[**Justification for Other Than Full and Open Competition (JOFOC)/Justification and Approval (J&A) – Template**](https://www.energy.gov/femp/articles/jofocja-template)

The [Energy Policy Act of 1992 (EPACT)](https://afdc.energy.gov/laws/key_legislation#:~:text=Energy%20Policy%20Act%20of%201992,-Back%20to%20Top&text=The%20Energy%20Policy%20Act%20(EPAct)%20of%201992%20(Public%20Law,renewable%20energy%2C%20and%20energy%20efficiency.), codified as [42 U.S.C. § 8256](https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap91-subchapIII-partB.htm), authorizes and encourages agencies to participate in programs, such as Utility Energy Service Contracts (UESCs), to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

The provisions within [42 U.S.C. § 8256](https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap91-subchapIII-partB.htm) meet the requirement for other than full and open competition and are allowable by [Federal Acquisition Regulation (FAR) Part 6.302-5](https://www.govinfo.gov/content/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec6-302-5.pdf) (*Authorized or Required by Statute*).

Likewise, the language in [10 U.S.C. §2913](https://www.govinfo.gov/content/pkg/USCODE-2023-title10/pdf/USCODE-2023-title10-subtitleA-partIV-chap173-subchapI-sec2913.pdf) provides the military departments and defense agencies with clear authorization to accept any financial incentive, goods, or services generally available from a gas or electric utility.

Blue, italicized font is used throughout the document where optional language or guidance is provided.

**Justification & Approval (J&A)/** **Justification for Other Than Full and Open Competition (JOFOC)**

**Template**

*[****Note:*** *The J&A should be started towards the beginning of the Utility Energy Service Contract (UESC) process. However, not all of the required information will be available at that time. Information such as the final proposed contract value will be added during the Investment Grade Audit, before the J&A is submitted for approval. Negotiations shall not commence until approval is obtained.]*

**1. Identification of Agency and Contracting Office:** *[Name of Agency; Name of Contracting Office and Location]*

**2. Nature/Description of Action[[1]](#footnote-2):**  Approval is requested to negotiate and issue a UESC Task Order (TO) under the terms and conditions of *General Services Administration (GSA) Areawide Contract (AWC) [GS-XXX-XX-XXX-XXXX],* or as a *TO under a Basic Ordering Agreement (BOA)*, or as a *separate contract*, for *[Utility]*, one of the serving[[2]](#footnote-3) distribution utility companies at *[Site Location]* and regulated by the *[State Public Utilities Commission]*. Approval is requested to provide UESC services without full and open competition. The work will be performed at *[Site Location]*, which is within the *[Utility’s]* franchised service territory established by *[State law and the Public Utilities Commission]*, under the terms and conditions of the *[AWC, BOA, or separate contract]*, and TO language.

**3. Description of Supplies Services:**  Subject to the provisions of the *AWC, BOA, or separate contract*, and provisions of the TO, the selected *[Utility]* will provide services, including planning, developing, and implementing agency projects, with the objectives of the reduction in use and conservation of energy and water in agency building(s) *[List Buildings / Location(s)]*. A description of the work requirements for this project is attached hereto. Implementation of this project will allow the *[Agency site]* to improve the facilities by installing energy and water conservation measures and reduce its electricity, gas, and water demand. The *energy and water* savings will reduce the site’s *electricity, gas, and water* allocation, resulting in utility cost avoidance and compliance with statutes to reduce *energy and water* consumption. The total estimated value of this UESC will be approximately *[Estimated Dollar Value]*.

**4. Identification of Statutory Authority:** The Energy Policy Act of 1992 (EPACT) (codified as 42 U.S.C. § 8256) authorizes and encourages agencies to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities. 42 U.S.C. § 8256 authorizes government agencies to take advantage of the expertise, rebates, and other financial incentives offered to customers of serving distribution utility providers for reducing energy consumption. [FAR Part 6.302-5](https://www.govinfo.gov/content/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec6-302-5.pdf) (Authorized or Required by Statute), in conjunction with [42 U.S.C. § 8256](https://www.law.cornell.edu/uscode/text/42/8256#:~:text=Each%20agency%20shall%20establish%20a,subchapter%20VII%20of%20this%20chapter.), provides authorization for the *[Agency]* to acquire services from a specified source(s) without requiring full and open competition. In this instance, the mechanism for executing the statutory authority is a UESC.

**5. Demonstration of Contractor’s Unique Qualifications:** *[Names of Utility(ies)]* is/are the only serving utility company(ies) willing and able to provide a comprehensive UESC at *[Site / Location]*. The *[Agency]* analyzed all eligible serving distribution utilities who responded to the *[Agency’s]* Letter of Interest/Sources Sought Notice for developing and proposing design-build services for a comprehensive energy project throughout the *[Site(s)/Location(s)]. [Names of Utility(ies)]* are one of the respondents to our Letter of Interest and Sources Sought Notice. *[Add reason/s utility was selected over the others if multiple utilities responded to the sources sought notice.]*

**6. Description of Efforts Made Ensuring Offers Are Solicited from As Many Sources as Practicable:** The Contracting Officer solicited all eligible distribution utilities within the franchise service territory of *[Site(s)/Location(s)].* The proposed contract action was published as a sources sought notice/ letter of interest. The Contracting Officer has determined the contract action is expressly authorized by statute to be made from these sources. *[Utility]* is one of these sources and is the serving distribution utility for *[Site].*

**7. Determination of Fair and Reasonable Cost:**  The Task Order’s negotiated price will be fully substantiated. *[Utility]* shall compete the subcontract for each of the energy conservation measures under the contract from a group of at least three competitors utilizing their competitive source selection process in accordance with FAR 52.244-5. Exceptions will be fully justified in the proposal and documented in the business clearance memorandum.

**8. Description of Market Survey*:***  According to the market survey, *[Names of Utilities]* are the only eligible utility companies willing and able to provide UESC at *[Site / Location]*. *[Utility]* was selected after a competitive selection process as discussed in paragraph 5.

**9. Any Other Supporting Facts:** *[Utility]* can provide all of the UESC design, installation and funding as well as the timely execution of the needed services. In addition to monetary incentives approved by the *[Public Utility Commission/other]*, the associated costs for procurement, contract administration, and performance assurance being performed by *[Utility]* on behalf of the United States Government represent a significant savings in time and cost

**10. Listing of Interested Sources:** *[One/Two]* utility company(ies) expressed interest to the Letter of Interest/Sources Sought Notice to provide a UESC at *[Site / Location]*. *[Utility]* was selected as the most competent to accomplish this specific project as discussed in Paragraph 5.

**11. Actions Taken to Remove Barriers to Competition:** 42 U.S.C. 8256 limits competition for UESCs to serving distribution utilities of *[Agency Site Location]*. For that reason*, [Agency]* will continue to solicit all serving distribution utilities in future UESC solicitations.

**12. Total Estimated Dollar Value of the Acquisition Covered by this J&A:** The Agency estimated total cost of accomplishing the work is approximately *[Dollar Value]* for a period of *[Term of Contract]. [Note: Approval authority of the justification depends upon the dollar amount in accordance with FAR 6.304.]*

**CERTIFICATION AND APPROVAL**

TECHNICAL/REQUIREMENTS

I certify that the facts and representations under my cognizance which are included in this Justification and its supporting acquisition planning documents are complete and accurate to the best of my knowledge and belief.

Technical Cognizance:

Signature: Phone No. Date

LEGAL SUFFICIENT REVIEW

I have determined this Justification is legally sufficient.

Signature: Phone No. Date

CO CERTIFICATION

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

Signature: Phone No. Date

APPROVING OFFICIAL

Upon the basis of the above Justification, I hereby approve the solicitation of the proposed procurement(s) described herein using other than full and open competition, pursuant to the authority of FAR 6.304

Signature: Date

Enclosures

1. Customize this section in accordance with your planned UESC contractual arrangement. [↑](#footnote-ref-2)
2. Even if the utility is not actually serving the federal site, those utilities eligible to serve the federal site are considered serving utilities because the site is in the utility’s franchised service territory. [↑](#footnote-ref-3)