

# **Sole Source**

Chief Procurement Office of Higher Education

# Initial Statement

- ▶ (30 ILCS 500/20-5)

Sec. 20-5. Method of source selection. Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding, in accordance with Section 20-10, except as provided in Sections 20-15, 20-20, 20-25, 20-30, 20-35, 30-15, and 40-20.

# Section 20-10

- ▶ (30 ILCS 500/20-10) Competitive Sealed Bidding
  - Part (B) Invitation for bids.
    - An Invitation for Bids shall be issued and shall include a purchase description and the material contractual terms and conditions applicable to the procurement.

# Section 20-15

- ▶ (30 ILCS 500/20-15) Competitive Sealed Proposals
  - Part (a) Conditions for use.
    - When provided under this Code or under rules, or when the purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals.

# Sec. 20-25

- ▶ (30 ILCS 500/20-25) Sole source procurements
  - Part (a)
    - In accordance with standards set by rule, contracts may be awarded without use of the specified method of source selection when there is only one economically feasible source for the item. A State contract may be awarded as a sole source procurement unless an interested party submits a written request for a public hearing at which the chief procurement officer and purchasing agency present written justification for the procurement method. Any interested party may present testimony. A sole source contract where a hearing was requested by an interested party may be awarded after the hearing is conducted with the approval of the chief procurement officer.

# Relevant Statutes

- ▶ 30ILCS 500/5-30
- ▶ 30ILCS 500/15-25
- ▶ 30ILCS 500/20-25
- ▶ 4.1525
- ▶ 4.2025
- ▶ 4.2060 (f)

Illinois Procurement Code

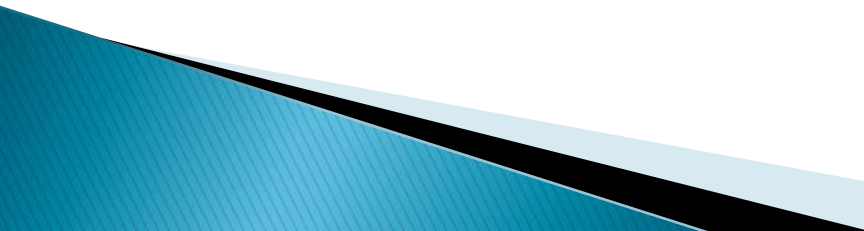
Illinois Higher Education  
Procurement Rules

# Sole Source Justification and related forms:

- ▶ Sole Source Justification Form (Version 5.0)
- ▶ The Conflict of Interest Review Request Form
- ▶ Disclosure Replacement Form
- ▶ Renewal or Extension that Exceed \$250,000 Questions
- ▶ Located on the Procurement Policy Board's (PPB) website:

<http://www2.illinois.gov/ppb/Pages/Resources.aspx>

# Procurements that are not sole source.

- ▶ Professional and Artistic Services under \$20,000
  - ▶ One-time purchases or one-year term contracts that are under the \$55,400 Small Purchase threshold (unless they are multi-year terms).
  - ▶ When there are at least 2 vendors in the market who could satisfy the University's need.
  - ▶ If the product is available from the manufacturer as well as distributors and/or resellers, it's not a sole source; however, it may be a sole economically feasible source if the university can get it for less straight from the manufacturer.
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# Justification Formulation

- ▶ The Chief Procurement Office of Higher Education encourages draft submissions before the signature process in case we recommend document changes.

# Section I

Bulletin or Reference Number:

## SECTION I - GENERAL INFORMATION

Requesting Agency/University:

Department/Bureau/Section:

Name of Requestor:

Date:

Project Title:

Vendor:

Provide a description of the supplies or services required:

Value of Initial Term, this Change Order or Amendment, or if a Renewal, Value of this Renewal: \$

Value is:  Actual  Estimated

This is a: Select One

Professional and Artistic?  Yes  No

*Sole Source may not be used for amendments for Professional or Artistic Services if the amendment would increase the value by more than 5% of the initial award or extend the term by more than 60 days.*

# Section 1

- ▶ Here are a few scenarios that the requestor should take into consideration when completing section 1.
  - Make sure the project title and vendor name on the bulletin notice match the information on the justification form and are consistent on all documents.
  - Description: Supply a brief description of the supplies or services that are needed (i.e. type of equipment, model number or software version)
  - Estimated Value: If possible, try to estimate yearly values on the higher end of the University's purchasing forecasts. This will enable the University to have more contract flexibility without having to submit amendments or change orders.

# Section 1(cont.)

- ▶ Type: When selecting sole source vs. sole economically feasible source, it is important to remember the distinction between the two.
  - A sole source vendor is the only vendor who can provide a specific supply or service to satisfy a universities need; this is the only vendor in the market.
  - A sole economically feasible source vendor is one among others who can provide the needed supply or service but for economic-related reasons, is the most economical choice. If the latter is selected as the method, there must be enough factual information to support the economic factors surrounding the procurement. Provide quotes/documentation from vendors contacted.

# Section 1(cont.)

- ▶ If the sole source request is for Professional and Artistic Services, please remember to include these requirements from section 30 ILCS 500/35-25 of the Illinois Procurement Code.
  - Description of the goal to be achieved;
  - The services to be performed;
  - The need for the service;
  - The qualifications that are necessary;
  - The plan for post-performance review;
  - Duration of the contract, with a schedule of delivery, when applicable;
  - Method for charging and measuring cost (hourly, per day, etc.);
  - The rate of remuneration; and
  - The maximum price

# Section II

## SECTION II - PROPOSED TERM

- One-Time Purchase
- Term Contract      Estimated Begin Date:                      Estimated Contract End Date:
- One-Time Amendment or Change Order to an Existing Contract for Reasons Other Than Adding Additional Funds  
Explain (Then Skip Section III and go to Section IV):

If a Term Contract, does the term, including renewals, exceed 12 months?     Yes     No  
If yes, a detailed justification is required:

# Section II

- ▶ **One-Time Purchases:** The requestor only needs to check the “One-Time Purchase” box.
- ▶ **Term Contracts:** Sole source procurements should generally be limited to a term of one year. Justification must be provided for all multi-term contracts, such as demonstrated economic benefit. If the contract will be a term contract, the contract start date must be after the hearing date. Allow adequate time after the hearing to obtain any hearing documents along with CPO approval and to publish the hearing documents and award notice. Remember the PPB has 30 days for review. The 30 day period begins with the publishing of the initial intent (more on slide 35).
- ▶ **One-Time Amendment or Change Order:** The requestor should check the box as well as provide a detailed explanation and any justification for the needed contract change.

# Section III

## SECTION III - RENEWALS

Number of Potential/Remaining Renewals:

Length of Each Renewal in Months:

Total Value of All or Remaining Renewals: \$

- ▶ Make sure the renewals on the notice match the information on the justification form and are consistent on all documents.
- ▶ If the renewal is \$250,000 (4.2060 (f)) or more, the PPB renewal questions must also be addressed and attached to the bulletin notice. These can be found on the PPB website using the link on slide 3. In certain instances, the PPB may also require responses to these questions for procurements under the threshold.



# Section IV

## SECTION IV - FUNDING

Select the type of funding to be used (check all that apply):

Federal Funds

State Appropriated Funds

Other (Explain):

- ▶ The type of funding is needed to help document the requirements of the Small Business Contract Act (30 ILCS 503).

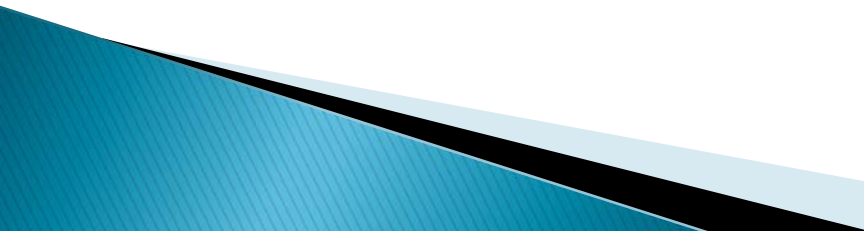
# Section V

## SECTION V - SOLE SOURCE JUSTIFICATION

This purchase is economically only available from a single source because it is:

- Art or Entertainment Services or Athletic Events
- Compatibility of Equipment, Accessories, Replacement Parts or Service
- Critical Changes to the Existing Contract Are Necessary and Best Accomplished by the Contract Holder
- Federal/State Grant Requires Contract with Vendor
- Items are Copyrighted or Patented and the Items are Only Available From the Holder – Copyright or Patent Number(s):
- Items are Required by an Existing Franchise Agreement
- Items are Required for Research and No Other Source is Able to Meet the Researcher's Documented Need
- Items are for Commercial Resale
- Items Are Needed for Trial Use or Testing
- Media for Advertising
- Necessary Adjustment of Utility Facilities in Conjunction with Highway Construction
- Organization Memberships (Dues, Fees, Conference Charges Including Mandated Travel and Related Expenses)
- Public Utility Regulated Services
- Radio and/or Television Broadcast Rights
- Railroad Crossings/Facilities Alterations – Proprietary
- Software License/Upgrade/Maintenance
- Other (Explain):

## Section V (cont.)

- ▶ Universities are permitted to check multiple boxes as long as it is thoroughly explained in Section VII.
  - ▶ For example: If the sole source justification is being submitted because items are Copyrighted or Patented, the Copyright or Patent number/s must be included. Patented features should be explained in further detail in Section VII of the sole source justification form.
  - ▶ If “Other” is selected as the justification, a thorough explanation detailing the circumstances must be included.
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# Section VI

Bulletin or Reference Number:

## SECTION VI - HISTORY

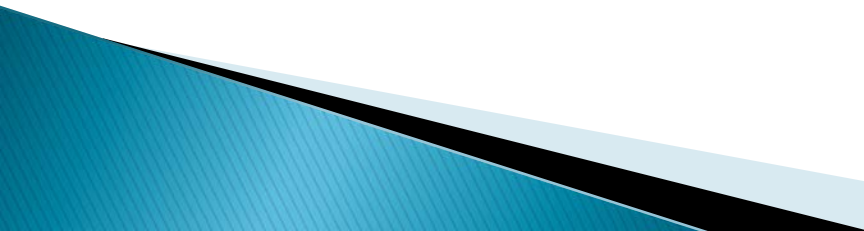
Has the Agency or University purchased these supplies or services in the past?  Yes  No

If yes, STARTING WITH THE MOST RECENT CONTRACT AND WORKING BACKWARD, for the entire relationship with this vendor for this supply or service, list each term, value, short description and type of procurement of each:

Term:	Term From:	Term To:	Value:	Description:	Contract Number:	Type:
One			\$			Select One
Two			\$			Select One
Three			\$			Select One
Four			\$			Select One
Five			\$			Select One
Six			\$			Select One
Seven			\$			Select One
Eight			\$			Select One
Nine			\$			Select One
Ten			\$			Select One

If more than 10 years, explain:

# Section VI (cont.)

- ▶ When listing previous contract history, make sure you are detailing contract information, not expenditure information. Start with the most current contract and work back, listing the term and value of each contract with this vendor for related supplies/services. Provide an explanation of any gaps between contracts. For example, if the previous contract ended on 6/30 but the new contract will not begin until 9/1, explain how the goods/services have been or will be purchased in between. If they have not been purchased, provide that information. Also provide an explanation if there are large fluctuations between new and previous contracts.
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# Section VII

- ▶ Provide adequate information for the SPO to make an informed determination. Make sure all questions under the Business Rationale are answered completely and with as much information as necessary.
- ▶ Include background information as to help justify the procurement but only include relevant information. Be precise and concise.
- ▶ Conclusions alone are not sufficient to support a sole source determination.
- ▶ When completing Section VII, “this is the only vendor” is not an acceptable response to all questions.
- ▶ Provide detail as to why this is the only vendor that will meet the University’s needs. Use fact-based information.
- ▶ Stay away from statements such as, “it will impact the University’s reputation,” unless you can also provide facts to support the statement.
- ▶ Incumbency is not sufficient justification for sole source.
- ▶ Documentation must be provided to support claims of voiding warranty or extended service agreements.

# Section VII (cont.)

1. Provide a detailed explanation of the need for the supplies or services:

- ▶ Questions to ask yourself while completing this answer.
  - What is the identified need?
  - What is being purchased?
  - How will the procurement be used?

# Section VII (cont.)

2. Why are the requested supplies or services the only one that can satisfy your requirements?

- ▶ This section is where the requestor needs to explain the justification/s selected in Section V.
- ▶ If your justification is “Items are Required for Research and No Other Source is Able to Meet the Researcher’s Documented Need” then you will need to explain the features or capabilities that alternative vendors cannot match and why they are significant to the University’s research.
- ▶ If your justification is for “Compatibility of Equipment, Accessories, Replacement Parts or Service”, the buyer will need to provide what is currently owned by the University and why compatibility is required.



# Section VII (cont.)

3. What are the unique features of the supplies or services that are not available in any other product or by any other vendor? Provide specific, quantifiable factors/qualifications:

- ▶ Look at sole source justifications as a puzzle. Each question is designed so the end user can properly justify the use of this sourcing method. Question 2 asks why this is the sole vendor who can satisfy the University need. In questions 3, we are looking for what is unique about this procurement.
  - For example: Say the University is seeking to procure a new series of textbooks. The proper justification in Section V will be “Items are copyrighted or Patented...” in question 1 you will explain how this need developed; question 2 you will explain that since these textbook are copyrighted they are only available from this vendor in the quantity required to resell in the campus bookstore; question 3 we want to explain how these supplies are unique. This would be something similar to “course curriculum is designed and selected at the discretion of the professors and the lesson plans developed by the university departments.

# Section VII (cont.)

4. If services, what are the unique qualifications this vendor possesses? Provide specific, measurable factors/qualifications:

- ▶ This section is only required when the University is procuring a service.
  - What sets this service apart from possible alternatives?
  - Be sure to provide specific, measurable factor/qualification.

# Section VII (cont.)

5. Were alternative supplies or services evaluated?  Yes  No

5a. If yes, name the alternative vendors whose supplies or services were evaluated:

5b. If yes, what were the alternatives for each vendor and why were they unacceptable? Please be specific with regard to features, characteristics, requirements, capabilities and compatibility:

5c. If no, why were alternatives not evaluated?

- ▶ A description of the market research conducted should be given along with a list of vendors contacted, including the date contacted, the name of the specific person contacted, and their response. If vendors were contacted or otherwise identified in the course of vetting the sole source, each of those vendors must receive notice of the sole source procurement as soon as it has been published in the Bulletin; along with any other known potential vendors. If no other vendor can meet the need, describe the steps taken to make that determination.

# Section VII (cont.)

6. What efforts were made to get the best possible price?

- ▶ The University should always attempt to negotiate with a vendor.
  - If a discount was negotiated from the vendor, provide the percentage or dollar value of the discount.

# Section VII (cont.)

7. Will this purchase obligate the State to this vendor for future purchases such as maintenance, licensing or continuing need?  Yes  No

7a. If yes, please provide details regarding future obligations and/or needs:

- ▶ Question 7 is often overlooked.
  - If maintenance, licensing or continuing need are a factor, the “yes” check box should be marked and 7a should be completed.

# Section VII (cont.)

8. Why is the price for this purchase considered to be fair and reasonable?

- ▶ Question 8 asks for different information than question 6.
- ▶ “See question 6” is not a valid response for this answer.
  - For example: The quoted price is fair based on a past competitive solicitation (with increases based on CPI), similar but not equal alternatives, and/or industry averages (i.e. computer programming rates) to name a few.

# Section VII (cont.)

9. If this is a renewal, describe why circumstances are such that competitive selection is still not an alternative since awarding the original contract:

- ▶ Question 9 should only be completed if this form is for a sole source renewal. If this is not a renewal please mark this field N/A.
- ▶ Renewal format has changed within the last year. See slide 34.

# Section VII (cont.)

10. What will be the financial or other impact to the State if this sole source is not approved and a competitive bid is required?

- ▶ Question 10 is often misinterpreted.
- ▶ Keep in mind all sole sources could potential be bid and should be the initial source method evaluated. Please read the question thoroughly and answer accordingly.
  - Stating the University would not be able to procure the required supply or service would not be a true statement unless there is evidence the vendor wouldn't bid in a competitive environment.



# Section VII (cont.)

11. Is there any additional justification information that you would like to add to justify this sole source?

- ▶ This is where the buyer should include any information the end user deems relevant that does not fit the criteria the 10 previous questions covered.

# Renewals:

- ▶ The guidelines to complete a renewal have recently changed.
- ▶ The PPB no longer requires the justification form to be completed.
- ▶ Universities are required to explain in the forwarding comments:
  - Why this remains a sole source?
  - The due diligence performed to ensure new vendors haven't entered the market.
- ▶ These will then be reviewed by the SPO and PPB. If additional information is need, it will be requested through the forwarding comments within the bulletin.

## **Sec. 15-25. Bulletin content.**

- ▶ (c-15) Sole source procurements. Before entering into a sole source contract, a chief procurement officer exercising sole source procurement authority under this Code shall publish a written description of intent to enter into a sole source contract along with a description of the item to be procured and the intended sole source contractor. This notice must be posted in the online electronic Procurement Bulletin before a sole source contract is awarded and at least 14 calendar days before the hearing required by Section 20-25.

# Sole Source Part 2

## Hearing Requested:

- Any hearing required shall be conducted in accordance with Subpart U of the Illinois Higher Education Procurement Rules.
- The hearing Officer will complete the Sole Source Justification Part 2 Form giving their recommendation to the CPO.
- The CPO will make their determination.
- SPO will publish the document to the bulletin.

## No Hearing Requested:

- The SPO will complete the Form.
- CPO will then review the procurement File.
- The CPO will make their determination.
- SPO will publish the document to the bulletin.

# Sec. 5-30. Proposed contracts; Procurement Policy Board.

- ▶ (a) Except as provided in subsection (c), within 30 calendar days after notice of the awarding or letting of a contract has appeared in the Procurement Bulletin in accordance with subsection (b) of Section 15-25, the Board may request in writing from the contracting agency and the contracting agency shall promptly, but in no event later than 5 calendar days after receipt of the request, provide to the Board, by electronic or other means satisfactory to the Board, documentation in the possession of the contracting agency concerning the proposed contract. Nothing in this subsection is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

(b) No contract subject to this Section may be entered into until the 30-day period described in subsection (a) has expired, unless the contracting agency requests in writing that the Board waive the period and the Board grants the waiver in writing.

# Bulletin Award Notice

- ▶ After the Sole Source Justification Part 2 is published, the SPO's role in the bulletin posting is complete.
- ▶ Financial Disclosures are posted (or disclosure replacement form).
- ▶ The award notice is completed by the buyer once:
  - The PPB waives their review.
  - -OR-
  - 30 days from the initial intent has passed.