

SOLE SOURCE

Sole source is a non-competitive purchase or procurement process accomplished after soliciting and negotiating with only one source, so-called sole source, thus limiting Full and Open Competition (FOC). Sole Source is also known as: sole source procurement, sole sourcing, sole-sourced contract, direct sourcing, sole supplier, direct source. **No-bid contract** is a popular term for what is officially known as a "sole source contract." A sole source contract implies that there is only one person or company that can provide the contractual services needed and that any attempt to obtain bids would only result in one person or company being available to meet the need. It is awarded usually, but not always, by a government after soliciting and negotiating with only one firm. These contracts can be negotiated much more quickly than a typical competitive contract but they are often fraught with suspicion that the company used illegal or immoral means to exclude competitors (usually cronyism or bribery). Nevertheless, U.S. law permits the government to award sole source contracts under specified circumstances (48 CFR Ch. 1, Part 6) but no-bid contracts are illegal under European Union commissioning law.

Urgency is often the rationale for sole source contracts, and cost uncertainty the rationale for cost-plus contracts. They permit the government to get contractors working as quickly as possible. While competitive contracts have been awarded in very short times, such speedy procurements are not easily done and are thus relatively unusual.

Legal reasons for sole source contracts include:

- only one firm has a product that will meet the projects needs or only one firm can do the work;
- the existence of an unusual and compelling urgency;
- for purposes of industrial mobilization or expert services;
- an international agreement;
- sole source is authorized or required by law, e.g., socio-economic programs;
- national security
- the public interest.

Sole Source Evaluation Factors

Like for any purchase performed through procurement methods with Full and Open Competition (FOC), a sole source evaluation will take place, but in a significantly different manner because no comparison will be performed against other prospective providers.

Indeed, the sole source evaluation is limited to the compliance of acquired goods or services to requirements set forth in the solicitation document. Because there is no competition, not only the requester's margin of negotiation is thin, but the Total Cost of Ownership (TCO) of the project may be more expensive than if there would have been other competitors.

For these reasons, requesters should review carefully and thoroughly the cost section of the proposal, knowing that such an audit could expand their negotiation margin.

Benefits of Sole Sourcing

As soon as you understand what is sole source, obvious become the benefits. As positive impacts of a shortened acquisition process, benefits of sole source are:

- a reduced decision cycle, i.e. time required to award contracts;
- lowered administrative costs, i.e. procurement process reduced to a minimum;
- prices reflecting the best value;
- better promoted small business participation
- improved delivery of products and services.

When to use Sole Source as a contracting method?

Sole Source Prescription

The *Competition in Contracting Act (CICA)* ensures all contractors to have an equal chance in responding to solicitation for goods or services.

Because sole source is only used when other procurement methods, namely micro-purchases, small purchases, and competitive solicitation procedures like sealed bids, or competitive proposals, are not applicable or lead to an unrealistic, sole source is a contracting method that is not promoting Full and Open Competition (FOC).

That is the reason why sole source solicitation constitutes a violation of the CICA unless it is justified under one of seven circumstances (FAR 6.302) described in the next section.

Sole Source Justification

Sole source justification should be thoroughly documented.

What is sole source justification? It's the rationale of the decision to use sole source solicitation as a procurement process.

The burden of proof to justify sole source procurement falls to the requester who should prepare a document called Sole Source Justification and Approval (J&A). (SEE ATTACHMENT)

The Federal Acquisition Regulation (FAR 6.302, Circumstances permitting other than full and open competition) describes the seven exceptions that can be invoked as sole source justification:

- Competition Requirements (FAR Part 6)
- Other Than Full and Open Competition (FAR Subpart 6.3)
- Circumstances permitting other than full and open competition (FAR 6.302):

- Only one responsible source and no other supplies or services will satisfy agency requirements.
- Unusual and compelling urgency.
- Industrial mobilization; engineering, developmental, or research capability; or expert services.
- International agreement.
- Authorized or required by statute.
- National security.
- Public interest.

The most frequently invoked justification for adopting a sole source procurement process is the first exception (FAR 6.302-1), i.e. when there is only one responsible source and no other supplies or services satisfy requirements usually defined in the statement of work (SOW).

Under this exception, sole source purchase must meet one of the following criteria:

- unicity, i.e. the item is only available from one single supplier (one-of-a-kind, parts maintenance, compatibility, standard compliance); or
- immediacy, i.e. delivery date or delays resulting from competitive solicitation are not acceptable; or
- emergency, i.e. delays resulting from other methods of solicitation are not bearable; or
- legitimacy, i.e. specific contexts (geographic, contractual, political, legal, military, security, etc.) may allow such a non-competition of sources; or
- inadequacy, all sources are qualified as inadequate (compatibility, compliance, price, quality, service, support, etc.); or
- exigency, i.e. any other specific reason dictating the choice of a given provider.
- Sole Source Justification is also known as: source justification, sole source justification, sole source justification letter, sole supplier justification,

Inappropriate Sole Source Justification

Sole sourcing is not appropriately justified and justifiable when used as a method of selecting a preferred vendor. Notwithstanding the fact that they could be voided by potential sole source solicitation protests, purchases of this kind, when put under scrutiny, will surely attract auditors' interest in their quest for details suggesting a bit of favoritism, partiality, and other bias.

How to use Sole Source

In order for your Purchasing/Procurement department to validate the purchase of sole-sourced goods or services, you should:

- provide a recent (less than 30 days) quotation (RFQ) from the sole source provider;
- fill out a Sole Source Justification & Approval (J&A) form;
- get the approval and signature on the form of an appropriate authority for the acquisition; and
- request your Procurement/Purchasing service for a Purchase Order (PO) by joining your Sole Source J&A form.

Sole Source Justification and Approval (J&A) Letter

Write a sole source justification letter with sentences providing only this information.

1. Use a formal letterhead and do not handwrite the sole source justification letter.
2. First, describe the products, goods, or services that are to be acquired and the estimated or exact amount of the contract to be awarded.
3. Next, specify the supplier, provider, reseller, distributor, or manufacturer you recommend. Provide complete company name, address, and contact information.
4. Then justify the use of sole source by presenting the exact keys reasons why this particular product or service is unique and unavailable from other sources.
Reasons could be one or several of the reasons vary.
5. Demonstrate how you determined that there was only one source for the product or service, providing a market research for instance.
6. Explicitly request that a sole source be approved for the procurement of the requested items or services.
7. Finally, close the letter formally with "sincerely" or a similar polite expression. Sign your name and title. Be sure to provide correct, complete contact and reference information for future correspondence.
8. Since things sometimes get a little more complicated than usual, remember to consult a lawyer for further information before doing anything.