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| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
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## I. PURPOSE

To establish procedures for justified sole source or noncompetitive procurements that are in accordance with Pace's Ordinance 15-21, Regulations Governing Public Bidding as amended, the RTA Act, Section 4.06 Public Bidding (70 ILCS 3615/4.06), and Federal Transit Administration (FTA) Circular 4220.1F (as amended).

## II. DEFINITIONS

For purposes of this procedure, the following definitions apply:

- A. Requesting Department - the department, organizational unit or personnel who identify the need for materials, supplies or services and initiates the procurement process by completing a Purchase Requisition.
- B. Purchase Requisition - procurement information that is entered in the Oracle system communicating the need for the acquisition of goods or services.
- C. Sole Source - characterized as the one and only source based on a vendor's unique capability or availability.
- D. Single Bid or Proposal - when Pace receives a single bid or proposal in response to a competitive solicitation over the Micro Purchase limit (those procurements that exceed \$3,000).
- E. Noncompetitive Procurement - when other than full and open competition exists and there is some level of restriction on competition.
- F. Brand Name References - referencing an item by brand name when it is impractical or uneconomical to make a clear and accurate description of the technical requirements.
- G. Salient Characteristics - those qualities of an item that are essential to ensure that the intended use of the item can be satisfactorily realized; the term is mainly used in connection with a brand-name-or-equal description.
- H. OEM – the Original Equipment Manufacturer who made the equipment.
- I. Brand Name Restriction – limiting competition by only allowing bids or proposals for specific brand name(s) or OEM item(s).
- J. FAR – the Federal Acquisition Regulations (FAR) are guidelines in which federal agencies have to adhere to in their procurement actions. Pace does not have to

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|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

adhere to the FAR, except as noted in the FTA Circular; see Section IV for references to the FAR.

- K. Cardinal Change - a cardinal change has been issued to a contract if that change causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such practices are sometimes informally referred to as “tag-ons” and are strictly prohibited. A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change.
- L. Emergency Requisition - requisitions for the immediate delivery of materials and supplies which are required to ensure the continuation of safe and economical transportation services, based on public exigency, and/or ensure the immediate safety of staff, passengers, or the public.
- M. Independent Cost Estimate (ICE) - is a neutral analysis, assessment, and quantification of all costs and risks associated with a procurement, using a method independent from the prospective offerors in advance of the offer, which shall be based on programmatic and technical specifications provided by the Requesting Department with primary responsibility for the program's development or operation.

### III. SCOPE

This procedure applies to purchases of all federally funded and grant funded materials, supplies and/or services that exceed \$3,000. See PC-16-B for procedures for handling sole source or noncompetitive purchases of operating or capital equipment, supplies, and/or services that do not utilize federal or grant funds, which exceed \$3,000.

For purposes of this policy, federal or grant funded means any contract for which the present and future funding source will include federal funds, State of Illinois grant funds or RTA grant funds whether for operating or capital purposes.

### IV. POLICY

Normally, Pace must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients and Pace’s Ordinance SBD 15-21 as amended, however, acknowledges that under certain circumstances, Pace may conduct procurements without providing for full and open competition.

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

A. Allowable Sole Source Procurements or Noncompetitive Procurements

1. Sole Source Vendor

When Pace requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements based on this vendor's unique capability or availability, Pace may make a sole source award.

The items or services are available from one source if one of the conditions described below is present:

- i. Unique or Innovative Concept - The vendor demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Pace only from one source and has not in the past been available to Pace from another source.
- ii. Patents or Restricted Data Rights - Patent or data rights restrictions preclude competition.
- iii. Substantial Duplication Costs - In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- iv. Unacceptable Delay - In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Pace's needs.

2. Single Bid or Proposal

Upon receiving a single bid or proposal in response to a competitive solicitation, Pace should determine if competition was adequate. After Pace determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Pace may determine the competition adequate and the procurement will qualify as

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|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

a valid competitive bid. A cost analysis must be performed in lieu of or in addition to a price analysis when this situation occurs. If competition is deemed to be inadequate Pace will have to revise the specifications or other requirements and re-bid/re-solicit for these items or services. See Section VI below.

### 3. Unusual and Compelling Urgency/Emergency Procurements

FTA Circular 4220.1F (as amended) and Pace’s Ordinance SBD 15-21, Regulations Governing Public Bidding as amended permits Pace to limit the number of sources from which it solicits bids or proposals when Pace has such an unusual and urgent need for the items or services that Pace would be seriously injured unless it were permitted to limit the solicitation. Pace may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the items or services.

### 4. Specific Noncompetitive Procurements Authorized by FTA

The Common Grant Rules provides FTA authority to permit Pace to use noncompetitive proposals. Under this authority, FTA has made the following determinations:

- i. Consortium, Joint Venture, Team, Partnership - With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects Pace to use competition, as feasible, to select other participants in the project.
- ii. FAR Standards –To ensure that Pace has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Common Grant Rules, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances:

- 1) Statutory Authorization or Requirement - To comply with

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|---|---|
| <p><b>Department<br/>PURCHASING</b></p> | <p><b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b></p> |
|---|---|

Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

- 2) National Emergency - To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
- 3) Research - To establish or maintain an educational or other non-profit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
- 4) Protests, Disputes, Claims, Litigation - To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
- 5) International Arrangements - When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing Pace for the cost of the acquisition of the supplies or services for that government.
- 6) National Security - When the disclosure of Pace’s needs would compromise the national security.
- 7) Public Interest - When Pace determines that full and open competition in connection with a particular acquisition is not in the public interest.

Only when one of the above circumstances applies, shall sole source or noncompetitive procurement methods be used.

**B. Associated Capital Maintenance Item Exception Repealed**

SAFETEA-LU repealed the special procurement preference previously authorized for associated capital maintenance items or OEM parts. Thus, any sole source or restricted procurement of associated capital maintenance items or OEM parts must qualify for an exception under the same standards that would apply to other sole source or restrictive/noncompetitive acquisitions.

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

### C. Prohibitions

#### 1. Less than full and open competition is not justified based on:

##### i. Failure to Plan

Pace's lack of advance planning does not justify a noncompetitive procurement.

##### ii. Limited Availability of Federal Assistance

Concerns about the amount of Federal assistance or future grant funding available to support the procurement do not justify a noncompetitive procurement (for example, expiration of Federal assistance or UWP grants previously available for award).

#### 2. Impermissible Actions

Per FTA 4220.1F (as amended), Pace may not use Federal assistance to finance:

##### i. Improper Contract Expansion

A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond Pace's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity. The Common Grant Rules require grantees to have procurement procedures that preclude from acquiring property or services it does not need.

##### ii. Cardinal Changes

Cardinal changes as defined in Section II, Definitions above are impermissible.

For additional guidance, please reference the FTA's *Best Practices Procurement Manual* or the FTA's website.

## V. OTHER SOLE SOURCE OR NONCOMPETITIVE AWARDS

The following additional procurement actions constitute sole source awards:

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

A. Time Extensions

Contract time extensions or change orders will be considered in light of whether they are permissible changes or impermissible cardinal changes.

Once Pace awards a contract, a permissible extension of the contract term length will require a sole source justification along with an ICE; additionally, this will require a cost analysis in lieu of or in addition to a price analysis as with all other sole source/noncompetitive actions.

B. Failure to Evaluate Options Before Awarding the Underlying Contract

If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award. This will require a sole source justification along with an ICE and a cost in lieu of or in addition to a price analysis as with all other sole source or noncompetitive actions.

C. Negotiating a Lower or Higher Option Price

Exercising an option after Pace has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example. If the price cannot be reasonably determined from the terms of the original contract or that price cannot be shown was a result of Federal actions that can be reliably measured, then this will require a sole source justification along with an ICE and a cost analysis in lieu of or in addition to a price analysis as with all other sole source/noncompetitive actions.

D. Brand Name References and Brand Name Restrictions

The FTA considers specifying only a "brand name" or only an "OEM" product, instead of allowing "an equal" product to be offered, to be restrictive and a situation that limits competition. Therefore, the FTA requires that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a product. The

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

brand-name-or-equal description should set forth those salient physical, functional, or other characteristics of the referenced product that an equal product must have in order to meet Pace’s needs. The specific features of the named brand which must be met by bidders or proposers shall be clearly stated.

For federally funded procurements, brand name restrictions are strictly prohibited. Where a brand name or equal product is identified, the specifications should list the salient functional, physical, or other characteristics essential to Pace. In other words, we must include a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. This procedure also applies to General Services Administration (GSA) Cooperative Purchasing Agreements. For additional requirements pertaining to Cooperative Purchasing Agreements or Joint Procurement Contracts when utilizing federal funds, see *PC-02-C, Formal Procurements*.

**VI. SOLE SOURCE AND NONCOMPETITIVE PROCUREMENT PROCEDURES**

When less than full and open competition is available to Pace, Pace shall:

- A. Conduct a cost analysis in lieu of or in addition to a price analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, as required by FTA Circular 4220.1F (as amended). Pace, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. This cost and/or price analysis shall be included in the procurement file
  
- B. If Pace decides to solicit an offer from only one source, the Requesting Department must justify its decision adequately in light of the standards of this Procedure. Whenever the above circumstances apply, a complete and thorough Sole Source Justification Form shall be completed by the Requisitioning Department and submitted to the Purchasing Department with the Purchase Requisition through the Oracle iProcurement system. This sole source justification must have all applicable approvals and will be fully evaluated by the Purchasing Department. It is the sole right and responsibility of the Purchasing Department to reject or approve sole source justifications based on its review of FTA Circular 4220.1F (as amended) and Pace Ordinance SBD 15-21, Regulations Governing Public Bidding. The sole source justification must be included in the procurement file.
  
- C. If Pace receives only one responsive and responsible bid or proposal during the procurement process, the Purchasing Department will conduct a Single Source/Single Bid Analysis (and complete and include in the procurement file a



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|---|---|
| <p><b>Department<br/>PURCHASING</b></p> | <p><b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b></p> |
|---|---|

*Single Source/Single Bid Analysis* form) and determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

1. Adequate Competition - If Pace determines that competition was adequate, we will proceed with award. Competition will be deemed to be adequate when the reasons for few responses were caused by conditions beyond Pace’s control. Many unrelated factors beyond Pace’s control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, Pace’s competition requirements will be fulfilled, and the procurement will qualify as a valid competitive bid.
  2. Inadequate Competition – Pace will deem competition to be inadequate when it is caused by conditions within Pace’s control. For example, if the specifications or other requirements used by Pace were unduly restrictive, competition will be deemed inadequate. In this situation, Pace would have to revise these specifications or other requirements and re-bid/re-solicit for these items or services.
- D. Special Requirements for Emergency Requisitions - Standard competitive bidding and normal internal approval processes are not required for the processing of emergency requisitions. Therefore, a fully justified emergency procurement that is authorized by the Executive Director will not require the “Red” or “Green” Folder or Board approval processes.

If Requesting Departments have a justified emergency as defined by Section IV, Subsection A, Item 3 above, Requesting Departments must obtain the following signed approvals:

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

| <u>Headquarters</u>   |   |
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| Purchase Amount       | Approval Required   |
| In excess of \$40,000 | Executive Director (prior to processing by the Purchasing Department) |
| \$40,000 and under    | Appropriate Deputy Executive Director, Officer, or Department Manager |

| <u>Divisions</u>      |  |
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| Purchase Amount       | Approval Required  |
| In excess of \$40,000 | Deputy Executive Director, Revenue Services <u>and</u> Executive Director (prior to processing by the Purchasing Department) |
| \$1,000 to \$40,000   | Deputy Executive Director, Revenue Services or appropriate Division Manager*   |
| Less than \$1,000     | Division Manager with written notification to the Deputy Executive Director, Operations                                      |

\* Approval required is determined by the item that is being purchased.

Emergency requisitions will be given priority by Purchasing and the Requesting Department must notify Purchasing that an Emergency has been declared.

The Requesting Department shall secure the signatures as outlined above on the hard copy of the Purchase Requisition as well as submit a fully approved sole source justification. The sole source justification attached to the Purchase Requisition must indicate that the items/services being procured are being processed as an emergency.

For those procurements exceeding \$40,000, a follow up report must be submitted to Pace’s Board of Directors within 5 working days after contract award.

Whenever any change order to an emergency procurement is issued, Pace will adhere to similar procedures. The Requesting Department shall secure the signatures as outlined above, including that of the Executive Director, on the hard

|                                  |  |
|----------------------------------|--|
| <b>Department<br/>PURCHASING</b> | <b>Subject<br/>SOLE SOURCE AND NONCOMPETITIVE<br/>PROCUREMENTS – Federally and Grant Funded<br/>Procurements</b> |
|----------------------------------|--|

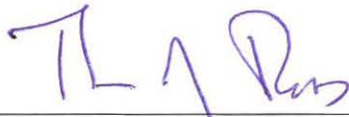
signatures as outlined above, including that of the Executive Director, on the hard copy of the Change Order Requisition regardless of dollar amount of the Change Order.

Caution should be exercised when issuing change orders against these emergency procurements and shall have limits as they would if they were approved by the Pace Board or were reported to the Board through the “green folder” process. Therefore, a change order issued against an emergency procurement cannot exceed 10% of the original contract value or \$40,000 (whichever is greater) without the Executive Director’s prior approval and another report would need to be submitted to the Board.

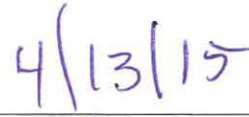
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See *Purchasing Department Roles and Responsibilities – Operating Manual* for applicable forms (i.e., *Single Source/Single Bid Analysis* form, *Sole Source Justification* form, etc.).



Executive Director Signature



Date