

Federal Acquisition Regulation

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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)).

[50 FR 52432, Dec. 23, 1985, as amended at 51 FR 36971, Oct. 16, 1986; 54 FR 46005, Oct. 31, 1989; 60 FR 42654, Aug. 16, 1995; 61 FR 39200, July 26, 1996; 63 FR 70267, Dec. 18, 1998; 67 FR 13068, Mar. 20, 2002]

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.

[50 FR 52432, Dec. 23, 1985]

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.

[50 FR 52432, Dec. 23, 1985]

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

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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) If 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 in an acquisition that would otherwise be subject to the Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, 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.

[50 FR 1729, Jan. 11, 1985, as amended at 50 FR 52433, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 64 FR 72418, Dec. 27, 1999]

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 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

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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.

(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.

[50 FR 1729, Jan. 11, 1985, as amended at 50 FR 52433, Dec. 23, 1985; 60 FR 48236, Sept. 18, 1995; 66 FR 27412, May 16, 2001]

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—