

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: 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]

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]**