Health and Human Services

findings (D & F) based on the data provided by program personnel. The appropriate CA (non-delegable) shall sign the D & F.

Subpart 306.3—Other Than Full and Open Competition

306.302 Circumstances permitting other than full and open competition.

306.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(iv) Follow-on contracts for the continuation of R & D studies on long-term social and health programs, research studies, or clinical trials may be deemed to be available only from the original source when it is likely that award to any other source would result in unacceptable delays in fulfilling HHS’ or the OPDIV’s requirements.

(b) Application.

(5) when the head of the sponsoring program office has determined that the activity must acquire only specified makes or models of technical equipment or parts to meet the activity’s program responsibility to test and evaluate certain kinds and types of products, and only one source is available. (NOTE: This criterion is limited to testing and evaluation purposes only and not for initial outfitting or repetitive acquisitions. Project Officers shall support the use of this criterion with citations from their agency’s legislation and the technical rationale for the item of equipment required.)

306.302–7 Public interest.

(a) Authority.

(2) Agency head, in this instance, means the Secretary.

(c) Limitations. The Contracting Officer shall prepare a written request for approval and provide it through appropriate acquisition channels, including the HCA and Associate DAS for Acquisition, to the Secretary. The request shall include a D & F for the Secretary’s signature that contains all pertinent information to support the justification for exercising the exemption to competition and a letter for the Secretary’s signature notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7).

306.303 Justifications.

306.303–1 Requirements.

(b) The responsible Program Office must provide a written justification whenever it requests that goods or services be acquired without obtaining full and open competition. The justification must be submitted with the AP or other acquisition request document—see Subpart 307.71. The Project Officer has responsibility for preparing the justification with assistance, as necessary, from the Contracting Officer.

(1) Justifications for acquisitions at or below the simplified acquisition threshold may be in the form of a paragraph or paragraphs contained in the requisition or other acquisition request document. Justifications for acquisitions in excess of the simplified acquisition threshold shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and titled “Justification for Other Than Full and Open Competition” (JOFOC). HHS requires use of a standard format for a JOFOC. The template for the justification is available on the ASFR/OGAPA/DA Internet Web site. Additional information may be included in the JOFOC template in accordance with OPDIV procedures.

(2) Regardless of the dollar amount of the acquisition, justifications shall—

(i) Fully describe what is to be acquired;

(ii) Provide a specific explanation of why it is not feasible to obtain full and open competition;

(iii) Be supported by verifiable facts, rather than untested or unsubstantiated opinions or conclusions; and

(iv) Be written in a manner to permit an individual without technical knowledge of the requirement to understand the supporting rationale.

(3) Preliminary arrangements with, or verbal or written commitments to, a proposed sole-source contractor shall be avoided given the statutory requirement to obtain full and open competition to the maximum extent practicable.
(4) Justifications for orders to be placed under FSS contracts that limit consideration of contractors shall comply with FAR 8.405–6 and 308.405–6.

306.304 Approval of the justification.

Certification, concurrence, and approval requirements. The Project Officer, the Project Officer’s immediate supervisor, the head of the sponsoring program office, and the Contracting Officer shall certify that the justification is accurate and complete by signing the JOFOC. For acquisitions in the dollar amount cited in FAR 6.304(a)(2) through (a)(4), the CCO, if applicable, and the HCA shall indicate their review of, and concurrence with, the justification by signing the JOFOC.

(a) The approving officials for JOFOCs are as follows:
   (1) The Contracting Officer shall exercise this approval authority unless a higher approval level is required by OPDIV procedures.
   (2) The CAs are listed in 306.501. This approval authority is not delegable.
   (3) The CA shall exercise this approval authority, except where the individual designated as the CA does not meet the requirements of FAR 6.304 (a)(3)(ii). This approval authority is not delegable.
   (4) HHS’ SPE is the Associate DAS for Acquisition.

(c) A class justification shall be processed in the same manner as an individual justification. A class justification may consist of contracts/orders for the same or related supplies and services or other contract/order actions that require essentially identical justifications.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The HHS CA is the Director, Strategic Acquisition Service, PSC. The CAs for each of HHS’ contracting activities are as follows:

AHRQ: Director, Office of Performance Accountability, Resources and Technology
ASPR/OAMCG: Chief of Acquisition Policy
CDC: Chief Information Officer
CMS: Chief Operating Officer
FDA: Deputy Commissioner for Administration
HRSA: Associate Administrator, Office of Operations
IHS: Director, Office of Management Services
NIH: Senior Scientific Advisor for Extramural Research, Office of Extramural Research (R&D) and Senior Advisor to the Director (other than R&D)
PSC: Director, Strategic Acquisition Service
SAMHSA: Executive Officer

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21510, Apr. 26, 2010]

306.502 Duties and responsibilities.

(a) Each OPDIV CA shall prepare an annual Competition Advocate Report (CAR), covering the prior fiscal year, in accordance with the requirements of FAR 6.502(b)(2) and 306.302(b), and provide it to the HHS CA not later than November 16 of each year or the next business day, if the due date falls on a non-business day. NIH’s two CAs shall prepare and sign a joint report covering their respective areas of responsibility.

(b) HHS requires that each CAR be prepared in a standard format. The template for the report is available on the ASFR/OGAPA/DA Internet Web site. As long as the standard headings are included and required information is addressed, the OPDIV may include additional information in accordance with OPDIV procedures.

(1) The CAR shall be based on information and data for all acquisitions that exceed the micro-purchase threshold for the applicable fiscal year, unless otherwise noted in the standard format.

(2) Each OPDIV CA shall obtain the information and data needed for preparation of the CAR from the responsible HCA and/or the CCO, as appropriate, who shall assist the CA in preparing the CAR.

(3) Prior to forwarding the CAR to the HHS CA, each OPDIV CA shall obtain the information and data needed for preparation of the CAR from the responsible HCA and/or the CCO, as appropriate, who shall review and approve it for accuracy and completeness.

(c) The HHS CA shall consolidate all OPDIV CARs and provide an HHS-wide CAR that addresses all requirements of FAR 6.502(b) to the HHS SPE and the CAO by December 20 of each year or the next business day, if the due date falls on a non-business day.