until such circumstances are improved.

Sole Source

A sole source procurement is where **only one** contractor or vendor is capable of supplying the required product. The unique nature of the requirement and determination of why no other vendor or contractor could provide the product or service is required as part of a written justification. The campus places a contract directly with the vendor or contractor for that sole source product. Sole source procurements

at values greater than SUNY's discretionary purchasing limits require campus approval as outlined later in this document.

Specific Allowance

A Specific Allowance is an allowance set forth in a construction contract for the purchase of integrated systems currently operating at the campus including fire alarm systems, locks/security systems and building or energy management systems. When a Specific Allowance is defined within the specification the system **must** be shown to be the only system that is compatible and necessary to interface with the existing systems. Specific Allowances require campus approval outlined later in this document.

Approvals – Campus Let and Campus Funded Projects

Single and Sole Source Procurement Approval

In accordance with SUNY Procedure 7553, for contracts over SUNY's discretionary purchasing thresholds single and sole source procurements can be made with the approval of the President or designee, after consultation with Campus Counsel and the Purchasing Director. Written justification supporting the single or sole source determination and justifying reasonableness of price must be maintained in the procurement record.

Note: Single and sole source awards of non construction related services over \$125,000 require OSC and AG approval.

New York State Contract Reporter (NYSCR) Exemption Approval

An individual advertisement in the NYSCR is required for all purchases greater than \$50,000. In order to receive exemption from this requirement Office of the State Comptroller (OSC) approval is required in addition to the approval by the campus as defined above. If the campus receives exemption from advertisement the campus is still required to publish a notice of the award of this contract in the New York State Contract Reporter. Approval of NYSCR exemption is separate from approval of single or sole source procurement.

Single and Sole Source Approval Process

1. Check to see if the purchase can be made off a state contract.
2. Complete a written justification as described in this document, including a justification for reasonableness of price.
3. Obtain written approval by the campus President or designee for the single or sole source procurement after consultation with Campus Counsel, Purchasing and Facilities, and maintain that approval in the procurement record.
4. If an exemption from NYSCR advertisement is required submit written justification to OSC requesting approval of the exemption.
5. Follow all applicable procurement laws, regulations and procedures required to place the contract or purchase order.

6. Publish a notice of a single or sole source award in the New York State Contract Reporter in accordance with Economic Development Law §144. This notice must include the name of the intended recipient of the contract and be placed as soon as practicable.
7. For single source awards, in addition to maintaining justification as part of the procurement record the campus must publish on its website, within 30 days of a single source contract award, a summary of the circumstances and material and substantial reasons why a competitive procurement is not feasible.

Specific Allowance Approval Process

1. Complete a written justification as described in this document, including a justification for reasonableness of price.
2. Obtain written approval by the campus President or designee for the specific allowance after consultation with Campus Counsel, Purchasing and Facilities, and maintain that approval in the procurement record.
3. Identify the product as a Specific Allowance in the specification and/or bid documents including the product brand, model number, item number or required characteristics.
4. Follow all applicable procurement procedures, regulations and laws required to award a construction contract.
5. Prior to contract award make the following modification to the standard [SUNY Construction Agreement](#).

SUNY Construction Agreement - Amend agreement as follows

Article II, Section 2.20, paragraph (A) (2), sentence two after the word 'section', insert the following: "except in those instances where a product has been approved by the University and defined as a specific allowance in the specification and contract documents."

Written Justification

The following information should be included in the written justification and maintained in the procurement record.

- Brief Project Description
- Project Budget
- Description of the product or service
- A summary of the justification
- Justification Detail
 - What is the rationale for selecting this product or service?
 - Is this an extension of an existing system?
 - Is the product/service unique?
 - What benefits will the product or service provide over other products?
 - Does any other product/service have substantially equivalent or similar benefits?
 - What other alternatives were considered and why are they not acceptable?
 - Is the price reasonable in comparison with other products/services when the particular benefits are considered?

- Have the bid documents been written in a fair and equitable manner, such that sole or single sourcing is limited to only those specific products and services for which it is required?
- Has the campus operated in good faith without interest to arbitrarily restrict or inhibit competition? Or without intent to reward one particular manufacturer or dealer?

Approvals - Fund Managed Projects

The State University Construction Fund has a process for approving single and sole source procurements on projects managed by The Fund. It is recommended that the campus first check to see if the product is available on state contract. If not, then the campus will make the sole source or single source procurement request in writing to the Design Coordinator. The letter of request will include background information, justification as to the circumstances under which the good or service qualifies for a sole source or single source procurement and why it is required, certification that the campus is operating in good faith. The Design Coordinator will administer approval by The Fund, and provide a single or sole source approval letter to the campus. In accordance with Economic Development Law §144, the campus is required to publish a notice of the award of this contract in the New York State Contract Reporter. This notice must state the reason for the exemption and be placed as soon as practicable.

Question and Answer

- 1. Question:** Our campus has a project to replace the fire alarm system in an existing building. We'd like to use the same fire alarm system that is installed on the rest of the campus. Should we handle this as a single source procurement, or a specific allowance?

Answer: Specific Allowance

Generally a contract for the installation of a fire alarm system would be placed with a contractor who is authorized by the manufacturer to install that system. However, some fire alarm systems are on state contract, so check to see if the vendor you would like to use is on state contract that first. If not, then in this case the campus would go through the Specific Allowance process in order to define a Specific Allowance in the specification for the installation of the fire alarm system. The campus would then advertise, conduct a bid and award the contract in accordance with the applicable laws, regulations and procedures.

- 2. Question:** Our campus is renovating a building, and as part of that renovation the building management system will be replaced. We'd like to use the same system that is installed in the adjacent buildings. Should we write the specification to call out the brand name of the system stating no equivalents or substitutions will be considered?

Answer: The specific allowance process should be used.

State Finance Law §163 requires specifications "be designed to enhance competition, ensuring the commodities or services of any offerer are not given preference". This is why our specifications state 'or equal/equivalent' when a product is named. In addition our contracts state that whenever a brand is stated it is intended to mean the brand, or equivalent. Therefore, we cannot write the brand name into the specification stating no equivalents will be considered. What we can do is go through the process to put a Specific Allowance in the contract for that building management system.

- 3. Question:** Our campus is purchasing a new key card system. We are either going to install it using in house staff, or we might hire a contractor to do the installation. Either way, we are going to be purchasing the material directly from the manufacturer and purchasing the installation separately. Would this be a sole source purchase?

Answer: This would be a single source purchase.

Chances are more than one vendor could provide the key card system. Since sole source purchases are only for unique products that could not be purchased from any other vendor a key card system would not be a sole source purchase, but it could be a single source purchase.

Resources

[State Finance Law §163\(10\)\(b\)](#)

[Economic Development Law §144\(e\)](#)

[OSC Guide to Financial Operations, Chapter XI.14.A Publication of Procurement Opportunities](#)

[SUNY Construction Agreement](#)