

Noncompetitive Type—Sole Source

The sole source method of procurement is used when there is only one supplier, distributor, or manufacturer for the product(s) and/or services(s) that are being procured.

Identification of Sole Source Products and/or Services

Before offering a sole source noncompetitive contract, a CE must verify that the product and/or service can only be procured from a single source. A procurement where there is only one offer is not necessarily sole source. There may be other suppliers, distributors, or manufacturers that could have submitted an offer but chose not to submit an offer.

For Example: There are 3 companies that commonly provide the type of cooling equipment that a CE is attempting to procure. Company A chooses not to bid because it is unable to meet the delivery timeline. Company B no longer distributes the line of products that would have met the specifications and technical requirements. Therefore, Company C is the only offeror. In this situation, the single offer submitted is not sole source. Instead, it is an inadequate competitive response to the solicitation. The CE must follow the guidance for that type of noncompetitive procurement.

For a sole source method to be used, there must be only one possible source for the product and/or service.

How does the CE determine the product and/or service is sole source?

1. A CE cannot accept a statement from the supplier, distributor, or manufacturer as verification that the product and/or service is only available from a single source.
2. The CE must actively attempt to solicit offers from other suppliers, distributors, or manufacturers.
3. If the product and/or service is available from other sources, but one source offers a feature(s) that other sources do not offer, the special feature cannot become the only factor that defines a product and/or service as the sole source unless the CE can document why this feature is required, not just preferred.
4. The CE must retain records that demonstrate its efforts to solicit offers for the product and/or service from other suppliers, distributors, or manufacturers.

Approval to Use a Sole Source Procurement Method

To request approval to use a sole source contract, the CE must submit a request to TDA in writing (paper, fax, or email)⁶³ which includes the following:

- Description of the CE's review of the solicitation, advertising, and other actions to determine if the contract was competitively solicited
- Description of the CE's actions to ensure that the supplier, distributor, or manufacturer is sole source
- Copies of the CE's solicitation, advertising, and other relevant documentation that demonstrate that the supplier, distributor, or manufacturer is a sole source.⁶⁴

TDA will provide written notification of approval or disapproval.⁶⁵

Brand Name Sole Source Purchase

When there is a compelling need, such as compatibility with current equipment, to purchase a specific brand product and/or service, the CE must have documentation that demonstrates that other available brands are not compatible with the CE's

1. current equipment,
2. replacement part inventory, and
3. maintenance staff's expertise.

However, even if the CE meets the brand name sole source purchase criteria listed above, it must still determine if there is more than one supplier for the brand of equipment or the services. If there are multiple suppliers, the CE must follow normal procurement processes in awarding a contract.

[NOTE: In some cases, suppliers for specific brands may be affiliated or associated suppliers which may result in collaboration among the suppliers and may restrict competition. CEs will need to address this as appropriate to ensure full and open competition.]

⁶³ See the *Contact Information for the Texas Department of Agriculture (TDA), Food and Nutrition* page which follows the table of contents for contact information for each program.

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⁶⁵ See the *Records Retention* subsection in this section for additional information on records retention.