

013-030 Procurement Types: Sole Source

ITS enabling legislation requires that information technology equipment and services be acquired in a manner that insures the maximum of competition among all manufacturers and suppliers of such equipment and services. Accordingly, ITS promotes full and open competition through the issuance of open specifications and the objective evaluation of vendor proposals to determine the lowest and best offering to meet an agency's or institution's business requirements. True competition protects the integrity and credibility of purchasing in the public sector and is essential in providing best value and adequate contractual protection for the purchasing entity.

Mississippi Public Purchasing Law (Section 31-7-13) specifies that noncompetitive items available only from one source may be exempted from bid requirements (sole-sourced). ITS statute, in Section 25-53-5 (p), permits ITS to utilize provisions in Public Purchasing law or regulations, when applicable. In certain limited situations, with appropriate written documentation and proper approval, information technology acquisitions may be sole-sourced. ITS applies a strict interpretation of the single source definition and is a strong advocate for conducting a competitive process unless the reasons for not competing are overwhelming and incontrovertible.

ITS Sole Source Procedure

The ITS Sole Source procedure is designed to allow agencies and universities to submit requests to ITS instead of to DFA when state-level sign off of sole source information technology acquisitions is required per Section 31-7-13 of the Mississippi Code. The ITS Sole Source Procurement Request Form, in conjunction with the Sole Source Certification signed by the agency or institution executive, has been designed to collect the necessary justification and certification for an information technology sole source acquisition. A Sole Source Procurement Request Form should be completed for all information technology sole source acquisition requests other than those delegated to the agency or institution (See Chapter 015 for specific dollar limits for the delegation of Sole Source approval to Agencies and Institutions of Higher Learning, as applicable).

Submit the Sole Source Procurement Request to ITS rather than to the DFA Office of Purchasing and Travel. It is not necessary to submit duplicate paperwork to the DFA Office of Purchasing and Travel for approval of sole source acquisitions. A copy of the [Sole Source Request form](#) is available in PDF or Word format on the ITS website. Customers may also submit sole source requests via ITS' [online procurement request system](#). All sole source certifications must be signed by the Executive Director of the agency or the President of the institution, or that person's designee.

The Sole Source Request form asks for documentation on any market research performed to determine if alternative sources are available. ITS may perform additional research based on the tools and information available through national organizations and subscription research services. If other sources exist, there must be compelling documentation as to why these sources are not acceptable.

ITS charges a fixed rate of \$125 to process a sole source certification if all justification and required documentation are included with the request and if the request does not have to be approved by the ITS Board. All sole source acquisitions above the Director Approval thresholds defined in [Section 018-030](#) require approval from the ITS Board.

A CP-1 Acquisition Approval form is issued by ITS for the amount of the sole source acquisition. Agencies that issue purchase orders through DFA should note that this CP-1 is uploaded by ITS into the DFA/SAAS system to authorize payment of the sole source purchase.

Sole Source Criteria and Required Documentation

Sole source acquisitions must meet certain criteria. Per public purchasing law, the following criteria must be met for a procurement to be authorized as sole source:

1. The product or services being purchased must perform a function for which no other product or source of services exists,
2. The purchaser must be able to show specific business objectives that can be met only through the unique product or services, AND
3. The product or services must be available only from the manufacturer and NOT through resellers who could submit competitive pricing for the product or services.

The purchasing agency or institution is responsible for documenting its business needs in the sole source request, as well as the ways in which the requested product or services meets those needs. In addition, the purchaser should

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document why other products or services cannot substantially meet the documented needs. If similar products or services exist in the marketplace, the business case for the unique functionality or characteristics of the sole-sourced item must be compelling for the procurement to be sole-sourced under state statute.

The purchasing agency/institution should obtain and submit to ITS a written proposal from the sole source provider. This proposal should clearly document the exact product and services to be provided, timeframes for delivery or service provision, and all associated pricing information, including retail price, discount structure, volume-related tiered pricing structures, ongoing support costs, and price escalation caps. If the purchasing agency/institution prefers, the ITS staff assigned to the sole source request can work with the vendor to obtain this information.

In addition to the above documentation from the purchaser, certification from the manufacturer should accompany the Sole Source Procurement Request. This documentation supplements the sole source justification but does not replace the purchaser's documentation of business need. The manufacturer must certify, on company letterhead, the unique features of the product or service within the marketplace and must also certify that the product or service is available only through the manufacturer or from a single specified distributor or reseller.

The following factors do **NOT** constitute valid criteria for sole source designations:

- Quality of the product or services: The competitive process has been established to determine the lowest and best offering.
- Price of the product or services: The competitive process has been established to determine the lowest and best offering.
- Project timetable or other scheduling constraints: The emergency purchase statute was established for situations meeting the statutory definition of "emergency," in which the delay incident to following a competitive process would be detrimental to the interests of the state. See [013-060 Emergency Purchases](#). In some situations in which the need is immediate but an emergency purchase cannot be justified, ITS can assist the purchasing entity in acquiring a temporary or interim solution until a competition can be conducted.
- Incumbent products or service providers: An award from a competitive process for the acquisition of products or services does not constitute a permanent purchasing mechanism. All products and services are re-evaluated from time to time to determine when a full competition and potential replacement are warranted. For service providers, this competition may include a reasonable learning curve for time required by non-incumbents to become acclimated to the particular customer, product, and/or environment.
- Sole source designation by other states: Mississippi's sole source requirements are more stringent than those in many other states.

Please remember: the law says single source, not best source. Competition is used to determine best source.

Benefits of Soliciting Proposals

It is always acceptable, and usually preferable, to solicit bids or proposals for an acquisition even if the product or services requested are believed to be unique in the marketplace. The benefits of soliciting proposals for a sole source item include:

- the purchaser develops a written statement of requirements against which to evaluate the sole source offering;
- the vendor submits a written statement of commitments and pricing for both initial and going costs, against which the purchaser can evaluate vendor and product performance and which can be incorporated into a negotiated contract; and
- the solicitation of written proposals increases the potential of reduced price offerings and/or written guarantees against excessive price escalation for a set contract period.

Agency/Institution Responsibility

The purchasing agency/institution is responsible for providing all necessary documentation and justification required to support a sole source acquisition, as described above. If adequate documentation is not provided with the request, ITS staff will work with the requestor's staff to obtain sufficient information to certify the sole source. Please note that ITS must charge an hourly rate for the time required to obtain this additional documentation.

The purchasing agency/institution is responsible for making the sole source procurement within the amount and from the vendor specified on the CP-1 Acquisition Approval form.

Delegation of Sole Source Certification

State Agencies: For state agencies, approval of all technology purchases with a life cycle cost of \$5,000 or less, including sole source purchases, has been delegated to the agency. The ITS Procurement Limits Policies for Agencies require a minimum of two [competitive written bids](#) or proposals for technology purchases with a life cycle cost over \$5,000 but not over \$25,000. Since, for single source items, the procuring agency will be unable to obtain two written bids, ITS must sign off on all sole source acquisitions of information technology with a life-cycle cost greater than \$5,000.

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IHLs: Institutions of Higher Learning (IHLs) have been delegated the authority to certify sole source procurements up to \$250,000 lifecycle cost under the ITS Procurement Limits Policies for IHLs. Institutions certifying a sole source purchase must ensure the three criteria listed above are met and documented in writing by the institution and the vendor prior to certifying a product or service as sole source. Sole source documentation must be reviewed and approved by the IHL's CIO for any sole-source certification above \$5,000. All sole source documentation should be retained in the institution's procurement file. Sole source requests above \$250,000 lifecycle cost require ITS approval.

Other than the delegations outlined above, all sole source technology procurements must be certified by ITS. ITS cannot exempt a sole source request--the ITS Exemption Request and ITS Sole Source Request are mutually exclusive.