

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

- 6.302-1 “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.” [Includes Brand Name Justification]
- 6.302-2 Unusual and compelling urgency.
- 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.
- 6.302-4 International agreement.
- 6.302-5 Authorized or required by statute.
- 6.302-6 National security.
- 6.302-7 Public interest.

The FAR requires detailed and accurate content of 11 items below. The program office is responsible for completing items 1, 3, 4, 5, 6, 8, 9, 10, 11. The contracting officer may add language and explanation to these, however the responsibility to justify a sole source falls primarily on the requisitioner. After the CO finds the J&A complete it will then, depending on the dollar value, need to go through the approval process prior to being signed and published with the solicitation.

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.”

Identify the agency and contracting activity processing the requirement. In addition insert the name of the appropriate contracting office and include the location of the contracting office. Also, include the statement that this document is a justification for other than full and open competition.

Example: Bureau of Indian Affairs, Office of _____ proposes to enter into a contract on a basis of other than full and open competition for (enter Program Office).

2. The nature and/or description of the action being approved.

Describe the type of action being issued, e.g., new contract, contract modification, etc. If this is a sole source action, include the contractor’s name and identify the contemplated contract type, i.e., firm fixed price, cost plus fixed fee, time and materials, etc. When processing a class justification, include the effective period the justification will be in effect. Provide sufficient information so the reviewer clearly understands the proposed approach under consideration. If an existing contract is being modified, include the contractor’s name, contract number, contract modification number, approval date, and the dollar amount of the modification, and if applicable, the dollar amount and approval date of the original justification supporting the contract.

3. A description of the supplies or services required to meet the agency’s needs (including the total estimated value).

Provide a clear and concise description of the product(s) and service(s) to be procured. This provides the reviewing and approving official with a better understanding of the scope, magnitude, and complexity of the requirement. Always include the estimated value of the procurement (including the total funding profile for all of the years that will be used.

Example: The requirement is to provide _____ at [site/location] at a total cost of \$000. These services require that [activity to be formed]_____. This will allow the Office of _____ to [accomplish mission objective]_____.

4. The statutory authority permitting other than full and open competition.

Cite the authority under one of the “seven exceptions” listed under FAR 6.302. Identify *only one specific statutory authority* that will be used to justify other than full and open competition.

Example: The statutory authority permitting other than full and open competition is 41 U.S.C.253(c)(1)(or 10 USC 2304(c) (1)) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1entitled, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.”[See above for complete list of 7 exceptions]

5. A demonstration that the proposed contractor’s unique qualifications or the nature of the action require use of the authority cited.

Provide an explanation of the contractor’s unique qualifications or the nature of the acquisition that requires the use of the statutory authority cited. This is the most important part of the J&A because it demonstrates that the prospective contractor has *unique qualifications and specialized capabilities or expertise* that is not prevalent in the marketplace. Also, provide an explanation of what unique qualifications and special capabilities the contractor possesses. Unique qualifications and expertise is defined as knowledge that is currently very limited within the marketplace; or there is only one company or individual that has the expertise to provide the product or perform the required services.

Contracting without providing for full and open competition is not justified based on the following circumstances: (1) lack of advance planning by the requiring

activity, or (2) issues concerning funding availability, and/or (3) the expiration of funds.

In those instances where a compelling and unusual urgency exception is cited, provide a discussion of the nature of the urgency. Provide supporting rationale and a concise description of the extent, nature, and impact of the potential harm to the Government. The use of the unusual and compelling urgency alone does not justify sole source procurement. Agencies must request offers from as many potential sources as is practicable under the circumstances. Describe efforts made to achieve these ends.

Example: (Insert Contractor's Name) is uniquely qualified to provide these services to (Insert Customer's Organization Name) based upon the following:

- a. They have/are ... **(This is a statement of fact. Common characteristics that make a contractor unique are knowledge, experience, and certification from another agency, security clearances of personnel, special capabilities, and possession of a proprietary product. The information must be very specific and use technical terms if necessary. Use a separate paragraph for each unique characteristic).***
- b. They have/are ... (In those instances where a compelling and unusual urgency exception is cited, **provide a discussion of the nature of the urgency.** Provide quantitative data or other rationale to describe the extent and nature of the potential harm to the government if the chosen contractor is not used).*
- c. They have/are ... (If only one source is the authority, write a paragraph that explains why any other sources that expressed an interest in the acquisition in writing are not qualified. These are the companies listed in paragraph 10 of the J & A. One sentence for each company will frequently suffice).*

6. A description of efforts to ensure that offers were solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

The justification should normally be prepared after the requirements notification is posted on FedBizOpps, to allow the program office an opportunity to examine the results of industry inquiries and reach a conclusion concerning the potential degree of competition. If the J&A is staffed prior to satisfying the synopsis requirement, state the reasons why this was done after the J&A was processed. This paragraph should provide a description of the type of action, i.e., contract, modification, purchase and/or delivery order, task orders, and estimated quantities. This section should also include a description of the efforts by the

Program Manager (PM) and contracting office to ensure that offerors are solicited from as many potential sources as possible.

When an acquisition contains brand name specifications, the Contracting Officer shall include with the solicitation the justification or required documentation. See FAR 5.102(a)(6) for the requirement to post the brand name justification.

7. A determination by the contracting officer that the anticipated cost (including the cost of options) to the Government will be fair and reasonable.

Provide a narrative of the measures performed by the Contracting Officer to ensure that the costs and/or prices will be fair and reasonable before negotiations commence. In addition, provide the methodology used in the market research analysis that supports a determination of fair and reasonable costs/prices. Provide any information, such as commercial pricelists or prior acquisition history that will help the Contracting Officer determine that the anticipated cost is fair and reasonable. This paragraph should always begin with a sentence similar to: "The Contracting Officer determines that the anticipated price(s) will be fair and reasonable based on...." By signing the justification the *Contracting Officer* makes a determination that the costs/prices to the Government are expected to be fair and reasonable.

8. A description of the market research conducted (per FAR Part 10) and the results or a statement of the reason market research was not conducted.

[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.]

Market research requires collecting and analyzing product/service information on the technical capabilities and prices/costs within the marketplace to satisfy agency needs. If market research was not conducted, state the reasons it was not conducted.. **When citing 6.302-1, the only possible way to state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here.** Acquisition planning should commence with performing market research to determine if commercial items or non-developmental items are available to meet the Government's needs. The extent of market research will vary, depending on such factors as cost, complexity, past experience, and urgency.

This is also the section of the J&A in which to describe the circumstances for acquiring a patented or copyrighted product on the representation of the intellectual property holder that has not been licensed for resale.

9. Any other facts supporting the use of other than full and open competition, such as:

-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.

-When FAR Subpart 6.302-1 is cited for a 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.

-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 any sources that expressed a written interest in the acquisition.

Example: A synopsis was issued in the FBO on 12/3/20xx, requesting that parties express their interest in writing to the Contracting Officer. Only XYZ Corporation responded. The XYZ capabilities statement was reviewed and [deficiencies vs. requirement were identified and discussed with xxx of the XYZ Corporation, who agreed.]

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition, before any subsequent acquisition for the supplies or services are required.

Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, and etc. If planning a competition, include the estimated date when the competitive procurement will occur. If competition is not planned, state so and provide the appropriate justification. Include written responses to synopsis announcements and other expressions of interest. All responses must be addressed prior to the approval of the justification. If a competitive procurement is being considered, provide the date of the issuance of the solicitation. If a sole source requirement is being contemplated, state the reasons why it is sole source. **If this is a follow-on procurement, state the measures initiated to eliminate or reduce competitive barriers.**

Certification

Requisitioner:

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

Signature

Date

Contracting Officer: (required for all J&As; if procurement exceeds \$650,000, additional reviews/approvals are required as identified below)

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

Signature

Date

Reviews and Approvals

Program Senior Official (or designee):

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

(Insert name)

Date

Competition Advocate (if > \$650,000 but not exceeding \$12.5 million):

I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief. Since this JOFOC does not exceed \$11.5M, this review serves as approval (cross out if over \$11.5M).

Competition Advocate

Date

Head of Contract Activity (> \$12.5 million but not exceeding \$85.5 million):

I have reviewed this justification and find it to be accurate and complete to the best of my knowledge and belief. Since this JOFOC does not exceed \$57M, this review serves as approval (cross out if over \$57M).

Head of Contracting Activity

Date