

Sole Source CONTRACT Filing Justification Template

Division or Region: Forest Regulation
Date: January 22, 2024
Solicitation Number: 93-106445
Company Name: Industrial Economics Inc. (IEc)
Sub-object good/services will be charged once approved: CZ
Funding Source (federal/state/local): State
Vendor FIN/TIN (Federal ID#/ Taxpayer ID#): 04-2735625

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 Washington Forest Practices Board (Board) is continuing its work to develop a permanent Water Typing System Rule. As part of the rule-making process, state agencies are required to undertake a Cost-Benefit Analysis (CBA) that estimates the costs of the rule and whether the benefits of the rule outweigh the costs (RCW 34.05.328). Additionally, the rulemaking agency must produce a Small Business Economic Impact Statement (SBEIS), unless the rule does not impose more than minor costs on businesses in an industry or the SBEIS requirements are contained within the CBA (RCW 19.85.025 and RCW 19.85.030).

The Washington State Department of Natural Resources (DNR) seeks to modify and finalize the preliminary CBA started in 2018, solicited via a Request for Proposals (RFP #18-64), which resulted in a contractual agreement with Industrial Economics, Inc. (IEc). The original contract with IEc was amended in 2020 to include additional tasks on how to determine the end of fish habitat (Chapter 5 of the original preliminary CBA), which is the division between Type F and Type N waters.

The business need for this contract is to build on the preliminary CBA, which was completed by IEc, to incorporate new data and results from the spatial analysis of the Board-approved Potential Habitat Breaks (PHB) options and Anadromous Fish Floor (AFF) alternatives. IEc, under this new contract, will continue to address concerns raised regarding Chapter 5, and, if needed, modify the methodologies, and reanalyze the fish effects analysis in sections 5.1 and 5.2. This contract will also cover the final CBA and SBEIS derived from the preliminary CBA following the public comment phase of formal rulemaking.

Sole Source Criteria

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

IEc was originally selected through a competitive process to complete the original CBA. Midway through that process, the Board in 2020 paused the rulemaking effort to identify and include additional rule elements. IEc had completed a preliminary CBA under the prior contract and had participated in all stakeholder reviews of the preliminary CBA.

IEc is the only contractor suited to complete this work by producing a final CBA and SBEIS because:

- 1- IEc is the original author of the preliminary CBA. IEc economists who authored the preliminary CBA and previous uncompleted effort are available to complete the task under a new contract. They have firsthand knowledge of the rulemaking effort, the intermediate products, the dataset, and the analysis conducted on the data.
- 2- Timber Fish and Wildlife (TFW) stakeholder groups are familiar with IEc's work and economists. In the prior effort, IEc successfully engaged with stakeholders: facilitated a review process, responded to comments, and addressed their concerns. Contracting with IEc allows this process to start

immediately from where it was left off without further interruption by leveraging existing stakeholder trust and relationships.

- 3- A sole source with IEC would allow the Board to complete the rulemaking process on the Board's approved timeline. The Board expects the rulemaking package to be ready for public review by May of 2024.

IEC is best placed to restart the CBA analysis where it was paused in 2020. A firm other than IEC will require at least a month to understand the rulemaking effort, as well as to review the intermediate products and datasets. Further, a firm other than IEC will most likely require additional time to understand the stakeholder context and form relationships. This would delay completion of the work and not allow DNR to meet the Board's deadline of May 2024.

DNR effort, staff time, and money already committed under the prior effort will be fully leveraged and utilized in a contract with IEC. DNR will lose the value gained from the prior effort if the contract is completed by another firm, potentially doubling the cost of this effort and delaying an important rulemaking effort by at least six months.

- 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.

For the CBA and SBEIS analysis, DNR initially selected this contractor for the original contract after careful review of other bidding firms in a competitive RFP. DNR at that point had researched firms with regards to qualifications to provide the first phase (the preliminary CBA) of the work. In planning for this subsequent work, DNR staff considered all the factors that drove the selection of the IEC for the CBA and SBEIS analysis. DNR performed comparisons from the most recent IEC quote to confirm that the IEC quote is consistent with potential offerings of other firms.

In order to have intimate familiarity with the analysis and data underlying this effort and create a final preliminary CBA and SBEIS in time to meet the Forest Practices Board's deadline of May 2024, it is critical for the contractor to pick up the process immediately from where it was left. The only firm capable of accomplishing this is IEC, who was the contractor for the original work. Even a short delay in this process would likely result in delay in this important rulemaking by at least six months. Consequently, no additional firms were contacted.

- 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 original contract with IEC was the result of a competitive solicitation process, which provided opportunities for small businesses. Unbundling the remainder of the CBA effort is not feasible for this rulemaking effort due to the nature of Washington State's rulemaking process. The limited nature of this contract and the interconnectedness of the previous and upcoming work means that unbundling would be inefficient and could significantly delay the Water Typing System Rule past the date established by the Forest Practices Board.

- 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).

The preliminary CBA is entirely IEC's work, as are previous updates in response to concerns regarding the methods used. IEC has worked with DNR to address the concerns raised, completed the preliminary CBA, and has historical knowledge about the CBA plus the process it went through. This contractor has worked on several iterations of the CBA, as the Board and the TFW Policy Committee have asked for more detail and more options. Contracting a firm other than IEC introduces the following additional costs:

- 1- More time will be needed for a new firm to fully understand the preliminary drafts, the intermediate products, the dataset, and the resulting analysis.
 - 2- DNR believes that the methodology used by IEC in the preliminary CBA is sound and any additional analysis done by a new firm would cause unnecessary delay.
 - 3- An economist with a new firm may also recommend or suggest changing the analysis methodology, introducing not only more time but also the need for more data collection and stakeholder engagement, causing further delay.
 - 4- A new firm will require additional time to become familiar with the challenging context of this project and to create new relationships with stakeholders.
 - 5- DNR estimates that the cost of contracting a new firm will most likely be double the cost of IEC completing the remainder of this effort.
 - 6- Engaging a new firm will likely delay the rulemaking effort by at least six months.
 - 7- It would be time consuming for DNR and a waste of its resources to onboard a new vendor in a way that would yield the same depth and breadth of knowledge about this topic area.
- 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.

No

- 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.

If this sole source award is not approved, the Board will be delayed in pursuing a permanent Water Typing System Rule to achieve the Riparian Conservation Strategy of the Forests and Fish Report (FFR). A delay in implementation of the permanent rule means a continuation of electrofishing as a method to determine fish habitat. Stakeholders (tribes; federal services; state agencies; and conservation groups) have raised concerns about this practice as a way to determine fish use and, therefore, the Board needs to take action quickly.

Also, the process of adopting a permanent rule will be delayed as the rule cannot be put forth for formal rulemaking without a comprehensive preliminary CBA, and rules cannot be adopted without a final CBA and SBEIS. The time to complete an RFP and potentially bring a new contractor up to speed on the background and current standing of the preliminary CBA will have detrimental effects on the timely implementation of the Board approved rulemaking.

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.
 - 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.

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.

For the original preliminary CBA and SBEIS, DNR selected this contractor after careful review of other bidding firms in a competitive RFP for the original contract. DNR at that point researched firms with regards to pricing in relation to the qualifications needed to do the work. In planning for this subsequent work, DNR staff considered the factors that drove the selection of IEC for the original preliminary CBA and SBEIS.

Additionally, DNR received a quote from IEC for the subsequent work needed. Informal checks and comparisons were made to ensure IEC's current quote for the remainder of this work is consistent with what DNR would expect from other firms for the same work. These comparisons include an existing contract for spatial analysis of rulemaking and other contracts related to the work of the Forest Practices Board.

The reasonableness of IEC's quote and the near certainty—based on the factors listed above—that a competitive process for the remainder of this effort will not give DNR the best value, are key drivers in pursuing a sole source contract with IEC.