

CHAPTER 8

SOLE SOURCE PROCUREMENT

In this Chapter look for . . .

- 8. Definition
- 8.1 Approval for Sole Source Procurements to \$50,000
- 8.2 Procurements Over \$50,000
- 8.3 Negotiating a Contract
- 8.4 Price Reasonableness Determination
- 8.5 Posting Requirements
- 8.6 Award Document
- 8.7 Legislatively Directed Contract Awards
- 8.8 Alternative Procurement

Annexes

- 8-A Sole Source Process Flowchart
- 8-B Sole Source Checklist
- 8-C Sole Source Procurement Approval Request Form
- 8-D Standard Contract Format (Non-Competitively Negotiated Contracts)
- 8-E Notice of Sole Source Award
- 8-F Form of Contract Award

8. **Definition.** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. Note: For sole source requirements exceeding \$5,000, a written quotation must be obtained from the vendor.

8.1 **Approval for Sole Source Procurements to \$50,000.** All sole source procurements for non-technology goods and services to \$50,000 must be approved in advance by the agency head or designee, which shall be the chief purchasing officer or a direct report to the agency head [see 1.2e(2)]. The written determination, using the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. In addition, a memorandum must be attached to the request which addresses the four points shown in 8.2. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

8.2 **Procurements Over \$50,000.**

Procurements Over \$50,000.

Unless otherwise authorized in this chapter, sole source procurements for non-technology goods and services over \$50,000 must be approved by DGS/DPS prior to commencement of the actual procurement using the Sole Source Procurement Approval Request form found in Annex 8-C which must be signed by the agency head or designee, who shall be a direct report to the agency head. [see 1.2e(2)]. Sole source procurements that originally included a renewal provision, for which approval for multi- years was obtained, do not need to be forwarded for approval until expiration of the term for which approval was obtained. In addition, a memorandum must accompany the request form, which addresses the following four points:

- Explain why this is the only product or service that can meet the needs of the purchasing agency.
- Explain why this vendor is the only practicably available source from which to obtain this product or service.
- Explain why the price is considered reasonable.
- Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Once written approval has been given, agencies and institutions are delegated the authority to proceed with awarding the contract.

Sole source procurements for entertainment (speakers, lecturers, musicians and performing artists) over \$50,000 do not require DGS/DPS approval, but must be approved prior to commencement of the actual procurement by the agency head or designee, who shall be a direct report to the agency head. Use the Sole Source Procurement Approval Request form in Annex 8-C, documenting that there is only one source practicably available for the entertainment to be procured, and include the signed form in the procurement file. In addition, a memorandum must be attached to the form which addresses the four points shown above.

- 8.3 **Negotiating a Contract.** Upon satisfying the requirements of paragraphs 8.1 and 8.2 above, a contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making sole source procurement, it is the buyer's or contracting officer's responsibility to negotiate a contract that is in the best interest of the Commonwealth. Negotiations can be conducted on adding terms and conditions favorable to the Commonwealth and deleting or changing terms that are one-sided, in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiation, one must be exceptionally well prepared and negotiate to the extent that is practicable. Written documentation of the negotiations shall be included in the procurement file. For assistance in conducting negotiations, please see Annex 7-C.
- 8.4 **Price Reasonableness Determination.** The buyer or contracting officer should carefully research the good or service and determine in writing what is a fair and reasonable price (see 4.10 for additional guidance). For example, if the good or service has been provided before, find out what price was previously paid. Research and determine if another agency has purchased the same commodity. This will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.
- 8.5 **Posting Requirements.** All sole source procurement award notices shall be posted on eVA (*Code of Virginia*, § 2.2-4303) and at a minimum state that only one source was determined to be practicably available and must also state that which is being procured, the contractor selected, and the date on which the contract was or will be awarded (see 3.18). Public award notices may be posted at locations in addition to posting on eVA VBO, at the discretion of the entity (public posting notice board, entity website, newspaper, etc.) but if posted in additional locations, the form in Annex 8-E should be used.
- 8.6 **Award Document.** Agencies must issue an award document (PO or contract) for sole source purchases in accordance with the provisions of Chapter 14. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable. When complicated negotiations have been involved, it may be in the agency's best interest to use the Commonwealth of Virginia Standard Contract form found in Annex 8-D.
- 8.7 **Legislatively Directed Contract Awards.** If an appropriation of funds by the General Assembly specifies a particular entity from which the agency administering such funds is to procure goods or nonprofessional services, the agency administering such funds may utilize the sole source method of procurement, based on the agency's determination that the General Assembly has authorized award solely to that entity, and that there is therefore only one source practicably available for that which is to be procured. If the entity to receive the contract is a charitable institution, the determination approved by the agency head or designee must include a determination that the compensation to be paid to the entity is no more than the fair and reasonable value of the goods or services being purchased from the entity. For such legislatively-directed contract awards, the "Sole Source Procurement Approval Request" form set out in Annex 8-C and the associated approval by DGS/DPS are not required; however, the agency's determination on the points specified in this Section 8.7 must be approved in advance and in writing by the head of the agency administering such funds, or by the agency head's designee, who shall be a direct report to the agency head, prior to commencement of the actual procurement, and a notice of award as specified in § 2.2-4303(E), *Code of Virginia*, must be posted in eVA VBO.

Agencies may then execute a contract that includes but is not limited to the scope of work, period of performance, compensation, reporting requirements and appropriate terms and conditions. An example form of contract award can be found in Annex 8-F. Agencies are responsible for ensuring that contracts meet a measurable scope of work supporting the fair and reasonable value determination and require written progress/achievement reports from the contractor.

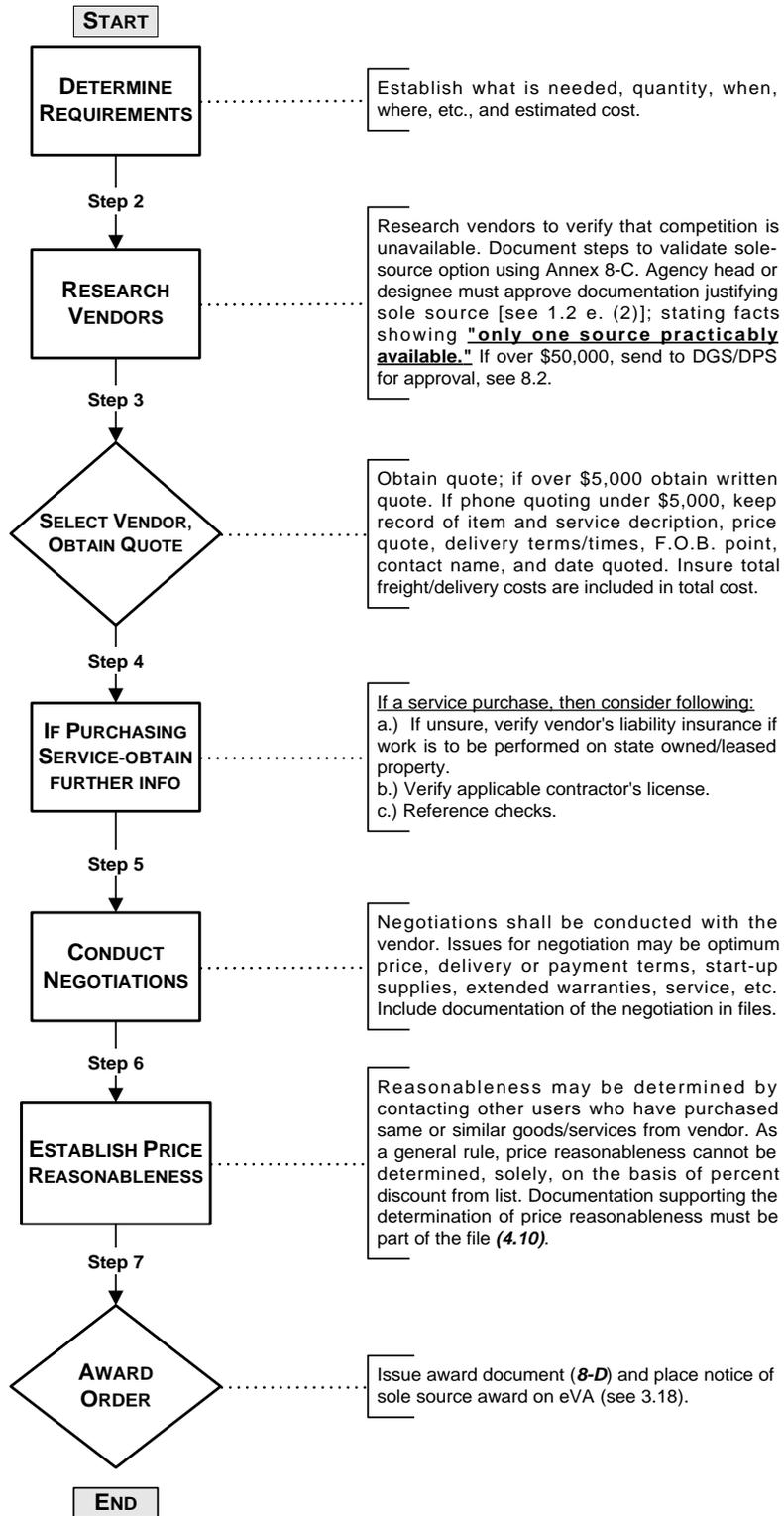
Reporting Requirements Example: If a charitable organization receives \$5,000 to provide meals at an average cost of \$10 each, the charitable organization would need to report on when and where it provided 500 meals.

- 8.8 **Alternative Procurement:** If any payment is declared unconstitutional for any reason or if the Attorney General finds in a formal, written, legal opinion that a payment is unconstitutional, in circumstances where a good or service can constitutionally be the subject of a purchase, the administering agency of such payment is authorized to use the affected appropriation to procure, by means of the Commonwealth's Public Procurement Act, goods and services, which are similar to those sought by such payment in order to accomplish the original legislative intent (2011 Appropriation Act, § 4.5.04).

Annex 8-A

SOLE SOURCE PROCESS (CODE OF VA § 2.2-4303E)

For Goods and Non-professional Services when competition is not practicably available.



Annex 8-B

SOLE SOURCE CHECKLIST

PIM 98-033



- ___ 1. Written determination approved by the agency head or designee as provided in 8.1, for procurements to \$50,000. The procurement must address the four points shown in 8.2.
- ___ 2. Approval for sole source, non-technology procurements over \$50,000 must be signed by the agency head or designee, as provided in 8.2 and sent to DGS/DPS for approval prior to commencement of the actual procurement. All request for approval must be submitted online using the eform available in eVA.
- ___ 3. Noncompetitive negotiation shall be conducted. The file shall include the results of the negotiations.
- ___ 4. Evidence that a determination of price reasonableness was conducted.
- ___ 5. Post sole source notice of award on eVA VBO.
- ___ 6. PO or contract issued.

(Rev.7/10)

PIM 98-033

**Sole Source Procurement Approval Request
Non-Technology Goods and Services**

All request for approval must be submitted online using the eform available in eVA.

If you do not have access contact your account executive

COMMONWEALTH OF VIRGINIA

STANDARD CONTRACT

(for use with noncompetitively negotiated contracts only)

Contract Number:

This contract entered into this ____ day of ____ 20__, by ____ hereinafter called the "Contractor" and Commonwealth of Virginia, ____ (Department, Agency, Division) called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Agencies of the Commonwealth of Virginia as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From ____ through ____

The contract documents shall consist of:

- (1) This signed form;
(2) The attached purchasing description, which consists of:
(a) The Scope of Work, and/or item description
(b) The General Terms and Conditions,
(c) The Special Terms and Conditions all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: _____ By: _____

Title: _____ Title: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Annex 8-E

(Agency Letterhead)

COMMONWEALTH OF VIRGINIA

NOTICE OF SOLE SOURCE AWARD

DATE OF AWARD _____

COMMODITY _____

PURCHASE ORDER OR CONTRACT NUMBER: _____

CONTRACTOR(S)/VENDOR(S) _____

IT HAS BEEN DETERMINED THAT ONLY ONE SOURCE IS PRACTICABLY AVAILABLE FOR THE COMMODITY LISTED ABOVE.

RECORDS FOR THIS PROCUREMENT ARE NOW AVAILABLE FOR INSPECTION.

(PURCHASE OFFICER/CONTRACT OFFICER)

(SIGNATURE)
NAME TYPED OR PRINTED

TELEPHONE NUMBER

E-MAIL ADDRESS

Annex 8-F

(AGENCY LETTERHEAD)

COMMONWEALTH OF VIRGINIA

FORM OF CONTRACT AWARD

Contract Number: _____ Date: _____

Vendor/Organization Reference Number: _____

Vendor/Organization Name: _____

Address: _____

SCOPE OF WORK: _____

PERIOD OF PERFORMANCE: From _____ through _____

COMPENSATION: _____

REPORTING REQUIREMENTS: The contractor shall provide a (weekly/monthly) progress report to (a specific person or title) outlining the specific tasks completed pursuant to the provisions of the contract and the completion dates of such tasks and projected completion dates for the remaining specific tasks required by the contract. At least (two weeks) prior to the submission of the final report, the contractor shall present a preliminary draft of the final report to (a specific person or title). The agency shall have the right to require additional elaboration as it deems necessary to insure a comprehensive and thorough written report of all required work required by the contractor. On or before the ending period of performance specified in the contract, a final report shall be delivered to (a specific person or title) for its approval. The contractor shall furnish (*n*) copies of the final report.

This contract award is subject to the attached list of General Terms and Conditions of the Commonwealth of Virginia *Vendors Manual Appendix B Section II* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is normally available for review at the purchasing office and is accessible on the internet at www.eva.virginia.gov under "Vendors Manual" on the vendor tab. Additionally, this contract award is subject to any attached Special Terms and Conditions.

(Agency Signature)

(Contractor Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**REQUIRED GENERAL TERMS AND CONDITIONS FOR ALTERNATIVE PROCUREMENTS
GOODS AND NONPROFESSIONAL SERVICES**

- A. *VENDORS MANUAL*
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- J. PAYMENT
- O. CHANGES TO THE CONTRACT
- V. DRUG-FREE WORKPLACE
- Y. AVAILABILITY OF FUNDS
- BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH