

From: [Bobbi Mariani](#)
To: [Bobbi Mariani](#)
Cc: [Dylan Dear](#); [JG Scott](#)
Subject: LBC - Follow-up information from meeting on October 3, 2018
Date: Thursday, October 25, 2018 8:37:09 AM
Attachments: [KDADS PRTF Information for LBC.pdf](#)
[KDADS PRTF Methods and Standards for Establishing Payment Rates.pdf](#)
[OSH Waitlist Average FY17 to Current.pdf](#)
[memo_lbc_wu_competitive_procurement_exceptions.pdf](#)

Members of the Legislative Budget Committee,

At the October 3, 2018, meeting of the LBC, several requests were made for follow up information from different state agencies. We have gathered information below and attached to address the requested information.

Kansas Department for Aging and Disability Services and the State Hospitals

The LBC requested the number of individuals on the waiting list for services at Osawatomie State Hospital in recent months.

- ***(OSH Waitlist Average FY 17 to Current attached)***

The LBC requested more detailed information on Psychiatric Residential Treatment Facilities (PRTFs) including how rates for separate PRTFs are established, the number of individuals served at the PRTFs, and the number of individuals on the PRTF waiting lists.

- On October 18, 2018, Cody Gwaltney, the Legislative Director for KDADS, provided the attached document (***KDADS PRTF Methods and Standards for Establishing Payment Rates attached***) which is the detailed methodology for how PRTF rates are set by KDADS. This is language from the Medicaid State plan which is approved by the federal Centers for Medicare and Medicaid Services (CMS). Mr. Gwaltney also noted that the rate set by KDADS sets the floor for the MCOs. They can supplement these rates based on their contracts with the PRTFs.
- Mr. Gwaltney also provided information on the number of individuals provided services by PRTFs through the Medicaid program, the cost of those services, and the number of individuals on the PRTF waiting list. (***KDADS PRTF Information for LBC attached***)

Kansas Corporation Commission

The LBC requested the information on the current balance of the Kansas Corporation Commission's Abandoned Oil and Gas Well Fund.

- The unencumbered balance in the Fund as of October 5, 2018 is \$2,655,165. As of October 5, 2018, encumbrances against the fund total \$719,555.

Kansas Department of Revenue

The LBC requested more detailed information on cost comparison of the contracts, including savings from fewer costs.

- The \$500,000 in FY 2019 and \$1.7 million in FY 2020 is the reduction in staffing costs, not

overall agency operations. This contract will actually cost \$3.0 million FY 2019 and \$3.0 to \$4.0 million in FY 2020, based on past mailing trends. The agency noted the equipment and software used for in-house processing in the Docking building is outdated and maintenance has been deferred for many years. By using a lockbox vendor, the State no longer will need to acquire and maintain the equipment for Channel Operations. Also, over time, the agency anticipates the amount of checks and returns received to significantly decrease through natural progression. The agency is also planning a marketing campaign aimed towards tax preparers, CPAs, and others to encourage electronic filing and payment remittance to decrease incoming payments via regular mail.

The LBC requested clarification on whether the contract with US Bank is evaluated on a yearly basis and whether the per item rate was negotiated every year.

- The contract is structured in a tiered pricing system, based on volume. Rates are constant for the first three years of the agreement at the highest volume rate, and then re-evaluated on an annual basis and adjusted to the appropriate tier.

Kansas Department of Administration

The LBC requested clarification on whether the Lockbox Service Agreement with US Bank is the only Lockbox agreement that the state has entered into.

- On October 12, 2018, John Yeary, Chief Counsel for the Kansas Department of Administration, reported that to his knowledge, the State Treasurer's Office has a contract with US Bank in part for lockbox services and the Department of Revenue and the Judicial Branch utilize lockbox services from US Bank via that contract, but was not aware of any others.

The LBC requested information on how other states deal with sole-source contracts.

- ***(Memo on Competitive Procurement Exceptions attached)***

The LBC requested information on the 458.0 percent increase and the reason of the increased number of no-bid contracts under the best interest of the State.

- This information is currently pending with the agency.

**Information Provided to the Legislative Budget Committee by the Kansas Department for Aging and Disability Services (KDADS) on Psychiatric Residential Treatment Facilities (PRTFs)
October 18, 2018**

Number of Individuals on the KanCare Psychiatric Residential Treatment Facility (PRTF) Wait List

FY 2018			
1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
56	103	116	144

Number of Individuals Served through the Medicaid Program

Calendar Year 2017			Calendar Year 2018		
Month	MCO Paid Amount	Number Served	Month	MCO Paid Amount	Number Served
January	\$ 2,497,084	293	January	\$ 2,852,791	284
February	2,314,180	277	February	*	*
March	2,670,714	254	March	*	*
April	2,581,715	285	April	*	*
May	2,634,194	309	May	*	*
June	2,586,011	302	June	*	*
July	2,906,845	287	July	*	*
August	2,770,914	281	August	*	*
September	2,756,592	272	September	*	*
October	2,910,094	279	October	*	*
November	2,728,873	259	November		
December	2,816,675	263	December		
Total \$	32,173,891		Total \$	2,852,791	

* Representatives from KDADS report these totals are not available, due to a lag in MCO encounter data.

Methods and Standards for Establishing Payment Rates Psychiatric Residential Treatment Facilities

Narrative Explanation of Reimbursement Formula

Under the Medicaid program, the State of Kansas pays psychiatric residential treatment facilities (PRTFs) for care and treatment provided to residents who are eligible for Medicaid benefits. The Kansas Department of Aging and Disability Services (the Department) administers the PRTF program pursuant to an interagency agreement with the Kansas Department of Health and Environment, Division of Health Care Finance, the single state Medicaid agency.

There are two classes of PRTFs:

- I. Class I is a PRTF that meets all:
 - A. Requirements for Medicaid participation as specified in 42 CFR 441.151, and
 - B. State standards and licensing requirements for a Class I PRTF including:
 - 1) Accreditation by the Joint Commission,
 - 2) Being licensed, but not Medicaid certified, as a psychiatric hospital, and
 - 3) Not refusing to admit any otherwise qualified Medicaid beneficiary who has a documented need for residential inpatient psychiatric treatment.
- II. Class II is a PRTF that meets all:
 - A. Requirements for Medicaid participation as specified in 42 CFR 441.151, and
 - B. State standards and licensing requirements of a Class II PRTF.

The narrative explanation of the reimbursement formula for each class of PRTF is divided into three major sections: Historical Costs, Rate Calculations, and Payment Limits.

Narrative Explanation of Reimbursement Formula for Class I PRTF

1) Historical Cost

Cost Reports

Providers are required to submit information on all costs incurred during the fiscal period from July 1st through June 30th on a uniform cost report, the PRTF Financial and Statistical Report. It organizes the commonly incurred business expenses of PRTFs into five reimbursable cost centers (Administration; Facility Operating; Property; Room, Board, and Support; and Treatment) and one non-reimbursable/non-resident related cost center. Reporting of non-reimbursable/non-resident related costs allows total operating expenses to be reconciled to the PRTFs' accounting records. Cost reports are to be submitted by September 30th

The cost report and cost report instructions are provided in Attachment 1.

KANSAS MEDICAID METHODS AND STANDARDS

Methods and Standards for Establishing Payment Rates Psychiatric Residential Treatment Facilities

Narrative Explanation of Reimbursement Formula

Mid-Period Reports

To accommodate a mid-period treatment cost adjustment, a report of costs incurred during the six-month period starting immediately after the end of the cost report period described above. The mid-period report will be for costs incurred July 1st through December 31st. Mid-period cost reports are to be submitted by March 31st using the same form and format as the annual cost report.

Allowable Costs

All cost reports are desk reviewed by the Department or its designee auditors. Adjustments are made, when necessary, to the reported costs in arriving at the allowable historic costs for the rate computations.

All mid-period reports are tested for reasonableness. The treatment cost center is desk reviewed. Adjustments are made, when necessary, to the reported costs in the Treatment cost center arriving at the allowable historic costs for the rate adjustments.

Change of Owner/Provider

When a non-arms length change of provider takes place or when an owner of real estate assumes the operations from the lease, the PRTF will be treated as an on-going operation. In this situation, the related provider or owner shall be required to file the appropriate year end cost report or mid-period report in conformance with the schedule described above. The new operator or owner is responsible for obtaining historical cost information from the prior operator for the months needed to submit accurate and complete reports that included costs incurred when the new operator was not involved in running the PRTF. The cost report information from the old and new operators shall be combined to prepare a 12-month cost report of a 6-month mid-period report in conformance to the schedule described above.

When an arms-length change in provider takes place, the new owner assumes the reimbursement rate of the old owner until the new owner can submit a full year or mid-period cost report in conformance with the schedule described above.

New Provider

The per diem rate for a new Class 1 PRTF will be based on a projected cost report reviewed by the Department for reasonableness. The Department will determine reasonableness by comparing projected costs with other similar PTRFs. In making these comparisons, the

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Methods and Standards for Establishing Payment Rates Psychiatric Residential Treatment Facilities

Narrative Explanation of Reimbursement Formula

Department will make appropriate adjustments and allowances to account for staffing ratios and unique physical plant requirements needed to serve children and adolescents who have a higher acuity of mental illness compared with those served by other PRTFs. The approved initial rates will be paid until new rates can be established from a complete full year cost report period using the rate calculation methods described below. Once a new rate is established from a full year cost report period, a retrospective cost settlement will be made from the first day of operation of the new Class I PRTF to the date that the new prospective rate is set.

2) Rate Calculations

Reimbursement rates will be calculated for the payment rate period of January 1st through December 31st, with a mid period adjustment to the Treatment cost center effective for the payment rate period from July 1st through December 31st.

Inflation

Inflation will be applied to all allowable reported costs except:

- 1) Owner/Related Party Compensation
- 2) Interest Expense
- 3) Real and Personal Property Taxes

Inflation will be applied from the midpoint of each cost report period to the midpoint of the rate payment period. The inflation will be based on the IHS Global Insight, National Skilled Nursing Facility Market Basket without Capital Index (IHS Index).

The IHS Indices listed in the latest available quarterly publication will be used to develop the inflation tables used for all payment schedules processed during the payment rate period. This may require the use of forecasted data. The inflation tables will not be revised until the next payment rate period.

Per Diem Costs

Per diem costs are determined by dividing each PRTF's inflated allowable costs, for each cost center, by the total number of reported resident bed days. Total PRTF reimbursement will include the actual allowed inflated per diem costs for each of the Administration; Facility Operating; Property; Room, Board, and Support; and Treatment cost centers.

KANSAS MEDICAID METHODS AND STANDARDS

Methods and Standards for Establishing Payment Rates Psychiatric Residential Treatment Facilities

Narrative Explanation of Reimbursement Formula

Mid-Period Rate Adjustment

The Treatment cost center will be adjusted for the difference between the inflated allowable per diem costs calculated for the full year rate payment period and the inflated allowable per diem costs calculated for the mid-period adjustment. This difference will be added to the rate currently in effect on July 1 and will be paid through the end of the rate payment period, December 31.

3) Payment Limits

Owner/Related Party/Director/Co-Director Limits

All Class 1 PRTFs cost related to owner/related party compensation will be limited. Since salaries and other compensation of owners and related parties are not subject to the usual market constraints, specific limits are applied to the reported amounts. First, amounts paid to non-working owners and directors are not an allowable cost. Second, owners and related parties who perform resident related services are limited to a salary chart based on the Kansas Civil Service classifications and wages for comparable positions. Owners and related parties who provide resident related services on less than a full time basis have their compensation limited by the percent of their total work time to a standard work week. The owners and related parties must be licensed or certified by the state to perform services requiring such credentials.

The compensation paid to owners and related parties shall be allocated to the appropriate cost center for the type of service performed. Each cost center has an expense line for owner/related party compensation. There is also a cost report schedule titled, "Statement of Owners and Related Parties." This schedule requires information concerning the percent of ownership (if over five percent), the time spent in the function, the compensation, and the description of the work performed for each owner and/or related party.

Comparable Private Pay Rates

Class 1 PRTFs are to be reimbursed the lower of the calculated Medicaid rate or their private pay rate. The Department maintains a registry of private pay rates. It is the responsibility of the facilities to send the Department their private pay rate updates so that the registry is current. When new Medicaid rates are determined, if the private pay rate reflected in the registry is lower, then the facility is held to that private pay rate until the facility sends notification that it has a higher private pay rate.

KANSAS MEDICAID METHODS AND STANDARDS

Methods and Standards for Establishing Payment Rates Psychiatric Residential Treatment Facilities

Narrative Explanation of Reimbursement Formula

Narrative Explanation of Reimbursement Formula for Class II

1) Historical Cost

Cost Reports

Providers are required to submit information on all costs incurred during the fiscal period from July 1st through June 30th on a uniform cost report, the PRTF Financial and Statistical Report. It organizes the commonly incurred business expenses of PRTFs into five reimbursable cost centers (Administration; Facility Operating; Property; Room, Board, and Support; and Treatment) and one non-reimbursable/non-residential related cost center. Reporting of non-reimbursable/non-resident related costs allows total operating expenses to be reconciled to the PRTFs' accounting records. Cost reports are to be submitted by September 30th.

The cost report and cost report instructions are provided in Attachment 1.

Mid-Period Reports

To accommodate a mid-period treatment cost adjustment, a report of costs incurred during the six-month period starting immediately after the end of the cost report period described above will be required. The mid-period report will be for costs incurred July 1st through December 31st. Mid-period cost reports are to be submitted by March 31st, using the same form and format as the annual cost report.

Allowable Costs

All cost reports are desk reviewed by the Department of its designee auditors. Adjustments are made, when necessary, to the reported costs in arriving at the allowable historic costs for the rate computations.

All mid-period reports are tested for reasonableness. The treatment cost center is desk reviewed. Adjustments are made, when necessary, to the reported costs in the Treatment cost center arriving at the allowable historic costs for the rate adjustments.

Change of Owner/Provider

When a non-arms length change of provider takes place or when an owner of real estate assumes the operations from the lease, the PRTF will be treated as an on-going operation. In this situation, the related provider or owner shall be required to file the appropriate year end cost

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Narrative Explanation of Reimbursement Formula

report or mid-period report in conformance with the schedule described above. The new operator or owner is responsible for obtaining historical cost information from the prior operator for the months needed to submit accurate and complete reports that includes costs incurred when the new operator was not involved in running the PRTF. The cost report information from the old and new operators shall be combined to prepare a 12-month cost report or a 6-month mid-period report in conformance to the schedule described above.

When an arms length change in provider takes place, the new owner assumes the reimbursement rate of the old owner until the new owner can submit a full year or mid-period cost report in conformance with the schedule described above.

New Provider

The per diem rate for a new PRTF will be the total of the state-wide median of each cost centers calculated at the last full year cost report until the new PRTF can report a full year cost report in conformance with the schedule described above.

2) Rate Calculations

Reimbursement rates will be calculated for the payment rate period of January 1st through December 31st, with a mid period adjustment to the Treatment cost center effective for the payment rate period from July 1st through December 31st.

Inflation

Inflation will be applied to all allowable reported costs except:

- 1) Owner/Related Party Compensation
- 2) Interest Expense
- 3) Real and Personal Property Taxes

Inflation will be applied from the midpoint of each cost report period to the midpoint of the rate payment period. The inflation will be based on the IHS Global Insight, National Skilled Nursing Facility Market Basket without Capital Index (IHS Index).

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Narrative Explanation of Reimbursement Formula

The IHS Indices listed in the latest available quarterly publication will be used to develop the inflation tables used for all payment schedules processed during the payment rate period. This may require the use of forecasted data. The inflation tables will not be revised until the next payment rate period.

Per Diem Costs

Per diem costs are determined by dividing each PRTF's inflated allowable costs, for each cost center, by the total number of reported resident bed days. Total PRTF reimbursement will include the actual allowed inflated per diem costs for each of the cost centers for Administration; Facility Operating; Property; and Room, Board, and Support or the upper payment limit for each of these cost centers, whichever is less, plus the actual allowable inflated per diem for the Treatment cost center.

Mid-Period Rate Adjustment

The Treatment cost center will be adjusted for the difference between the inflated allowable per diem costs calculated for the full year rate payment period and the inflated allowable per diem costs calculated for the mid-period adjustment. This difference will be added to the rate currently in effect on July 1 and will be paid through the end of the rate payment period, December 31.

**Osawatomie State Hospital Waitlist
Average Daily Total of Individuals Per Month
FY 2017 to Current**

	FY 2017	FY 2018	FY 2019
Jul	17.5	10.8	6.0
Aug	14.6	10.0	5.9
Sept	22.5	5.5	6.3
Oct	14.9	6.6	
Nov	10.9	4.7	
Dec	10.0	7.8	
Jan	25.3	7.6	
Feb	17.5	6.1	
Mar	20.8	8.5	
Apr	13.3	5.4	
May	11.6	5.4	
Jun	13.9	4.7	
Year	16.1	6.9	6.0

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October 23, 2018

To: Legislative Budget Committee

From: Steven Wu, Fiscal Analyst

Re: Exemptions to the Competitive Procurement Process

This memorandum contains an overview of state practices regarding exemptions from the competitive bidding process and requests for additional information made during the Legislative Budget Committee meeting on October 3, 2018.

Noncompetitive Procurements

While competitive procurements are the standard rule, each state has statutory or administrative exemptions to the competitive bidding or negotiation process. When requesting a noncompetitive procurement, most states require that the purchasing state agency establish that open competition is not applicable. Within that subset of noncompetitive procurements, sole source procurements are based on a justification that only one known source exists or that only one single supplier can fulfill the state's requirements. Currently, 48 states require that state agencies submit written justification for sole source procurements, and 36 states specifically authorize sole source procurements in statute.

While states vary in the acceptable conditions for sole source procurement, the most common reasons include circumstances where no competition for the good or service exists (42 states); where the good or service is unique or special in nature (32 states); where compatibility with existing equipment is an overriding concern (29 states); where limited or proprietary interests are an overriding concern (29 states); and where a professional expert is requested (22 states). Additionally, 18 states employ a "best interest of the state" determination in some form when evaluating requests for noncompetitive procurements. The most common sole source procurements include systems and product maintenance, information technology, and laboratory equipment.

Best Practices and Common Procedures

While each state's statutes and regulations vary in how noncompetitive procurements are handled, 30 states have implemented the 2000 American Bar Association (ABA) Model Procurement Code in some form, either widely adopting the Model Code's language or using it as a basis for developing state-specific requirements. The National Association of State Procurement Officials (NASPO) has identified the following recommendations to maximize the use of competitive procurements and minimize the use of noncompetitive procurements:

- Ensure that timely market research and acquisition planning processes are in place;
- Require that the central procurement office post a notice of intent to enter into a sole source contract on its website and by email notification if an electronic procurement system exists; and
- Maintain a record listing all sole source procurements, to be published or submitted to the Governor or Legislature.

Reviewing the procurement procedures and requirements across all 50 states, and the District of Columbia, reveals common practices, detailed below.

Create a Standardized Template for Written Justifications

Most states require written justification to support sole source procurement requests, which may include information such as the description of unique features that prohibit competition; research that verifies a vendor as the sole source of the procurement; a description of the marketplace of distributors, dealers, and resellers; known compatibility issues; and any possible timing issues regarding the procurement.

Establish a Centralized Review and Approval Process

Most states statutorily require that a chief procurement officer (CPO) lead a central procurement office and oversee procurement efforts across the states. Major responsibilities and final authority within the CPO include developing the rules, regulations, and procedures governing procurement; establishing statewide and agency-specific contracts; performing oversight functions; and resolving contract disputes. Most states require that the CPO or the purchasing state agency's procurement officer approve of sole source procurements.

Currently, 43 states have a single CPO, and 24 states require that the CPO, or an equivalent official, approve of each noncompetitive procurement. In most states, final approval for sole source procurement requests resides with the CPO, though a few states vest that authority within the Governor, State Comptroller, Commissioner, Board, or a higher authority that oversees procurement.

Additionally, most states have a central procurement office that supports and provides services to state agencies. NASPO recommends the ideal procurement organizational structure as a comprehensive law that applies to all state agencies and all types of procurements, with a centralized management system led by a CPO at a high executive level within the government. The most common services provided by central procurement offices include procurement training (48 states); staffing expertise upon request (48 states); electronic access to state contracts (47 states); conducting procurement on state agencies' behalf (46 states); purchase from state contracts (44 states); and various certifications (21 states).

Publish Requests for Sole Source Procurements

Currently, 21 states require that a notice of intent to sole source be published, either on the central procurement office's website or by email notification. A few states statutorily require

that a legal notice to be placed in a newspaper of wide circulation. These public postings allow potential vendors to indicate interest in bidding on or negotiating for the good or service.

Establish an Appeal Process Based on Public Input

Some states have an appeal process for sole source procurements that is triggered whenever a potential vendor responds to a public posting with an interest to deal. After receiving a protest, most states review documentation provided by the potential vendor to determine whether competitive procurement should be used instead. Final authority to sustain or overrule the protest often lies with the CPO. If sustained, the purchasing agency must select a competitive procurement method and if overruled, the purchasing agency may continue with the sole source procurement.

Limit the Terms of Sole Source Contracts

Sole source procurements may risk overspending because they are negotiated in the absence of a direct market mechanism. Some states combat this by limiting the length of the contract, while other states employ a one-year provisional term, after which the state's purchasing authority evaluates whether requirements or market conditions have changed and determines whether the sole source is warranted over competition.

Educate State Agencies About Noncompetitive Procurements

In most states, the central procurement office promulgates educational materials and training sessions about noncompetitive procurements and, specifically, avoiding them when possible. Training sessions between the central procurement office and state agencies discuss the statutory and policy guidelines behind noncompetitive procurements, emphasizing the need for compelling justifications.

50-State Survey of Exemptions to the Competitive Procurement Process

State	Statutory Authority	Statutory Criteria
AK	AS 36.30.300(a)	Noncompetitive contracts for supplies, services, professional services, or construction may be awarded when the Chief Procurement Officer, or, for construction contracts or procurements for the state equipment fleet, the Commissioner of Transportation and Public Facilities determines that competitive bidding or proposals are not practicable, and it is in the state's best interest.
AL	AL Code § 41-16-51	Alabama law recognizes 17 exemptions to the competitive bidding process, including contracts for securing certain professional services; contracts for fiscal or financial advice or services; and contractual services and purchases of commodities for which there is only one vendor or supplier.
AR	AR Code § 19-11-232	Noncompetitive contracts for a required or designated commodity or service may be awarded when the State Procurement Director, the head of a procurement agency, or a designee of either officer above the level of agency procurement official determines in writing that it is not practicable to use other than the required or designated commodity or service.
AZ	AZ Rev Stat § 41-2536	Noncompetitive contracts for materials, services, or construction items may be awarded if the Director of the Department of Administration determines in writing that there is only one source for the required procurement. Sole source procurement should be avoided except when no reasonable alternative sources exist.
CA	CA Pub Contract Code § 10340 CA Pub Contract Code § 10302 CA Pub Contract Code § 12102	Noncompetitive contracts for services, including the furnishing of equipment, materials, or supplies, may be awarded in cases of emergency; when the purchasing state agency has received less than three bids or proposals after advertising the contract; or when the contract is between state agencies. Additionally, acquisition of information technology goods are exempt from competitive bidding requirements if the Director of General Services determines that only one source that can meet the state's need exists or during emergency situations. California law also gives the Department of General Services the authority to prescribe the conditions under which a contract may be awarded without competition.
CO	CO Rev Stat § 24-103-205	Noncompetitive contracts for supplies, services, or construction items may be awarded when, under rules, the executive director, the chief procurement officer, the procurement official, or their designees determine in writing that there is only one source for the required procurement.
CT	CT Gen Stat § 4a-57 CT Gen Stat § 4a-58	Noncompetitive contracts for supplies, materials, equipment, and contractual services may be awarded at the discretion of the Commissioner of Administrative Services for minor nonrecurring emergency purchases of \$10,000 or less; the purchase of vehicles to comply with statutory requirements regarding alternative fuel vehicles; and the procurement of certain public utility services. Additionally, the Commissioner may waive competitive bidding requirements whenever an emergency exists by reason of extraordinary conditions that could not reasonably be foreseen or guarded against. If such a procurement is estimated to cost \$50,000 or more, the Standardization Committee must approve of the contract.
DC	DC Code § 2-354.04	Noncompetitive contracts may be awarded when there is only one source for the required good or service, as determined by the Director of the Office of Contracting and Procurement. Notice of intent to enter into a sole source contract must be posted on the internet at least 10 days prior to the award.
DE	29 DE Code § 6904(i)	Noncompetitive contracts may be awarded if the agency head determines that there is only one source for the required material or nonprofessional service. The agency must submit written documentation stating the basis for the procurement; the existence of a sole source condition; and sufficient evidentiary data.

50-State Survey of Exemptions to the Competitive Procurement Process

State	Statutory Authority	Statutory Criteria
FL	FL Stat § 287.057(3)(c)	Florida law recognizes 14 exemptions to the competitive bidding process, including where procurement is only available from a single source; contracts for health services; and contracts for legal services. For sole source procurements, purchasing agencies must electronically post a description of and request for the procurement sought for at least 7 business days. The agency must then submit a written determination of its intent to enter a sole source purchase contract.
GA	GA Code § 50-5-67(c)	Georgia law does not specifically identify noncompetitive contracts in its statutes on state purchasing. State agencies may nonetheless enter into a sole source contract if, after engaging in the competitive bidding process, the received bids or proposals are noncompetitive or excessive in cost.
HI	HI Rev Stat § 103D-306	Noncompetitive contracts for goods, services, or construction may be awarded if the head of a purchasing agency determines in writing that only one source for the required procurement exists. The writing is subject to approval by the chief procurement officer; must be posted publicly; and must be without objection.
IA	IA Code § 8A.311	Noncompetitive contracts for equipment, supplies, and services may be awarded when the Director of the Department of Administrative Services determines that best interests of the state will be served by the exemption, based on an immediate need or emergency need existing for the item or service; or a need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement. Additionally, state agencies may submit requests for noncompetitive contracts if it is more economical than purchasing through the Department of Administration because of an immediate or emergency need, or if the purchase will not exceed \$10,000 and the purchase would contribute to compliance with targeted small business procurement goals.
ID	ID Code § 67-9221	Noncompetitive contracts may be awarded when particular savings may be obtained through the use of educational discounts, reverse public auctions, or acquisition of federal surplus or excess property; the procurement is only available from a sole source; during emergency situations demanding immediate delivery; or when the Director of the Department of Administration and the Administrator of the Division of Purchasing determine that other circumstances justify a noncompetitive procurement.
IL	30 ILCS 500/1-10 30 ILCS 500/20-25	Illinois law recognizes 16 exemptions from the competitive bidding process, including when only one feasible source for the procurement exists; intergovernmental contracts; and contracts necessary to prepare for anticipated litigation, enforcement actions, or investigations. For sole source procurements, the Chief Procurement Officer (CPO) and the purchasing state agency must present written justification for the procurement method upon written request for a public hearing. Notice of intent to enter into a sole source contract must be published online at least 14 calendar days before the hearing, after which the CPO may then approve or deny the contract.
IN	IN Code § 5-22-10-13	Noncompetitive contracts may be awarded when only one source for the supply exists and the purchasing agent makes such a determination in writing, detailing the justification for the sole source and research to confirm why the particular provider is needed.
KS	KS Stat § 75-3739 KS Stat § 75-3322 KS Stat § 75-37,130 et seq	Kansas law recognizes 13 exemptions to the competitive bidding process, including where no competition for the procurement exists; where compatibility with existing equipment is the overriding consideration; and when the Director of Purchases determines that the sole source contract is in the best interest of the state.

50-State Survey of Exemptions to the Competitive Procurement Process

State	Statutory Authority	Statutory Criteria
KY	KY Rev Stat § 45A.095	Noncompetitive contracts may be awarded where only one known capable supplier of a commodity or service exists; when competition is not feasible; during emergency conditions; or for sponsorships, naming rights, or other advertising considerations for which competition is not feasible. Additionally, Kentucky law recognizes 8 potential exemptions to the competitive bidding process, including for services where rates are fixed by law or ordinance; for library books; and for commercial items that are purchased for resale.
LA	LA Rev Stat § 39:1597	Noncompetitive contracts may be awarded when, under regulations, the Chief Procurement Officer determines in writing that there is only one source for the required supply, service, or major repair item.
MA	MA Gen L ch 30B § 7	Noncompetitive contracts may be awarded for procurements of not more than \$50,000; contracts for the procurement of certain educational materials; or contracts for certain utility services when, after reasonable investigation, the Chief Procurement Officer determines in writing that only one practicable source exists.
MD	MD State Fin & Pro Code § 13-107	Noncompetitive contracts may be awarded whenever a procurement officer determines, with approval from the head of the purchasing entity and any other statutory requirement, that only one available source for the good or service exists. State agencies may also enter into a sole source contract for certain litigation services, with prior written approval of the Attorney General.
ME	5 ME Rev Stat § 1825-B	Maine law recognizes 7 exemptions to the competitive bidding process, including for purchases of \$2,500 or less where the best interests of the state would be served; purchases of \$10,000 or less where procurement from a single source is the most economical, effective, and appropriate means of fulfilling a demonstrated need; and where the procurement is only available from one source. The Director of the Bureau of General Services must approve waiving competitive bidding requirements.
MI	Michigan Management and Budget Act § 18.1261	Michigan law recognizes 6 exemptions to the competitive bidding process, including the imminent protection of public health or safety; emergency repair or construction; and when within a state agency's delegated purchasing authority.
MN	MN Stat § 16C.10	Minnesota law recognizes 10 exemptions to the competitive bidding process, including when there is clearly and legitimately only a single source for the goods and services; for certain farm and garden products; and for certain utility services where no competition exists or where rates are fixed by law or ordinance.
MO	MO Rev Stat § 34	Missouri law recognizes 7 exemptions to the competitive bidding process, including where the use of competitive bidding is not practicable or advantageous to the state; when supplies are proprietary and only available from the manufacturer or a single distributor; and when only one distributor services the region where the procurement is needed. For sole source procurements of \$5,000 or greater, the Commissioner of the Department of Administration must post notice of the proposed purchase.
MS	MS Code § 31-7-13(m)	Mississippi law recognizes 37 exemptions to the competitive bidding process, including where noncompetitive items are available only from one source; for purchasing agreements, contracts, and maximum price regulations approved by the Department of Finance and Administration; and for intergovernmental sales and transfers. The purchasing state agency must file a certification of the conditions and circumstances requiring the procurement with the Department of Finance and Administration, which must then authorize the procurement in writing.

50-State Survey of Exemptions to the Competitive Procurement Process

State	Statutory Authority	Statutory Criteria
MT	MT Code § 18-4-306	Noncompetitive contracts may be awarded when the Director of the Department of Administration and the head of a purchasing state agency determine in writing that there is only one source for the supply or service item; only one source is acceptable or suitable; or the procurement must be compatible with current supplies or services. Additionally, contracts for supplies or services offered for sale, lease, or rental by public utilities are exempt from the competitive bidding process if the prices are regulated by the public service commission or other governmental authority.
NC	NC Gen Stat § 143-129	North Carolina law recognizes 11 exemptions to the competitive bidding process, including purchases where a needed product is available only from one source; purchases of information technology; and purchases made through a competitive bidding group purchasing program.
ND	NDCC § 54-44.4	North Dakota law recognizes 10 exemptions to the competitive bidding process, including circumstances where the procurement is available from only one source; where no acceptable bid or proposal was received pursuant to the competitive bidding or proposal process; and where the purchasing agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.
NE	NE Code § 73-507	Nebraska law recognizes 13 exemptions to the competitive bidding process, including contracts for professional legal services; agreements for services to be performed by a state agency, another state, or local government agency; and agreements for services between a state agency and certain state entities established by the Constitution of Nebraska.
NH	NH Rev Stat § 21-I:11	New Hampshire law recognizes 4 exemptions to the competitive bidding process, including when the best interests of the state would be served and the purchase involves a total expenditure of not more than \$10,000 or is a purchase in an approved class; when only one procurable source exists; and when the procurement has a fixed market price at all sources available to the state.
NJ	NJ Rev Stat § 52:34-10	New Jersey law recognizes 7 exemptions to the competitive bidding process, including when only one source of supply is available; where more favorable terms can be obtained from a primary source of supply; and when commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action.
NM	NM Stat § 13-1-126	Noncompetitive contracts may be awarded when there is only one source for the required service, construction or item of tangible personal property; when the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and when other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.
NV	NV Rev Stat § 333.400	Noncompetitive contracts may be awarded when standard equipment parts for which prices are established must be obtained from the manufacturer of the equipment or when the article needed is a patented or proprietary one and therefore obtainable from only one source of supply.
NY	NY State Fin L § 163(10)(b)	Noncompetitive contracts for services, commodities, or procurements may be awarded to meet emergencies arising from unforeseen causes, upon a determination by the Commissioner of General Services or the state agency that the specifications or requirements for purchase have been designed in a fair and equitable manner.

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State	Statutory Authority	Statutory Criteria
OH	Ohio Rev Code § 125.11	Noncompetitive contracts may be awarded upon request to and approval by the Office of Budget and Management's Controlling Board. The Controlling Board is comprised of representatives from the House and Senate, who review and approve or deny specific requests. Additionally, state agencies may spend up to \$50,000 with a vendor per year without going through a formal competitive bidding process.
OK	74 OK Stat § 74-85.7 74 OK Stat § 74-85.45j 74 OK Stat § 74-85.3008	Oklahoma law recognizes 7 exemptions from the competitive bidding process, including procurements where only one source exists; where the State Purchasing Director determines that an unusual, time-sensitive, or unique circumstance exists which make such an exemption in the best and immediate interest of the state; and for contracts for master custodian banks or trust companies.
OR	OR Rev Stat § 279B.075	Noncompetitive contracts may be awarded upon a written finding that may include that the efficient utilization of existing goods requires acquiring compatible goods or services; that the goods or services required to change software or data with other public or private agencies are available from only one source; that the goods or services are for use in a pilot or experimental project; or other findings that support the conclusion that the goods or services are available from only one source.
PA	62 PA Cons Stat § 515	Pennsylvania law recognizes 10 exemptions from the competitive bidding process, including situations where only a single contractor is capable of providing the supply, service, or construction; where it is not feasible to award the contract on a competitive basis; and where the contract is for certain legal or financial services. Written determinations of procurements over \$250,000 must be signed by the head of the purchasing agency.
RI	RI Gen L § 37-2-21	Noncompetitive contracts for supplies, services, or construction items may be awarded when the Chief Purchasing Officer determines in writing that only one source for the required procurement exists; during emergency situations where there exists a threat to public health, welfare, or safety; and for noncompetitive negotiations after competitive solicitations.
SC	SC Code § 11-35-710 SC Code § 11-35-1560	South Carolina law recognizes 15 exemptions to the competitive bidding process, including procurements where there is only one source for the required supply, service, information technology, or construction item; articles for
SD	SD Codified L § 5-18A-8	Noncompetitive contracts for supplies or services may be awarded if the purchasing state agency determines in writing that the supplies or services are of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the supplies or services. The determination that the contractor selected is justifiably the sole source shall be based on either the uniqueness of the supplies or services or the sole availability at the location required.
TN	TN Code § 12-3-504	Noncompetitive contracts for goods or services may be awarded when only a single source of supply exists. Additionally, Tennessee law authorizes the Chief Procurement Officer to make certain purchases outside of the competitive bidding process, including procurements entered into by competitive negotiation when it is in the best interest of the state.
TX	TX GOV'T § 2155.067	Noncompetitive contracts may be awarded upon a written determination from the purchasing state agency explaining the need for the specifications; the reason why competing products are not satisfactory; and other information requested by the commission. Additionally, Texas law recognizes additional exemptions from the competitive bidding process, including the delegated authority to purchase goods and services exceeding \$15,000.

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State	Statutory Authority	Statutory Criteria
UT	UT Code § 63G-6a-802	Noncompetitive contracts may be awarded if the Chief Procurement Officer or the head of the procurement unit with independent procurement authority determines in writing that only one source for the procurement item exists; that transitional costs are a significant consideration; that a cost-benefit analysis demonstrates that transitional costs are unreasonable or cost-prohibitive; and that the award of a contract is under such circumstances that make the standard procurement process impractical and not in the best interest of the procurement unit.
VA	VA Code § 2.2-4303	Noncompetitive contracts may be awarded upon a determination in writing that only one source is practicably available. Written notice detailing the sole source; the good or service being procured; the contractor select; and the specifications of the contract must be posted online and in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract.
VT	-	Vermont law is silent regarding sole source procurements. Administrative Bulletin No. 3.5 details guidelines for sole source procurements. State agencies may submit requests for sole source procurements to the Office of Purchasing and Contracting for review. If the contract exceeds \$15,000, additional approval from the Secretary of Administration is required. Possible uses of sole-source contracts include an unusual and compelling urgency, such as when health, public safety, or the conservation of public resources is at stake; situations posing extreme financial consequences to the State; legislatively mandated situations; and when required by a warranty or proprietary license agreement.
WA	WA Rev Code § 39.26.125 WA Rev Code § 39.26.140	Washington law recognizes 14 exemptions to the competitive bidding process, including sole source contracts; direct buy purchases, as designed by the Director of the Department of Enterprise Services (Department); and purchases from master contracts established by the Department or an authorized agency. State agencies must submit requests for a sole source contract to the Department and make the contract available for public inspection not less than 10 working days before the proposed starting date of the contract.
WI	WI Stat § 16.72 WI Stat § 16.75	Noncompetitive contracts may be awarded if the procurement is in the best interest of the state, as determined by the Secretary of Administration. If the contract price is expected to exceed \$25,000, the Department of Administration must first post a notice of intent online, describing the procurement, stating the intent to make the purchase without soliciting bids, and stating the date on which the contract or purchase order will be awarded. The date of the award must be at least 7 days after the date of the last insertion or the date of posting.
WV	WV Code § 5A-3-10C	Noncompetitive contracts may be awarded if the Director of the Purchasing Division determines in writing that only one source for the required commodity or service exists. The purchasing state agency must submit written documentation setting forth the basis for the sole source procurement and the specific efforts made to determine the availability of other sources. Prior to the Director's final determination, registered vendors must be notified of the procurement being sought and provided an opportunity to indicate interest in bidding.

50-State Survey of Exemptions to the Competitive Procurement Process

State	Statutory Authority	Statutory Criteria
WY	WY Stat § 9-2-1016	Noncompetitive contracts may be awarded if the administrator determines in writing, and the governor approves, that competition is not feasible. Additionally, an elected state official may also contract for supplies or services for their office by noncompetitive negotiation if the contract is for \$20,000 or less and they determine that competition is not feasible. Certain leasing contracts are also exempt from the competitive bidding process.