

Acquisition and Property Division Policy Memorandum

Subject: Preparation and Approval of Justification of Other than Full and Open Competition/Sole Source Justification and Limited Source Justification		Number: FAR 6-05
Distribution: ARS: DAD's PAO's NAL AFM NASS ERS CSREES	Date: October 26, 2007	This Replaces: PM 6-04 dated 7/12/2007

Background:

Federal Acquisition Circular (FAC) 2005-13, which was issued on September 28, 2006, revises Federal Acquisition Regulation (FAR) 6.304 and FAR 13.501 to raise the approval level dollar thresholds. It also revises FAR 8.405-6 to introduce the Limited Source Justification for use with certain Federal Supply Schedule (FSS) acquisitions.

This memorandum supersedes all previous memorandums on this subject. It is issued to provide clarification of approval levels and format and content of Justifications for Other Than Full and Open Competition (JOFOC's) and Limited Source Justifications.

Policy Guidance:

For acquisitions under Part 6 and Subpart 13.5, each JOFOC must be formatted as shown in Enclosure 2. Each paragraph number and title as shown in the enclosure must be included. If the information required by a paragraph is "not applicable," "N/A" should be indicated for that paragraph. Unless the reason is readily apparent, a brief explanation should be included as to why it is not applicable. Sole Source Justifications must be formal, and must include the same type of information required to be in a JOFOC.

For applicable acquisitions under Subpart 8.4, the Limited Source Justification shall be formatted as shown in Enclosure 3. Each paragraph number and title as shown in the enclosure must be included. If the information required by a paragraph is "not applicable," "N/A" should be indicated for that paragraph. Unless the reason is readily apparent, a brief explanation should be included as to why it is not applicable.

Approval Levels for JOFOCs under FAR 6.304 Open Market Acquisitions

<u>DOLLAR VALUE</u>	<u>APPROVING OFFICIAL</u>
\$3,001* to \$550,000	Contracting Officer
\$550,001 to \$11,500,000	Chief, Acquisition Programs and Oversight Branch (APOB), Acquisition and Property Division (APD), as the Competition Advocate
\$11,500,001 to \$57,000,000	Deputy Administrator, Administrative and Financial Management (AFM).
\$57,000,001 and above	USDA Senior Procurement Executive

* No JOFOC is required for sole source simplified acquisitions (\$3,001 to \$100,000). Sole source simplified acquisitions require only a written explanation of the reason for the lack of competition and a written determination by the contracting officer that the price is fair and reasonable.

Approval Levels for Limited FSS Sources Considered under FAR 8.405-6(h)

<u>DOLLAR VALUE</u>	<u>APPROVING OFFICIAL</u>
\$100,001 to \$550,000	Contracting Officer
\$550,001 to \$11,500,000	Chief, APOB, APD, as the Competition Advocate
\$11,500,001 to \$57,000,000	Deputy Administrator, AFM
\$57,000,001 and above	USDA Senior Procurement Executive

Approval Levels for JOFOCs under FAR 13.501(a) (2) Special Test Items

<u>DOLLAR VALUE</u>	<u>APPROVING OFFICIAL</u>
\$100,001 to \$550,000	Contracting Officer
\$550,001 to \$11,500,000	Chief, APOB, APD, as the Competition Advocate
\$11,500,001 to \$57,000,000	Deputy Administrator, AFM
\$57,000,001 and above	USDA Senior Procurement Executive

Action Required By
REE Contracting Officers

Coordinate with Program Personnel to ensure that all JOFOC's include the information required by FAR 6.303-2(a) and that they are completed in the format shown in Enclosure 2. Ensure that all JOFOC's are approved at the proper levels as prescribed above.

Coordinate with Program Personnel to ensure that all Limited Source Justifications include the information required by FAR 8.405-6(g) and that they are completed in the format shown in Enclosure 3. Ensure that all Limited Source Justifications are approved at the proper levels as prescribed above.

APD Point of Contact

APOB, APD, 301-504-1725

Approved

_____/ s/ _____
Larry R. Cullumber
Director
Acquisition and Property Division

JOFOC AND LIMITED SOURCE JUSTIFICATION CERTIFICATION

Requirements/Program Office:

I certify the facts and representations under my cognizance included in this justification form are complete and accurate basis for the justification.

(Signature and Printed Name)

Name Title Phone Date

Contracting Officer:

I certify that this justification is accurate and complete to the best of my knowledge and belief.

(Signature and Printed Name)

Name Title Phone Date

REVIEW/APPROVALS:

If approval is required at a higher level than that of the REE Competition Advocate, the Competition Advocate must still review the document, and a signature block should be included to indicate this.

**JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION UNDER
FAR 6.303-2 Open Market Acquisitions and
FAR 13.5 Special Test Items**

TITLE:

The title of each document shall be **JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION.**

CONTENT:

1. Contracting Activity. This paragraph includes the proper contracting activity address. A point of contact, along with a phone number, should be included.
2. Nature/Description of Action. This paragraph identifies the type of action being issued (i.e., contract, modification, order against a Basic Ordering Agreement (BOA), etc.) for what and by whom. The type of contract being contemplated must be addressed.
3. Description of Supplies/Services. This paragraph provides a complete and accurate description of the supplies and/or services being procured including the estimated value. This description includes the intended use and quantities supplies/services. The description and estimated value of the requirements should be broad enough to allow for quantity increases, should the contract unit price be lower than originally estimated and/or additional requirements become known. If options are included, an estimated cost of the basic contract, each option, and the total estimated cost should be included.
4. Statutory Authority. This paragraph is written to include the appropriate United States Code referenced as well as cite the appropriate FAR section. For acquisitions under Subpart 13.5, in accordance with FAR 13.501(a)(1)(ii), the statutory authority to be cited should be an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).
5. Demonstration of Contractor's Unique Qualifications. This paragraph is the most important paragraph of the JOFOC as it includes a concise narrative explaining why it is necessary to contract for the requirement using other than full and open competition. For the urgency exception, provide a discussion of the nature of the urgency, reasons for its occurrence, and why it is "urgent and compelling." By law and regulation, failure to plan for expiring funds is not a valid reason for citing this exception.

6. Federal Business Opportunities (FedBizOps) Announcement/Potential Sources. This paragraph details all efforts to solicit as many sources as possible for the immediate requirement or subcontracting opportunities. State when the synopsis was published or reasons why a synopsis was waived, and cite the FAR reference authorizing waiver. State the number of responses received. If no responses were received, so state. Indicate that any responses will be assessed and discuss the specifics of any responses received in paragraph 10 of the JOFOC.

7. Determination of Fair and Reasonable Cost. This paragraph describes actions taken to ensure that the Contracting Officer will determine a fair and reasonable price (e.g., obtain audit/field reports, perform cost and/or price analysis, etc.).

8. Market Survey. Market survey is defined as all efforts undertaken to develop potential sources and is separate from the FAR Part 5 synopsis required by law. This paragraph details attempts made to develop new sources. If no market survey is conducted, a concise explanation is required. Issuance of a synopsis as required in FAR Part 5 does not satisfy the requirement to conduct a market survey. A survey can include announcements in trade journals or telephone surveys with interested/knowledgeable individuals in and out of Government.

9. Additional Support. This paragraph includes any other facts supporting the use of other than full and open competition. If no additional information is available, so state. Additional supporting information might include:

a. Providing an explanation of why technical data packages, specifications, statements of work, etc., required for full and open competition have not been developed and are not available.

b. In follow-on acquisitions where the justification is that the acquisition must be sole source to avoid "substantial duplication of costs" that will not be recovered through competition, or to avoid unacceptable delays in fulfilling the requirement, providing an accurate estimate of the costs duplicated how the estimate was developed, and the extent/impact of the delay which will result.

c. When urgency is the justification, a detailed explanation providing additional data, additional estimated costs which will be incurred, and other rationale detailing the extent and nature of the harm to Government.

10. Other Interested Sources. This paragraph sets forth information on synopsis response and other expressions of interest. The number of written responses to the synopsis should be identified here. Explain how each response was addressed. If no responses have been received, so state.

11. Actions Taken to Remove Barriers to Future Competition. This paragraph describes actions being taken to ensure that future buys will be competed. Additional actions taken to enhance competition might include challenging restrictive data markings, developing plan(s) to acquire unlimited data rights, the development of a second source, etc. If competition is planned, provide the estimated dates of the first competitive action. An explanation is required if no competition is planned. If future competition is not planned because this JOFOC covers all known requirements, so state.

LIMITED SOURCE JUSTIFICATION under FAR 8.405(g) Restricted Consideration of FSS Sources on Orders Exceeding the Simplified Acquisition Threshold

TITLE:

The title of each document shall be **LIMITED SOURCE JUSTIFICATION**

CONTENT:

1. Contracting Activity. This paragraph includes the proper address of the activity placing the delivery order. A point of contact, along with a phone number, should be included.
2. Nature/Description of Action. This paragraph identifies that the type of action being issued is an order against a Federal Supply Schedule Indefinite Delivery Contract. State what is being procured.
3. Description of Supplies/Services. This paragraph provides a complete and accurate description of the supplies and/or services being procured including estimated value. This description includes the intended use and quantities of supplies and services. The description and estimated value of the requirements should be broad enough to allow for quantity increases, should the unit price be lower than originally estimated and/or additional requirements become known. If options are included, an estimated cost of the basic order, each option, and the total estimated cost should be included.
4. Statutory Authority. Per FAR 8.405-6(g) (1), each Limited Source Justification shall state that the acquisition is conducted under the authority of the Multiple Award Schedule.
5. Justification Rationale. FAR 8.405-6 requires an ordering activity to justify limiting its consideration of FSS contractors to fewer than required in 8.405-1 or 8.405-2 or to a brand name item or one peculiar to one manufacturer. Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs. Circumstances that may justify restriction is that (1) only one source is capable of responding due to the unique or specialized nature of the work (2) the new work is a logical follow-on to an original FSS order provided that the original order was placed in accordance with the applicable FSS ordering procedures. The original order must not have been previously issued under sole source or limited source procedures and (3) an urgent and compelling need exists, and following the ordering procedures would result in unacceptable delays.

6. Best Value Determination. The ordering activity must make a best value determination consistent with FAR 8.404(d). GSA has already determined that FSS rates are fair and reasonable but the ordering activity must conclude that the order represents the best value (that is, per FAR 2.101 provides the greatest overall benefit in response to the requirement) and results in the lowest overall cost alternative considering price, special features, administrative costs, etc., to meet the Government's needs.
7. Market Research. This paragraph includes a description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.
8. Additional Support. This paragraph includes any other facts supporting limited FSS source consideration.
9. Actions Taken to Remove Barriers to Future Competition. This paragraph includes a statement of actions, if any that the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.