

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 4200.1C

1-9-87

SUBJECT: COMPETITION IN CONTRACTING

1. PURPOSE. To establish policies and procedures to assure that Departmental competitive contracting procedures conform to the requirements of the Competition in Contracting Act and that such procedures are used in the acquisition of personal property and nonpersonal services.
2. CANCELLATION. DOE 4200.1B, COMPETITION IN CONTRACTING, of 4-17-85.
3. EXCLUSIONS. The provisions of this Order do not apply to financial assistance transactions or to subcontracting activities by contractors, except for noncompetitive subcontracts directed by the Department of Energy (DOE) to management and operating contractors (see page 5, paragraph 7d). Neither do they apply to modifications within the scope and under the terms of existing contracts, such as change orders or priced options. To be considered for exclusion from this Order, an option must be exercisable at an amount specified in or reasonably determinable from the terms of an existing contract.
4. BACKGROUND. Competition can offer cost savings which may be quite significant. It can result in lower prices, higher quality, and better and more responsive service in the supply of goods and services. It can enhance design innovations because of the diversity of ideas and approaches available in an open environment. It also promotes fairness which is critical to public trust and cooperation. A number of Initiatives require that the Department continue to take positive steps to increase competition in its acquisition program. Public Law, Federal and Departmental acquisition regulations, and good business management practices mandate that competitive methods, including full and open competition, be the first alternative considered and that other than full and open competition be permitted only when one of the exemptions on page 6, paragraph 7f, applies and the necessary justification has been approved. Competitive acquisition can be maximized through effective advance acquisition planning, clear definition of requirements (which definition is not unnecessarily restrictive of competition), timely release of procurement requests, and full testing of the market place for competitive sources.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Procurement and Assistance
Management Directorate

5. REFERENCES.

- a. DOE 1360.1A, ACQUISITION AND MANAGEMENT OF COMPUTING RESOURCES of 5-30-86, which prescribes policies and procedures for acquisition and management of computing resources.
- b. DOE 4210.2, BUSINESS STRATEGY GROUPS, of 4-10-79, which prescribes the policy for convening business strategy groups for major system acquisitions or major projects (or other unusual, high visibility projects) and describes their function and responsibilities.
- c. DOE 4300.2A, NON-DEPARTMENT OF ENERGY FUNDED WORK. of 12-19-86, which establishes policies and procedures for non-DOE funded work performed under DOE contracts.
- d. DOE 5700.4A, PROJECT MANAGEMENT SYSTEM, of 11-17-83, which establishes the project management system for the Department's major system acquisitions and other major projects, and includes detailed requirements for acquisition planning for such projects.
- e. Executive Order 12352, Federal Procurement Reforms, Title 3 Code of Federal Regulations (CFR) 137, of 3-17-82, which directs all Federal agencies to take positive steps to increase competition and to improve their procurement systems.
- f. Public Law 98-369, the Competition In Contracting Act of 1984 (CICA) which, among other things, seeks full and open competition through the use of *competitive* procedures in the acquisition of property and services and directs that agencies establish a competition advocacy program.
- g. Public Law 98-577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, which, among other things, seeks to eliminate procurement practices which unnecessarily *inhibit* full and open competition.
- h. Title 48 CFR Chapter 1, Federal Acquisition Regulation (FAR), which is the uniform, Government-wide regulation concerning acquisition.
- i. Title 48 CFR Chapter 9, Department of Energy Acquisition Regulation (DEAR), which is the DOE regulation supplementing and implementing the FAR

- j. Federal Information Resources Management Regulations (FIRMR), 41 CFR Chapter 201, Subchapter 11, which prescribes policies for the application of competition in the acquisition of ADP and telecommunication requirements of the Government.

6. DEFINITIONS.

- a. Agency Competition Advocate is the individual appointed pursuant to CICA to, amend other things, promote full and open competition in the Department's Acquisitions and to challenge barriers to-competition. For DOE, this is the Associate Director of Procurement for Competition, Procurement and Assistance Management Directorate.
- b. Head of the Contracting Activity is the senior official within a Departmental Element who has been delegated specific authority by the Director of Procurement and Assistance Management (M-4) to award and administer procurement contracts, assistance instruments, and sales contracts; to appoint contracting officers; to appoint contracting activity competition advocates; and also to serve as a contracting officer.
- c. Contracting Activity Competition Advocates are the individuals appointed to promote full and open competition in the acquisitions conducted by their contracting activity, to challenge barriers to such competitions, and for approval of those Justifications for other than full and open competition for acquisitions over \$100,000 and through \$1,000,000.
- d. Procurement Executive is the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act, 41 United States Code (U.S.C.) 414(3), who is responsible for the acquisition system. In DOE this is the Director of Procurement and Assistance Management.
- e. Senior Program Official is any of the individuals appointed as Assistant Secretaries or Directors of DOE staff offices.
- f. Commerce Business Daily is a daily publication of the Department of Commerce, providing a listing of Federal contract awards, and a brief synopsis of planned or proposed contract actions for the purpose of

allowing sources to identify their capabilities and interest in competing for awards. It is available on a subscription basis.

- g. Full and Open Competition is a process by which responsible sources are permitted to submit sealed bids or competitive proposals.
- h. Competitive Procedures are those procedures considered to constitute full and open competition pursuant to CICA, and include:
 - (1) The acquisition of architectural or engineering services conducted pursuant to the Brooks Act, Public Law 92-582, 40 U.S.C. 541.
 - (2) The competitive selection of basic research proposals resulting from a general announcement and the peer review or scientific review as appropriate) of such proposals.
 - (3) Competitive solicitations using the solicitation techniques described as the program opportunity notice and the program research and development announcement contained in subparts 917.72 and 917.73 of the DEAR.
 - (4) The use of the multiple awards schedule program of the General Services Administration (see FIRM 201-11.001(c) and 201-11.002-1 regarding ADPE make and model limitations and 201-32.206 regarding lowest-cost criteria).
 - (5) Competitions restricted to small business participation pursuant to sections 9 and 15 of the Small Business Act.
 - (6) Competitions restricted to Labor Surplus participation pursuant to Part 20 of the Federal Acquisition Regulation.
- i. Advance Acquisition Planning is the process by which the acquisition initiators in conjunction with contracting personnel:
 - (1) Develop, well in advance of procurement initiation, a preliminary schedule for the release of those procurement request packages which they expect to initiate during specified quarters of the fiscal year in relation to their present or anticipated budget authority; perform a periodic updating of such schedules; and establish controls to assure the timely release, on schedule, of procurement request packages to the cognizant contracting activity.

- (2) Consider, for individual acquisitions, various options for competitively obtaining the required property or services including: potential market source (e.g., profit or not-for-profit businesses; educational or other nonprofit institutions; small or disadvantaged businesses); the performance of complete market survey as necessary to develop a proposed source list adequate to obtain full and open competition; and the proposed type of contract.

7. POLICY.

- a. Full and open competition is the required method of acquiring property and services for the Federal Government, except for those circumstances exempted by CICA. See Section 11c for justification exemptions.
- b. Noncompetitive acquisition shall be avoided whenever possible. Some acquisitions first perceived as noncompetitive can indeed be competitive if previously unrecognized sources are made aware of the requirement. All proposed acquisitions expected to exceed \$25,000 will therefore be publicly synopsisized in the Commerce Business Daily unless they fall within one of the exceptions listed on page 13, paragraph Y.
- c. Under no circumstances may Departmental personnel direct work to or accept work for the Department's management and operating contractors for the purpose of avoiding the requirements of CICA.
- d. All work assignments to laboratories or other management and operating contractors where DOE requires performance by a specific subcontractor(s) must be supported by a justification for other than full and open competition in accordance with this Order. The justification shall include a determination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities and that the contractor has technical responsibility for the work assigned.
- e. In any instances where work to be assigned to a management and operating contractor, either by DOE or as a result of the acceptance of a funds-in agreement, is not clearly within the assigned mission of the contractor and/or is not clearly recognized in the statement of work of the contract or in related articles of such contract, then a justification shall be prepared in accordance with this Order.

f. Acquisitions may not be made without full and open competition except when one of the seven circumstances enumerated in CICA exists or as exempted by the procedures in paragraph 11c of this Order. Contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning or by concerns related to the amount of funds available (for example, the funds will expire). Acquisitions authorized by the Small Business Act, under the authority of section 8(a) of that act, are authorized by CICA. The circumstances allowing less than full and open competition, and details concerning their application, are listed below:

(1) Only One Responsible Source Is Available and No Other Type of Property or Services Satisfy the Needs of the Department.

Examples of the use of this exception include:

- (a) In the case of a contract based on acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which is not otherwise available to the Department and does not resemble the substance of a pending competitive procurement.
- (b) In the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in substantial duplication of cost to the Government which is not expected to be recovered through competition, or unacceptable delays in fulfilling the Department's needs. Such requirements may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.
- (c) When the agency has determined in accordance with standardization programs that only specific makes and models of technical equipment and parts will satisfy the agency's needs.

(2) Unusual and Compelling Urgency.

- (a) When this exception is used to accommodate unforeseen urgent requirements, the Department is required by the statute to request offers from as many potential sources as is practicable under the circumstances.
- (D) The justification for use of the exception for urgency may be approved after contract award, if necessary. This does not, however, negate the requirement for other preaward justifications or approvals which may be required by other statutes, regulations, or internal DOE directives.
- (c) To the extent practicable, only a minimum quantity or term shall be acquired sufficient to satisfy the Department's needs while the remainder is acquired using full and open competition.
- (d) This exception may be used only when serious "injury" (financial or other) would result if the Department were to delay the award.

(3) Industrial Mobilization; or Experimental, Developmental, or Research Work. This exception may be used when it is necessary to award the contract to a particular source or sources in order to:

- (a) Maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of national emergency or to achieve industrial mobilization.
- (b) Establish or maintain in essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a Federally funded research and development center.

(4) International Agreement. This exception is used when the terms of an international agreement or treaty between the U.S. Government and a foreign government or International organization, or the written directions of a foreign government reimbursing the Department for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures.

- (5) Authorized or Required by Statute. This exception applies when a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the need is for a brand-name commercial item for authorized resale.
- (6) National Security. This exception is used when the disclosure of the Department's needs would compromise the national security unless the Department is permitted to limit the number of sources from which it solicits bids or proposals (the Department is still required to request offers from as many potential sources as is practical under the circumstances - see FAR 6.302-6(0)).
- (7) Public Interest Determined by Secretary. This exception is only available on a contract-by-contract basis and cannot be made on a class basis. The processing of a request for the use of this secretarial authority is the responsibility of the Procurement and Assistance Management Directorate. Use of this authority may not be delegated. This exception may be used when the Secretary:
 - (a) Determines that it is necessary in the public interest to use procedures other than competitive in the particular procurement concerned.
 - (b) Notifies the Congress in writing of such a determination not less than 30 days before the award of the contract.

8. PROCEDURES.

- a. General. The procedures necessary to obtain full and open competition or to justify other than full and open competition involve acquisition planning, effective use of the public notice procedures required by CICA and the FAR, careful and deliberate written Justifications, and attention to the special status of small and small/disadvantaged businesses pursuant to Federal policy.
- b. Planning.
 - (1) Any acquisition must of necessity include consideration of competition. Procedures regarding acquisition planning are found in part 7 of the FAR and In DOE 5700 series directives. Acquisition planning and market surveys shall be performed to promote and provide for full and open competition, or, when full and open competition is not required in accordance with part 6 of the FAR, to obtain Competition to the maximum extent practicable,

1-9-87

with due regard to the nature of the supplies and services to be acquired. A market survey means attempts to locate qualified sources with the capability of fulfilling the requirement. It may range from contacts with knowledgeable persons regarding similar requirements to more formal mechanisms such as sources sought notices in the Commerce Business Daily (see paragraph 8c below), and other pertinent publications such as trade or professional journals. It is important that the market survey results be documented as they will be required if there is a later need for a justification.

- (2) When the nature of the requirement is such that full and open competition will result as a consequence of the "solicitation available" notice described on page 11, paragraph 8c(3), such a notice will satisfy the requirements for a market survey.
- (3) The initial planning stage is an appropriate time to consider use of the Commerce Business Daily as a means of identifying qualified sources for the acquisition. Acquisitions, which might otherwise be proposed for other than full and open competition, may be accomplished on a competitive basis through effective use of the Commerce Business Daily. Actions identified as other than full and open competition will be identified to the contracting officer by the initiating office for coordination with and concurrence by the competition advocate pursuant to FAR 7.104(c).
- (4) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to assure that the Government meets its needs in the most effective, economical, and timely manner.
- (5) Planning Requirements:
 - (a) Major system acquisitions, including those additional projects formally designated as major projects, shall follow the detailed, formal planning steps set forth in the DOE 5700 series directives. Long-range planning for computer resource acquisition is also required by DOE 1360.1A. Other acquisitions exceeding \$1,000,000 that are not covered by those directives shall include written acquisition plans in accordance with section 7.105 of the Federal Acquisition Regulation, 48 CFR 7.105 as shown in attachment 2 of this directive. The content may be revised or limited as appropriate to accommodate the circumstances of the particular acquisition. In the case of acquisitions of \$1,000,000 or less, planning shall be accomplished and documented in sufficient detail to assure compliance with CICA.

Notwithstanding the above, competitive actions in accordance with paragraph 6h(2) do not require an advance plan.

- (b) For new work as well as renewals or project continuations that expect funding, preliminary written acquisition plans shall be developed by the outlay program resource managers (Budget and Reporting Account Holders) and submitted to the cognizant HCA annually, within 45 days after release to Congress of the President's budget. A copy shall also be provided to the Senior Procurement Executive at Headquarters for use in scheduling program liaison and other support staff functions. As a minimum, these plans shall include a statement of need, estimated cost, required delivery or performance period, whether competitive (identify known sources) or noncompetitive (preliminary rationale), any special considerations capabilities attendant to the proposed acquisitions, designation of project officer, and designation of the cognizant Head of Contracting Activity (HCA). This preliminary acquisition plan will serve as basis for any additional necessary planning information which may be required by FAR part 7 or by the cognizant HCA.
- c. Public Notices. The Commerce Business Daily is the publication in which the public notices required by various public laws and the FAR for acquisitions expected to exceed \$25,000 are published as well as notices of contract awards exceeding \$25,000 that are likely to result in the award of subcontracts. It is published each Federal workday by the Department of Commerce and it is available on a subscription basis. Each issue typically contains notices concerning planned requirements, solicitations available, subcontract opportunities, planned noncompetitive actions, and other notices of interest to the acquisition community. Notices of proposed contract actions (see exceptions on page 13, paragraph 9) generally allow at least a 15-day response period between publication of the notice and the release of any resulting solicitation. These notices, referred to as synopses, include but are not limited to the following:
 - (1) Research and Development Advance Notices. These notices, described at FAR 5.205(a), describe areas of research interest and invite interested parties to submit qualifications for evaluation. The intent is to obtain a broad base of qualified sources. A secondary purpose is to minimize proposal preparation and evaluation by identifying and notifying those who appear to lack specialized expertise needed for the research. Because of their preliminary nature, FAR 5.205(a) requires a second notice when any resulting solicitation becomes available.

- (2) Sources Sought. This type of advance notice is similar to the research and development advance notice, except it is for other types of services or supplies. Depending on the nature of the requirement, the notice may or may not identify specialized qualification criteria and provide for evaluation of the responses and notice to the respondents. It may not, however, imply that any restriction of eligibility to compete is being made. When effectively used in the planning phase, this notice can often identify sources for competition. Due to their preliminary nature, a second notice is required when the solicitation becomes available.
 - (3) Solicitation Available. This type of notice identifies a fully competitive requirement for which a solicitation is available upon request.
 - (4) Notice of Intent. This type of notice identifies a requirement for other than full and open competition. It is required for other than those requirements excepted on page 13, paragraph 9. It must identify the authority under CICA for the noncompetitive or less than full and open competitive acquisition, identify the intended source(s), and include a statement that all responsible sources may submit a bid, proposal, or quotation. This type of notice must include Commerce Business Daily numbered note 22 if a sole source acquisition is involved. Among other things, numbered note 22 advises readers that the Government will consider any proposal received within 45 days following the date of publication of the notice. This type of notice is not intended to be a substitute for a market survey type notice when such a notice is appropriate.
- d. Small and Small/Disadvantaged Business Reviews. Small and small/disadvantaged businesses are accorded a special status in the Federal acquisition system. For example, all purchases having a value of \$25,000 or less are set-aside exclusively for small business participation. In order to assure that these businesses receive an appropriate share of other acquisitions, contracting officers must assure that a small/disadvantaged business review is conducted by the contracting activity's small and small/disadvantaged business specialist. If an earlier sources sought notice has been published, its results will be identified in the procurement request. This review is obtained for actions exceeding \$10,000, through use of DOE F 4220.2, "Section 8(a)/Small Business/Labor Surplus Set Aside Review," after the procurement request has been submitted to the contracting officer. The review may:

- (1) Identify small and small disadvantaged business source(s) to be solicited under an unrestricted full and open competition.
 - (2) Identify an adequate number of qualified small businesses to permit an open competition limited to small business participation.
 - (3) Identify sources whose development plans clearly indicate qualifications to successfully perform the requirements under the Small Business Administration's (SBA) 8(a) development program for socially and economically disadvantaged small businesses.
 - (4) Identify no small business sources.
- e. Justifications For Other Than Full and Open Competition. In those instances in which only one source is known to exist or in which less than full and open competition is being sought, a justification must be prepared by the acquisition Initiator in the format specified in Attachment 1, fully executed by appropriate personnel, and submitted as part of the procurement request package to the contracting officer. When under the extend/compete procedures a management and operating contract will be extended, the Head of the Field Element (or the Director of Headquarters Procurement Operations for such contracts assigned to Headquarters) is the contracting officer that must review the justification.
- (1) If the justification is adequate and any of the exceptions on page 13, paragraph 9, apply (that is, a notice of intent is not required) the contracting officer shall sign the justification and submit it to the contracting activity competition advocate, if required, for final approval (or review if a higher level approval is required by page 15, paragraph 11) or challenge. Justifications exceeding \$25,000 through \$100,000 need not be submitted to the competition advocate unless so required by the head of the contracting activity.
 - (2) If none of the exceptions on page 13, paragraph 9, applies (that is a notice of intent is required) then the contracting officer will sign the justification, if adequate, and issue a notice of intent synopsis. The results of the notice of intent synopsis will be added to the Justification if the notice of intent results in no sources other than that or those identified in the justification. This may be accomplished by an annotation identifying the Commerce Business Daily issue in which the notice appeared. The necessary approval will then be obtained in accordance with page 15, paragraph 11. If qualified sources are

identified, then a solicitation for full and open competition will be issued.

- (3) If source(s) are identified through a notice of intent synopsis who possess qualifications which might reasonably call the earlier justification into question, the responses shall be furnished to the acquisition Initiator for evaluation. If, upon completion of the evaluation, it is decided to proceed without competition, all the officials signing the prior justification shall sign an addendum. If, however, a notice of intent identifies source(s) with no reasonable possibility of being qualified, then an addendum describing this fact shall be executed by the contracting officer and then subject to the approval of the contracting activity competition advocate. If the action exceeds the advocate's approval ceiling, it shall be submitted for review by the contracting activity competition advocate prior to determination by the head of the contracting activity or procurement executive, as appropriate.

9. EXEMPTIONS FROM COMMERCE BUSINESS DAILY NOTICES.

- a. The following types of contract actions are exempt from the Commerce Business Daily presolicitation publication requirements when the contracting officer determines that:
 - (1) The contract action is of a classified nature, and the synopsis cannot be worded to preclude the disclosure of classified information; or disclosure of the Department's needs would compromise the national security. Other proposed classified contract actions shall be published in the Commerce Business Daily, even though access to classified matter might be necessary to submit a proposal or perform the contract.
 - (2) The contract action is to fulfill a need for supplies or services that is of such an unusual and compelling urgency that the Government would be seriously injured unless the Department is permitted to limit the number of sources from which it solicits bids or proposals and is unable to comply with the publication time periods specified in FAR 5.203.
 - (3) The contract action is one for which either the written direction of a foreign government reimbursing the Department for the cost of the acquisition of the supplies or services for such government, or the terms of an International agreement or treaty between the United States and a foreign government, has the

effect of requiring that the acquisition shall be from a specified source or sources.

- (4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the SBA using the authority of section 8(a) of the Small Business Act, or from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped.
- (5) The contract action is for utility services, other than telecommunications services, and only one source is available as substantiated by a documented market search.
- (6) The contract action is an order placed under a requirements contract (see FAR 16.503).
- (7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Public Law 97-219), or an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal. The determination by the contracting officer to allow an exception for the above-described unsolicited research proposal must be documented and be reviewed and concurred in by legal counsel and the contracting activity competition advocate. Patent counsel shall also be consulted, as appropriate, to the technical analysis.
- (8) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable.
- (9) The contract action is made under conditions described in FAR 6.302-3 or 6.302-5 with regard to brand name commercial items for authorized resale, and advance notice is not appropriate or reasonable.
- (10) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of FAR 5.207 with respect to the current contract action.

- (11) It is necessary to award the contract to a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.
 - b. Contract actions, other than those specified in paragraphs 9(a)(1) through 9(a)(11) above, may be exempt when the Secretary determines, in writing, after consultation with the Administrator for the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.
10. JUSTIFICATIONS FOR OTHER THAN FULL AND OPEN COMPETITION. Acquisitions proposed to be conducted without full and open competition must be justified in writing and approved following the procedures on page 12, paragraph 8(e). A determination by the Secretary per paragraph 7(f)(7), that the public interest requires such action, takes the place of a justification unless the Secretary requires the preparation of a separate justification in support of the determination. Formats for such justifications are provided in Attachment 1. Details regarding justifications may be found at FAR 6.303 and DEAR 906.303-1, and for ADP make and model acquisition at FIRMR 201-11.002-1. Additional details regarding acceptance of unsolicited proposals may be found at FAR 15.506-2 and DEAR 915.506-2.
11. APPROVAL OF JUSTIFICATIONS.
 - a. Justifications for other than full and open competition must be approved in writing above the level of the contracting officer, except for acquisitions processed using the small purchase procedures of FAR 13, see FAR 13.106(c)(2), as follows:
 - (1) Over \$25,000 and through \$100,000: one level above the contracting officer.
 - (2) Over \$100,000 and through \$1,000,000: contracting activity competition advocate following concurrence of the official at ha(l) above.
 - (3) Over \$1,000,000 and through \$10,000,000: head of the contracting activity following concurrence of the officials at 11a (1) and (2) above.

- (4) Over \$10,000,000: procurement executive following concurrence of the officials at 11(a)(1) through (3) above.
- b. The authorities listed on page 15, paragraph 11(a), may not be delegated, except that the authority at paragraph 11(a)(3) above may be delegated to a designee occupying a position in the Senior Executive Service (or in a comparable or higher position under another schedule).
- c. Formal Justification and higher level approval are not required in situations in which the official contract file is documented that the acquisition is exempt because it involves:
 - (1) Contracts under the following authorities:
 - (a) FAR 6.302-4 concerning acquisitions conducted as a result of international agreement or treaty.
 - (b) FAR 6.302-5(a)(2)(i) when a statute expressly requires that a procurement be made from a specified source.
 - (c) FAR 6.302-5(a)(2)(ii) the agency's need is for a brand name commercial item for authorized resale.
 - (d) FAR 6.302-5(b)(2) from qualified nonprofit agencies for the blind or severely handicapped.
 - (e) FAR 6.302-5(b)(4) under Section 8(a) of the Small Business
 - (2) Contracts for electric power, energy, gas (natural or manufactured), water, or other utility services (excluding telecommunications) when such services are available from only one source.
 - (3) Contracts for educational services (such as training) from nonprofit institutions.
 - (4) A determination by the Secretary (page 8, paragraph 7(f)(7)) that it is necessary in the public interest to use other than competitive procedures.

12. RESPONSIBILITIES AND AUTHORITIES.

a. Senior Program Official shall:

- (1) Assure proper and effective acquisition planning including the conduct of market surveys by: establishing and maintaining an acquisition planning system which promotes full and open competition to the maximum practical extent; designating a senior-level individual who has the responsibility of ensuring that competitive alternatives are fully considered in program planning; and assuring, through the periodic collection of summary acquisition plans, that the contracting officer and contracting activity competition advocate are aware, well in advance, of the formulation of acquisition requests so that sufficient leadtime will be available for the conduct of business strategy groups or other reviews of detailed acquisition plans as may be necessary.
- (2) Be responsible for ensuring the accuracy, adequacy, and completeness of the justifications for other than full and open competition. This responsibility may be delegated in writing to one or more senior official or manager of a field organization who shall review and concur in justifications. This senior official or manager shall be at least one level above the acquisition initiator.
- (3) Promptly transmit copies of the above written delegation to the Director of Procurement and Assistance Management for information and for dissemination to cognizant procurement organizations, as necessary.

b. Initiators of Acquisitions shall:

- (1) Assist resource managers identified in paragraph 8b(5) in the identification of transactions that require advance procurement planning concurrent with the budget request activities.
- (2) Obtain the review of legal counsel and concurrence of the manager of a Departmental field element or designee for any work assignment to a management and operating contractor where DOE requires performance by a specific subcontractor(s).

- (3) Make all reasonable efforts to define requirements in such a manner as to allow competitive acquisition. When preparing specifications and work statements to be used in an acquisition, the initiator shall review and eliminate any unnecessarily restrictive specifications for conditions which may constitute barriers to full and open competition. In conjunction with contracting personnel, the initiators may convene business strategy groups to consider such project issues that will maximize potential competition.
 - (4) Request assistance from the contracting officer and contracting activity competition advocate as early in the acquisition cycle as the requirement is defined in order that the market survey, including any "sources sought" notice which may be appropriate, can be made if competitive sources are not known.
 - (5) Coordinate with and secure the concurrence of the contracting officer in all acquisition plans. The contracting officer shall coordinate with and secure concurrence of cognizant contracting activity competition advocate if the plan proposes using other than full and open competition.
 - (6) Review capability statements which may be submitted in response to notices placed in the Commerce Business Daily and advise the contracting officer regarding capabilities of responding organizations.
 - (7) Prepare necessary justification in the format stipulated by this Order and certify thereto when recommending acquisition using other than full and open competition.
- c. Small and Small/Disadvantaged Business Specialists shall:
- (1) Assist in all market searches by endeavoring to identify qualified small or small/disadvantaged business sources to participate in the Department's contracting program.
 - (2) Perform small and small/disadvantaged business reviews in a timely manner.
- d. Agency Competition Advocate shall:
- (1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the Department.

1-9-87

- (2) Review the contracting operations of the Department to promote competitive procedures and identify and report to the procurement executive:
 - (a) Opportunities and actions to achieve full and open competition in the contracting operations of the Department.
 - (b) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the Department.
- (3) Prepare and submit an annual report to the procurement executive describing:
 - (a) Such advocate's activities.
 - (b) New initiatives required to increase competition.
 - (c) Any barriers to full and open competition that remain.
 - (d) Other ways in which the Department has emphasized competition in areas such as acquisition training and research.
- (4) Recommend to the procurement executive goals and plans for increasing competition on a fiscal year basis.
- (5) Recommend to the procurement executive a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

e. Contracting Activity Competition Advocates shall:

- (1) Have ready access to and support of the head of the contracting activity.
- (2) Assess the organizations' training needs in the competition area and work with the agency competition advocate to ensure timely delivery of needed training.
- (3) Have no duties or responsibilities inconsistent with the duties and responsibilities enumerated in CICA and this Order.

- (4) Challenge barriers to competition and promote full and open competition in the contracting activity's acquisitions.
- (5) Review the contracting activity's acquisition activities to assure that competition is sought whenever practical.
- (6) Review, approve, and/or disapprove those justifications for other than full and open competition over \$100,000 but not exceeding \$1,000,000 as described at page 15, paragraph 11a(2) and concurrence on those exceeding \$1,000,000 before their submission to a higher level approval official.
- (7) Review and approve, or if above the advocate's authority, review and make recommendations concerning noncompetitive acquisition plans and requests as required by paragraphs 8, 10, and 11, on pages 8 through 13, 15, and 16, including unnecessarily detailed specifications and unnecessarily restrictive statements of work.
- (8) Make recommendations to the head of the contracting activity concerning means of making the acquisition system more competitive.
- (9) Report annually to the head of the contracting activity regarding the contracting activity's competitive posture and aid the agency competition advocate in preparing the Departmental report required on page 19, paragraph 12d(3).
- (10) Assist the head of the contracting activity in establishment and monitoring of goals and plans for increasing competition on a fiscal year basis.

f. Contracting Officers shall:

- (1) Provide for full and open competition through use of the competitive procedure or combination of competitive procedures best suited to the circumstances of the contract action.
- (2) Challenge any acquisition proposed on other than a full and open competition basis.
- (3) Locate potential competitive sources with the assistance of the acquisition initiators, and coordinate with the contracting activity competition advocate regarding planned acquisitions on other than a competitive basis as required by FAR 7.104(c).

- (4) Place the necessary notices in the Commerce Business Daily as required.
- (5) Assist initiators in evaluating responses received as a result of such notices, and, when qualified responses are received, assure that a competitive solicitation is issued.
- (6) Coordinate with acquisition initiators to ensure that written plans shall provide the necessary advance information for the acquisition, and, after considering FAR 7.105, shall require any additional needed information.

g. Legal Counsel shall:

- (1) Review and provide coordination in all justifications for other than full and open competition over \$1,000,000, or such lower dollar amount as may be determined by Counsel.
- (2) Review and provide coordination, if appropriate, regarding the applicability of exceptions to publicizing an intent to accept an unsolicited research proposal and the propriety of disclosure of certain information concerning the proposal in accordance with page 14, paragraph 9a(7).
- (3) Review, regardless of established reviewing levels, all justifications for other than full and open competition for work assignments to management and operating contractors where DOE requires performance by a specific subcontractor. This shall be done at the location of the acquisition initiator.

BY ORDER OF THE SECRETARY OF ENERGY:



HARRY L. PEEBLES
Director of Administration

FORMAT FOR

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

(Sole source)

1. The (name of contracting activity) of the Department of Energy plans to contract by means other than full and open competition. This document sets forth the justification and approval of the use of one of the exceptions to full and open competition allowed under the Competition in Contracting Act of 1984.
2. Describe the nature of the action being approved; such as: This is a sole source acquisition (state reasons therefor).
3. Describe the supplies or services required to meet the Department's needs including the estimated cost.
4. Cite the specific exception of the act allowing this action, that is, section 303(c) (Insert specific number) which allows (insert purpose of exception).
5. Demonstrate that the proposed contractor's (Identify the proposed source) unique qualifications or the nature of the acquisition requires use of the authority cited.
6. Describe efforts made to ensure that offers are solicited from as many potential sources as is practicable.
7. State how the anticipated price or cost will be determined to be reasonable.
8. Describe the results of the market survey conducted, including any advance Commerce Business Daily notices published, the interest and abilities of potential competitive sources, or furnish a statement of the reasons a market survey was not conducted.
9. Furnish any other facts supporting the use of other than full and open competition, such as:
 - a. 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.
 - b. When FAR 6.302-1 is cited for follow-on acquisitions as described in FAR 6.302-1(b)(2)(i), an estimate of the cost that would be duplicated and how the estimate was **derived**.

- c. When FAR 6.302-2 is cited, describe the extent and nature of the harm to the Government.
10. Furnish listing of the sources, if any, that expressed, in writing, an interest in the acquisition as a result of an advance Commerce Business Daily notice.
11. Furnish 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 required.

The above is certified accurate and complete to the best of my knowledge and belief:

Acquisition Initiator	<u>Bill Jones</u> (Name)	<u>3-21-85</u> (date)
-----------------------	-----------------------------	--------------------------

Contracting Officer	<u>Bob Smith</u> (Name)	<u>3-26-85</u> (date)
---------------------	----------------------------	--------------------------

Review

Senior Program official (or designee)	<u>R. Anderson</u> Assistant Secretary (or Field Office Equivalent)	<u>3-25-85</u> (date)
--	---	--------------------------

Legal Counsel (over \$1,000,000 see page 21, paragraph 12g)	<u>E. Plurius</u> Assistant Chief Counsel (or Field Office Equivalent)	<u>3-30-85</u> date)
---	--	-------------------------

NOTE: If a "notice of intent" synopsis is required, it should be performed prior to submission to the competition advocate. If no responses are received, a notation may be made on the justification regarding that fact. If responses are received, an addendum shall be prepared describing the analysis and disposition of such responses. The addendum must be approved and signed. If other than full and open competition will follow such response consideration.

Approval

Contracting Activity Competition Advocate (or other official, see page 15, paragraph 11)	<u>G. Johnson</u> (Name)	<u>4-2-85</u> date)
---	-----------------------------	------------------------

NOTE: For management and operating contracts, the only required approvals are the manager of the Departmental field element, legal counsel at the field element, and the procurement executive.

Addendum

In support of the justification for other than full and open competition to which this addendum is attached, a notice of intent synopsis was published in the Commerce Business Daily on _____

(Discuss here the results of the "notice of Intent" synopsis, if one is required, including whether any responses were received and, if responses were received, why the responses were not considered adequate to allow competition.)

Certified accurate and complete to the best of my knowledge and belief.

Contracting Officer

Bob Smith

(Name)

3-10-85

(date)

(See page 13, paragraph 8e(3), regarding the possible need for additional signatures in special circumstances.)

Approval

Competition Advocate
(or other official,
see page 15, paragraph 11)

G. Johnson

(Name)

4-15-85

(date)

FORMAT FOR

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

(Unsolicited Proposal)

1. The (name of contracting activity) of the Department of Energy plans to contract by means other than full and open competition. This document sets forth the justification and approval of the use of one of the exceptions to full and open competition allowed under the Competition In Contracting Act of 1984.
2. Describe the nature of the action being approved; such as: This action is the acceptance of an unsolicited research proposal.
3. Describe the supplies or services required to meet the Department's needs including the estimated cost.
4. The specific section of the act allowing this action is section 303(c)(1) which allows other than full and open competition when there is only one responsible source.
5. Describe the following aspects of the unsolicited proposal:
 - a. Unique or innovative methods, approaches, or ideas originated or assembled by the offeror.
 - b. Overall scientific or technical merits of the proposal.
 - c. Potential contribution of the effort to the agency's specific mission.
 - d. The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are internal factors for achieving the proposal objectives.
 - e. The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.
6. Describe whether the action involves an unsolicited research proposal that demonstrates a unique and innovative research concept for which publication of a Commerce Business Daily notice would improperly disclose the originality of thought or innovativeness of the proposed research.
7. State how the anticipated price or cost will be determined to be reasonable.
8. Describe the results of the market survey conducted including the interest and abilities of potential competitive sources, or state that no market survey has been conducted for the reason explained at paragraph 6, above.

9. Describe what actions, if any, the Department may take to remove or overcome any barriers to competition before any subsequent acquisition for this type research.

The above is certified accurate and complete to the best of my knowledge and belief:

Acquisition Initiator	<u>Bill Jones</u> (Name)	<u>3-21-85</u> (date)
-----------------------	-----------------------------	--------------------------

Contracting Officer	<u>Bob Smith</u> (Name)	<u>3-27-85</u> (date)
---------------------	----------------------------	--------------------------

Review

Program Senior Official (or designee)	<u>Tom Headman</u> Assistant Secretary (or Field Office Equivalent)	<u>3-25-85</u> (date)
--	---	--------------------------

Legal Counsel (over \$1,000,000) (see page 21, paragraph 12g)	<u>E. Pluri bus</u> Assistant Chief Counsel (or Field Office Equivalent)	<u>3-30-85</u> (date)
---	--	--------------------------

Approval

Contracting Activity Competition Advocate (or other official, see page 15, paragraph 11)	<u>G. Johnson</u> (Name)	<u>4-2-85</u> (date)
---	-----------------------------	-------------------------

FORMAT FOR

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

(Limited Competition)

1. The (name of contracting Activity) of the Department of Energy plans to contract by means other than full and open competition. This document sets forth the justification and approval of the use of one of the exceptions to full and open competition allowed under the Competition in Contracting Act of 1984.
2. This action involves competition limited to certain sources. (Explain the circumstances and facts supporting the need for this limitation.)
3. Describe the supplies or services required to meet the Department's needs including the estimated cost.
4. Cite the specific exception of the act allowing this action, such as section 303(c) (insert specific number) which allows (insert purpose of exception).
5. Demonstrate that the proposed contractors' (identify the proposed sources) unique qualifications or the nature of the acquisition requires use of the authority cited.
6. Describe efforts made to ensure that offers are solicited from as many potential sources as is practicable.
7. State how the anticipated price or cost will be determined to be reasonable.
8. Describe the market survey conducted, including any advance Commerce Business Daily notices published, and the results including the interest and abilities of potential competitive sources, or furnish a statement of the reasons a market survey was not conducted.
9. Furnish any other facts supporting the use of other than full and open competition, such as:
 - a. 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.
 - b. When FAR 6.302-1 is cited for follow-on acquisitions as described in FAR 6.302-1(b)(2), an estimate of the cost that would be duplicated and how the estimate was derived.

"FEDERAL ACQUISITION REGULATION (FAR)"

Section 7.105 Contents of Written Acquisition Plans. In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions must be made (see paragraph 2, below). The plan shall address all the technical, business, management, and other significant considerations that will control the acquisition. The specific contents of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner shall follow the applicable instructions in paragraphs 1 and 2 below, together with the agency's implementing procedures.

1. Acquisition Background and Objective.
 8. Statement of Need. Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives and any related in-house effort.
 - b. Applicable Conditions. State all significant conditions affecting the acquisition; such as (i) requirements for compatibility with existing or future systems or programs; and (ii) any known cost, schedule, and capability or performance constraints.
 - c. est. Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:
 - (1) Life-Cycle Cost. Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.
 - (2) Design-to-Cost. Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

- (3) Application of Should-Cost. Describe the application of should-cost analysis to the acquisition (see 15.810).
 - d. Capability or Performance. Specify the required capabilities or performance characteristics of the supplies or services being acquired and state how they are related to the need.
 - e. Delivery or Performance-Period Requirements. Describe the basis for establishing delivery or performance-period requirements (see Subpart 12.1). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes Justification for not providing for full and open competition.
 - f. Trade-Offs. Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.
 - g. Risks. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.
2. Plan of Action.
- a. Sources. Indicate the prospective sources of supplies and/or services that meet the need. Consider required sources of supplies and services (see Part 8). Include consideration of small business, small disadvantaged business, and labor surplus area concerns (see Parts 19 and 20). If the acquisition or a part of it is for commercial or commercial-type products (see Part 11), address the results of market research and analysis and indicate their impact on the various elements of the plan. If the acquisition or part of it is for other than commercial or commercial-type products, address the extent and results of the market survey conducted-or the reasons one was not or will not be conducted.
 - b. Competition.
 - (1) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. - If full and open competition is not contemplated cite the authority in 6.302, discuss the basis for the-application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

- (2) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.
 - (3) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.
- c. Source-Selection Procedures. Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.6).
 - d. Contracting Considerations. For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations.
 - e. Budgeting and Funding. Describe how budget estimates were derived and discuss the schedule for obtaining adequate funds at the time when they are required (see Subpart 32.7).
 - f. Product Descriptions. In accordance with Part 10, explain the choice of product description types to be used in the acquisition.
 - g. Priorities, Allocations, and Allotments. When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see Subpart 12.3).
 - h. Contractor Versus Government Performance. Address the consideration given to OMB Circular No. A-76 (see Subpart 7.3).
 - i. Management Information Requirements. Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

- j. Make-or-Buy. Discuss my consideration given to make-or-buy programs (see Subpart 15.7).
- k. Test and Evaluation. To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.
1. Logistics Considerations. Describe:
- (1) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial products (see Part II).
 - (2) , The reliability, maintainability, and quality assurance requirements, including any planned use of warranties (see Part 46).
 - (3) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27).
 - (4) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.
- m. Government Furnished Property. Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations such as its availability or the schedule for its acquisition (see Part 45).
- n. Government-Furnished Information. Discuss any Government Information, such as manuals, drawings, and test data to be provided to prospective offerors and contractors.
- o. Environmental Considerations. Discuss environmental issues associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

- p. Security Considerations. For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).
- q. Other Considerations. Discuss, as applicable, energy conservation measures, standardization concepts, the Industrial readiness program, the Defense Production Act the Occupational Safety and Health Act, foreign sales Implications, and any other matters germane to the plan not covered elsewhere.
- r. Milestones for the Acquisition Cycle. Address the following steps and any other appropriate:
- Acquisition plan approval.
 - Statement of Work.
 - Specifications.
 - Data requirements.
 - Completion of acquisition package preparation.
 - Purchase request.
 - Justification and approval for other than full and open competition where applicable and/or any required D&F approval.
 - Issuance of synopsis.
 - Evaluation of proposals, audits, and field reports.
 - Beginning and completion of negotiations.
 - Contract preparation, **review**, and clearance.
 - Contract award.
- s. Identification of participants In acquisition plan preparation. List the individuals who participated in preparing the acquisition plan, giving contact information for each.

