

Management Instruction

Noncompetitive Purchases

This management instruction (MI) provides guidance to individuals involved in the purchase process, including the contracting officer and the requesting organization [purchase/supply chain management (SCM) team] on whether to purchase goods or services competitively or noncompetitively. The MI also establishes procedures for determining the purchase method; developing and evaluating a Noncompetitive Purchase Request; and securing recommendations, endorsements, and approvals of such requests.

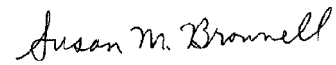
Scope

The following procedures apply to all noncompetitive purchases of supplies, services, and equipment; design, construction, and related services; and mail transportation and related services. The awarding of task orders from among multiple ordering agreements or indefinite delivery/indefinite quantity (ID/IQ) contracts are not subject to this MI when the ordering agreements or ID/IQ contracts were awarded competitively. For these actions, the requesting organization should consult with their contracting officer for guidance. Information about noncompetitive purchases of real estate and related services is provided in Handbook RE-1, *Postal Service Facilities Guide to Real Property Acquisitions and Related Services*.

Determining the Purchase Method

As early as possible, the requesting organization should contact the relevant purchasing organization to discuss upcoming requirements and how they should be met. Topics to be addressed include market conditions, potential sourcing strategies, and purchase methods. In most cases, the competitive purchase method is best suited to meet the business objectives of the Postal Service™. Competition brings market forces to bear and allows comparisons of the relative value of competing proposals and prices. However, there are business situations in which the noncompetitive purchase method better suits the Postal Service's business objectives. Determining the appropriate purchase method is part of purchase planning and is discussed in 2-10, Determine Extent of Competition, and 2-20, Develop and Finalize Sourcing Strategy, of the *Postal Service's Supplying Principles and Practices* (SPs and Ps). Whether the noncompetitive purchase method is the most effective business practice will depend on the particular purchase. As discussed in the Supplying Practices, four general business scenarios represent instances in which the noncompetitive

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CONTENTS

Scope	1
Determining the Purchase Method	1
Preliminary Purchase Method Determination	2
Noncompetitive Purchase Request	2
Contracting Officer Evaluation	3
Approval Authorities	4
Documentation	4
Emergencies	4
Attachment	4
Noncompetitive Purchase Request	4
ATTACHMENT	
Noncompetitive Purchase Request (Required)	5

method may best suit Postal Service business objectives and therefore prove the most effective. The four scenarios are described below.

1. **Sole Source.** Only one supplier exists who is capable of satisfying a requirement.
2. **Industry Structure or Practice.** The industry producing or supplying the required goods or services is structured in a manner that renders competition ineffective; for example, when purchasing goods or services that are regulated, such as some utilities, or when purchasing from nonprofit or educational institutions that do not compete in the marketplace.
3. **Compelling Business Interests.** There is a business interest that is so compelling that purchasing noncompetitively outweighs the benefits of competition. These situations can include, but are not limited to, the urgency of the requirement, a supplier innovation that furthers Postal Service business objectives, or undue cost or delay would result from a contract award to a new supplier.
4. **Superior Performance.** A supplier's superior performance and its contributions to the Postal Service's business and competitive objectives merit award of a particular purchase. For example, extending the term or expanding the scope of a contract for substantially the same or similar goods or services when a supplier has performed at such a high level that the extension or expansion is well-deserved, or when a supplier's superior performance has made such performance beneficial to Postal Service operations.

Preliminary Purchase Method Determination

The purchase/SCM team must make a preliminary purchase method determination as to which sourcing process is best suited to meet the Postal Service's business needs. This should occur in the requirements definition phase, or if applicable, prior to the completion of the Justification of Expenditure or the Decision Analysis Report. The relevant purchasing organization will assist in conducting market research and provide any other needed expertise. If a determination is made to obtain goods or services noncompetitively, the requesting organization must develop a Noncompetitive Purchase Request, providing accurate and complete data in support of their request.

Noncompetitive Purchase Request

The requesting organization must submit a Noncompetitive Purchase Request to the contracting officer. The request must include the business scenario and rationale for the noncompetitive purchase. While the extent and detail of the request will depend on the particular purchase, its complexity, and its potential dollar value, the following must be addressed in all cases (see the attachment to this MI for more detail):

1. Purpose — Purpose of the purchase.

2. Background – Past purchases, summary of contract for modifications, etc.
3. Scenarios/basis (Include only those that apply):
 - a. Sole source.
 - b. Industry structure or practice.
 - c. Compelling business interests.
 - d. Superior performance.
4. Market research – Other firms or products/services evaluated.
5. Company identity and history – Type of organization, prior customers, etc.
6. Estimated cost – Estimated cost.
7. Future Purchases – Plans for future competition.
8. Conflicts of interest or appearance of the loss of impartiality in the performance of official duties certification and nondisclosure statement:
 - A certification that the requestor(s) does not have a financial interest in any entity or party interested in the purchase that would give rise to a criminal financial conflict of interest (see 18 USC § 208) or a personal or business relationship that could lead a reasonable person with the relevant facts to question the requestor's ability to remain impartial in the selection process (see 5 CFR 2635.502 of the Standards of Ethical Conduct for Employees of the Executive Branch) and
 - A statement that the requestor(s) will not disclose any sensitive information during the purchasing process.
9. Required signatures of the requesting organization – The Noncompetitive Purchase Request must be signed by:
 - a. Its originator/preparer.
 - b. All responsible manager(s) in the requesting office's management chain.
 - c. Vice president of the requesting office if the estimated value of the noncompetitive purchase is expected to exceed \$250,000.

Contracting Officer Evaluation

The contracting officer must review the Noncompetitive Purchasing Request and perform a written evaluation of the proposed supplier's past performance and supplier capability and any other matter he or she believes will lead to a more informed and effective purchase decision. The contracting officer must document his or her approval or disapproval if within his or her delegated authority, or forward his or her recommendation through the management chain to the appropriate approval authority. The contracting officer's approval of the Noncompetitive Purchase Request does not constitute approval of contract award. The contracting officer is required to negotiate reasonable pricing and terms and conditions prior to contract award, including review of relevant competitive pricing, when applicable.

Approval Authorities

The managers of the Facilities, Mail Equipment, Services, Supplies, and Transportation Portfolios within Supply Management may approve noncompetitive purchases valued up to \$10 million, except for noncompetitive purchases of professional, technical, and consultant services valued at \$1 million or more. Requests for noncompetitive professional, technical and consultant services contracts valued at \$1 million or more, and all other noncompetitive purchases valued at \$10 million or more must be reviewed and approved by the Vice President, Supply Management. Portfolio managers may delegate up to \$250,000 of this approval authority to subordinate contracting officers.

Documentation

The CO must ensure that all necessary reviews and approvals, price determinations, and supplier evaluations are documented and included in the contract file.

Emergencies

When emergency conditions directly affect the safety or well-being of Postal Service personnel or may stop or seriously impede Postal Service operations, a contracting officer may approve an oral request for a noncompetitive purchase within his or her delegated noncompetitive approval authority. The requesting organization must follow up by addressing the appropriate elements of the Noncompetitive Purchase Request and sending it to the contracting officer. The contracting officer must include the Noncompetitive Purchase Request in the contract file.

Attachment

Noncompetitive Purchase Request

All requesting organizations must use the attachment to this MI, the Noncompetitive Purchase Request, to obtain approval for proposed noncompetitive purchases. If approval is granted, the contracting officer must include a copy of the request along with evidence of its approval in the contract file.

ATTACHMENT

Noncompetitive Purchase Request (Required)

Instructions. The noncompetitive purchase request should cover each area listed below. It is to be completed by the requesting organization. The relevant purchasing organization should be contacted for assistance as necessary. The depth of coverage depends upon the purchase's dollar value, importance, potential long-term impact, etc. Additional topics may be added if necessary to support the request.

1. Purpose

What is the purpose of the purchase? What Postal Service need will be met? What will be the benefit to the Postal Service? Is the item for test and evaluation or for functional or operational use? If for test and evaluation, what is the plan for purchase of additional quantities if the tests are successful?

2. Background

Describe past purchases of the same or similar products/services. If a contract modification is contemplated, provide a summary of the contract value, modifications, and period of performance.

3. Basis (Include only those applicable to your situation)

- a. *Sole Source*. A single supplier is capable of satisfying a requirement.
- b. *Industry Structure or Practice*. This is when the industry producing or supplying the required goods or services is structured in a manner that renders competition ineffective; for example, when purchasing goods or services that are regulated, such as some utilities, or when purchasing from nonprofit or educational institutions that do not compete in the marketplace.
- c. *Compelling Business Interests*. There is a business interest that is so compelling that purchasing noncompetitively outweighs the benefits of competition. These situations can include, but are not limited to, the urgency of the requirement, a supplier innovation that furthers Postal Service business objectives, or undue cost or delay would result from a contract award to a new supplier.
- d. *Superior Performance*. A supplier's superior performance and its contributions to the Postal Service's business and competitive objectives merit award of a particular purchase. For example, extending the term or expanding the scope of a contract for substantially the same or similar goods or services when a supplier has performed at such a high level that the extension is well deserved, or when a supplier's superior performance has made such performance beneficial to Postal Service operations.

4. Market Research

List other firms or products/services evaluated. State why their approach or product does not satisfy Postal Service's needs. What source/product list has been screened? Estimate number of companies/individuals with similar products/services. Is the recommended source a manufacturer or dealer? Is the product commercially available? How long has it been on the market? How did you learn about the product/service?

5. Company Identity and History

Briefly define the type of organization, prior customers and contracts, and whether it has previously contracted with the Postal Service.

6. Estimated Cost

What's the estimated cost of the items or service? Estimate ancillary costs, such as maintenance, as well as total contract cost. If computer software is to be purchased, estimate cost of maintenance, upgrading, etc. What type of licensing arrangement does the company require? Estimate savings to the Postal Service over useful life of the product or result of the service. If modification of the item is required, estimate the cost of modification. What is the impact upon the Postal Service if the request is not approved?

7. Future Purchases

Describe plans to develop competition for subsequent purchases. Is there a specification adequate for competition? If not, what is being done to develop one? Describe the plans and proposed timetable.

8. Certifications of No Financial Conflict of Interest or Appearance of the Loss of Impartiality in the Performance of Official Duties

I certify that I and those persons whose interests are imputed to me by law, do not have a financial interest in any entity or party interested in this purchase. This includes any party or entity involved in the award of the purchase and any of its competitors.

I understand that the financial interests of the following persons are imputed to me by law:

- a. My spouse.
- b. My minor children.
- c. My general partner in any non-Postal Service business.
- d. An organization or entity in which I serve as officer, director, trustee, general partner or employee and
- e. A person with whom I am negotiating for or have an arrangement concerning prospective employment.

I also certify that, to the best of my knowledge, this purchase is not likely to have a direct and predictable effect on the financial interests of a member of my household, and that I do not have a covered relationship with any party or entity interested in this purchase or with anyone that represents a party or entity interested in this purchase. I understand that I have a covered relationship with:

- a. A person, other than a prospective employer, with whom I have or seek a business, contractual or other financial relationship that involves other than a routine consumer transaction.
- b. A person who is a member of my household or a relative with whom I have a close personal relationship.
- c. A person for whom my spouse, my parent or dependent child is, to my knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.
- d. A person for whom I have, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.
- e. An organization, other than a political party, in which I am an active participant.

I also certify that I am not aware of any other circumstances that I believe would cause a reasonable person with knowledge of the relevant facts to question my ability to remain impartial in this purchase.

I understand that if I have a financial conflict of interest related to this purchase, or my participation in this purchase that would lead a reasonable person with the relevant knowledge to question my ability to remain impartial, that I am disqualified from participating in this purchase. I also understand that I must immediately stop all work on this purchase and consult with ethics counsel to determine if I may continue to participate in this purchase.

Nondisclosure

I understand that I may not disclose any nonpublic information to any party interested in this purchase nor allow the use of nonpublic information by any party interested in this purchase. Nonpublic information is information that I have gained by reason of my Postal Service employment and that I know or reasonably should know has not been made available to the general public.

9. Required Signatures of the Requesting Organization

Originator/Preparer Date

Title

All responsible manager(s) in the requesting organization's management chain

Name Date

Name Date

Title

Title

Vice President* Date

*The vice president of the requiring organization must sign the request if the estimated cost of the purchase exceeds \$250,000.