

(5) *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

[56 FR 36302, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 71 FR 75892, Dec. 19, 2006; 75 FR 45073, Aug. 2, 2010; 80 FR 36904, June 26, 2015; 85 FR 61504, Sept. 29, 2020; 88 FR 73235, Oct. 25, 2023]

Subpart 205.4—Release of Information

205.470 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are expected to exceed \$1.5 million. This clause implements 10 U.S.C. 4957.

[69 FR 63328, Nov. 1, 2004, as amended at 70 FR 8537, Feb. 22, 2005; 78 FR 37983, June 25, 2013; 85 FR 61504, Sept. 29, 2020; 87 FR 76990, Dec. 16, 2022; 88 FR 6581, Jan. 31, 2023]

Subpart 205.5—Paid Advertisements

205.502 Authority.

(a) *Newspapers.* Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers.

[69 FR 63328, Nov. 1, 2004]

PART 206—COMPETITION REQUIREMENTS

Sec.

206.000 Scope of part.

206.001 Applicability.

206.001–70 Exception for prototype projects for follow-on production contracts.

Subpart 206.1—Full and Open Competition

206.102 Use of competitive procedures.

206.102–70 Other competitive procedures.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

206.302–2 Unusual and compelling urgency.

206.302–3 Industrial mobilization, engineering, developmental, or research capability, or expert services.

206.302–3–70 Solicitation provision.

206.302–4 International agreement.

206.302–5 Authorized or required by statute.

206.302–7 Public interest.

206.303 Justifications.

206.303–1 Requirements.

206.303–2 Content.

206.303–70 Acquisitions in support of operations in Afghanistan.

206.304 Approval of the justification.

206.305 Availability of the justification.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36303, July 31, 1991, unless otherwise noted.

206.000 Scope of part.

For information on the various approaches that may be used to competitively fulfill DoD requirements, see PGI 206.000.

[80 FR 21657, Apr. 20, 2015]

206.001 Applicability.

(b) As authorized by 10 U.S.C. 1091, contracts awarded to individuals using the procedures at 237.104(b)(ii) are exempt from the competitive requirements of FAR part 6.

[70 FR 2361, Jan. 13, 2005, as amended at 87 FR 10990, Feb. 28, 2022]

206.001–70 Exception for prototype projects for follow-on production contracts.

(a) Also excepted from this part are follow-on production contracts for products developed pursuant to the “other transactions” authority of 10

206.102

U.S.C. 4022 for prototype projects, when the contracting officer receives sufficient documentation from the agreements officer issuing the other transaction agreement for the prototype project that—

(1) The other transaction agreement included provisions for a follow-on production contract (10 U.S.C. 4022(f)(1)); and

(2) Where applicable, the threshold at 10 U.S.C. 4022(a)(2)(C) and the requirements at 10 U.S.C. 4022(f)(2)(A) and (B) have been met.

(b) See PGI 206.001–70 for additional guidance.

[88 FR 33835, May 25, 2023]

Subpart 206.1—Full and Open Competition

SOURCE: 84 FR 4365, Feb. 15, 2019, unless otherwise noted.

206.102 Use of competitive procedures.

(d) *Other competitive procedures.*

(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in 235.016(a) (10 U.S.C. 3012(2)).

[84 FR 4365, Feb. 15, 2019, as amended at 87 FR 76990, Dec. 16, 2022]

206.102–70 Other competitive procedures.

(a) Competitive selection of proposals based on a review by scientific, technological, or other subject-matter expert peers resulting from a commercial solutions opening as described in subpart 212.70 (10 U.S.C. 3458) is a competitive procedure.

(b) The award of a contract as a prize resulting from a competitive selection of prize recipients for advanced technology achievements is a competitive procedure (10 U.S.C. 4025(f)), when the solicitation is widely advertised, including through the Governmentwide point of entry (see FAR part 5). See PGI 206.102–70 for approval requirements.

[88 FR 55939, Aug. 17, 2023, as amended at 89 FR 79001, Sept. 26, 2024]

48 CFR Ch. 2 (10–1–24 Edition)

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202(b), as applicable, and any other information that may be pertinent, in the supporting documentation.

[69 FR 74991, Dec. 15, 2004]

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(i) Section 8059 of Pub. L. 101–511 and similar sections in subsequent defense appropriations acts prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(2) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to

be in the interest of national defense; or

(3) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(c) *Application for brand-name descriptions.*

(2) Notwithstanding FAR 6.302-1(c)(2), in accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use brand name or equal descriptions.

(d) *Limitations.* Follow the procedures at PGI 206.302-1(d) prior to soliciting a proposal without providing for full and open competition under this authority.

(S-70) *Application for proprietary specifications or standards.* In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use proprietary specifications and standards.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993; 69 FR 74991, Dec. 15, 2004; 80 FR 21657, Apr. 20, 2015; 84 FR 25192, May 31, 2019]

206.302-2 Unusual and compelling urgency.

(b) *Application.* For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2(b).

[69 FR 74991, Dec. 15, 2004]

206.302-3 Industrial mobilization, engineering, developmental, or research capability, or expert services.

206.302-3-70 Solicitation provision.

Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 3204(e)(4)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

[63 FR 67803, Dec. 9, 1998, as amended at 87 FR 76990, Dec. 16, 2022]

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(c) *Limitations.* (i) 10 U.S.C. 4141 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 4141,

(2) Identifies the particular college or university involved; and

(3) States that award is being made in contravention of 10 U.S.C. 4141(a); and

206.302-7

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993; 59 FR 36089, July 15, 1994; 60 FR 29497, June 5, 1995; 60 FR 40107, Aug. 7, 1995; 65 FR 39704, June 27, 2000; 68 FR 7439, Feb. 14, 2003; 87 FR 76990, Dec. 16, 2022; 88 FR 73236, Oct. 25, 2023; 89 FR 60831, July 29, 2024]

206.302-7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303-1 Requirements.

(a) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), no justification and approval is required for a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount not exceeding \$100 million.

(b) In lieu of FAR 6.303-1(b), in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracting officers shall not award a sole source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding \$100 million unless—

(1) The contracting officer justifies the use of a sole source contract in writing in accordance with FAR 6.303-2;

48 CFR Ch. 2 (10-1-24 Edition)

(2) The justification is approved in accordance with 206.304(a)(S-71); and

(3) The justification and related information are made public after award in accordance with FAR 6.305.

[85 FR 34529, June 5, 2020]

206.303-2 Content.

(b)(i) In lieu of the threshold at FAR 6.303-2(b), each justification shall include the information at FAR 6.303-2(b), except for sole-source 8(a) contracts over \$100 million (see paragraph (d) of this section).

(ii) Include the information required by PGI 206.303-2(b)(i) in justifications citing the authority at FAR 6.302-1.

(d) In lieu of the threshold at FAR 6.303-2(d), each justification for a sole-source 8(a) contract over \$100 million shall include the information at FAR 6.303-2(d).

[80 FR 21657, Apr. 20, 2015, as amended at 85 FR 34529, June 5, 2020]

206.303-70 Acquisitions in support of operations in Afghanistan.

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7703-1(a).

[73 FR 53152, Sept. 15, 2008, as amended at 78 FR 59856, Sept. 30, 2013]

206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition and Sustainment) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(S-70) For a noncompetitive follow-on acquisition to a previous award for the same supply or service supported by a justification for other than full

and open competition citing the authority at FAR 6.302-1, follow the procedures at PGI 206.304(a)(S-70).

(S-71) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), the head of the procuring activity is the approval authority for a proposed sole-source 8(a) contract exceeding \$100 million. This authority may only be delegated to an officer or employee who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

[61 FR 10285, Mar. 13, 1995, as amended at 61 FR 50451, Sept. 26, 1996; 65 FR 39704, June 27, 2000; 80 FR 21657, Apr. 20, 2015; 85 FR 34529, June 5, 2020; 88 FR 73236, Oct. 25, 2023]

206.305 Availability of the justification.

See PGI 206.305 for further guidance on the requirements for preparing, obtaining approval, and posting justification and approval documents for contracts awarded using the authority of FAR 6.302-2.

[80 FR 67255, Oct. 30, 2015]

PART 207—ACQUISITION PLANNING

Subpart 207.1—Acquisition Plans

- Sec.
- 207.102 Policy.
- 207.103 Agency-head responsibilities.
- 207.104 General procedures.
- 207.105 Contents of written acquisition plans.
- 207.106 Additional requirements for major systems.
- 207.108 Additional requirements for telecommuting.
- 207.170 [Reserved]
- 207.171 Component breakout.
- 207.171-1 Scope.
- 207.171-2 Definition.
- 207.171-3 Policy.
- 207.171-4 Procedures.
- 207.172 Human research.

Subpart 207.3—Contractor Versus Government Performance

- 207.302 Policy.

Subpart 207.4—Equipment Acquisition

- 207.401 Acquisition considerations.
- 207.470 Statutory requirements.
- 207.471 Funding requirements.

Subpart 207.5—Inherently Governmental Functions

- 207.500 Scope of subpart.
- 207.503 Policy.

Subpart 207.70—Buy-to-Budget—Additional Quantities of End Items

- 207.7001 Definition.
- 207.7002 Authority to acquire additional quantities of end items.
- 207.7003 Limitation.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36305, July 31, 1991, unless otherwise noted.

Subpart 207.1—Acquisition Plans

207.102 Policy.

(a)(1) See 212.102 regarding requirements for a written determination that the commercial product or commercial service definition has been met when using FAR part 12 procedures.

[73 FR 4114, Jan. 24, 2008, as amended at 88 FR 6581, Jan. 31, 2023]

207.103 Agency-head responsibilities.

(d)(i) Prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at \$10 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at \$50 million or more for all years or \$25 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms “final buy out” and “one-time buy” refer to a single