



POLICY STATEMENT

Policy Statement 5602

Policy Area: Procurement

Effective Date: **MAY 06 2008**

Approved: *Paul A. Quander, Jr.*
Paul A. Quander, Jr., Director

Justification for Other Than Full and Open Competition (JOFOC)

I. COVERAGE

This Policy Statement and its appended procedures apply to all Court Services and Offender Supervision Agency ("CSOSA" or "Agency") employees, excluding the Pretrial Services Agency.

II. BACKGROUND

Federal Acquisition Regulations (FAR), in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974, require the full and open competition of all Government acquisitions over \$3,000 in value. According to FAR 2.101, Definitions, "Full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete." Under limited circumstances, agencies are authorized to award contracts that restrict competition, such as "sole source" or "urgency" contracts. Per FAR 2.101, a sole source acquisition means, "a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source." Per FAR 6.302-2(a)(2), agencies may limit the number of sources from which it solicits if there is such an "unusual and compelling urgency" that the Government would be "seriously injured" when using full and open competition.

III. POLICY

To comply with Federal laws, any awards for the acquisition of supplies and services using other than full and open competition shall be documented and approved in advance in accordance with the procedures appended to this Policy Statement.

IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

A. Authorities.

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. Law 105-33, 111 Stat. 748, Section 112333 codified at D.C. Official Code § 24-133.

Office of Federal Procurement Policy Act of 1974, Pub. L. 93-400,
amended by Pub.96.83
40 U.S.C. § 121© (1986), Public Buildings, Property, and Works
48 C.F.R. Section(s) 2.000-2.21 (2005), Definition of Words and Terms
48 C.F.R. Section(s) 6.000-6.502 (2005), Competition Requirements
48 C.F.R. Section(s) 10.000-10.002, (2005), Market Research
41 C.F.R. Section 3.104 (2005), Improper Business Contacts and Conflicts of Interest

B. Supersedures

None.

C. Procedural References.

Policy Statement 5601, Procurement Requests, (*draft*) dated June 24, 2003

D. Attachments.

Appendix A – General Procedures
Appendix B – Sample JOFOC Format

**APPENDIX A
GENERAL PROCEDURES**

A. Competition - General

To ensure the Government receives quality products and/or services at the most advantageous price, all Agency procurements over \$3,000 will be competed. The extent and formality of the competition depends on the value of the proposed action, the type of contracting method selected, and the availability of the goods or services in the open market. The Office of Procurement will advise program office personnel on the best approach to meeting the competition requirements for Agency acquisitions.

B. Justifications For Other Than Full and Open Competition

To award a contract without providing for full and open competition, a valid, supportable, and well documented justification must be made. A lack of advance planning by the requesting office is not adequate justification for other than full and open competition. In addition, “concerns related to funds availability (e.g., funds will expire)...” is insufficient to justify restricting competition (FAR 6.301(c)).

The following authorities permit other than full and open competition:

- 1) FAR 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements (e.g., unique supplies or services that are available from only one supplier). This authority shall be used, if appropriate, in preference to the authority in 6.302-7 (Public Interest); it shall not be used when any of the other circumstances are applicable. Citation: 41 USC 253(c)(1);
- 2) FAR 6.302-2, Unusual and compelling urgency (i.e., when delay in award would result in serious injury, financial or other, to the Government). Citation: 41 USC 253(c)(2);
- 3) FAR 6.302-3, Industrial mobilization (e.g., in case of a national emergency), engineering, development, research capability, or expert services. Citation: 41 USC 253(c)(3);
- 4) FAR 6.302-4, International agreement (i.e., agreement or treaty between U.S. and a foreign government). Citation: 41 USC 253(c)(4);
- 5) FAR 6.302-5, Authorized or required by statute (e.g., Government Printing Office or Small Business Administration’s 8(a) program). Citation: 41 USC 253(c)(5);
- 6) FAR 6.302-6, National security (i.e., compromise thereof). Citation: 41 USC 253(c)(6), and:

- 7) FAR 6.302-7, Public interest (i.e., the Agency head determines that the competition of the proposed contract action is not in the public interest). Citation: 41 USC 253(c)(7).

C. Requesting a Justification For Other Than Full and Open Competition

The Contracting Officer shall not commence negotiations for a sole source contract, or make an award based on limited competition, until a Justification For Other Than Full and Open Competition (JOFOC) is documented, certified as accurate, and approved by the appropriate officials. The Contracting Officer and a designee from the requesting office (e.g., program manager) will work together to develop a JOFOC, in accordance with FAR 6.303-2 and the Sample Format in Appendix B. The JOFOC must include, at a minimum, the following information:

- 1) Identification of agency and contracting activity, and identification of the document as a Justification for Other Than Full and Open Competition.
- 2) Description of the action being requested for approval.
- 3) Description of the supplies or services required to meet the agency's needs and the estimated dollar value thereof.
- 4) Identification of the statutory authority (reference Paragraph B. above) permitting other than full and open competition.
- 5) A description of the proposed contractor's unique qualifications or the nature of the acquisition which requires the use of the authority cited (e.g., reason for the cited authority).
- 6) A description of efforts made to ensure that offers were solicited from as many potential sources as practical.
- 7) A determination by the Contracting Officer that the agreed-upon price will be fair and reasonable.
- 8) A description of the market research conducted, or a statement describing the reason that market research was not conducted.
- 9) Any other facts supporting the use of other than full and open competition.
- 10) A listing of sources, if any, expressing an interest in the acquisition.
- 11) A statement of actions, if any, the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the required supplies or services.
- 12) A certification from the technical personnel (requesting office program manager) that any supporting data forming a basis for the justification is complete and accurate.

- 13) The Contracting Officer's certification that the justification is accurate and complete to the best of the Contracting Officer's knowledge and belief.

D. Approval of the JOFOC

In accordance with FAR 6.034, the following delineates the levels of Agency approval:

- 1) For proposed actions not exceeding \$100,000 the Contracting Officer's certification will serve as approval.
- 2) For proposed actions over \$100,000 but not exceeding \$500,000 the written approvals of the Director of Procurement and the Associate Director of the requesting office are also required.
- 3) For proposed actions exceeding \$500,000 but not exceeding \$10,000,000 the written approval of the Senior Procurement Executive (Associate Director for Management and Administration) is additionally required.

E. Release of Information

Upon approval, the Contracting Officer shall file the JOFOC in the official contract file. JOFOCs shall be made available for public inspection only as applicable under the Freedom of Information Act.

**APPENDIX B
SAMPLE JUSTIFICATION FORMAT**

Justification for Other than Full and Open Competition (JOFOC)

For Contracting Action: 9594-##-#-####

1. Identification of Agency/Contracting Entity:

Court Services and Offender Supervision Agency (CSOSA)/ Management and Administration,
Office of Procurement

2. Nature and/or Description of Action to be Approved:

State whether approval is being requested for a new contract, a task order under an existing contract or a modification. Include type of contract (i.e., firm-fixed price, cost-reimbursable, time and materials) and type of funds to be used (i.e., one-year, no year).

3. Description of Supplies or Services Required:

Describe the supplies/services. Include the estimated total value (base plus any options).

4. Identification of Statutory Authority Permitting Other than Full and Open Competition:

Identify the statutory authority permitting other than full and open competition, followed by the FAR regulation, for example:

"41 USC 253(c)(1), Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements, as implemented by FAR 6.302-1."

"41 USC 253(c)(2), Unusual and Compelling Urgency, as implemented by FAR 6.302-2."

5. Reason for Cited Authority:

Describe how this action requires the use of the authority cited. If applicable, identify the proposed or potential contractor(s), and include an in-depth discussion of the proposed contractor's unique qualifications for fulfilling the contract requirements.

If the authority is FAR 6.302-1, "Sole Source," include the required schedule and any lead-time involved.

If the authority is FAR 6.302-2, "Urgency," include the required schedule and lead-time involved along with a discussion of the serious injury to the Government which would result if award of a contract is delayed.

6. Efforts to Obtain Competition:

Describe efforts to ensure offers are solicited from as many potential sources as practicable. Also, describe the extent of competition anticipated for this acquisition (i.e., none, limited, etc.). For all requirements estimated at \$25,000 or greater, state whether the synopsis required by FAR 5.201 shall be, or has been, published for "Sole Source." For "Urgency" include the following statement: "The unusual and compelling urgency of this action precludes synopsis, in accordance with FAR 5.202(a)(2)."

7. Determination of Fair and Reasonable Cost:

The document should state, "The Contracting Officer will determine the cost or price negotiated for this contracting action is fair and reasonable prior to award." Or, state the basis for fair and reasonable pricing (e.g., results of market research; current price lists, catalogs, or advertisements; comparison with similar items in a related industry; comparison to an independent Government estimate); or another reasonable basis.

8. Market Research:

Describe the extent and the results of the market research (per FAR Part 10) conducted to identify all qualified sources or a statement explaining why market research was not conducted.

9. Additional Supporting Facts:

Explain 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. For "Urgency," provide "data, estimated cost, or other rationale as to the extent and nature of the harm to the Government."

10. Interested Sources:

Include a listing of the sources that have written to express interest in the acquisition or clearly state: "No other sources have expressed a written interest."

11. Proposed Actions to Overcome Barriers to Competition:

Describe, in detail, the actions taken or planned to remedy the restricted competition on future requirements of this technical nature.

Technical/Requirements Certification:

I certify the technical information regarding this requirement, which forms a basis for this justification, is complete and accurate:

Name
Title, Office

Date

Contracting Officer Certification:

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

Name
Contracting Officer

Date