

State of Illinois
Chief Procurement Office

Sole Source Procurements Report
Fiscal Year 2013

August 1, 2013



There are times when only one responsible and economically feasible source for a supply or service exists, and no other supply or service will satisfy the State's requirements.

CHIEF PROCUREMENT OFFICE MISSION & VALUES

To work with agencies and universities to meet their procurement needs while exercising independent authority, oversight, and approval designed to continuously improve the procurement process and ensure: compliance with law, fair treatment, diversity, integrity, transparency and value.

The four Chief Procurement Officers, appointed pursuant to Section 10-20 of the Illinois Procurement Code and confirmed by the Illinois Senate, ensure that approximately \$10 billion in procurements made by the State are fair, transparent, accountable, and in the best interest of the State. Procurement using a competitive process is the preferred method, but sometimes that is not possible, or practical. The Procurement Code specifically authorizes state agencies and universities to contract directly with vendors that are the sole economically feasible source. These sole source contracts are the subject of this report.

SOLE SOURCE PROCUREMENT OVERVIEW

Section 20-25 of the Illinois Procurement Code (30 ILCS 500/20-25) allows contracts to be awarded without using a competitive method of source selection when there is only one economically feasible source for an item. For example, sole source is appropriate when procuring public utilities or where the item is proprietary and available only from the manufacturer. However, because these are exceptions to the normal practice of competitive bidding, sole source contracts require heightened scrutiny and may include a public hearing before they are executed. The sole source process is an open and transparent process.

Agencies must justify a sole source request using a standardized justification form. If the request appears to meet the criteria for sole source, a notice of intent to enter into a sole source contract is published in the publically available on-line Illinois Procurement Bulletin. This notice also goes to the Procurement Policy Board. The notice is published for at least 14 days and includes a description of the item to be procured, the intended sole source contractor, and the date, time, and location of a public hearing that would be held if requested by any interested party. The 14 day notice allows time for interested parties to provide comments and request a hearing. Hearing participants may include the person who requested the hearing, the state purchasing officer, an agency representative, a representative of the Procurement Policy Board, the vendor identified as the sole source, and a hearing officer. Each party is given the opportunity to speak and raise any issues pertinent to the sole source intent.

After the hearing, the hearing officer makes a recommendation based on all the hearing and relevant documentation. The Chief Procurement Officer takes the recommendation under advisement and issues a decision to permit or disallow the award. This decision and related documentation is posted to the Procurement Bulletin.

A State contract may not be awarded as sole source unless approved by the Chief Procurement Officer.

EXECUTIVE SUMMARY

In Fiscal Year 2013, the Chief Procurement Officers streamlined policies and practices yet continue to ensure that sole source awards receive the highest level of scrutiny. Prior to the published notice of intent to award a sole source contract, State Purchasing Officers consult with agency and university procurement staff on the appropriateness of using a sole source procurement method. This consultation includes a review of the sole source justification. When appropriate, sole source contracts may be longer than one year with appropriate supporting justification. In some instances, the decision to alternatively use a competitive procurement is made.

In Fiscal Year 2013, 60 hearings were held compared to 786 hearings in Fiscal Year 2012; a 92.3% decrease. This decrease was made possible by Public Act 097-0895, an amendment to the Procurement Code that permits sole source awards without a hearing unless requested by an interested party. This amendment has saved the State approximately 297 hours of hearing time. Since each hearing involves preparation and participation by a state hearing officer, agency procurement staff, and a state purchasing officer, the number of actual labor hours saved is at least three times that of the actual hearing.

The value of the awarded 654 sole source contracts in Fiscal Year 2013 was \$419,326,280 compared to 784 sole source contracts valued at \$423,987,737 in Fiscal Year 2012. While this is only a 1.1% decrease in the value of awards, the number of sole source contracts decreased 16.71%.

Vendors presented testimony challenging or questioning the procurement method in 60 (9.17%) of the 654 sole source awards published in Fiscal Year 2013. Evidence that the request to use the sole source procurement method is being properly vetted early in the procurement process is that only four (6.67%) of the 60 sole source awards that went to hearing were denied.

Justifications for Using a Sole Source Procurement

- No Substitutions Available
- Lack of Competition
- Specific Characteristics Limit to One Supplier
- Supplier's Unique Capability
- Proprietary Technology
- Copyrighted
- Patented
- Radio or TV Broadcast Rights
- Time is of the Essence and only One Supplier can Meet Needs within Timeframe
- Grant Requires Contract with Designated Supplier

SOLE SOURCE CONTRACTS SUMMARY			
Total Value of Sole Source Contracts	=		\$419,326,280
Total Number of Sole Source Contracts	=		654
Total Number of Agencies and Universities using Sole Source Contracts	=		47
Number and value of awards by CPO jurisdiction:			
• General Services	277 awards	=	\$169,281,897
• Higher Education	368 awards	=	\$248,322,183
• Capital Development Bd.	9 awards	=	\$1,722,200
• Dept. of Transportation	0 awards	=	\$0

SOLE SOURCE PROCURMENTS—CAPITAL DEVELOPMENT BOARD

The CPO for the Capital Development Board (CDB) held 9 sole source hearings and approved 8 requests. 6 of the sole source contracts involved similar circumstances where an expired contract did not adequately address performance end dates. CDB did not manage the construction projects to ensure vendors' performance was completed by the end dates specified in the contracts. As a result, the contracts "expired" or terminated prior to full performance. Expired contracts cannot be renewed and disallow the Comptroller to make further payments or contract changes.

In each expired contract, the vendors had substantially performed the work prior to expiration. Based upon the structure of the payments associated with the work performed, that some small amount of work remained incomplete, and on warranty and insurance requirements, each vendor was determined to be the most economically feasible source to finish the uncompleted work.

In some of the approved sole sources, the vendors sought approval of changes that had been performed but which were not authorized in writing prior to the performance of work. CDB's contract documents and process were restructured to prevent new occurrences of this situation.

Of the three remaining sole source procurements, one was withdrawn prior to hearing for lack of justification. The other two were standard sole source procurements where only one product vendor existed.

LCM Architects LLC is an architect-engineer firm that designed and oversaw the initial construction of a \$23M renovation of Governors State University. The project was put on hold in 2004 and restarted in March 2010, but LCM's contract expired in November 2012. A sole source contract was required to permit LCM to finish administering and overseeing the remaining construction. The contract retains LCM's expertise that is specific to the project, and eliminates risks that might otherwise be inserted through a shift to a new entity.

Clyde Union was sole-sourced because they were the only source of parts for repairing steam vacuum condensate pumps, including molds needed to manufacture parts.

	FY '13	FY '12
Number of Sole Source Contracts Published and Hearings Requested	9	21
Number of Sole Source Contracts Approved	8	21
Number of Sole Source Contracts Denied	0	0
Number of Sole Source Procurements Withdrawn	1	0
Dollar Value of Sole Source Contracts	\$1,722,200	\$1,191,709
Average Dollar Value of Sole Source Contracts	\$215,275	\$56,748

SOLE SOURCE PROCURMENTS—INSTITUTIONS OF HIGHER EDUCATION

Due to the nature of universities' research and medical requirements, the need for sole source procurements is higher than that of state agencies. Yet, the overall number of sole source procurements in Fiscal Year 2013 dropped 35.55% from Fiscal Year 2012 and the dollar value decreased 14.85% in the same time period. Some of the decrease is attributable to Public Act 097-0643 that exempted certain procurements from the Illinois Procurement Code.

To apply a higher level of scrutiny over sole source procurements, the CPO for Higher Education appointed a State Purchasing Officer dedicated to reviewing sole source procurements beginning in January 2012.

More university sole source awards are moving to a base term of one year. Procurements requesting a term longer than one year are reviewed on a case-by-case basis and may require additional justification. In two sole source hearings, the proposed term was shortened.

	FY '13	FY '12
Number of Universities Awarding Sole Source Contracts	13	13
Dollar Value of Sole Source Contracts	\$248,322,183	\$291,627,244
Number of Sole Source Contracts Published	368	571
Average Dollar Value of Sole Source Contracts	\$674,789	\$510,731

Sole Source Transaction Type	#	% of total
Art, entertainment services, or athletic events	4	1.09%
Compatibility of equipment, accessories, replacement parts, or service is a paramount consideration	71	19.29%
Copyrighted or patented and is not available except from the holder of the copyright or patent	96	26.09%
Federal or State grant requires a contract with the vendor	3	.82%
Item is to be procured for commercial resale	41	11.14%
Items are needed for trial use or testing	10	2.72%
Media is for advertising	8	2.17%
Public utility service is regulated	11	2.99%
Radio and television broadcast rights	15	4.08%
Software license, upgrade, or maintenance	44	11.96%
Other (primarily to meet research requirements)	65	17.66%
TOTAL	368	

SOLE SOURCE PROCURMENTS—DEPARTMENT OF TRANSPORTATION (CONSTRUCTION)

The Department of Transportation (DOT) requested no sole source awards for construction in Fiscal Year 2013. No sole source procurements were sought in Fiscal Year 2012 or 2011.

SOLE SOURCE PROCURMENTS—GENERAL SERVICES

The number of Sole Source contracts in General Services increased by 44.27%. The dollar value of Sole Source contracts increased by 29.06%.

To apply a higher level of scrutiny over proposed sole source procurements, the CPO for General Services requires greater justification for sole source contracts lasting longer than one year. In only a few situations are sole source contracts approved for two years or more. This policy forces agencies to review their own needs and the marketplace frequently whenever sole source vendors are used. The premise is that the marketplace is dynamic and ever-changing technologies and vendors present an opportunity for the State to conduct a competitive procurement.

In Fiscal Year 2013, the CPO for General Services began oversight for procurements made by the Illinois State Board of Education (ISBE). ISBE had 10 sole source awards valued at more than \$1.8M.

The largest sole source award, \$32M, in Fiscal Year 2013 was to IBM Corporation for an Enterprise License Agreement (ELA). A hearing to discuss or challenge the award was not requested by any interested party.

The IBM operating system and other software included in the proposed ELA are used to run the mainframe computers that are the backbone of the IT Mainframe Infrastructure. Hundreds of custom developed mainframe applications are designed and written using IBM software. Converting to alternative platforms and software would require substantial time, staff resources and money. The ELA allows the State to obtain maintenance/support, services, and release protection for IBM products currently installed, and to expand usage of products at a lower price compared to purchasing them separately.

	FY '13	FY '12
Number of Agencies Awarding Sole Source Contracts	34	34
Dollar Value of Sole Source Contracts	\$169,281,897	\$131,168,784
Number of Sole Source Contracts Approved	277	192
Average Dollar Value of Sole Source Contracts	\$611,126	\$683,171
Number of Sole Source Contracts Denied	2	2

PUBLIC ACT 097-0895—IMPROVING THE SOLE SOURCE HEARING REQUIREMENT

On August 3, 2012, Public Act 097-0895 amended Section 20-25 of the Illinois Procurement Code (30 ILCS 500/) by permitting the award of a State contract 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.

This change to the Procurement Code has greatly improved the efficiency and use of limited State resources while maintaining the public's access to question, challenge, or simply learn about a potential sole source contract. Prior to the amendment, the Chief Procurement Office had to conduct a hearing for every sole source award even if no party expressed interest in attending.

A sole source contract hearing takes an average of 30 minutes. 594 sole source contracts were awarded without a hearing being requested saving the State approximately 297 hours. Since each hearing involves preparation and participation by a state hearing officer, agency procurement staff, and a state purchasing officer, the number of actual labor hours saved is at least three times that of the actual hearing.

SOLE SOURCE HEARING ANALYSIS	
Sole Source Contract Notices Published	654
Sole Source Contracts with No Hearing Requested	594
Hearing Requested	60
Number of Sole Source Contracts Withdrawn	1
Number of Sole Source Contracts Approved after Hearing (as originally published in the Notice)	46
Sole Source Contract Denied after Hearing	4
Sole Source Contract Approved with a more limited scope or term length than originally published in the Notice after Hearing	7
Sole Source Contract Approved after the Hearing was requested, but later withdrawn, and no other comments received at the Hearing	2

SOLE SOURCE AWARDS BY AGENCY — GENERAL SERVICES

Agency	Total Dollar Value Contracts FY13	Number Contracts FY13	Total Dollar Value Contracts FY12	Number Contracts FY12
AGING	\$317,365	3	\$832,364	2
AGRICULTURE	\$1,829,970	26	\$735,418	13
BOARD OF ELECTIONS	\$174,162	1	n/a	n/a
CENTRAL MANAGEMENT SERVICES	71,004,684	58	\$11,927,597	38
CHILDREN AND FAMILY SREVICES	\$3,039,057	9	\$1,351,754	4
COMMERCE COMMISSION	\$0	0	\$87,300	1
COMMERCE AND ECONOMIC OPPORTUNITY	\$2,021,161	10	\$10,452,854	8
COMMUNITY COLLEGE BOARD	\$255,642	2	\$154,167	2
CORRECTIONS	\$1,320,000	2	\$5,459,042	8
CRIMINAL JUSTICE INFORMATION AUTHORITY	\$202,400	3	\$127,400	2
EMERGENCY MANAGEMENT AGENCY	\$1,046,680	8	\$748,709	5
EMPLOYMENT SECURITY	\$3,080,060	5	\$5,433,755	9
ENVIRONMENTAL PROTECTION AGENCY	\$358,260	3	0	0
FINANCIAL AND PROFESSIONAL REGULATION	\$710,000	4	\$438,000	4
GUARDIAN & ADVOCACY COMMISSION	\$0	0	\$44,385	1
HEALTH INFORMATION TECHNOLOGY	\$0	0	\$160,000	1
HEALTHCARE & FAMILY SERVICES	\$3,008,803	6	\$3,876,750	3
HISTORIC PRESERVATION AGENCY	\$274,212	9	\$112,350	1
HOUSING DEVELOPMENT AUTHORITY	\$609,937	5	\$557,079	5
HUMAN SERVICES	\$5,963,522	10	\$1,297,389	9
INSURANCE	\$0	0	\$320,000	1
JUVENILE JUSTICE	\$87,000	1	\$666,292	2
LABOR	\$500,000	1	\$0	0
LOTTERY	\$1,347,420	2	\$445,000	2
MATH AND SCIENCE ACADEMY	\$0	0	\$123,025	2
MEDICAL DISTRICT COMMISSION	\$0	0	\$330,000	1
MILITARY AFFAIRS	\$193,816	2	\$32,000	1
NATURAL RESOURCES	\$872,892	8	\$774,266	8
PUBLIC HEALTH	\$16,403,227	23	\$2,362,991	16
REVENUE	\$22,716,196	24	\$5,744,929	6
STATE BOARD OF EDUCATION	\$1,812,194	10	n/a	n/a
STATE FIRE MARSHALL	\$382,800	3	\$395,380	2
STATE POLICE	\$3,227,363	8	\$3,953,180	13
STUDENT ASSISTANCE COMMISSION	\$2,036,500	7	\$795,000	4
TOLL HIGHWAY AUTHORITY	\$22,212,789	13	\$68,459,096	10
TRANSPORTATION (NON-CONSTRUCTION)	\$1,930,784	8	\$2,541,343	3
VETERAN'S AFFAIRS	\$343,000	3	\$160,000	3
WORKER'S COMPENSATION COMMISSION	\$0	0	\$270,000	2

SOLE SOURCE AWARDS BY UNIVERSITY — HIGHER EDUCATION

University	Total Dollar Value Contracts FY13	Number Contracts FY13	Total Dollar Value Contracts FY12	Number Contracts FY12
Chicago State University	\$2,894,264	11	\$670,923	9
Eastern Illinois University	\$7,589,870	15	\$4,398,317	16
Governors State University	\$1,099,930	6	\$2,492,000	11
Illinois State University	\$4,310,733	20	\$5,139,032	33
Northeastern Illinois University	\$109,661	1	\$0	0
Northern Illinois University	\$10,148,659	26	\$10,177,061	35
Southern Illinois University Carbondale	\$5,506,606	20	\$11,796,527	32
Southern Illinois University Edwardsville	\$19,072,677	24	\$9,184,575	30
Southern Illinois University Medical School	\$1,596,817	11	\$3,265,671	20
University of Illinois Chicago	\$113,794,980	87	\$158,358,284	151
University of Illinois Springfield	\$754,347	7	\$624,328	9
University of Illinois Urbana Champaign	\$74,207,996	123	\$78,282,434	206
Western Illinois University	\$7,258,643	17	\$7,238,091	19
Illinois Math and Science Academy	\$0	0	\$0	0

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