



OKLAHOMA
Office of Management
& 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: 03/01/2022	Point of Contact: PIM@omes.ok.gov
Prior PIM: 09/01/2018	Statutory and Rule Reference: <ul style="list-style-type: none">• 74 O.S. §85.45j. and 85.45j.1.• OAC Title 260:115
Approved: Dan Sivard, State Purchasing Director	Approval Date: 04/01/2022

As a means of disseminating relevant state procurement information to state entities, the Office of Management and Enterprise Services, Purchasing Division 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 within certain guidelines as outlined in the Statutory and Rule References cited above, subject to the following criteria.

Criteria

1. For all sole source or sole brand acquisitions, an agency shall complete in full, a certification form (OMES-CP-FORM-002) that has been initially authorized by the agency Chief Administrative Officer and shall be retained in the agency contract file. The certification form shall not be dated more than sixty (60) days prior to the acquisition. If negotiated terms and conditions with the supplier do not already exist, OMES-FORM-CP-024 is also required.

2. OMES-CP-FORM-002 and OMES-CP-FORM-024 may be located at the following: <https://oklahoma.gov/omes/services/purchasing/central-purchasing-library.html> .
3. If a sole source or sole brand acquisition price requires submission to the State Purchasing Director, the agency shall submit all supporting documentation in addition to the requisition for the acquisition.
 - All documentation requirements for sole source and sole brand acquisitions by an agency must be submitted, to the State Purchasing Director prior to contract award.
 - Annual revalidation of the sole source or sole brand certification form is required.
 - The responsibility and accountability for the sole source/sole brand certification remains with the chief administrative officer of the agency, The State Purchasing Director is not approving, affirming, denying or signing the sole source/sole brand acquisition certification. The State Purchasing Director is only accepting the required certification form and acknowledging receipt of the document.
 - The State Purchasing Director may request additional information necessary to adequately review a requisition to ensure compliance with the Central Purchasing Act and associated rules. [74 OS. §85.7.A.2.]

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. An agency shall submit a monthly listing of all executed sole source or sole brand acquisitions exceeding \$25,000 of the preceding month to the State Purchasing Director, by either checking the sole source flag in PeopleSoft or by utilizing OMES form 1933 as set forth at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/OMESForm1933.pdf>. OMES form 1933 should only be utilized by state agencies not utilizing the state system of record, PeopleSoft.
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 the 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 sole source or sole brand acquisitions in conjunction with OMES-FORM-

CP-002 when initially determined that a sole source or sole brand is the proper acquisition method. OMES-FORM-CP-024 may be found at:

<https://oklahoma.gov/omes/services/purchasing/central-purchasing-library.html>

- b. For IT acquisitions, the state's IT terms and conditions must be included as well as the hosting agreement, if applicable.
- c. An agency that has negotiated terms and conditions with a supplier, is not required to submit OMES_FORM_CP-024. However, if this 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 supplier enter into discussions and 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 term(s) 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 are contrary to or in direct conflict with stated terms in OMES-FORM-CP-024 or the IT terms and conditions.

- 5. The state agency Chief Administrative Officer is the approving authority for sole source or sole brand acquisitions and by signing the certification (OMES-FORM-CP-002) is affirming the submitted information is true and accurate.
- 6. All sole source and sole source brand acquisition documentation shall be maintained in accordance with state record retention requirements.
- 7. Additional sole source certification guidelines are attached to this PIM to aid in the determination of whether a sole source or sole brand is the proper acquisition method and to provide examples of supporting documentation. A competitive bid for goods and services is the suggested method of requisition. The competitive bid offers the best value for the State of Oklahoma while also affirming whether or not a product or service is a Sole Source/ Sole Brand.
- 8. When submitting the Sole Source/Sole Brand Acquisition Certification with the ePro requisition to the State Purchasing Director or the State Chief Information Officer, indicate the applicable code form 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 can cause a delay of processing the certification document.

9. 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.

10. 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.

Sole Source Certification Guideline

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 vendors. 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 vendors 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 vendor 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 vendors from which it solicits bid/proposals. (i.e. - existing software)	Provide data, estimated cost and how those costs were derived, and other rational 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 vendor, i.e., Oklahoma State Correctional Industries (OCI), State Use Committee.	Cite the referenced statute on the Sole Source/Sole Brand Certification and on the ePro requisition. A copy of the referenced statute may be attached.