



# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE

To: All Agency Directors

From: Eric R. Mens, CPP, CPPM *ERM*  
Director, Procurement Services

Date: February 2, 2009

Subject: Policy No. 22, Only Practical Source Procurement (Revision 1)

1. Policy No. 22, issued October 20, 2008, replaced in its entirety the policy previously set forth in Purchasing Policies and Procedures Manual dated 09-01-02. This Revision 1 to Policy No. 22 makes the changes discussed below.

(a) In order to correct an administrative oversight, Section 22-5.4 *Review and Approval of Justification* is revised at paragraph (c) to clarify that procurements of \$100,000 or more will require OMBD approval and signature:

“(c) For procurements \$100,000 or more, if the Contract Specialist determines....”

(b) The second sentence of Section 22-7.1 is revised to delete the word “should” and substitute the phrase “Data fields shall, as a minimum, include:”

(c) In order to correct an administrative oversight, Section 22-7.4 is added as below to make Policy No. 22 consistent with reporting requirements contained in Section 17-6.8.3 of Policy No. 17, Emergency Purchases:

“**22-7.4** The Department of Procurement Services shall submit an annual report (including negative report) of sole source purchases to the Mayor’s designee for provision to the Mayor, the Chief Administrative Officer, and the City Council.”

2. This change is effective immediately upon dissemination.

**NO. 22****ONLY PRACTICAL SOURCE PROCUREMENT****22-1.0 References**

- (a) Chapter 74 of the Code of the City of Richmond (2004) as amended
- (b) Procurement Services, Agency Desktop Toolkit, 2006

**22-2.0 Definitions.** For purposes of this regulation, the terms defined in this section have the meanings ascribed to them in this section unless the context clearly indicates that another meaning is intended.

**22-2.1** “*Agency Head*” means the Director or head of a Using Agency.

**22-2.2** “*Contract Specialist*” means the Department of Procurement Services employee assigned responsibility for a particular solicitation, procurement, and contract.

**22-2.3** “*Director*” means the Director of Procurement Services or designee.

**22-2.4** “*Only Practical Source*” means there is only one source practicably available for the goods and services required.

**22-2.5** “*Sole Source,*” as used in the context of this regulation, refers to “*Only Practical Source.*”

**22-2.6** “*Using Agency*” means any department, agency, bureau, board, commission, court, city jail or jail forum, or other unit in the city government requiring goods services or construction.

**22-3.0 Background.**

**22-3.1** City Code § 74-42 authorizes the Director of Procurement Services to award a contract to a source without competitive sealed bidding or competitive negotiation and to conduct negotiations, as appropriate, as to price, delivery, and terms.

**22-3.2** Section 74-42 requires the Director to (i) review available sources, (ii) make a sole source determination in writing, (iii) ascertain from the Office of Minority Business Development (OMBD) whether minority business enterprises or emerging small businesses exist that would be qualified, willing, and able to provide the required goods or services, and (iv) keep appropriate records of such transactions.

**22-4.0 Policy.**

- (a) The term “sole source” implies that there is only one person or company that can provide the goods, services, or construction needed and that any attempt to obtain competitive bids or solicit proposals would result in only one person or company being available to meet the need.

- (b) For purposes of this regulation, a sole source procurement may occur only when the Director of Procurement Services finds the following:
- (1) One or more of the following conditions exist:
    - i. The required goods or services cannot be provided without intellectual property rights, proprietary information, or trade secrets owned by only one responsible source;
    - ii. The required goods or services involve the calibration, modification, or repair of equipment already purchased under a prior procurement that can be performed by only one responsible source (e.g., an equipment manufacturer or such manufacturer's authorized dealer); or
    - iii. The Chief Administrative Officer has approved a standardization of goods as being in the best interests of the City and such goods are available from only one responsible source; and
  - (2) No goods or services other than those from such one responsible source will satisfy the Using Agency's unique requirements.
- (c) The Agency Head is responsible for ensuring the conduct of appropriate market research to support its case for a sole source procurement and for timely submitting the background information and documentation necessary to support the Director's determination required under City Code § 74-42.
- (d) Urgent and compelling circumstances that would make delays in performance or delivery or both of goods or services unacceptable to the City must be addressed under Procurement Policy No. 17, Emergency Purchases.

## **22-5.0 Procedures.**

**22-5.1** *Requisition.* The Using Agency requesting an only practical source procurement shall submit an appropriately funded requisition (RX) and shall include with the requisition the form "Justification for Sole Source Procurement" (see Attachment A). A written memorandum fully justifying the basis for the sole source (see section 22-5.2, below) must be attached to the Form. The "Justification for Sole Source Procurement" form must be signed by the Head of the Using Agency.

**22-5.2** *Justification.* The Using Agency shall prepare a written justification in a memorandum setting forth all facts and recommendations necessary for the Director to make the determination required by the City Code. At a minimum, the justification shall do the following:

- (a) Identify the basis for the sole source using the criteria set forth in 22-4.0(b) of this regulation;
- (b) Explain why the goods or services are the only goods or services that meet the Using Agency's needs;
- (c) Explain why the vendor is the only practicable source available from which to obtain the required goods or services;
- (d) Describe what market research was conducted to support the sole source conclusion (and attach any supporting documentation); and
- (e) Explain why the price is fair and reasonable.

**22-5.3** *Submission and Assignment.* The Using Agency shall submit a copy of the funded requisition along with the supporting documentation and justification to the Department of Procurement Services.

**22-5.4** *Review and Approval of Justification.*

- (a) The Contract Specialist shall review the sole source form and supporting documentation to:
  - (1) Ascertain that the appropriate documentation is provided;
  - (2) Verify that the Using Agency's justification meets the criteria set forth in Section 22-4.0(b);
  - (3) Review the description of supplies and services required to meet the Using Agency's need (including estimated contract value) to ensure that the specification does not limit, steer, or otherwise eliminate competition;
  - (4) Verify the Using Agency's conduct of market research and the results of such market research; and
  - (5) Validate the Using Agency's determination that the price is fair and reasonable or determines that negotiations are necessary.
- (b) If the Contract Specialist determines the Using Agency requirement not to be an only practical source procurement and following consultation with the Director, the Contract Specialist will return the requisition and supporting documents to the Using Agency with direction to solicit the requirement using the appropriate competitive procedures.
- (c) If the Contract Specialist determines that the requirement is a valid sole source, following consultation with the Director, the Contract Specialist will send the

request to OMBD for approval and signature. If the request is for information technology equipment, the requisition and supporting document are first routed to the Department of Information Technology (DIT) for approval and signature.

- (d) Following receipt of OMBD and DIT approvals, the Contract Specialist will route the request to the Director for approval and signature.
- (e) Following the receipt of appropriate approvals, the Contract Specialist is responsible for negotiating final prices, posting the award notice, contract execution, and entering the contract in the City's Advantage financial system.

#### **22-6.0 Notice of Award.**

**22-6.1** *Form of Notice.* Upon the approval for award of a sole source procurement with a contract value of \$50,000 or more over the contract period, the Contract Specialist shall prepare a "Notice of Intent to Award." The notice shall clearly identify what is being procured, the contractor selected (including address), the date on which the contract was or will be awarded, and the contract value.

**22-6.2** *Posting of Notice.* The notice shall be posted on the City of Richmond website and in the public lobby of the Department of Procurement Services.

#### **22-7.0 Record-Keeping and Reporting.**

**22-7.1** The Department of Procurement Services shall keep a record of all only practical source procurements in a separate database for record-keeping purposes. Data fields should include:

- (a) Contractor name,
- (b) Contractor address,
- (c) Dollar value,
- (d) Date of award,
- (e) Contract term (period),
- (f) Brief description of what is being procured,
- (g) Using Agency, and
- (h) Contract number.

**22-7.2** Department of Procurement Services Standard Operating Procedure 2007-5 (as revised), Section 1.2, requires that the Contract Specialist include sole source procurements with a contract value of \$50,000 or more over the contract period in the Department's Weekly High Profile Contract Status Report. This Report is made available to the Chief Administrative Officer on a weekly basis.

**22-7.3** All records related to sole source procurements shall be maintained and available for public inspection in accordance with City Code § 74-5.