



Agenda Item Summary: Item #09-0740

BOC Meeting Date
07/15/2009

Commission Districts Affected
All

Requesting Agency
Office of the County Manager

Requested Action *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*

Request approval of Purchasing Policy and Procedure 800-11, Basis for Conditions Allowing Award of Contract without Competition.

Requirement for Board Action *(Cite specific Board policy, statute or code requirement)*

Resolution 09-0535 directed the County Manager to draft and submit to the Board of Commissioners policies and procedures for the execution of sole source purchases by all departments of Fulton County.

Is this Item Goal Related? *(If yes, describe how this action meets the specific Board Focus Area or Goal)*

Yes No

Summary & Background

(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)

The County Manager recommends approval of Purchasing Policy and Procedure 800-11, Basis for Conditions Allowing Award of Contract without Competition. This policy will provide user departments with procedures regarding contracts to be awarded without competition pursuant to Fulton County Code Section 2-319, Conditions allowing for award of contract without competition, also referred to as "sole source" contracting.

Fiscal Impact / Funding Source

(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)

N/A

Exhibits Attached

(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)

Exhibit 1: Copy of 800-11, Basis for Conditions Allowing Award of Contract without Competition

Source of Additional Information

(Type Name, Title, Agency and Phone)

Felicia Strong-Whitaker, Interim Director, Department of Purchasing & Contract Compliance x4204

Agency Director Approval

County Manager's Approval

Typed Name and Title

Zachary Williams, County Manager

Phone

404.612.4500

Signature

Date

7/10/09



POLICY AND PROCEDURE

SUBJECT: Basis for Conditions Allowing Award of Contract without
Competition

DATE: July 15, 2009

NUMBER: 800-11

I. STATEMENT OF POLICY:

Fulton County adheres to a policy of using open competition in the award of contracts to the greatest extent possible. However, under certain circumstances, it may be necessary to award contracts without competition (also referred to as "sole source" contracting). The General Assembly of Georgia authorized Fulton County to award contracts without competition through the enactment of 1995 Ga. Laws Page 978, codified as Section 2-319 of the Fulton County Code (FCC). To comply with FCC § 2-319, contracts will be awarded without competition only in accordance with this Policy and Procedure.

II. BASIS FOR CONDITIONS ALLOWING AWARD OF CONTRACT WITHOUT COMPETITION

Pursuant to FCC § 2-319, contracts may be awarded without competition when there is only one source for the work, labor, or services to be done or the supplies, materials, or equipment to be purchased. Supplies or services may be considered to be available from only one source as permitted by the following categories:

The Board of Commissioners has authorized that the following categories are permitted as basis for conditions allowing award of contracts without competition:

- A. When required in order to comply with, or avoid voiding of or penalties under, licenses and warranties held by the County.
- B. Expert services, acquiring the services of an expert or neutral person for any anticipated litigation or dispute.
- C. The existence of limited rights in data, patent rights, copyrights, or secret processes; or similar circumstances, make the supplies and services available from only one source.
- D. When necessary to maintain compatibility with existing equipment or systems, only specified makes and models of technical equipment, software, and parts will satisfy the County's needs for additional units or replacement items, and only one source is available.

- E. Authorized or required by statute, a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source.
- F. Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or high-specialized equipment, including major components.
- G. A governmental agency is the only provider of the service and/or supplies.
- H. When a review of the market demonstrates that the work, services, or materials sought by Fulton County are so unique that only one vendor can satisfy the County's requirements.
- I. When acquiring utility services.
- J. Acquiring legal counsel.

III. AUTHORITY

Except as otherwise provided in this procedure, award of contracts without competition (sole source) may be approved only by the Board of Commissioners of Fulton County.

IV. PROCEDURES

The Department of Purchasing & Contract Compliance and the User Department must follow the following steps prior to submitting a request for a sole source to the Board of Commissioners for approval.

- 1) The User Department requesting the sole source must submit a memo to the Purchasing Department detailing the justification for sole source designation, a completed Sole Source Justification Form and a letter from the vendor indicating their justification of the sole source designation.
- 2) The Department of Purchasing & Contract Compliance must complete the following steps:
 - a. Conduct Market Research – In order to determine whether the request meets the requirements for sole source designation the purchasing representative must review the Sole Source Justification Form and conduct a market research. Research resources shall include, Thomas Register, industry organizations, Internet searches and advertisement of intent to award a sole source.
 - b. Post Public Advertisement – All intended sole source acquisitions shall be advertised on the Fulton County Bid Board for a minimum of five (5) business days.

- c. Justification Form – If the purchasing department representative determines the needed good or service should be designated as a sole source acquisition, the purchasing representative shall complete the Sole Source Justification Form.
- d. Public Notice – The purpose of the public notice is to provide any potential qualified vendors the opportunity to respond. The advertisement shall include the following information; a brief description of the supplies and/or services, the identity of the sole source supplier, a copy of the completed Sole Source Justification Form and instructions to the vendors how to submit any offers to perform the sole source determination. Any offers to perform a sole source designation must be presented in writing prior to the closing date of the public notice. Any potential offerers must submit sufficient documentation which will allow the County to meaningfully review the offer. The public notice shall serve as the County’s notice of intent to award.
- e. Review of Offer to Perform – If a vendor submits an offer to perform a sole source determination, the purchasing representative will review that information with the User Department to determine whether the offer meets the requirements of the County. The purchasing department representative and the user department representative shall conduct a review to determine whether it is in the County’s best interest to competitively procure the good or service. If the determination is not disputed then the item is prepared to be presented to the County Manager for approval.
- f. County Manager Review – The County Manager shall review the sole source package and approve the item to be presented to the BOC. The Justification Form shall be included as certification by the County Manager and Purchasing Agent as required by FCC § 2-319.
- g. BOC Approval – Upon BOC approval a contract or purchase order shall be prepared based on the negotiated terms.
- h. The purchasing file shall be maintained in the Purchasing Department File Room as required.

Department Sponsor: County Manager’s Office, Department of Purchasing & Contract Compliance

Policy Review Date: July 2009

Effective Date:

References: 1995 Ga. Laws Page 978

Agencies Affected: All County Departments