

Guide for Single Vendor Purchases Greater Than \$100,000

Federal procurement regulations require awarding agency approval for purchases of goods and services from a single vendor where the cumulative amount exceeds \$100,000 and there has been no competition. NIJ is concerned that award recipients may be expending award funds in excess of the allowable amount with one vendor without documentation of adequate competition and/or without sole source approval from OJP. Recipients of awards made under any OJP program should review this material to see if you need to submit a request for sole source approval via Grant Adjustment Notice (GAN) in GMS.

Note: Closed awards may be subject to audit by either the Office of the Inspector General (OIG) or OJP.

Follow these steps for how to determine whether your agency needs to have sole source approval before making purchases on their open award, how to write an appropriate justification, and how to submit the justification correctly.

Step 1 - In order to determine whether your agency needs to have a sole source approval from OJP before making purchases on an open award, please answer the following questions:

Questions:

1. Award Number: _____
2. Does the budget include purchases across all budget categories with a single vendor that totals over \$100,000? Yes/No
**If No, skip to Q5*
3. Do you have documented compliance with State and Federal procurement policies regarding adequate competition? Yes/No
**If No, sole source approval is necessary if the total contract to or total purchase from a single vendor is over \$100,000.*

Useful References Regarding Procurement Procedures

- ◆ [DOJ Procurement Guide](#)
- ◆ [2011 OJP Financial Guide](#)
- ◆ [2011 OJP Financial Guide - Chapter on Procurement](#)

Examples of Vendors that May Require a Sole Source Justification:

- ◆ Life Technologies (formerly Applied Biosystems)
- ◆ Promega
- ◆ Qiagen
- ◆ Alliant
- ◆ Porter Lee
- ◆ STaCS
- ◆ Tecan
- ◆ NicheVision

Definitions:

Competitive Sealed Bidding – Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

Negotiation (Procurement by competitive proposals) – The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

Sole Source Contracting – Procurement by noncompetitive proposals is procurement through the solicitation from only one source, or after solicitation of a number of sources, competition is determined inadequate.

4. Chose the type of procurement used (see sidebar for definitions):
 - a. Competitive Sealed Bidding
 - b. Negotiation (Statement of Work)
 - c. Sole Source Contract

**If a or b, no sole source approval is necessary if the agency received more than one bid.*
5. Are there vendors in the budget which may, in the course of the project, cumulatively reach \$100,000?
Yes/No

**If No, no sole source approval is necessary.*

Step 2 –

Create the justification for your Sole Source Approval GAN.

Use the example below as a **guide** for developing your sole source justification. Your justification must be in the same format as the example below, headings included. Anything in *italic* is further guidance, or places where you should insert specific information on the vendor or products being purchased.

Sole Source Justification Example for a DNA Backlog Reduction Award

Description

A brief description of the program and what is being contracted for and/or purchased. The objective of the project funded by [your award number] is to handle, screen, and analyze backlogged forensic DNA casework samples and to improve DNA laboratory infrastructure and analysis capacity so that forensic DNA samples can be processed efficiently and cost-effectively, and so that future backlogs can be prevented.

Under this project, the laboratory will make expenditures *in multiple budget categories* with the vendor [insert vendor name]. The contracts/purchases are anticipated to, over the course of the project, total over \$100,000. [Insert vendor name] is the only vendor that can provide the required items and services in order for the laboratory to meet project goals and to continue to be in compliance with the guidelines defined in the solicitation document.

*You also need to detail the contracts/purchases by copying/pasting them from your budget document, listing each item or group of items to be purchased from the vendor in this section, or by creating an Appendix table that lists all the items expected to be contracted/purchased from this vendor. **The total cost figure should be entered on the***

Sole Source Approval GAN screen in GMS. This total should be calculated from the most recent approved budget for this award.

Explanation for Sole Source

Explanation of why it is necessary to contract noncompetitively, to include the following:

- *Expertise of the Contractor*
- *Management*
- *Responsiveness*
- *Knowledge of the Program*
- *Experience of Contractor Personnel*
- *Results of a Market Survey to Determine Competition Availability Or, If One Was Not Conducted, Why Not?*

For purchase of kits: The solicitation mandates that laboratories must follow NDIS DNA Data Acceptance Standards for all profiles uploaded to NDIS. There are only two vendors of approved STR typing kits that are currently approved by NDIS for DNA analysis: one is supported by Life Technologies and the other is supported by Promega. This agency is utilizing [insert vendor name] kits; therefore, *products and services* to be purchased under this project at the only products and services that can be used to facilitate the project goals and are only available from [vendor name].

The decision to utilize [insert vendor name] STR testing kits was made [insert a brief statement of history here. If a method was used that supported adequate competition between the two vendors, state that explicitly.]

For purchase of instrumentation other than genetic analyzers (for example, if you are purchasing additional robots for your agency): Our laboratory is utilizing the [insert vendor name] platform which includes [list equipment]. The decision to go with [insert vendor name] was made [insert a brief statement of history here. If a method was used that supported adequate competition between the two vendors, state that explicitly (i.e., did you evaluate all robots available and then chose this one?) Note if you have already validated the instrument, developed technical procedures using this instrument, and trained lab analysts in its use.

As this laboratory validated the [insert vendor name] STR testing kits, the lab procedures for DNA testing, and all instruments at considerable cost in supplies and personnel resources, it is not cost-effective to completely re-validate the procedure when purchasing a new instrument to use in our validated procedures.

If seeking duplicate instruments to increase lab capacity, always remember to refer to the fact that you have expended a lot of resources already in validating the instrument, training personnel on the use of this instrument, and that your analytical procedures are for the use of this particular instrument. It would take months to re-validate the entire procedure, which would probably cost almost as much as, or even more than any cost savings received from bidding the instrument out and would effectively impact the

agency's ability to process backlogged cases while the lab is validating the new instruments.

For purchase of a genetic analyzer and/or the expert system software and maintenance contracts to go with the genetic analyzer: Life Technologies is the only vendor of capillary electrophoretic genetic analyzers that have been validated for forensic DNA testing. Life Technologies is the only vendor that can offer warranty service and maintenance on the instruments they provide.

This paragraph can be used for either kits or instruments: DNA National QA Standards also require that laboratories validate their entire DNA testing procedure, which includes the protocols, STR testing kits, and the instruments used in the analysis of samples. Any significant changes to the validated procedure must, in turn, be validated. Validation of the procedure used in this laboratory took months and involved a significant expenditure of resources and funds.

This paragraph can/should be used for all justifications: [Insert vendor name] is an expert in the field of human identification. For nearly [insert # of years, vendor name], has led the development and commercialization of DNA detection and analysis technologies providing innovative systems that allow human identification and forensic scientists to maximize their use of DNA in solving crimes and establishing identity.

Time Constraints

- *When Contractual Coverage Is Required and Why*
- *Impact on Program If Dates Are Not Met*
- *How Long Would it Take Another Contractor to Reach the Same Level of Competence? (Equate to Dollars, If Desired)*

The project period for award [insert award number] is [from ___ to ___ or 18 months from the effective date of the award] and the purchases will be made during this time.

Without the ability to purchase the [insert “proposed goods and services” or insert the actual items/services to be purchased] from [insert vendor name] within the project period, the goals of the project would not be met.

It is unknown how long it would take another vendor to reach the same level of competence because [insert one of three reasons: 1) VENDOR is one of two NDIS-approved STR kit vendors (and, as stated earlier, the use of an NDIS-approved analysis method is mandated in the solicitation, and because the entire laboratory system has been set up and validated to use the [insert vendor name] kit/platform, it would take more than the current project period to transition to another vendor.

2) The laboratory chose to go with the [insert vendor name] platform, as stated earlier. The laboratory system has been set up and validated to use the [insert vendor name and instrument]. It would take more than the current project period to transition to another vendor and instrument.

3) Life Technologies is the only vendor of the capillary electrophoretic genetic analyzers currently validated for forensic DNA testing purposes and it is the sole supplier for the Genemapper (ID or ID-X) software that runs the genetic analyzer and helps interpret the generated data.

Uniqueness

Options:

Life Technologies is the only provider of the capillary electrophoretic genetic analyzers validated for DNA analysis. The analysis software package and maintenance contracts are tied to the analysis equipment. There are no other vendors who can provide the items or services to support this platform

Or:

[Insert vendor name] is the only vendor that can provide the [insert list of equipment to be purchased] to this laboratory considering the protocols and procedures that have already been validated. The STR testing kits used by this laboratory have been designed to perform optimally on this platform, and there are no other vendors who can provide the equipment or services to support this platform.

Or:

[Insert vendor name] is the only vendor that can provide the STR testing kits to this laboratory, considering the protocols and procedures that have already been validated within the laboratory. [insert vendor name] is one of the two NDIS-approved STR testing kit vendors, and the laboratory has been using [insert vendor name]'s kits for years.

Other Points:

Other points that should be covered to “sell the case”

[Insert vendor name] is one of two NDIS-approved STR testing kit vendors and, as stated earlier, the use of an NDIS-approved analysis method is mandated in the solicitation. It is this requirement that limits this agency’s ability to pursue other vendors for these services and products. Therefore, [insert vendor name] is the only vendor who can now provide the items and services proposed for use to meet project goals.

Or:

Our laboratory previously evaluated other products of other vendors and chose to utilize the [insert instrument name from vendor name]. The laboratory has expended significant resources validating the protocols and procedures for DNA analysis on this instrument as well as training all personnel in this NDIS-approved analysis method. It would take months to revalidate the entire procedure and any cost savings from bidding the instrument purchase out would be negated by a costly revalidation process.

Declaration

A declaration that this action is in “the best interest” of the agency.

The proposed expenditures with [*insert vendor name*] are in the best interest of our agency because they will allow us to continue to meet project and program objectives. If these purchases were not allowed, not only would the objective of the project not be met, but significant negative impacts would occur in project metrics and would affect the agency’s ability to process backlogged cases.

Step 3 – Submit a Sole Source Approval GAN request in GMS.

There are several pieces to a Sole Source Approval GAN:

Organization to be Sole Sourced to: The name of the vendor you wish to request to sole source to, not your own agency information. **You MUST include the zip code plus-four digits in this address.**

Amount of Sole Source: The total cost for all goods and services in your last approved budget that you wish to purchase from this one vendor – be sure to include all instruments, supplies, software and maintenance contracts.

Justification: In GMS, you must write something in the “Justification” module. A summary of the purchases you are requesting from this vendor is best, but “See attached justification” is acceptable.

Justification Attachment: This is the justification you have just created using the guidance from Step 2. Attach this to the GAN in GMS.

Once you have filled in all of the information above for the Sole Source Approval GAN and attached your Justification document, submit the GAN to your Program Manager. Your Program Manager will review the GAN and the attached Justification before approving it, or change request it back to you for revisions.

Examples of requests that will result in a denial of your sole source GAN:

1. Any request to sole source the outsourcing of DNA casework or database samples to a particular vendor will be denied. There are multiple private labs that can offer this service and you MUST compete any request that exceed \$100,000. You also may not circumvent this requirement by asking for budget approval to outsource cases to multiple vendors without competition if the total outsourcing request exceeds \$100,000.
2. Validation services are offered by several vendors and these may not be included in any sole source GAN request.

Some notes on Sole Source Approval GANs:

- ❖ *A sole source justification and GAN is for ONE vendor only. If you have more than one vendor from whom you'll purchase over \$100,000 of goods or service without competition, you will need a separate justification and GAN for each one.*
- ❖ *A sole source justification needs to be in your own words. It is not a letter from the vendor from whom you will be purchasing. Do not include any documents received from your vendor and do not cut and paste sole source data received from the vendor in your justification.*
- ❖ *If you have questions about what you can or cannot sole source, or if you have questions about the guidance given here, please contact your Program Office.*