

# **POLICY FLASH 2006-22**

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**DATE:** April 3, 2006  
**TO:** Procurement Directors  
**FROM:** Office of Procurement and Assistance Policy, MA-61  
Office of Procurement and Assistance Management

**SUBJECT:** Acquisition Guide Chapters 5.2, Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1 and 6.1, Competition Requirements

**SUMMARY:** This Flash forwards new Guide Chapter 5.2 that provides guidance on publicizing sole source actions when using FAR 6.302-1 as the authority. A revised Chapter 6.1 is also forwarded. The revisions include updating office names under the Authority section and adding direction to the contracting officer to ensure that market research and the results of the sources sought synopsis are included in a justification prior to approval. The sample JOFOC has also been substantially revised.

The Flash and the Guide Chapter may be viewed at  
<http://procfsionals.pr.doc.gov>.

Questions concerning this policy flash should be directed to Jackie Kniskern at 202-287-1342 or [Jacqncinc.Kniskernfr1hq.doc.gov](mailto:Jacqncinc.Kniskernfr1hq.doc.gov).

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Michael P. Fischetti, Acting Director  
Office of Procurement and  
Assistance Policy

# Synopsizing Proposed Non-Competitive Contract Actions Citing the Authority of FAR 6.302-1



[Reference: FAR 5 and DEAR 905]

## Overview

This section discusses publicizing sole source actions as part of the approval of a Justification for Other than Full and Open Competition (JOFOC) using the authority of FAR 6.302-1.

## Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. One exception permits contracting without full and open competition when the required supplies or services are available from only one responsible source (FAR 6.302-1). This exception is supported by a written JOFOC and the publication of the notice required by FAR 5.201.

FAR 5.201 requires the publication of a notice of a proposed contract action for acquisition of supplies and services, other than those covered by the list of exceptions in FAR 5.202 and the special situations in FAR 5.205, exceeding \$25,000.

## Notice

When required by FAR 5.201, Contracting Officers will publicize a notice in FedBizOpps stating it is DOE's intent to award a contract or modification to an existing contract on a sole source basis. The notice should include:

- a statement identifying the exception to CICA;
- the information required by FAR 5.207;
- a complete and accurate description of the supplies or services to be furnished under the stated contract that would permit interested parties to submit a meaningful capability statement for consideration by DOE to determine whether to conduct a competitive acquisition;
- Numbered Note 22 ([www.fbo.gov/Numbered\\_Notes.html](http://www.fbo.gov/Numbered_Notes.html)) or a similar statement that informs interested parties to identify their interest and capability to respond to the requirement and that the information received will normally be considered solely for the purpose of determining whether to conduct a competitive procedure; and

- a statement providing for responses to be submitted within 45 days (thirty days if award is made under an existing basic ordering agreement).

This notice should be published prior to the preparation of the JOFOC. The responses to the notice and DOE reviews of the responses are to be included in the JOFOC. If no responses are received, this should be noted in the JOFOC. The notice should be in addition to other forms of market research conducted for the requirement. The notice must be current and publicized for the requirement at hand, not for previous or other requirements.

# Competition Requirements



*[Reference: FAR 6 and DEAR 906]*

## Overview

This section discusses competition requirements and provides a model Justification for Other than Full and Open Competition (JOFOC).

## Background

The Competition in Contracting Act (CICA) of 1984 requires that all acquisitions be made using full and open competition. Seven exceptions to using full and open competition are specifically identified in FAR Part 6. Documentation justifying the use of any of these exceptions is required. The exception, with supporting documentation, must be certified and approved at certain levels that vary according to the dollar value of the acquisition. The information that must be included in each justification is identified in FAR Part 6.

## Authority

For purposes of competition requirements, the Procurement Executive is the designee of the Secretary of Energy. For most DOE contracting activities, the Procurement Executive is the Director, Office of Procurement and Assistance Management. For National Nuclear Security Administration (NNSA) contracting activities, it is the Director, Office of Acquisition and Supply Management.

In addition to the authorities in FAR Part 6, DOE has two other authorities that provide for other than full and open competition. They are:

- The Federal Property and Administrative Services Act (40 U.S.C. 474(13)), which provides that nothing in this Act shall impair or affect any authority or programs authorized under the Atomic Energy Act of 1954, as amended.
- The Atomic Energy Act of 1954, as amended, which provides that the President may exempt any specific action of DOE in a particular matter carried out under the authority of this Act from the provisions of law relating to contracts whenever it is determined that such action is essential in the interest of common defense and security.

## **Competition Advocates**

Pursuant to FAR 6.501, the Secretary of Energy has delegated the authority for appointment of agency and contracting activity competition advocates to the Procurement Executives, DOE and NNSA. The Procurement Executives have delegated to their HCAs the authority to appoint contracting activity competition advocates.

## **Justification**

Contracting officers certify that the JOFOC is complete and accurate and also require the acquisition initiator to furnish and certify that the supporting data (e.g., verification of the government's minimum needs and schedule requirements, efforts to find additional sources, rationale for limiting sources, or other information that forms the basis for other than full and open competition) is complete, current; and accurate.

A complete JOFOC must include the results of market research and, if applicable, the sources sought synopsis (see Chapter 5.2) as part of the main body of the justification and not as an addendum. An attachment may be used to provide detailed reviews of responses to the synopsis and companies reviewed during market research, but the results of market research and a summary of responses received must be included in the main body of the JOFOC.

The contracting activity legal counsel office concurs in a JOFOC with an estimated amount of more than \$1 million or such lower threshold as the contracting activity legal counsel office may establish.

Each contracting activity should issue local implementing procedures that define the appropriate processing of JOFOCs at their locale. These procedures should specifically address the responsibilities of the program manager and contracting activity legal counsel.

The use of the attached model JOFOC, in coordination with FAR 6.303-2, assures a consistent approach for including the kind of information identified in the FAR.

## **Use of the Urgency Exception**

The urgency exception contained in FAR 6 is not acceptable if there is evidence of poor planning and if the action cannot pass the test of a valid noncompetitive action. The General Accounting Office and other reviewing organizations have held that the lack of planning or the delaying of a requirement to use the urgency exception is viewed as an attempt to circumvent CICA requirements.

All requirements citing urgency as the exception should receive careful scrutiny to assure that the reason for the urgency is valid.

## **Work Direction**

Under no circumstances shall Department of Energy personnel direct work to a particular source through, or accept work for, any of the Department's contractors or their subcontractors for the purpose

of avoiding the requirements of the Competition in Contracting Act, or as a means of satisfying a requirement that should be contracted for by the Department.

Work assignments to any contractor in which the Department requires performance by a specific subcontractor(s) must be supported by a Federal justification for other than full and open competition as if the work were being contracted directly by the Department. The justification shall include a determination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities and that the contractor has technical capability to perform the work assigned.

DOE employees shall not initiate an interagency agreement under the Economy Act to another Federal agency to circumvent Federal or DOE regulations, or in the belief that an outside agency will permit a lesser standard of adherence to Federal and Departmental procurement regulations or policies than that expected of DOE contracting officers.

### **Best Practices**

When unsolicited proposals are considered, the unique or innovative method, approach, or idea contained in the proposal must be described in the JOFOC. Any unique, innovative or proprietary features that might be compromised if publicly disclosed in FedBizOpps are also identified in the JOFOC.

For a JOFOC advocating limited competition, the circumstances surrounding the limitation, including how the number of firms in the competition was determined, must be described.

Negotiations for a sole source contract should not begin before the JOFOC has been approved.

### **Sample Justification**

A sample is attached.

**Justification for Other than Full and Open Competition**  
Contracting Activity Processing the Requirement  
Name of Organization Originating the Requirement  
Identification Number (purchase request/solicitation number)

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1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for Other than Full and Open Competition".
  2. The nature and/or description of the action being approved, i.e. sole source, limited competition, establishment of a new source, etc.
  3. A description of the supplies or services required to meet the agency's needs.
  4. The statutory authority permitting other than full and open competition.
  5. A statement demonstrating the unique qualifications of the proposed contractor or the nature of the action requiring the use of the authority.
  6. A description of efforts to ensure that offers were solicited from as many potential sources as is practicable. Include whether or not a FedBizOps announcement was made and what response, if any, was received, and include the exception under FAR 5.202 when not synopsisizing. Describe whether any additional or similar requirements are anticipated in the future. (This may not be included as an addendum, but must be in the body of the JOFOC.)
  7. Cite the anticipated dollar value of the proposed acquisition including options if applicable and a determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable.
  8. A description of the market research conducted and the results or a statement of the reason market research was not conducted. Do not simply refer to the sources sought synopsis.
  9. Any other facts supporting the use of other than full and open competition, such as:
    - a. -Explanation of why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition have not been developed or are not available.
    - b. When FAR Subpart 6.302-2 is cited for follow on acquisition as described in FAR 6.302-1(a)(2)(ii), an estimate of cost to the Government that would be duplicated and how the estimate was derived.
    - c. When FAR 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

- 10. A listing of the sources, if any, that expressed a written interest in the acquisition.
- 11. A statement of actions the agency may take to remove or overcome any barriers to competition if subsequent acquisitions are anticipated.

Certification

The information contained in this Justification for Other than Full and Open Competition is certified accurate and complete to the best of my knowledge and belief.

Acquisition Initiator \_\_\_\_\_ Contracting Officer \_\_\_\_\_  
 Signature Date Signature Date

Reviews and Approvals

(See FAR 6.2, 6.3 and 6.5 and DEAR 906.202, 906.304 and 906.305 for review and approval requirements under specific circumstances)

Program Senior Official (or designee)	_____ Signature Date	Contracting Activity Legal Counsel (if > \$1 million)	_____ Signature Date
Contracting Activity Competition Advocate (if > \$500,000)	_____ Signature Date		
Agency Competition Advocate (if > \$10 million)	_____ Signature Date		
Senior Procurement Executive (if > \$10 million)	_____ Signature Date		
Secretary of Energy (if > \$50 million)	_____ Signature Date		