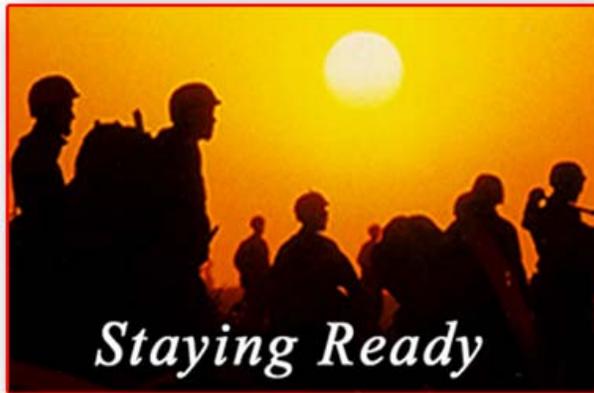


## Sole Source, Limited Sources, and Fair Opportunity



**March 25, 2009**

# Agenda



- ❑ **Sole Source** (Justifications & Approvals)
- ❑ **New Policy for Posting J&A's**
- ❑ **Limited Sources Justification**
- ❑ **J&A/LSJ Log**
- ❑ **Fair Opportunity**
- ❑ **Questions**

# Agenda



- Sole Source (Justifications & Approvals)**
- New Policy for Posting J&A's
- Limited Sources Justification
- J&A/LSJ Log
- Fair Opportunity
- Questions

# Sole Source (Justifications & Approvals)



## Seven Authorities

- 6.302-1 Only One Responsible Source
- 6.302-2 Unusual or Compelling Urgency
- 6.302-3 Industrial Mobilization...
- 6.302-4 International Agreement
- 6.302-5 Authorized/Required by Statute
- 6.302-6 National Security
- 6.303-7 Public Interest

# Sole Source (Justifications & Approvals)



## Seven Authorities

- **6.302-1 Only One Responsible Source**
- **6.302-2 Unusual or Compelling Urgency**
- 6.302-3 Industrial Mobilization...
- 6.302-4 International Agreement
- 6.302-5 Authorized/Required by Statute
- 6.302-6 National Security
- 6.303-7 Public Interest

# Sole Source (Justifications & Approvals)



6.302-1

## Only One Responsible Source

(a)(2) When supplies or services are available from only one responsible source...or a limited number of sources, and no other type of supplies or services will satisfy agency requirements.

# Sole Source (Justifications & Approvals)



6.302-1

## Only One Responsible Source

(a)(2)(i) Unsolicited research proposal

(a)(2)(ii) Follow on for continued development or production of major system or specialized equipment...when its likely award to other source results in substantial duplication of cost that is not expected to be recovered – unacceptable delays...

# Sole Source (Justifications & Approvals)



## 6.302-1 Only One Responsible Source

(a)(2)(iii) Follow on for continued provision of highly specialized services...when its likely award to other source results in substantial duplication of cost that is not expected to be recovered – unacceptable delays...

# Sole Source (Justifications & Approvals)



## 6.302-1 Only One Responsible Source

(c) *Brand name descriptions:* Brand name, product, feature, peculiar to one manufacturer is does not provide for full and open competition, regardless of number of sources...[explain why other manufacturer's products will not satisfy]...

**MUST publish redacted J&A on  
GPE with solicitation.**

No provision  
for exceptions

# Sole Source (Justifications & Approvals)



## 6.302-1 Only One Responsible Source

(d) *Limitations:* For contracts awarded using this authority, the notices required by FAR 5.201 shall have been published and any responses considered.

Open market non-competitive action for supplies or services, must publish intent synopsis prior to approving J&A.

# Sole Source (Justifications & Approvals)



## 6.302-1 Only One Responsible Source

Process:

Open market non-competitive action for supplies or services, must publish intent synopsis prior to approving J&A

# Sole Source (Justifications & Approvals)



## 6.302-2

### Unusual and Compelling Urgency

(2) Government would be seriously injured.

J&A may be signed after award, if the time to prepare the J&A would seriously injury the government. [Note: in practice, the facts should be discussed with the Special Competition Advocated in advance to ensure correct application]

# Agenda



- Sole Source (Justifications & Approvals)
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# New Policy Posting J&A's



## DASA (P) Memo, 13 Feb 09

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All J&A's must be posted in FedBizOps  
via ASFI

**Applies to ALL J&A's under FAR Part 6.302,  
regardless of dollar value!**

- 14 Calendar days to post
- Urgent & compelling signed in 7 days, posted within 30 days

# New Policy Posting J&A's



## USAMRAA Process: Format

For ALL FAR 6.302 J&A's

**Must use format at AFARS 5153.9005, as  
described in USAMRAA Policy # 06-05  
(currently under revision)**

# New Policy Posting J&A's



## USAMRAA Process: Posting

For ALL FAR 6.302 J&A's

- **After award, redact approved J&A and forward Policy Branch for redaction review**
- **Policy Branch will post (for now) redacted J&A to FedBizOps via ASFI**
- **Future: Specialist will post redacted J&A to FedBizOps via ASFI.**

# Agenda



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# Limited Sources Justification & Approval



## 8.405-6

Orders placed under Federal Supply Schedules are exempt from FAR Part 6 requirements; however, restricted source actions must still be justified and approved...

# Limited Sources Justification & Approval



## 8.405-6 Restricting Sources

(1) To fewer than required in 8.405-1 or 8.405-2, or...

(2) Item peculiar to one manufacturer (brand name, product or feature). [Research must show other companies' similar products do not meet, or cannot be modified to meet, the agency's needs]

# Limited Sources Justification & Approval



## 8.405-6 Restricting Sources

(b)(1) One source due to unique or specialized nature of the work...

(b)(2) Logical follow-on to original order [Note: original order MUST have been completed]

(b)(3) Urgent and compelling need - ordering procedures would result in unacceptable delays.

# Limited Sources Justification & Approval



## USAMRAA Process: Format IAW USAMRAA Policy # 08-01

- **Under or equal to Simplified Acquisition threshold (\$100,000) – Contracting Officer documentation.**
- **Exceeding \$100,000, must use format at 8.405-6 (g)(i-x)**

# Limited Sources Justification & Approval



## USAMRAA Process: Supplies

- **DO NOT synopsise intent to buy brand name supply without competition**
- **Obtain approval signatures for LSJ**
- **Post redacted LSJ with solicitation on e-buy**

# Limited Sources Justification & Approval



## USAMRAA Process: Services

- **Obtain approval signatures on LSJ**

Do not have to publish intent synopsis

Do not have to publish redacted LSJ with solicitation.

# Limited Sources Justification & Approval



**NO requirement to post  
LSJ on ASFI / FedBizOps  
at this time!**

# Agenda



- Sole Source (Justifications & Approvals)
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# J&A / LSJ Log



Log Number	Requiring Activity	PR Number	Award Number	KS	KO
09-001	TRICARE	HT000382318876/8470/5234		Comeau	Signore
09-002	USAMMA	TBD		TBD	B. Hovermale
09-003	WRAIR	W74MYF-8206-N559	W81XWH-09-P-0047	Comegys	Aaron Wade
09-004	USAMRMC	W23RYX82704005		Ohaegbu	Aaron Wade
09-005	TRICARE	W81G43-8302-0010	W81XWH-08-D-0039-0007	Hunt	Signore
09-006	USAMRIID	W23MYC8155N087		Smith	Nevels
09-007	USAMRMC	W23RYX82964001	W81XWH-07-D-0053-0002	McCune	B. Hovermale
09-008	TRICARE	HT000382258464		Green	L. Hovermale
09-009	USAMC-AFRIMS	WT0J3Y8311N339/WT0J3Y8304 N384		Ohaegbu	Aaron Wade
09-010	USAMMDA	W806YH82832001	W81XWH-09-C-0031	Phil Huff	Ethan Mueller
09-011	USAMMCE	WK4FV1-8304-A224	W81XWH-09-P-0097	Brian Miller	Bert Hovermale
09-012	USAMMDA	W806YH83382001	W81XWH-09-C-0086	Jackson	Ethan Mueller

# J&A / LSJ Log



- Obtain Log # for all J&A, LSJ, and Fair Opportunity actions with limited competition (FAR 16.505) regardless of dollar amount (USAMRAA Policy # 06-05 under revision)
- When scope changes to awards, must have a J&A or LSJ, depending on whether under FAR 6, 8, or 16.

# Agenda



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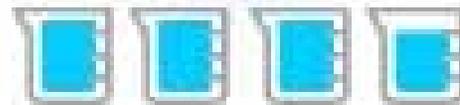
# Agenda



## DEPENDS Adjustable Underwear



Super Plus Absorbency



# Fair Opportunity

## FAR 16.505 Orders Under Multiple Award Contracts (IDIQ's)

(a)(b)(1)(i) Must provide each awardee a Fair Opportunity for each order exceeding \$3000, except....

# Fair Opportunity

## FAR 16.505

### Exceptions to Fair Opportunity

(b)(2)(i) Need is so urgent that fair opportunity would result in unacceptable delays.

(ii) Only one awardee capable because of unique or highly specialized supplies/services

(iii) Logical follow-on, if all awardees were give fair opportunity under original order

(iv) Minimum guarantee

# Fair Opportunity

## FAR 16.505

### If Fair Opportunity is Not Offered

- Prepare a LSJ IAW 8.405-6
- Provide advance copy to Task Order/  
Delivery Order Ombudsman for review and  
comment (TO/DO Ombudsman is not an  
Approval Authority)

# Fair Opportunity

## FAR 16.505

### If an Awardee Complains

- The Contracting Officer should try and resolve the issue first
- Awardee may complain to the TO/DO Ombudsman (but cannot protest)
- TO/DO Ombudsman reviews complaints and ensures fair opportunity

# Fair Opportunity



## TO/DO Complaint Review Process

1. Contractor complaint in writing
2. Review against Regulatory requirements to verify legitimate complaint under 16.505 (b)
3. If fits under 16.505 (b), gather facts from Contracting Officer
4. Review award decision documentation
5. Draft independent opinion Memo based on findings whether fair opportunity was or should have been provided.

# Fair Opportunity

## TO/DO Complaint Review Process

6. Coordinate opinion Memo with JAG
7. If determined fair opportunity was not provided, but should have, meet with Contracting Officer, JAG, and Chief of Contracting
8. If Ombudsman determination stands, draft Decision Memo to implement corrective actions
9. If Opinion Memo finds fair opportunity was provided, or rationale supports limiting sources, draft Decision Memo for Contractor

# Practical Tips

## Market Research:

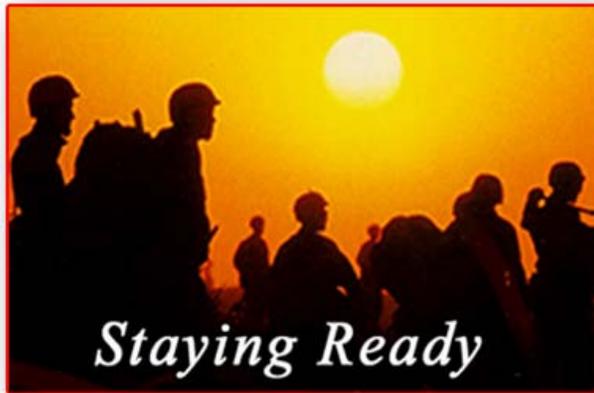
- Internet searches – what did I find?
- How do I know no one else can do it?
- Someone else probably can do it, but what is the additional cost and time?
- Customers: ask the Contracting Officer for sample J&A's and LSJ's
- Urgent & Compelling must be really urgent and compelling.

# Agenda



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# Sole Source, Limited Sources, and Fair Opportunity



**THE END**