

Lehigh University Uniform Guidance (UG) Federal Awards: Sole Source Hypotheticals

Acceptable Sole Source opportunity under UG:

Situation #1: What if a specific (named) vendor/product/model is specifically required by the sponsor/funder in the special terms and conditions of my grant?

Answer: If the sponsor is requiring specific goods or services in order to receive the grant, this would be an acceptable sole source under UG. The requirement must be explicit in the terms and conditions

Unacceptable Sole Source Opportunities Under UG

Situation #1: What if I name a specific vendor in my proposal and the proposal is accepted? Is that justification for a sole source?

Answer: No, The UG exemption requires both (1) a written request by the grantee for a noncompetitive purchase, and (2) for the funding agency to “expressly authorize” approval of that request. A simple approval of a proposal without any expressed approval, and no mention of the non-competitive procurement in the proposal does not fit that criteria.

Potential “Gray Area” Sole Source Opportunities Situation #6: What if a specific (named) vendor/consultant is included in the proposal and the request for a sole source exemption is stated clearly in the budget justification of the proposal, and the federal funding agency accepts the proposal, would that be a legitimate sole source justification?

Answer: Because of the newness of these requirements, it’s not yet clear whether approval of the proposal by the federal agency constitutes “expressly authorized” under the UG even when the request for a sole source exemption is clearly stated in the proposal. The University is monitoring this situation with our peers and national associations and will revise guidance accordingly.

When a request for an exemption is intended to be made to the federal agency and is known at time of proposal, investigators are encouraged to include in their proposal a clear justification for a sole source exemption. At time of award, SPS will assist the Principal Investigator with securing permission from the funding agency which will reference the documentation that was in the proposal as part of the exception. (Purchasing Services and ORSP will continue to monitor this situation with the government and will advise the research community accordingly)

Situation #2: I want to sole source a consultant for academic research. I have a strong professional relationship with the individual and the person is familiar with my work. He/she is also the top expert in their field. Is this a sole source?

Answer: Typically, this is NOT going to be a sole source because it is nearly impossible to justify that one person is the ONLY person in the world that can perform the requested service. Most of the time, the best that can be justified is that they are “best” qualified, which is not a legitimate sole source justification. However, if an individual is REQUIRED based on qualifications they have, a sole source may be justified. The key to a successful justification is to explain in details the required qualifications – why we need someone with that specific qualification and how we know this is the only person with this qualification.

Good Examples:

a) Chris Consultant is needed to assist with my research, which must be completed within the next 6 months. He is familiar with this type of work and one of the best in the world. I have reached out to the 5 top experts in the field and Chris is the only one who can commit to providing their services within my allotted timeline.

b) Chris Consultant is needed to assist with my research. He is world class in his field. He is also familiar with XYZ. Chris is the only world class expert who is familiar with the intersection of these two subjects. No other supplier has this unique combination of knowledge/skill set.

Poor Example:

Chris Consultant is needed to assist with my research. Chris is a world-renowned expert with vast experience with this type of work. No one is as good as Chris at this type of work. (Chris may be “best” qualified but not the ONLY one that could do it. An RFP (or informal bid if under \$150,000) should be used that may ultimately result in Chris’s selection as best option, but other individuals could possibly respond).

Helpful Hints:

An RFP or Informal Bid (if under \$150,000) to choose the “best” qualified individual or consultant is most times the better option. Be sure to focus on the unique qualifications – why do we need someone with that qualification and why is this the ONLY person that could possibly have that qualification?

Situation #3: I found a good/service with an unbeatable price from a world-class supplier. It is 30% cheaper than anywhere else. Is this is a viable sole source?

Answer: No. Price is never a justification for a sole source. If under \$150,000 you can obtain 2 other quotes, if the value is over \$150,000 a formal RFP will need to be issued.

Situation #4: If we perform a formal bid for a good/service and we have no responses to the bid, can I then sole source the vendor that I want?

Answer: Assuming that a legitimate solicitation open to all potential vendors was attempted and documented that contained specifications/scope of work that were not considered “lockout” specs, this would be acceptable under UG.

Situation #5: I have been using this good/service for the last 10 years. I still need it for my research. Others could supply the necessary goods/service, but all of my research has this media/product and changing vendors could disrupt my research or previous work product results. Is this a viable sole source?

Answer: Purchasing advises Principal Investigators to seek sponsor approval to not have to competitively source the good or service when critical to the research.

Purchasing recognizes the University’s core mission of research and supports that mission in the best way possible. Purchasing will continue to attempt to resolve with question with other peer institutions to ensure that research is not hindered by the new UG regulations.