



DEPARTMENT OF THE ARMY
HUMPHREYS ENGINEER CENTER SUPPORT ACTIVITY
HUMPHREYS ENGINEER CENTER
7701 TELEGRAPH ROAD
ALEXANDRIA, VA 22315-3860

REPLY TO
ATTENTION OF:

CEHEC-CT (715)

6 APR 2000

MEMORANDUM FOR All HQUSACE, HECSA, WRSC and 249th Engineer Battalion
(Prime Power) Team Members

SUBJECT: Procurement Management Memorandum of Instruction (PMOI# 715-00-01), for
Other Than Full and Open Competition, Sole Source Justification and Approvals (J&A)

1. References:

- a. Federal Acquisition Regulation (FAR), Part 6, Subpart 6.3.
 - b. Department of Defense Federal Acquisition Regulation Supplement (DFARS), Part 6, Subpart 6.3.
 - c. Army Federal Acquisition Regulation Supplement (AFARS), Part 6, Subpart 6.3.
 - d. Corps of Engineers Federal Acquisition Regulation Supplement (EFARS), Part 6, Subpart 6.3.
2. This memorandum reiterates procedures and guidance for writing sole source Justification and Approval (J&A).

3. Procedures.

a. Before a contract can be awarded to a sole source contractor, it must be determined that full and open competition cannot be obtained. In accordance with the Competition in Contracting Act (CICA), full and open competition is the required government acquisition process. Full and Open Competition is the process by which all responsible offerors are allowed to compete. There are seven (7) circumstances permitting other than full and open competition. If circumstances arise that use one of these exceptions, a Justification and Approval will be required in the format at enclosure 1.

Supersedes HECSA PIL #90-1, dated 15 April 1990.

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b. Contracting without providing for full and open competition will be considered improper on the basis of:

- (1) lack of advance planning by the requiring activity or
- (2) concerns related to the amount of funds available for the acquisition (e.g., funds expiring)

c. The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition:

- (1) Only one (1) responsible source and no other supplies or services will satisfy agency requirements. FAR 6.302-1
- (2) Unusual and Compelling Urgency. FAR 6.302-2
- (3) Industrial mobilization; engineering, developmental, or research capability; or expert services. FAR 6.302-3
- (4) International Agreement. FAR 6.302-4
- (5) Authorized or Required by Statute. FAR 6.302-5
- (6) National Security. FAR 6.302-6
- (7) Public Interest. FAR 6.302-7

d. Before a contract may be entered into under one of the exceptions listed above, a Justification and Approval (J&A) must be prepared in writing (see format at encl 2). The J&A must be certified as to the accuracy and completeness of the justification, and approved by the approval levels set forth in EFARs 6.304 as shown below.

- | | |
|-----------------------------|--|
| \$100,000 - \$500,000 | - One level above the Contracting Officer (Special Competition Advocate) or Chief of Contracting |
| \$500,000 - \$10,000,000 | - Special Competition Advocate for the procuring activity designated pursuant to FAR 6.501 |
| \$10,000,000 - \$50,000,000 | - Special Competition Advocate at HQUSACE ATTN: CEPR for approval by the PARC |

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Over \$50,000,000

- Deputy Assistant Secretary of the Army
(Procurement) pursuant to Acquisition Letter
(AL) 95-6

e. A Justification and Approval is not to be used as a means to avoid the normal acquisition process. J&As will be subject to review by both contracting and legal personnel. J&As not meeting the minimum standards of this review will be returned without action for revision in accordance with written comments provided, and resubmission as appropriate, lengthening the procurement lead time. A J&A is a stand-alone legal document which, if challenged, must withstand the scrutiny of GAO, Federal Courts or Congress, and therefore must fully justify the use of the exception cited.

f. For further information and access to the above regulations, the following web sites can be accessed: <http://www.arnet.gov/far>, <http://www.deskbook.osd.mil>, and <http://acqnet.sarda.army.mil/library>.

2 Encls


CHARLES B. RAU
Director