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 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 *INSERT PUBLISH DATE*]**

1. **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]**

1. **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]**

1. **Question: Rather than posting on the agency website, can’t 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]**

1. **Question: When would a grant require an agency to contract with a specific vendor?**

**Answer:** An agency may name a firm or individual in the written grant application to perform specific services or provide specific goods. If the approval from the funding source and receipt of funds requires the agency to contract with the named 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]**

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

**Answer:** No. DES will only approve procurements that legitimately qualify as a sole source contract. Alternatively and if no related master contract exists, see [Direct Buy Policy](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/Policies/DES-125-03DirectBuy.pdf?=61124), [Emergency Procurement/Purchase Policy](https://des.wa.gov/sites/default/files/public/documents/About/Procurement_reform/Policies/DES-130-00EmergencyProcurePurch.pdf?=61124) or RCW [39.26.125(4)](http://apps.leg.wa.gov/rcw/default.aspx?cite=39.26.125).

1. **Question: What types of instruments can be considered sole source contracts?**

**Answer:** “Sole source contract” refers to a category of instruments 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. [*INSERT PUBLISH DATE*]

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

**Answer:** 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. [*INSERT PUBLISH DATE*]

1. **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.). [*INSERT PUBLISH DATE*]

1. **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. [*INSERT PUBLISH DATE*]

1. **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. [*INSERT PUBLISH DATE*]

1. **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. [*INSERT PUBLISH DATE*]

1. **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. [*INSERT PUBLISH DATE*]

1. **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 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. 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 RCW require the agency to file this amendment to a sole source contract with the Department of Enterprise Services (DES) for approval. 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.

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. [*INSERT PUBLISH DATE*]

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

**Answer:** Yes. The 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. [*INSERT PUBLISH DATE*]

1. **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 obtain quotes for ISPs. [*INSERT PUBLISH DATE*]

1. **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. [*INSERT PUBLISH DATE*]

1. **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 nonstate 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 nonstate funds, the amendment(s) is not required to be filed with DES for approval. [*INSERT PUBLISH DATE*]