

SOLE SOURCE/NONCOMPETITIVE CONTRACT AWARDS

State Purchasing Law is based on the principles of open competition with the intent of obtaining the best pricing on behalf of taxpayers and equal opportunity to participate in State contracts. It is the responsibility of agencies to justify how a noncompetitive award does not negatively challenge these principles. The Chief Purchasing Officer has the authority and responsibility for making determinations as to why, whether or when the requirements for competition may be suspended within the confines of the Purchasing Statutes.

Sometimes an agency may want to make a purchase or grant award without a competitive process. Not every noncompetitive award is made on a sole source basis. State law is very specific as to what constitutes an appropriate exemption from the requirement for an open competitive process for awarding contracts.

“Sole source” means that there is NO OTHER entity capable of or authorized to provide the goods or services or which can administer a grant program. (See statutory citation below.)

The State Purchasing Law also permits the Chief Purchasing Officer to determine that competitive bidding may not be in the best interest of the State with regard to certain purchases, e.g., public utilities, art, expert witnesses. (See statutory citation below and Section 9 of the State Purchasing Rules.)

Single source means that OTHER entities ARE capable of or authorized to provide the goods or services or who can administer a grant program.

PROCEDURE: Agencies should attach to the requisition letters addressed to the Purchasing Agent requesting a noncompetitive award. All requests for either single or sole source noncompetitive contract awards, must provide an explanation in accordance with what is provided by statute and regulation as appropriate. Users should concentrate on explaining either how they determined that the product or service is unique or why, if it is not unique, the state will benefit by exempting the contract from the requirements for competition.

Things to Think About:

- Past satisfaction with a vendor is not always and appropriate argument for a noncompetitive award. Other vendors would like the opportunity to prove themselves and may be able to provide better pricing and better service.
- Sometimes it takes more time and is more difficult to try to justify a sole source than simply subjecting a purchase to a competitive process and demonstrating that only one vendor will respond.
- Although a particular brand and model have been selected, there may be more than one dealer authorized to sell a product.
- Delegated authority with a payee for one service or commodity may not apply to other services or commodities.
- Extending a contract beyond the term provided in the contract constitutes a sole source award which must be authorized.
- Obtaining sole source determination before submitting a grant application will speed the award process.
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NONCOMPETITIVE STATUTE

§ 37-2-21 Noncompetitive procurements. – (a) *Sole source.* A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the chief purchasing officer or purchasing agent, determines, in writing, that there is only one source for the required supply, service, or construction item.

(b) *Emergency.* Notwithstanding any other provision of this chapter, the purchasing agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in the regulations; provided, that the emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, shall be included in the contract file.

(c) *Noncompetitive negotiation after competitive solicitation.* Contracts issued under procedures set forth in §§ 37-2-19, 37-2-20 and 37-2-59 – 37-2-72 may be negotiated with the successful vendor(s) subject to the provisions of § 37-2-28. A written determination of the basis for the negotiated contract and supporting the negotiated price, shall be included in the contract file.

§ 37-2-54 Chief purchasing officer – Purchases. – (a) The chief purchasing officer, except as otherwise provided by law, shall purchase, or delegate and control the purchase of, the combined requirements of all spending agencies of the state including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services, except that competitive bids may not be required:

- (1) For contractual services where no competition exists such as sewage treatment, water, and other public utility services;
- (2) When, in the judgment of the department of administration, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state;
- (3) When instructional materials are available from only one source;
- 4) Where rates are fixed by law or ordinance;
- (5) For library books;
- (6) For commercial items that are purchased for resale;
- (7) For professional, technical, or artistic services;
- (8) For all other commodities, equipment, and services which, in the reasonable discretion of the chief purchasing officer, are available from only one source;
- (9) For interests in real property.
- (10) For works of art for museum and public display;
- (11) For published books, maps, periodicals, newspaper or journal subscriptions, and technical pamphlets;
- (12) For licenses for use of proprietary or patented systems; and
- (13) For services of visiting speakers, professors, performing artists, and expert witnesses.

(b) Nothing in this section shall deprive the chief purchasing officer from negotiating with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof or other governmental entities, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between the general service administration and the vendor affected.