

GUIDANCE: FAR Part 6, FAR Part 13.5,
DFARS 206.303, DLAD 4105.1/REV 5 Part 06

DATE: as of 11 April 2001

SUBJECT: PREPARING A JUSTIFICATION AND APPROVAL (J&A)

SUMMARY: Contracting Officers are required, with certain limited exceptions, to promote and provide for full and open competition in soliciting offers and awarding Government contracts. Contracting Officers cannot commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the Contracting Officer (1) Justifies the use of such actions in writing; (2) Certifies the accuracy and completeness of the justification; and (3) Obtains the approvals required by governing regulations.

There are seven specific statutory authorities that permit contracting without providing for full and open competition. They are:

- (1) Only One Responsible Source and No Other Supplies or Service Will Satisfy Agency Requirements (FAR 6.302-1)
- (2) Unusual and Compelling Urgency (FAR 6.302-2)
- (2) Industrial Mobilization; or Engineering Developmental, or Research Capability; or Expert Services (FAR 6.302-3)
- (4) International Agreement (FAR 6.302-4)
- (5) Authorized or Required by Statute (FAR 6.302-5)
- (6) National Security (FAR 6.302-6)
- (7) Public Interest (FAR 6.302-7)

Each of the statutory authorities must be fully supported, documented, and approved by the designated approval authority in the form of a Justification and Approval (J&A).

Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

ENCLOSURES: (1) Sample Format for J&A
(2) Sample Certification and Approval Page for J&As not exceeding \$500,000

PURPOSE: Provides guidance for the preparation of J&As by the requisition originator.

SCOPE: **Applies to:**

- (1) All contract awards including those using the simplified acquisition procedures of FAR Part 13.
- (2) All modifications, regardless of dollar value, for new or increased scope of work.

Does Not Apply to:

- (1) Contract modifications within the scope and under the terms of an existing contract (e.g., modifications pursuant to the "Changes" clause of the contract). This includes the exercise of priced options that were evaluated as part of the initial competition or were included in the approved J&A for the initial award of a sole source contract.
- (2) Orders placed against task order and delivery order contracts including requirement contracts, GSA Schedules, Indefinite Delivery, and Indefinite Quantity Contracts.
- (3) Orders placed under indefinite-quantity contracts that were entered into under other than full and open competition and the required J&A adequately covers the requirements contained in the order.
- (4) Orders placed under indefinite-quantity contracts that were entered into under full and open competition or full and open competition after exclusion of sources and all responsible sources were realistically permitted to compete for the requirements contained in the order.
- (5) Orders placed under requirements contracts or definite-quantity contracts.
- (6) Set asides for Small Business concerns and competitions limited to eligible Section 8(a) contractors.
- (7) Contracts awarded using contracting procedures that are expressly authorized by statute including sole source awards under the Section 8(a) program.
- (8) Contract actions processed as small disadvantaged business set-asides or as historically black college and university and minority institution set-asides.

PROCEDURES:

The requisition originator will prepare and obtain certification for all data required to support the J&A. No contractor assistance is to be used in the preparation effort. The Contracting office will assist with any questions you may need to have addressed.

(1) The J&A should be formatted as shown in in the "Sample Format For J&A". Provide/obtain the technical and requirement certification signatures on the certification and approval page of the J&A.

(2) Submit the J&A with the request package to the cognizant contracting section.

SAMPLE FORMAT FOR J&A

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. SUMMARY/INTRODUCTION:

This introductory section should be concise, as these points will be developed in detail later within the document.

State in a few sentences the following:

- a. The field activity/agency
- b. Description of the Supplies/Services
- c. The estimated value and Contract duration
- d. The statutory authority cited for other than full and open competition (insert only one of the following stating the citation "10 U.S.C. 2304(c)(__)" followed by the authority title)
 - (1) Only One Responsible Source and No Other Supplies or Service Will Satisfy Agency Requirements (FAR 6.302-1)
 - (2) Unusual and Compelling Urgency (FAR 6.302-2)
 - (3) Industrial Mobilization; or Engineering Developmental, or Research Capability (FAR 6.302-3)
 - (4) International Agreement (FAR 6.302-4)
 - (5) Authorized or Required by Statute (FAR 6.302-5)
 - (6) National Security (FAR 6.302-6)
 - (7) Public Interest (FAR 6.302-7)

2. DESCRIPTION OF AGENCY'S NEED:

This section should have more detail to include the following information:

- a. A summary of the origin of the procurement
- b. A description of the supplies/services needed

Provide a concise but complete description of the supplies or services to be procured, including quantity(s), level of effort, and/or period of performance, and the purpose or intended usage for which they are to be obtained. The government's minimum needs must be clearly stated.

- c. Any other general information needed to understand the context of the procurement

3. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION:

This section should address why the full quantity to be contracted for needs to be purchased without using competitive procedures. This section should include the following:

- a. Cite the authority and provide the rationale (Same authority as stated in Section 1.d above) 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.

- (1) When FAR 6.302-1, only one responsible source, is cited for follow-on acquisitions as described in FAR 6.602-1(b)(2), an estimate of the cost that would be duplicated and how the estimate was derived is required.

- (2) When 6.302-2, unusual and compelling urgency, is cited, clear rationale as to the estimated cost or other rationale as to the extent and nature of the harm to the Government should be addressed.

- (3) If security clearances or the national security is a factor, state how it relates to your requirement.

- b. Provide a detailed explanation as to why full and open competition is not feasible. This is the most important part of the J&A and should be comprehensive. Refer to the attached, "**Situations and Supporting Rationale for Sole Source Authority**," for guidance on selected circumstances which may warrant sole source or other limited source acquisition and the type of supporting information required in each case. Cross reference succeeding paragraphs, if applicable. For example, if citing sole source circumstance based on proprietary technical data, refer the reader to paragraph 9a for additional information. In the case of urgency, fully address the compelling nature of the urgency and how full and open competition would harm the Government. Explain why the urgency could not have been overcome by advance planning.

4. PRICE/COST CONSIDERATIONS:

This section should discuss relevant pricing issues as follows:

- a. Basis for determining that the anticipated price/cost will be fair and reasonable
- b. Length of the proposed procurement award
- c. Quantity of purchase
- d. Any other particulars bearing on the price/cost of the contract

5. MARKET RESEARCH/EFFORTS TO OBTAIN COMPETITION:

This section should include steps that the requestor has taken to have the required procurement publicized to generate competition as follows:

- a. Discuss the market research performed and results obtained. The policies and procedures for conducting market research are set forth in Part 10 of the Federal Acquisition Regulation (FAR). Market research involves obtaining information specific to the item being acquired and will vary depending on such factors as urgency, estimated dollar value, complexity and past experience. The techniques for conducting market research range from reviewing catalogs and other generally available product literature to publishing formal requests for information in appropriate technical or scientific journals or business publications. Publication of a synopsis in the Commerce Business Daily as required by Subpart 5.2 of the FAR does not constitute market research. If no market research was conducted, e.g., when the requirement is inherently noncompetitive due to proprietary data, qualifying unsolicited proposal, etc., provide appropriate explanation.
- b. Provide a narrative description of the efforts being made, including whether the acquisition has been or will be synopsisized in the Commerce Business Daily as required by FAR 5.2, or, if not, which exception under FAR 5.202 applies. If an exception under FAR 5.202 applies, the appropriate statement usually will be either **"Not applicable; synopsis of the proposed contract is not required per FAR 5.202** or **"Not applicable; however, the proposed acquisition has been (or will be) synopsisized to provide increased contracting opportunities."**
- c. Include a listing of any sources that expressed, in writing, an interest in the procurement.

6. ACTIONS TAKEN TO OVERCOME BARRIERS TO COMPETITION.

This section should discuss any efforts to identify and evaluate less restrictive methods of expressing the requirement and should include the following:

- a. Describe any and all actions planned or taken to ensure that future procurements for the required supplies or services will be competed, including challenges to restrictive data markings, acquisition of data rights, development of detailed specifications, etc. Identify any known barriers to competition such as equipment compatibility. If future competition is planned, include the estimated date that the competitive procurement will take place. If not, state and discuss the reason why not.

7. CERTIFICATION AND APPROVAL SIGNATURES

Technical and requirements personnel are responsible for providing and certifying as accurate and complete, the necessary data to support their recommendation for other than full and open competition. Certification and approval signatures are as follows:

**SAMPLE CERTIFICATION AND APPROVAL PAGE
FOR J&As NOT EXCEEDING \$500,000
(APPROVAL AUTHORITY - CONTRACTING OFFICER)**

TECHNICAL AND REQUIREMENTS CERTIFICATION - FAR 6.303-2(b)

I CERTIFY THAT THE FACTS AND REPRESENTATIONS UNDER MY COGNIZANCE WHICH ARE INCLUDED IN THIS JUSTIFICATION (AND ITS SUPPORTING ACQUISITION PLAN NO. _____ **if OVER \$100,000.00**) WHICH FORM A BASIS FOR THIS JUSTIFICATION ARE COMPLETE AND ACCURATE.

TECHNICAL COGNIZANCE:
(Normally requisition originator)

Name and Title	Organization	Phone	Date
----------------	--------------	-------	------

REQUIREMENTS COGNIZANCE:
(Normally the program/project manager or supervisor)

Name and Title	Organization	Phone	Date
----------------	--------------	-------	------

CONTRACTING OFFICER CERTIFICATION - FAR 6.303-2(a)(12) (Note: Pursuant to FAR 6.304(a)(1)), this certification serves as approval of the J&A) I CERTIFY THAT THIS JUSTIFICATION (AND ITS SUPPORTING ACQUISITION PLAN NO. _____ **if OVER \$100,000.00**) IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name and Title	Organization	Phone	Date
----------------	--------------	-------	------

SITUATIONS AND SUPPORTING RATIONALE FOR SOLE SOURCE AUTHORITY

The authority for sole source acquisitions is the most frequently used basis for a Justification and Approval (J&A). The situations listed below, followed by examples of supporting rationale, are some of the circumstances which may warrant this authority:

SITUATIONS

SUPPORTING RATIONALE

1. Supplies or services can be obtained from only one person or firm (supply type contracts)

a. Justification must clearly establish the Government's minimum need for the item and that no other firm can provide a similar item which could satisfy the requirement.

b. Why there is only one source in existence which can perform the contract requirement. Any statements made in support of this must be a matter of fact and not dependent upon limited knowledge of sources known by the requester.

c. Specific features of the item which support why it is not available from another source. Be specific in identifying required minimum/maximum or ranges in electrical, electronic, and/or dimensional characteristics and the reason this characteristic(s) is required.

2. The proposed procurement is for non-personal services of a highly technical or specialized nature and only one individual or firm can perform these services.

a. Describe the contractor's workforce, methods, materials or management and operating systems which are unique.

b. If it is unique because of knowledge of key individuals, what is the basis of the knowledge that another firm could not obtain the same or equivalent expertise?

c. Can another firm obtain the necessary highly specialized experience or technical capability in time to perform the requirement? Address considerations in paragraph 3, Authority For Other Than Full and Open competition, in the J&A if time is of the essence.

3. Follow-on contracts when award to another source would result in (a) substantial duplication of costs not likely to be recovered by competition, or (b) unacceptable delays in fulfilling the agency's requirements.

a. Was the item or service previously procured? If yes, was it from the same contractor? Was the previous procurement competitive? If yes, why should the present procurement not be competitive?

b. Estimate of the cost that would be duplicated and how estimate was derived.

c. If the proposed procurement is for full or partial continuation of a previous effort by the proposed contractor, identify any actions previously taken or in process to break out parts of the program for which contractors may compete.

d. Can another firm obtain the necessary experience or technical capability in time to perform the requirements. Address considerations in paragraph 3, Authority For Other Than Full and Open Competition in the J&A, if time is of the essence.

4. One source controls patent rights, copyrights, trade secrets, technical data, secret processes or other proprietary data essential to contract performance

a. Identification of the proprietary data including patent and copyright numbers.

b. The mere existence of such rights or circumstances does not automatically justify not competing. It must be clearly established that no other firm has or can obtain the proprietary data. Attempts made to obtain such data should be cited.

c. Explain why the requirement cannot be revised to a more functional basis to allow sources to compete who do not have access to the data.

d. Is it practicable to obtain unlimited rights? What attempts have been made to obtain proprietary data for items?

e. Is need for less than full and open competition unavoidable due to restrictive legends on the technical data or computer software describing the supply or service? Was the depicted item developed at private expense?

5. Replacement parts in support of equipment specifically designed by one manufacturer.

a. A statement that available data is not adequate to assure that parts will perform the same function in equipment as the original parts.

b. Attempts made to obtain proprietary data for the items.

6. Segments of a project are so intertwined that it is impossible to successfully accomplish the program if all segments are not procured from the same contractor.

a. Identify the previous effort by the contractor.

b. Demonstration that award to any other contractor would increase costs, duplicate effort, or require additional time.

c. How the Government would be seriously injured financially or otherwise if the products or services were obtained from other than the proposed contractor.

d. Attempts made to obtain proprietary data for the items.

7. As a result of a thorough technical evaluation, only one company's product (hardware or methodology) has been found fully qualified to perform the required function.

a. Identify the details of the technical evaluation, i.e., what products were included in the test (and the basis for excluding any apparently competitive product), when the test was performed, by whom, the test criteria, etc.

b. State why this particular product or methodology was selected including an explanation of its uniqueness.

8. Test and evaluation of a specific product is required as part of a larger test of competitive items.

a. Identify the other items being tested, the period of the test, where, and by whom. If requisitions for the other items are not included in the package, identify when the test was performed, by whom, the test criteria, etc.

9. As a result of a thorough technical evaluation, only one product has been found fully qualified to perform the required function.

a. Identify the details of the evaluation, i.e., what products were included in the test (and the basis for excluding any apparently competitive product), when the test was performed, by whom, the test criteria, etc.

10. Only one source has possession of particular capabilities, facilities, or special equipment.

a. Identify the unique capabilities, facilities, or special equipment and why needed.

11. Unsolicited proposal which offers significant scientific or technological promise.

See DLAD 4105.1 For Guidance

12. Time is of the essence and only one source can meet the Government's needs.
(see note below)

- a. Exact delivery requirements.
- b. Reason for critical schedules.
- c. Why and how it was determined that only the proposed contractor can meet the critical schedules.
- d. Consequences if deliveries are not met, including how the Government would be seriously injured financially or otherwise if the products or services were not furnished by a certain time.

Note: Justification for only one source cannot be based on this reason alone, since the competitive process allows contractors to identify whether or not (and if so, how) they can meet the required delivery or performance date, and provides for rejection if they cannot. If a short delivery time or immediate full performance is a critical factor and limits even attempting competition, the data must be fully justified in terms of cost and mission impact to the Government. As a general rule, the J&A will not be approved when the urgency of the procurement is a result of, or is based upon circumstances within the control of Government personnel involved in the procurement process (i.e., inadequate planning, failure to take action on the procurement within a timely manner or other administrative delays). How did the Government get into the urgent situation?

