Sole Source CONTRACT Filing
Justification Template

Use the following justification template for preparing to file sole source contracts in the Sole Source Contracts Database (SSCD). Once completed, copy and paste the answers into the corresponding SSCD question and answer fields. You will also need to include a copy of this completed form in the documents you post to your agency website and in WEBS.

What is a sole source contract?

"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. (RCW 39.26.010)

Unique qualifications or services are those which are highly specialized or one-of-a-kind.

Other factors which may be considered include past performance, cost-effectiveness (learning curve), and/or follow-up nature of the required goods and/or services. Past performance alone does not provide adequate justification for a sole source contract. Time constraints may be considered as a contributing factor in a sole source justification however will not be on its own a sufficient justification.

Why is a sole source justification required?

The State of Washington, by policy and law, believes competition is the best strategy to obtain the best value for the goods and services it purchases, and to ensure that all interested vendors have a fair and transparent opportunity to sell goods and services to the state.

A sole source contract does not benefit from competition. Thus the state, through RCW 39.26.010, has determined it is important to evaluate whether the conditions, costs and risks related to the proposal of a sole source contract truly outweigh forgoing the benefits of a competitive contract.

Providing compelling answers to the following questions will facilitate the evaluation.

Specific Problem or Need

- What is the business need or problem that requires this contract?

  The 2021 Legislature passed Governor-request legislation that created the Office of Independent Investigations (OII) to conduct investigations of police use of excessive force. The new agency became operational on July 1, 2022.

  The OII is the first statewide independent investigations agency in the nation.
OII requires support in the development of the OII organizational structure, position descriptions for investigation staff, multiple systems for notification, data tracking, and training related to investigations.

Richard Rosenthal started this work under a DES exemption contract (K02) that ran from 09/10/2021 to 6/30/2022. A series of unavoidable delays in the transition project has resulted in delays to Mr. Rosenthal’s body of work.

Mr. Rosenthal’s background and direct experience with the OII transition uniquely qualify him to continue until the project is done. Bringing in another contractor will result in further delays as they would need time to understand the work to date and develop a plan to complete it.

Sole Source Criteria

- Describe the unique features, qualifications, abilities or expertise of the contractor proposed for this sole source contract.

The OII Transition Team determined a need to engage a contractor with direct experience starting and managing an independent investigations agency. The only independent investigation agencies in North America using a model similar to the one contemplated in the OII enabling legislation are in Canada.

Mr. Rosenthal has experience starting a province-wide independent investigations unit and served as its first director. Additionally, he worked in Seattle on the Seattle Police Department consent decree. As a result, he understands Washington state government, the operating environment for public agencies, and stakeholders in the criminal justice system.

Mr. Rosenthal has a Law degree from the UC Berkeley School of Law, and a Ph.D. in Criminology from Simon Fraser University. Mr. Rosenthal has authored multiple articles on police use of force and police oversight. In addition to his work as director of the Independent Investigations Office of British Columbia, Mr. Rosenthal has served as a police monitor, directed independent police review organizations, and worked as a prosecuting attorney.

Mr. Rosenthal was one of two individuals who have started and operated a truly independent investigations agency. He was selected because the model used in his BC agency is nearly a direct parallel to the agency envisioned by the legislature. Mr. Rosenthal’s experience working in the criminal justice system in Washington state is the other unique factor that separated him from the other candidate. Ian Scott started and operated the independent investigations agency in Ontario. While his agency had similarities to the agency defined in the OII enabling legislation, there were multiple differences that made it less relevant to the OII.
What kind of market research did the agency conduct to conclude that alternative sources were inappropriate or unavailable? Provide a narrative description of the agency’s due diligence in determining the basis for the sole source contract, 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 (if you state that no other businesses were contacted, explain why not), 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.

The OII staff contacted the founding directors of the Independent Investigation offices in British Columbia and Ontario. It was essential that we have someone who 1) started and managed an independent investigations agency, and 2) was able to support the project for a year or more. The only individuals who met these criteria were the retired directors from BC and Ontario. The OII Transition Team interviewed both individuals.

Richard Rosenthal, (604) 217-7518, r.rosenthal@shaw.ca
Ian Scott, (416) 459-9396, ian@iandscott.ca

Both candidates were highly qualified. However, Mr. Rosenthal’s experience working in the criminal justice system in Washington state reduced his learning curve significantly. Furthermore, we found that the BC model was much closer to the model in the OII statute than Ontario. As a result, Mr. Rosenthal was selected to provide consultation to the OII Transition Team.

What considerations were given to providing opportunities in this contract for small business, including but not limited to unbundling the goods and/or services acquired.

The proposed contractor is the sole proprietor of a small business.

Provide a detailed and compelling description that includes quantification of the costs and risks mitigated by contracting with this contractor (i.e., learning curve, follow-up nature).

Mr. Rosenthal’s experience establishing investigative organizations and programs coupled with his participation in the OII transition will enable him to continue working with no learning curve. Over the 11 month’s working on the project Mr. Rosenthal has developed a deep understanding of the statute creating the OII, the political and legal environment, and understanding of the policies developed for the office to continue his work with no learning curve. This will save money and support our ability to seamlessly complete the standup of the OII. A new
contractor would need at least 1 or 2 weeks to get up to the level of knowledge required to finish the project, resulting in significant cost increases.

- Is the agency proposing this sole source contract because of special circumstances such as confidential investigations, copyright restrictions, etc.? If so, please describe.

  No.

- Is the agency proposing this sole source contract because of unavoidable, critical time delays or issues that prevented the agency from completing this acquisition using a competitive process? If so, please describe. For example, if time constraints are applicable, identify when the agency was on notice of the need for the goods and/or service, the entity that imposed the constraints, explain the authority of that entity to impose them, and provide the timelines within which work must be accomplished.

  The legislation creating the OII went into effect July 25th, 2021. Delays appointing the statutorily required Advisory Board and the need to run two nationwide searches before a qualified director could be hired, extended the project timeline by seven months. Mr. Rosenthal will be essential to completing the project in a timely manner.

- Is the agency proposing this sole source contract because of a geographic limitation? If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.

  No.

- What are the consequences of not having this sole source filing approved? Describe in detail the impact to the agency and to services it provides if this sole source filing is not approved.

  The OII would not be able to open without the policies, procedures, physical facilities, and training for staff required to conduct high quality, thorough investigations. If the sole source extension is not approved, the OII will lose valuable time completing a full procurement and training a new consultant if Mr. Rosenthal is not selected. Without investigative capacity, the OII will be unable to accept police use of force cases as required by law.

Sole Source Posting

- Provide the date in which the sole source posting, the draft contract, and a copy of the Sole Source Contract Justification Template were published in WEBS.

  07/08/2022
If exempt from posting in WEBS, please provide which exemption.

If failed to post, please explain why.

- Were responses received to the sole source posting in WEBS?
  - If one or more responses are received, list name of entities responding and explain how the agency concluded the contract is appropriate for sole source award.

**Pending – time has not passed**

**Reasonableness of Cost**

Since competition was not used as the means for procurement, how did the agency conclude that the costs, fees, or rates negotiated are fair and reasonable? Please make a comparison with comparable contracts, use the results of a market survey, or employ some other appropriate means calculated to make such a determination.

*The OII Transition Team relies on a network of homicide investigation organizations in the US and Canada for access to information and resources. A sampling of these organizations indicates the typical rate for a top-level forensic investigation consultant is between $150 and $350 per hour. This is validated by agreements we have in place for general criminal investigations at $150 and $250 per hour.*