

Sole Source Procurement

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Emerging Issues: 2014 Sole Source Procurement Work Group

In the summer of 2014, the Sole Source Procurement Work Group, formed under NASPO's Emerging Issues Committee, was tasked with conducting a data-gathering project on the topic of sole source procurement, as an effort by the membership, to understand each other's statutes, regulations, and practices regarding this type of non-competitive procurement. A member survey was deployed to collect several data points, such as:

- statutory or regulatory provisions allowing sole sources;
- criteria to allow them and written justification requirements;
- approval authority; and
- requirements to publish a notice of intent.

Non-competitive and sole source procurement are sensitive topics in the public sector. While competition is the preferred method of performing a procurement process, non-competitive procurements, such as sole source procurements, may be the appropriate tool under certain circumstances. This paper provides a snapshot of how states address and use sole source procurement.

Definitions

While there are common elements and criteria used to describe non-competitive procurements, such as *sole source procurements*, there is not one single accepted definition nationwide. As a general rule, statutes prohibit non-competitive procurements but provide for exemptions and waivers of competition, such as sole source procurements. Competition is not available in a sole source procurement situation simply because there is only a single source for the procurement or no reasonable alternative source exists.

[Appendix II](#) presents a list of definitions of sole source procurements from the state procurement offices included in our survey.

It is important to note that some states only define situations where competition can be waived and do not have the exact term *sole source procurement* defined in their laws altogether. Other states have both the terms *sole source* and *single source* defined. Yet, a couple of states only use terms such as *proprietary purchases*, which distinguishes them from sole sources, meaning that in proprietary purchases competition can be obtained between distributors even though the proprietary product required is restricted to one manufacturer(s).

Survey Highlights

Forty-one jurisdictions participated in the 2014 NASPO Sole Source Procurement Survey. Key results of the survey included:

- 27 states do not permit sole source procurements without justifications.
- 22 states have criteria established in statute to allow sole sources procurement (standardized sole source justifications are present in 14 states).
- 38 states require written justification for sole source procurements from requesting departments. (Appendix I)
- 20 states require that some form of public notification (i.e. “intent to sole source”) be published.
 - Requirements to publish a notice of intent to sole source reside in statute for most states and policy for a few. All states post the notice on the central procurement office website and/or email notifications through eProcurement or ERP system. A few responding states have a requirement to place a legal notice in the official state newspaper.
- 15 states limit the length of a sole source procurement contract.
 - A few states have a one-year term for sole source procurement contracts, after which a determination is made as to whether a sole source contract is still warranted or competition is available or whether requirements have changed before a new justification is provided.
 - Most states apply the same maximum limit that is used for all other contracts, which can be twelve months, three to four years, or between five to seven years; contract limits vary
- 26 states maintain a record listing all sole source contracts.
 - Only 5 of those who maintain records of sole source contracts submit a copy of this record to their legislature.
- Most common reasons for sole source procurements noted by the responding state central procurement offices are noted below:

Good/service is unique/special in nature	Compatibility (e.g., a public safety agency requiring a specific piece of equipment to be compatible with an existing equipment system)	Limited or proprietary systems (i.e. additional licenses, updates, specialized replacement parts, etc.)	A professional expert is requested	Bridging a gap between contracts because a new contract was not in place prior to expiration
31 states	29 states	29 states	19 states	12 states

- 20 states require the Chief Executive/Commissioner or the requesting procurement officer for the requesting department to approve a sole source procurement.
 - Final approval for sole source procurement requests in most states resides with the Chief

Procurement Official. A few states have that authority vested with the Governor, State Comptroller, Commissioner, Board, or a higher authority that oversees procurement.

- 4 states have a protest or appeal process specifically related to sole source procurements.
 - 12 states have had a sole source procurement overturned as a result of a public posting or appeal/protest process.
 - Current practices vary among the states regarding situations where a member of the public notifies the procurement office (as a result of the public posting) indicating that they can provide the requested good or service. In some states, the CPO can cancel the sole source, an investigation takes place, and all other sources are considered (vendors have the opportunity to place a bid). In case of a protest, state procurement officer rules on the protest. If sustained, then agency is denied permission to proceed with a sole source and must choose another procurement method.