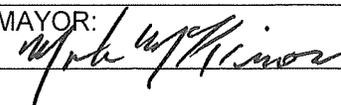
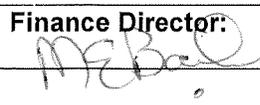


02POL0013
ORIGINAL

CITY OF LYNNWOOD

POLICY/PROCEDURES

TITLE: Non Competitive Purchasing Policy		2002
EFFECTIVE DATE	SUPERSEDES: NA	
MAYOR: 	Finance Director: 	Purchasing Manager: 

Applicable To: All City Departments and employees

Relevant Legal Authority

- RCW 39.04.280 *Municipal exceptions to Competitive Bidding (supplements LMC)*
- RCW 39.30.045 *Supply of used goods at public auction*
- RCW 33.34.010 *Acquire surplus property from another government agency without bid*
- RCW 39.34.080 *Agreements for services and supplies from another government agency without bid*
- RCW 39.04.280 (1) *Waives competitive bidding for emergencies*
- RCW 35.21.278 *Neighborhood Self Help Projects waived with consideration to the City of 3 times return. Payments to self help group may not exceed \$25,000 annually or \$2 per resident (whichever is greater)*

Washington Fruit & Produce Co. V. City of Yakima, 3 Wn 2d 152 (1940) – no need to bid if natural monopoly exists (MRSC page 24)

- LMC: 2.92.020 (A) 6 *Emergency Procurements*
- 2.92.020 (B) 4 *Non competitive Purchases*
- 2.92.020 (E) 2 k *Public Works Non Competitive Emergency Contracts*

PURPOSE: Lynnwood Municipal Code (LMC) allows exceptions to public bidding in special situations. The first is a sole source situation where only one reasonable source of supply is found; and the second is an emergency situation that requires immediate acquisition. In both instances, bids or quotes may not be required and you can proceed to a direct purchase from your single supplier. The purpose of this policy is to encourage diligent consideration of sole source and emergency procurements and to clearly delegate authorities for these determinations.

POLICY STATEMENT: Competitive bidding or cost comparisons are considered favorable for the City, to insure the City acquires products and services in a fair, reasonable and competitive manner as a public responsibility, reducing risk of favoritism towards particular vendors and insuring vendors are given equal opportunities. Occasionally, the City requires equipment or work available only from a single source, or must respond to an emergency without time for competition. The City intends to provide for procedures that allow acquisition without competition, but with due diligence and consideration and clearly delegated authorities for such decisions.

1. **Emergency:** An emergency procurement applies when the City does not have reasonable time to conduct a competitive process without a reasonably high risk to life, substantial property or monetary loss, health, welfare or safety.
 - a. An emergency situation shall not automatically result in emergency acquisitions. The employee in charge of the emergency is to assess which items require an immediate, emergency purchase and which items can wait for normal competition to be completed. Some items can be acquired rapidly but still within competitive bid standards (i.e. acquisition of items from state contracts or existing City contracts; acquisitions through 3 phone quotes, etc.). The highest level of competition that can be reasonably conducted

shall be performed, up to and including that which would normally be required for the purchase. Emergency acquisitions shall be limited to those specific acquisitions that require a response so rapid that meeting normal competitive requirements is neither reasonable nor practical.

- b. Automatic Delegated Authority to Declare Emergency Purchase. To assure that responding departments have authority to easily and effectively respond to an emergency, decisions regarding emergency acquisitions shall be delegated as follows:
 - i. Department Heads and/or their delegated managers are authorized herein to make emergency designations for all purchases that are normally within their independent authority and do not normally require Mayor approval.
 - ii. The Mayor shall make emergency designations for all purchases that normally demand Mayor and Council approval except Public Works emergency contracts which are instead designated solely to the Public Works Director as given immediately following.
 - 1. Equipment and supplies over \$35,000
 - 2. Routine services over \$10,000
 - 3. Routine agreements such as leases over \$10,000;
 - 4. Other Bid and Contract thresholds indicated under 2.92.010.
 - iii. If the Mayor is not available within the time required for a prudent and responsible decision, in the reasonable opinion of the highest-level responding authority to the emergency, then this decision shall be automatically and without specific verbal or written direction from the Mayor necessary, delegated to the responding Department Head or the otherwise highest-ranking official supervising the emergency response.
- c. Public Works Director Authorities: The Public Works Director is given full authority under LMC 2.92.020(E)(2)(k) to designate an emergency situation that requires a Public Works contract.
 - i. When conducting an Emergency Public Works program, employees are encouraged to work with City Purchasing to the extent practical.
 - ii. Employees are instructed to use a Contractor registered on the Small Works Roster if at all practical.
 - iii. Prevailing Wages and bonds/retainage rules still apply during emergency work. Insurance certifications and named insured are still desired.
 - iv. Employees are encouraged to seek written quotes for all work in order to document the agreement, to the extent practical in responding to the emergency.
- d. Departments are to notify Purchasing as soon as practical, if the item would otherwise be subject to Purchasing approval (i.e. any purchase over \$2,000). This insures proper coordination or routine documentation and payment processing.
- e. Departments notify Council at the next Council meeting following the emergency purchase, if the item would normally be subject to Council approval (i.e. sealed bid limits of \$35,000 for equipment, \$35,000 for public works), per LMC 2.92.020A6. For public works, LMC does not specifically include Public Works contracts for this notification, although RCW 39.04.280(2) b requires notification in the public record within 2 weeks of entering the contract.

- f. Written Record. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file pursuant to RCW 39.04.280(2) and LMC 2.92.020(A)(6). This requirement must be fulfilled within 2 weeks, per RCW 39.04.280(2) b. This information must be available to the public, per RCW 39.04.28(2) a. The Council notice provided above may fulfill this requirement, or if such Council notice is not required, then a separate note to the “contract file” shall be provided. This contract file may be the invoice file, the purchase order file, or the emergency file itself.
- g. Used or Auction items can constitute an emergency purchase that may be made in advance, should there be a substantial monetary loss or other loss the City if the purchase was not made immediately.
2. **Sole Source:** Sole source conditions shall be considered unusual and be used in a limited manner. These are situations where there is only one reasonable source of supply. The Lynnwood Municipal Code specifically defines a sole source condition. Specific examples that meet LMC 2.92.020(B)(4) include:
- Single supplier of a licensed or patented good or service;
 - A unique manufactured component;
 - Continuation with an existing supplier to match a previous installation, part, system or service;
 - A used item that is not likely to be replicated in the marketplace;
 - A single authorized distributor for the desired product; and
 - Insurance or bonds (per RCW 39.04.280.1.2.
- a. The Finance Director has delegated authority to the Purchasing & Contracts Manager to review and determine that a sole source condition meets the proper criteria. To insure due diligence, multiple reviews will be done before a sole source decision is complete:
- i. Departments shall identify a sole source condition and submit a verbal or written request for sole source waiver to Purchasing.
 - ii. Purchasing shall conduct an independent search to verify a sole source condition reasonably exists. Such a search may include additional advertising, confirmation from other government agencies of similar sole source conditions, confirmation of limited sales territory distributorships, and/or other source searches.
 - iii. The Purchasing Manager shall submit such findings in writing to the City Attorney for concurrence as required by the Lynnwood Municipal Code, before the purchase is conducted if practicable. The Purchasing Manager will submit such findings concurrently to the Finance Director to invite a response and/or concurrence.
 - iv. Notice to Council will be given only if the dollar value would normally require Council action.
 - v. A written record of the basis for the sole source and for the selection of the particular contractor shall be included in the contract file pursuant to RCW 39.04.280(2) and LMC 2.92.020(B) 4e. This requirement must be fulfilled within 2 weeks, per RCW 39.04.280(2) b. This information must be available to the public, per RCW 39.04.28(2) a. This requirement may be fulfilled by Council notice above, or if such Council notice is not required, then a separate note shall be provided. This written determination may be filed with the invoice, the purchase order file, or the emergency file itself.

- b. **Federal requirements:** When federal grants provide funding for the acquisition, Project Managers shall consider the grant agency requirements for sole source or emergency acquisitions.

3. **Summary of City Council requirements:**

- a. Sole Source: City Council approves sole source in advance, if the purchase would have otherwise required Council approval under a normal purchase.
- b. Emergency Equipment, Materials, Supplies and Services: Emergency purchases do not require Council authorization but the Department shall disclose as soon as practical following the emergency, per LMC 2.02.020(A)(6).
- c. Emergency Public Works: LMC 2.92.020(E)(k) (Public Works – Non Competitive Contracts) does not require Council disclosure. However, it is considered the intent of Council to know of such acquisitions, and is the requirement of 39.04.280(2) B for some type of public record, so therefore the practice shall be to disclose such emergency contracts as soon as practical.

Sole Source Procedures

These procedures are established by, and may be modified by, the City Finance Director. They are to give general instructions and are not binding except as required by policy.

Sole Source Procedures: Purchases that are legitimately restricted to a single supplier may be made directly from a sole source vendor without soliciting other bids or quotes with proper approval. The Purchasing & Contracts Manager shall consider all requests, seek concurrence from City Attorney and inform Finance Director, before approving and processing. To request a sole source purchase, the department shall discuss the sole source acquisition with Purchasing or submit in writing to Purchasing with the Requisition. Department shall describe:

1. Desired item.
2. Why item is only product that can satisfy needs; why alternates are unacceptable.
3. Why is this supplier the only supplier and describe efforts made to find others.
4. Consequences to the City if sole source is not accepted.

Purchasing shall be responsible for the following:

1. Buyer reviews request, verifies, conducts search for alternative suppliers, and recommends to Purchasing & Contracts Manager.
2. Purchasing & Contracts Manager makes a decision, and sends written request to City Attorney for a written concurrence and to Finance Director for review.
3. Request proceeds to Council, if Council would ordinarily have to approve such a purchase following normal bid thresholds and normal Council approval requirements.
4. Upon concurrence by City Attorney, Purchasing & Contracts Manager approves purchase and continues. This may include negotiations to price, terms and delivery.
5. Purchasing maintains a list of sole source procurements, logging supplier's name, amount and type of purchase, and item(s) bought.

Public Work Project – Emergency

1. Public Works Director makes sole determination of when an emergency requires a public works contract. Public Works Director may directly authorize staff to proceed. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
2. Staff shall use a registered Small Works Roster contractor to perform work. If none is reasonably available, staff continues with any qualified contractor.
3. Public Works staff shall attempt to create a written quote or work order to insure that contractor and City are in agreement as to details of the job. Prevailing wages and retainage/bonds always apply, and insurance coverage should be sought from the contractor.
4. Documentation shall be attached to any contracts, purchase orders, and/or invoices as appropriate.
5. The Public Works Director shall inform Council in writing when items or services are obtained that exceed Mayor authorities (\$35,000).

FTA requirements: Should federal FTA funds apply, Project Managers shall consider FTA requirements for sole source or emergency acquisitions. See procedures attached. FTA Circular 4220.1D applies. Sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contracts is considered a sole source procurement that must comply with this paragraph.

- Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposal and at least one of the following circumstances applies:
 - o The item is available only from a single source;
 - o The public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation;
 - o FTA Authorizes noncompetitive negotiations (in writing);
 - c. After solicitation of a number of sources, competition is determined inadequate;
 - d. The item is an associated capital maintenance item that is procured directly from the original manufacturer or supplier of the item to be replaced (must be certified in writing the FTA before procurement).