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Director

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STATE OF OKLAHOMA
DEPARTMENT OF CENTRAL SERVICES

PROCUREMENT INFORMATION MEMORANDUM 99-03

TO: All Certified Procurement Officers

REVISION DATE: September 10, 2009

SUBJECT: Sole Source/Sole Brand Acquisition Approvals and Reports

REFERENCES:

74 O.S. Section 85.45j

SOLE SOURCE/SOLE BRAND ACQUISITION APPROVALS

Sole source and sole brand (a form of sole source) are defined in the Central Purchasing Act (74 O.S. Sections 85.2.29 and 85.2.30). Specific source/sole brand approval or a sole source/sole brand certification is not required for acquisitions of \$5,000.00 or less. Attachment 1 summarizes approval authority.

Sole source/sole brand requisitions which exceed \$5,000.00 but are within the state agency's delegated monetary procurement authority.

The state agency Chief Administrative Officer is the approving authority for sole source/sole brand acquisitions which exceed \$5,000.00 but are within the state agency's delegated monetary procurement authority. The approval of the State Purchasing Director is not required.

The state agency Chief Administrative Officer's signature on the sole source/sole brand certification constitutes approval for a sole source/sole brand acquisition and also fulfills the requirement for CPO documentation required by 74 O.S., section 85.45j.

To comply with the requirements of 74 O.S., section 85.45j, the sole source/sole brand certification shall be filed in the agency acquisition file and the file shall be maintained for three (3) fiscal years following the end of the fiscal year during which the award was made. Any pertinent documents supporting the sole source/sole brand certification shall also be included in the agency acquisition file and maintained for three (3) fiscal years as described above.

Sole source/sole brand requisitions which exceed \$5,000.00 and also exceed the state agency's delegated monetary procurement authority.

"SERVICE, QUALITY, INTEGRITY"

1. The state agency shall prepare a sole source/sole brand certification pursuant to 74 O.S., Section 85.45j.A.2., and the state agency Chief Administrative Officer shall sign the certification.
2. The state agency shall submit the requisition with all attachments, including the certification, to the State Purchasing Director.
3. The State Purchasing Director shall approve or deny the requisition. The State Purchasing Director shall make the acquisition for an approved requisition, and a denied requisition shall be returned to the state agency.

SOLE SOURCE/SOLE BRAND CERTIFICATION

Attachment 2 lists the eight circumstances which may justify a sole source/sole brand acquisition and the requirements which the supporting certification must meet. A sole source/sole brand certification form (DCS/Purchasing Form 002) is available on the Department of Central Services website at www.dcs.ok.gov.

SOLE SOURCE/SOLE BRAND REPORTING

The Central Purchasing Act (74 O.S., Sections 85.45j.A.8. and 85.45j.A.9.) requires that state agency Chief Administrative Officers report monthly on sole source/sole brand acquisitions exceeding \$5,000.00. The report must also include information on sole source/sole brand requests modified or disapproved by the State Purchasing Director. State agency reports are to be provided by the state agency to the State Purchasing Director. Please see the above statutory references for additional details.

However, the PeopleSoft system will capture this information for each agency utilizing the PeopleSoft system to process the acquisitions. The following reporting procedures should be followed:

Agencies processing directly: Regardless of whether an award is subject to or exempt from the Central Purchasing Act, no reports from state agencies are required if the award was made using the PeopleSoft system. The acquisition must be identified by populating the sole source/sole brand field in PeopleSoft. Office of State Finance (OSF) will prepare a consolidated sole source/sole brand report which includes sole source/sole brand information from all state agency PeopleSoft transactions and provide copies to the State Purchasing Director and legislature.

Agencies processing thru an interface: Regardless of whether an award is subject to or exempt from the Central Purchasing Act, if the award was made by an agency processing acquisitions via an interface with PeopleSoft, a hard copy report will still be required to be forwarded to DCS. State agencies may use OSF Form 1933 for reporting (Form 1933 is available in Chapter 200 of the Office of State Finance Procedures Manual or at www.state.ok.us/osfdocs/manual/200-appn.pdf). OSF will include data from OSF Forms 1933 in the consolidated sole source report furnished to the State Purchasing Director and legislature. In lieu of an OSF Form 1933, state agencies may use a computer prepared report provided it contains all data elements contained in the OSF Form 1933.

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Scott Schlotthauer
State Purchasing Director

Attachments:

1. Sole Source/Sole Brand Approval Authority
2. Sole Source/Sole Brand Certification

**Sole Source / Sole Brand
Approval Authority
Summary
Effective August 26, 2009**

Acquisition dollar amount	Within agency dollar authorized threshold	Exceeds agency dollar authorized threshold
Under \$5,000	No affidavit or approval required	No affidavit or approval required
\$5,000 to \$10,000	Agency Chief Administrative Officer	State Purchasing Director
\$10,000 to \$25,000	Agency Chief Administrative Officer	State Purchasing Director
\$25,000 to \$50,000	Agency Chief Administrative Officer	State Purchasing Director
Over \$50,000	Not applicable. Agency statutorily limited to \$50,000	State Purchasing Director

Sole Source/Sole Brand Certification Guidelines

Code	Reason for Sole Source/Sole Brand	Certification must clearly:
1	Only a specified make, model, or brand will meet agency needs, even though the makes, models, or brands are available from multiple vendors. A brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of vendors solicited. This restricts competition in that only vendors able to supply a specified make, model, or brand are permitted to compete.	State why the specified makes, models, or unique services are absolutely essential to the State's requirements.
2	Market research clearly shows that there is only one responsible vendor and it can be demonstrated that no other supplies or services will satisfy agency requirements.	State why the specified makes, models, or unique services are absolutely essential to the State's requirements, and what market research was accomplished to clearly establish that only one vendor can supply the supplies or services, copyright material.
3	Requirement is for additional units or replacement parts of specified makes and models of technical equipment and only one vendor is available.	State why the specified makes and models are absolutely essential to the State's requirements, and what market research was accomplished to clearly establish that only one vendor can supply the supplies or services.
4	Agency needs to purchase supplies or services from the original vendor in the case of a follow-on contract because award to any other vendor would result in substantial duplication of costs to the State that would not be recovered through competition, or in unacceptable delays in fulfilling agency requirements.	Provide data, estimated cost and how those costs were derived, extent of delay and impact of delay, and other rationale as to the extent and nature of the harm to the Government (i.e. license fee, software maintenance support, custom software). Questions: - Are the same vendor personnel available from last project to work on this project?
5	Purchase of a brand name commercial item that will be used for authorized resale.	No additional information needed.
6	Agency has an unusual and compelling urgency for supplies or services and the State would be seriously injured unless the agency is permitted to limit the number of vendors from which it solicits bid/proposals. (i.e. - existing software)	Provide data, estimated cost and how those costs were derived, and other rationale as to the extent and nature of the harm to the Government. (Justification may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.)
7	Agency needs to acquire services of an expert, such as expert services to support a current or anticipated litigation or dispute, involving the State in any trial, hearing, or proceeding whether or not the expert is expected to testify. Examples of such services include, but are not limited to, assisting the State in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a vendor or the State, which is in litigation or dispute, or is anticipated to result in dispute or litigation.	Indicate why the source for expert services is absolutely essential to the State's requirements, thereby precluding consideration of other sources.
8	A statute expressly authorizes or requires that the acquisition be made from a specified vendor, i.e., Oklahoma State Industries, State Use Committee.	Attach copy of the referenced statute.