



GSA Office of Governmentwide Policy

Class Justification CD-2021-02

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MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

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Jeffrey Koses

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SUBJECT:

Class Justification - Other than Full and Open
Competition for Urgent Lease Acquisitions

1. **Purpose.** This memorandum approves a class justification providing Public Buildings Service (PBS) limited authority to use other than full and open (OTFO) competition for certain emergency lease actions. The class justification is pursuant to the Federal Acquisition Regulation (FAR) 6.302-2(c)(1) requirement that the contracting officer (CO) documents the contract file describing the circumstances that justify the use of other than full and open competition procedures due to unusual and compelling urgency for an urgent situation.¹
2. **Background.** GSA Order ADM P 2430.3, *The General Services Administration Emergency Program*, establishes GSA's overall guidance for assisting Federal agencies in emergencies. The Order states that the program was established "to ensure the U.S. General Services Administration (GSA) is adequately prepared to respond to an emergency event effectively."

¹ Urgent lease actions refer to leases entered into using urgent and compelling justifications to limit competition in response to an urgent need which may be related to a natural disaster, or may be more localized, such as mold or a fire at a particular building which requires the agency to relocate, temporarily or permanently.

GSA is often called upon to provide workspace and related support services to Federal agencies in emergencies. The need to provide such workspace and services in support of disaster relief efforts is often of unusual and compelling urgency. Any delay could seriously harm a critical Government program and the recipients of Federal assistance. The Federal Property and Administrative Services Act (see 41 U.S.C. 3304, and FAR 6.302-2) allows for contracting without full and open competition when there is an unusual and compelling urgency (see Attachment A).

This class justification satisfies the requirements of FAR 6.302-2 for the vast majority of GSA emergency lease procurements and streamlines the process for efficiently awarding these contracts. It also highlights those areas which merit additional attention.

3. **Authority.** This class justification is issued in accordance with GSAM 501.404 and 501.707. The justification is pursuant to the authority and requirements contained in FAR 1.703, 1.704, 6.302-2, and 18.104.
4. **Applicability.** This class justification applies to individual acquisitions of workspace and related supporting emergency services provided to Federal agencies:
 - a. to facilitate recovery from an emergency or major disaster declared by the President under applicable statutory authority, including, but not limited to, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or the National Emergencies Act (50 U.S.C. 1601 et seq.);
 - b. to facilitate disaster preparedness or response;
 - c. to facilitate recovery from a cyber, nuclear, biological, chemical, or radiological attack; or
 - d. to facilitate the preparedness or response to health, safety, or other issues which so adversely impact the mission of an agency in a government controlled location as to necessitate the agency's expeditious relocation.

5. **Limitations.** This class justification is limited to lease acquisitions—
 - a. with a total period of performance no longer than one (1) year, unless exceptional circumstances exist (see Attachment B); and
 - b. with a total contract value up to the prospectus threshold², unless a higher threshold is approved by the HCA.

6. **Requirements.** Applicable lease procurements are subject to the following requirements.

Due to the unusual and compelling urgency of the requirement, expedited procedures may be utilized, including informally requesting quotes via telephone or email or other electronic means.

Due to the unusual and compelling urgency of the requirement, it is not in the Government's interest to post a synopsis notice to the GPE for applicable lease procurements, pursuant to FAR 5.202(a)(2)).

For each proposed lease contracting action taken pursuant to this class justification, as a reminder, contracting officers should ensure the contract file includes documentation of the below details. These details could be captured in the acquisition plan, price negotiation memorandum, or other acquisition document.

- a. Certification that the requirement falls within the scope and applicability of this class justification (see Attachment C) (see FAR 6.303-2(b)(12)).
- b. Determination that the proposed contractor is responsible (see FAR 9.104-1).
- c. Determination of fair and reasonable pricing consistent with market conditions and the Government's requirements (see FAR 13.106-3).

² GSA Annual Prospectus Thresholds:
<https://www.gsa.gov/real-estate/design-construction/gsa-annual-prospectus-thresholds>

7. **Cancellation.** Class Justification OTFO 1992 for the Acquisitions of Space and Related Services to Support Federal Agencies Acting in Response to Emergencies or Major Disaster Situations signed on Nov 5, 1992, is hereby canceled in its entirety.
8. **Effective Date.** This class justification is effective immediately and remains in effect until rescinded, amended or incorporated into the GSAR.
9. **Point of Contact.** Questions regarding this class justification may be directed to Marten Wallace at GSARPolicy@gsa.gov.

Attachments

- Attachment A - Justification for Other than Full and Open Competition for
Emergency Lease Acquisitions
- Attachment B - Exceptional Circumstances Determination.
- Attachment C - Contracting Officer Certification

**CD-2021-02
Attachment A**

**Justification for Other than Full and Open Competition for
Emergency Lease Acquisitions**

(1) Identification of the agency and the contracting activity.

GSA Public Buildings Service (PBS) contracting activities.

(2) Nature and/or description of the action being approved.

Use of other than full and open competition procedures due to unusual and compelling urgency.

(3) A description of the supplies or services required to meet the agency's needs.

Acquisitions of leased workspace and related supporting services provided to Federal agencies to facilitate disaster preparedness or emergency response.

(4) An identification of the statutory authority permitting other than full and open competition.

41 U.S.C. 3304 and FAR 6.302-2 allow for contracting without full and open competition when there is an unusual and compelling urgency.

(5) A demonstration that the nature of the acquisition requires use of the authority cited.

GSA is often called upon to provide work space and related support services to Federal agencies in emergency situations. The need to provide such work space and services in support of disaster relief efforts is of unusual and compelling urgency, and any delay will seriously harm a critical Government program and the recipients of Federal assistance.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.

In accordance with FAR 5.202(a)(2) and FAR 6.302-2, contracting activities do not need to submit a synopsis if the delay would seriously injure efforts. However, competition will be solicited to the maximum extent possible from as many potential sources as is practicable, consistent with the circumstances of the particular emergency. Often, this may be done by phoning a reasonable number of sources and asking for quotes and availability, on the spot.

Contracting activities in each affected region for a particular emergency will work in conjunction with Regional Emergency Coordinators (RECs), State and local government entities, commercially available real estate listing services, local real estate brokers, and the Federal Emergency Management Agency (FEMA), as applicable, to provide additional guidance for efficiently including small business concerns and quickly responding to requirements in support of relief efforts.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

The Government anticipates being able to negotiate a fair and reasonable price, taking into account market conditions existing at the time of acquisition. The Contracting Officer will determine that the price is fair and reasonable at the time of contract award and will conduct the respective price analyses at the contract level consistent with FAR subpart 15.4, including FAR 15.404-1(b). The Contracting Officer may use existing non-competitive contracts for price comparison, historical pricing data or other available pricing tools to determine the price fair and reasonable. This determination will be documented in the contract file.

(8) A description of the market research conducted.

The Contracting Officer will utilize advanced market research tools such as commercially available real estate listing services, telephone market outreach, and any other market research tools available to the fullest extent possible.

As the need for space arises, a market survey will be conducted. All potential sources which can be located within the timeframe, and which can provide habitable space suitable for the needs of the responding agency, will be solicited.

(9) Any other facts supporting the use of other than full and open competition.

None.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

Not applicable.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition.

Under the circumstances described herein, there are no actions that the agency can take to overcome the barriers to full and open competition. Any subsequent acquisitions for similar services will be required to follow full and open competition.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

This class justification CD-2021-02 may be used by GSA contracting officers for applicable emergency lease acquisitions to satisfy the required certification

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Attachment B

Exceptional Circumstances Determination

Leases over the SLAT, acquired using unusual and compelling urgency procedures for an emergency, are limited to one year, including extensions and renewals, unless the HCA determines that exceptional circumstances exist. Accordingly, the HCA can sign a determination of exceptional circumstances to authorize leases with a term of more than one year, up to a maximum of five years.

Subject to informal approval from the HCA (e.g., via email) in advance, the exceptional circumstances determination may be signed after the lease acquisition award when formal signature prior to award would unreasonably delay the acquisition. This determination is required, regardless of whether a class or individual justification is used. The determination must be retained in the contract file.

When the regional team intends to execute a lease with an initial term of more than one year, a determination must be completed and signed by the LCO before forwarding to the HCA for approval. This determination must be signed by the HCA and placed in the file. Leases over the SLAT with initial terms of one year or less, which are later extended to make the total term more than a year, also require a determination.

**CD-2021-02
Attachment C**

Contracting Officer Certification

This class justification may be used by GSA Contracting activities only when, with respect to each proposed lease contracting action taken pursuant to this class justification, the contracting officer executes and includes in the appropriate lease contract file the following certification:

“I certify that, to the best of my knowledge and belief, the requirement for space falls within the scope and applicability of the class justification for other than full and open competition for the acquisition of workspace and related supporting services in response to emergencies or major disaster situations specified in the applicability section of this class justification. The Contracting Officer anticipates being able to negotiate a fair and reasonable price consistent with market conditions and the Government’s requirements.”