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RE: 41 USC 253 (c) (1) - 4 pages/  
FAR 6.302 - 10 -pages

FROM: <span style="background-color: black; color: black;">[REDACTED]</span> <i>b7c</i> Assistant General Counsel	Room 7358	Phones <span style="background-color: black; color: black;">[REDACTED]</span> <i>b7c</i> (voice) (fax)	Date 5/25/00
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**Sec. 253. Competition requirements**

- (a) Procurement through full and open competition; competitive procedures
  - (1) Except as provided in subsections (b), (c), and (g) of this section and except in the case of procurement procedures otherwise expressly authorized by statute, an executive agency in conducting a procurement for property or services -
    - (A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this title and the Federal Acquisition Regulation; and
    - (B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.
  - (2) In determining the competitive procedures appropriate under the circumstance, an executive agency -
    - (A) shall solicit sealed bids if -
      - (i) time permits the solicitation, submission, and evaluation of sealed bids;
      - (ii) the award will be made on the basis of price and other price-related factors;
      - (iii) it is not necessary to conduct discussions with the responding sources about their bids; and
      - (iv) there is a reasonable expectation of receiving more than one sealed bid; and
    - (B) shall request competitive proposals if sealed bids are not appropriate under clause (A).
- (b) Exclusion of particular source; restriction of solicitation to small business concerns
  - (1) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures but excluding a particular source in order to establish or maintain any alternative source or sources of supply for that property or service if the agency head determines that to do so -
    - (A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of such property or services;
    - (B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;
    - (C) would be in the interest of national defense in establishing or maintaining 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;
    - (D) would ensure the continuous availability of a reliable source of supply of such property or service;
    - (E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

- (F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.
  - (2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 638 and 644 of title 15;
  - (3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1) of this section.
  - (4) A determination under paragraph (1) may not be made for a class of purchases or contracts.
- (c) Use of noncompetitive procedures  
An executive agency may use procedures other than competitive procedures only when -
    - (1) the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency;
    - (2) the executive agency's need for the property or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals;
    - (3) 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 property 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 procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;
    - (4) the terms of an international agreement or treaty between the United States Government and a foreign government or international organization, or the written directions of a foreign government reimbursing the executive agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;
    - (5) subject to subsection (h) <sup>(1)</sup> of this section, a statute expressly authorizes or requires that the procurement be made through another executive agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale:

- (6) the disclosure of the executive 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; or
- (7) the head of the executive agency -
  - (A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and
  - (B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.
- (d) Property or services deemed available from only one source; nondelegable authority
  - (1) For the purposes of applying subsection (c)(1) of this section -
    - (A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and
    - (B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the Government which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the executive agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.
  - (2) The authority of the head of an executive agency under subsection (c)(7) of this section may not be delegated.
- (e) Offer requests to potential sources  
An executive agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) of this section shall request offers from as many potential sources as is practicable under the circumstances.
- (f) Justification for use of noncompetitive procedures
  - (1) Except as provided in paragraph (2), an executive agency may not award a contract using procedures other than competitive procedures unless -
    - (A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;
    - (B) the justification is approved -
      - (i) in the case of a contract for an amount exceeding \$500,000 (but equal to or less than \$10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause
      - (ii) or (iii); and

- (ii) in the case of a contract for an amount exceeding \$10,000,000 (but equal to or less than \$50,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or
    - (iii) in the case of a contract for an amount exceeding \$50,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of this title (without further delegation); and
    - (C) any required notice has been published with respect to such contract pursuant to section 416 of this title and all bids or proposals received in response to such notice have been considered by such executive agency.
- (2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required -
  - (A) when a statute expressly requires that the procurement be made from a specified source;
  - (B) when the agency's need is for a brand-name commercial item for authorized resale;
  - (C) in the case of a procurement permitted by subsection (c)(7) of this section; or
  - (D) in the case of a procurement conducted under (i) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.), or (ii) section 637(a) of title 15.
- (3) The justification required by paragraph (1)(A) shall include -
  - (A) a description of the agency's needs;
  - (B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;
  - (C) a determination that the anticipated cost will be fair and reasonable;
  - (D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;
  - (E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and
  - (F) a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition before a subsequent procurement for such needs.
- (4) The justification required by paragraph (1)(A) and any related information shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.
- (5) In no case may an executive agency -
  - (A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or
  - (B) procure property or services from another executive agency unless such other executive agency complies fully with the

**6.302 -- Circumstances Permitting Other Than Full and Open Competition.**

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

**6.302-1 -- Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements.**

**(a) Authority.**

(1) Citations: 10 U.S.C.2304(c)(1) or 41 U.S.C.253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that --

(A) Demonstrates a unique and innovative concept, or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and,

(C) Does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C.2304(d)(1)(A) and 41 U.S.C.253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in --

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition, or

(B) Unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C.2304(d)(1)(B) or 41 U.S.C.253 (d)(1)(B).)

(iii) For DOD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition, or

(B) Unacceptable delays in fulfilling the agency's requirements. (See 10

U.S.C.2304(d)(1)(B.)

- (b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):
- (1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by --
    - (i) Unique supplies or services available from only one source or only one supplier with unique capabilities; or,
    - (ii) For DOD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.
  - (2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).
  - (3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.
  - (4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.
- (c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)
- (d) *Limitations.*
- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

- (2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

**6.302-2 -- Unusual and Compelling Urgency.**

(a) *Authority.*

- (1) Citations: 10 U.S.C.2304(c)(2) or 41 U.S.C.253(c)(2).
- (2) When 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, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where

- (1) an unusual and compelling urgency precludes full and open competition, and
- (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.*

- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.
- (2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

**6.302-3 -- Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services.**

(a) *Authority.*

- (1) Citations: 10 U.S.C.2304(c)(3) or 41 U.S.C.253(c)(3).
- (2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order --
  - (i) 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,
  - (ii) 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



- (iii) To acquire the services of an expert or neutral person (see 33.201) for any current or anticipated litigation or dispute.

(b) *Application.*

- (1) Use of the authority in paragraph (a)(2)(i) of this subsection may be appropriate when it is necessary to --
  - (i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;
  - (ii) Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;
  - (iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);
  - (iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;
  - (v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;
  - (vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or
  - (vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.
- (2) Use of the authority in paragraph (a)(2)(ii) of this subsection may be appropriate when it is necessary to --
  - (i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;
  - (ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or
  - (iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii)

of this subsection.

- (3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of either --
- (i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:
    - (A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency, or
    - (B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or
  - (ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.
- (c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

#### 6.302-4 -- International Agreement.

- (a) *Authority.*
- (1) Citations: 10 U.S.C.2304(c)(4) or 41 U.S.C.253(c)(4).
  - (2) Full and open competition need not be provided for when precluded by 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.
- (b) *Application.* This authority may be used in circumstances such as --
- (1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or
  - (2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.
- (c) *Limitations.* Except for DoD, NASA, and the Coast Guard, contracts awarded using this authority shall be supported by written justifications and approvals described in 6.303 and 6.304.

**6.302-5 -- Authorized or Required by Statute.**

**(a) Authority.**

- (1) *Citations:* 10 U.S.C.2304(c)(5) or 41 U.S.C.253(c)(5).
- (2) Full and open competition need not be provided for when
  - (i) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or
  - (ii) The agency's need is for a brand name commercial item for authorized resale.

**(b) Application.** This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

- (1) Federal Prison Industries (UNICOR) -- 18 U.S.C.4124 (see Subpart 8.6);
- (2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped -- 41 U.S.C.46-48c (see Subpart 8.7);
- (3) Government Printing and Binding -- 44 U.S.C.501-504, 1121 (see Subpart 8.8).
- (4) Sole source awards under the 8(a) Program -- 15 U.S.C.637 (see Subpart 19.8).
- (5) The Robert T. Stafford Disaster Relief and Emergency Assistance Act -- 42 U.S.C.5150 (see Subpart 26.2).
- (6) Sole source awards under the HUBZone Act of 1997 -- 15 U.S.C.657a (see 19.1306).

**(c) Limitations.**

- (1) This authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically --
  - (i) Identifies the entity involved;
  - (ii) Refers to 10 U.S.C.2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions; and
  - (iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in 10 U.S.C.2304(j) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate. However, this limitation does not apply --
    - (A) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or

- (B) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.
- (2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for --
- (i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or
- (ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)
- (3) The authority in (a)(2)(ii) of this subsection may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

#### 6.302-6 -- National Security.

(a) *Authority.*

- (1) Citations: 10 U.S.C.2304(c)(6) or 41 U.S.C.253(c)(6).
- (2) Full and open competition need not be provided for when 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.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.*

- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.
- (2) See 5.202(a)(1) for synopsis requirements.
- (3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

#### 6.302-7 -- Public Interest

(a) *Authority.*

- (1) Citations: 10 U.S.C.2304(c)(7) or 41 U.S.C.253(c)(7).
  - (2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.
- (b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.
- (c) *Limitations.*
- (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by --
    - (i) The Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or
    - (ii) The head of any other executive agency. This authority may not be delegated.
  - (2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.
  - (3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) above.
  - (4) This Determination and Finding (D&F) shall not be made on a class basis.

#### 6.303 -- Justifications.

##### 6.303-1 -- Requirements.

- (a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer --
- (1) Justifies, if required in 6.302, the use of such actions in writing;
  - (2) Certifies the accuracy and completeness of the justification; and
  - (3) Obtains the approval required by 6.304.
- (b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.
- (c) Justifications required by paragraph (a) above may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

- (d) Contract actions subject to the Agreement on Government Procurement (see Subpart 25.4, Foreign Acquisition) may be made without providing for full and open competition only when permitted and justified pursuant to this subpart. If, in such a contract action, the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition, a copy of the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.
- (e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

#### 6.303-2 -- Content.

- (a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:
  - (1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."
  - (2) Nature and/or description of the action being approved.
  - (3) A description of the supplies or services required to meet the agency's needs (including the estimated value).
  - (4) An identification of the statutory authority permitting other than full and open competition.
  - (5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
  - (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBB notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.
  - (7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.
  - (8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.
  - (9) Any other facts supporting the use of other than full and open competition, such as:
    - (i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
    - (ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

**FAR -- Part 6; Competition Requirements; (FAC 97-14); 23 November 1999**

- (iii) When 6.302-2 is cited, 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.
  - (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.
  - (12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.
- (b) 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.

MODE = MEMORY TRANSMISSION

START=MAY-25 17:21

END=MAY-25 17:29

FILE NO. = 098

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG.NO.	PROGRAM NAME
001	OK	*	[REDACTED] b2	015/015		

\*\*\*\*\* b7c Admin. Law/Inves. Law \*\*\*\*\* b7c



FBI

Office of the General Counsel  
Administrative Law Unit

Facsimile Transmittal Sheet

PRECEDENCE	CLASSIFICATION
<input type="checkbox"/> Immediate	<input type="checkbox"/> Top Secret
<input type="checkbox"/> Priority	<input type="checkbox"/> Secret
<input checked="" type="checkbox"/> Routine	<input type="checkbox"/> Confidential
	<input type="checkbox"/> Sensitive
	<input type="checkbox"/> Unclassified

TO:

Recipient: [REDACTED] b7c VIA FAX-NUMBER: [REDACTED] b2 Recipient's voice phone: [REDACTED] b7c	15 pages total (including cover)
---	-------------------------------------

FOR:

	Appropriate Action	Comment	Note and Return
	Approval	Coordination	Per Conversation
x	As Requested	File	Signature/Initial
	Circulate	x For Your Information	Other:
	Clearance	May We Discuss	

RE: 41 USC 253 (c) (1) - 4 pages  
FAR 6.302 - 10 -pages

FROM: [REDACTED] b7c Assistant General Counsel	Room 7358	Phones [REDACTED] b7c (voice) (fax) b2	Date 5/25/00
---	--------------	---	-----------------

FBI/DOJ

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*Good Luck*

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DATE 8/30/02 BY SP3/C/KSB



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FOIA  
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Section 552

Section 552a

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The following number is to be used for reference regarding these pages:  
Document 21, page 1

~~SECRET~~

To: Finance Division From: CID/OSS, [REDACTED] b2  
Re: [REDACTED] 06/12/2000 (S) b1

open competition." Justification for use of non-competitive procedures is pursuant to Title 41, USC, Section 253 (c) (6), which provides that "the disclosure of the executive 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." A proposed JUSTIFICATION addendum, with certifications by a Contracting Officer and Technical Specialist, is attached. CRU assistance is also requested in the preparation of an appropriate agreement to be executed by a Contracting Officer of the FBI and ChoicePoint, which would provide for a statement of services to be performed, a fee schedule, terms of confidentiality, assignment of proprietary rights, and indemnification.

Administrative: (U) [REDACTED] CID sponsored meetings at FBIHQ, 2/24/00 and 3/16/00, and 4/28/00. b2

Enclosure(s): (U) [REDACTED] Justification for Other Than Full and Open Competition in Accordance with Title 41, United States Code, Section 253 (c) (6).

(S) [REDACTED]

(U) [REDACTED] (S) b1

[REDACTED] (S) b1

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Section 552

Section 552a

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(b)(7)(E)

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(b)(8)

(b)(9)

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The following number is to be used for reference regarding these pages:  
document 21, pages 3-7

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X Deleted Page(s) X  
X No Duplication X

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To: Finance Division From: CID/OSS [redacted] b2  
Re: [redacted] 06/12/2000

(S) b1

LEAD (S)

Set Lead 1: (Adm.)

FINANCE

AT WASHINGTON, D.C.

1) (u) Will review the contents of this communication and advise CID if a services agreement can be effected with ChoicePoint as set forth above.

2) (u) Will assist CID in the preparation of this agreement to include a statement of work, terms of exclusivity, terms of confidentiality, indemnification and fee schedules.

♦♦

~~SECRET~~

To: Finance Division From: CID/OSS  
Re: [REDACTED] 06/12/2000

~~SECRET~~ b2

(S) b1

Work Copy Routing Slip

- 1 - [REDACTED] Room 6851
- 1 - [REDACTED] Room 7116
- 1 - [REDACTED] Room 4012
- 1 - [REDACTED] Room 3012
- 1 - [REDACTED] Room 5155
- 1 - [REDACTED] Room 4343
- 1 - [REDACTED] Room 9483
- 1 - [REDACTED] Room 7338

b7c

ChoicePoint Folder

(S) b1

Rec'd 7/11/00  
 Reviewer 7/11/00  
 5:50  
 looks good  
 just need the  
 original to  
 S.C.

Original 7/14/00

8/30/02  
 CLASSIFIED BY: SP5/JCK/SB  
 REASON: 1.5 / c1  
 DECLASSIFY ON: X  
 #91508

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Section 552

Section 552a

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Contained in FBI's document.

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Document 22, page 1

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JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

WANT RESULTS EQUIVALENT TO  
THAT OBTAINABLE THROUGH  
FULL AND OPEN COMPETITION

b1

3. DESCRIPTION OF SERVICES REQUIRED:

(S)

[REDACTED]

(S)

[REDACTED]

(S)

[REDACTED]

(S)

[REDACTED]

1) (S)

[REDACTED]

2) (S)

[REDACTED]

3) (S)

[REDACTED]

~~SECRET~~

~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

b1

4) (S)

[REDACTED]

5) (S)

[REDACTED]

6) (S)

[REDACTED]

7) (S)

[REDACTED]

4. STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION:

(u) The statutory authority for using other than full and open competition is Title 41, United States Code, Section 253 (c) (6) the disclosure of the executive 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.

5. DEMONSTRATION THAT PROPOSED NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED:

[REDACTED] (S) b1

~~SECRET~~



~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

PLANT SITE FOR KODAK...  
KODAK...  
KODAK...

[REDACTED]

b1

(S)

(S)

[REDACTED]

b1

(S)

[REDACTED]

b1

~~SECRET~~

~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

b1

(S)

(S)

(S)

(U) 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.

6. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT AS MANY POTENTIAL SOURCES AS PRACTICABLE ARE SOLICITED:

(S)

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Section 552

Section 552a

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(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

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(b)(7)(D)

(k)(2)

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(k)(3)

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(k)(7)

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The following number is to be used for reference regarding these pages:

Document 22, page 6

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JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

b1

(S)




9. OTHER FACTORS:

(U) The terms and conditions of the agreement will provide for confidentiality, assignment of proprietary rights and indemnification.

10. LISTING OF THE SOURCES THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.

(U) Due to the concerns for National Security delineated above, no sources were given the opportunity to express a written interest in this acquisition.

11. ACTIONS TAKEN TO REMOVE/OVERCOME BARRIERS TO COMPETITION:

~~(S)~~ As stated above in Items <sup>(S)</sup> 5 and 6, the unacceptable risk of exposure to all CID and NSD  operations, which would result from competitive-bid solicitations, and the sensitive circumstances of the initial contract for a feasibility study, dictate that the absence of competition is warranted.

~~SECRET~~

~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

(S) (u) Should the feasibility study result in implementation, consideration will be given to whether portions of the performance contract can be competitively bid on a limited basis.

12. CERTIFICATIONS:

TECHNICAL SPECIALIST CERTIFICATION:

(u) As the Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

\_\_\_\_\_  
Date  
Contracting Officer's  
Technical Representative

CONTRACTING OFFICER CERTIFICATION:

(u) (S) As the Contracting Officer handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

\_\_\_\_\_  
Date  
Contracting Officer  
\_\_\_\_\_  
Date  
Unit Chief

LEGAL REVIEW:

\_\_\_\_\_  
Date  
Assistant General Counsel

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Section 552a

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Document 23, page 1

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JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

MAINTAINING SOURCE INFORMATION  
MULTIPLE SOURCES OF INFORMATION

3. DESCRIPTION OF SERVICES REQUIRED:

bl

(S)

[REDACTED]

bl

(S)

[REDACTED]

bl (S) ~~(S)~~

[REDACTED]

bl

(S)

[REDACTED]

bl

1)

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2)

(S)

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[REDACTED]

3)

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bl

[REDACTED]

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X2

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JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

b1 4) (S) [REDACTED]

b1 5) (S) [REDACTED]

b1 6) (S) [REDACTED]

b1 7) (S) [REDACTED]

4. STATUTORY AUTHORITY PERMITTING OTHER THAN FULL AND OPEN COMPETITION:

(u) The statutory authority for using other than full and open competition is Title 41, United States Code, Section 253 (c) (6) the disclosure of the executive 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.

5. DEMONSTRATION THAT PROPOSED NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED:

b1 (S) [REDACTED]

~~SECRET~~



~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

STATE DEPT. FORM NO. 101 (REV. 11-15-60)  
EXHIBIT B (PARTIAL) (NO. 101-101)

b1

[REDACTED]

(S)

(S)

b1

[REDACTED]

(S)

b1

[REDACTED]

~~SECRET~~

~~SECRET~~

JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

b1 (S) [REDACTED]

b1 (S) [REDACTED]

b1 (S) [REDACTED]

(U) 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.

6. DESCRIPTION OF EFFORTS MADE TO ENSURE THAT AS MANY POTENTIAL SOURCES AS PRACTICABLE ARE SOLICITED:

b1 (S) [REDACTED]

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(b)(7)(D)

(k)(2)

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Document 23, page 6

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**JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION**

b1  
(S)



**9. OTHER FACTORS:**

(U) The terms and conditions of the agreement will provide for confidentiality, assignment of proprietary rights and indemnification.

**10. LISTING OF THE SOURCES THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.**

(U) Due to the concerns for National Security delineated above, no sources were given the opportunity to express a written interest in this acquisition.

**11. ACTIONS TAKEN TO REMOVE/OVERCOME BARRIERS TO COMPETITION:**

(S) b1  
~~(S)~~ As stated above in Items 5 and 6, the unacceptable risk of exposure to all CID and NSD operations, which would result from competitive bid solicitations, and the sensitive circumstances of the initial contract for a feasibility study, dictate that the absence of competition is warranted.

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JUSTIFICATION FOR OTHER THAN  
FULL AND OPEN COMPETITION

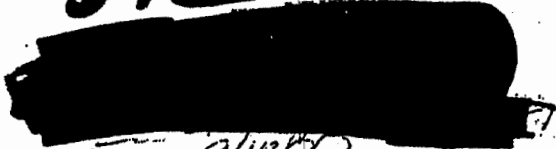
*(X)* Should the feasibility study result in implementation, consideration will be given to whether portions of the performance contract can be competitively bid on a limited basis.

12. CERTIFICATIONS:

TECHNICAL SPECIALIST CERTIFICATION:

*(X)* As the Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

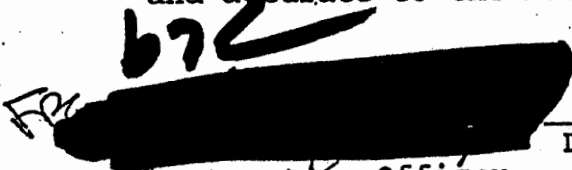
\_\_\_\_\_  
Date  
Contracting Officer's  
Technical Representative

*b7c*  


*b2 9/1/80*


CONTRACTING OFFICER CERTIFICATION:

*(X)* As the Contracting Officer handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

*b7c*  
*For*   
\_\_\_\_\_  
Date  
Contracting Officer

\_\_\_\_\_  
Date  
Unit Chief

LEGAL REVIEW:

*b7c*  
  
\_\_\_\_\_  
Date  
Assistant General Counsel

~~SECRET~~

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, between ChoicePoint, Inc. having offices located at 1000 Alderman Drive, Alpharetta, Georgia 30005 (hereinafter called "ChoicePoint"), and the United States Government, Department of Justice, Federal Bureau of Investigation (hereinafter the "FBI"), having offices located at 935 Pennsylvania Avenue, N.W., Washington, D.C. 20035.

WHEREAS, ChoicePoint and the FBI possess certain information which is not available to the public, which ChoicePoint and the FBI desire to protect against disclosure or competitive use; and

WHEREAS, in order to facilitate discussions and analyses between ChoicePoint and the FBI, certain confidential and proprietary, technical, financial, business, public source information, and law enforcement sensitive information may be disclosed by the FBI or ChoicePoint,

NOW, THEREFORE, the parties agree to the following:

A. DEFINITIONS

1. The term "Information," as used in this Agreement, means business or law enforcement data, including but not limited to all specifications, drawings, sketches, models, samples, reports, plans, forecasts, current or historical data, computer programs or documentation and all other technical and financial data.

2. "Proprietary Information" is defined as information which is in the possession of ChoicePoint, is not generally available to the public, and which ChoicePoint desires to protect against unrestricted disclosure or competitive use. Proprietary Information includes, but is not limited to, the information specified in Exhibit B of this agreement.

3. "Sensitive Law Enforcement Information" is defined as information which is in the possession of the FBI, is not available to the public, and which the FBI desires to protect against unrestricted disclosure. It is information that, if disclosed, could harm or otherwise impede investigative activities, investigative techniques, or other activities of the FBI. Sensitive Law Enforcement Information includes, but is not limited to, the information specified in Exhibit A of this agreement.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 01/01/02 BY SP5/KJ/KSB

Department of Justice  
 Federal Bureau of Investigation  
 Internal Routing/Action Slip

TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
	7176	DIRECTOR		5129	Budget Unit
	7176	Mr. Bucknam		4340	Policy Planning and Analysis Unit
	7142	Mr. Pickard		5129	Administrative Unit
	11861	CJIS DIVISION			
	Quantico	TRAINING DIVISION		5012	VCMO Section
	6012	PERSONNEL DIVISION		3823	Financial Crimes Section
	5829	INFORMATION RES. DIV.		3155	Corruption/Civil Rights Section
	4026	NATIONAL SECURITY DIV.		3028	OC/DO Section 1
	3090	LABORATORY DIVISION		3012	OC/DO Section 2
	6028	FINANCE DIVISION		4330	Intelligence Section
	7427	OFC. GENERAL COUNSEL		7443	International Relations Branch
	7125	INSPECTION DIVISION		5155	Administrative Section
	7240	OPCA		5155	Operational Support Section
	7901	EEO			
	7129	OPR		4343	[REDACTED]
	7116	[REDACTED]		4944	[REDACTED]
	7110	[REDACTED]		US	[REDACTED]
				10151	[REDACTED]
	7116	[REDACTED]		4343	[REDACTED]
	7443	[REDACTED]			[REDACTED]
	3012	[REDACTED]		4343	[REDACTED]
	3028	[REDACTED]			[REDACTED]
	5155	[REDACTED]		7338	[REDACTED]
	3155	Vacant			
	7443	[REDACTED]			
	4330	[REDACTED]			
	3012	[REDACTED]			
	7373	[REDACTED]			
	5155	[REDACTED]			
	5012	[REDACTED]			
	3028	[REDACTED]			
	5012	[REDACTED]			
	5712	[REDACTED] SIOC			

- |   |   |
|---|---|
| <input type="checkbox"/> Urgent         | <input type="checkbox"/> For Your Information         |
| <input type="checkbox"/> Special        | <input type="checkbox"/> Please Initial               |
| <input type="checkbox"/> Approp. Action | <input type="checkbox"/> For Your Signature/ Approval |
| <input type="checkbox"/> FYI            | <input type="checkbox"/> See Remarks                  |
| <input type="checkbox"/> See Me         | <input type="checkbox"/> See Reverse                  |

Remarks:

Draft copy of Statement Of Work we will be discussing on Thurs, 07/27 at 1:00PM in Room 5145.

FROM [REDACTED] b7C (S) b1 b2

Room 4343 Phone [REDACTED] Date 07/26/2000 FBI/DOJ

DRAFT

~~SECRET~~

STATEMENT OF WORK  
FOR FISCAL YEAR(S) 2000-2001

CONTRACT FOR SERVICES

[REDACTED]

b2

WASHINGTON, D.C.

(S) b1

b1

1. Background: (S)

[REDACTED]

[REDACTED]

(S) b1

[REDACTED]

(S)

8/30/02  
CLASSIFIED BY: SP5/NC/KSB  
REASON: 1.5 (C)  
DECLASSIFY ON: X 1

~~SECRET~~  
DRAFT

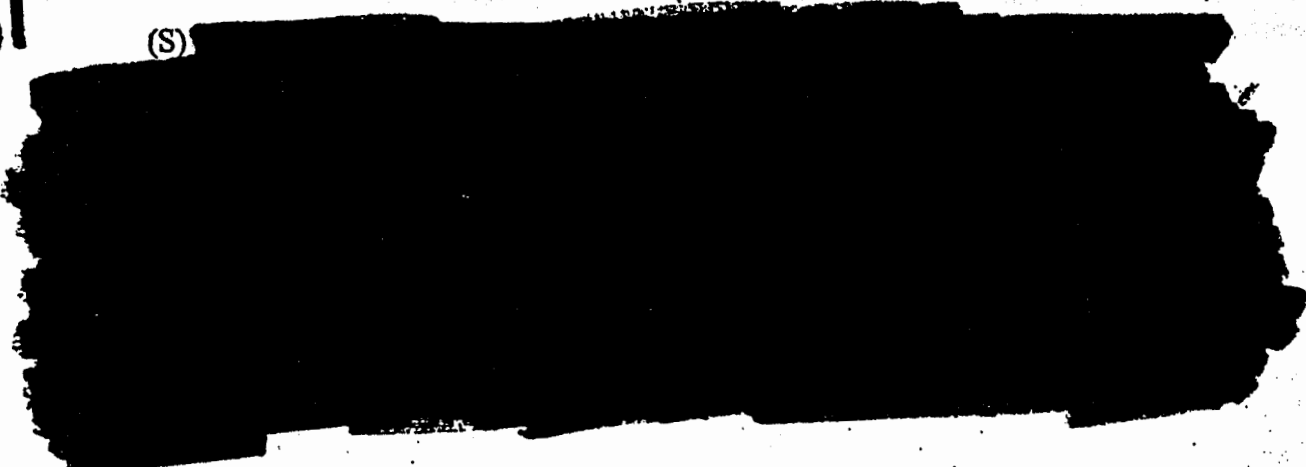
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT



~~SECRET~~

bl

(S)



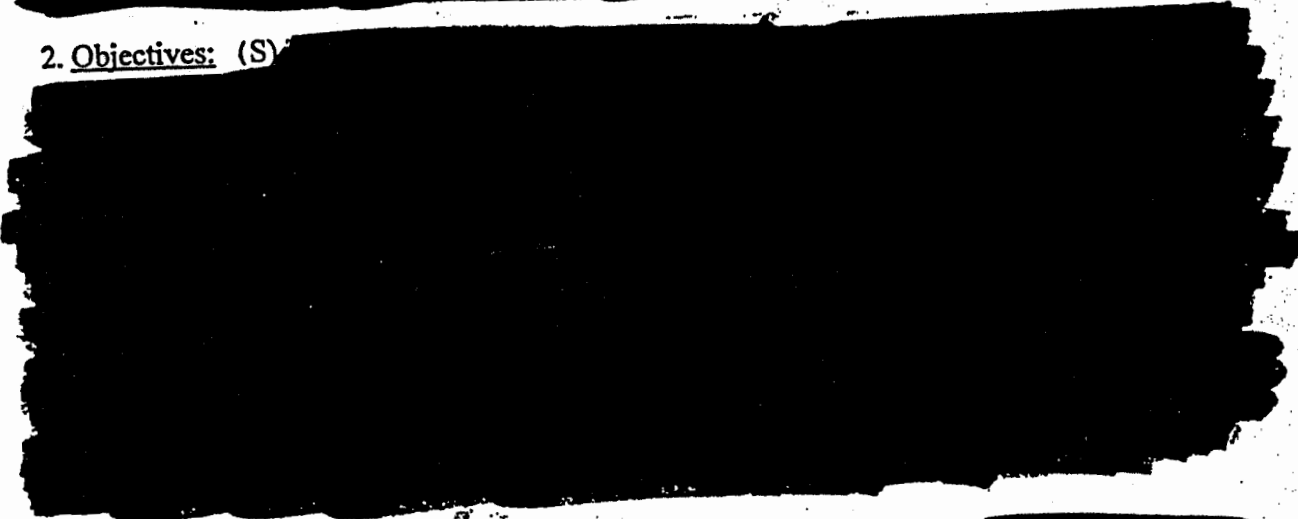
bl

(S)



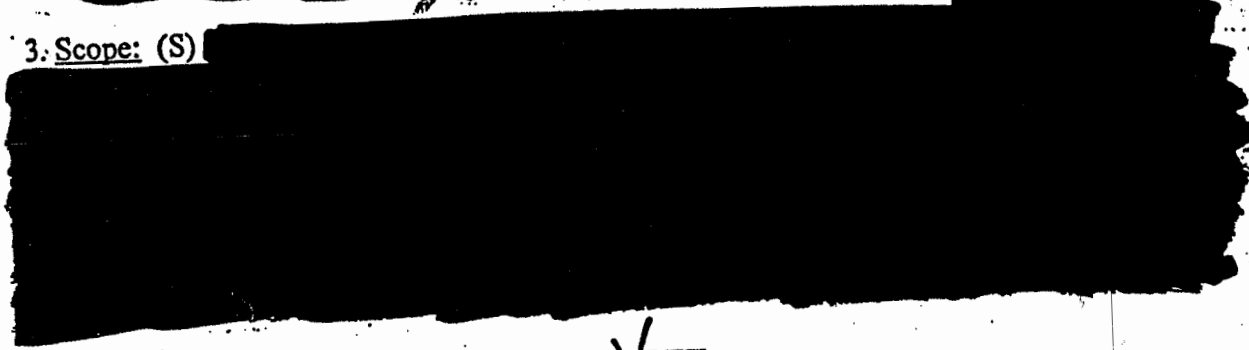
bl

2. Objectives: (S)



bl

3. Scope: (S)



~~SECRET~~

SECRET ~~X~~

[REDACTED]

b1

4. Tasks/Requirements: (S)

[REDACTED]

b1

(S) [REDACTED]

b1

(S) (X) [REDACTED]

(S) [REDACTED]

b1

4.1 (S)

[REDACTED]

b1

4.2 (S)

[REDACTED]

b1

4.3 (S)

[REDACTED]

b1

4.4 (S)

[REDACTED]

b1

SECRET ~~X~~

SECRET

[Redacted] (S) b1

4.5 (S) [Redacted]

b1

4.6 (S) [Redacted]

b1

4.7 (S) [Redacted]

b1

4.8 (S) [Redacted]

b1

~~[Redacted]~~ b2

[Redacted]

5. [Redacted] (S) b1

[Redacted] we b7c Control b1

5.2 (S) [Redacted] b1

b2  
[Redacted]  
TKM

Murphy  
P&

7 7

SECRET

in Control  
we

XXXXXX  
XXXXXX  
XXXXXX

FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

(b)(2)

(b)(3)

(b)(4)

(b)(5)

(b)(6)

(b)(7)(A)

(b)(7)(B)

(b)(7)(C)

(b)(7)(D)

(b)(7)(E)

(b)(7)(F)

(b)(8)

(b)(9)

(d)(5)

(f)(2)

(k)(1)

(k)(2)

(k)(3)

(k)(4)

(k)(5)

(k)(6)

(k)(7)

Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

Pages were not considered for release as they are duplicative of \_\_\_\_\_

Page(s) withheld for the following reason(s): Contained in FBI's Choicepoint Information document.

The following number is to be used for reference regarding these pages:  
Document 24, page 6

XXXXXXXXXXXXXXXXXXXX  
X Deleted Page(s) X  
X No Duplication Fee X

~~SECRET~~

**10. Period Of Performance:**

~~SECRET~~

XXXXXX  
XXXXXX  
XXXXXX

FEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

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- Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552

Section 552a

(b)(1)

(b)(7)(A)

(d)(5)

(b)(2)

(b)(7)(B)

(j)(2)

(b)(3)

(b)(7)(C)

(k)(1)

(b)(7)(D)

(k)(2)

(b)(7)(E)

(k)(3)

(b)(7)(F)

(k)(4)

(b)(4)

(b)(8)

(k)(5)

(b)(5)

(b)(9)

(k)(6)

(b)(6)

(k)(7)

- Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

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Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

1 Pages were not considered for release as they are duplicative of Notes/Comments dated 7/26/00

Page(s) withheld for the following reason(s): \_\_\_\_\_

- The following number is to be used for reference regarding these pages:

Document 25

XXXXXXXXXXXXXXXXXXXX

X Deleted Page(s) X  
X No Duplication Fee X  
X for this page X

b7C

SF86 - pass them

ditto

New how:  
@ [redacted]

b2

Clear for attorney

8.1 Print person

Use their space resources...  
take out brochures, which are  
each printed by a new vendor.  
we have approval.

b7C

8.3

\* [redacted] script of  
[redacted] lyrics

9 "Contract site"

10

Six mo or 1 yr?

how much time do we  
need.

no assistance / motion

\* non disclosure  
[redacted] b7C

b7C

we will not have exclusive or any other  
rights to disclose what you are  
non disclosure -

b7C

DOCUMENT 26

16. w. v. FBI

b2

[redacted] S-CMS [redacted]

CAZCA