

Sole Source Contract Policy

FREQUENTLY ASKED QUESTIONS

- 1. Question: If DES does not provide a decision within 10 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 10 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, Revised published 04-03-2019]

- 2. Question: May the 5 working days advertising requirement through Washington's Electronic Business Solution (WEBS), the 10 working day's approval process, and the 10 working day's public inspection posting requirement run concurrently?**

Answer: Yes. [FAQ published 2013]

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

Answer: No. Client service contracts are exempt from competition and should not be filed as sole source contracts. [FAQ published 2013]

- 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: When would a grant require an agency to contract with a specific vendor?**

Answer: When a grantor decides that it will provide grant funding only when an agency works with a specific vendor, that contract is not required to be competitively awarded. It would not need to be filed with DES or require approval by DES. [FAQ published 2013, Revised published 04-03-2019]

- 6. Question 6a: 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\(4\)](#). [FAQ Published 04-03-2019]

Question 6b: 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: What types of instruments can be considered sole source contracts?

Answer: "Sole source contract" refers to a category of transactions used for sole source acquisitions. It can be in the form of a contract, purchase order, field order, etc. This definition has been added to the DES Procurement Policy Glossary Supplement. **[FAQ Published 04-03-2019]**

8. Question: Why is there an agency requirement to make a proposed sole source contract available at least 10 working days before the contract start date in addition to the WEBS 5 working day posting requirement?

Answer: The 10-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]**

9. Question: In addition to posting a proposed sole source contract in WEBS, is there a preferred method for making such contracts available for public inspection within the agency?

Answer: No. Agencies are free to determine the manner in which they will make proposed contracts available for public inspection (e.g. via a location on the agency web site, through paper copies available at the agency headquarters, etc.). **[FAQ Published 04-03-2019]**

10. 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]**

11. 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 10 working day posting requirement has been met. **[FAQ Published 04-03-2019]**

12. 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]**

13. Question: What is a late filing?

Answer: Any sole source contract set to begin any time prior to or during the DES processing period will be flagged as a “late filing” and will not receive approval even if all other sole source criteria has been satisfied. DES is not authorized to retroactively approve sole source contracts. **[FAQ Published 04-03-2019]**

14. 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 tenth (10th) 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 tenth (10th) 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]**

15. Question: Can an agency review other filed and completed sole source filings?

Answer: Yes. The Sole Source Contracts Database (SSCD) has this functionality available. Agencies must update their user role to “Query Status Review” to be able to have access to other agency sole source filings. **[FAQ Published 04-03-2019]**

16. 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]

17. 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]

18. 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]

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

Answer: It 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 policy. 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]

20. Question: How do I know whether or not my contract is a collaborative research contract?

Answer: In the DES Procurement Policy Glossary Supplement document, the term “Collaborative Research” means research conducted by an agency or institution of higher education with another public or private entity. As long as your contract falls under this definition and has a majority of the work being research, it’s exempt from filing. Although research contracts are exempt from competition, the transaction (contract) must still be within the agency’s delegated purchasing authority for services. Collaborative research contracts must also comply with other DES procurement policies, standards and procedures. [Published 04-01-2022]

21. Question: Please provide examples of research contracts that are exempt from Sole Source policy.

Example 1: An agency contracts with a private entity for research and development of advanced farm equipment. In the contract the vendor will have proprietary rights to all the research, findings, blueprints, test machine models, and anything else that derives from the contract. Nothing in the industry market currently exists comparable to what is to be developed.

Analysis: Based on the DES glossary definition of “Collaborative Research”, this contract falls under POL-DES-140-00, exemption #10) Contracts related to collaborative research. If the contractor had not secured

proprietary rights, there is a possibility that all or a portion of the development phase of the contract could have been competitively procured.

Example 2: An agency obtains a combination of services under the terms of the contract, exclusive of all subcontracts. 75% of these services are strictly for research and 25% to provide reporting.

Analysis: The Research contract is exempt under policy DES-140-00 exemption 10) Contracts related to collaborative research; this is based on a majority of the total services being for research purposes.

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22. 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. **[Published 04-01-2022]**

23. 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 OCIO Policy #121 and may require advanced approval. Agencies may need to coordinate with their assigned OCIO consultant, as often an [Information Technology Project Assessment \(ITPA\)](#) is necessary to submit with the OCIO prior to receiving DES approval for sole source. DES coordinates with the OCIO to understand the steps the agency still needs to take in order to conform with OCIO Policy #121. Ensuring you have met all requirements will assist in a timely DES sole source decision.

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24. Question: If I receive approval notification from DES prior to the 10 day filing period expiring, can I execute the contract/purchase early?

Answer: No. You must wait until the 10 working day period has concluded before commencing work.

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25. 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 5 day 'clock' over?

Answer: Possibly. You must repost for an additional 5 business days (the day you post, state holidays, and weekends do not count) only if there is not currently 5 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]**

26. 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 Director of DES in addition to receiving approval for sole source (via SSCD) prior to commencing work.

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 specific agency or a specified group of agencies as needed from time to time. A convenience contract is not available for general use and may only be used *as specified by the department*. Convenience contracts are not intended to replace or supersede master contracts as defined in this chapter. (Emphasis added). Agencies must obtain pre-approval from DES to enter into a convenience contract. **[Published 04-01-2022]**

27. 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 posted as an attachment to the WEBS posting. **[Published 04-01-2022]**

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

Answer: If an agency receives an inquiry or a capability statement, they should respond in writing (e-mail is the most common method) advising the firm of: (1) the agency’s analysis of their capability statement and/or inquiry; and (2) the agency’s determination. The agency should then save copies of all correspondence (capability statement and documents) as received, agency’s analysis, agency’s determination on whether the firm meets or does not meet the requirements and upload copies to the SSCD for DES’ review. **[Published 04-01-2022]**

29. 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 \$1,000,000 for the six (6) months it would take to train and bring a new contractor up to speed.

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 \$500,000. 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]**

30. Question: Is there anything I cannot put as a requirement in my Legal Notice to vendors?

Answer: Yes. There are a couple known things to date, but this is also up to DES' sole discretion upon review of your legal notice. An agency may request an exception from the sole source policy/procedures from the DES Director, in advance, if it feels the experience 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. An agency may request an exception from the sole source policy/procedures from the DES Director, in advance, if it feels the experience or previous employment with the state/agency is justified and necessary. **[Published 04-01-2022]**

31. 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]**

32. 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]**

33. 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]**