

November 16, 2001

Department of the Interior Acquisition Policy Release 2002 – 2

Subject: Departmental Class Justification and Approval to Limit Competition and Waiver of Publication Requirements for Acquisitions in Response to the National Emergency Declared as a Result of the Recent Terrorist Attacks.

1. Purpose: To transmit a copy of the subject Class Justification and Approval and Waiver document. This DIAPR will only be transmitted electronically; accordingly a copy should be printed and filed locally with copies of the DIAR.

2. Effective date: Immediately

3. Background: On September 14, 2001, President George W. Bush signed a Declaration of National Emergency by Reason of Certain Terrorist Attacks. In that Proclamation, President Bush declared that a National Emergency has existed since September 11, 2001. This National Emergency has given rise to a continuing urgent need for supplies and services of an unusual and compelling nature since September 11.

Over the past several days the Office of Acquisition and Property Management polled the members of the Acquisition Management Partnership and found that several bureaus/offices thought it would be helpful to have a Department-wide Class J&A. Some DOI units are already playing a role in the Federal response to this National Emergency. We are providing the necessary authority to support those units and any additional activities that may arise in response to the national emergency.

In responding to this emergency DOI contracting activities will need to act with appropriately accelerated procedures. To empower and accelerate the acquisition process supporting this national emergency, DOI's Senior Procurement Executive has signed a class justification and approval for other than full and open competition per FAR Part 6 and a waiver to FAR Part 5 publication requirements. This is available for use by any DOI contracting activity for acquisitions meeting the criteria set forth in the document. For those contracting activities that do not have emergency needs, these authorities do not apply.

4. Action required: Bureau Procurement Chiefs shall ensure that the attached document is widely disseminated within their acquisition community and that the authority provided in the document is used appropriately by warranted contracting officers.

5. Additional Information: The attachment is provided in MSWord format to make it available for inclusion in the contract file. If you have questions about this matter, please contact John 'Pete' Peterson by telephone at (202) 208-7269 or by email to J_K_Peterson@ios.doi.gov

/s/ Debra E. Sonderman

Debra E. Sonderman, Director
Office of Acquisition and Property Management

**United States Department of the Interior
Class Justification and Approval for
Other Than Full and Open Competition
And
Waiver of Publication Requirements**

Federal law (41 U.S.C.253(c)(2)) authorizes under certain conditions, including unusual and compelling urgency, contracting without providing for full and open competition. Exceptions are also authorized to the statutory requirements in the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), to provide public notice of contracting opportunities. On September 11, 2001, terrorist attacks initiated a national emergency as evidenced by Presidential Proclamation 7463 entitled, "Declaration of National Emergency by Reason of Certain Terrorist Attacks" signed on September 14, 2001.

Therefore;

For any acquisition made by any Department of the Interior contracting activity directly as a result of the Department's response to this declared national emergency (including any action that would subsequently require formal ratification by an authorized official at a contracting activity); and based on 41 U.S.C. 253 (c)(2), further described in Federal Acquisition Regulation 6.302-2, Unusual and Compelling Urgency; and 15 U.S.C. 637(c) and 41 U.S.C. 416, further described in Federal Acquisition Regulation 5.2(a)(2), I, as the Senior Procurement Executive, Department of the Interior, waive:

- (1) The requirement for publication through the Government Point of Entry or Commerce Business Daily and,
- (2) The requirement for full and open competition applicable to acquisitions executed in response to the national emergency.

This national emergency is of such an unusual and compelling urgency that the Government and the public could be seriously harmed unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. This approval and waiver is granted for use on acquisitions for goods and services (including A&E and construction) in support of responses to the national emergency. This includes any related recovery efforts as well as any enhanced security efforts deemed to be urgently needed in order to prevent/mitigate future acts of terrorism.

It is anticipated that actions taken under this approval will be of such unusual and compelling urgency that:

- (1) The total value of this class action cannot be predetermined.
- (2) The nature of the emergency as opposed to a contractor's unique qualifications will require the use of this approval.
- (3) The contracting officer will not have access to (in terms of time, in the need for security, and via communications or transportation restraints) sufficient numbers

of vendors to achieve normal competition. Therefore, the extent of limited competition utilized and the selection of the applicable contractor shall be at the discretion of the procuring contracting officer.

- (4) Market research, beyond locating the most available responsible vendor, may require time not available in the circumstances. Nevertheless, to the extent that time is available, as determined by the contracting officer, it shall be performed.
- (5) The contracting officer's signature on the award will evidence that the anticipated costs to the Government are expected to be fair and reasonable.
- (6) Sources expressing interest: No offerors are expected to express an interest in any applicable acquisitions since applicable procurements will not be publicized pursuant to the above waiver of FAR 5.2 publication requirements. However, should any source express an interest, the contracting officer shall document the file to record that fact and how the matter was resolved.
- (7) Actions to overcome barriers to competition: Due to the unusual and compelling nature of the national emergency, no such actions to overcome barriers to competition need be taken.
- (8) The extent and nature of harm to the Government or the public cannot be known in advance of this justification.

Limitations: (1) Contracts utilizing this class justification and valued at more than \$10,000,000 life-cycle cost shall be pre-approved by the Senior Procurement Executive. (2) New service contracts issued utilizing this class justification shall not have a period of performance longer than one year and whenever possible will be for a shorter period reflecting only the particular task or emergency situation urgently needing to be addressed. New procurement modifications to existing contracts shall not extend the term of the contract beyond a one-year period. Fully competitive service contracts shall replace the initial emergency contracts to the maximum extent possible when continuing service is needed. This limitation is not applicable to construction contracts where completion of the project requires more than a 12 month contract period.

In order for these waivers to be used, the contracting officer need not add additional documentation to the file beyond:

- (1) Before the award is executed, or as soon as possible thereafter, place a copy of this approval in the acquisition file along with a short note indicating compliance with the applicable limitations, if any, listed above.
- (2) Place with this approval in the file, a) a short description of the action; b) a short description of the supplies or services required; c) a short description of the extent of competition pursued or a short description explaining why only one source was solicited; d) a short description of market research undertaken, if any, in support of the action; e) list any additional vendors expressing an interest in the acquisition and a short description of the resolution of their inquiries; and, f) a signed statement that the award was made in response to the national emergency and that the descriptions above are accurate representations to best of his/her knowledge. For brevity, it is suggested that a-f above be included in one document.

This class justification and approval is accurate and complete to the best of my knowledge and is effective, as may be amended, through the earlier of September 30, 2002, or until such time as the national emergency is declared to be at an end. Routine acquisitions supporting the agency's mission, including routine security related acquisitions, are not covered by this approval and waiver.

/s/ Debra E. Sonderman _____

Debra E. Sonderman,
Senior Procurement Executive,

United States Department of the Interior

November 16, 2001

date