



Enterprise Services Policy No. POL-DES-140-00

# Sole Source Contract Policy

## FREQUENTLY ASKED QUESTIONS

- 1. Question: If DES does not provide a decision within 15 working days of the filing, does the sole source contract automatically become approved?**

**Answer:** No. The goal of DES is to process all requests within 15 working days. There may be circumstances in which additional time will be required. For example, the number and complexity of requests received by DES can impact DES's processing time. DES will notify the agency of any delays or need for additional time. Agencies are encouraged to budget ample lead time to accommodate the DES approval process, vendor notice requirements, and transparency requirements. [FAQ published 2013, Revisions published 04-03-2019; 06-06-2024]

- 2. Question: May the 10 working days advertising requirement through Washington's Electronic Business Solution (WEBS), the 15 working day's approval process, and the 15 working day's public inspection posting requirement run concurrently?**

**Answer:** Yes. [FAQ published 2013; Revised 06-06-2024]

- 3. Question: Are agencies required to seek sole source approval for client service contracts?**

**Answer:** No. Per sole source policy, exemptions that fall within RCW 39.26.125 such as client service contracts (RCW 39.26.125(6)) are exempt from competition and therefore, should not be filed as sole source contracts, nor should they be filed as 'exempt' sole source contracts. [FAQ published 2013; Revised 06-06-2024]

- 4. Question: In the future, will there be a central repository made available where all sole source contracts may be made available for public inspection?**

**Answer:** DES will be working toward this end but for now and to meet statutory requirements, sole source contracts are to be made accessible directly from the agency. [FAQ published 2013]

- 5. Question: Should the sole source contract approval process be used for urgent/crucial procurements?**

**Answer:** No. Urgency nor crucial meet the sole source justification requirements. Urgency and crucial are factors considered under Emergency purchases provided other criteria are met. Please see [Emergency Procurement/Purchase Policy](#) or RCW [39.26.125](#). [FAQ Published 04-03-2019]

- 6. Question: I have a contract that needs to start as soon as possible and only one vendor can complete the work within my required timeline, therefore I am pursuing the sole source route. Is timing a consideration for sole source approval?**

**Answer:** No. Urgency and timing alone do not meet the sole source justification requirements. You will be required to provide additional justification to show that the purchase meets the sole source criteria. [Published 04-01-2022]

- 7. Question: Why is there an agency requirement to make a proposed sole source contract available at least 15 working days before the contract start date in addition to the WEBS 10 working day posting requirement?**

**Answer:** The 15-day notice and inspection period is required by RCW 39.26.140(1). The requirement provides transparency to the public and is designed to also give notice to vendors that are not registered in WEBS. In addition, this notice requirement gives vendors the opportunity to demonstrate that they are capable of providing the goods or services. **[FAQ Published 04-03-2019; Revised 06-06-2024]**

- 8. Question: Can I just post the sole source to WEBS to satisfy the public inspection requirement as well?**

**Answer:** No, as WEBS is not available to the public as it requires registration and is intended for the vendor community. Posting to the Agency's website provides transparency to the general public and is designed to also give notice to vendors that are not registered in WEBS. In the event an agency does not have a website, it can post on another website, through newspaper advertisements, or other means as appropriate. **[FAQ Published 04-03-2019]**

- 9. Question: Is there a recordkeeping best practice regarding the public notice requirement?**

**Answer:** For audit purposes, agencies are encouraged to include in their contract file evidence (e.g. a screen shot print out of a webpage) that the 15 working day posting requirement has been met. **[FAQ Published 04-03-2019; Revised 06-06-2024]**

- 10. Question: Is there a best practice for avoiding possible sole source review delays?**

**Answer:** To avoid delays, agencies should ensure that all documents are complete and included in the initial filing, along with compelling answers to the sole source justification questions and evidence of the WEBS posting and public inspection notice. Agencies are encouraged to budget ample lead time to accommodate the DES approval process, vendor notice requirements, and transparency requirements. In determining whether to approve a sole source contract filing, DES will review all information submitted including vendor challenges and the agency response. Occasionally, DES experiences a backlog, particularly in the high-volume filing months of May and June. DES will alert agencies if there will be delays in processing sole source filings. **[FAQ Published 04-03-2019]**

- 11. Question: What language should appear in a sole source contract or amendment that will tell vendors that the contract or amendment is not valid until receiving DES approval?**

**Answer:** The language is as follows:

For Contracts: DES Sole Source Approval: The provisions of Chapter 39.26.140 RCW requires this sole source contract to be filed with and approved by the Department of Enterprise Services (DES). The effective date of this contract is either upon DES approval of the contract, the fifteenth (15th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

For Amendments: DES Sole Source Approval: The provisions of Chapter 39.26.140 RCW requires this sole source contract amendment to be filed with and approved by the Department of Enterprise Services (DES). The effective date of this amendment is either upon DES approval of the amendment, the fifteenth (15th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

Both original contract filing and any amendments (that are required to be filed with DES) require DES approval before the contract/amendment becomes effective. The purpose of this language is to put the vendor on notice of the effective date of the contract or amendment. This is a material term for sole source contracts and substantive amendments, and is designed to prevent work occurring before a

contract/amendment becomes effective. [FAQ Published 04-03-2019; Revised 06-06-2024]

**12. Question: Can an agency review other agencies filed and completed sole source filings?**

**Answer:** No. Though the Sole Source Contracts Database (SSCD) has this functionality available. Only applicable DES staff have access to other agency sole source filings. [FAQ Published 04-03-2019; Revised 06-06-2024]

**13. Question: Are Internet Service Providers (ISP) considered under the exemption for utilities?**

**Answer:** No. According to the Utilities and Transportation Commission (UTC), ISP is regulated for quality only. The UTC does not set pricing. In addition, in many areas there are more than one ISP available. In such instances, it is appropriate for an agency to conduct a competitive process for ISPs. [FAQ Published 04-03-2019]

**14. Question: Are software license renewals exempt from competition and from the sole source policy?**

**Answer:** No. Software license renewals are not exempt and should be filed as a new sole source, if applicable, or re-competed. [FAQ Published 04-03-2019]

**15. Question: In purchasing software licenses, what does equivalent in scope mean (reference Exemption #6)?**

**Answer:** DES recognizes that software licenses change over time. Equivalent in scope means the then current version from the software licensor. For example, the software license that was competitively procured in June is version 9 and six months later the version that is currently being sold is 10.5, the version 10.5 would be considered equivalent in scope. [FAQ Published 04-03-2019; Revised 06-06-2024]

**16. Question: Are sole source contracts awarded by institutions of higher education exempt from the sole source policy?**

**Answer:** Though these may be exempt from filing as a "Sole Source Contract" in SSCD and posting to WEBS, they are required to be filed as an "Exempt Sole Source Contract" in SSCD. Whether your contract is "Exempt" or not depends on the funding source. In accordance with RCW 39.26.140(4), sole source contracts awarded by institutions of higher education from non-state funds are exempt from the sole source approval process (posting to WEBS/public inspection period). Sole source contracts awarded by institutions of higher education that include state funds that are greater than 50% of the total consideration are required to be filed with DES for approval. For amendments to sole source contracts, if the original contract was not required to be filed because greater than 50% was non-state funds, the amendment(s) is not required to be filed with DES for approval. [FAQ Published 04-03-2019; Revised 06-06-2024]

**17. Question: Can I guess on the estimated start date I list in SSCD for my contract/PO?**

**Answer:** Yes. However, the start date indicated in the SSCD must be realistic and as accurate as possible at the time of filing; and it must match the start date in the contract/PO. This information is included in Module 2 of Purchasing and Procurement 101 Training. In order to comply with sole source laws/policy, the start date must be at a minimum, 15 working days out from the date you file in SSCD / post public notice. [Published 04-01-2022; Revised 06-06-2024]

**18. Question: Is there anything else I should consider when preparing an IT sole source contract filing?**

**Answer:** Per DES Sole Source Policy DES-140-00, #7, all applicable information technology (IT) related sole source contracts must also conform to all applicable WaTech Policies and may require advanced approval. Agencies may need to coordinate with their assigned WaTech consultant, as often an [IT Investment Intake](#) (f/k/a an Information Technology Project Assessment (ITPA)) is necessary to submit with WaTech prior to receiving DES approval for sole source. DES coordinates with the WaTech to understand the steps the agency still needs to take in order to conform with all applicable WaTech Policies. Ensuring you have met all requirements will assist in a timely DES sole source decision. **[Published 04-01-2022; Revised 06-06-2024]**

**19. Question: If I receive approval notification from DES prior to the 15 day filing period expiring, can I execute the contract/purchase early?**

**Answer:** No. You must wait until the 15 working day period has concluded before commencing work and/or signing the contract. **[Published 04-01-2022; Revised 06-06-2024]**

**20. Question: If I have to repost my legal notice (notice of intent to award a sole source contract) in WEBS because it contained an error that needed to be fixed, does this start the 10 working day 'clock' over?**

**Answer:** Possibly. You must repost for an additional 10 working days (the day you post, state holidays, and weekends do not count) only if there is not currently 10 working days remaining on the posting in WEBS at the time of the amended posting. In this case, an amended legal notice may be required and uploaded to the WEBS posting. **[Published 04-01-2022; Revised 06-06-2024]**

**21. Question: If my sole source contract is part of a convenience contract as well, do I need any additional approval other than receiving approval from DES via the SSCD?**

**Answer:** Yes. You must request and receive written authorization from the Assistant Director of DES Contracts & Procurement Division in addition to receiving approval for sole source (via SSCD) prior to commencing work. The first step is to obtain permission to enter into the convenience contract from DES, then seek sole source approval. Only the lead agency is required to submit the sole source request to DES, following the sole source procedure, see [PRO-DES-140-00](#). In addition to following these requirements, the convenience contract approval letter should be included as an attachment in the Sole Source Contracts Database (SSCD) filing. Details about the contract's status as a convenience contract, including a list of the participating agencies, should be included in the sole source contract justification and legal notice of intent. *Analysis:* RCW 39.26.070 allows for "convenience contracts" as specified by DES:

A convenience contract is a contract for specific goods or services, or both, *that is solicited and established in accordance with procurement laws and rules* for use by a specified group of agencies. A convenience contract is not available for general use and *must be approved* by the department. Convenience contracts are not intended to replace or supersede statewide contracts. (*Emphasis added*). Agencies must obtain pre-approval from DES to enter into a convenience contract. **[Published 04-01-2022; Revised 06-06-2024]**

**22. Question: Is there a "sample legal notice" template that I can utilize?**

**Answer:** Yes. We have a Word version of a template posted [HERE](#). This should be included as an attachment to the WEBS and agency website postings as well as a copy filed in SSCD. **[Published 04-01-2022; Revised 06-06-2024]**

**23. Question: What should I do if I receive a capability statement from a vendor in response to my posted legal notice?**

**Answer:** Please see sole source procedures, section “Responding to Vendor Capability Statement(s) When Received” (PRO-DES-140-00) for appropriate steps to take. **[Published 06-06-2024]**

**24. Question: I don’t believe the vendor who submitted a capability statement can do the work even though they stated they were capable.**

**Answer:** A competitive procurement is most likely the viable option moving forward. Per sole source glossary supplement: A “*Capability Statement*” is a written statement from a vendor that explains to a state agency how that vendor is **capable** of meeting the requirements listed in the legal notice. Receiving a capability statement is evidence that there may be an existing market for the business need (good and/or service) and that sole source is not the appropriate procurement route. A capability statement is not a formal bid that undergoes an evaluation. In order to fairly assess and evaluate a vendor’s qualifications, responsiveness, and/or responsibility, a full competitive process may be necessary. **[Published 06-06-2024]**

**25. Question: As part of the sole source justification questions, I’m asked to “Provide a detailed and compelling description that includes quantification of the costs and risks mitigated by contracting with this contractor” - Can you give me an example of what quantification could look like?**

**Answer:** Yes.

**Example 1:** It would cost the agency an additional \$2,000,000 for the six (6) months it would take to train and bring a new contractor up to speed. This was based on historical knowledge on the time necessary for the prospective contractor to learn all the specifics and establish realistic timelines and relationships required for the success of the project. Our agency estimates needing “X Number” of staff and determined through market research standard rates of consideration are “\$X per hour/month”.

**Example 2:** The training and knowledge needed to get a new contractor up to speed on the project would add significant time to this contract (approximately 6 months to the current contract/project timeline). The estimated cost of educating the new contractor and potential rework (from not having substantial knowledge or required training), would cost in excess of \$750,000. This added training and knowledge transfer would cause issue with the time the new contractor could effectively start work (creating the need for a longer contract, updated project schedule, and more taxpayer money spent). Without proper training the contract may lack value. **[Published 04-01-2022; Revised 06-06-2024]**

**26. Question: Is there anything I cannot put as a requirement and/or qualification in my Legal Notice to vendors?**

**Answer:** Yes. There are a few things known to date, but this is also up to DES’ sole discretion upon review of your legal notice. An agency may request an exemption from the sole source policy/procedures from the DES Director in writing and in advance, if it feels it is justified and necessary.

1. You may not require any number of years of experience. (e.g. *15 years experience in successfully managing health care related projects*). Instead, DES suggests wording this type of requirement as “*successful management of health care related projects*”).
2. You may not require previous employment or contracts with the state or a particular agency.

Requiring years of experience or prior experience with the state are considered to be barriers to entry into government contracting as they are not performance-based. For example, although the

contractor(s) may not have the excessive experience or work history with the state, they may have the necessary knowledge and skills to do the work.

3. You may not require excessive criteria be prepared and submitted by the vendor; similar to items you might require of vendors in a full competitive solicitation. This could include, but is not limited to: the vendor (who intends to submit a capability statement) having to prepare multiple pages of text or gather previous contracts, create lengthy responses to questions, providing references, etc.

**[Published 04-01-2022; Revised 06-06-2024]**

27. **Question: Why can't my agency require years of experience, prior experience with the state, references, etc. as part of the requirements I list in my Legal Notice of intent to sole source?**

**Answer:** The sole source contracting avenue is very different from conducting a full competitive process. The timelines for sole source contracts are much shorter than conducting an RFP/RFQQ/RFQ/etc. There is also no formal evaluation or protest process involved with posting/filing for sole source. Requiring years of experience and other items mentioned above are considered excessive and/or barriers to entry to do business with Washington State and often 'create' a sole source scenario. The agency needs to focus on the business need when drafting its Legal Notice, rather than excessive qualifications. An agency should conduct a full competitive solicitation that undergoes a transparent evaluation process in order to compare multiple vendors' qualifications and responsiveness. **[Published 06-06-2024]**

28. **Question: The sole source procedures require my contract to contain "performance-based" language. What does this mean?**

**Answer:** As defined in the [Glossary Supplement](#) document, "[Performance Based Contract](#)" means a results-oriented contracting method that focuses on the outputs, quality, or outcomes that may tie at least a portion of a contractor's payment, contract extensions, or contract renewals to the achievement of specific, measurable performance standards and requirements. Additionally, RCW 39.26.180(3) states: "To the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

**Example:** Regarding due dates for deliverables, the statement of work should specify what the contractor must accomplish in order to be paid for its performance under the contract. **[Published 04-01-2022]**

29. **Question: I received a 'Disapproval' from DES on my filing because work began prior to DES reviewing and issuing its decision. Will you provide guidance on how I can proceed?**

**Answer:** The recommended path forward may vary depending on all the reason(s) for the disapproval. DES advises connecting with the DES Policy Team for guidance on how to proceed. **[Published 04-01-2022]**

30. **Question: What holidays are observed that could potentially impact my filing timeline(s)?**

**Answer:** See [RCW 1.16.050](#). State holidays are observed. The complete list includes:

- New Year's Day

- Martin Luther King Jr. Day
- President’s Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran’s Day
- Thanksgiving Day
- Native American Heritage Day (the day after Thanksgiving)
- Christmas Day **[Published 04-01-2022]**

**31. Question: What is the purpose of filing Sole Source exemptions (#3-17) listed in the sole source policy?**

**Answer:** The purpose of this is to increase transparency and oversight of sole source exempt contracts in the enterprise. Exempted contracts do not require posting in WEBS, for public inspection (agency website), and there is no filing period. Appropriate use of exemption(s) listed in this policy will be reviewed through contract audits and agency procurement risk assessments. **[Published 06-06-2024]**

**32. Question: What is a “Late Filing”?**

**Answer:** A “Late Filing” means a sole source request that is submitted with a start date prior to the required 15-day filing and public inspection period. A late filing will receive a ‘Disapproval’ or ‘Late Filing’ decision, both mean that all the requirements in the policy/law were not met; therefore, DES cannot approve. **[Published 06-06-2024]**

**33. Question: When filing an “Exempt” contract in SSCD, should I be filing 20 business days before or after I sign/execute my contract?**

**Answer:** Assuming your agency has determined that your contract falls rightfully within one of the exemptions (#3-17 or special DES Director approved sole source exemption) listed in the sole source policy, you should file it within 20 business days **after** you execute/sign the contract. As stated in the [Sole Source Procedures](#) document, you will need to attach/upload a copy of the final signed exempt sole source contract in SSCD when you file. **[Published 08-05-2024]**

**34. Question: Do amendments to “Exempt” Sole Source contracts need to be filed as well?**

**Answer:** No. At this time, subsequent amendments to exemptions under the sole source policy do not need to be filed. DES encourages agencies to ensure that the exemption is still valid for any contracts executed under the previous sole source policy’s exemption list. **[Published 08-05-2024]**

**35. Question: Do I need to file previously executed exempt Sole Source contracts in SSCD?**

**Answer:** No. You only need to file **new** Sole Source exempt contracts executed on or after June 6, 2024. **[Published 08-05-2024]**

**36. Question: Do I need to file Direct Buy purchases, Interagency Agreements (IAA’s), and other contracts using the various procurement methods mentioned in RCW 39.26.125(3)-(16)?**

**Answer:** No. As stated in the Sole Source Policy, section 5. B. all sole source exemptions listed in policy except for #1 & 2 need to be filed. Exemption #1 of the policy states: “Exceptions to the competitive

solicitation requirement, listed under RCW 39.26.125(3)- (16).” This statute includes contracts/purchase orders such as IAA’s, Direct Buy, Client Service, etc. **[Published 08-05-2024]**