



RUTGERS POLICY

Section: 20.1.16

Section Title: Administrative Policies, Procedures, and Services

Policy Name: Policy on Notification and Approval of Certain Contracts Awarded without Competitive Bids or Proposals

Formerly Book: N/A

Approval Authority: Board of Governors

Responsible Executive: Senior Vice President for Finance and Treasurer

Responsible Offices: Purchasing Department and Facilities and Capital Planning

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Revisions: 9/3/2009 (Updated administrative titles and Board committee names);
10/10/2013 (Updated title)

Errors or changes? Contact: Executive Director, University Procurement Services, 848-932-4375

1. **Policy Statement**

The Purchasing Policy (Section 20.1.11) states that all university purchasing will be conducted in a manner that provides, to the maximum extent possible, open and free competition and adherence to competitive procurement practices but the Purchasing Policy also allows for the waiver of competitive bidding when there is appropriate justification to award no-bid/sole source or single source contracts. Certain no-bid/sole source or single source contracts should be reviewed by the Board of Governors of Rutgers, The State University of New Jersey, or an appropriate Committee thereof.

2. **Reason for Policy**

- To assure that certain no-bid/sole source or single source contracts as outlined in this policy are reviewed by the Board of Governors.
- To provide employees, suppliers, and vendors with guidelines on purchases of this nature.

3. **Who Should Read This Policy**

Members of the university community who use university funds for the purchase or lease of supplies, equipment or services.

4. **Related Documents**

- a. Policy 20.1.11, Purchasing Policy
- b. Policy 60.4.2, Code of Ethics for Administrative and Professional Staff Members

5. **Contacts**
- a. Director of Purchasing, Rutgers-New Brunswick
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 - b. Director of Purchasing, Rutgers-Newark
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 - c. Vice President for Facilities and Capital Planning
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6. **The Policy**

20.1.16 POLICY ON NOTIFICATION AND APPROVAL OF CERTAIN CONTRACTS AWARDED WITHOUT COMPETITIVE BIDS OR PROPOSALS

Policy Statement

The Purchasing Policy (Section 20.1.11) states that all university purchasing will be conducted in a manner that provides, to the maximum extent possible, open and free competition and adherence to competitive procurement practices. Policy 20.1.11 also allows for the waiver of competitive bidding when there is appropriate justification to award no-bid/sole source or single source contracts.

In some instances, certain no-bid/sole source or single source contracts must be reviewed by the Board of Governors (BOG) of Rutgers or an appropriate Committee thereof. This policy (Section 20.1.16) outlines when the BOG should receive prior notification of no-bid/sole source or single source contracts so as to review and approve the same.

Section 1. Definition of No-bid/Sole Source or Single Source Contracts

No-bid/sole source or single source contracts are any contractual relationship which legally binds the university to undertake any action or make any payment to any vendor for services, goods, or equipment provided to the university where the other party was selected without a competitive process. Use of a request for proposals or an invitation to bid or any other process in which at least two alternative parties are asked to set forth terms under which such party would perform under the proposed contract is deemed to qualify as a competitive process.

No-bid/sole source or single source contracts arise when a unit of the university discusses the terms of a proposed contract with only one party. Notwithstanding the forgoing three sentences to the contrary, any educational or research subcontract (regardless of the amount) issued by the university to any party, including other research institutions or any appropriate public or private institution under any externally funded/sponsored research program award or contract shall not be deemed a no-bid/sole source or single source contract subject to this policy.

Section 2. Competitive Process to Select Vendors

As more particularly set forth in part IV of the Purchasing Policy 20.1.11 the university should utilize a competitive process to select vendors for any contract the university may enter into. If a contracting unit of the university believes that the university would be better served by a sole source or single source contract, the contracting unit shall, before entering into the contract, follow the existing procedure set forth in the Purchasing Policy Section IV.B, for waiver of the competitive bidding process. Such procedure requires, *inter alia*, preparation of a "request for competitive bid waiver" form that explains:

1. why the vendor was selected without a competitive process; and
2. why the university's interests are better served.

Such form is approved by the Purchasing Department and kept with the contract. In addition, and only in the event that the proposed contract will, at the time it is entered into, bind the university to pay \$1 million or more for any one-time service or equipment or goods, the contracting unit shall submit the proposed contract and the completed "request for competitive bid waiver" form to the Office of the Secretary of the University (Office of the Secretary) for inclusion in the next available Board of Governors' agenda and the agenda of the relevant Committee of the Board of Governors.

Section 3. Role of the Office of the Secretary

For any such sole source or single source contract for \$1 million or more that the Office of the Secretary receives pursuant to Section 2 above, the Office of the Secretary shall determine which Committee of the Board of Governors should evaluate the proposed sole source or single source contract and ensure that the matter is entered onto such Committee's agenda for discussion, and, thereafter, for action by the Board of Governors. The Office of the Secretary may elect to place the matter on two separate Committee agendas. By way of example, contracts involving equipment for research or use by the academic departments of the university should be discussed by the Committee on Finance and Facilities, contracts involving athletic matters should be discussed by the Committee on Intercollegiate Athletics, contracts involving capital projects or construction should be discussed by the Committee on Finance and Facilities, etc.

Section 4. Approval of the Contract by the Board of Governors

If the relevant Committee of the Board of Governors recommends that the university should enter into the proposed sole source or single source contract, and the Board of Governors, after discussion at a meeting, believes that the university's interests are best served by using the proposed vendor, the Board of Governors shall permit the contracting unit to enter into such contract and such permission shall be memorialized by way of resolution adopted by the Board of Governors. The contracting unit of the university may enter into the proposed sole source or single source contract once the Board of Governors resolution is adopted. The relevant Committee or the Board of Governors may condition approval on inclusion of specific terms and conditions that are deemed to be in the best interest of the university, and, in such cases, the proposed sole source or single source contract should be amended prior to signature to include the specific terms or conditions required by the Board of Governors or Committee thereof.

Section 5. Approval of Certain Proposed Sole/Single Source Contracts Less than \$1 Million

If, for proposed sole source or single source contracts that will not exceed \$1 million, the nature of the proposed contract is of great interest to the university community or the larger community in which the university operates, or the contracting unit believes the nature of the contract should be presented to the Board of Governors notwithstanding the contract has a value less than \$1 million, a contracting unit may elect to obtain Board of Governors' approval via the process described in Sections 2, 3 and 4 above.

Section 6. Exceptions

Sole source or single source contracts that are put in place to cover unknown or unexpected services, but which, at the time they are entered into, will not bind the university to pay \$1 million or more are not required to receive Board of Governors' approval pursuant to Sections 2, 3 and 4. An example of such a contract is one for specialized legal services. If a single firm is determined to best meet the university's needs and there is no expectation that the firm will be paid more than \$1 million but, over time, the firm is paid \$1 million or more due to unexpected legal work that arose after the contract was signed, such contract shall not require Board of Governors' approval at the time the vendor is paid \$1 million or more nor at the time the contract is initially executed.

Section 7. Extraordinary or Emergency Circumstances Regarding Certain Sole Source or Single Source Contracts

If a proposed sole source or single source contract that is not otherwise required to be approved by the Board of Governors prior to execution pursuant to any other policy of the university, and such other policies do not provide for execution prior to Board of Governors' approval under extraordinary or emergency circumstances, then, the proposed sole source or single source contract can, in extraordinary or emergency circumstances, be executed prior to the Board of Governors' approval if the following steps have been taken:

1. Senior Vice President for Finance and Treasurer (SVPF/T) has received the contracting units' proposed contract and "request for competitive bid waiver" form, which justifies use of the sole source or single source contract;
2. the SVPF/T is in agreement with the contracting unit's recommendation for such an award;
3. the SVPF/T has consulted with the chair of the Board of Governors, the chair of the Committee on Finance and Facilities, and the chair of any other relevant Committee as identified by the Office of the Secretary pursuant to Section 3 above; and
4. those chairpersons agree that entering into the contract is in the best interest of the university.

At the next regularly scheduled meeting of the Board of Governors, the full Board of Governors will be asked to ratify the contract award.