

**HOMELAND SECURITY ACQUISITION MANUAL**

**DEPARTMENT OF HOMELAND SECURITY  
REVISIONS TO MULTIPLE HSAM CHAPTERS RELATING TO COMPETITION  
AND OTHER TECHNICAL CHANGES**

This HSAM Notice is being transmitted to all DHS Heads of Contracting Activities and Acquisition Leads. PLEASE DISSEMINATE TO WIDEST POSSIBLE AUDIENCE – ACQUISITION STAFF, FINANCIAL PERSONNEL, CUSTOMERS, PURCHASE CARDHOLDERS, ETC.

**Introduction:** This notice provides revisions to associated chapters of the HSAM which implement changes as a result of Federal Acquisition Circular (FAC) 2005-13 regarding policy on the use of Brand Name Specifications. This notice also incorporates the Justification and Approval Guide as part of the HSAM. The following chapters are impacted by this HSAM Notice:

**Chapter 3001 - Appendix A, Heads of the Contracting Activities:** Updates the Head of the Contracting Activity (HCA) position titles in Appendix A, Head of the Contracting Activities.

**Chapter 3005 and 3005.1:** (1) 3005.003 is amended to clarify that the use of online procurement services for open market procurements, such as reverse auction tools, does not fulfill the responsibility to disseminate information as required by FAR Part 5; and (2) 3005.102 is amended to add the requirement for publishing the brand name justification with the solicitation's synopsis where the acquisition exceeds \$25,000.

**Chapter 3006.3 and new Appendix A of Chapter 3006: HSAM 3006.3:** (1) 3006.303-1(a) is added to incorporate the DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0, into the HSAM and (2) previous subparagraphs 3006.304(a)(5) and (6) are realigned to subparagraph (b) of this subchapter. **Guide:** A prior J&A Guide appeared on the Acquisition Policy and Legislation web page, but was not part of the HSAM. The significant changes to the new Guide include the following: (1) The J&A format was incorporated into the Guide; (2) the Office of Management and Budget (OMB) directed guidance on the use of brand name and the acquisition of software was added along with other revisions relating to the use of brand name from Federal Acquisition Circular 2005-13; and (3) the guidance for "Authorized or Required by Statute" was clarified to indicate when a J&A is required. The approval levels for DHS J&As are also stated in the Guide.

**Chapter 3008:** 3008.405-6 is added to provide the designees for justification approvals when brand name specifications are used in orders placed under Federal Supply Schedules.

**Chapter 3011:** 3011.105 is added to establish Requirement Official instructions for providing the supporting documentation of proposed sole source acquisition to the contracting officials for approval.

**Chapter 3013:** (1) 3013.106 is added to include instructions and designation of approval officials when using sole sources (including brand name descriptions). (2) 3013.501 is added to provide the designees for justification approvals when using sole sources (including brand name descriptions) for the test program for certain commercial items.

**Chapter 3053:** DHS Form 700-16, Simplified Acquisition Summary, is modified to amend FAR references and other minor technical edits.

This notice is issued in accordance with HSAM 3001.301-70(c)(2). The changes will be integrated into the electronic HSAM version at [www.dhs.gov](http://www.dhs.gov) and DHSOnline on or about November 12, 2007. The HSAM is revised to incorporate the following:

## CHAPTER 3001 - FEDERAL ACQUISITION REGULATIONS SYSTEM

(1) Chapter 3001, Appendix A, Heads of the Contracting Activity, is revised to read:

CBP	Executive Director, Procurement Directorate; and Executive Director, SBI Acquisition Office
ICE	Director, Office of Acquisition Management
DHS OPO	Director, Office of Procurement Operations
FEMA	Director, Office of Acquisition Management
FLETC	Director, Procurement Division
TSA	Assistant Administrator for Acquisition
USCG	Director of Contracting and Procurement (CG-91)
USSS	Chief, Procurement Division

## CHAPTER 3005 – PUBLIZING CONTRACT ACTIONS

(2) Subchapter 3005.000 is amended to read:

### Subchapter 3005.000 Scope

### **3005.003 Governmentwide point of entry (GPE).**

(a) Use of online procurement services for open market procurements, such as reverse auction, does not fulfill the responsibility to disseminate information as required by (FAR) 48 CFR Part 5.1. Some of these online procurement service tools provide for automatic notification or optional dissemination to the GPE. Contracting professionals and ordering officials shall ensure that all required information, such as the brand name justification or documentation (See (FAR) 48 CFR Part 5.102(a)(6)), is included for the GPE, if the acquisition is expected to exceed \$25,000.

(3) Subchapter 3005.102 is revised to read:

#### **Subchapter 3005.1 Dissemination of Information**

##### **3005.102 Availability of solicitations.**

(a)(1) For DHS acquisitions expected to exceed \$25,000, all solicitations including brand name specifications (when authorized) and their justification or documentation (see (FAR) 48 CFR Part 5.102(a)(6)) shall be made available via the internet at <http://www.fedbizopps.gov>, unless an exception at (FAR) 48 CFR Part 5.102(a)(5) applies.

## **CHAPTER 3006 COMPETITION REQUIREMENTS**

(4) Subchapter 3006.302-1 (title) is revised to read:

#### **Subchapter 3006.3 Other Than Full and Open Competition**

##### **3006.302 Circumstances permitting other than full and open competition.**

**3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(5) Subchapter 3006.303 is revised to read:

#### **3006.3 Other Than Full and Open Competition**

##### **3006.303 Justifications.**

##### **3006.303-1 Requirements.**

(a) Appendix A of this Chapter, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0, provides additional requirements and guidance, including a sample format for J&As.

(6) **Subchapter 3006.304** is revised to read:

**3006.304 Approval of the justification.**

(b) For DHS a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, and (FAR) 48 CFR Part 6.302-2 is cited as the authority, by the Head of the Contracting Activity unless a higher approval authority is required in accordance with (FAR) 48 CFR Part 6.304 or DHS procedures. This authority is not delegable below the Head of the Contracting Activity (HCA). Individuals acting in the place of approving officials shall meet the qualification requirements of (FAR) 48 CFR 6.304.

(c) Class justifications shall be approved by the same approval authority as for individual justifications (see (FAR) 48 CFR 6.304(a) and HSAM 3006.304(a) above).

(7) **DHS Justification and Approval (J&A) Guide, Chapter 3006, Appendix A, version 1.0, dated** October 2007 is added by this notice and is provided as Attachment (1).

**CHAPTER 3008 - FEDERAL SUPPLY SCHEDULES**

(8) **Subchapter 3008.405** is added as follows:

**Subchapter 3008.405 Ordering procedures for Federal Supply Schedules.**

**3008.405-6 Limited sources justification and approval.**

(a)(1) When an order for a Federal Supply Schedule (FSS) contains brand name specifications, ordering activities and ordering officials shall coordinate the written justification or documentation with the ordering activity contracting officer for further processing and approval as designed in subparagraph (h) of this subchapter. The ordering activity contracting officer for the action shall ensure the request for quotation (RFQ) is posted with the approved brand name justification or documentation in “e-Buy” as required by (FAR) 48 CFR Parts 8.402(d) and 8.405-6.

(h) For proposed FSS orders expected to exceed \$25,000 and up to the simplified acquisition threshold, the contracting officer is the approval official for the brand name documentation. The justification and approval requests for the use of brand name and limited sources for FSS as described in (FAR) 48 CFR Parts 8.405-6(a)(1) and (h) shall be submitted to the DHS or Component Competition officials designated at HSAM, Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

## **CHAPTER 3011 – DESCRIBING AGENCY NEEDS**

**(9) Subchapter 3011.1** is amended to add the following:

### **3011.1 Selecting and developing requirements documents.**

#### **3011.105 Items peculiar to one manufacturer.**

(a)(2)(i) Justification and approval requests for proposed acquisition shall be submitted to the DHS approval officials as designated in HSAM, Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

(ii) Supporting documentation prepared by the requirements official shall be submitted to the contracting officer for approval as designated in HSAM 3013.106-1(b) and posting if required by (FAR) 48 CFR Part 5.102(a)(6).

(b) For multiple award schedule orders, see HSAM Subchapter 3008.405-6 for DHS processing requirements and approval officials.

## **CHAPTER 3013 - SIMPLIFIED ACQUISITION PROCEDURES**

**(10) Subchapter 3013.106** is added as follows:

### **3013.106 Soliciting competition, evaluation of quotations or offerors, award, and documentation.**

#### **3013.106-1 Soliciting competition.**

(b) The requirements official for the proposed acquisition shall prepare the supporting documentation for soliciting from a single source. The ordering activity contracting officer for the action is the approval official for proposed actions exceeding \$25,000 up to the simplified acquisition threshold.

(3) When the acquisition requires a particular brand name, product or a feature of a product, peculiar to one manufacturer, which precludes consideration of a product manufactured by another company, the ordering activity contracting officer shall ensure the request for quotation (RFQ) is posted with the brand name documentation in FedBizOpps as required by (FAR) 48 CFR Part 5.102(a)(6).

**(11) Subchapter 3013.501** is added as follows

### **3013.501 Special documentation requirements.**

(a)(2)(1) The justification and approval requests for the use of sole source (including brand name) as described in (FAR) 48 CFR Parts 13.501(a)(1) and (2) shall be

submitted to the DHS or Component Competition officials designated at HSAM, Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

## **CHAPTER 3053 - FORMS**

**(12) DHS Form 700-16, Simplified Acquisition Summary and Continuation Sheet** is amended to update FAR references and the updated version, dated 10/07 is provided as Attachment (2).

### **Additional information:**

Direct any questions or comments to Joe Giuliani at (202) 447-5686 or e-mail at [Joseph.Giuliani@dhs.gov](mailto:Joseph.Giuliani@dhs.gov). Components should submit J&As, which require review and approval by the Chief Procurement Officer, to their designated HCA Desk Officer.

**Effective date:** November 21, 2007

**Signed by:**

*/s/*

**Domenico Cipicchio, for  
Thomas W. Essig  
Acting, DHS Chief Procurement Officer**

**Justification and Approval (J&A) Guide  
(For Other than Full and Open Competition)**

Office of the Chief Procurement Officer  
**November 2007**  
**Version 1.0**

## PREFACE

This Guide will help you prepare and process Justification and Approvals (J&As) for the use of other than full and open competition, and will help you answer questions such as:

- [Do I need a J&A?](#)
- [What is the basis for the justification?](#)
- [What goes in the J&A?](#)
- [Who approves the J&A?](#)

The requirement for preparing J&As is statutory. The 1984 legislation that established the requirement is known as the Competition in Contracting Act (CICA). The law was codified in 10 U.S.C. 2304 and 41 U.S.C. 253 and is implemented by the Federal Acquisition Regulation (FAR) Part 6, as supplemented by the Department of Homeland Security Acquisition Regulation (HSAR) and the Homeland Security Acquisition Manual (HSAM). 10 U.S.C. 2304 and its sections apply to the United States Coast Guard (USCG) only and 41 U.S.C. 253 and its sections apply to the remaining DHS Components, except the Transportation Security Administration (TSA).

This Guide is not intended to serve as a substitute for the FAR, HSAR and the HSAM. It does not relieve the preparer of the J&A from reviewing these regulations and manual. In addition, this Guide will not focus on the J&As required for the standardization of equipment and/or vehicles. If additional guidance is needed on standardization, contact the Department Competition Advocate, who is located in the Office of the Chief Procurement Officer or the Procuring Activity Competition Advocates (PACAS).

## CHAPTER 1

### WHEN IS A JUSTIFICATION & APPROVAL REQUIRED?

The law requires the Government to solicit full and open competition from the private sector leading to the award of a contract, purchase order, etc. unless one of seven statutory exceptions applies. The authority for each exception is described in Chapter 2 of this Guide. If awarding a contract under other than full and open competition procedures pursuant to these authorities, written documentation is required.

Written documentation is also required if awarding a contract using full and open competition after exclusion of one or more sources. If you are excluding one or more sources for reasons such as to maintain or develop alternative sources of supplies or services, a Determination & Findings (D&F) must be prepared by the Contracting Officer and approved by the Chief Procurement Officer. Refer to FAR Subpart 6.2 and HSAR Subpart 3006.2.

“Full & open competition” is specifically defined in the statute, as explained in the definition in Chapter 5 of this Guide. The existence of “competition” does not necessarily mean full and open competition was solicited. If only a limited number of sources are able to compete due to competitive barriers that are inherent in the Government’s requirement, a J&A may be required. Even when full and open competition does not exist, the CO is required to “solicit offers from as many potential sources as is practicable under the circumstances” (FAR 6.301(d)). In addition, the Government may not automatically reject proposals from sources not identified in the J&A. The Government is obligated to consider any proposal received from a responsible source.

These requirements apply to all new contracts and modifications except:

1. Acquisitions made under the simplified acquisition procedures of FAR Part 13 (for those actions, a simpler explanation is allowed);
2. Contracts awarded under procedures expressly authorized by statute (other than those addressed under the authority of 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5). So if you are excluding a class or classes of sources in order to conduct a small business set-aside, or an 8(a) acquisition, no written justification or determination is required. A brief explanation should be placed in the contract file;
3. Contract modifications that are within the scope and under the terms of an existing contract (e.g., changes clause actions, exercise of contract options when initially priced and evaluated under full and open competition, etc.); and
4. Orders placed under indefinite-quantity contracts when the contract was awarded under the procedures of FAR Subparts 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements in the contract or when the contract was awarded under FAR Subpart 6.3 and the contract’s J&A adequately covered the requirements specified in the order.

Seek legal advice regarding required documentation for Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts, Government Wide Agency Contracts (GWACs), or IDIQ DHS-wide contracts where orders contain requirements for brand name specifications.

## CHAPTER 2

### **AUTHORITIES FOR USING OTHER THAN FULL AND OPEN COMPETITION**

The requirements for documentation and approval vary depending upon the authority that applies. The most common authorities used in DHS are: Only one responsible source and no other supplies or services will satisfy agency requirements; and Unusual and compelling urgency. The following paragraphs describe conditions when each authority may be appropriate, key issues to address, and documentation requirements.

10 U.S.C. 2304(c)(1) or  
41 U.S.C. 253(c)(1)

#### **ONLY ONE RESPONSIBLE SOURCE AND NO OTHER SUPPLIES OR SERVICES WILL SATISFY AGENCY REQUIREMENTS**

Guidance regarding use of this authority is at FAR 6.302-1. It applies when either the required supplies or services are available from only one responsible source that can satisfy agency requirements or, for DoD, NASA, and USCG, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. A J&A must be approved prior to commencing negotiations when proceeding under this authority.

When Appropriate:

This authority is appropriate when impediments to full and open competition are known to exist. It is normally used for follow-on acquisitions when only a specified source is capable of performing the effort. The use of this exception may be appropriate under the following conditions:

1. A unique and innovative unsolicited research proposal is received that does not resemble the substance of a pending competitive acquisition-(see FAR 6.302-1(a)(2)(i), and FAR Subpart 15.6), or, demonstrates a unique capability of the source to provide the particular research services proposed;
2. A follow-on contract is planned for the continued development or production of a system or highly specialized equipment, when award to any other source would result in substantial duplication of costs (which could not be recovered through competition) or unacceptable delays in fulfilling the agency requirements (see FAR 6.302-1(a)(2)(iii));
3. For DoD, NASA, and USCG - A follow-on contract is planned for the continued provision of highly specialized services, when award to any other source would result in substantial duplication of costs or unacceptable delays (see FAR 6.302-1(a)(2)(iii)).

4. The existence of limited rights in data, patent rights, copyrights, secret processes, the control of basic raw material, or similar circumstances, make the supplies or services available from only one source (see FAR 6.302-1(b)(2)).
5. When acquiring utility services, circumstances dictate that only one supplier can furnish the service (see FAR 6.302-1(b)(3)).
6. When there is a reasonable basis to conclude that the Government's minimum needs can only be satisfied by unique supplies or services available from only one with unique capabilities (see FAR 6.302-1(b)(1)).
7. An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer. However, use of brand name or equal descriptions or other purchase descriptions that permit offerors to propose products other than the specific brand name product do not require J&As (FAR 6.302-1(c)).

**Key Points for the Justification:**

The single most important part of any justification citing this authority is the market research, (see FAR Part 10). Only by a thorough review of the marketplace including commercial items and nondevelopmental items can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

If the justification is based upon the absence of required data or the existence of limited rights in data, the justification must thoroughly document the actions taken to obtain missing data or to validate, challenge or otherwise remove this impediment. The mere existence of such rights or circumstances does not in and of itself justify use of this authority. If rights are limited by patents or copyright, authorization and consent procedures may be used to permit offerors to circumvent such restrictions (see FAR Part 27). If limited rights in technical data apply, the Government may negotiate purchase of unlimited rights, royalty provisions, Government purpose license rights, or other arrangement to overcome this impediment (see FAR Subpart 27.4.)

The justification must thoroughly describe the unique capabilities or qualifications of the source that form the basis for the justification. In addition, unless exempted by FAR 5.102(a)(5) and 5.202, potential sole source, including brand name descriptions, actions are required to be published at the Government's business opportunities website called the FedBizOpps (FBO) which is the Governmentwide Point of Entry (GPE)). Within each synopsis, a statement affirming that "all interested sources will be considered" should be included to show the reader that all interested contractors would be afforded an opportunity to demonstrate they can meet the Government's minimum requirements. If more than one company adequately demonstrates the capability to meet requirements (to the satisfaction of the Contracting Officer) then the proposed sole source must be canceled and a competitive acquisition conducted.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained and if an audit is necessary. This determination is made to give the coordinator/approver assurance that you are acting in the best interests of the Government by obtaining a fair and reasonable price despite restricting competition.

When an acquisition contains a brand name or other purchase description which is used to specify a particular brand name, product, or feature of a product peculiar to one manufacturer, it does not provide for full and open competition no matter how many sources are solicited. If the acquisition contains brand name specifications, the contracting offices shall include the justification or documentation required by FAR 6.302-1(c)(redacted as necessary) with the solicitation publication in the FedBizOpps. Solicitations using this authority must be published in the FedBizOpps per FAR 5.102 and any bids or proposals received must be considered. The Office of Management and Budget (OMB) has specifically directed agencies to reinforce the need to maintain vendor neutral contract specifications, as conveyed in their April 11, 2005 memorandum to Chief Acquisition Officer, Chief Information Officer, and Senior Procurement Executives on the topic, “Use of Brand Name Specifications. The OMB April 2005 memorandum along with the early OMB memorandum, on July 1, 2004, entitled, Software Acquisition, reminds agencies about their responsibilities when procuring software to support agency operations. These memoranda can be found at [www.whitehouse.gov/omb/memoranda](http://www.whitehouse.gov/omb/memoranda).

10 U.S.C. 2304(c)(2) or  
41 U.S.C. 253(c)(2)

### **UNUSUAL AND COMPELLING URGENCY**

Guidance regarding use of this authority is at FAR 6.302-2. It applies when the need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the number of sources solicited is limited to those specified. **The Contracting Officer is obligated to request offers from as many potential sources as practical under the circumstances.** When citing this authority, the J&A may be prepared and approved after contract award or issuance of an undefinitized contract action when preparation and approval prior to award would unreasonably delay the acquisition. (FAR 6.302-2(c)).

DHS and its Components have a special statutory requirement associated with use of this authority. If the contract award facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, the contract period of performance should be limited to the minimum period necessary, and shall not exceed 150 days unless exceptional circumstances apply and justification is approved by the Head of the Contracting Activity or higher approval authority if required by FAR 6.304 or DHS procedures. (See HSAM 3006.302-2(c)(3) for more information.)

#### When Applicable:

This authority is used to provide rapid deployment of supplies and/or services to support time-critical missions. The authority may also be used to extend existing critical service contracts when the award of a follow-on contract has been delayed by conditions that could not have been foreseen, such as protests prior to award. The authority may apply whenever unusual urgency precludes full and open competition and delay of the award would result in serious injury, financial or other, to the Government. Typically, these requirements are granted exceptions from the requirement to publicize the anticipated contract action per FAR 5.202.

#### Key Points for the Justification:

The most critical aspect of these justifications is quantifying the nature of the serious injury. If any delay will place financial obligations on the Government, these costs must be estimated and the basis of the estimate explained in the justification. If potential personnel injuries or loss of life are possible, describe the conditions that create this condition and why no actions other than the planned acquisition could avert these conditions. If the defensive posture of the United States would be seriously jeopardized, explain the impaired defensive capability.

The justification must explain the extent to which competition is limited (one source or multiple sources) and show that competition was obtained to the maximum extent possible given the conditions described in the justification. If the conditions surrounding the acquisition are similar to those cited under exception 1 (i.e., only one responsible source), be sure to detail these competition impediments in the justification to provide additional support for the limitation of competition. Again, market research is critical.

Only by a thorough review of the marketplace including commercial items and nondevelopmental items or services, can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained.

10 U.S.C. 2304(c)(3) or  
41 U.S.C. 253(c)(3)

**INDUSTRIAL MOBILIZATION; OR ENGINEERING, DEVELOPMENTAL, OR  
RESEARCH CAPABILITY; OR EXPERT SERVICES**

Guidance regarding use of this authority is at FAR 6.302-3. It applies when it is necessary to award the contract to a particular source or sources in order to (i) maintain a facility, producer, manufacturer, or other supplier in case of national emergency or to achieve industrial mobilization; (ii) to establish or maintain an essential engineering, research or development capability provided by an educational or non-profit institution or federally funded research and development center; and (iii) to acquire services of an expert or neutral person for any current or anticipated litigation or dispute. When citing this authority, the J&A must be approved prior to commencing negotiations. Note: This is not one of the authorities typically used at the Department.

When Applicable:

FAR 6.302-3(b) lists the following specific situations where the use of this authority may be appropriate:

1. Keep vital facilities or suppliers in business or make them available in the event of a national emergency;
2. Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;
3. Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);
4. Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;
5. Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or its outlying areas; or the United States, its outlying areas, and Canada;
6. Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or

7. Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

**Key Points for the Justification:**

The most important part of justifications citing this authority is demonstrating the need to maintain the capability possessed by the identified source(s).

The justification must thoroughly describe the unique capabilities or qualifications of the designated source that form the basis for the justification. In addition, with rare exceptions these potential sole source actions are required to be published at the Government's business opportunities website called the FedBizOpps. If a contractor challenges the potential sole source action, the contractor must be afforded an opportunity to show it can meet the Government's minimum requirements. If such a showing is made to the satisfaction of the Contracting Officer, then the proposed sole source must be canceled and a competitive acquisition conducted.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained.

If it is inappropriate to pursue actions to foster future competition, be sure to explain why no actions are planned or underway.

Examples for the use of this authority can be found at FAR 6.302-3(b)(3).

10 U.S.C. 2304(c)(4) or  
41 U.S.C. 253(c)(4)  
**INTERNATIONAL AGREEMENT**

Guidance regarding use of this authority is at FAR 6.302-4. It applies when competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written direction of a foreign government reimbursing the Department for the cost of the acquisition supplies and services.

Note: USCG does not have to support contracts using this authority with a (J&A). See FAR 6.302-4(c).

**When Appropriate:**

Whenever we are purchasing supplies or services under an international agreement for non-U.S. customers, this authority may be appropriate. This authority may be used in circumstances such as:

1. When the acquisition is to be reimbursed by a foreign country and that country has specified in written direction, such as a Letter of Offer and Acceptance, that the supplies or services be acquired from a particular firm; or
2. When the planned contract is for supplies to be used, or services to be performed, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

**Key Points for the Justification:**

A copy of the pertinent parts of that documentation that has the effect of restricting competition must be attached to the Justification. Note that FAR 5.202(a)(3) permits an exception to the requirement to publicize the proposed contract action when competition is limited by the terms of an international agreement.

10 U.S.C. 2304(c)(5)

41 U.S.C. 253(c)(5)

**AUTHORIZED OR REQUIRED BY STATUTE**

Guidance regarding use of this authority is at FAR 6.302-5. It applies when statute expressly authorizes or requires the acquisition to be made through another agency or from a specified source; or the agency's need is for a brand name commercial item for authorized resale. When citing this authority, a justification is required and must be approved prior to commencing negotiations. However a J&A is not required under the following conditions:

1. Federal Prison Industries (UNICOR) awards -18 U.S.C. 4124 (see FAR Subpart 8.6);
2. Qualified Nonprofit Agencies for the Blind or other Severely Disabled awards-41 U.S.C. 46-48c (see FAR Subpart 8.7) awards;
3. Government Printing and Binding awards-44 U.S.C. 501-504, 1121 (see FAR Subpart 8.8);
4. Sole source awards under the 8(a) Program 15 U.S.C. 637 (see FAR Subpart 19.8);
5. The Robert T. Stafford Disaster Relief and Emergency Assistance Act awards-42 U.S.C. 5150 (see FAR Subpart 26.2);

**When Applicable:**

The authority of 41 U.S.C. 2304(c)(5) may be used to justify other than full and open competition when the statute authorizes, or requires the procurement to be made from a specified source or sources. A J&A is required for an acquisition that does not satisfy one of the conditions listed in (1) through (5) above.

Sole source awards under the HUBZone Act of 1997 (15 U.S.C. 657a) or the Veterans Benefits Act of 2003 (U.S.C. 657f) while authorized by law, must have a J&A per FAR 6.302-5(c)(2)(ii). When a statute expressly authorizes the procurement to be made from a specified source or sources, but does not require, that the procurement be made from a specified source, the contracting officer shall prepare a J&A and the content shall include the specific statutory cite, along with the 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5) citation.

10 U.S.C. 2304(c)(6)  
41 U.S.C. 253(c)(6)  
**NATIONAL SECURITY**

Guidance regarding use of this authority is at FAR 6.302-6. Use of this authority may be appropriate for certain highly sensitive classified programs. It applies when disclosure of the Government's needs would compromise national security and it is necessary to limit the number of sources who are solicited. When citing this authority, the J&A must be approved prior to commencing negotiations.

**When Applicable:**

This authority may be used when disclosure of the Government's needs would violate security requirements. It should not be used simply because the acquisition is classified or merely because access to classified material will be necessary to submit a proposal or perform the contract. The distinction is the fact that the disclosure of the basic need or overall requirement itself would compromise national security.

**Key Points for the Justification:**

Documentation for this type of program is typically limited to the minimum essential information to establish validity of the justification. The J&A may also be a classified document. Special handling procedures exist for processing such documentation to the reviewing and approval authorities. Only parties with a "need to know" **and** the proper level of security clearance should be permitted access to the documentation. Using this authority does not relieve the Contracting Officer of the requirement to solicit offers from as many potential sources as is practicable. Therefore, the requirements office must work closely with the Contracting Officer to maximize competition.

**The justification must also:**

1. Identify how national security would be compromised if the Department's needs were disclosed in the FedBizOpps synopsis and why the synopsis could not be worded in such a manner that national security would not be compromised;
2. Include a statement on why it is critical for vendors to have access to this classified information to prepare their technical and/or cost proposals and the level of security clearance required;
3. Identify the number and value of the contracts that the justification covers; and
4. Follow any DHS/Component policies, procedures and or guidance regarding contractor access to sensitive/classified information.

10 U.S.C. 2304(c)(7)

41 U.S.C. 253(c)(7)

**PUBLIC INTEREST**

Guidance regarding use of this authority is at FAR 6.302-7. Use of this authority is extremely rare. It applies when the Secretary of Homeland Security determines that the use of full and open competition is not in the public interest for the particular acquisition concerned. This authority may only be used when the Secretary makes a written determination and findings (reference FAR Subpart 1.7) and Congress is notified in writing of this determination not less than 30 days prior to award of the contract. The approval for this authority is not delegated. The Contracting Officer must prepare a justification to support the secretarial determination and may not release the solicitation until the determination has been approved.

**When Applicable:**

This authority may only be used when none of the other authorities is appropriate. The determination may not be made on a class basis.

**Key Points for the Justification:**

Describe the reasons full and open competition is not in the public interest and why no other authority is appropriate for use. Keep in mind that this authority is not typically used, so strong rationale is required.

## CHAPTER 3

### FORMAT OF THE J&A JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (J&A)

DHS is legally required to promote full and open competition; however, there are statutory authorities that allow for the absence of competition ([See \(FAR\) 48 CFR 6.302](#)). The frequent exceptions to competition are (1) Only one source is available; and (2) The requirement has unusual and compelling urgency. This section provides assistance in the preparation of the J&A. It is the customer's responsibility to fill out this justification. There are 12 elements to the J&A ([See \(FAR\) 48 CFR 6.303-2](#)). Each element is addressed below.

#### JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (*Cite authority, e.g., 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7)*)

Pursuant to the requirements of the Competition in Contracting Act (CICA) as implemented by FAR Subpart 6.3 and in accordance with the requirements of FAR 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR 6.303-2 as follows:

1. Agency and Contracting Activity. Identification of the agency and the contracting activity, and specific identification of the document as a Justification for other than full and open competition. Example: The Department of Homeland Security, Office of Procurement Operations, proposes to enter into a contract on a basis other than full and open competition;
- 2.. Nature and/or description of the action being approved. Approval for a sole source, follow-on procurement for supplies, services, maintenance, rework, etc. Example: DHS has a requirement on a sole source basis to upgrade and maintain proprietary software at an estimated cost of \$5,520,000. List the name and address of the proposed contractor(s);
3. Description of Supplies/Services. Describe the supplies or services to be acquired. Provide the estimated total value (including options, if any). Example: The requirement is to provide upgrades and support for XYZ software at a total cost of \$5,520,000. The re-capitalization system software requires upgrades to allow integration of information from BCIS and CBP system with DHS' system. This upgrade will allow DHS to consolidate all the information automatically. The manufacturer is the only one that provides this upgrade and the required support for a smooth transition. (If "Unusual and Compelling Urgency" were cited and the proposed contract action facilitates the response to or recovery from a natural disaster, act of terrorism or other man-made disaster, the period of performance is limited to 150 days unless exceptional circumstances apply. See HSAM 3006.302-2(c)(3));

Period		Unit Price	Total
Base Year	12 mo	\$70,000	\$840,000

Option Year 1	12 mo	\$80,000	\$960,000
Option Year 2	12 mo	\$90,000	\$1,080,000
Option Year 3	12 mo	\$100,000	\$1,200,000
Option Year 4	12 mo	\$120,000	\$1,440,000
			Total \$5,520,000

4. Identification of Statutory Authority Permitting Other Than Full and Open Competition. Cite the authority under one of the “seven exceptions” listed under FAR 6.302. Example: The statutory authority permitting other than full and open competition is 10 U.S.C. 2304(c)(1)(for USCG) or 41 U.S.C.253(c)(1) (for other Components; except TSA) implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”. If "Unusual and Compelling Urgency" is cited, indicate whether or not the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster;

5. Demonstration That the Nature of the Acquisition Require Use of the Authority Cited. This paragraph is one of the most important parts of the J&A and should spell out why you have to restrict competition on this acquisition. If using only one responsible source as your authority, explain in detail the specific requirements (not what the equipment or process is capable of doing), why only one contractor is capable of fulfilling those requirements, and where other proposed contractors fail to meet those requirements. If using “Unusual and Compelling Urgency” as your authority, explain in detail why the urgency was not the result of poor planning. You must paint the full picture of this emergency situation and why it was not the user or contracting office’s inability to plan that turned a normal acquisition into an urgent one. Identify what unique qualifications the proposed contractor has for fulfilling the contract requirements. Example: This requirement is a modification to existing software that was designed by XYZ contractor. The existing software is proprietary and only XYZ may make the modifications. If "Unusual and Compelling Urgency" is cited and the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, explain any exceptional circumstances requiring a period of performance beyond 150 days. See HSAM 3006.302-2(c)(3), including requirement for HCA approval of the J&A;

6. Description of efforts made to ensure that offers are solicited from as many potential sources as is practicable. The description should include whether a FedBizOpps notice was or will be publicized, as required by FAR Subpart 5.102(a)(6) and 5.2, and if not, which exception under FAR 5.202 applies. If an announcement has already been made in FedBizOpps, give the date of issuance;

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable. This paragraph should always begin with a sentence similar to: “The contracting officer determines that the anticipated price(s) will be fair and reasonable based on....” You may have information, such as, commercial pricelists or

prior acquisition history that will help the contracting officer determine the anticipated cost is fair and reasonable (FAR Subpart 15.4);

8. **Description of Market Research.** Market Research is required by FAR Part 10. Describe the results of your market research. Example: The internet was searched for a list of contractors that could provide the software or compatible software that would work with XYZ software. The market research showed that only XYZ could provide the upgrade and there are no other distributors but the manufacturer. If no market research was conducted, provide a reason for its absence. On a sole source acquisition, the only possible way you can state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here. This is also the section of the J&A to describe the circumstances for acquiring a patented or copyrighted product on the representation of the intellectual property holder that has not been licensed for resale;

9. **Any Other Facts Supporting the Use of Other Than Full and Open Competition.** You must explain why technical data packages, specifications, SOW, or purchase descriptions are not suitable for full and open competition. Discuss why your requirement cannot be modified to enhance competition. If you are contending only one source can provide your need, you must provide information why and describe the extent to which the Government will be harmed if not acquired from that vendor. Example: Your requirement is for modification of a software package designed by XYZ Corporation. If XYZ does not do the modification, the new contractor will have to re-write two-thirds of the existing software to make the modification. In this case, you must provide an estimate of the cost to the Government that would be duplicated and how it was derived. If using exception FAR 6.302-2, data, estimated cost, or other rationale as to the extent and nature of the harm is not all safety concerns only those that maybe life threatening;

10. **A Listing of the Sources, if Any, That Expressed, in Writing, an Interest in the Acquisition.** Example: A synopsis was issued in the CBD on 12/3/2000 requesting that parties express their interest in writing to the contracting officer. Only XYZ Corporation responded;

11. **A Statement of the Actions, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required.** Include a statement of actions taken or will be taken to increase competition for future acquisitions of the same item/service. Will the Government revise overly technical specifications; acquire data rights, drawings, etc.? An example of the statement of actions is as follows: "The USCG is replacing motors on all boats that are clockwise to counter clockwise rotation. Only one source can provide clockwise rotation motors. Once replaced, market research shows that a minimum of 20 manufacturers will be able to compete for this requirement. Any subsequent requirements will be acquired with counter clockwise rotation." If urgent and compelling circumstances are being relied upon, is the agency working on a fully competitive procurement to satisfy longer term needs that will be conducted at the earliest opportunity? If using "Unusual and



\* This format is not required for proposed action under \$100K, however the Contracting Officer is responsible for approval of sole source documentations, including brand name specifications (See FAR 5.102, 6.303-1, 8.405-1, 11.105, 13.106-1 and 13.501, and implementing HSAM chapters.)

\*\*For a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, approval by the Head of the Contracting Activity unless a higher authority is required. This authority is not delegable.

## CHAPTER 4

### APPROVAL OF J&As

For actions not exceeding \$550,000\*, the Contracting Officer's certification required by FAR 6.303-2(a)(12) will serve as approval unless a higher approving level is established by the Component.

For actions exceeding \$550,000\* but not exceeding \$11,500,000\*, the Contracting Activity Competition Advocate is the final approving official. If the Contracting Activity does not have a Competition Advocate appointed by the Component, the Department's Senior Competition Advocate will be the final approving official.

For actions of \$11,500,000 but not exceeding \$57,000,000 (\$78,500,000 for the USCG), the Component Competition Advocate is the final approving official and approval by the Head of the Contracting Activity (HCA) will be required.

For actions exceeding \$57,000,000, (\$78,500,000 for the USCG), the Department's Chief Procurement Officer is the final approving official.

#### NOTE:

Each review must be prepared by lower level approval(s), e.g., for actions over \$57 million, all approvals (Contracting Officer, Component Competition Advocate and Head of the Contracting Activity) are also required. If any approval required is not received, the acquisition shall not proceed, except for acquisitions between \$550,000\* and \$11.5 million\* where the Contracting Activity's Competition Advocate is not available and the Departmental Competition Advocate agrees to sign the approval (see FAR 6.304(a)(2)).

\*For a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, approval by the Head of the Contracting Activity unless a higher authority is required. This authority is not delegable.

## CHAPTER 5

### ACRONYMS & DEFINITIONS

#### ACRONYMS

<b>CICA:</b>	<b>Competition in Contracting Act</b>
<b>D&amp;F:</b>	<b>Determination &amp; Findings</b>
<b>HSAR:</b>	<b>Homeland Security Acquisition Regulation</b>
<b>HSAM:</b>	<b>Homeland Security Acquisition Manual</b>
<b>FAR:</b>	<b>Federal Acquisition Regulation</b>
<b>HCA:</b>	<b>Head of the Contracting Activity</b>
<b>J&amp;A:</b>	<b>Justification &amp; Approval</b>
<b>SOW</b>	<b>Statement of Work</b>

## DEFINITIONS

**Competition:** When used in relation to the award of a contract, competition includes both “full and open competition” and other types of competition between a limited number of sources. A justification and approval is normally required when only a limited number of responsible sources are permitted to compete for contract award.

**Competition Advocate:** An individual designated by the Component to serve as an advocate for competition for the procuring activity in accordance with Section 20 of the Office of Federal Procurement Policy Act. The Competition Advocate promotes “full and open competition” and challenges barriers to such competition, and fulfills the duties and responsibilities set forth in FAR Subpart 6.5. A list of DHS and Component Competition Advocates may be found on DHSONline within the Acquisition, Acquisition Policy and Legislation page at: <https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=98621>

**Class Justification & Approval:** A J&A providing authority for a class (or group) of contracting actions for the same or related supplies or services that require essentially identical justifications. The Contracting Officer must make a written determination that an individual contract action may be awarded within the scope of a class J&A before such actions are awarded (FAR 6.303-1(c)). **Note:** This type of J&A is not commonly used.

**Department Competition Advocate:** An individual designated by the Chief Procurement Officer to serve as an advocate for competition for the agency in accordance with Section 20 of the Office of Federal Procurement Policy Act. The job of the Competition Advocate is to promote “full and open competition” and challenge barriers to such competition, as well as fulfill the duties and responsibilities as delineated in FAR Subpart 6.5.

**Full & Open Competition:** When used with respect to contract actions, means that all “responsible” sources are permitted to compete (FAR Subpart 6.1). Small business set-asides, 8(a) competitions, and so forth are considered full and open competition (FAR Subpart 6.2) after exclusion of services.

**International Agreement:** An agreement between the United States and a foreign government or international organization. An international agreement may be a treaty, Letter of Offer and Acceptance, Memorandum of Agreement, etc.

**Justification & Approval (J&A):** A written and approved document explaining the reasons for the sole source or limited competition contract action that does not provide an opportunity for all responsible sources to submit proposals.

**Market Research:** Approach used to collect and analyze information about capabilities within the market, before acquiring goods and services to determine if sources exist to meet the agency's requirements or whether or not commercial items or nondevelopment items either exist or can be modified to meet the agency's needs.

**Responsible:** When used in reference to making award to a prospective contractor (i.e., the offeror selected for award), a "responsible" contractor must: (a) have adequate financial resources, or the ability to obtain them; (b) be able to comply with the required or proposed delivery/performance schedule; (c) have a satisfactory performance record; (d) have a satisfactory record of integrity and business ethics; (e) have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (f) have the necessary production, construction, technical equipment and facilities, or the ability to obtain them; and (g) be otherwise qualified and eligible to receive an award under the applicable laws in regulations. In short, a responsible contractor is one who is capable of performing the contract and who has a satisfactory record of past performance and integrity (reference FAR 9.104-1). In the context of "full and open competition", the Government is generally prohibited from predetermining the responsibility of prospective offerors and thereby limiting competition to a pre-selected group.

**Sole Source:** A contract action that is entered into, or proposed to be entered into for the purchase of supplies or services, after soliciting and negotiating with only one source.

**Synopsis:** A notice published in the FedBizOpps for the purposes of identifying the Government's requirements as potential business opportunities (preaward) (e.g. Sources Sought, Presolicitation Notice) or for those requirements, which have been awarded (postaward) (e.g. Post Award Synopses). The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Preaward synopses are typically required for open market purchases that will exceed \$25K. When the acquisition includes a brand name description, the Contracting Officer shall include the justification or documentation with the solicitation when published in the FedBizOpps (See FAR 5.102(a)(6)). For post-award synopses and notices, reference FAR Subpart 5.3 and HSAM Subpart 3005.3.