

Policy Statement on Sole Source Purchases for DNA Grantees

The following supplemental guidance is provided so grantees and vendors understand federal procurement requirements for use of federal grant funds and the need for prior sole source approval when goods and services in excess of \$100,000 are requested.

Federal Procurement Requirements

Procurements made with federal grant funds are subject to the standards set forth in 28 C.F.R. 66.36 and other applicable federal law, including the provisions of 28 C.F.R. 66.36 that relate to competition. Prior approval from OJP (in the form of a Sole Source Approval GAN) is required for all sole source procurements to a single vendor in excess of \$100,000.

1. First, examine your budget and see if you have a single vendor from whom you want to make \$100,000 or more in procurements across ALL budget categories on a sole source basis (i.e., you will not be collecting bids for the requested goods or services.)
2. If you find such a vendor, then you must file a Sole Source Approval GAN in GMS prior to issuance of any purchase orders to that vendor.

Why are Sole Source Approval GANs required?

The Sole Source Approval GAN serves two purposes. The first is to document the justification for using the selected vendor. The second is to document NIJ approval.

Your Sole Source Approval GAN **must** clearly state that either:

This is a unique purchase available only from one source, including discussion of how the agency determined it was a unique system.

Or

This is not a unique purchase, but it has unique capabilities no other system has; and discuss how the agency determined that they will make this purchase to the exclusion of other choices.

How do you prepare the justification for a Sole Source Approval GAN?

See the attached example for guidance. Remember that grantees must write their justifications in their own words and must not use direct quotes from vendor publications.

What kinds of justifications can NIJ program managers approve?

NIJ program managers can approve Sole Source Approval GANs in the following situations:

1. Supplies and instruments: When a kit, instrument or chemistry has already been validated by your lab and that kit, instrument or chemistry is currently in use in your lab, specified in your technical procedures, and analysts have been trained and competency tested using that kit, instrument or chemistry. Examples here would include the STR test kits your lab currently uses, genetic analyzers, etc.
2. Upgrades: Upgrade of an instrument or software process already in place in your lab. For example, if you are adding a DNA module to your existing LIMS system—no other vendor would have access to the source codes to provide this upgrade.
3. Service contracts or warranties: Only vendors that manufacture an instrument or provide software can issue warrant service for the items they produce.
4. Prior testing of competing models: If your lab is looking for a small, tabletop DNA extraction workstation and you arrange with multiple vendors offering such products to loan you models so that you can conduct side-by-side comparison testing to see what unit provides you with the best results. This testing can be used as the basis for your sole source justification. Be prepared to provide details on how the testing was conducted and what the basis for selection was in your justification document.

Examples of goods, services and requests NIJ program managers cannot approve:

1. Training – Multiple agencies have the technical ability to provide specific training.
2. Validation work – There are at least four vendors that can perform validation work for new instruments, kits and procedures you may want to use in your lab.
3. New, first-time purchases – An example here would be that a lab decides that they would like to purchase an extraction robotic workstation and has never evaluated, purchased or validated such a unit before. They would have to generate a Request for Quote (RFQ) or Request for Proposal (RFP) listing the specifications that they want such an instrument to have. Grantees must be careful not to make the RFQ so specific that only a single vendor can provide a quote for the goods and services requested because if you get only one quote back, you still have to file a sole source GAN, which the program office probably could not approve. You should never name a specific product by name or model number in your RFQ (the term used for this practice is a lock out specification) but should state you want an extraction robotic workstation that can process x samples in x time, etc.

You must follow your state/local procurement process in selecting which bid to accept based on best value. Both grantee and vendors must recognize that the Federal Government cannot and will not mediate contract disputes between a state/local government and a vendor just because federal funds are being used for the acquisition. Any and all contract disputes are solely between the entities that originate the contract or bid offering and the vendor(s) involved.

4. Requests for specific products available from other sources – Examples would be for a new, specific LIMS system by name to the exclusion of all others, a particular vendor of custom lab furniture to the exclusion of all others, etc.
5. Requests not based on your lab's own evaluation – Examples would be if you request a specific instrument, chemistry or technology based on another lab using the products you want to procure; a literature survey; examination of technical specifications provided by the vendor; or discussions held between your lab and competing vendors.
6. Outsourcing contracts – Contracts for outsourcing DNA case or offender testing MUST be competed if in excess of \$100,000.

Bundling Procurement Costs

Many vendors offer price reductions when they provide additional services. An example would be to offer a price reduction when purchasing an instrument which may result in lowered costs for installation of the equipment, software additions, training, validation work, service and/or warranty service agreements, etc. Any vendor including items which are not unique (like training and validation) must realize that these services must be competitively bid if the total cost exceeds \$100,000. There is nothing wrong with this practice as long as:

- The vendor provides a cost estimate with each charge broken out based on the request provided by the grantee.
- Every good or service offered has a reasonable cost associated with the goods and services provided. Examples of prohibited practices would include not charging for validation service or training in an effort to lock out competition from competing vendors that offer this service. These services have a cost and they cannot be hidden in instrument or installation costs.

Grantees must realize that costs must be provided in the proper budget categories on their grant. Instrument costs go in the "Equipment" category; software and installation costs go in the "Other" budget category; validation, training, and warranties or service/maintenance contracts would go in the "Consultants/Contracts" category. Vendors are encouraged to provide price quotes that clearly show each charge to make it easier for grantees to properly itemize their grant budgets.

Budgets will be change requested back for revisions if a lump sum is put into the equipment budget category for any goods or services other than the instrument itself., or with a budget narrative that is not sufficient. Grantees must clearly state in the budget narrative exactly what costs are associated with such requests.

Distributors

Many vendors allow distributors to provide their goods and services to specific agencies at a fixed price (for instance, to the Federal Government based on a GSA negotiated price).

In an earlier Newsletter, we provided information that some distributors were offering goods and services routinely requested by DNA laboratories. This information was based on information that the program office received from the distributor that they could provide goods/services to non-federal agencies at the same price as the GSA contract. However, this information was subsequently disputed by some vendors. The Program Office has never seen the agreements between the vendors and their distributors and we are not legal experts; therefore, we have decided to no longer require grantees to receive quotes from distributors and vendors before submitting Sole Source Approval GANs.