

706.003

Subpart 706.3—Other Than Full and Open Competition

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706.501 Requirement.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

706.003 Definitions.

Procuring activity means “contracting activity”, as defined in 702.170-3.

[50 FR 40528, Oct. 4, 1985]

Subparts 706.1-706.2 [Reserved]

Subpart 706.3—Other Than Full and Open Competition

706.302-5 Authorized or required by statute.

Certain annual appropriations acts authorize USAID to contract with certain disadvantaged enterprises using other than full and open competition. The provisions implementing this authority are set forth in 706.302-71 and part 726.

[58 FR 8702, Feb. 17, 1993, as amended at 62 FR 40467, July 29, 1997]

706.302-70 Impairment of foreign aid programs.

(a) *Authority.* (1) Citation: 40 U.S.C. 474.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of \$250,000 or less by an overseas contracting activity;

(3)(i) An award for which the Assistant Administrator responsible for the project or program makes a formal

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written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under AIDAR 715.370-1 (Title XII selection procedure—general) or 715.370-2 (Title XII selection procedure—collaborative assistance).

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the government or would result in unacceptable delays.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances. While the authority at 706.302-70(b)(5) is for use when the contracting officer determines that the incumbent contractor is the only practicable, potential offeror, the requirement to publicize the intended award, as required in FAR 5.201, still applies.

(2) The contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in FAR 6.303, except that determinations made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

(3) The authority in 706.302-70(b)(3)(i) shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The specific foreign assistance objective which would be impaired must be identified and explained in the written determination and finding. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written determination and finding, and this consultation must

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be reflected in the determination and finding.

(4) Use of the authority in 706.302-70(b)(5) for proposed follow-on amendments in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on amendments using this authority, the contracting officer's certification required in FAR 6.303-2(a)(12) will serve as approval.

[50 FR 40976, Oct. 8, 1985, and 50 FR 51395, Dec. 17, 1985, as amended at 54 FR 28069, July 5, 1989; 54 FR 46389, Nov. 3, 1989; 57 FR 5235, Feb. 13, 1992; 61 FR 39091, July 26, 1996; 62 FR 40467, July 29, 1997; 64 FR 42042, Aug. 3, 1999]

706.302-71 Small disadvantaged businesses.

(a) *Authority.* (1) Citations: Sec. 579, Pub. L. 101-167 (Fiscal Year (FY) 1990), Sec. 567, Pub. L. 101-513 (FY 1991), Sec. 567, Pub. L. 102-145 (FY 1992), Sec. 562, Pub. L. 102-391 (FY 1993), Sec. 558, Pub. L. 103-87 (FY 1994), and Sec. 555, Pub. L. 103-306 (FY 1995).

(2) Except to the extent otherwise determined by the Administrator, not less than ten percent of the amounts made available through the appropriations cited in paragraph (a)(1) of this section for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises (as defined in 726.7002). In order to achieve its goal, USAID is authorized in the cited statutes to use other than full and open competition to award contracts to small business concerns owned and controlled by socially and economically disadvantaged individuals (small disadvantaged businesses as defined in 726.7002), historically black colleges and universities, colleges and universities having a student body of which more than 40 percent of the students are Hispanic Americans, and private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged, as the terms are defined in 726.7002.

(b) *Application.* This authority may be used only if the Agency determines in accordance with 726.7004 that:

(1) The acquisition is to be funded from amounts referred to in paragraph (a) of this section;

(2) Award of the acquisition to an eligible organization is appropriate to meet the requirement in paragraph (a)(2) of this section; and

(3) After considering whether the acquisition can be made under the authority of section 8(a), award under section 8(a) is not practicable.

(c) *Limitations.* (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) Use of this authority is not subject to the requirements in FAR 6.303 and FAR 6.304, provided that the contract file includes a certification by the contracting officer stating that the procurement is being awarded pursuant to 706.302-71 and that the application requirements and limitations of 706.302-71 (b) and (c) have been complied with.

[56 FR 27208, June 13, 1991, as amended at 58 FR 8702, Feb. 17, 1993; 61 FR 51235, Oct. 1, 1996; 62 FR 40467, July 29, 1997]

706.303-1 Requirements.

(a)-(c) [Reserved]

(d) USAID project procurements are generally not subject to the Trade Agreements Acts of 1979 (see 725.403 of this chapter). To the extent procurements are made under the authority of FAR 6.302-3(a)(2)(i) or FAR 6.302-7 with Operating Expenses (OE) Funds, the Contracting Officer shall send a copy of the justification to the Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, ATTN: Director, International Procurement Policy.

[50 FR 16086, Apr. 24, 1985]

Subpart 706.5—Competition Advocates

706.501 Requirement.

The USAID Administrator delegated the authority to designate the agency competition advocate and a competition advocate for each agency procuring activity (see 706.003 of this part) to the M/OAA Director. The M/OAA Director, under the Administrator's delegation, has designated the M/OAA Deputy Director for Policy, Evaluation and Support as the Agency's competition advocate and the deputy head of each