

Sole sourcing

COMMON WISDOM HOLDS that public procurement ordinarily should be conducted in an open, transparent and fair manner. It is assumed that a competitive approach to contract award will provide government with the best possible goods and services at the fair market price. However, most governments recognize that in at least a narrow band of cases, there is little possibility of competitive supply, so let's look at an exception to competitive contracting, "sole sourcing." The term "sole sourcing" describes a non-competitive procurement process accomplished after soliciting and negotiating with only one source. Therein lies the fundamental problem with sole sourcing – where only one bid is obtained, the government cannot be sure it has received a fair price.

The usual circumstances in which sole sourcing is permitted under government purchasing policies include the following:

- Low value purchases: for very small purchases, the benefits of competitive sourcing do not justify the additional administrative burden. The exact figure at which purchases become sufficiently small to justify not seeking competitive quotes varies widely, but few permit sole sourcing on this basis for purchases above a few thousand dollars.
- Purchases from a supplier who enjoys an exclusive patent or other monopoly right. Some public authorities broaden this category to include any type of item sold only through the manufacturer for which there is no comparable alternative available in the market – something very unlikely to be true.
- Items and parts match an existing piece of equipment and are available only from the same source.
- Upgrades to existing software available only from the developer.
- Small extensions of an existing contract.
- Emergency purchases due to disaster or other crisis, or where there are pressing health and safety issues.

When the above criteria are fairly applied, they provide a public procurement system the necessary flexibility. When inadequate safeguards are built into the process, they afford loopholes that make government contracting ripe for abuse.

The critical goal in any package of rules governing sole sourcing should be to build in accountability. Anyone who argues in favor of sole sourcing should be required to take personal responsibility for it. Most governments require any requisition to purchase using sole sourcing to be in writing. Usually, the requisition must include an appropriate justification for the sole source approach. This should be formally recorded and signed by the person who advocated the approach. Given the potential for abuse, all sole source transactions should be subject to review and audit by internal audit, as well as by the usual purchasing authorities. Senior level approval should be required to permit such contracts to proceed. Despite these precautions, experience shows that it is often difficult to decide who is **ultimately accountable**.

Except for emergency purchases, additional time should be built into the approval process to confirm that the decision to employ sole sourcing is based on proper investigation, evaluation, and documentation of alternate sources of supply. Purchasing departments should be required to describe (and document) the



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efforts made to ensure that offers are solicited from as many potential sources as is practicable. Individuals with sufficient technical training and expertise to give credibility to the claim should verify the list of the unique technical specifications required of the product. Even where this is done, there should always be a further gatekeeper, who queries the necessity of obtaining a product with these features. If this cannot be answered clearly and concisely, one must doubt the entire rationale.

Too often "emergencies" result from a lack of forward planning that would allow the need for supply to be identified well enough in advance. A steady increase in the number of contracts awarded through sole sourcing indicates that the procurement system is breaking down – insufficient effort is being allocated to identify emerging needs within the organization.

Even where sole sourcing is necessary, care should be taken in the way in which such contracts are awarded. Emergency situations do demand an immediate response. Often there are humanitarian concerns: lives are at risk and/or infrastructure has collapsed, inconveniencing thousands. In such a situation, the first priority is to identify and meet the affected population's most urgent needs. However, generally emergency contracts should never be of long duration. Even in a crisis, a certain level of sober oversight is required.

One would assume that everyone would work together for the common good, yet, surprisingly, international studies show that major emergencies actually increase the potential for corruption. There is no reason to believe that domestic and more limited emergencies such as serious snow or ice storms, floods and so forth will not suffer from such dishonesty.

In a situation where it appears there is only one supplier, consider solving the procurement need by some alternate type of supply that would permit increased competition. As well, the purchasing department should engage in market research in an effort to determine whether there are other potential sources of supply that may be interested in competing for the contract.

In our next article, we will look at other situations where it might be advantageous for public authorities to consider an alternative to the normal competitive approach. ~~~

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