United States Department of Agriculture

Office of the Assistant Secretary for Departmental Management

Management Services

Procurement Operations Division

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USDA

ACQUISITION OPERATING PROCEDURE (AOP)

FROM: Scott C. Wolz
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JAN 19 2011

SUBJECT: AOP No. 5: Justification and Approval: Limited Source and Other Than Full and Open Competition

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◆**PURPOSE:** The purpose of this Acquisition Operating Procedure (AOP) is to provide a standardized format for Justifications and Approvals prescribed in the Federal Acquisition Regulation (FAR) 6.603, Other Than Full and Open Competition and FAR 8.405-6, Limited Source.

◆**REVISIONS:** Changed the Approving Official's offices and dollar thresholds; changed Team Leads to Chief, Contracting Branch; and in Attachment 2, added text to Item #4, New Work. This AOP replaces AOP No. 5, dated July 11, 2008.

◆**AUTHORITIES:** FAR 6.3, 6.5, 8.405-6; Agriculture Acquisition Regulation 406.5 and "Delegation of Competition Advocate Authority" memo dated April 11, 2007, signed by Chief of the Procurement Operations Division (POD).

Approving Official	***Dollar Threshold***
OPPM Senior Procurement Executive (SPE)	exceeding $62.5M
OPPM, Chief Procurement Policy Division (PPD)	over $12.5M, up to 62.5M
MS/POD, Head Contracting Activity Designee (HCAD)	over $1M, up to $12.5M
MS/POD, Procurement Analyst/Competition Advocate Contracting Officer (CO)	over $650,000, up to $1M up to $650,000*

**The CO may use AOP #10, Justification and Approval- Simplified Acquisition Procedures for proposed contract actions up to $150,000.*

◆ **REVIEW PROCESS:**

a). The CO will ensure the Program Official and Branch Chiefs have reviewed and approved the Justification. After the appropriate approvals are obtained, the CO will submit the form to the appropriate higher level Approving Official for review, if applicable, through the POD Procurement Analyst.

b). The SPE; OPPM, Chief of PPD; MS/POD HCAD or MS/POD Competition Advocate will review the Justification and if approved, will returned it to the CO. If the Justification is disapproved, comments will be provided. At the Approving Official's discretion, discussions may be needed with the CO and/or Branch Chiefs to discuss the information submitted.

OTHER THAN FULL AND OPEN COMPETITION JUSTIFICATION

(Pursuant to FAR 6.303-2, the justification must contain sufficient facts and rationale to justify the use of this authority)

1. Contracting Office: _____

(e.g., POD IT Contracting Branch; NITC RMS; NFC CS Team)

2. Nature of the Action: _____

(Briefly in one or two line describe the action to be approved)

3. Description of the Supplies or Services: _____

(Provide a description of the supplies and services to be acquired)

4. Estimated Cost and Period of Performance: _____

(Provide the estimated cost for the contract base and option years, and the contract period of performance)

5. Statutory Authority and Supporting Rationale _____

(Check all authorities that may apply and provide the details to support the authority)

☐Only One Responsible Source {*41 USC 253(c)(1), FAR 6.302-1*}
(Explain the unique capabilities or why the particular brand name, products or features of the product can only satisfy the specialized nature of the Government's requirement. Attach a list of the brand name products. List other companies' similar products and explain why the products lacked the particular features, do not meet or cannot be modified to satisfy the Government's requirement, e.g., limited data rights, patent rights, copy rights, secret processes)

☐Unusual and Compelling Urgency {*41 USC 253(c)(2), FAR 6.302-2*}
(Explain the extent of serious injury in financial, data or other effects to the Government if the award is delayed. Note: Urgency is not the result of poor acquisition planning)

☐Industrial Mobilization, Engineering, Developmental {*41 USC 253(c)(3), FAR 6.302-3*}
Research Capability or Expert Services
(Explain how the use of the proposed source is needed to maintain: a) A facility, producer, manufacturer in case of national emergency or achieve industrial mobilization; b) Engineering, research or development by a educational or nonprofit organization, federally funded center, etc.; and c) Services of an expert or neutral person for litigation or disputes involving a trial, hearing, court proceeding, etc.)

☐International Agreement {*41 USC 253(c)(4), FAR 6.302-4*}
(Attach a copy of the agreement between the United States and Foreign organization requiring one specific contractor for this acquisition)

☐Authorized or Required by Statute {*41 USC 253(c)(5), FAR 6.302-5*}
(List the statute requiring this acquisition with another Agency or a specified contractor or need is for a brand name commercial item for authorized resale, e.g., Sole Sources with UNICOR 18USC 4124, HUBZone 15 USC 657a)

☐National Security {*41 USC 253(c)(6), FAR 6.302-6*}
(Explain why the need for secrecy when disclosure of action would compromise national security)

☐Public Interest {*41 USC 253(c)(7), FAR 6.302-7*}
(Attach a copy of the Agency Head's determination explaining why competing this acquisition is not in the public interest)

6. Competition Effort: *(The Contracting Officer (CO) will describe efforts made to solicit offers from potential sources as practicable to ensure no other sources are available, including whether a Notice was or will be publicized in the Federal Business Opportunities (FAR 5.2) and, if not, which FAR 5.202 exception applies)*

7. Fair & Reasonable Cost: *(The CO will explain how cost/price will be determined to be fair and reasonable FAR 15.4)*

8. Market Research: *(Explain market research conducted and the findings or why market research was not conducted, FAR 10)*

9. Other Supporting Facts:

- *Specification/SOW Modified for Competition:* *(If applicable, explain why the specifications, descriptions or statement of work have not been developed, are not available or cannot be modified to permit competition)*
- *Major System or Highly Specialized Equipment:* *(If this is a follow-on for continued development or production of a major system or highly specialized equipment or components, 1) provide the estimated cost of duplication if an award was made to any other source; 2) explain how the costs were derived; and 3) explain any potential unacceptable delays)*
- *Additional Information:* *(Explain or attached additional data or documentation)*

10. Interested Sources: *(Provide the name and address of sources that expressed (in writing) an interest in the Acquisition and explain why the sources were determined to be ineligible)*

11. Competition Barrier: *(Explain actions taken or to be taken to increase competition for future acquisitions of the same supplies or services, such as, will the Government revise overly technical specifications/SOWs, acquire data rights and drawings, etc. to remove or overcome barriers to competition)*

LIMITED SOURCE JUSTIFICATION

(Pursuant to FAR 8.405-6, orders placed under FSS are exempt from FAR Part 6; however, acquisitions restricting FSS contractors to an item peculiar to one manufacturer, a justification must contain sufficient facts and rationale to justify the use of the authority)

1. Contracting Office: _____

(e.g., POD IT Contracting Branch; NITC RMS; NFC CS Team)

2. Nature of the Action: _____

(Briefly in one or two line describe the action to be approved)

3. Description of the Supplies or Services: _____

(Provide a description of the supplies and services to be acquired)

4. Estimated Cost and Period of Performance: _____

(Provide the estimated cost for the contract base and option years, and the contract period of performance)

5. Supporting Rationale _____

(Check the applicable authority and the provide details to support the rationale)

☐Item Peculiar to One Manufacturer (*Brand Name*)

*(A brand name item, product or feature of the product peculiar to one manufacturer, whether available from one or more FSS **is** an item peculiar to only one manufacturer)*

a) Explain why the particular brand name, products or features of the product from one source can only satisfy the specialized nature of the Government's requirement. Attach a list of the brand name products (Note: Explaining the products capability or process is not adequate rationale).

b) If applicable, explain the contractor's unique qualifications to provide the supplies or services.

c) List other companies' similar products and explain why the products lacked the particular features, do not meet or cannot be modified to satisfy the Government's requirement.

☐New Work (*Logical Follow-on for continued development or production of a major system or highly specialized equipment. The original FSS order was not issued under the limited source or sole source procedures)*

a) Explain why the supplies are deemed available from only the original source for the continued development or production of a major system or highly specialized equipment, including major components.

b) If an award to any source other than the original source for the continued development or production of a major system or highly specialized equipment, including major components:

1. *Explain the substantial duplication of cost to the Government that is not expected to be recovered through competition,* ***OR***

2. *Explain the unacceptable delays in fulfilling the agency's requirements*

☐Urgent and Compelling Need

(Explain the extent of serious injury in financial, data or other effects to the Government if the award is delayed. Note: Urgency is not the result of poor acquisition planning)

6. Best Value: *(The Contracting Officer will explain how the order represents the best value FAR 8.404(d))*

7. Market Research: *(Explain market research conducted among FSS holders and the findings or why it was not conducted, FAR 10)*

8. Other Supporting Facts: *(Explain or attach any other information to support the use of the authority)*

9. Competition Barrier: *(Explain actions taken or to be taken to increase competition for future acquisition of the same supplies or services such as: will the Government revise overly technical specifications/SOWs, acquire data rights and drawings)*

CERTIFICATION:

I certify that the information for this requirement meets the Government's minimum and the justification is accurate and complete to support the acquisition for the justification.

Program/Project Manager	Division	Date

To the best of my knowledge and belief, I certify that the data supporting this justification is accurate and complete to support the acquisition for the justification.

Contracting Officer	Date
Chief, Contracting Branch	Date

DECISION OF THE APPROVING OFFICIAL:

Approved: _____

Disapproved: _____

Approved Subject to the listed conditions: _____

Conditions:

Approving Official Signature	Date