



It may be a sole source, if...





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What is a Sole Source procurement?

- Noncompetitive procurement of material or service
- Any contract entered into without a competitive acquisition process, based on a justification that only one known source exists or that only one single supplier can fulfill the requirements



State Purchasing Act

O.C.G.A. § 50-5-51:

The Department of Administrative Services shall have the power and authority and it shall be the department's duty, subject to this part:

(1) To canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, equipment, and services other than professional and personal employment services required by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of this state **under competitive bidding** in the manner and subject to the conditions provided for in this article;



Sole Source Procurement

“I am of the opinion that where only one product can meet the applicable specifications, there is no necessity to solicit bids from other suppliers of such products since this would be a useless act. Finally, of course, the same principles would apply when a product is available from one source only. This conclusion is confirmed by Ga. Code Ann. § 40-1910, which states that contracts shall be awarded on the basis of competitive bids ‘**whenever possible.**’” *1974 Georgia Attorney General Opinion 74-16*

- “wherever possible” language is carried forward in O.C.G.A. § 50-5-67



Why is a Sole Source *special*?

- ❑ Does not provide for fair and open competition
- ❑ Limitations
 - Additional public scrutiny
 - Additional audit scrutiny
 - Additional vendor scrutiny
- ❑ No cost competition



Sole Source Procurement

- Section 2.3.2 of the Georgia Procurement Manual et seq.
 - Based on market analysis, the procurement professional may determine only one supplier is capable of providing the needed goods or services.
- Section 2.3.2.1
 - For purchases with a value of \$25,000 or more, sole-source purchases are prohibited unless the state entity establishes justification why the needed goods or services should not be procured through open competition.
 - Sound procurement practice requires that a sole-source purchase occur when it is the **only option** and not as an attempt to contract with a favored service provider or for a favored good.

It may be a Sole Source, if...

✓ Uniqueness can be established

- Only one supplier can satisfy the technical requirements because of unique technical competence or expertise
- Only one supplier possesses patents or exclusive rights to manufacture or furnish the item or service





It may be a Sole Source, if...

- ✓ Excessive Costs can be quantified
...and should be reasonable
- Only one supplier can furnish the services because of the supplier's previous state entity experience and having an alternative source duplicating these capabilities would result in excessive costs to the state entity.
- The use of any other manufacturer's good/equipment or software would result in excessive costs to the state entity.



Sole Source Procurement

1974 Georgia Attorney General Opinion 74-16 provides “...the proper execution of the duties of [DOAS] demands that it **determine to the best of its ability that specifications (either those suggested by the requisitioning agency or those developed by DOAS) do not arbitrarily exclude potential vendors, and that no other vendor can in fact meet all applicable and reasonable specifications.** Only when these duties are properly executed do the exceptions relating to the available sources become operative so as to allow the department to forego the requirement of bid solicitation.”



Should the State allow the use
of Sole Source acquisitions?



What is not a Sole Source procurement?

- 👎 An agency requirement for a particular proprietary product or service does not automatically justify a sole source procurement if there is more than one potential bidder or offeror for that item (including software).
- 👎 An agency preference for a brand name product does not justify a sole source procurement.
- 👎 A supplier's characterization that they offer THE BEST (service, support, warranty, etc.)
- 👎 Incumbency does not justify a sole source procurement.
- 👎 A desire to contract with a favored supplier or for a favored good.
- 👎 A good's or service's "uniqueness" alone may not qualify the producer or supplier of the good or service as a sole provider of a good or service.



Furthermore ...

A Sole Source requests should not be justified on the basis of:

- A lack of advance planning
- Concerns related to the amount of funds available for the acquisition of the goods or services
- Previously non-competitively bid contract

In addition, the issuance of a Sole Source is NOT a quick way to procure something!!!



What are the most common
Sole Source procurement by the
State?



Is this a Sole Source?

- The Georgia Department of Driver Services is providing public notice of its intent to award a contract to Modular Furniture Group, Inc. to provide high quality modular units that are durable, portable, and flexible with ease of assembly and disassembly without the use of nails or screws.
- The DDS Customer Service Centers are located throughout the State for the purpose of providing various license issuances, renewals, and other driver related services to the public. The centers require unique work areas to provide these services. DDS has spent several thousands of dollars to construct specifically designed work areas.
- Over periods of time, DDS has had to relocate some of its centers for various reasons, leaving behind very expensive, permanently installed fixtures that were specifically designed for the site. Some areas have been exposed to flooding, causing damage to cabinetry systems.
- Also, as space requirements change due to equipment replacement or modifications, or the need for additional equipment arises, so does the need to re-configure work areas.



Is this a Sole Source?

- The college is providing public notice of its intent to award a one-time purchase order to Healthcare Technologies to provide the ProT X-Ray room and FlashPad wireless digital detector. Healthcare Technologies has been identified as the sole source for this purchase. Healthcare is the only available supplier and they do not have other distributors.
- One of the college's campuses has the same ProT X-ray room. Some of the students and colleges utilize and train at two campus locations. It is important to have the training agenda the same for both locations and staff experienced and comfortable with both rooms.
- Healthcare Technologies has two X-Ray service engineers near the south campus for prompt service, response and experience.
- If a service agreement is ever requested after the warranty period, better pricing would be available for service contract on two systems.
- The Flashpad detector which is only associated with the ProT X-Ray has two handles which provides for security when utilizing the detector in a teaching environment.



Is this a Sole Source?

- DBF is providing public notice of its intent to award a contract to MicroPact Global, Inc. to provide its CAVU eLicense software and entellitrak system for purposes of managing the required regulatory, supervision, examination and Federal reporting functions of the State's financial service providers.
- Specifically, MicroPact is the only software provider that has implemented application interfaces with the Federal Government – a base requirement of DBF.
- As confirmation of exclusivity capability, the Conference of State Bank Supervisors has advised DBF that MicroPact has the only commercial products available that meet the functional and operational needs of state financial services regulatory agencies, having successfully implemented MicroPact's products in 20 state banking, non-depository, and securities regulatory agencies.
- Working collaboratively with the Georgia Technology Authority (GTA) and the Department of Administrative Services (DOAS), DBF further conducted a comprehensive marketplace assessment to identify potential COTS system solutions.



What is the difference between a Sole Source and a Sole Brand purchase?

- The Sole Brand is competitively bid
- The Sole Brand specifications restricts acquired good/equipment/software to a specific manufacturer or owner's brand
- A Sole Brand name acquisition speaks to a product's uniqueness, standard of quality, performance and other characteristics that been meet the State's requirements



When considering the issuance of a Sole Source, we suggest you ask the following questions:

- Why is a Sole Source method of procurement being recommended?
- Why shouldn't we bid this out?
- If we bid this out could there possibly be other responsive bids?
- Am I comfortable signing my name to recommend a Sole Source method of procurement?



Sole Source Process Review

- Conduct market research
- Provide adequate justification
- Obtain DOAS approval for Sole Sources > \$500,000 prior to posting
- Post on the Georgia Procurement Registry
- Complete the protest period prior to award

Sole Source is NOT a quick way to procure something.



A Sole Source is Not just Filling Out SPD-PS020!

Consider the following components:

- Single event or multi-year
- Pricing (fixed fee or time & material)
- Maintenance
- State contract template or supplier paper
- Implementation Services
- Statement of Work (SOW)



Sole Source Protests – Management/Resolution

- Consider getting the Supplier to withdraw the protest
- Double-check requirements
- Cancel the Sole Source event
- Have the Supplier prove it
- Be ready with documentation
- Know your entity's embedded costs and how much to move to another supplier



Questions

