



**State of Oklahoma
Office of Management and Enterprise Services
Central Purchasing**

PROCUREMENT INFORMATION MEMORANDUM

Affected Entities/Personnel: State agencies procurement staff	Subject: Sole Source and Sole Brand Acquisitions
Effective Date of PIM: 09/01/2018	Point of Contact: PIM@omes.ok.gov
Supersedes PIM: Sole Source and Sole Brand Acquisitions dated 07/01/2015	Statutory and Rule Reference: 1. 74 O.S. §85.45j. and 85.45j.1. 2. OAC Title 260:115-5-5; 115-5-13; 115-7-3
Approved: Ferris J. Barger, State Purchasing Director	Approval Date: 09/14/2018

As a means of disseminating relevant state procurement information to state entities, the Office of Management and Enterprise Services, Central Purchasing, periodically issues procurement information memoranda. To the extent any information in this procurement information memorandum (PIM) conflicts with information in a previously issued memorandum, the information in this PIM controls.

Summary

Sole source and sole brand acquisitions are methods which a state agency may utilize in acquiring goods and services subject to the requirements set forth in the statutory and rule references cited above and in accordance with the following criteria.

Criteria

1. The agency shall provide the following documentation attached to the ePro requisition regardless of the acquisition purchase price:
 - a) Fully completed sole source or sole brand acquisition certification form [OMES FORM CP 002](#) that has been initially authorized by the agency chief administrative officer; and

- b) All supporting documentation to justify the determination the sole source or sole brand is the proper acquisition method.
2. All documentation requirements for sole source and sole brand acquisitions with an acquisition purchase price over an agency's purchasing acquisition threshold must be submitted, reviewed, and approved by the State Purchasing Director prior to contract award.
3. The responsibility and accountability for the sole source/sole brand certification remains with the chief administrative officer of the agency.
4. Annual revalidation of the certification is required.

Practitioner Comments

1. The introductory paragraph contains a reference acknowledging that this PIM may contain information which conflicts with information in a previously issued PIM. The statement is intended to resolve any such conflict in favor of the most current PIM issued.
2. Each state agency shall submit a monthly listing of all sole source and sole brand acquisitions exceeding \$5,000 executed by the agency in the preceding month to the State Purchasing Director by either checking the sole source flag in PeopleSoft **or** if the agency is not on PeopleSoft, submission of an Exempt and Misreported Sole Source/Brand Contracts/Purchase Orders form, [OMES Form 1933](#).
3. All IT acquisitions must be approved by the State Chief Information Officer (CIO). The CIO is approving or denying the acquisition meets the State's IT requirements and security standards but is not approving, affirming or signing the sole source sole brand certification. For the avoidance of doubt, the agency's responsibility to certify the sole source sole brand does not operate to exempt an agency from the state procurement laws, including but not limited to the duty of the Chief Information Officer to approve acquisitions for information technology and telecommunication products or services.
4. Sole source and sole brand terms and conditions guidance:
 - a) An agency may utilize [OMES FORM CP 024](#) incorporating standard terms and conditions for a sole source or sole brand acquisition in conjunction with the certification when initially determined that a sole source or sole brand is the proper acquisition method.
 - b) An agency that has negotiated terms and conditions with a supplier is not required to submit [OMES FORM CP 024](#) with the certification to the State Purchasing Director. However, if the form is used, it may be modified to the extent that the terms of the form align with the negotiated terms of the same transaction.

For example: if an agency and a sole source or sole brand supplier reach an agreement which becomes memorialized between the parties, then [OMES](#)

[FORM CP 024](#) is not necessary. Alternatively, [OMES FORM CP 024](#) can be used in a modified form to align the terms as negotiated and any terms not addressed in the associated negotiations which are stated in [OMES FORM CP 024](#) can be deleted from the form. No term should be agreed to between the parties that is contrary to or in direct conflict with stated terms in [OMES FORM CP 024](#).

5. The chief administrative officer of each state agency is the approving authority for the agency's sole source or sole brand acquisitions and, by signing the certification, is affirming the submitted information is true and accurate and acknowledges his/her understanding that signing the certification knowing such information to be false is subject to punishment for perjury. If convicted or entering a plea of nolo contendere, shall be subject to fine and/or imprisonment, immediately forfeit his or her position and shall be ineligible for appointment to or employment in state service for a period of five (5) years.
6. The chief administrative officer's signature must be on file with OMES Central Purchasing on the Authorized Signature [OMES FORM CP 001](#).
7. All sole source and sole source brand acquisition documentation shall be maintained for a period of three years following the end of the fiscal year during which the acquisition was made.
8. Additional sole source certification guidelines are attached to this PIM to aid in the determination of whether sole source or sole brand is the proper acquisition method and to provide examples of supporting documentation.
9. When submitting the Sole Source/Sole Brand Acquisition Certification ([OMES FORM CP 002](#)) for approval by the State Purchasing Director or the State Chief Information Officer, indicate the applicable code from the Sole Source Certification Guidelines set forth below and provide any supporting documentation required to support the Sole Source Certification. Please note inadequate supporting documentation is likely to cause delay of approval until such documentation is provided.
10. In the following sections, scope of the original certification is discussed. Scope means work to be performed under a contract in order to meet the objectives of the contract and may include specific tasks, deadlines, costs, hours, entities, etc.
11. Amendments to a sole source contract made within the 12 month contract period which are made within the scope of the original certification do not require a new Sole Source/Sole Brand Acquisition Certification [OMES FORM CP 002](#).

For example: Agency ABC entered into a sole source contract for 1,000 hours to complete a defined project. It has been determined that an additional 75 hours is needed to complete the project this year. An amendment to the contract can be made without the submission of a new [OMES FORM CP 002](#).

12. Amendments to a sole source contract made within the 12 month contract period which are made outside of the scope of the original certification do require a new [OMES FORM CP 002](#).

For example: Agency ABC entered into a sole source contract with Supplier XYZ to purchase a specific piece of equipment to be delivered to Agency ABC. The sole source certification, [OMES FORM CP 002](#), is written specifically for the purchase of the specified equipment and delivery only. Upon delivery, it was determined that set up of the equipment by a certified supplier XYZ employee was required for the equipment to operational. In this example, the setup and charge for the set up are outside the scope of the original sole source certification. A new [OMES FORM CP 002](#) is required for the additional set up service.

13. If federal funding is involved and a state agency receives notification from a federal granting agency that additional grant funding is available to the state agency to reimburse grant authorized expenses during the specified grant period, the following scenarios would apply:

For example: The original sole source certification justification was written in a manner which does not limit the dollar amount, the number of authorized entities nor does it identify the specific entities. The state agency will attach the original sole source certification to the change order to add the additional funds to the existing contract.

For example: The original sole source certification justification was written in a manner which specifies the dollar amount of the grant award or limits the number of grant authorized entities for the specified grant period. In this case, a new sole source certification would be required to justify the additional funding or awards.

Sole Source Certification Guidelines

Code	Reason for Sole Source	Certification must clearly:
1	Only a specified make, model, or brand meets agency needs, even though the makes, models, or brands are available from multiple suppliers. A brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of suppliers solicited. This restricts competition in that only suppliers are able to supply a specified make, model, or brand are allowed to compete for state business.	State why the specified makes, models, or unique services are absolutely essential to the state's requirements.
2	Market research clearly shows there is only one responsible supplier and it can be demonstrated that no other supplies or services will satisfy agency requirements.	State why the specified makes, models, or unique services are absolutely essential to the agencies requirements, and what market research was accomplished to clearly establish that only one supplier can provide the supplies or services, copyright material.
3	Requirement is for additional units or replacement parts of specified makes and models of technical equipment and only one supplier is available.	State why the specified makes and models are absolutely essential to the agency requirements, and what market research was accomplished to clearly establish that only one supplier can provide the supplies or services.
4	Agency needs to purchase supplies or services from the original supplier in the case of a follow-on contract because award to any other supplier would result in substantial duplication of costs to the state that would not be recovered through competition, or in unacceptable delays in fulfilling agency requirements.	Provide data, estimated cost and how those costs were derived, extent of delay and impact of delay, and other rationale as to the extent and nature of the harm to the government, i.e. license fee, software maintenance support, custom software. Question: Are same supplier personnel available from last project to work on this project?
5	Purchase of a brand name commercial item that will be used for authorized resale.	No additional information needed.
6	Agency has an unusual and compelling urgency for supplies or services and the state would be seriously injured unless the agency is permitted to limit the number of suppliers from which it solicits bid/proposals. (i.e. - existing software)	Provide data, estimated cost and how those costs were derived, and other rationale as to the extent and nature of the harm to the government. (Justification may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.)
7	Agency needs to acquire services of an expert, such as expert services to support a current or anticipated litigation or dispute, involving the state in any trial, hearing, or proceeding whether or not the expert is expected to testify. Examples of such services include, but are not limited to, assisting the state in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a supplier or the state, which is in litigation or dispute, or is anticipated to result in dispute or litigation.	Indicate why the source for expert services is absolutely essential to the State's requirements, thereby precluding consideration of other sources.
8	A statute expressly authorizes or requires that the acquisition be made from a specified supplier, i.e., State Use Committee non-profit entity, Oklahoma Correctional Industries, specific professional organization, etc.	Attach copy of the referenced statute.