

FDA STAFF MANUAL GUIDES, VOLUME III - GENERAL ADMINISTRATION

PROCUREMENT AND SUPPLY MANAGEMENT

PROCUREMENT

NONCOMPETITIVE/LIMITED SOURCE ACQUISITIONS

Effective Date: 07/20/2005

Changed: 09/06/2011

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1. PURPOSE

This guide sets forth the FDA policies and procedures applicable to all acquisitions conducted without providing for full and open competition and for restricting consideration of GSA Federal Schedule contractors. It describes the process for the preparation, submission, and approval of a Justification for Other than Full and Open Competition (JOFOC) and Limited Source Justifications for restricting consideration of GSA Federal Schedule contractors, and prescribes review and approval requirements.

2. POLICY

Title VII of Pub. L. 98-369 entitled, the "Competition in Contracting Act of 1984" authorizes contracting without providing for full and open competition under certain conditions. Section 201 of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 251, et seq.) provides the authority for sole source orders or limited competition restricting consideration of GSA schedule contractors.

3. REQUIREMENTS

- A. The Competition in Contract Act (CICA) of 1984 promulgates the Government's policy to promote full and open competition in the acquisition process to the maximum extent practicable. The Federal Acquisition Regulation (FAR) requires Contracting Officers to promote full and open competition by using competitive procedures to solicit offers and award contracts unless they can justify using full and open competition after exclusion of sources (FAR Subpart 6.2), or other than full and open competition (FAR Subpart 6.3). Moreover, FAR 8.4 requires the circumstances and rationale for restricting consideration of GSA Federal Supply Schedule contractors be documented, if competition is limited to fewer than three schedule contractors

- B. The program office should discuss prospective noncompetitive acquisition requests with the Contracting Officer as early as possible during acquisition planning, and before submitting the Memorandum of Need (MON), if applicable, and the Requisition. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays which might otherwise occur should it be determined that the request for JOFOC or Limited Source Justification for Federal Supply Schedule Orders are not justified. All justifications shall be submitted initially to the cognizant Contracting Officer.

- C. JOFOCs are required for approval of acquisitions utilizing other than full and open competition. Limited Source Justifications are required when restricting consideration of federal supply schedule contractors. For requirements above \$150,000, they must be separate self-contained documents utilizing the format described herein.

- D. For acquisitions between \$3,000 and \$150,000, the necessary documentation may vary by acquisition from a paragraph or two on the Requisition to a full JOFOC or Limited Source Justification depending on the nature of the supplies or services. Project Officers should consult with Contracting Officers prior to JOFOC or Limited Source Justification preparation to avoid unnecessary paperwork. Regardless of the format used, the Justification shall contain the following content to support the noncompetitive nature of the acquisition:
 - 1. Specific technical features or capabilities not available from any other source

 - 2. Estimated costs to duplicate special facilities or previous work and how the estimate was derived

3. Information on how it was determined to be a sole source
 4. Critical dates for award or and delivery
 5. Data, estimated cost, or other rationale on the extent and nature of the serious injury or financial harm to the Government
 6. Impact on the Agency if contract/order is not awarded by the requested date
 7. Any other facts supporting the noncompetitive acquisition
- E. Every noncompetitive or limited source competition justification must be made on factual information. The program and contracting staff must work together to achieve realistic long-range planning. The acquisition of supplies or services by other than full and open competition or by restricting consideration of schedule contractors to fewer than that required cannot be justified either by lack of advance planning or by concerns related to funding availability.
- F. All Justifications shall fully state what is to be acquired and the reasons why the requirement will not be competed. Justifications must provide reasons which go beyond inconvenience and must explain why it is not possible to obtain competition. The JOFOC or Limited Source Justification should be sufficient to permit an individual without technical competence in the area to follow the rationale for using other than full and open competition
- G. It is the responsibility of the cognizant Contracting Officer and/or the Competition Advocate to determine whether a contract may properly be awarded without competition. Program offices and Project Officers are responsible for furnishing the cognizant Contracting Officer and other approving officials with pertinent factual information necessary to make such determination.

4. FORMAT, CONTENT, AND INSTRUCTIONS

- A. See Attachment A for the format to be used to prepare either a "Justification for Other Than Full and Open Competition" (JOFOC) pursuant to FAR Part 6.3; or, a "Limited Source Justification" for restricting consideration of GSA Federal Supply Schedule contractors pursuant to FAR Part 8.4
- B. See Attachment B for JOFOC Instructions.

- C. See Attachment C for Limited Source Justification Instructions.
- D. It is recommended that you consult with the Contracting Officer to determine which instruction applies (Attachment B or C) and to receive assistance with preparing the justification.

5. APPROVAL OF THE JUSTIFICATIONS

- A. The required approval levels are as follows:

DOLLAR THRESHOLDS	REVIEW MEMBER(S)	*APPROVING OFFICIAL(S)
\$100,000 – \$650,000	Contract Specialist	One Level (organizationally**) above Contract Specialist; and
\$650,001 – \$10,000,000	Division Director, OAGS, or Director, OFFAS	Director OAGS; and Competition Advocate for Procuring Activity
\$10,00,001 - \$50,000,000	Director, OAGS	Director, OAGS (Head of Contracting Activity, FDA)
\$50,000,001 and above	Director, OSS	Deputy Assistant Secretary for Acquisition Management and Policy

NOTE: *Each review must be preceded by lower level approval(s), e.g., over \$50 million all reviews and approvals are required

NOTE: **Organizationally is defined in terms of organizational positions within the Office Of Acquisitions and Grants Services (OAGS) and the Office of Field Financial and Acquisition Services (OFFAS).

- B. The estimated dollar value of all options shall be included in determining the approval level of a justification.
- C. A justification that applies to a class of contract actions shall be processed as an individual; justification.

6. EFFECTIVE DATE

The effective date for this guide is July 20, 2005.

7. Document History -- 2610.11, Noncompetitive/Limited Source Acquisitions

STATUS (I, R, C)	DATE APPROVED	LOCATION OF CHANGE HISTORY	CONTACT	APPROVING OFFICIAL
Initial	07/20/2005	N/a	Office of Acquisitions and Grant Services (HFA-500)	Hugh Hurwitz, Director, OAGS
Change	10/25/2006	Para.5/block4	Office of Acquisitions and Grant Services (HFA-500)	Glenda Barfell, Acting Director, OAGS
Change	09/06/2011	Sect.Hd 3.C,D; Sect.Hd.5/table column 1	Office of Acquisitions and Grant Services (HFA-500)	Glenda Barfell, Director, OAGS