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Key Guidance Concerning Justifications and Approvals for Other Than Full and Open Competition

A Mandatory Reference for ADS Chapter 302

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General:

Federal regulations send a strong message to industry and Federal procurement personnel that full and open competition is the customary way for the Government to obtain goods and services. The [Competition in Contracting Act \(CICA\) of 1984](#) as implemented in the [Federal Acquisition Regulation \(FAR\) Part 6](#) sets a standard of competition for procuring goods and services through the Federal procurement process. As a result, every contract award is directly affected by policy and procedural requirements established to promote open and fully competed requirements. Full and open competition means procedures that permit all responsible sources to submit competitive proposals on a procurement action.

The Federal Acquisition Regulation, specifically FAR Part 6, allows for certain limited exceptions to competition. However, the Government must explain its rationale for not competing a requirement and post that rationale on a public Web site. The FAR describes the minimum information and rationale that must be included in a justification for other than full and open competition document to comply with the law. The documentation must clearly and convincingly explain why full and open competition is not in the best interest of the Government. The rationale must be explained in a manner that can be understood by anyone, including those not knowledgeable in Government procurement.

This Mandatory Reference outlines important submission, routing and posting requirements for Justifications and Approvals, or J&As, also known as “JOFOCs” (“Justifications for Other Than Full and Open Competition”).

Market Research (See [FAR Part 10](#)):

Competition is the law, but it offers advantages in that it affords the Government the opportunity to obtain innovative solutions from industry through the best diverse ideas, cost savings through competitive pricing, and higher quality products/services.

In order to maximize the advantages of competition, we must include a test of the marketplace in our acquisition strategy. A market survey is an excellent tool for determining if competition is possible, what capabilities exist in the private sector, and for assessing industry’s interest in meeting our need(s). This market survey can be done at any time, but to enable an effective acquisition strategy, it must be completed before publishing the formal procurement request for proposals.

Market surveys are also an excellent method to solicit industry comments on Agency requirements. The information gained from a market survey can help the acquisition team formulate its program and acquisition strategies by answering questions about the marketplace, such as:

- Did the Government clearly articulate its requirement?
- Does the acquisition strategy promote competition?
- What is the level of private sector interest?

- Are there small businesses with the capability to perform the service or provide the supplies?
- What capabilities exist in the private sector, should additional sources be developed?
- Are there commercial services or items available in the marketplace that can meet the agency's need?

There are several types of notices and synopses, that is, pre-solicitation notices: draft statements of work, sources sought synopses, pre-proposal conference announcements, special notices, draft Request for Proposals (RFPs), and business fairs. Notices identify the intended result for the procurement to allow for many different approaches. Notices do not use any descriptions or specifications that may restrict competition and exclude unnecessary features/services that increase cost. This simple means of communication broadens industry participation, improves small business access to acquisition information and increases competition by informing industry of contracting and subcontracting opportunities. The time invested in this phase of the procurement will expedite a realistic assessment of the "acquisition lead time" and the steps needed to award a contract.

A. General Submission Requirements

1. For J&As using [FAR Part 6](#) and [AIDAR 706.302-70\(b\) \(5\)](#):
The Contracting Officer (CO) must submit the J&A document required by FAR Part 6 or AIDAR 706.302-70(b)(5) exceptions to competition in *final form* to the "Justifications & Approvals Mailbox." (JustificationsandA@usaid.gov).

"Final form" means a CO-originated document addressing [FAR subpart 6.303-2\(a\)\(1\)-\(12\) and \(b\)](#) content requirements, which includes certification from the technical office and clearance from the Office of General Counsel (GC/A&A) or Regional Legal Advisor (RLA).

2. For J&As using [AIDAR 706.302-70\(b\)\(3\)](#):
Per AIDAR Part 706, the Assistant Administrator or Administrator must make a formal written determination with supporting findings (D&F) when AIDAR 706.302-70(b)(3)(i) or (b)(3)(ii) is used, respectively. For additional information on D&Fs, see [FAR subpart 1.7](#).

- a. As required by AIDAR 706.302-70(c)(3), all D&Fs must reflect prior consultation with the Agency Competition Advocate (ACA). Such consultation may be in the form of a statement to the effect that consultation was obtained along with ACA signature and date.

Example: *AIDAR 706.302-70(c)(3) requires prior consultation with the Agency Competition Advocate before executing the written determination and finding, and this consultation must be reflected in the written determination and finding.*

The written determination and finding herein reflects prior consultation with the undersigned Agency Competition Advocate, regarding the subject procurement action.

- b. The content requirements of a D&F include, but are not limited to, the following:
 - Findings;
 - Identification of the specific foreign assistance objective which would be impaired and how; and explanation of the circumstance(s) requiring use of the exception and other options explored by USAID;
 - Authority;
 - Agency Competition Advocate consultation signature line and date; and
 - Statement of Determination by Approving Official with signature and date.
- c. Additionally, the CO must write a J&A to support the non-competitive award and must attach it to the D&F. CO certification per FAR subpart 6.303-2(a)(12) is not required.
- d. The Operating Unit (OU) must submit both the draft D&F and the justification in final form concurrently to the J&A Mailbox (JustificationsandA@usaid.gov) to obtain ACA consultation comments and signature.

B. Routing, Clearance, and Approval

1. Routing and required clearances of a J&A are defined by the specific statutory authority for other than full and open competition being used. For additional information regarding routing of a J&A, see the flowchart [Approval Process for Other Than Full and Open Competition for Acquisition](#).
2. In accordance with [ADS 302, USAID Direct Contracting, section 302.3.4.1](#), the OU must obtain clearance by the Administrator for all non-competitive:
 - a. New awards of \$5 million or more to the same organization for any of the same activities; or
 - b. Award extensions of \$5 million or more (including Task Orders). For those types of awards described above that are for Critical Priority Countries (CPCs), the threshold is \$20 million or more.
3. Approval of the justification must be in accordance with FAR subpart 6.304, and as detailed in the flowchart, [Approval Process for Other Than Full and Open Competition for Acquisition](#).

C. Screening and Posting

J&As must be posted in accordance with the policy and procedures at [ADS](#)
[302.3.4.1.c](#).

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