

TOPIC 19
NON-COMPETITIVE ACTIONS
SOLE-SOURCED
EXAMPLE 1

Objectives

To determine if contracting officers:

1. sufficiently justified their decisions to award contracts without competition and
2. pay fair and reasonable prices when awarding contracts without competition.

INTRODUCTION

This guide provides suggested audit steps for determining whether an agency effectively executed Sole Sourced Actions. The guide expands upon the researchable questions associated with Non-Competitive Actions (Topic 19) identified in the *Contract Audit Guide Framework* released in 2009 and updated in 2020 by the Contracting Committee of the Federal Audit Executive Council. The framework provides a construct of issues and researchable questions to consider when planning audits or reviews of contracts. It is the Contracting Committee's intention to issue audit guides for each issue identified in the framework. Audit teams are encouraged to modify this *Non-Competitive Sole Sourced, Example 1* audit guide as appropriate, and to use the guide, in conjunction with other appropriate tools, to assess Sole Sourced Actions.

BACKGROUND

In July 2009, the Office of Management and Budget directed all Federal agencies to reduce the amount of dollars obligated on sole-source contracts. The Government Accountability Office (GAO) found that from 2013 to 2017, one-third of all government-wide contract obligations were made sole-source contracts. Sole-source contracts reduce competition in Government contracting and can prevent the Government from obtaining the best products and services to meet its requirements. Sole-source contracts also put the Government at risk of paying unnecessarily high prices. Competition is the best way to ensure that a contract price is reasonable. Without competition, contracting officers must rely on other price analysis techniques, such as market research, to analyze proposed contract prices. However, in 2014 GAO found that four federal agencies did not leverage man available market research techniques on lower dollar contracts.

GAO also found in 2016 that three federal agencies had limited or no insight into their use of bridge contracts, which are sole-source contracts awarded when an existing contract is set to expire but the follow-on contract is not ready to be awarded, and a solo-source contract is needed to avoid a gap in service.

Several other Offices of Inspector General have reviewed sole source contracting within recent years and found problems with how their Department was awarding sole source contracts. For example, in 2016, one OIG reviewed 34 sole-source contracts awarded by one of its bureaus between 2012 and 2015 and found that 29 of the 34 contract files did not comply with pre-award requirements. This included a lack of sole-source justifications and inadequate sole-source justifications. Additionally, some of the contract files lacked an independent government cost estimate (IGCE), and others included IGCEs that were inadequate to use for price analysis.

Federal Acquisition Regulation (FAR) 6.101(a) states that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts, with certain limited exceptions. FAR 15.402(a) states that contracting officers shall purchase supplies and services from responsible sources at fair and reasonable prices. FAR 15.404-1(b)(2)(ii) states that normally, adequate price competition establishes a fair and reasonable price.

AUDIT STEPS

NOTES:

1. Please refer to Appendix 1: Laws and Federal Acquisition Regulation (FAR) for Non-Competitive Actions-Not Exhaustive as guidance for UCAs
2. Some agencies like the DoD may have supplemental guidance such as the DFARS governing the use of Non-Competitive Actions. Please refer to any supplemental guidance, policies, or procedures governing Non-Competitive Actions that your agency may have.

OBJECTIVE 1: DETERMINE IF THE CONTRACTING OFFICERS SUFFICIENTLY JUSTIFIED THEIR DECISIONS TO AWARD CONTRACTS WITHOUT COMPETITION.

- A. Did the contracting officer prepare a written justification explaining why he or she needed to award the contract without competition? (FAR 6.303-1)
- B. In the written justification, did the contracting officer cite one of the statutory exceptions permitting contracting without competition? (FAR 6.302).
- C. Did the contracting officer obtain the required level of approval to award the contract without competition? (FAR 6.303-1 and 6.304).
- D. Did the contracting officer document that he or she conducted market research to attempt to identify additional sources who could meet the requirement? (FAR 6.303-2(b)(8)).
- E. Did the contracting officer document how he or she intends to remove barriers to competition in the future? (FAR 6.303-2(b)(11)).
- F. If the contract was awarded as an 8(a) sole-source set-aside, was the total anticipated contract value within the dollar limits established by FAR 19.804-3(c)?
- G. Was the contracting officer's explanation for why he or she awarded the contract without competition sufficient?

OBJECTIVE 2: DETERMINE IF THE CONTRACTING OFFICERS PAID FAIR AND REASONABLE PRICES WHEN AWARDING CONTRACTS WITHOUT COMPETITION.

- A. Did the contracting officer prepare a written determination that the contract price was fair and reasonable? (FAR 15.402(a) and 15.406-3(a)(11))
- B. Did the contracting officer determine that the price was reasonable in accordance with proposal analysis techniques included in FAR 15.404?
- C. Was the contracting officer's price reasonableness determination adequate?
- D. Was the contracting officer required to obtain certified cost or pricing data in accordance with FAR 15.403, and if so, did the contracting officer obtain certified cost or pricing data?
- E. Obtain and review the bureau(s) internal reviews over Sole Sourced contracting actions for similar findings in this audit. If repeat findings are identified, this is a monitoring breakdown in

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the GAO Green Book. The recommendation(s) should be tailored towards correcting this breakdown.

Appendix 1: Applicable FAR-Not Exhaustive

CRITERIA

Federal Acquisition Regulation (FAR) Requirements:

FAR 6.302 – Circumstances permitting other than full and open competition. This section states the circumstances that allow the contracting officer to award the contract without full and open competition:

- Only one responsible source and no other supplies or services will satisfy agency requirements.
- Unusual and compelling urgency.
- Industrial mobilization; engineering, developmental, or research capability; or expert services.
- International Agreement.
- Authorized or required by statute.
- National Security.
- Public Interest.

FAR 6.303 Justifications. This section states when a justification to award a contract without competition is required and what the justification should include.

FAR 6.304 Approval of Justification. This section states what level of approval is required for the justification.

FAR 13.501 Special documentation requirements. This section establishes procedures for awarding sole source contracts under Simplified Acquisition Procedures.

FAR 15.402, "Pricing Policy." This states that contracting officer will purchase supplies and services from responsible sources at fair and reasonable prices.

FAR 15.403-1, "Prohibition on obtaining certified cost or pricing data." This states the circumstances when a contracting officer shall not require certified cost or pricing data from the contractor.

FAR 15.403-4, "Requiring certified cost or pricing data." This states that the threshold for obtaining certified cost or pricing data is \$750,000.

FAR 15.404, "Proposal analysis." This section discusses techniques that a contracting officer may use to analyze the contractor's proposed price and determine if the proposed price is fair and reasonable.

FAR 15.406-2, "Certificate of Current Cost or Pricing Data." This section states that when certified cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of

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Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

FAR 19.804-3-c. Sole source 8(a) awards. This section discusses Small Business Administration (SBA) involvement in 8(a) sole source awards.

FAR 19.806. Pricing the 8(a) contract. This section states that the SBA shall obtain certified cost and pricing data from the 8(a) contractor and if the price exceeds a fair market price, then the contract may not be awarded.

FAR 19.805-1 General. This section establishes when an 8(a) sole source award can be made, including establishing dollar thresholds.

FAR 19.808-1 Sole Source (Contract Negotiation). This section states that the SBA may not accept for negotiation a sole source 8(a) contract that exceeds \$22 million unless the requesting agency has completed a justification in accordance with the requirements of FAR 6.303.

FAR 19.811-1 Sole Source (Preparing Contracts). This section states that the SBA 8(a) contract shall be prepared in the same detail as would be required in a contract with a business concern. An SF-26 shall be used as the award form (SF-1442 for construction) as required by FAR 36.701(a), USC to be followed, and items that shall be inserted by SBA. Finally, it states the exemption where a single contract document may be used for both a prime contract and the 8(a) contract in lieu of separate contracts.

FAR 19.811-3 Contract Clauses. (c) The Contracting officer shall insert the clause at 52.219-17 Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

FAR 19.814 Requesting a formal size determination (8(a) sole source requirements). This section states what to do if the size status of an 8(a) participant is called into question.

FAR 19.13 Historically Underutilized Business Zone (HUBZone) Program. This section states that the CO shall consider HUBZone set-asides before considering HUBZone sole source awards or small business set-asides (19.1305), HUBZone sole source before small business set-asides (19.1306), and that the CO shall insert clause 52.219-3 for contracts awarded on a sole-source basis to, HUBZone small business concerns under 19.1305 or 19.1306 (19.1309).

FAR 19.14 Service-Disabled Veteran-Owned Small Business Procurement Program (SDVOSB). This section states that the CO shall consider SDVOSB set-asides before considering SDVOSB sole source awards (19.1405) SDVOSB sole source should be considered before small business set-asides if the listed requirements are met (19.1406), and that the CO shall insert clause 52.219-27 for contracts awarded on a sole source basis to SDVOSB concerns under 19.1405 and 19.1406.

FAR 19.15 Women-Owned Small Business Program (WOSB). This section states that the CO shall consider WOSB on a sole source basis before considering small business set-asides if the listed requirements are met (19.1506), and that the CO shall insert clause 52.219-29 for contracts awarded on a sole source basis to SDVOSB concerns under 19.1505(c) and 19.1506(b).

FAR 52.219-3 Notice of HUBZone Set-Aside or Sole Source Award. The clause that must be inserted for HUBZone Sole source awards.

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FAR 52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. This is the clause that must be inserted for all SDVOSB set-asides, including Sole source set-asides.

FAR 52.219-29 Notice of Set-Aside or Sole Source Award for Economically Disadvantaged Women-Owned Small Business Concerns. This is the clause that must be inserted for Economically Disadvantaged WOSB Sole source awards.

FAR 52.219-30 Notice of Set-Aside or Sole Source Award for Women-Owned Small Business Concerns Eligible under the Women-Owned Small Business Program. This is the clause that must be inserted for WOSB Sole source awards.