

6.303-2

48 CFR Ch. 1 (10-1-06 Edition)

(d) 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; 69 FR 77872, Dec. 28, 2004]

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 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—

(1) For a proposed contract not exceeding \$550,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$550,000 but not exceeding \$11.5 million, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$11.5 million, but not exceeding \$57 million, or, for DoD, NASA, and the Coast Guard, not exceeding \$78.5 million, by

the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$57 million or, for DoD, NASA, and the Coast Guard, over \$78.5 million, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

[50 FR 1729, Jan. 11, 1985, as amended at 50 FR 52433, Dec. 23, 1985; 54 FR 13023, Mar. 29, 1989; 55 FR 3881, Feb. 5, 1990; 55 FR 52790, Dec. 21, 1990; 60 FR 42654, 42665, Aug. 16, 1995; 61 FR 31618, June 20, 1996; 65 FR 24325, Apr. 25, 2000; 70 FR 11739, Mar. 9, 2005; 71 FR 57366, Sept. 28, 2006]

6.305 Availability of the justification.

(a) The justification required by 6.303-1 and any related information shall be made available for public inspection as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 253(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection.

Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with subpart 24.2.

[50 FR 1729, Jan. 11, 1985 and 50 FR 52429, Dec. 23, 1985, as amended at 62 FR 257, Jan. 2, 1997; 65 FR 16286, Mar. 27, 2000]

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

(a) *Sealed bids.* (See part 14 for procedures.) Contracting officers shall solicit sealed bids if—

(1) Time permits the solicitation, submission, and evaluation of sealed bids;

(2) The award will be made on the basis of price and other price-related factors;

(3) It is not necessary to conduct discussions with the responding offerors about their bids; and

(4) There is reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States and its outlying areas. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

[50 FR 1729, Jan. 11, 1985; 50 FR 4221, Jan. 30, 1985; 50 FR 52429, Dec. 23, 1985; 54 FR 5054, Jan. 31, 1989; 64 FR 51833, Sept. 24, 1999; 68 FR 28080, May 22, 2003]