Preemption Under the Code

30 ILCS 500/20-5  Method of source selection.


- The default procurement method is an Invitation for Bids.
Section 20-25

30 ILCS 500/20-25    Sole source procurements.

- (a) In accordance with standards set by rule, contracts may be awarded without use of the specified method of source selection when

  - there is only one economically feasible source for the item.
Section 20-25(a) (cont.)

- A State contract may be awarded as a sole source procurement unless an interested party submits a written request for a public hearing at which the chief procurement officer and purchasing agency present written justification for the procurement method.

- Any interested party may present testimony.

- A sole source contract where a hearing was requested by an interested party may be awarded after the hearing is conducted with the approval of the chief procurement officer.
Procurements that are not sole source.

- Professional and Artistic Services under $20,000.

- One-time purchases or one-year term contracts that are under the $55,800 Small Purchase threshold (unless they are multi-year terms).

- When there are at least 2 vendors in the market who could satisfy a University’s need.

- If the product is available from the manufacturer as well as distributors and/or resellers, it’s not a sole source; however, it may be a sole economically feasible source if the university can get it for less straight from the manufacturer.
Sole Source Justification and related forms:

- Sole Source Justification Form (SSJF) (Version 5.1)
- The Conflict of Interest Review Request Form
- Disclosures or Disclosures Replacement Form
- Renewal or Extension that Exceed $250,000 Questions

All forms are prescribed by and located on Procurement Policy Board’s (PPB) website: http://www.illinois.gov/ppb/Pages/Resources.aspx
Sole Source Determination

4.2025 (c) (1)

- As soon as a need is identified by the university, the SPO must be contacted to determine the appropriate procurement method. The final determination as to whether a procurement shall be made as a sole source or sole economically feasible source procurement shall be made by the SPO, based on a request made by a university.
The Chief Procurement Office of Higher Education encourages draft submissions of the SSJF before the signature process in event changes to document are needed.

Do not leave any fields blank in the SSJF. If a particular field does not apply, such as the number of potential renewals, the field is marked N/A.
**SSJF Part I Section I**

<table>
<thead>
<tr>
<th>SECTION I - GENERAL INFORMATION</th>
<th>Bulletin or Reference Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requesting Agency/University:</td>
<td></td>
</tr>
<tr>
<td>Name of Requestor:</td>
<td></td>
</tr>
<tr>
<td>Project Title:</td>
<td></td>
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<tr>
<td>Vendor:</td>
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<tr>
<td>Provide a description of the supplies or services required:</td>
<td></td>
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<tr>
<td>Value of Initial Term, this Change Order or Amendment, or if a Renewal, Value of this Renewal: $</td>
<td>Value is: □ Actual □ Estimated</td>
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<tr>
<td>This is a: Select One</td>
<td></td>
</tr>
<tr>
<td>Professional and Artistic? □ Yes □ No</td>
<td></td>
</tr>
</tbody>
</table>

*Sole Source may not be used for amendments for Professional or Artistic Services if the amendment would increase the value by more than 5% of the initial award or extend the term by more than 60 days.*
SSJF Section I

In completing Section I:

› Make sure the project title and vendor name on the Bulletin notice match the information on the SSJF and are consistent on all documents.

› **Description**: Supply a brief description of the supplies or services that are needed (i.e. type of equipment, model number or software version).

› **Estimated Value**: If possible, try to estimate yearly values on the higher end of the University’s purchasing forecasts. This will enable a University to have more contract flexibility without having to submit amendments or change orders.
SSJF Section I (cont.)

Type of Sole Source: Distinguish when selecting sole source vs. sole economically feasible source:

- A **sole source** is where there is only one vendor who can provide a specific supply or service to satisfy a university’s need; there are no other vendors.

- A **sole economically feasible source** is one where other vendors may be able to provide the needed supply or service but, for economic-related reasons, only one vendor is reasonable. If this method is selected, there must be enough factual information to support the economic factors surrounding the procurement, such as providing quotes/documentation from other vendors contacted.
SSJF Section I (cont.)

Professional & Artistic Sole Source requests need to include the requirements from Section 35-25 of the Code.

- Description of the goal to be achieved;
- The services to be performed;
- The need for the service;
- The qualifications that are necessary;
- A plan for post-performance review;
- Duration of the contract, with a schedule of delivery (when applicable);
- Method for charging and measuring cost (hourly, per day, etc.);
- The rate of remuneration; and
- The maximum price.
SECTION II - PROPOSED TERM

☐ One-Time Purchase
☐ Term Contract  Estimated Begin Date:  Estimated Contract End Date:
☐ One-Time Amendment or Change Order to an Existing Contract for Reasons Other Than Adding Additional Funds
   Explain (Then Skip Section III and go to Section IV):

If a Term Contract, does the term, including renewals, exceed 12 months?  ☐ Yes  ☐ No
   If yes, a detailed justification is required:
SSJF Section II

- One-Time Purchases: The requestor only needs to check the “One-Time Purchase” box.

- Term Contracts: Sole source procurements are generally limited to a term of one year. Detailed justification must be provided for all proposed multi-term contracts, such as demonstrated economic benefit. The contract start date must be after the hearing date. Adequate time after the hearing should be allowed to obtain any hearing documents, CPO approval, and publication of the award. PPB has a 30 day review period, which begins with the publishing of the initial intent to award.

- One-Time Amendment or Change Order: The requestor should check the box and provide a detailed explanation and any justification for the needed contract change.
SSJF Part I Section III

SECTION III - RENEWALS

Make sure the renewals on the notice match the information on the justification form and are consistent on all documents.

If the renewal is $250,000 or more, the PPB renewal questions must also be addressed and attached to the Bulletin notice. These can be found on the PPB website using the link on slide 12. In certain instances, the PPB may also require responses to these questions for procurements under the threshold.
The type of funding is needed to help document the requirements of the Small Business Contract Act (30 ILCS 503).
Not understand this as "state contracts" under the Small Business Contracts Act includes contracts funded by either state or federal funds.
SECTION V - SOLE SOURCE JUSTIFICATION

This purchase is economically only available from a single source because it is:

☐ Art or Entertainment Services or Athletic Events
☐ Compatibility of Equipment, Accessories, Replacement Parts or Service
☐ Critical Changes to the Existing Contract Are Necessary and Best Accomplished by the Contract Holder
☐ Federal/State Grant Requires Contract with Vendor
☐ Items are Copyrighted or Patented and the Items are Only Available From the Holder – Copyright or Patent Number(s):
☐ Items are Required by an Existing Franchise Agreement
☐ Items are Required for Research and No Other Source is Able to Meet the Researcher’s Documented Need
☐ Items are for Commercial Resale
☐ Items Are Needed for Trial Use or Testing
☐ Media for Advertising
☐ Necessary Adjustment of Utility Facilities in Conjunction with Highway Construction
☐ Organization Memberships (Dues, Fees, Conference Charges Including Mandated Travel and Related Expenses)
☐ Public Utility Regulated Services
☐ Radio and/or Television Broadcast Rights
☐ Railroad Crossings/Facilities Alterations – Proprietary
☐ Software License/Upgrade/Maintenance
☐ Other (Explain):
Universities may check multiple boxes as long as a thorough explanation is provided in Section VII.

For example: If the sole source justification is being submitted because items are copyrighted or patented, the copyright or patent number/s must be included.

Patented features should be explained in further detail in Section VII of the sole source justification form.

If “Other” is selected as the justification, a thorough explanation detailing the circumstances must be included.
SSJF Part I Section VI

SECTION VI - HISTORY

Has the Agency or University purchased these supplies or services in the past?  □ Yes  □ No

If yes, STARTING WITH THE MOST RECENT CONTRACT AND WORKING BACKWARD, for the entire relationship with this vendor for this supply or service, list each term, value, short description and type of procurement of each:

<table>
<thead>
<tr>
<th>Term</th>
<th>Term From</th>
<th>Term To</th>
<th>Value</th>
<th>Description</th>
<th>Contract Number</th>
<th>Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
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<td>Eight</td>
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<td>Select One</td>
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<tr>
<td>Nine</td>
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<td>Select One</td>
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<tr>
<td>Ten</td>
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<td></td>
<td>$</td>
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<td>Select One</td>
</tr>
</tbody>
</table>

If more than 10 years, explain:
SSJF Section VI (cont.)

- When listing previous contract history, include contract information, not expenditure information.

- Start with the most current contract and work back, listing the term and value of each contract with this vendor for related supplies/services.

- If there is a gap between contracts, provide an explanation of the gap. For example, if the previous contract ended on 6/30 but the new contract will not begin until 9/1, explain how the supplies/services have been or will be purchased in between. If they have not been purchased, provide that information.

- Include an explanation if there are significant differences in cost between new and previous contracts (i.e. increased volume, increase in price due to supply shortage).
SSJF Part I Section VII

- Provide sufficient information for the SPO to make an informed determination. Ensure all questions under this Section are answered completely and with as much relevant information as possible, including background information to help justify the sole source procurement method.

- When completing Section VII, “this is the only vendor” is not an acceptable response to all questions. A university should provide detail as to why this is the only vendor that can meet the university’s need.

- Be precise and concise. Use fact-based information, not conclusions.
SSJF Section VII (cont.)

- Look at sole source justifications as a puzzle. Each question is designed so the end user can properly justify the use of this sourcing method.

- Stay away from statements such as, “It will impact the University’s reputation” unless you can also provide facts to support the statement.

- Incumbency is not sufficient justification for sole source.

- Provide documentation to support claims of voiding warranty or extended service agreements.

- Provide information on market research conducted, including names of person contacted and vendor response.
SSJF Section VII (cont.)

1. **Provide a detailed explanation of the need for the supplies or services:**

   - Questions to ask yourself while completing this answer.
     - What is the identified need?
       - Include needed specifications.
     - What is being purchased.
     - How will the procurement be used?
   
   - Include all relevant background information.
SSJF Section VII (cont.)

2. Why are the requested supplies or services the only one that can satisfy your requirements?

- This question is where the requestor needs to explain the justification selected in Section V.

- If your justification is “Items are Required for Research and No Other Source is Able to Meet the Researcher’s Documented Need” then you will need to explain the features or capabilities that alternative vendors cannot match.

- If your justification is for “Compatibility of Equipment, Accessories, Replacement Parts or Service”, the buyer will need to provide what is currently owned by the University and why compatibility is required.

- Are there resellers?
In question 3, we are looking for the unique attributes this vendor can provide.

The requestor should explain in detail the attributes outlined in question 2 which are not provided by any other vendor.

- How are they unique from possible alternatives?
- How are these attributes beneficial?
- How would with university be negatively affected without the attributes?

Be sure to provide specific, measurable factors or qualifications.
This section is only required when a University is procuring a service.

- What sets this service apart from possible alternatives?

- Be sure to provide specific, measurable factors or qualifications.
SSJF Section VII (cont.)

5. Were alternative supplies or services evaluated? □ Yes □ No
   5a. If yes, name the alternative vendors whose supplies or services were evaluated:
   5b. If yes, what were the alternatives for each vendor and why were they unacceptable? Please be specific with regard to features, characteristics, requirements, capabilities and compatibility:
   5c. If no, why were alternatives not evaluated?

- A description of the market research conducted is given along with a list of vendors contacted, including the date contacted, the name of the specific person contacted, and the vendor response.

- If vendors were contacted or otherwise identified in the course of vetting the sole source, each of those vendors must receive notice of the sole source procurement as soon as it has been published in the Bulletin, along with any other known potential vendors. If no other vendor can meet the need, describe the steps taken to make that determination.
Even though this is a sole source, Universities should always attempt to negotiate with a vendor.

- If a discount was negotiated from the vendor, provide the percentage or dollar value of the discount.
SSJF Section VII (cont.)

- Question 7 is often overlooked.
  - If maintenance, licensing or continuing need are a factor, the “yes” check box should be marked and 7a should be completed regarding future obligations and/or needs.
Question 8 asks for different information than question 6.

“See question 6” is not a valid response for this answer.
  ◦ For example: The quoted price is fair based on a past competitive solicitation (with increases based on CPI), similar but not equal alternatives, and/or industry averages (i.e. computer programming rates).
SSJF Section VII (cont.)

9. If this is a renewal, describe why circumstances are such that competitive selection is still not an alternative since awarding the original contract:

- Question 9 should only be completed if this form is for a sole source renewal. If this is not a renewal, please mark this field N/A.

- This answer will no longer be used. See slide 38.
SSJF Section VII (cont.)

10. What will be the financial or other impact to the State if this sole source is not approved and a competitive bid is required?

- Question 10 is often misinterpreted. All sole sources could potentially be competitively solicited. Please answer what the consequences are if the procurement is competitively sourced.

- Stating the University would not be able to procure the required supply or service is not an accurate statement unless there is evidence the vendor would not bid in a competitive environment.
SSJF Section VII (cont.)

11. Is there any additional justification information that you would like to add to justify this sole source?

- This is where the buyer may include any other information to help assist the SPO in reviewing the sole source justification that was not included in the 10 previous questions.
Section 20-25

(c) Notice of intent to enter into a sole source contract shall be provided to the PPB and published in the online electronic Bulletin at least 14 calendar days before the public hearing required in subsection (a). The notice shall include:

- the sole source procurement justification form prescribed by the Board,
- a description of the item to be procured,
- the intended sole source contractor, and
- the date, time, and location of the public hearing.

A copy of the notice and all documents provided at the hearing shall be included in the subsequent Procurement Bulletin.
Sole Source Part 2

Hearing Requested:

- Hearings are conducted in accordance with Subpart U of the Illinois Higher Education Procurement Rules.

- The Hearing Officer completes the SSJF Part II and provides a recommendation to the CPO.

- CPO makes the final determination to approve or deny sole source as the procurement method.

- SPO publishes Part II to the Bulletin.

No Hearing Requested:

- SPO completes SSJF Part II for CPO review.

- CPO reviews the procurement file and makes the final determination to approve or deny sole source as the procurement method.

- SPO publishes Part II to the Bulletin.
(a) Except as provided in subsection (c), within 30 calendar days after notice of the awarding or letting of a contract has appeared in the Procurement Bulletin in accordance with subsection (b) of Section 15-25, the Board may request in writing from the contracting agency and the contracting agency shall promptly, but in no event later than 5 calendar days after receipt of the request, provide to the Board, by electronic or other means satisfactory to the Board, documentation in the possession of the contracting agency concerning the proposed contract. Nothing in this subsection is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

(b) No contract subject to this Section may be entered into until the 30-day period described in subsection (a) has expired, unless the contracting agency requests in writing that the Board waive the period and the Board grants the waiver in writing.
After the Sole Source Justification Part 2 is published, the SPO’s role in the Bulletin posting is complete.

Financial Disclosures are posted (or disclosure replacement form).

The award notice is completed by the buyer once:
- The PPB waives their review, or
- 30 days has passed from the initial notice of intent to award Bulletin posting.
The guidelines to complete a renewal have changed. The PPB no longer requires the justification form to be completed.

Universities are required to explain in the notice comments:
- Why the procurement remains a sole source.
- The due diligence performed to ensure new vendors have not entered the market.

The remarks will be reviewed by the SPO and PPB. If additional information is need, it will be requested through the forwarding comments within the Bulletin.
Sole Source Cycle Time

- Cycle time varies. Based on:
  - Due diligence performed.
  - Evidence provided.
  - How well justification forms are written.
    - Was a hearing requested?
    - Did the CPO have questions during Part 2 review?
- SPO review time.
  - Average 9 days.
- Code requirements
  - 30 day review period.