




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
ACQUISITION AND GRANTS OFFICE

DEC 01 2016

MEMORANDUM FOR: Deputy Assistant Administrators
Staff Office Directors

FROM: Mitchell J. Ross 
Director

SUBJECT: Acquisition Instruction 17-01, Procedures for a Justification for
Other Than Full and Open Competition

The purpose of this memorandum is to provide the attached Acquisition Instruction (AI) 17-01, which rescinds AI 15-03, issued on December 8, 2014, and establishes the NOAA Acquisition and Grants Office (AGO) procedures and instructions for the preparation of a Justification for Other Than Full and Open Competition (JOFOC). The Federal Acquisition Regulation (FAR) requires agencies to promote and provide competition leading to the award of a contract. When a contract award is made using other than full and open competition, written justification, certified accuracy and completeness of the justification, and approval are required.

The AI sets forth procedures for the roles and responsibilities and the required documentation, review, and approval of the facts and rationale justifying other than full and open competition. These procedures are applicable to all NOAA Line and Staff Offices associated with acquisitions under FAR Part 6, with exception to those exempt by FAR 6.001 or by authorized statute.

Questions regarding this matter should be addressed to Mr. Justin Cofer, AGO Policy and Oversight Division (POD) at Justin.L.Cofer@noaa.gov, or by telephone at (816) 823-3820.

Attachment

Acquisition Instruction 17-01, Procedures for a Justification for Other Than Full and Open Competition

December 1, 2016

ACQUISITION INSTRUCTION 17-01

PROCEDURES FOR A JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

A. Purpose

The purpose of this Acquisition Instruction is to rescind AI 15-03 dated December 8, 2014 and provide the updated procedures and instructions for the preparation and the narrative information¹ for a Justification for Other Than Full and Open Competition (JOFOC). The narrative information shall be submitted as an attachment to the Form CD 492 (Revised December 2015 or most current version available).

B. Background

The Federal Acquisition Regulation (FAR) requires the Government to promote and provide competition in soliciting offers leading to the award of a Government contract. If awarding a contract using other than full and open competition procedures pursuant to one of the seven authorities under FAR 6.302, written justification, certified accuracy and completeness of the justification, and approval are all required.

C. Applicability

These procedures are applicable to all NOAA Line and Staff Offices and all acquisitions under FAR Part 6, with exception to those acquisitions exempt under FAR 6.001 or by authorized statute. This AI is not applicable for Justifications for Limited Sources (FAR 8.405-6(d) and Justifications for Exception to Fair Opportunity (FAR 16.505(b)(2(ii))).

D. General

Each JOFOC will address each sequential requirement itemized in FAR 6.303-2(b)(1)-(12). Each JOFOC will be reviewed and approved based on the delegation of authority for FAR 6.304 as addressed within CAM 1301.70 and Acquisition Instruction 16-01.

E. Roles and Responsibilities

1. Requesting Activity/Program Office

The requesting activity shall notify and engage the early involvement of the supporting Acquisition Division once the requirement is identified. After working with the contract specialist/contracting officer to solicit sources and conduct thorough market research, the requesting activity will determine availability and suitability of competition to meet the requirement. A JOFOC is prepared by the requesting activity and formulates the written documentation required to support the recommendation for other than full and open competition after conducting thorough market research. The requesting activity certifies that

¹ As required in the Federal Acquisition Regulation (FAR) 6.303-2

the narrative information within the justification is accurate and contains complete data necessary to support the recommendation for other than full open competition. The requesting activity also certifies that the justification verifies the Government's minimum needs or schedule requirements and any rationale used to justify other than full and open competition procedures².

2. Supporting Acquisition Division Contract Specialist/Contracting Officer

The contract specialist/contracting officer shall advise the client on statutory requirements for promoting competition. The contract specialist/contracting officer assists in conducting market research, notification of the requirement(s) to the public, and the preparation of the JOFOC and supporting documentation required for the review and approval. This responsibility includes obtaining all required review signatures in sections 12 and 13 of the JOFOC template before submission for approval. The contract specialist/contracting officer shall make the justification publicly available as required within FAR 6.305.

- a. For a JOFOC with an estimated value exceeding \$700,000, the contract specialist/contracting officer shall submit the JOFOC and any supporting documents through the Acquisition and Grants Office (AGO) Policy and Oversight Division (POD) for the SBPO review.
- b. The Operating Unit Competition Advocate and DOC Competition Advocate names and titles shall be filled in the proper area of the Form CD 492 before submission of the package.

3. Office of General Counsel (OGC)

A legal review is required for a JOFOC with an estimated value greater than \$150,000. Legal concurrence, provided as a separate attachment, for a justification with an estimated value not exceeding \$700,000 is acceptable. Legal concurrence shall be provided within section 13 of the JOFOC template for a justification with an estimated value exceeding \$700,000.

4. Head of Contracting Office (HCO)

- a. For a JOFOC with an estimated value not exceeding \$700,000, the HCO has been delegated the authority³ to provide a review and approval with a signature in the Operating Unit Competition Advocate signature block on the Form CD 492.
- b. For a JOFOC with an estimated value exceeding \$700,000, the HCO shall provide a review and concurrence with a signature in in section 13 of the JOFOC template.

5. Senior Bureau Procurement Official (SBPO)

A JOFOC with an estimated value exceeding \$700,000 shall receive a review and concurrence from the SBPO before the submission of the JOFOC and the associated supporting documents to the Department of Commerce (DOC) Competition Advocate. The

² FAR 6.303-2(b)

³ NOAA Acquisition Alert 14-03 Senior Bureau Procurement Official Delegated Authorities for Review and Approval dated August 7, 2014

SBPO shall provide concurrence with a signature in the Operating Unit Competition Advocate signature block on the Form CD 492. Following the SBPO review, the JOFOC, memorandum, and supporting documents will be submitted to the DOC Competition Advocate by the AGO Director's administrative staff.

F. INSTRUCTIONS FOR JOFOC TEMPLATE

In accordance with FAR 6.303-2, each JOFOC shall contain sufficient facts and rationale to justify the use of the specific authority and at a minimum, address each of the twelve content requirements. The content for each section of the JOFOC should be concise and not deviate from the required information. The descriptions should not be extensive nor comprehensive, only sufficient enough to provide a general understanding of what is being procured. The narratives shall be written based on the applicable authority/exception. The following instructions are for the preparation of the JOFOC template that will be submitted as an attachment to the Form CD 492. These instructions shall be used to reduce the redundancy or restatement of facts within the narratives for each section.

1. Identification of the agency and contracting activity (FAR 6.303-2(b)(1))

Identify the agency, bureau, acquisition division (acquisition division location) processing the requirement, and include a statement identifying the document as a justification for other than full and open competition in support of the program, the requesting activity and/or program office, and the NOAA Line Office.

2. The nature and/or description of the action being approved (FAR 6.303-2(b)(2))

Describe the contract action with the following information, as applicable to the specific requirement:

- a. Describe the type of contract action being issued (e.g., new contract, contract modification, etc.)
- b. Provide sufficient information on the proposed contract action approach under consideration.
 - (1) If this is a sole source action, include the contractor's name and identify the contemplated contract type (firm fixed price, cost plus fixed fee, time and materials, etc.); or
 - (2) If an existing contract is being modified, include the contractor's name, contract number, and contract modification number.

3. A description of the supplies or services required to meet the agency's needs (including the estimated value) (FAR 6.303-2(b)(3)).

Provide a clear and concise description of the product(s) and/or service(s) to be procured.

- a. The explanation of what is being procured shall minimally address the scope, magnitude, and the complexity of the requirement.

- b. The description shall include the estimated value of the action, including the total funding profile for all of the years that will be used.

4. An identification of the statutory authority permitting other than full and open competition (FAR 6.303-2(b)(4)).

Cite the appropriate authority under the “seven exceptions” as prescribed in FAR 6.302-1 through FAR 6.302-7. Only one specific statutory authority shall be used to justify other than full and open competition.

5. A statement demonstrating the unique qualifications of the proposed contractor or the nature of the action requiring the use of the authority FAR 6.303-2(b)(5)).

This is a significant part of the JOFOC document, as this narrative validates the fact that a prospective contractor or a particular brand name has unique qualifications and/or specialized capabilities or expertise that was not identified in the marketplace. Contracting without providing for full and open competition is not justified based on the (1) lack of advanced acquisition planning by the requesting activity; (2) funding availability; and/or (3) the expiration of funds..

- a. Explain the contractor’s or the brand name’s unique qualifications or the nature of the acquisition that requires the use of the statutory authority cited.
- b. Provide a description of what unique qualifications and special capabilities the contractor or the brand name possesses, which is the knowledge that is limited within the marketplace or one company or individual possessing the expertise to provide the product or perform the requirement.
- c. The FAR requires that the agency/bureau must request offers from as many potential sources as is practicable under the circumstances. Describe efforts made to achieve these ends.
- d. When an unusual and compelling urgency exception is cited, provide a description of the nature of the urgency, the supporting rationale, and a concise description of the extent, nature, and impact of the potential harm to the Government.

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR 5.2 and, if not, which exception under FAR 5.202 applies (FAR 6.303-2(b)(6)).

The JOFOC shall be prepared after the requirements notification is posted on FedBizOpps, to allow the requesting activity/program office an opportunity to examine the results of industry inquiries in determining the capability of the respondents to the requirements notification and the overall availability of competition. If the JOFOC is prepared prior to satisfying the synopsis requirement, state the reasons why this was done after the JOFOC was processed.

- a. Describe the efforts performed by the requesting activity/program office and the servicing acquisition division to ensure that offers are/were solicited from as many potential sources as possible.
- b. Include in the description whether the synopsis shall be, or has been published. In accordance with the NOAA Acquisition Manual Subpart 1330-5.101, all requirements estimated at \$15,000 or greater shall be posted.
- c. When an acquisition contains brand name specifications, the contracting officer shall include with the solicitation the justification or required documentation. See FAR 5.102(a)(6) for the requirement to post the brand name justification.

7. Determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable (FAR 6.303-2(b)(7)).

Provide information on the following:

- a. The measures performed by the contracting officer to ensure that the costs and/or prices are/will be determined as fair and reasonable before negotiations commence.
- b. The methodology used in the market research analysis that supports a determination of fair and reasonable costs/prices.
- c. Any information, such as commercial pricelists or prior acquisition history that will help the contracting officer determine that the anticipated cost is fair and reasonable.

8. A description of the market research conducted (FAR Part 10) and the results or a statement of the reason market research was not conducted (FAR 6.303-2(b)(8)).

Market research requires collecting and analyzing product/service information on the technical capabilities and prices/costs within the marketplace to satisfy agency needs. If market research was not conducted, the reasons it was not conducted should be stated. When citing 6.302-1 and stating that there is only one contractor who can fulfill the agency's needs, this shall be validated by conducting market research, and the market research should be summarized in this section. The extent of the market research will vary, depending on such factors as cost, complexity, past experience, and urgency.

9. Any other facts supporting the use of other than full and open competition (FAR 6.303-2(b)(9)).

Provide any additional facts on why the requirement (i.e. technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions) is not suitable for full and open competition, if necessary.

- a. Briefly state why the requirement cannot be modified to promote competition.

- b. If contending that only one source can meet the need, information must describe the extent to which the Government will be harmed if not acquired from that vendor.
- c. When FAR Subpart 6.302-1 is cited for a follow-on acquisition, as described in FAR 6.302-1(a)(2)(ii), provide an estimate of cost to the Government that would be duplicated and how the estimate was derived.
- d. When FAR 6.302-2 is cited, provide data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

10. A listing of the sources, if any, that expressed, in writing, an interest in the acquisition (FAR 6.303-2(b)(10)).

Provide the following information:

- a. The date that a synopsis was posted requesting sources provided interest.
- b. The date the interest was received by the contracting officer.
- c. The capabilities statement was reviewed and deficiencies discussed with the interested source(s). List the interested sources.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required (FAR 6.303-2(b)(11))

Provide the following information:

- a. Describe actions taken, or that will be taken, to remove or overcome any barriers to competition before initiating any subsequent acquisitions for the supplies, or services required, including challenges to restrictive data markings, data rights, preparation of a performance based work statement, and etc.
- b. If planning a competition, include the estimated date when the competitive procurement will occur. If competition is not planned, state so and provide the appropriate justification.
- c. If this is a follow-on procurement, state the measures initiated to eliminate or reduce competitive barriers.

12. Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief (FAR 6.303-2(b)(12)). Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel (FAR 6.303-2(c)).

The narrative shall include two separate certification statements and signature and date blocks.

- a. The technical/requirements personnel from the requesting activity/program office will certify the requirement meets the Government's minimum needs and the data are complete and accurate.
- b. The contracting officer will certify the data supporting the recommended use of other than full and open competition and that the information are complete and accurate.

G. EFFECTIVE DATE

This AI is effective on the date of issuance and will remain in effect until superseded or rescinded.

H. POINT OF CONTACT

Questions concerning this Acquisition Instruction should be directed to Justin Cofer, AGO Policy and Oversight Division, at Justin.L.Cofer@noaa.gov or by telephone at (816) 823-3820.

Attachments:

Form CD 492

Acquisition Instruction 17-01 JOFOC Template

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

I recommend that the Department of Commerce negotiate only with _____
(Proposed Contractor(s))

for _____
(Description of Supplies or Services)

Requisition No. _____ Cost Estimate \$ _____
(Include basic contract period and all options or total systems life costs)

Requesting Activity _____ Contracting Activity _____

CERTIFICATION REQUIREMENTS

I certify that the attached narrative justification is accurate and contains complete data necessary to support the recommendation for other than full and open competition. The requisitioner further certifies that the attached narrative justification verifies the Government's minimum needs or schedule requirements and any rationale used to justify other than full and open competition procedures.

| Requisitioner (Name and Title) | Signature | Phone No. | Date |
|--------------------------------|-----------|-----------|------|
| | | | |

Before requesting this acquisition, state the statutory authority for conducting this acquisition under "other than full and open competition" procedures in the following blank _____ (use only one statutory authority). Also provide a narrative justification to this form. In accordance with FAR Subpart 6.3, the narrative justification must include the facts necessary to reasonably and legitimately lead to the use of the specific authority for other than full and open competition; including adequate information on the nature and/or description of the action being approved and a description of the supplies or services required to meet the agency's needs.

Use of this form is optional when: the justification contains all information required by FAR 6.303-2, is certified by the requisitioner and contracting officer and is approved at the appropriate levels.

STATUTORY AUTHORITY

41 USC 3304(a)(1) - Only one responsible source and no other supplies or services will satisfy agency requirements.

The supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements.

41 USC 3304(a)(2) - Unusual & compelling urgency

The agency's need for the supplies or services is of such an unusual and compelling urgency 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. (NOTE: This authority will not be approved if it is determined that the urgency is due to a lack of advance planning by the requiring activity. Solicitation from as many potential sources as is practicable under the circumstances is required.)

41 USC 3304(a)(3) - Industrial mobilization; engineering, developmental, or research capability; or expert services

It is necessary to award the contract to a particular source or sources in order (a) to 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; (b) to 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 (c) to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

41 USC 3304(a)(4) - International agreement

The terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, have the effect of requiring the use of procedures other than competitive procedures.

41 USC 3304(a)(5) - Authorized or required by statute

A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale.

41 USC 3304(a)(6) - National security

The disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

41 USC 3304(a)(7) - Public interest

The agency head (Secretary of Commerce) determines that it is not in the public interest to use full and open competition in the particular acquisition concerned, and notifies Congress in writing of such determination not less than 30 days before award of the contract.

APPROVAL REQUIREMENTS

| | | | |
|---------------------------------|------------------|------------------|-------------|
| Contracting Officer (CO) | Signature | Phone No. | Date |
|---------------------------------|------------------|------------------|-------------|

Operating Unit (OU) Competition Advocate - Not exceeding \$700,000:

| | | | |
|---|------------------|------------------|-------------|
| OU Competition Advocate (Name and Title) | Signature | Phone No. | Date |
|---|------------------|------------------|-------------|

Department of Commerce (DOC) Competition Advocate - Over \$700,000 but not exceeding \$68 million:

| | | | |
|--|------------------|------------------|-------------|
| DOC Competition Advocate (Name and Title) | Signature | Phone No. | Date |
|--|------------------|------------------|-------------|

Senior Procurement Executive (SPE) - Over \$68 million:

| | | | |
|-----------------------------|------------------|------------------|-------------|
| SPE (Name and Title) | Signature | Phone No. | Date |
|-----------------------------|------------------|------------------|-------------|

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NOTE: Use the total cost estimate specified on the front of this document in determining the necessary approvals. Each review must be preceded by lower level approval(s), e.g., over \$68 million all approvals are required.

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JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (JOFOC) TEMPLATE
(INSERT THE NAME OF PROGRAM / TITLE OF THE PROCUREMENT REQUIREMENT)

Identification Number: *(e.g. purchase request/solicitation number/contract number)*

1. Identification of the agency and contracting activity (FAR 6.303-2(b)(1)).

Example: “The NOAA Acquisition and Grants Office (AGO) _____ Acquisition Division located in _____, proposes to enter into a contract on the basis of other than full and open competition in support of the *(enter the program, the requesting activity/program office and NOAA Line Office)*.”

2. The nature and/or description of the action being approved (FAR 6.303-2(b)(2)).

Example: “NOAA intends to award a *(new contract, contract modification, etc.)* to *(contractor’s name)*.”

Choose from the following based on applicability:

(1) For a Sole Source Action: A (firm fixed price, cost plus fixed fee, time-and-materials, labor-hour, etc.) contract is contemplated for award; or

(2) For an existing contract being modified: Contract number _____ will be / was modified on (insert date) in the amount of (insert dollar amount.) (If applicable)

3. A description of the supplies or services required to meet the agency’s needs (including the estimated value) (FAR 6.303-2(b)(3)).

Example: “The requirement is to provide *[insert supplies/services to be provided and location]* at a total cost of \$____ for *[insert period of performance, including any option periods]*. This will allow the *[insert name of the program, the requesting activity/program office and NOAA Line Office]* to accomplish its mission of *[insert mission objective]*.”

4. An identification of the statutory authority permitting other than full and open competition (FAR 6.303-2(b)(4)).

Example: “The statutory authority permitting other than full and open competition is 41 U.S.C. 3304(a)(1) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled, Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.”

5. A statement demonstrating the unique qualifications of the proposed contractor or the nature of the action requiring the use of the authority (FAR 6.303-2(b)(5)).

Example: “*(Insert Contractor’s Name)* is uniquely qualified to provide these services to *(Insert Customer’s Organization Name)* based upon the following:

a. They have/are ... ***(This is a statement of fact:*** *Common characteristics that make a contractor unique are knowledge, experience, certification from another agency, security clearances of personnel, special capabilities, and possession of a proprietary product. The information must be very specific and use technical terms if necessary. Use a separate paragraph for each unique characteristic).*

b. They have/are ... *(In those instances where a compelling and unusual urgency exception is cited, provide a discussion of the nature of the urgency. Provide quantitative data or other rationale to describe the extent and nature of the potential harm to the government if the chosen contractor is not used).*

c. They have / are ... (If only one source is the authority, write a paragraph that explains why any other sources that expressed an interest in the acquisition in writing are not qualified. These are the companies listed in section 10 of the JOFOC.).”

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR 5.2 and, if not, which exception under FAR 5.202 applies (FAR 6.303-2(b)(6)).

Example: “The (requesting activity/program office) and the (specific) Acquisition Division solicited available capabilities from industry for (insert requirement) through notification on FedBizOpps on (insert date). (Insert number) responses were received and after review of the received capabilities, the (requesting activity/program office) determined that adequate competition to provide (insert requirement) is/was not available.”

7. Determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable (FAR 6.303-2(b)(7)).

Example: “The Contracting Officer determines that the anticipated price(s) will be fair and reasonable based on _____. Prior to award of the proposed contract/modification/order, cost or price information shall be obtained from the contractor and a price/cost analysis will be performed and documented to sufficiently determine that the cost to the Government of the proposed acquisition will be fair and reasonable.”

8. A description of the market research conducted (see FAR Part 10) and the results or a statement of the reason market research was not conducted (FAR 6.303-2(b)(8)).

Example: “Market research was conducted by the (requesting activity/program office) and the (acquisition division) to identify available sources and to evaluate the availability of the marketplace to meet the requirement as follows:

Based on the results of market research, the government determined that a limited number of vendors were/are available but none possessed the capability to...”

9. Any other facts supporting the use of other than full and open competition (FAR 6.303-2(b)(9)).

Example: “This (contract, modification, order, etc.) is necessary to avoid a break in service for this critical mission requirement. (Contractor name) possesses the (insert the unique qualifications/specialized capabilities) required to perform this requirement. An open competition to complete the work would cause intolerable delay to the (insert program name) and pose a (insert risk) to the Government. The requirement cannot be modified in any manner to increase competition due to (insert the reason). “

Or

“All facts have been documented in (insert the section number). There are no additional facts to be reported in this section.”

10. A listing of any sources that expressed a written interest in the acquisition (FAR 6.303-2(b)(10)).

Example: “A synopsis was issued on FedBizOpps on (insert date), requesting that parties express their interest in writing to the Contracting Officer. Only (insert vendor name) responded. The (insert vendor name) capabilities statement was reviewed and [deficiencies vs. requirement were identified and discussed with (vendor point of contact) of the (insert vendor name), who agreed”

Or

“No sources indicated an interest as a result of the synopsis posted FedBizOpps on (insert date).”

11. A statement of any actions the agency may take to remove or overcome any barriers to competition, if subsequent acquisitions are anticipated (FAR 6.303-2(b)(11)).

Example: “The Government will continue to conduct thorough market research to gauge the marketplace capabilities for future requirements. The Government will seek competition of future acquisitions for these *(products or services)*.”

12. CERTIFICATION

The JOFOC has been prepared and certified by:

Technical/Requirements Personnel:

I certify the requirement meets the Government’s minimum need and that the facts, representations, and data included in this justification are complete and accurate.

(Signature above; insert typed name under signature)
(Insert Title)

Date

Contracting Officer:

I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

(Signature above; insert typed name under signature)
Contracting Officer

Date

13. CONCURRENCE

Concur:

Office of General Counsel *(If over legal review threshold)*

(Signature above; insert typed name under signature)
(Insert Title)

Date

Head of Contracting Office *(If over \$700,000)*

(Signature above; insert typed name under signature)
Director, *(Insert name of Acquisition Division)*

Date