

## Sole Source Modifications Feedback

Section/Feedback:	Agency:	DES Response:
<b>Section 2a</b>		
Clarification – may agencies modify this template? ( <i>justification template from the DES website</i> )	DSHS - Cindy Haider	As long as the justification questions and content stays the same (information stays there), it's fine to modify.
<b>Section 2b</b>		
<b>Section 2b-</b> Many small agencies may or may not have their own website for this information, and I can speak from personal experience that it was never used or looked at.	DES - Alex Kenesson	Public inspection is statutorily required. If a small agency does not have their own website to publicly post, either they can make paper copies available; or, we'd advise them to contact DES small agency procurement services for other possible alternatives.
Crazy idea, but could we provide one? Maybe we can centralize all Sole Sources to a specific website?	DES - Alex Kenesson	This has been an idea that has come up a few times. The hope is, in moving towards One WA, this will be achievable some day.
<b>Section 2b-</b> Some agencies may consider moving to a full-telework environment, and I know most of my contracts never had "wet" signatures to them, so there may be concerns with limiting this to paper copies at agency headquarters.	DES - Alex Kenesson	Thank you for your feedback. The paper option is just one option, the other is to put it on their agency website. This is not a new requirement; the 10-day public inspection period is a requirement under statute. Per our current FAQ: Agencies are free to determine the manner in which they will make proposed contracts available for public inspection (e.g. via a location on the agency web site, through paper copies available at the agency headquarters, etc.).
Can the solicitation be posted on the agency's website prior to posting in WEBS (listed in 2C)?	WSDOT - Adrienne Logan	Sure.
Which holidays (state, federal, county, private industry) are observed?	WSDOT - Adrienne Logan	State holidays. We have added an FAQ to address this.
<b>"Note: working days exclude weekends, holidays, and the day you post/file."</b> Recommend this comment be added to c. and d. also.	DSHS - Cindy Haider	Thank you for your feedback. We modified the note to add clarity in the procedures.
<b>Section 2c</b>		
<b>2ci.</b> Clarification – Must the prospective vendor register in WEBS prior to the SSCC filing?	DSHS - Cindy Haider	Thank you for your feedback. Yes - the prospective vendor should be registered in WEBS prior to the SSCD filing.
<b>2ciii</b> Will they provide a template that demonstrates what a legal notice should obtain so we may meet the requirement "must show evidence that resemble requirements contained in the legal notice"?	WSDOT - Adrienne Logan	Thank you for your feedback. The procedure contains a hyperlink to the Legal Notice Template, found in section 2a, completing the template fulfills the requirement.
<b>2cii</b> - "In addition to the contract containing sound terms and conditions, the contract must show evidence that resemble requirements contained in the legal notice and should be performance-based; and " DSHS comment: I do not understand what this means.	DSHS - William Taplin	Thank you for your feedback. We have modified the procedures and added an FAQ to provide some clarity.
<b>2ciii</b> What is the definition of "performance-based"? Will they provide an example?	WSDOT - Adrienne Logan	We have added a question to the FAQ document to address this. See RCW 39.26.180(3): to the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.
<b>2c,ii, 5)</b> The projected contract value, including the option to add additional consideration if option(s) for extensions are included;" Clarification is needed here: It is unclear if the requirement is just that agencies need to add language indicating that there might be additional consideration added if a contract is amended OR if the requirement is that the amount of money that may be added in the case of an amendment be included in the posting. If the former, that fine. If the latter, however, agencies would be put in the position of guessing the amount of increase in the case of an amendment, which would likely not be providing accurate information for potential contractors.	OFM - Bonnie Lindstrom	For example: due dates for deliverables; the statement of work has to specify what the contractor must accomplish in order to be paid for its performance under the contract. In the past we have given agencies some flexibility here, but I think the instructions are clear: if there may be extensions, it should be acknowledged that future extensions may add \$.

**2c,iii.** What is the criteria being applied to determine if a term or condition is "sound"? Who makes the determination of the sound terms and conditions, DES or the agency? If the terms and conditions have been approved by the agency AAG, on what basis would DES now say the term or condition is not sound and require an edit?

Thank you for your feedback. We modified the word "sound" to "appropriate". The answer to your question would be very situational. We are focused on the language in order to protect the state's interests. The terms need to be meaningful while managing the risk of the contract.

## Section 2d

<p><b>Section 2d-</b> historically if the contract wasn't at least posted to WEBS [but perhaps within it s10 day window] the SSCD would be denied, being clear that the expectation is to now do both at the same time (Post to WEBS with the SSCD answers, as you are filling out the SSCD questions) would be beneficial</p>	DES - Alex Kenesson	Thank you for your feedback. We've revised the procedures slightly in hopes to provide clarity.
<p>If the agency provides <i>all</i> information at least 10 days prior to the start date, does this mean DES will render a decision at the end of the 10 working days so we can start the contract by the intended start date? "Generally within 10 working days" isn't precise – it is a subjective time frame.</p>	WSDOT - Adrienne Logan	Thank you for this feedback and appreciate this question. 9 times out of 10 the answer is yes, <i>if all materials were provided</i> , if every box is checked and the sole source justification is sound... then yes, DES will issue a decision on the 10th day. That is the "perfect world" situation though. Typically there is an issue with the filing that requires some degree of back-and-forth clarification and the agency may have some delay in getting answers to us, which may cause delays in a DES decision.
<p>This will have agencies reaching out at day 11 for a decision if DES hasn't provided one.</p>	WSDOT - Adrienne Logan	If there is no movement on the filing and the agency is concerned, they should absolutely reach out to DES.
<p>If agencies are obligated to meet hard timelines, why shouldn't DES have hard deadlines also? This is good customer service.</p>	WSDOT - Adrienne Logan	As long as any issues/ correspondence questions have been answered/resolved timely by the requesting agency, then filings are most often approved within the 10 day period. Yes. We have added a note to section 2dii to clarify.
<p><b>2d,ii ii.</b> Attaches a copy of the draft sole source contract, which must be in significantly final form; including any related exhibits, attachments, and/or documents;" If these contain proprietary or confidential information is the redacted version acceptable?</p>		

## Section 4

<p><b>Section 4</b> – Historical feedback on "what's next" if you get a denial would be beneficial, state agencies may feel, "Im denied so now what do I do, my agency needs this thing but I cant buy it" could provide hardships.</p>	DES - Alex Kenesson	We have added an FAQ to provide one example.
<p><b>4a</b> What else is open for assessment of approval or denial?</p>	OFM - Bonnie Lindstrom	We have added a couple additional bullets. In addition, the language is necessary in order to incorporate any future unforeseen items.
<p><b>4a</b> Will the agency be involved in the "not limited to" criteria?</p>	OFM - Bonnie Lindstrom	Yes. The agency should expect communication from DES. Most likely this would be in via correspondence questions sent over in SSCD.
<p><b>4b</b> How will DES post for public inspection any other criteria for approval or denial of a sole source?</p>	OFM - Bonnie Lindstrom	DES relies on updates to its FAQ document for immediate communications on enhancements to the policy and/or procedure documents. Also, DES sends communication to agencies typically at a minimum via the Contracts Connection and/or PCAG.
<p><b>4b</b> Will any other determinations be taken into account for approval or denial and then be posted in the SSCD for historical and public transparency purposes?</p>	OFM - Bonnie Lindstrom	It depends on the circumstances of the presented sole source filing.
<p><b>4a</b> Who else could participate in "other criteria" besides the DES policy team?</p>	OFM - Bonnie Lindstrom	It depends on the circumstances. In some cases the others who could participate include the DES Director, DES leadership, members of the OCIO policy team, and AAG are all possible participants.
<p><b>4b</b> - The concern here is that DES staff reviewing capability statements will not have experience in the agency's mission, and/or general business area and not have the expertise to effectively and efficiently review the capability statements and the agency's analysis. Will DES engage the agency when doing that review?</p>	OFM - Bonnie Lindstrom	Yes. DES typically asks agencies if they received any capability statements. If the requesting agency did receive capability statements, they'll be asked to provide in depth analysis as to why the firm(s) are either qualified, or not. DES looks at what was requested of vendors in the legal notice advertised and whether or not they demonstrated meeting those qualifications.
<p><b>4bi</b> - Clarification. How will DES review to determine that "Sufficient market research being conducted prior to filing in SSCD."?</p>	DSHS - Ed Maynard	It depends on the circumstances presented in the individual sole source filing. DES has provided more detail and guidance on providing sufficient market research
<p><b>4biv</b> - "Proposed draft sole source contract's terms and conditions, scope of work, etc. being sound.. " DSHS comment: This review does not seem to be within the scope of what determines whether a vendor is the only practicable source to provide the goods or services.</p>	DSHS - Will Taplin	Thank you for your feedback. When a decision is issued on a filing, DES being the regulatory agency, needs to be able to support that decision. DES often has contracts filed that do not show evidence in the contract document that the work to be performed is aligned with what was outlined in the legal notice (WEBS posting) and/or the answers to the justification questions. It is problematic when a contract SOW has work that could arguably be performed by a number of contractors, rather than a single source. DES also has to keep in mind the risks to the state as a whole. Additionally, this is why DES also reviews terms and conditions, SOWs, etc..

DSHS - Cindy Haider

**4biv** - "Proposed draft sole source contract's terms and conditions, scope of work, etc. being sound *and applicable to what was posted/advertised in WEBS and on agency's website*;" DSHS comment: How is this different then iii? Propose revision for clarification.

**4bv** - Clarification. 2.C.iv. States, "A copy of the Sole Source Contract Filing Justification Template containing complete and compelling answers to all questions as submitted in SSCD." 4.B.v. States, "Answers to the Sole Source Contract Filing/Amendment Filing Justification Template questions being complete and compelling;" Not in its entirety?

Please note we have exchanged the word 'sound' for 'appropriate'. Section iii is regarding whether the postings have met the requirement timelines and locations (agency website for 10 days, WEBS for 5, etc.). Section iv is regarding the specific language contained in the contract, legal notice, etc. The requirements listed in the legal notice in WEBS must be resembled in the contract.

Thank you for your feedback. We revised both sections in order to provide clarity.

## Sole Source Modifications Feedback

Section/Feedback:

Agency:

DES Response:

### **Market Research**

**From a region dealing with staffing shortages:** *This proposed new requirements is way to over bearing, just reading and trying to follow all the requests is time consuming enough, we don't need to make this unreasonable. Usually it is hard enough to get answers to simple questions let alone the complicated analysis of what market research was done. This new proposal is asking for a book of information, which will just consume a crazy amount of time to explain to a lay person. I don't believe we need to complicate the process even more than it already is.*

WSDOT - Adrienne Logan

Thank you for your feedback. The intent is that the process will now be more transparent and consistent in performing necessary market research across the state.

**Market Research** - Issues: 1. We are unclear of the value of researching the past. Information about the past does not have any bearing on whether a service is currently being provided and by whom.

WSDOT - Adrienne Logan

Thank you for your feedback. There is nothing to compare the current state of the service/product to if you have no past information/data around what you are trying to procure. Therefore, we find it helpful and necessary to include the past.

2. "Extensive internet search" is vague. Too, without doing its own extensive internet research, how will DES be in the position of determining whether the research done by an agency is sufficient?

WSDOT - Adrienne Logan

Based on the information provided in the filing justification regarding market research. If the answer given is complete and compelling to DES, it will be deemed sufficient.

3. If an agency is looking for a contractor with a very new industry IT experience, coupled with Washington State owned system(s) experience, how would it go about doing adequate market and internet research that will be acceptable to DES for a multitude of needs that in the first place justifies the sole source. Would the agency simply do research on both requirements and explain how the two requirements not being found together justifies the sole source?

WSDOT - Adrienne Logan

It depends on the filing presented to DES. It's possible the agency could conduct, at a minimum, an RFI prior to filing the sole source. The RFI may have shown only one vendor responded. Also, if this a very new industry IT contract, how did the agency arrive at determining there was truly only one vendor to provide the service or do the work? DES expects agencies to explain the process and steps they take to arrive at the conclusion of a sole source. DES needs to see a level of effort put forward.

4. We would suggest allowing agencies some flexibility here. Instead of requiring agencies to do all of the listed market research activities (the "minimum" as proposed), perhaps give them the discretion to determine which are appropriate given the proposed contract.

WSDOT - Adrienne Logan

Thank you for your feedback. We have modified the glossary definition to state 'may include' vs. 'should include at a minimum'. This will allow agencies some flexibility. In addition, we've added to the justification template market research question.

Please provide clarification on this requirement: "Information about the past, present, and potential service/item being acquired; "

WSDOT - Adrienne Logan

It is intended for the agency to provide a narrative description of the agency's due diligence in determining the basis for the sole source, including methods used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; contacting similar service providers; and reviewing statewide pricing trends and/or agreements. Include a list of businesses contacted (do not state that no other businesses were contacted), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.

Market Research requirements should not be listed in the Glossary.

DSHS - Cindy Haider

Thank you for your feedback. We have provided more context in the Justification Templates.

For "Market analysis in trends, pricing, and service/product availability ." What will the timeframe of the market analysis? Six months prior?

DSHS - Cindy Haider

It depends on the filing presented to DES.

How will DES verify the minimum Market Research was completed. Recommend having these added to the SS Justification Template.

DSHS - Cindy Haider

Thank you for your feedback. DES will verify that appropriate market research was performed based on the information provided in the filing justification submitted to SSCD. If the answer given is complete and compelling to DES, it will be deemed sufficient.

This should be in alphabetical order. Need to add:

WSDOT - Adrienne Logan

Thank you for your feedback. The definitions have been placed in alphabetical order.

**Performance-based**

WSDOT - Adrienne Logan

We have added a definition to the glossary. Additionally see RCW 39.26.180(3): to the extent practicable, agencies should enter into performance-based contracts. Performance-based contracts identify expected deliverables and performance measures or outcomes. Performance-based contracts also use appropriate techniques, which may include but are not limited to, either consequences or incentives or both to ensure that agreed upon value to the state is received. Payment for goods and services under performance-based contracts should be contingent on the contractor achieving performance outcomes.

**Legal notice**

WSDOT - Adrienne Logan

Thank you for your feedback. We have added a definition to the glossary.

**Internet Validation???**

WSDOT - Adrienne Logan

Thank you for your feedback. This is not a definition we will add at this time as we'd like to allow for some flexibility in internet searches (validation) for agencies.

**Compelling** - Issue: This new definition is subjective and dependent on who is doing the review. Is there a set of criteria that DES will use to do its review? In addition, unless the DES reviewer is an attorney, we're not sure how a determination that the "provided information should be able to withstand legal challenge" will be made, and don't know what "if applicable" means.

OFM - Bonnie Lindstrom

Thank you for your feedback. We have removed the words 'legal' and 'if applicable'.

**Compelling** - This is not a useful definition or standard that agencies can use to guide their actions.

DSHS - William Taplin

Thank you for your feedback. We realize it is subjective, but it needs to stand public scrutiny. We removed 'legal' and 'if applicable' from the definition.

## Sole Source Modifications Feedback

Section/Feedback:	Agency:	DES Response:
<b>From Existing FAQ</b>		
<b>#22</b> They mention the outdated Purchasing and Procurement 101 training. When is this going to be updated? Do they have a current review schedule for DES Training?	WSDOT - Adrienne Logan	<b>Response from Training:</b> This is a great and fair question. The PP101 series is next on the list (right after small purchases) to be updated. We have it about 65% updated. The only project that may come before it is the Supplier Diversity project which is a training priority when the policy is ready. Thank you so much for the feedback. We always welcome it and need it.
<b>#23</b> "as often an" should be "as often as"	WSDOT - Adrienne Logan	Thank you for your feedback. We reviewed and "as often an" is correct.
<b>#25</b> So if an amendment is required and there isn't 5 days left on the posting, the clock starts over? This answer needs to be worded with more clarity.	WSDOT - Adrienne Logan	Correct, if a legal notice is amended then the clock starts over to meet transparency requirements. More clarity has been provided in FAQ #25.
<b>#26</b> In what instance would a sole source be part of a convenience contract?	WSDOT - Adrienne Logan	It depends. In circumstances where there is only one source of a service that exists, yet another agency needs to utilize it, this would be an example of a sole source convenience contract. See RCW 39.26.070
What does it mean that a convenience contract is not available for general use and may only be used as specified by the department? How else could it be used or what are they trying to say?	WSDOT - Adrienne Logan	The use of a convenience contract is only permissible as authorized by the DES Director. DES anticipates issuing future guidance around convenience contracts.
What do they define a department as?	WSDOT - Adrienne Logan	Please see RCW 39.26.010 (9) "Department" means the Department of Enterprise Services.
Does this statement mean that our agency contracts need approved by DES? "The statute appears to permit state agencies to use a convenience contract "as specified by the department", which implies that your agency must obtain pre-approval from DES."	WSDOT - Adrienne Logan	Yes. You must request and receive written authorization from the Director of DES to use a convenience contract in addition to receiving approval for sole source (via SSCD) prior to commencing work.
<b>#30</b> The answer states that it is up to DES' sole discretion upon review of our legal notice. Isn't the legal notice complete prior to submitting the papers on SSCD? 10 days before the agency must post the draft contract, completed SSC Filing template, and legal notice publicly and include these documents in the SSCD submittal.	WSDOT - Adrienne Logan	The legal notice is sometimes posted in WEBS concurrently with filing in SSCD and posting to the agency's website. As part of the overall sole source review process, DES reviews the legal notice. If requirements for the legal notice are not met, the agency will be asked to amend the legal notice and WEBS posting to add the revised legal notice. This restarts the transparency requirement 5-day clock.
<b>Question 6b:</b> "Sole source" means a contractor providing goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practicable source to provide the goods or services.	DSHS - William Taplin	Thank you for your feedback. If you will refer to the answer in 6b where we state: "No. Urgency and timing <u>alone</u> do not meet the sole source justification requirements." Your interpretation includes adding the words ' <i>during the service period</i> ' which are not part of the statute. Our analysis is based on the statutory definition of 'sole source' only.
How does this answer square with the definition of "Sole source" included in 39.26? If there is only one vendor who can provide services at the location required during the service period, it would seem they would be fully within the definition.		
A hypothetical vendor could reasonably attest to being able to provide nearly any service given a long enough timeline. Timing certainly should be a consideration for sole source approval.		

**#25 Answer:** When would this ever be the case? Is DES recommending that WEBS postings be longer than 5 business days? DSHS - William Taplin

Some agencies prefer to post the legal notice in WEBS for longer than 5 business days. The requirement currently is only 5 business days. Example: AGENCY posted the legal notice to WEBS for seven (7) business days. On the second business day, DES reviews what is posted in WEBS to discover the AGENCY forgot to list the total estimated contract value and period of performance in the the legal notice. DES then contacts AGENCY to notify them that an amended legal notice is necessary. If the AGENCY posts a revised legal notice to WEBS that same day, the posting can still close 5 business days later at the original scheduled end date. If the AGENCY fails to post a revised legal notice that same day, then they will need to extend the closing date out by one (1) business day.

**#29 Example 2:** Does this answer conflict with the proposed answer to 6.b? DSHS - William Taplin

There are other factors taken into consideration in this example in addition to timing. If you refer to 6.b. it states: "Urgency and timing alone do not meet the sole source justification requirements."

**#30:** Clarification. Should this be in Policy? There should be exceptions for requesting years of experience and employment as we feel it could be essential in a SS filing in order review a capability statement. DSHS - Ed Maynard

Thank you for your feedback. The DES Director has been clear that years of experience and requirements of previous contracts with the state are not acceptable. They are barriers for doing business with the state. This direction is also in alignment with Executive Order 22-01, Equity in Public Contracting, and overall DEI goals for Washington. Agencies do however, have the option to request approval from the DES Director for an exception to the sole source policy/procedure if the experience is believed to be justified and necessary. Such requests are sent from the agency's head and sent to the DES Director.

**#30:** Clarification. Should this be "You may not..." Instead of "many". DSHS - Ed Maynard

Thank you for catching that! This has been updated.

### Other FAQ

Why not use the standard solicitation process to validate it is a sole source? WSDOT - Adrienne Logan

Sure. This is a valid way to justify a sole source. Some agencies currently use the competitive solicitation process, or at a minimum, conduct an RFI to then support a sole source contract request.

What benefit does this process provide the agencies? It seems like a lot of work when you can utilize the standard solicitation process. WSDOT - Adrienne Logan

The purpose of these changes are to increase transparency to the vendor community and to clarify the DES review process. Agencies may use the standard solicitation process if appropriate. The sole source process is still a shorter overall process, and there is a benefit there for agencies to use it -- but only if sole source laws and policies can justify the sole source designation. If in doubt, the law favors using a competitive process, as the best course of validating a sole source

## Sole Source Modifications Feedback

Section/Feedback:

Agency:

DES Response:

### Justification Template

Offering agencies to provide specific other commentary/exceptions might be beneficial, why an item wasn't posted to WEBS/Website, or anything else really.

DES - Alex Kenesson

Currently, agencies have this option to explain under the "Sole Source Posting" portion of the Justification Template (and in SSCD)

**Issue** : There is an internal inconsistency in that it states the template is "optional" and then requires agency use the template. Is it optional?

OFM - Bonnie Lindstrom

Thank you for your feedback. We have removed the word 'optional'.

DSHS - Ed Maynard

Thank you for your feedback. We have revised the market research question found on the justification template as well as SSCD in hopes to provide clarity.

Regarding the bullet that contains "*Please refer to the Sole Source Glossary definition of market research and what is required prior to answering this question.*" Requirements in Glossary? Should the 4 bullets be brought into both SSJ templates, under this bullet?

DSHS - Ed Maynard

Thank you for your feedback. We modified this question so that it won't appear to be duplicated.

Regarding the bullet that contains "*When cost savings is applicable, please include quantified analysis and breakdown.*" Clarification. How is this different from a detailed and compelling description of the cost mitigated by contracting with this contractor?

### Amendment Justification Template

Same feedback as above.