

## SMART Fact Sheet: Non-Competitive Procurement Justification

### ***What is “sole source” procurement?***

Procurement by noncompetitive proposals, referred to as sole source procurement, is procurement through solicitation of a proposal from only one source. If a State recipient is conducting a sole source procurement, it must follow the same policies and procedures it uses for procurements from its non-Federal funds, pursuant to 2 CFR 200.317. Sole source procurements by all other grant recipients, including subrecipients of a State, must adhere to the standards set forth in [2 C.F.R. § 200.320\(c\)](#) in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. To help determine when a sole source procurement may be used, see SMART’s Sole Source Review Checklist.

### ***When is the sole source approval required by SMART?***

**Sole source procurements by State recipients must adhere to the same policies and procedures the State uses for non-Federal funds.** No additional approval by DOT is required.

All sole source procurements by entities other than States require adequate written justification that meets the criteria listed below and documentary support in the procurement file to be allowable.

A recipient must also request and receive written approval from SMART **prior to** purchasing equipment, technology, or services; obligating funding for a contract; or entering into a contract with award funds related to sole source procurements in excess of the simplified acquisition threshold. The recipient may set its own simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures. The simplified acquisition threshold cannot exceed the threshold established at 48 CFR 2.101, currently \$250,000. For the purchase of equipment, technology, or services under a SMART award – to include but not limited to noncompetitive (‘sole source’) procurements, **recipients must use their own documented procurement procedures that reflect applicable state and/or local laws and regulations, as long as those requirements conform to the federal procurement standards set forth in 2 C.F.R. § 200.318.**

*Recipients may conduct noncompetitive (“sole source”) procurement through solicitation of proposals from only one source when one or more of the following circumstances apply:*

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, which cannot exceed \$50,000 (according to [2 CFR 200.320\(a\)\(1\)](#));
- The item/service is available only from one source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- DOT expressly authorizes a non-competitive procurement in response to a written request from the recipient; or
- Competition is determined inadequate after solicitation of a

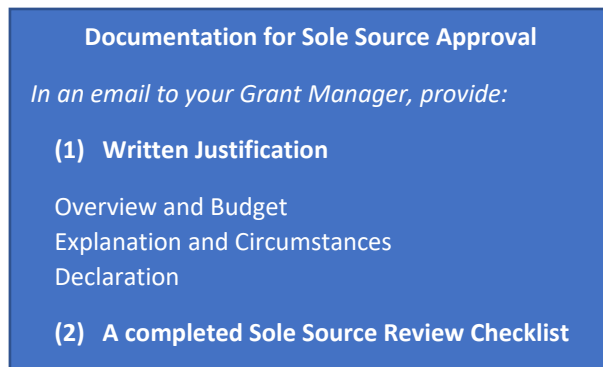
A sole source justification request should only be submitted if a recipient determines that the award of a contract through a competitive process is infeasible based on the specific circumstances set forth in 2 CFR 200.320(c). Sole source procurement should be used only when competitive solicitation procedures like sealed bids or competitive proposals are not applicable to the requirements or are impracticable.

### ***What documentation must be submitted to SMART for sole source approval?***

An award recipient must initiate a *Sole Source Approval* Grant Award Modification (GAM) by emailing your SMART Grant Manager to request approval to enter into a noncompetitive contractual relationship

“sole source” with a contractor under a Federal award, where the contracted cost exceeds the Simplified Acquisition Threshold as determined by the recipient, not to exceed \$250,000. **Attach the following documents to the email:**

1. Written justification (including an itemized budget for the contract amount)
2. A completed Sole Source Review Checklist.



### Written Justification Outline

The outline below may be helpful in preparing your agency’s sole source request and ensuring that all the necessary information is included. The request should include the following information, which SMART will review to consider approval of a sole source contract:

#### **Section I. Overview and Budget**

1. A brief description of the project.
2. The amount to be designated for the sole source procurement.
3. The purpose of the contract.
4. An itemized budget for the contract amount.

#### **Section II. Explanation and Circumstances**

1. An explanation as to why it is necessary to contract in a noncompetitive manner.
2. Which one (or more) of the three circumstances identified below applies to the procurement transaction. *Where applicable, include supporting information as identified below under the applicable section(s):*
  - a) If the item or service is available only from one source, please include the following:
    - Uniqueness of items or services to be procured from the proposed contractor or vendor (e.g., compatibility or patent issues)
    - How the agency determined that the item or service is only available from one source (e.g., market survey results, independent agency research, patented or proprietary system)
    - Explanation of need for contractors’ expertise linked to the current project (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier scoping, planning, or earlier aspects or phases of the project)

- Any additional information that would support the case.
- b) If the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation, please include the following:
- Description of the public exigency or emergency
  - Need for the contract and period of performance
  - Impact on project if deadline/dates are not met
  - How long it would take an alternate contractor to reach the same required level of competence (equate to dollar amounts, if desired)
  - Any additional information that would support the case.
- c) If competition is determined inadequate after solicitation of several sources, please include the following:
- Results of a market survey to determine competition availability; if no survey is conducted, please explain why not
  - Any additional information that would support the case.

### **Section III. Declaration**

1. Provide a declaration that this action/choice is in the best interest of the agency.

Failure to provide all the necessary information will delay the processing of your request. Your agency will be contacted if any of the identified information is missing or if additional supporting information is required. If SMART determines that the request does not meet the standards set forth above, the request will be denied.

Please be advised that conflicts of interest are prohibited under the procurement standards set forth in [2 C.F.R. § 200.318\(c\)](#). In addition, program funds should not be awarded to any party that is debarred or suspended from participation in federal assistance programs.

If you have any questions regarding the federal requirements that guide procurement procedures, please contact your Grant Manager.

#### **Sole Source Review Checklist**

An award recipient must initiate a Sole Source Approval Grant Award Modification (GAM) to request approval to enter into a noncompetitive contractual relationship with a contractor under an award where the contracted cost exceeds the Simplified Acquisition Threshold (currently \$250,000). The sole source justification should include adequate information to address the elements below. In addition to the written justification, attach to the *Sole Source Approval* GAM a copy of the itemized budget for the contract amount.

Below is a checklist of qualifying situations intended to help evaluate sole source requests. The sole source approval request only needs to meet one of these qualifying situations. However, all the conflict of interest items must be addressed in the justification.

#### **Item Only Available Through a Single Source**

- Does independent research through internet searches or discussions with subject matter experts corroborate that the item is available only from a single source?

- Does the request demonstrate the uniqueness of items or services to be procured from the proposed contractor or vendor (e.g., compatibility or patent issues, etc.)?
- Does the request demonstrate and support how it determined that the item or service is only available from one source (e.g., market survey results, independent agency research, patented or proprietary system)?
- Does the request demonstrate a significant need for contractor's expertise linked to the current project (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier phases of project)?
- Are details about the contractors' expertise linked to the current project well documented? (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier scoping, planning, or earlier aspects or phases of the project)

#### **Public Emergency**

- Is there a public emergency such as a natural disaster or catastrophic event?
- Has there been a declared state of emergency in which these goods and services will be needed?
- Is there an immediate health or safety concern?

#### **Inadequate Competition**

- Does the request adequately describe the efforts to competitively contract for this item? For example, were requests for proposals or bids conducted and what was the nature of the responses?
- Does the request adequately describe the efforts to ensure the contract pricing is fair and reasonable?
- Does the request provide results of a market survey to determine competition availability or explained why no survey was conducted?

#### **Conflict of Interest/Suitability/Procurement Standards (*justification must address all items*)**

- Does the request ensure there is no conflict of interest with the proposed vendor?
- Does the request indicate that the Excluded Parties List was checked and that the proposed vendor has not been debarred from receiving federal funds?
- Does the request include evidence that the procurement will be competed in compliance with the organization's procurement policies and the procurement standards outlined in [2 C.F.R. Part 200](#), including the required contract provisions?