

# Part 6 - Competition Requirements

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## **6.000 Scope of part.**

This part prescribes policies and procedures for full and open competition.

### **6.001 Applicability.**

This part applies to all acquisitions except—

- (a) Contracts awarded using the simplified acquisition procedures of part 13;
- (b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (c) Contract modifications that are within the scope of the contract, including exercising priced options that were evaluated as part of the original competition (see part 17);
- (d) Orders placed under requirements contracts or definite-quantity contracts;
- (e) Orders placed under indefinite-quantity contracts that were entered into according to this part when—
  - (1) The contract was awarded under 6.101 or 6.102, and all responsible sources were realistically permitted to compete for the requirements contained in the order; or
  - (2) The contract was awarded under 6.103, and the justification and approval, if required, adequately covers the requirements contained in the order; or
- (f) Orders placed against task order and delivery order contracts entered into according to part 16.

### **6.002 Limitations.**

No agency may contract for supplies or services from another agency to avoid the requirements of this part.

### **6.003 Advocates for competition.**

(a) 41 U.S.C. 1705 requires the head of each executive agency to designate and resource an advocate for competition for the agency and for each procuring activity of the agency.

(b) The advocate promotes full and open competition, promotes the acquisition of commercial products and services, and challenges barriers to acquisition. The advocate reports actions taken to increase competition to the senior procurement executive and chief acquisition officer.

## Subpart 6.1 - Presolicitation

### 6.101 Full and open competition.

(a) Except as authorized by 6.102 and 6.103, contracting officers must obtain full and open competition by using competitive procedures to solicit offers and award Government contracts (see 10 U.S.C. 3201 and 41 U.S.C. 3301).

(b) Contracting officers must use the competitive procedure, or combination of procedures, best suited to efficiently fulfill the Government's requirements. Competitive procedures include sealed bids, competitive proposals, and other procedures explicitly authorized by statute.

(1) *Sealed bids*. For sealed bidding procedures, see part 14. Use sealed bids only when the contracting officer has found that all of the following apply:

(i) Time permits staff to solicit, submit, and evaluate sealed bids;

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

(iii) Discussion with bidders is unnecessary; and

(iv) Contracting officers reasonably expect to receive more than one sealed bid.

(2) *Competitive proposals*. For competitive proposal procedures, see part 15.

(3) *Other competitive procedures*. The following procedures are also considered competitive procedures (see 41 U.S.C. 152):

(i) Selection of sources for architect-engineer contracts according to the provisions of 40 U.S.C. 1102 *et seq.*

(ii) Competitive selection of basic and applied research, as well as that part of development not related to developing a specific system or hardware procurement, if award results from—

(A) Proposals in response to a general solicitation or broad agency announcement; and

(B) A peer review or scientific review of such proposals.

(iii) Use of procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration.

## 6.102 Full and open competition after excluding sources.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids*. (See [6.401\(a\)](#).)

(b) *Competitive proposals*. (See [6.401\(b\)](#).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.

(c) *Combination of competitive procedures*. If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) Other competitive procedures.

(1) Selection of sources for architect-engineer contracts in accordance with the provisions of [40 U.S.C. 1102 et seq.](#) is a competitive procedure (see [subpart 36.6](#) for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from-

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting

the participation of all offerors capable of satisfying the Government's needs;  
and

(ii) A peer or scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of [41 U.S.C. 152\(3\)\(A\)](#) for the multiple award schedule program of the General Services Administration is a competitive procedure.

## **6.102-1 Establishing or maintaining alternative sources.**

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would-

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) 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;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)

(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see subpart 1.5) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in paragraph (a)(1) of this section is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

### **6.102-2 Set-asides for small business concerns.**

Contracting officers may set aside acquisitions for small business concerns. This authority also includes—

(a) Contract actions conducted under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(b) Contract actions set aside for specific small business socioeconomic categories (see part 19).

### **6.102-3 Set-asides for local firms during a major disaster or emergency.**

Contracting officers may set aside acquisitions for small business concerns. This authority also includes—

(a) Contract actions conducted under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(b) Contract actions set aside for specific small business socioeconomic categories (see part 19).

## **6.103 Other than full and open competition.**

(a) Agencies may contract without providing for full and open competition under authorities specified in this section (see 10 U.S.C. 3204 and 41 U.S.C. 3304).

(b) Contracting without providing for full and open competition must not be justified on the basis of—

(1) A lack of planning by the requiring activity; or

(2) Concerns related to the amount of funds available to the agency or activity for acquisition.

(c) When not providing for full and open competition, the contracting officer must solicit offers from as many potential sources as is practicable under the circumstances.

(d) Except for contracts awarded under the authority of 6.103-5 and 6.103-7, an acquisition under this section requires—

(1) Consideration of all bids, proposals, quotations, or capability statements received; and

(2) Justification and approval required by 6.104.

### **6.103-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(a) *Authority.* 10 U.S.C. 3204(a)(1) or 41 U.S.C. 3304(a)(1).

(b) *One responsible source.* Agencies may contract without providing for full and open competition when the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements. For DoD, NASA, and the Coast Guard, this authority extends to situations where only a limited number of responsible sources can satisfy agency requirements.

(c) Supplies and services may be deemed as available from only one source under this authority under the following circumstances—

(1) When an unsolicited research proposal shows a unique and innovative concept (see definition at 2.101) the substance of which is not otherwise available to the Federal Government and does not resemble the substance of a pending competitive acquisition. For DoD, NASA, and the Coast Guard, this authority extends to situations where a source demonstrates a unique capability to provide the particular research services proposed.

(2) When awarding a follow-on contract for the continued development or production of a major system or highly specialized equipment and, for DoD, NASA, and the Coast Guard, for the continued provision of highly specialized services, would result in—

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

(ii) Unacceptable delays in fulfilling the agency's requirements.

(d) *Application for brand-name descriptions.* Except as authorized at 6.103-5, use of brand-name descriptions, or specification of attributes peculiar to one manufacturer, prevents full and open competition and should only be used when justified and approved according to 6.104. This does not apply to "brand name or equal" descriptions as they provide for full and open competition.

## **6.103-2 Unusual and compelling urgency.**

(a) *Authority.* 10 U.S.C. 3204(a)(2) or 41 U.S.C. 3304(a)(2).

(b) *Urgency.* Agencies may contract without providing for full and open competition 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, financially or otherwise, unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(c) *Period of performance.* The total period of performance of a contract greater than the simplified acquisition threshold awarded or modified using this authority—

(1) May not exceed the time necessary—

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through competitive procedures; and

(2) May not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply. This determination—

(i) Is separate from the justification and approval for the use of the unusual and compelling urgency authority and must be documented in the contract file;

(ii) Does not cover any subsequent modification that further extends the period of performance, except for options included in the original determination. Such extensions must be approved at the same level as the original determination.



(d) *Documentation after award.* The justification and approval for the use of this authority, as well as the determination described in paragraph (c)(2) of this section, may be made after contract award when making the determination before award would unreasonably delay the acquisition.

### **6.103-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.**

(a) *Authority.* 10 U.S.C. 3204(a)(3) or 41 U.S.C. 3304(a)(3).

(b) *Application.* Agencies may contract without providing for full and open competition when it is necessary to award the contract to a particular source or sources in order—

(1) 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;

(2) 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

(3) To acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

### **6.103-4 International agreement.**

(a) *Authority.* 10 U.S.C. 3204(a)(4) or 41 U.S.C. 3304(a)(4).

(b) *International agreement.* Agencies may contract without providing for full and open competition when precluded by the—

(1) Terms of an international agreement or a treaty between the United States and a foreign government or international organization; or

(2) The written directions of a foreign government reimbursing the agency for the cost of acquiring the supplies or services for such government.

(c) *Limitations.* Contracts awarded by DoD, NASA, and the Coast Guard using this authority do not require the written justifications and approvals described in 6.104.

### **6.103-5 Authorized or required by statute.**

(a) *Authority.* 10 U.S.C. 3204(a)(5) or 41 U.S.C. 3304(a)(5).

(b) *Authorized or required by statute.* Agencies may contract without providing for full and open competition when—

(1) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or

(2) The agency's need is for a brand-name commercial product for authorized resale (*e.g.*, commercial products for resale through commissaries). This authority does not include other uses of brand name descriptions that generally preclude full and open competition and are required to be addressed in accordance with 6.103-1(d).

(c) *Application.* This authority may be used when statutes expressly authorize or require that acquisition be made from a specified source or through another agency. Examples include, but are not limited to:

(1) Sole-source awards of certain socio-economic small business concerns (see 15 U.S.C. chapter 14A); and

(2) Sole-source awards under the SBIR or STTR programs for Phase III (see 15 U.S.C. 638(r)(4)) or Phase II, when directly following a competitively awarded initial Phase II award (see 15 U.S.C. 638(ff)).

(d) *Limitations.*

(1) Do not use this authority 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; and

(ii) States that award to that entity must be made despite the merit-based selection procedures in 10 U.S.C. 3201(e) for armed services acquisitions or 41 U.S.C. 3105 for civilian agency acquisitions.

(2) This limitation does not apply—

(i) When the work provided for in the contract continues the work performed by the specified entity under a preceding contract; or

(ii) 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.

(e) With the exception of sole-source 8(a) contracts over \$25 million (section 811 of Public Law 111-84, 41 U.S.C. 3304 note), contracts awarded using this authority do not require written justifications and approvals described in 6.104.

### **6.103-6 National security.**

(a) *Authority.* 10 U.S.C. 3204(a)(6) or 41 U.S.C. 3304(a)(6).

(b) *National security.* Full and open competition need not be provided for when disclosing the agency's needs would compromise national security unless the agency can limit the number of sources from which it solicits bids or proposals.

### **6.103-7 Public interest.**

(a) *Authority.* 10 U.S.C. 3204(a)(7) or 41 U.S.C. 3304(a)(7).

(b) *Public interest.* Full and open competition need not be provided for when the agency head determines it is not in the public interest for that particular acquisition.

(c) *Limitations.*

(1) A written determination to use this authority must be made in accordance with subpart 1.5, by the head of the executive agency. The authority may not be delegated and the determination must not be made on a class basis.

(2) Agencies must notify Congress, in writing, of such determination not fewer than 30 days before awarding the contract.

## **6.104 Justification and approval.**

(a) A justification and approval must support procedures under 6.103, except 6.103-5 and 6.103-7.

(b) Contracting officers require the support of the broader acquisition team when making decisions regarding competition. 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 under 6.103, except for 6.103-7, may be made on an individual or class basis. Justifications under 6.103-7 may only be made on an individual basis.

## **6.104-1 Justification content.**

(a) At a minimum, each justification must 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 using the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as possible, including whether a notice was or will be publicized as required by part 5 and, if not, which exception under part 5 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) 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 using other than full and open competition, such as:

(i) When 6.103-1 is cited for follow-on acquisitions as described in 6.103-1(c)(2), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(ii) When 6.103-2 is cited, data, estimated cost, or other rationale as to whether and how much the Government would be harmed.

(10) A listing of the sources, if any, that expressed an interest in the acquisition in writing.

(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) For sole-source 8(a) contracts over \$25 million, the justification must include, at a minimum, the contents described at paragraphs (a)(3), (a)(4), and (a)(7) of this section. It should also include a determination that using a sole-source contract is in the best interest of the agency concerned and any other matters specified by agency procedures.

## 6.104-2 Approval of justification.

(a) The justification for other than full and open competition must be approved in writing. Officials at a higher authority level may approve lower dollar justifications. For example, the senior procurement executive as well as the head of the procuring activity may approve a \$60 million justification. Approval levels are as follows:

Value (including options)	Approval authority
\$750,000 or below	Contracting officer.
	Accomplished by certification required at 6.104(a)(12).
>\$750,000 - \$15,000,000	Advocate for competition.
	Not delegable.
>\$15,000,000 - \$75,000,000	Head of the procuring activity.
(>15,000,000 - \$100,000,000 for DoD, NASA, and the Coast Guard)	May be delegated to a member of the armed services at the general or flag officer level or a civilian in a grade above the GS-15 (or equivalent) level.

Value (including options)	Approval authority
	Senior procurement executive.
>\$75,000,000	Not delegable, except in the case of the Under Secretary of Defense for Acquisition and Sustainment, acting as
(>\$100,000,000 for DoD, NASA, and the Coast Guard)	the senior procurement executive for the Department of Defense.

Table 6-1. Approval authorities for other than full and open competition.

(b) A class justification for other than full and open competition must be approved in writing in accordance with agency procedures. The estimated total value of the class will determine the approval level.

(c) A justification must include the estimated dollar value of all options to determine the approval level.

## Subpart 6.2 - [Reserved]

## Subpart 6.3 - Postaward

### 6.301 Availability of the justification.

(a) The agency must make publicly available the justification required by 6.104 as required by 10 U.S.C. 3204(f) and 41 U.S.C. 3304(f).

(b) The justification must be made publicly available within 14 days after contract award, except—

(1) Justifications under 6.103-2 must be posted within 30 days after contract award; and

(2) Justifications for brand-name descriptions under 6.103-1(d) must be posted with the solicitation (see part 5).

(c) The justifications must be made publicly available—

(1) At the Government Point of Entry (GPE);

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE; and

(3) For a minimum of 30 days.

(d) Contracting officers must 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 must 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 part 24 in determining whether the justification, or portions of it, are exempt from posting.

(e) The requirements of paragraphs (a) through (c) do not apply if posting the justification would compromise national security or create other security risks.