

## SOLE SOURCE CONTRACT DEFINITION AND CRITERIA

### 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, as per 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 however will not be on its own a sufficient justification.*

### Why is a sole source justification required?

*The State of Washington, by law and policy, 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 the benefits of a competitive contract.*

## PLEASE PROVIDE CLEAR AND COMPELLING ANSWERS TO THE FOLLOWING JUSTIFICATION QUESTIONS:

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

ESD requires the vendor’s NGTS subject matter experts to provide daily production support and knowledge transfer. The vendor is currently in the best position to handle the ongoing maintenance and support based on their unequalled history working on NGTS and familiarity with several of the unique technology components. Like any large-scale IT system, there will always be a need for ongoing support and maintenance on the system. ESD requires this support from the vendor in order to accomplish the required NGTS improvements which includes the on-going transition to our ITSD staff.

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

Kiehl Northwest has developed and maintained the Next Generation Tax System (NGTS) for Employment Security for the past five years. This resource has intimate and historical knowledge of all facets of the design, documentation, and architecture that are crucial to resolving business rule defects and functionality. Currently focusing on system architecture changes to ensure the system performance is working as expected. We have made some progress with knowledge transfer over the last year but due to the amount of work still to be accomplished and the allocation of resources assigned to the system we need these resources to continue with their efforts through 2024. The unique knowledge base specific to this contracted resource is crucial to the success of the agency mission.

***Contractor Capability***

Years of working with contractors' resources have proven this contractor is extremely competent and able to deliver required complex updates to the system quickly and efficiently.

***Proficiency***

This contracted resource has expert level experience developing, testing code and administering the data specific to the NGTS system. ESD started out with 33 contracted resources and has only retained the most experienced, productive, and successful in delivering complex system functionality and value to the state of Washington.

3. What kind of market research did the agency conduct to conclude that alternative sources were inappropriate or unavailable?

ESD did not conduct any market research specific to this sole source. Instead, ESD concluded that no alternative exists based on two primary factors. First, ESD has been working with this system for ten years and understands the intricacies of the system and the expertise that is required to provide these services. In addition, ESD has used, and is still using, third-party contractor resources to perform services on many of ESD's systems, including NGTS. These third-party contracted resources are useful for some of the tasks associated with work on the system and ESD will continue to utilize them for that work, including using resources obtained through a competitive solicitation. However, these resources do not have the knowledge and expertise working with the system to be able to provide this level of maintenance and support services, and are themselves reliant on the knowledge and expertise that this vendor provides.

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

Without this contract ESD will lose the technical subject matter expert resulting in significantly higher maintenance and operation costs in addressing the remaining business-related defects and enhancements of the system. This loss will result in much higher and longer associated cost by utilizing contractors who aren't familiar with the intricacies of this complex system. This type of

extended timeline not only compounds the cost to the agency but also continues costly impact to WA state businesses reporting wages and submitting tax payments for UI benefit funding.

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

**NOT APPLICABLE**

6. 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 which work must be accomplished.

**NOT APPLICABLE**

ESD is not 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. ESD is proposing this Sole Source contract because of the unique qualifications of the vendor. No other vendor could provide resources with the same knowledge and expertise about the NGTS system for some ongoing maintenance and support that this vendor can provide.

7. 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.

**NOT APPLICABLE**

8. 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.

ESD will lose the technical subject matter expert resulting in delays addressing business related issues that prevent or impair WA state businesses reporting wages and submitting tax payments for UI benefit funding.

9. 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.

In this particular case, ESD did not consider any opportunities for small businesses to provide these services. Only one vendor exists who has the knowledge about the system to provide this level of ongoing support for the system and they are not a small business.

10. 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 comparison with comparable contracts, use the results or a market survey, or employ other appropriate means calculated to make such a determination.

The costs associated to this contract are in line and in some cases lower than contractors performing similar work for ESD.

If an Amendment answer the following questions as well:

11. State the rationale for executing an amendment to an existing contract rather than competitively procuring the goods and/or services and awarding a new contract. Include how executing the amendment can most effectively achieve the agency's purpose.

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Amending this contract will continue to support the stability, maintenance, and enhancements of one of our major Tax systems (Next Generation Tax System). ESD IT Portfolio, includes the mission critical systems that support the payment of unemployment benefits, support job seekers and collect taxes. These systems are used by internal ESD work units of varying size, Washington citizens seeking employment and applying for unemployment benefits, and Washington employers that file and pay taxes quarterly. ESD collects an average of \$290 million in taxes quarterly, which NGTS supports. Consequently, loss of resources could delay funding used to pay unemployment benefits, negative impact to Washington employers and their representatives resulting from inability to submit tax and wage reports, news reports that are damaging to the agency's reputation.

12. Are the proposed goods and/or services within the scope of the original contract?

**YES**  **NO**

If no, explain

13. Explain why the goods and/or services were not included in the terms of the original contract.

The type of services being provided are the same that was included in the original contract. ESD requires the vendor for longer than originally anticipated. ESD needs to leverage the vendor staff for ongoing support and maintenance while ESD's staff work on some additional business-related changes and improvements.

14. Explain what conditions have changed since the award and other applicable information that clearly justifies the decision to amend the contract.

In 2021, staff devoted a lot of time implementing mandatory COVID 19 legislative mandates, the existing backlog of work was halted due to those initiatives into 2022. Although backlog work items were picked up again at the end of 2022, a new RFP was signed with a new bank and NGTS staff had to meet those deliverables. There were also additional legislative bills that passed which impacted the team. NGTS coding is difficult and while we have made leaps and bounds in development since the system went live, the core of Tax Accounting system is delicate and expertise in this area is still very much needed.

15. What are the consequences of not having this amendment approved? Describe in detail the impact to the agency and to the services it provides if this amendment is not approved.

These systems are used by internal ESD work units of varying size, Washington citizens seeking employment and applying for unemployment benefits, and Washington employers that file and pay taxes quarterly. ESD collects an average of \$290 million in taxes quarterly, which NGTS supports. Consequently, loss of resources could delay funding used to pay unemployment benefits, negative impact to Washington employers and their representatives resulting from inability to submit tax and wage reports, which may result in news reports that are damaging to the agency's reputation.

16. Are the rates the same as that negotiated under the original contract?

YES  NO

If no, explain:

The vendor's contractor knowledge is key and valuable to our agency. Hourly rates have been increased as requested by vendors due to cost of living. Typically, an increase of 3% to 10% has occurred every year. There is no increase in rate for 2024.