

Central Texas College Materials Management Policy and Procedures Manual	Policy No. 120 October 2017
Proprietary and Sole Source Purchasing Procedures	

I. GENERAL

Competitive bidding requirements are applicable to all purchases made by the District. In accordance with state law, competitive bidding requires both price and product competition. There are instances, however, where such competition may not be available, but price competition can be obtained. In this case the purchase may be referred to as a proprietary purchase. If neither product nor price competition is available, the purchase may be referred to a sole source purchase.

The proprietary purchase procedure is a valuable tool that should be used whenever appropriate. If a proprietary purchase is justified, the request should be processed accordingly, rather than by soliciting competitive bids and then attempting to disqualify bids received on other products.

Because purchasing files are subject to the Open Records Act, the use of proprietary/sole source purchase procedures is an overt act which must withstand critical scrutiny. Justifications must be objective and must avoid statements which cannot be substantiated. This is particularly true in addressing reasons that competing products are not satisfactory. Statements regarding product quality, which may be subjective, should not be used.

It is recognized that many purchases are based upon extensive investigative work done by the requestor prior to submitting the purchase request and that there are good reasons why one product will work and another may not. However, remember that the proprietary/sole source purchase procedure is an exception to competitive bidding requirements to be used only when appropriate. It is not a mechanism for circumventing such requirements.

II. PROCEDURES

The law recognizes that there may be instances when proprietary or sole source purchases must be made, but such purchases must be appropriately justified. The justification for such purchases must be in writing and must be based upon a need for some feature or characteristic (specification) that is unique to the requested product or service and which cannot be provided by any other product or service. The justification, signed by the requester or other authorized individual, must be forwarded to the Purchasing Department

and must contain the following elements.

- A. Identification of the unique feature(s) or characteristic(s)/specification(s) of the requested product which will serve as the basis for the proprietary/sole source justification.
- B. An explanation of the need for the unique specifications. This explanation must address the critical importance of the unique specifications to the intended use of the product or service.
- C. The reason(s) competing products are not satisfactory. This section must relate to the explanation of need for the unique specifications and should serve to support a finding that the stated need cannot be met with competing products. Sufficient detail must be included to indicate that the marketplace has been reasonably and fairly canvassed in an effort to locate acceptable competitive products.
- D. A statement which clearly articulates the effects on the program, if the goods or services were to be procured elsewhere.

The written justification is not a justification to purchase. The law does not require that the decision to purchase products and services be justified. Rather, it is a justification of the need for something that is unique about the product or service which precludes competition. It is important to note that the price of a product is not an acceptable justification for a proprietary purchase. Price is determined as a result of competitive bidding. If there are two or more products which are acceptable, preserving the competitive bidding environment will help ensure that the District receives the best value.

III. PROPRIETARY/SOLE SOURCE COMMITTEE

Upon receipt of the written justification, the Purchasing Agent will call a meeting of the Proprietary/Sole Source Committee comprised of the Director of Business Services or designee (Chair), fiscal representative, technical representative knowledgeable in the equipment/service to be purchased, and two at-large representatives. The committee finding will be submitted to the Director, Business Services for approval. A copy of the findings will be kept on file in the Purchasing Department.

IV. EXCEPTIONS

The procedures contained in this policy do not apply to the following:

- 1. An item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly; and

2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water; and
4. A captive replacement part or component for equipment.