

## Attachment C

### HHS Template and Instructions for a Justification for Other than Full and Open Competition

**Completion Instructions:** HHS has established a standard template for preparation of a Justification for Other than Full and Open Competition (JOFOC) for non-Federal Supply Schedule acquisitions exceeding the simplified acquisition threshold. Operating Divisions (OPDIVs) shall prepare the template in accordance with these completion instructions. (NOTE: The Project Officer (PO) has responsibility for completing all of the information items included in the template, with any necessary assistance from the cognizant Contracting Officer (CO) and Contract Specialist (CS) -- especially for items 3.(b), 4., 6., 7., 8. and 10. listed below.

The instructions for preparing a JOFOC are specified in “red” and should be deleted prior to processing the document for review and approval. Also, do not include the completion instructions in the completed document.

A completed JOFOC must contain all of the applicable bolded headings in the order specified. Place the required information directly next to, or under, the applicable heading. If a heading does not apply to a specific JOFOC, indicate “not applicable” (N/A) next to it. Reference and attach any additional information necessary to support the JOFOC.

### Justification for Other than Full and Open Competition

*“Source Selection Information – see FAR 2.101 and 3.104”*

1. **Identification of the agency and contracting activity.** Provide the following information:
  - a. **Federal agency and contracting activity.** HHS. Enter the OPDIV name after “HHS.”
  - b. **Sponsoring organization.** Specify the name of the OPDIV’s major subcomponent organization (such as Institute, Center, Office, or Division) and lower-tier organization, if applicable, that is sponsoring the proposed acquisition.
  - c. **Project Officer information.** Provide the following information:
    - Project Officer name.
    - Mailing address.
    - E-mail address.

- Telephone number.

2. Nature and/or description of the action being approved. Provide the following information:

- a. Acquisition purpose and objectives. State the nature, purpose, and objective(s) of the acquisition and the overall program of which it is a part. Identify the authorizing program legislation, as applicable.
- b. Project background. Specify any project background that is important to understanding the acquisition and the need it will satisfy. If the project is a continuation or renewal of an ongoing contract/order, provide the current contract/order number and indicate: (i) the name of the incumbent or predecessor contractor; (ii) the period of performance; (iii) total dollar amount obligated to date; and (iv) whether the initial and any subsequent awards were competed and, for any sole-source or limited competition awards, the basis for the approved JOFOC.

3. Description of the supplies or services required to meet the agency's needs (including the estimated value). Provide the following information:

- a. Project title. Enter the project title as it will appear in the solicitation and resultant contract/order.
- b. Project description. Provide a brief (i.e., half-page or less) narrative description of the project. [NOTE: A Statement of Work (SOW) may be referenced and attached in lieu of providing a project description. The term SOW, as used throughout this document, includes "Specification," "Statement of Objectives" (SOO), and "Performance Work Statement (PWS)."]

Provide the following information:

- Requirement type. Check the appropriate box:

- Research & development (R&D)
- R & D support services
- Support services (non-R&D)
- Supplies/equipment
- Information technology (IT)
- Construction
- Architect-engineer (A & E) services
- Design-build
- Other (specify): \_\_\_\_\_

- Type of action. Check the appropriate box:

- New requirement
- Follow-on
- Other (specify): \_\_\_\_\_

- **Proposed contract/order type.** Check all that apply:
  - Firm-fixed-price
  - Other fixed-price (specify, e.g., fixed-price award-fee, fixed-price incentive-fee): \_\_\_\_\_
  - Cost-plus-fixed-fee
  - Other cost reimbursement (specify, e.g., cost-plus-award-fee, cost-plus-incentive-fee): \_\_\_\_\_
  - Time and materials
  - Indefinite delivery (specify whether indefinite quantity, definite quantity, or requirements): \_\_\_\_\_
  - Other (specify): \_\_\_\_\_
  - Completion Form     Term form
  
- **Acquisition identification number.** Specify the requisition number, proposed solicitation number, or other acquisition identification number, if applicable.

c. **Total estimated dollar value and performance/delivery period.** Specify the total estimated dollar value of the acquisition, inclusive of options, and the total performance/delivery period.

4. **Identification of the statutory authority permitting other than full and open competition.** Check the applicable block below based on the acquisition circumstance.

- This acquisition is conducted under the authority of 41 United States Code (U.S.C.) 253(c)(\_\_)** as set forth in Federal Acquisition Regulation (FAR) 6.302- \_\_. Check this block for an acquisition that is based on the authority used to support the noncompetitive acquisition (see FAR 6.302-1 through 6.302-7). Enter the appropriate U.S.C. exception and FAR citation in the spaces provided.
  
- This acquisition is conducted under the authority of section 4202 of the Clinger-Cohen Act of 1996.** Check this block for an acquisition that is based on the authority of the test program for commercial items – specifically section 4202 of the Clinger-Cohen Act of 1996 [see FAR 13.501(a)(1)(ii)].
  
- This acquisition is conducted under the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a).** Check this block for an acquisition that is based on the authority of the test program for commercial items – specifically the Services Acquisition Reform Act of 2003 [see FAR 13.500(e) and 13.501(a)(1)(ii)]. **{NOTE:}** This authority may only be used when acquiring items in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack [see FAR 13.500(e)(1)].

5. **Demonstration that the proposed contractor(s) unique qualifications or the nature of the acquisition requires use of the authority cited. Provide the following information, as applicable:**
  - a. **Name and address of the proposed contractor(s).** Enter the (i) name and address of the proposed sole source contractor or (ii) names and addresses of the contractors to whom the proposed acquisition will be limited.
  - b. **Nature of the acquisition and proposed unique qualifications of the contractor(s).** Describe fully why only the designated supply/service will meet the sponsoring organization's needs and the contractor's unique qualifications to provide the requirement. Discuss how those qualifications or the nature of the acquisition relate to the authority cited.
6. **Description of the efforts made to ensure that offers are solicited from as many potential sources as practicable. Indicate whether a FedBizOpps notice was or will be publicized as required by FAR Subpart 5.2 and, if not, which exception under FAR 5.202 applies. Explain the efforts taken (or to be taken) to solicit as many potential offerors as possible, particularly if the basis of the JOFOC is the authority cited in FAR 6.302-2 (i.e., unusual and compelling urgency) or 6.302-6 (i.e., national security.) (NOTE: Proposed acquisitions for other than full and open that are expected to exceed \$25,000 must be announced in Federal Business Opportunities (FedBizOpps), whether or not a sources sought notice or other presolicitation notice was issued previously.) Indicate whether a FedBizOpps notice will be published as required by FAR Subpart 5.2 and, if not, state the exception in FAR 5.202 that applies.**
7. **Determination by the Contracting Officer that the anticipated cost/price to the Government will be fair and reasonable. Provide a statement, based on the specific circumstances and type of acquisition proposed, that reflects the steps the CO will take (including documentation) regarding the fairness and reasonableness of the cost/price of the contract/order prior to its award. The determination shall cite, at a minimum: (a) the type of cost or pricing information that will be obtained from the proposed contractor(s) and whether it will be certified – see FAR 15.406-2; (b) the type and extent of cost or price analysis anticipated; and (c) whether an audit will be performed.**
8. **Description of the market research conducted (see FAR Part 10) and the results, or a statement of the reasons market research was not conducted. Describe the market research that was conducted and the results of that effort (see FAR Part 10). Examples of market research include: (a) issuing a sources sought announcement in FedBizOpps; (b) publishing a request for information in technical or scientific journals or business publications; (c) reviewing literature published by qualified organizations; (d) contacting knowledgeable acquisition and program officials in Government and industry regarding market capabilities; and (e) convening a presolicitation conference to exchange information with the marketplace. If market research was not conducted, provide an explanation. (NOTE: Issuing the FBO notice under Item 6. above does not, in and of itself, constitute market research.)**

**9. Any other facts supporting the use of other than full and open competition.** Cite any other factors not mentioned earlier in the justification as to why the requirement cannot be competed. Also, if applicable:

(a) explain why technical data packages, engineering descriptions, or a SOW suitable for full and open competition have not been developed or are not available for a competitive acquisition;

(b) when the requirement can only be satisfied by one responsible source for a follow-on acquisition [see FAR 6.302-1(a)(2)(ii)], indicate whether there would be (i) unacceptable delays in fulfilling the agency's requirements and/or (ii) duplication of cost by award to another organization and, if so, provide an estimate of the cost duplication and how it was derived;

(c) if the justification is based on unusual and compelling urgency (see FAR 6.302-2), indicate (using data, estimated cost, or other rationale) the extent and nature of the harm that the sponsoring organization would incur and/or the unacceptable delays that would occur. Also, explain whether the proposed period of performance is the minimum acceptable period necessary to meet mission requirements, including why a shorter period is not advisable. If future extensions are anticipated, indicate what steps will be taken to encourage and solicit competition. (NOTE: The length of a contract or order awarded under these circumstances cannot exceed one year unless approved by the OPDIV Head of the Contracting Activity.)

**10. Listing of sources, if any, that expressed, in writing, an interest in the acquisition.** List the sources, if any, that have expressed an interest, in writing, in the acquisition and provide an explanation of why they are not being considered. If no expressions of interest have been received, enter "No other sources have expressed an interest, in writing, in the proposed acquisition."

Any responses, such as capability statements, received in response to a published notice (e.g., a sources sought notice or request for information), must be evaluated. Include all evaluations as an attachment to the JOFOC, along with the names of the individuals who participated in the review and a copy of the communication to each organization that responded. In addition, document any requests made to the CO by interested organizations for a copy of the solicitation or SOW with the following information: (a) the name of and contact information for the organization that submitted the request; (b) any communications with the requestor; and (c) the disposition of the request.

(NOTE: Normally, a JOFOC should be routed for review and approval after the FedBizOpps notice period (see Item 6.) has expired. However, in extenuating circumstances (e.g., when substantial administrative, funding, or technical delays or issues are anticipated or occur that could jeopardize timely review and approval of a JOFOC), a JOFOC that does not require Senior Procurement Executive (SPE) review and approval may be routed for review (but not approval) prior to completion of the synopsis period. The OPDIV HCA must provide prior written/electronic concurrence with such an action. In no event shall the justification be forwarded to the approving official before expiration of the synopsis period and before the results of any expressions of interest in the

acquisition have been evaluated (other than requests for a copy of the solicitation) and documented. Further, a solicitation may only be released to an intended source after approval of a JOFOC.)

- 11. Statement of the 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.** Provide a brief statement as to whether or not there are future plans to acquire the same type of supplies or services, e.g., further extensions or renewals by competitive or other means. If subsequent acquisitions are anticipated, cite actions taken, or anticipated, to avoid continued noncompetitive acquisition of the requirement in the future and a schedule for accomplishing those actions. (NOTE: This may involve recompeting a successor requirement at a logical juncture in the phasing of the project or “breaking out” segments of the requirement to facilitate competition, where feasible.) If no actions have been or will be undertaken to overcome barriers to competition for future acquisitions, so indicate and provide an explanation.
- 12. Program office certification.** The program officials cited shall complete the information required below and sign the certification in the blocks provided.

**This is to certify that the portions of this justification that have been developed by the undersigned program office personnel, including supporting information and/or data verifying the Government’s minimum needs, schedule requirements and other rationale for other than full and open competition, are accurate and complete.**

Official	Name & Title	Signature	Date
Project Officer			
Project Officer’s Immediate Supervisor			
Head of the Sponsoring Program Office			

- 13. Contracting Officer certification.** The CO shall complete the information required below and sign the certification in the block provided. [NOTE: The CO's signed certification may serve as approval of a JOFOC over \$100,000 but not exceeding \$550,000<sup>1</sup>, depending on OPDIV procedures.)

This is to certify that the justification for the proposed acquisition has been reviewed and that to the best of my knowledge and belief the information and/or data provided to support the rationale and recommendation for approval is accurate and complete.

Official	Name & Title	Signature	Date
Contracting Officer			

- 14. Chief of the Contracting Office and Head of the Contracting Activity signature(s).** The Chief of the Contracting Office (CCO), if applicable, and the HCA shall indicate review of, and concurrence with, any JOFOC over \$550,000<sup>2</sup> by providing the information required below and signing in the applicable block.

Official	Name & Title	Signature	Date
Chief of the Contracting Office			
Head of the Contracting Activity			

<sup>1</sup> This dollar range is current as of the date of issuance of interim acquisition policy memorandum No. 2008-03, but is subject to change – see FAR 6.304(a)(1) and 13.501(a)(2)(i). See HHSAR 306.304(a)(1) and 313.501(a)(2)(i) for additional information regarding CO approval of a JOFOC in this dollar range.

<sup>2</sup> This review and concurrence requirement is applicable to the dollar ranges over \$550,000 cited in the FAR, specifically: (i) over \$550,000 but not exceeding \$11.5 million; (ii) over \$11.5 million but not exceeding \$57 million; and (iii) over \$57 million – see FAR 6.304(a)(2) through (4) and 13.501(a)(2)(ii) through (iv). See HHSAR 306.304 and 313.501(a)(1)(iii) for additional information regarding CCO/HCA review of and concurrence with a JOFOC in these dollar ranges. These dollar ranges are current as of the date of issuance of interim acquisition policy memorandum No. 2008-03, but are subject to change.

- 15. Competition Advocate signature.** The designated OPDIV Competition Advocate (CA), upon acceptance of the rationale provided in the JOFOC, shall complete the information required below and sign in the block provided as the approving official for any JOFOC over \$550,000 but not exceeding \$57 million<sup>3</sup>. However, if the CA does not meet the requirements of FAR 6.304(a)(3)(ii) for a JOFOC over \$11.5 million, but not exceeding \$57 million, an individual other than the CA shall exercise the approval authority.

The signature of the CA, or that of an individual meeting FAR 6.304(a)(3)(ii) requirements for a JOFOC over \$11.5 million, but not exceeding \$57 million, shall serve as concurrence on any JOFOC over \$57 million that requires the approval of the HHS SPE.

Official	Name & Title	Signature	Date
Competition Advocate			

- 16. HHS Senior Procurement Executive signature.** The HHS SPE, upon acceptance of the rationale provided in the JOFOC, shall complete the information required below and sign in the block provided as the approving official for any JOFOC over \$57 million<sup>4</sup>.

Official	Name & Title	Signature	Date
HHS Senior Procurement Executive			

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<sup>3</sup> This approval authority is applicable to the following dollar ranges cited in the FAR, specifically: (i) over \$550,000, but not exceeding \$11.5 million; and (ii) over \$11.5 million, but not exceeding \$57 million – see FAR 6.304(a)(2) and (3) and 13.501(a)(2)(ii) and (iii). See HHSAR 306.304(a)(2) and (3) and 313.501(a)(ii) and (iii) for additional information regarding this approval authority, including when the CA does not meet the requirements of FAR 6.304(a)(3)(ii). These dollar ranges are current as of the date of issuance of interim acquisition policy memorandum No. 2008-03, but are subject to change.

<sup>4</sup>This dollar range is current as of the date of issuance of interim acquisition policy memorandum No. 2008-03, but is subject to change – see FAR 6.304(a)(4) and 13.501(a)(2)(iv). See HHSAR 306.304(a)(4) and 313.501(a)(2)(iv) for additional information regarding SPE approval of a JOFOC in this dollar range.