[A Brief Introduction: [succession lease, new lease, replacement lease,…]]

[Example for Radio Transmitter]
This is a succeeding lease for tower antenna attachment space along with ___ square feet of floor space in an adjacent equipment building located at __________, ______ which is approximately __________. The geographic coordinates are Latitude __ ° __' __" N and Longitude __ ° __' __" W

1. Nature and/or Description of the Action Being Approved:

[Example for Radio Transmitter]
Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) proposes to enter into a ____ (__ ) year lease for tower space along with ___ square feet of climate controlled equipment building space for a National Weather Radio transmitter to be located at __________ which is approximately __________.

2. Description of Requirements to Meet the Agency’s Needs (Including the Estimated Value):

[…the anticipated rental for this procurement action is $____ annually for a total estimated cost of $____ over the ____ (__ ) year term.]

[Example for Radio Transmitter]
The real property requirement is for tower space along with adjacent ___ square feet of climate controlled equipment building space, located in __________. ______ for up to a ____ (__ ) year term. The delineated area is a ____ mile radius from the existing location at or above ____ feet above ground level at or above an elevation of ____ feet above mean sea level. Due to the incumbent site’s existing infrastructure including a ready source of electrical power, telecommunications connection, along with the benefit of ensuring a continuation of service for the delineated area is best suited for the National Weather Radio’s antenna and transmitter installation requirements. The anticipated rental rate for this procurement action will be $____ annually for a total estimated cost of $____ over the ____ (__ ) year term.

3. An Identification Of The Statutory Authority Permitting Other Than Full and Open Competition:

[41 U.S.C. 3304(a)(?) (see citation guidance below)]

[Typical example for Radio Transmitter]
41 U.S.C. § 3304(a)(1) Only one responsible source and no other supplies and services will satisfy the needs of the executive agency.

4. Demonstration that the Acquisition Requires use of the Authority Cited:

[Explain via narrative the use of authority cited in Section 3, above]

[Cost-Benefit Analysis – GSAM 570.402-5]
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Full Term Lease Savings \$x,xxx

[Note: typically based upon the fact that award to other than the current Lessor would require relocation of
the entire requirement and would cause to incur move and replication costs that would not be recovered
through competition.]

[Typical example for Radio Transmitter]
Based upon FAR 6.302-1(a) [(see citation guidance below)], this location best meets the program requirements of the
National Weather Service and would ensure no degradation of the current broadcast coverage area. Maintaining the
National Weather Radio antenna and transmitter facility in the identical location meets NWS requirements to
measure, observe, research and detect weather in this region without modifying data or altering findings. Therefore,
no other sources were determined to be practicable. The favorable location, along with the provision of electric,
telecommunications services make remaining at this site in the Government’s best interest. Relocating to another
tower outside of the delineated area would redefine the propagation pattern which could result in the creation of
reception voids covered by the present transmissions from this location. Relocating also could result in frequency
overlapping and interference which could degrade the signals from this transmitter.

GSAM 570.402-5 allows for negotiation with the incumbent lessor when a cost-benefit analysis shows that the
Government cannot expect to recover relocation and duplication costs through competition. The following is the
Cost-Benefit Analysis for this Categorical Space requirement with a restrictive delineated area:

[Fill-in chart above for summary of market]

Even if there were alternative sites, an award to other than the current Lessor would require relocation and would
cause the Government to incur move and equipment replication costs that would not be recovered through
competition (FAR 6.302-1). Therefore, the proposed action involves negotiating a lease with __________ for the
aforementioned requirement. Government intends to negotiate a succeeding lease and remain at its current
location.

5. Description of Efforts to Solicit as many Sources as is Practicable:

[Example for Radio Transmitter]
Due to the National Weather Service program requirements and the limited ___ mile delineated area no other
locations were identified.

6. Demonstration that Anticipated Cost will be Fair and Reasonable:

[In accordance with FAR 6.303-2(b) (7), I hereby determine that the anticipated rent to the Government of
$______ annually is fair and reasonable.]

7. Description of Market Survey Conducted:

[Example for Radio Transmitter]
While no other towers are located within the delineated area, an expanded search was conducted to obtain market
information in and around the ______________, __ area.

[Market survey or Market research has been performed using …..] [creating an attachment is acceptable]

Recent market surveys of communication towers in the greater ________ market show a rental range from
$________ to $________ per annum.

Or

Based upon a communication tower lease(s) completed _____ kilometers (or miles) away from this market
within the past 12 months were leased by __________ for $__________ including all utilities, backup
power, concrete pad space, and equipment shed space.

8. Other Factors Supporting Justification:

9. List of Sources That Expressed Interest in the Acquisition:

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10. **Future Actions to Overcome Barriers to Full and Open Competition:**

11. **Contracting Officers Certification:**
By signature on this Justification for Other than Full and Open Competition, the Contracting Officer certifies that the award of a lease of up to ____ SF of _______ to _______ is in the Government's best interests and is accurate and complete to the best of my knowledge and belief.

________________________________________ __________________________
Contracting Officer Date

12. **Technical Requirements Personnel Certification:**
I certify that the supporting data used to form the basis of this justification is complete and accurate to the best of my knowledge and belief.

________________________________________
Realty Specialist Date

Concurrence: [if TCV is above $650,000]:

____________________________________________________________________
DOC, Office of General Counsel Date
[if TCV is above $650,000]:

____________________________________________________________________
NOAA, Program Office Official Date
[if TCV is above $650,000]:

____________________________________________________________________
NOAA, OCAO, RPMD Director Date
[if TCV is above $650,000]:

Approval [if TCV is above $650,000]:

____________________________________________________________________
NOAA, Chief Administrative Officer Date
[if TCV is above $650,000]:

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JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
(JUSTIFICATION OR OTFO)

PURPOSE:

This document is to provide general guidance on the Justification for Other Than Full and Open Competition (referred to as the Justification or OTFO).

REASON:

The Sole Source Justification is an acquisition planning document.

Before commencement of negotiations and as part of Acquisition Planning, the Contracting Officer must justify and certify “that the Justification is accurate and complete” to the best of their knowledge. The Realty Specialist is responsible for providing and certifying as accurate and complete their recommendation for other than full and open competition.

OTHER THAN FULL AND OPEN COMPETITION [JUSTIFICATION OR OTFO]

When referring to the Justification or the OTFO, GSAR 570 refers to the Federal Acquisition Regulations 6.3.

FAR 6.303-1 states:
(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.

Awarding contracts on other than full and open competition 41 U.S.C. 3304(a)(1) through (c)(7) can only be done based on certain limited exceptions:

- 41 U.S.C. 3304(a)(1) - FAR 6.302-1 Available from Only One Source
- 41 U.S.C. 3304(a)(2) - FAR 6.302-2 Unusual and Compelling Urgency
- 41 U.S.C. 3304(a)(4) - FAR 6.302-4 International Agreement or Treaty
- 41 U.S.C. 3304(a)(6) - FAR 6.302-6 National Security
- 41 U.S.C. 3304(a)(7) - FAR 6.302-7 Public Interest

The statutory exceptions most commonly used by NOAA Real Property:

- 41 U.S.C. 3304(a)(1) - FAR 6.302-1 Available from Only One Source
- 41 U.S.C. 3304(a)(2) - FAR 6.302-2 Unusual and Compelling Urgency

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Before drafting the Other Than Full and Open Competition Justification, a decision on which exception must be decided. Use 41 U.S.C. 3304(a)(1) - FAR 6.302-1, when the other exceptions do not apply. If one of exceptions (c)(2) through (c)(7) specifically applies, choose the specific exception. More than one exception is neither appropriate nor necessary. If uncertain, it is best to select the one specific exception over a more general exception.

MOST COMMONLY USED EXCEPTIONS:

When using exception 41 U.S.C. 3304(a)(1) - FAR 6.302-1, Only one responsible source and no other supplies or services will satisfy agency requirements. The emphasis is either a) the source is unique and necessary or b) a cost-benefit analysis demonstrates that costs will not be recovered through competition. A typical real property example emphasizes that move, replication, and up-front costs/investments will not be recovered through competition [also see the PBS Leasing Desk Guide Chapter 5]. Because NOAA typically leases tower space, improved land, marina or pier facilities, University or Educational facilities that are rather common place the source is rarely unique. Typically it is the restricted delineated area that limits potential sources. The restrictive delineated area does not exempt the Realty Specialist or Contracting Officer from conducting market research or performing a greater market analysis in determining fair and reasonableness. A restrictive delineated area ‘in and of itself’ does not automatically provide that there is only one source that is unique and necessary to satisfy the Government’s requirement. Therefore, identifying no potential locations within a restrictive delineated area does not exempt the Realty Specialist or Contracting Officer from performing ‘cost-benefit’ analyses.

When using exception 41 U.S.C. 3304(a)(2) - FAR 6.302-2, Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. The emphasis is on the unusual circumstances and that injury [financial, legal, physical,…] would result from delay of award. This exception allows the Contracting Officer to limit the number of sources. A typical real property example is in response to an emergency where a precise location is critical due to unusual and urgent circumstances [natural or manmade disaster]. If using this exception, the term of the lease is limited to one (1) year with the understanding that the requirement will be terminated at the end of one (1) year or the requirement will be properly competed for any subsequent lease term [or one of the other exceptions will be demonstrated through a subsequent and separate justification or OTFO].

When using exception 41 U.S.C. 3304(a)(5) - FAR 6.302-5, A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source. If the legislation requires and identifies a specific source the legislation is a standalone justification. Otherwise, the justification emphasis is on legislation authorizing, but not requiring, that the procurement be made from a specified source. A typical real property example would be a statute authorizing a joint research center to be collocated with a specific Cooperative Institute or University but Lessor

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(Vendor) and/or location are not specified in the legislation. Regardless, competitive alternatives may be limited due to shared resources, access, and federal investment through Grants or other Cooperative Agreements.

LESS COMMONLY USED EXCEPTIONS:

41 U.S.C. 3304(a)(3) - FAR 6.302-3, is used when the Government must keep vital facilities or suppliers in business or make them available in the event of a national emergency or to acquire the services of an expert or neutral for current or anticipated litigation or dispute. The emphasis is either a) the need to maintain an essential capability for analyses, studies, or experiments or b) assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions. This exception is not typically used for real property lease contracting.

41 U.S.C. 3304(a)(4) - FAR 6.302-4, is used 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. The emphasis is on the acquisition 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. This is a rare exception and is not typically used for real property contracting [Best to use 41 U.S.C. 3304(a)(1) - FAR 6.302-1 even if outside the United States].

41 U.S.C. 3304(a)(6) - FAR 6.302-6, is used 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. The emphasis is on disclosure of the Government’s needs would compromise the national security not just because the acquisition may be classified. This is a rare exception; however, a real property example would be when the Government needs to acquire the space undercover without reference to the Government thus limiting typical market response to a Government space requirement. This authority would not be appropriate merely because the mission within the usable space of the requirement may be classified and/or top secret [Best to not use or mention in Justification even if Realty Specialist or Contracting Officer is aware of said activity or mission].

41 U.S.C. 3304(a)(7) - FAR 6.302-7, is used when the agency head determines that it is not in the public interest in the particular acquisition concerned. This exception is usually not an option and requires a written determination by the head of the agency that competition is not in the public interest. In accordance with GSAR 506.303-1 (b) “...submit the justification for the Administrator’s approval through the Senior Procurement Executive.” If said exception is used, Congress shall be notified in writing of such determination not less than 30 days before award of the contract [Due to Congressional requirements, may not be applicable or appropriate. If legislation requires and identifies a specific source the legislation is a standalone Justification].

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PROPER USE OF AUTHORITY:

Using the exception for an unusual and compelling urgency, and the Justification must explain how the government would be seriously injured unless the government limits the number of sources from which it solicits offers. Further, an unusual and compelling urgency does not allow the Contracting Officer to ignore the potential for competition. It is best to request offers from as many potential sources as is practical under the circumstances. Unusual and compelling urgency exception must be limited in both scope and duration.

JUSTIFICATION AMENDMENTS:

The contracting officer must amend the justification when any of the following occur prior to award of the initial contract:

1. An increase in the annual rent and/or total contract value of the prospective contract are greater than the authority of the approved Justification;
2. A change in the term of the contract which leads to an increase in contract term and/or leads to an increase in the total contract value, including any renewal options;
3. A change in the competitive strategy that further reduces competition; and/or,
4. A change in requirements that affects the basis for the justification thus alters the cited exception.

COST BENEFIT ANALYSIS

A comparative analysis of the anticipated cost deferential of remaining in place compared to moving to another space. The Cost-Benefit Analysis includes anticipated market rates, moving costs, as well as costs to reproduce or build out the space and infrastructure to meet the tenant agency's mission. This analysis which demonstrates whether the overall cost to the Government is greater or lesser than the cost of remaining at the current location provides the foundation for an OTFO used to justify a succeeding lease. GSAM 570.402-6 provides a detailed description.

Per the PBS Leasing Desk Guide, Chapter 5, a cost-benefit analysis must consider the following factors:

- The prices of other potentially available properties;
- Relocation costs
  a) the cost of equipment and installation on the potential new location's tower [listed under the potential new location's tower column];
  b) the removal of existing equipment from the existing location's tower (incumbent) [listed under the potential new location's tower column]; and,
  c) any restoration or remediation to the existing location's tower (incumbent) [listed under the potential new location's tower column];
- Duplication of costs to the Government. Duplication cost is typically the rent (for a few months) at the existing location's tower while the new tower is being brought into operation [listed under the potential new location's column]; and,
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- Other appropriate factors, examples include, the new location’s tower requiring the Government to fund a structural assessment [listed under the potential new location’s column], or another example could be applied against the incumbent if the Government is planning on replacing and upgrading equipment even when staying-put [listed under the incumbent location’s column].

A sample Cost-Benefit Analysis for Categorical or Special Purpose Space requirement with a restrictive delineated area may appear as follows:

<table>
<thead>
<tr>
<th></th>
<th>Incumbent Location Name and Address</th>
<th>Location 1 Name and Address</th>
<th>Location 2 Name and Address</th>
<th>Location 3 Name and Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Contract Value/Annual Rent</td>
<td>$60,000/$12,000</td>
<td>$54,000/$10,800</td>
<td>$48,000/$9,600</td>
<td>$42,000/$8,400</td>
</tr>
<tr>
<td>Relocation Costs**</td>
<td>$0</td>
<td>$30,000</td>
<td>$30,000</td>
<td>$30,000</td>
</tr>
<tr>
<td>Duplication Costs**</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Other**</td>
<td>$3,000 to upgrade existing kilowatt of equipment</td>
<td>Asking rate outside delineated area</td>
<td>Asking rate outside delineated area</td>
<td>Asking rate outside delineated area</td>
</tr>
<tr>
<td>Full Term Lease Savings***</td>
<td>$9,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Whether a savings is anticipated or not, an explanation as to why the anticipated rent is fair and reasonable is necessary. Further, the anticipated cost may or may not reflect the final negotiated contract. However, the Justification must be amended if the annual rent and/or the total contract value of the prospective contract are greater than the authority of the approved Justification.

** The cost to relocate all people, materials, personal property, and equipment is typically understood by the reader as ‘relocation costs’; however, the rows entitled duplication costs and other costs will require an explanation along with a note demonstrating the math, if numbers are placed into the fields. The explanation can be referenced below the chart.

*** The savings is placed under the incumbent location. The amount of savings is the least costly alternative less the cost to remain at the incumbent location.

Market Research

Market Research is any methodical effort to gather information about the market or customers, in order to gain insight or improve business decisions. It may involve consulting commercial databases, real estate brokers, and other sources of expertise. It may or may not involve directly contacting commercial lessors. Market research
generates useful information for setting negotiation objectives by helping to identify ranges of fair and reasonable costs for the type of space desired.

Section 4 supports the citation in Section 3:
If the authority cited in Section 3 is 41 U.S.C. 3304(a)(1) - FAR 6.302-1 which emphasizes that move, replication, and up-front costs/investments will not be recovered through competition. The market alternatives referenced in the cost-benefit analysis in Section 4 should align with the availability of space both within the delineated area and within the greater market area around the delineated area. The Cost-Benefit Analysis could include comparables of recent private sector lease agreements if the Realty Specialist does not receive alternative market information; and, if the Realty Specialist is unable to identify other asking prices in the greater market even some distance away from the subject property (outside of the delineated area).

Section 7 supports the citation in Section 6:
Section 7 of the Sole Source Justification summarizes the market findings (per Section 4); and, recent comparables in support of the statement in Section 6 of the Sole Source Justification providing that the Contracting Officer determines the anticipated rent is fair and reasonable. The market research in Section 7 can refer back to the market information in Section 4; along with, other more comprehensive market research/market information across the greater market and may include market information a few Counties away from the subject property which may in some cases cross State lines.

Justification Signature Threshold(s)

For Justifications with Total Contract Values (TCV) equal to or less than $650,000 [FAR 6.304(a)(1)], the Contracting Officer shall certify that the Justification is in the Government’s best interests and is accurate and complete to the best of their knowledge. If the TCV is greater than $650,000, the document will require Program Office (Line Office) concurrence, Director, Real Property Management Division concurrence, General Counsel concurrence and an approval signature by the NOAA, Chief Administrative Officer.

FORMAT FOR JUSTIFICATIONS:

When referring to the Justification or OTFO, GSAR 570 refers to the Federal Acquisition Regulations 6.3. The format for the Justification or the OTFO is outlined under Federal Acquisition Regulations 6.303-2, entitled ‘Content’. Further, GSAR 570 does not provide for a Justification format if the annual rent is equal to or below the Simplified Lease Acquisition Threshold. However, RPMD requires the same format for prospective contracts requiring a Justification regardless of annual or total contract value.