



Questions and Answers from *Deep Dive on Sole-Source Procurement for POS and PSA Contracts*

April 28, 2021

1. We received several questions about when sole-sourcing is appropriate when an agency applies for or receives federal funds. We have consolidated responses below.

1.A. Generally speaking, when should I use waiver code B?

Waiver code B states, "Supplier is mandated by federal law/grant (i.e. Medicaid), state statute, or public act." Generally, this waiver code covers situations when a legally binding document like a contract or grant from the federal government, state statute, or a public act names a *specific supplier* that you must contract with in order to provide the services you are procuring.

If you have a grant or contract that lists a provider or partner that you must work with, you do not need to complete a competitive procurement process and instead can sole source with the specified provider/partner.

1. B. Can I list a specific vendor/partner on my grant application without selecting that partner competitively?

Sometimes, applications for grant funds require that you list one or several partners that you plan to work with. The ideal approach to a situation like this is to do a competitive procurement process to select the partner(s) that you plan to list on your application. If you then win the grant funds, you can issue contracts to the providers listed in the grant, and those contracts would be considered competitive (i.e. they would not require a sole-source waiver). Please see question 2 for more information on how to do this.

However, there are situations where you might not be able to competitively select a partner to include on a grant application. You might know that you have a better chance of winning the grant funds if you choose your partner(s) strategically, in which case a fair and open bidding process might not make sense. You might be choosing partners based on specific criteria in the grant that would prevent a free and open bidding process. You might require the expertise of a specific organization in order to successfully win the grant, and therefore will want to target a specific partner to list on your application. Even if you don't need to list a specific partner or partners in the grant application, you might be required to begin programming within a limited timeframe (30 or 60 days) which would prevent you from completing a full competitive procurement process. All of these are acceptable situations in which to request a sole-source waiver using this waiver code. Please include in the justification box additional information so that we can understand the circumstances that led to your need to waive competition.

1.C. What would prevent a state agency from always responding to a federal grant application with specific vendors to avoid the procurement process?

We want to emphasize that if you are applying for a grant, you should think carefully and critically about whether the situation at hand *requires* that you waive competition. As we mentioned during the presentation, we hope that agencies will limit the use of sole-source procurement to situations when it is absolutely necessary. This waiver code does not grant free rein to forgo the competitive process whenever you are applying for grant funding.



2. Can you begin the RFP process based on an expected award of funds? Even if the total amount that may be rewarded is not known?

Yes, you can absolutely do this, as long as you are clear in the RFP that award is dependent upon receipt of funding. You can also include language that indicates that the exact amount to be awarded to your agency is not known. If you are clear in your communications with the provider/supplier community, this is a great option for undertaking a competitive procurement when outside funding is in play.

3. If I go out to bid, how many responses to the RFP qualifies that procurement as non-competitive? Can you define and give examples of when the "Waiver from Competition" and "Waiver for Non-Competitive" would be used?

If you go out to bid and receive fewer than three proposals (1 or 2 proposals), the procurement is considered non-competitive. In this case, you would code the requisition as "non-competitive." The "Waiver from Competition" category would be used when you did not attempt a competitive process and instead have a single provider/supplier in mind. In this case you are asking that we waive the requirement for you to go to bid at all, hence "waiver from competition."

4. Shouldn't all the waiver codes that are applicable be picked?

If more than one waiver code is applicable, you can select multiple waiver codes. We collect data on which waiver codes are used when, and that data helps us identify procurements that might be good candidates for competitive procurement in the future, so we ask that you choose only the waiver codes that truly apply for a given waiver request.

5. What waiver code should I select when we are renewing a Human Service Contract that will be going out to bid in a year or two?

If you are planning to re-bid the service within a year or two, you can select waiver code C, "Services are to prevent disruption in treatment outcomes and continuity of care for vulnerable populations or emergency services." Please indicate in the justification box approximately when you plan to re-bid the service. Including this kind of information in your procurement plans will help us review and approve these waiver codes more quickly.

6. If we have a PSA that is less than \$20,000 which didn't need OPM approval but now we need to do an amendment to make it over \$20,000 and/or maybe over one year, do we complete a request for amendment request or a sole source request?

If you are amending an existing contract to add time and/or funding to it, please use an amendment, NOT a new sole-source contract. Even though you didn't submit a requisition for the original contract, there is a record of the contract in Core, so please submit an amendment requisition off of that existing contract. Amendments require OPM approval in the following circumstances:

- 1) The cost of the original contract is greater than \$50,000
- 2) The amendment has a cost of 100% or more of the original contract cost
- 3) The amendment increases the cost to more than \$50,000
- 4) The amendment extends the term beyond a one-year period
- 5) The amendment is the second or subsequent amendment.



Please use the justification box to explain why you have chosen to extend an existing contract rather than going out to bid.

7. You mention the threshold of \$100,000 for competitive/noncompetitive procurement - wasn't \$50,000 and over/under 1 year the prior threshold?

To the extent possible, all contracts should be bid competitively. If you wish to procure something for more than \$20,000 through a sole source, you must get OPM approval to waive the competition requirement.

For those contracts between \$20,000 and \$100,000, OPM will consider waiver code A, which says "the cost to the state of a competitive solicitation process would outweigh the benefits of such a process," as a justification for the waiver from competition.

8. We have a contractor whose services we would like to extend on a sole-source basis. Should we submit an amendment POS or Waiver from Competition request?

If the contractor will be providing the same service that it has been under the current contract, an amendment is preferable. Please include in your amendment request a justification for why you are extending the existing contract rather than going out to bid to continue to provide the service. If the terms or scope of the contract are changing significantly, a new contract may be more appropriate.

9. We have some clinical POS and PSA contracts that provide clinical services. When amending or renewing these, we use the justification that changing or interrupting the services by the current provider is crucial as our vulnerable population takes a long time to trust and feel comfortable with a new provider. Is this acceptable?

OPM understands that transitioning to a new human service provider can be challenging and is open to approving longer contract terms to mitigate this challenge. However, we believe human service agencies should develop transition plans to allow for the possibility of contracting with a new provider. One of the goals of competitive procurement is ensuring that the State is providing the best possible services to the people who need them; we achieve this goal by regularly "going to market" to see what providers are out there and whether there are approaches other than the ones we are currently using that might serve our target populations better. That goal needs to be balanced with the reality of the discomfort that a new provider might cause among a population of vulnerable folks. There is no blanket answer here. The procurement planning process is a good time to discuss this challenge with OPM and to weigh the tradeoffs between competitive procurement and its impact on the target population.

10. How long does it take to get a response to a request for non-competitive procurement?

OPM/Finance regularly review requisitions at least twice per week. If all the information on the requisition is completed correctly, we can approve a request once we review it, sometimes in a matter of hours. If we have questions about the request, the process will be delayed. Filling out all the requisition fields clearly and accurately will help ensure that your requisition is approved quickly. If you have an urgent or high priority request that needs our immediate attention, you can notify us via email and we will review it as soon as possible. Please note that OPM/Budget must approve your requisition before OPM/Finance receives it for review.



11. Will OPM ever consider providing certificates after these trainings so that employees could show their understanding? I think it would help measure the understanding of this process

Thank you for this suggestion! We will absolutely discuss the possibility of creating a training certificate and will notify everyone if this option becomes available.

12. Adding a sole source provider in Core-CT before authorizing the use of the Contractor can result in Core-CT having a list of Contractors who are not authorized to Contract with the State.

Registering a vendor on Core-CT does not automatically authorize the State to make payments to the vendor. A contract and funding must be attached to the vendor in order for them to receive any sort of funds. If the agency has gotten to the stage of requesting a sole-source waiver from OPM, it is our understanding that the agency has established a relationship with the vendor that warrants the vendor registering in Core.

13. Can we submit a sole-source request that doesn't specify a supplier?

No, the supplier must be listed on a sole-source requisition. This allows us to validate that it is appropriate that the specified vendor receive the contract.

14. Can my agency submit a sole-source requisition that covers multiple contracts?

No, each sole-source requisition is attached to a single contract. Please submit one requisition per sole-source contract.