

Sole Source Procurements

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What is a Sole Source?

- A legitimate need that only a specific supply or service can meet.
- Only one vendor can provide that specific supply or service.



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SC Reg 19-445.2105 (B)

Sole Source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurements.

- 1) Where the compatibility of equipment, accessories, or replacement parts in the paramount consideration;
- 2) Where a sole supplier's item is needed for trial use or testing;
- 3) Where the item is one of a kind;



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Written Determinations

(MMO Form # 102)

Step 1 - Describe the Agency need. The goal is to encourage open competition.

Describe the problem that you are trying to solve, not the product or service that solves the problem that you are trying to solve. That is a solution.

Where we see problems is when the written determination begins with solution or specific supply. We have even seen where the agency put its name in this space...



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Written Determinations

(MMO Form # 102)

Step 2 – Describe the market research the Agency performed to determine the availability of products or services that would meet the Agency's needs.



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Market Research

Per DPS Guidance

“Market research is a process for gathering and analyzing data on industries, markets, and suppliers on key factors such as quality, delivery, cost, and other key performance indicators. This data allows for a clearer understanding of market forces, which allows a procurement professional to make the most appropriate decision regarding the procurement.”

Market Research:

- 1) Identifies available solutions in the market space
- 2) Identifies the suppliers in the market, and
- 3) Identifies industry characteristics such as pricing, contract terms and conditions, payment terms, financing, etc.

Based on your Market Research:

- 1) Is there a commercially available solutions or will customization be required?
- 2) Are there multiple vendors that can satisfy the agency’s need?
- 3) What terms and conditions are common in the market space?



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Written Determinations

(MMO Form # 102)

Step 3 – Describe the supplies, construction, information technology, and/or services Vendor will provide under the contract:

Based on what you found in your documented Market Research, you should have a pretty good idea of the types of products available in the market, the suppliers that can provide a solution that meets the agency's need(s), price range, and terms and conditions.



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Written Determinations

(MMO Form # 102)

Step 4 – Provide a detailed explanation as to why no other vendor's supplies, construction, information technology, and/or services will meet the need(s) of the Agency.

By this point, you should be able to articulate why only one solution is available and that it is only available from one supplier.



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Written Determinations

(MMO Form # 102)

The written determination must be signed and dated by either the chief procurement officer, the agency head, or a designee of either officer above the level of procurement officer. Per Regulation 19-445.2105 C. (2), the determination must be authorized prior to contract execution.



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Public Notice

SC Code Ann. § 11-35-1560 (A). Sole Source contracts with a total potential value of greater than \$50,000 must be posted in SCBO, except that public notice is not required if the chief procurement officer, after consultation with the head of the purchasing agency, determines in writing that award without such notice is in the best interest of the State.

SC Code Ann. § 11-35-1560 (A).“The public notice must contain a statement of the right to protest under Section 11-35-4210 (1) and must be posted at least five business days before entering into a contract. For contracts with a total potential value greater than \$250,000, such notice must be posted at least ten business days before entering into a contract.”



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Public Notice

SC Reg 19-445.2105 (D)(2) The public notice must include the written determination or how to obtain the written determination immediately upon request.

A valid written determination requires that it be signed by the appropriate authority and be dated to demonstrate timeliness. Since Public Notice requires the written determination to be immediately available, the written determination must be signed and dated prior to the date of the public notice.



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Market Research or Public Notice

Prior to the publication of the Public Notice requirements, agencies sometimes published an intent to award as a sole source in an effort to identify additional suppliers.

Advertising a sole source prior to obtaining the approved written determination, especially with a statement to the effect that the agency is attempting to identify vendors that could meet the needs of the agency, would amount to market research.

Publication of intent to award with the intent to identify potential suppliers, does not satisfy the public notice requirement.



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Transparency

Per the Center for Strategic & International Studies:

Officials are responsible for their choices, ensuring they act in the public's best interest. An open and transparent way of procurement is paramount for any governmental framework. Allowing the public to see how responsible governmental officials are making decisions. It promotes fair competition by providing all suppliers with an equal opportunity. Non-competitive approaches often result in poor-quality goods and services. Transparency in procurement processes holds officials accountable for their decisions, allowing the public and oversight bodies to scrutinize procurement activities and ensure they align with the public's best interest.

The intent of the public notice requirement is to provide transparency. The best way to achieve transparency is to include the written determination on the face of the SCBO ad or to provide a link to the written determination in the SCBO ad. Providing a contact phone number and/or e-mail address could be problematic in that it may delay access, and therefore would not meet the transparency intent of the Code.



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Other Requirements

SC Code Section 44-107-30: The SC Drug-Free Workplace Act requires that persons receiving a grant or contract from a state agency for goods, construction, or services for a stated or estimated value of fifty thousand dollars or more certify to the state that they will implement and maintain a drug-free workplace program.

SC Code Ann. § 11-35-2440: Reporting Requirements requires that all governmental entities must submit quarterly a listing of all sole source procurements to MMO. The submission must be made within 30 days of the end of the quarter. The record must contain:

- 1) Each contractor's name
- 2) The amount and type of each contract.
- 3) A listing of supplies, services, information technology, or construction procured under each contract.



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Cost & Pricing Data

SC Regs 19-445.2120 (B)(2)

Cost & Pricing Data must be obtained for any sole source procurement that exceeds \$500,000. This requirement may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

Appendix U of the Compendium provides instructions for submitting cost-price data.



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Compliance

SC Code Ann. 11-35-1560 (c)

“A violation of these regulations by a purchasing agency, upon recommendation of the Division of Procurement Services with approval of the majority of the board, must result in the temporary suspension, not to exceed one year, of the violating governmental body's ability to procure supplies, services, information technology, or construction items pursuant to this section.”



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Common Audit Findings

- Written determinations inadequate or not provided.
- Written determinations not properly approved (signed and dated) by authorized officials.
- Public Notice does not include immediate access to written determination.
- Public Notice not posted five business days before entering into a contract. Ten business days required for contracts greater than \$250,000.
- Right to protest clause not included in public notice.
- Cost or pricing data not obtained or waived (11-35-1830).
- Sole Sources not reported to MMO or reported late.



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