

## Contract Formation

# Activity 11: Limiting Competition

*Exceptions to the requirement for obtaining full and open competition.*

**Related Flow Charts:** [Flow Chart 11](#)

**Related Courses:** LC 055: Competition Requirements

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### Part A: Simplified Acquisition Procedures

Tasks	FAR Reference(s)	Additional Information
1. For acquisitions not exceeding the simplified acquisition threshold (SAT), determine if only one source is reasonably available.	FAR 13.106-1(b)(1) For purchases not exceeding the simplified acquisition threshold [soliciting from a single source].	Determine if only one source is reasonably available because of factors such as the: <ul style="list-style-type: none"><li>• Urgency of the requirement;</li><li>• Existence of exclusive licensing agreements for the product or service required;</li><li>• Brand name; and</li><li>• Need to provide for industrial mobilization.</li></ul>
1a. If only one source is solicited and the acquisition does not exceed the SAT, include additional statements explaining the absence of competition.	FAR 13.106-3(b)(3)(i) Special situations [file documentation and retention].	This does not apply to an acquisition of utility services available from only one source.
1b. Document the contract file.	FAR 13.106-3 Award and documentation [soliciting competition, evaluation of quotations or offers, award and documentation	Keep documentation to a minimum.

Tasks	FAR Reference(s)	Additional Information
2. For simplified acquisitions under the authority of FAR Subpart 13.5—Simplified Procedures for Certain Commercial Items, determine if a sole source acquisition is appropriate.	FAR 13.501(a) Sole source (including brand name) acquisitions [special documentation requirements].	
2a. Prepare a sole source (including brand name) justification.	FAR 13.501(a)(1)(ii) Sole source (including brand name) acquisitions [special documentation requirements].	Prepare the sole source (including brand name) justification using the format at FAR 6.303-2, modified to reflect that the procedures in FAR subpart 13.5 were used in accordance with 41 U.S.C. 1901 or the authority of 41 U.S.C. 1903.
2b. Obtain any required approval of the sole source justification.	FAR 13.501(a)(2) Sole source (including brand name) acquisitions [special documentation requirements].	<p>Each sole source justification must be approved in writing. For a proposed contract:</p> <ul style="list-style-type: none"> <li>Exceeding \$150,000, but not exceeding \$650,000, the contracting officer's certification serves as approval unless a higher approving level is established in agency procedures.</li> <li>Exceeding \$650,000, but not exceeding \$12.5 million, the Competition Advocate for the procuring activity must approve the justification. This authority is not delegable.</li> <li>Exceeding \$12.5 million, but not exceeding \$62.5 million, or for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, the head of procuring activity or the official described in FAR 6.304(a)(3) or (a)(4) must approve the justification and approval. The authority is not delegable.</li> <li>Exceeding \$62.5 million, or for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, the official described in FAR 6.304(a)(4) must approve justification and approval. This authority is not delegable except as provided in FAR 6.304(a)(4).</li> </ul>

Tasks	FAR Reference(s)	Additional Information
2c. Make the justification publicly available.	FAR 13.501(a)(1)(iii) Sole source (including brand name) acquisitions [special documentation requirements]. FAR 13.501(a)(1)(iv) Sole source (including brand name) acquisitions [special documentation requirements].	Make publicly available brand name justifications with the solicitation, in accordance with FAR 5.102(a)(6). Make publicly available the justifications (excluding brand name) required by FAR 6.305(a) within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award, in accordance with FAR 6.305 procedures at paragraphs (b), (d), (e), and (f).
2d. Document the contract file.	FAR 13.501(b) Contract file documentation [special documentation requirements].	The contract file must include: <ul style="list-style-type: none"> <li>• A brief written description of the procedures used in awarding the contract, including the fact that the procedures in FAR subpart 13.5 were used;</li> <li>• The number of offers received;</li> <li>• An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and</li> <li>• Any approved sole source justification.</li> </ul>

### Part B: Competition Excluding Particular Sources

Tasks	FAR Reference(s)	Additional Information
1. Determine if full and open competition after excluding one or more sources is appropriate.	FAR 6.2 Full and open competition after the exclusion of sources [competition requirements].	An agency may exclude a source or sources: <ul style="list-style-type: none"> <li>• To establish or maintain an alternative source or sources of supply if the agency head determines to do so in accordance with FAR 6.202(a).</li> <li>• To fulfill statutory requirements related to the Small Business Act. No separate justification or determination and findings (D&amp;F) is required.</li> <li>• To fulfill statutory requirements related to 8(a) competition. No separate justification or D&amp;F is required.</li> <li>• To fulfill statutory requirements related to the HUBZone Act of 1997. No separate justification or D&amp;F is required.</li> <li>• To fulfill the statutory requirements related to the</li> </ul>

Tasks	FAR Reference(s)	Additional Information
		<p>Veterans Benefits Act of 2003 (related to Service-Disabled Veteran-Owned Small Businesses (SDVOSB) concerns). No separate justification or D&amp;F is required.</p> <ul style="list-style-type: none"> <li>To fulfill statutory requirements related to 15 U.S.C. 637(m) (related to Economically Disadvantaged Woman-Owned Small Business (EDWOSB) and Women-Owned Small Business (WOSB) concerns). No separate justification or D&amp;F is required.</li> </ul> <p>To fulfill statutory requirements related to 42 U.S.C. 5150 (related to local firms during a major disaster).</p>

2. Prepare a D&F when full and open competition after excluding sources is required to establish or maintain an alternative source or sources of supply or establish/maintain an alternative source or sources of supply.

FAR 6.202 Establishing or maintaining alternative sources [full and open competition after exclusion of sources].

Prepare the D&F for agency head or designee signature based on a determination that excluding sources will:

- Increase or maintain competition and likely result in reduced overall costs;
- Be in the interest of national defense in case of a national emergency or industrial mobilization;
- Be in the interest of national defense in establishing or maintaining 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;
- Ensure the continuous availability of a reliable source of supplies or services;
- Satisfy projected needs based on a history of high demand; or
- Satisfy a critical need for medical, safety, or emergency supplies.

Class D&Fs are not authorized.

## Part C: Other Than Full and Open Competition

Tasks	FAR Reference(s)	Additional Information
<p>1. Determine if supplies or services are available only from a single source or only a limited number of sources can satisfy the requirement.</p>	<p>FAR 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements [circumstances permitting other than full and open competition].</p>	<p>The identification must be fully supported by market research. When the required supplies or services are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, 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:</p> <ul style="list-style-type: none"> <li>• Supplies or services offered in an unsolicited proposal see the requirements in Activity 6, Part C; and</li> <li>• Supplies that may be deemed to be available only from the original source in the case of certain follow-on development or production contracts when it is likely that award to another source would result in substantial duplication of cost or unacceptable delays.</li> </ul>
<p>2. Determine if the acquisition, due to unusual or compelling urgency, warrants precluding full and open competition.</p>	<p>FAR 6.302-2 Unusual and compelling urgency [circumstances permitting other than full and open competition].</p>	<p>Data from the requiring activity must fully support the urgency of the requirement and that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.</p> <p>Do not cite this justification if compelling urgency results solely from lack of advance planning by the requiring activity and/or pending expiration of funds.</p> <p>Request offers from as many sources as practicable under the circumstances.</p>

Tasks	FAR Reference(s)	Additional Information
<p>3. Identify an acquisition situation where restricting competition is necessary to provide for industrial mobilization, establish or maintain an essential engineering, developmental, or research capability, or acquire neutral or expert services.</p>	<p>FAR 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services [circumstances other than full and open competition].</p>	<p>Data from the requiring activity must fully support an evaluation that full and open competition need not be provided for because it is necessary to award the contract to a particular source or sources in order to:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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; or</li> <li>• Acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.</li> </ul>
<p>4. Identify an acquisition situation where an international agreement restricts competition to a specified source or sources.</p>	<p>FAR 6.302-4 International agreement [circumstances permitting other than full and open competition].</p>	<p>Circumstances when this authority may be used include:</p> <ul style="list-style-type: none"> <li>• When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm; or</li> <li>• When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be used.</li> </ul> <p>Consider the limitations identified at FAR 6.302-4(c).</p>

Tasks	FAR Reference(s)	Additional Information
<p>5. Identify an acquisition situation where contracting without full and open competition is authorized or required by statute.</p>	<p>FAR 6.302-5 Authorized or required by statute [circumstances permitting other than full and open competition].</p>	<p>Acquisition situations where contracting without full and open competition due to statutory requirements include situations when:</p> <ul style="list-style-type: none"> <li>• A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or</li> <li>• The agency's need is for a brand name commercial item for authorized resale.</li> </ul> <p>This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:</p> <ul style="list-style-type: none"> <li>• Federal Prison Industries (UNICOR)—18 U.S.C. 4142 (see subpart 8.6).</li> <li>• Qualified nonprofit agencies for the blind or other severely disabled—41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7).</li> <li>• Government Printing and Binding—44 U.S.C. 501-504, 1121 (see subpart 8.8).</li> <li>• Sole source awards under the 8(a) Program (15 U.S.C. 637), but see 6.303 for requirements for justification and approval of sole-source 8(a) awards over \$22 million (See subpart 19.8).</li> <li>• Sole source awards under the HUBZone Act of 1997—15 U.S.C. 657a (see 19.1306).</li> <li>• Sole source awards under the Veterans Benefits Act of 2003 (15 U.S.C. 657t).</li> <li>• Sole source awards under the WOSB Program—15 U.S.C. 637(m) (see 19.1505).</li> </ul> <p>Consider the limitations identified at FAR 6.302-5(c).</p>

Tasks	FAR Reference(s)	Additional Information
<p>6. Identify an acquisition situation where restricting competition is necessary because disclosure of the requirement would compromise national security.</p>	<p>FAR 6.302-6 National security [circumstances permitting other than full and open competition].</p>	<p>Information from the requiring activity must fully support an evaluation that disclosure of the agency's requirement would compromise the national security (e.g., would violate security requirements). It must not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.</p> <p>Do not construe this authority as automatically allowing sole-source procurement. Select methods for identifying sources and soliciting offers from them under conditions that will protect the national security.</p> <p>Request offers from as many potential sources as is practicable under the circumstances.</p>
<p>7. Identify an acquisition situation where the public interest will be otherwise served by restricting competition.</p>	<p>FAR 6.302-7 Public interest [circumstances permitting other than full and open competition].</p>	<p>Market research and other available information must fully support this evaluation. Only consider this authority for restricting competition when none of the authorities in FAR 6.302 (Tasks 3-8 above) apply.</p> <p>A written justification is required in accordance with FAR 1.7. Class D&amp;Fs are not authorized.</p> <p>If approved, Congress must be notified not less than 30 days before contract award.</p>
<p>8. Justify the need to negotiate or award any contract without full and open competition.</p>	<p>FAR 6.303-1 Requirements [justifications]. FAR 6.303-2 Content [justifications].</p>	<p>Each justification must contain sufficient facts to justify the use of the authority cited.</p> <p>The cognizant contracting officer must certify that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.</p>

Tasks	FAR Reference(s)	Additional Information
<p>9. Obtain any required approval of a justification for other than full and open competition.</p>	<p>FAR 6.304 Approval of the justification [other than full and open competition].</p>	<p>Except when competition is restricted based on the public interest, the justification for other than full and open competition must be approved in writing. For a proposed contract:</p> <ul style="list-style-type: none"> <li>• Not exceeding \$650,000, the contracting officer's certification of the justification will serve as approval unless a higher approving level is established in agency procedures.</li> <li>• Over \$650,000 but not exceeding \$12.5 million, the Competition Advocate for the procuring activity must approve the justification. This authority is not delegable.</li> <li>• Over \$12.5 million but not exceeding \$62.5 million or for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, the Head of the Procuring Activity, or a designee who is a general or flag officer or is serving in a position in grade GS-16 or above (or equivalent) must approve the justification.</li> <li>• Over \$62.5 million, or, for DoD, NASA, and the Coast Guard, over \$85.5 million, the Senior Procurement Executive of the agency must approve the justification. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.</li> </ul> <p>Any justification to limit competition in the public interest, regardless of dollar amount, is considered approved when the Secretary or agency head makes the determination required at FAR 6.302-7(c)(1).</p> <p>When applicable, a class justification for other than full and open competition must be approved in writing in accordance with agency procedures. The approval level is determined by the estimated total value of the class.</p> <p>The estimated dollar value of all options shall be included in determining the approval level of a justification.</p>

Tasks	FAR Reference(s)	Additional Information
10. Publicize the justification.	FAR 6.305 Availability of the justification.	The justification must be made publically available at the Governmentwide Point of Entry (GPE) for a minimum of 30 days.

**Part D: Considering Unsolicited Proposals**

Tasks	FAR Reference(s)	Additional Information
1. Forward unsolicited proposals to the agency point of contact for unsolicited proposals.	FAR 15.606 Agency procedures [unsolicited proposals].	<p>Follow agency procedures for controlling the receipt, reproduction, and distribution of unsolicited proposals.</p> <p>An unsolicited proposal is a written proposal for a new or innovative idea that is submitted on the initiative of the offeror and not in response to a government request or announcement of any kind. Advertising material, commercial item offers, contributions, or routine correspondence are not unsolicited proposals.</p> <p>It should include the elements required by FAR 15.605, but most importantly, it should be signed by a person authorized to represent and contractually obligate the offeror.</p>

Tasks	FAR Reference(s)	Additional Information
<p>2. As the agency point of contact, determine if the unsolicited proposal merits comprehensive evaluation.</p>	<p>FAR 15.606-1 Receipt and initial review [unsolicited proposals].</p>	<p>Make the determination considering In making the determination, consider whether the proposal:</p> <ul style="list-style-type: none"> <li>• Is a valid unsolicited proposal, meeting the requirements of FAR 15.603(c);</li> <li>• Is suitable for submission in response to an existing agency request or announcement (see FAR 15.602);</li> <li>• Is related to the agency mission;</li> <li>• Contains sufficient technical and cost information for evaluation;</li> <li>• Has overall scientific, technical, or socioeconomic merit;</li> <li>• Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and</li> <li>• Complies with the marking requirements of FAR 15.609.</li> </ul> <p>If the proposal meets these requirements, promptly acknowledge receipt and process the proposal.</p>
<p>3. As the agency point of contact, reject an unsolicited proposal that does not merit comprehensive evaluation.</p>	<p>FAR 15.606-1(c) Receipt and initial review.</p>	<p>Promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal. The rejection should include information such as the following:</p> <ul style="list-style-type: none"> <li>• How the agency interprets the proposal;</li> <li>• Why it is not being evaluated; and</li> <li>• The names of other government offices or agencies that might consider the proposal (if applicable).</li> </ul>
<p>4. As the agency point of contact, request any additional information from the offeror necessary to support a comprehensive evaluation of the unsolicited proposal.</p>	<p>FAR 15.605 Content of unsolicited proposals.</p>	<p>Unsolicited proposals should contain the information, such as:</p> <ul style="list-style-type: none"> <li>• Basic information including: <ul style="list-style-type: none"> <li>○ Offeror's name and address and type of organization;</li> <li>○ Names and telephone numbers of offeror technical and business points of contact;</li> </ul> </li> </ul>

Tasks	FAR Reference(s)	Additional Information
		<ul style="list-style-type: none"> <li>○ Identification of proprietary data to be used only for evaluation purposes;</li> <li>○ Names of other agencies or parties receiving the proposal or funding the proposed effort;</li> <li>○ Date of submission; and</li> <li>○ Signature of a person authorized to represent and contractually obligate the offeror.</li> </ul> <ul style="list-style-type: none"> <li>● Technical information including: <ul style="list-style-type: none"> <li>○ Concise proposal title and abstract (approximately 200 words);</li> <li>○ A reasonably complete discussion of the technical effort and agency benefit;</li> <li>○ Information on the key personnel; and</li> <li>○ Any need for agency support (e.g., government property or personnel resources).</li> </ul> </li> <li>● Supporting information including: <ul style="list-style-type: none"> <li>○ Proposed price or total estimated cost;</li> <li>○ Period of time the proposal is valid;</li> <li>○ Type of contract preferred;</li> <li>○ Proposed duration of effort;</li> <li>○ Brief description the offeror's past experience and performance;</li> <li>○ Other applicable information; and</li> <li>○ The names and telephone numbers of agency personnel already contacted.</li> </ul> </li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>5. As the agency point of contact, forward the unsolicited proposal to the most likely requiring activity and/or other qualified evaluators.</p>	<p>FAR 15.606-2(a) Evaluation [agency procedures].</p> <p>FAR 15.608 Prohibitions [unsolicited proposal].</p> <p>FAR 15.609 Limited use of data [unsolicited proposals].</p>	<p>When forwarding an unsolicited proposal for evaluation:</p> <ul style="list-style-type: none"> <li>• Attach or imprint on each unsolicited proposal the legend required by FAR 15.609(d) unless the offeror clearly states in writing that no restrictions are imposed on disclosure.</li> <li>• Direct evaluators to consider the following factors: <ul style="list-style-type: none"> <li>○ Unique, innovative, and meritorious methods, approaches, or concepts;</li> <li>○ Overall scientific, technical, or socioeconomic merits;</li> <li>○ Potential contribution of the effort to the agency's specific mission;</li> <li>○ The offeror's capabilities, related experience, and other factors related to achieving the proposal objectives;</li> <li>○ The qualifications, capabilities, and experience of the proposed personnel critical to achieving the objectives; and</li> <li>○ The realism of the proposed cost.</li> </ul> </li> <li>• Direct evaluators to notify the agency point of contact of their recommendations when the evaluation is completed.</li> <li>• Request each evaluator to submit a written recommendation when the evaluation is completed.</li> <li>• Do not submit unsolicited proposals for review by persons outside the Government if: <ul style="list-style-type: none"> <li>○ No permission has been received from the offeror for such release; or</li> <li>○ The outside persons fail to certify that they will not disclose proposal data.</li> </ul> </li> </ul>

Tasks	FAR Reference(s)	Additional Information
<p>6. As the agency point of contact, determine whether to accept or reject the unsolicited proposal.</p>	<p>FAR 15.607 Criteria for acceptance and negotiation of an unsolicited proposal.</p>	<p>Consider agency evaluations, market research, and other available information. Normally, an unsolicited proposal should be rejected if:</p> <ul style="list-style-type: none"> <li>• Its substance: <ul style="list-style-type: none"> <li>○ Is available to the Government without restriction from another source;</li> <li>○ Closely resembles a pending competitive acquisition requirement;</li> <li>○ Does not relate to the activity's mission; or</li> <li>○ Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.</li> </ul> </li> <li>• Adequate funds are not available to accept all or part of the proposal.</li> </ul>
<p>7. Complete the documentation needed to negotiate an acceptable unsolicited proposal on a sole source basis.</p>	<p>FAR 15.607 Criteria for acceptance and negotiation of an unsolicited proposal.</p>	<p>Prepare the justification following the guidelines at FAR 6.303 and FAR 6.302. Each justification must contain sufficient facts to justify the use of the authority cited.</p> <p>The cognizant contracting officer must certify that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.</p> <p>Prepare a synopsis when required following the requirements of FAR 5.202(a)(8).</p> <p>The agency technical office sponsoring the contract furnishes the necessary funds.</p>

Tasks	FAR Reference(s)	Additional Information
<p>8. Notify the offeror that the Government has rejected its unsolicited proposal.</p>	<p>FAR 15.607 Criteria for acceptance and negotiation of an unsolicited proposal.  FAR 15.608 Prohibitions [unsolicited proposals].</p>	<p>Clearly cite the reasons why the proposal is not being accepted.</p> <p>If the Government decides to competitively solicit offers based on a similar requirement, it must not:</p> <ul style="list-style-type: none"> <li>• Use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.</li> <li>• Disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information may result in criminal penalties for the personnel involved.</li> </ul>