

Federal Acquisition Regulation

6.302-1

6.208 Set-asides for local firms during a major disaster or emergency.

(a) To fulfill the statutory requirements relating to 42 U.S.C. 5150, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see Subpart 26.2).

(b) No separate justification or determination and findings is required under this part to set aside a contract action. The set-aside area specified by the contracting officer shall be a geographic area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.

[72 FR 63086, Nov. 7, 2007. Redesignated at 76 FR 18308, Apr. 1, 2011]

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) 41 U.S.C. 3304 and 10 U.S.C. 3204 each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 3204. Other executive agencies are subject to 41 U.S.C. 3304. Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency. (See 6.302.)

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

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

(2) Concerns related to the amount of funds available (*e.g.*, funds will expire) to the agency or activity for the acquisition of supplies or services.

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

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102 (a) or (b), if appropriate, or any other procedures authorized by this regulation.

[50 FR 1729, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985, as amended at 79 FR 24198, Apr. 29, 2014; 84 FR 19842, May 6, 2019; 87 FR 73896, Dec. 1, 2022]

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

[50 FR 52431, Dec. 23, 1985]

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

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

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that:

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 3204(b)(A) and 41 U.S.C. 3304(b)(1).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

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

(B) Unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 3204(b)(B) or 41 U.S.C. 3304(b)(2).)

(iii) For DoD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in—

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

(B) Unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 3204(b)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities; or

(ii) For DoD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances,

make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see part 27).

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand-name descriptions.* (1) An acquisition or portion of an acquisition that uses a brand-name description or other purchase description to specify a particular brand-name, product, or feature of a product, peculiar to one manufacturer—

(i) Does not provide for full and open competition, regardless of the number of sources solicited; and

(ii) Shall be justified and approved in accordance with 6.303 and 6.304.

(A) If only a portion of the acquisition is for a brand-name product or item peculiar to one manufacturer, the justification and approval is to cover only the portion of the acquisition which is brand-name or peculiar to one manufacturer. The justification should state it is covering only the portion of the acquisition which is brand-name or peculiar to one manufacturer, and the approval level requirements will then only apply to that portion;

(B) The justification should indicate that the use of such descriptions in the acquisition or portion of an acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company; and

(C) The justification shall be posted with the solicitation (see 5.102(a)(6)).

(2) Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer

Federal Acquisition Regulation

6.302-2

products other than those specifically referenced by brand-name, provide for full and open competition and do not require justifications and approvals to support their use.

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

[50 FR 52431, Dec. 23, 1985, as amended at 52 FR 21886, June 9, 1987; 53 FR 27463, July 20, 1988; 56 FR 29127, June 25, 1991; 59 FR 67018, Dec. 28, 1994; 66 FR 2128, Jan. 10, 2001; 71 FR 57359, Sept. 28, 2006; 73 FR 10962, Feb. 28, 2008; 77 FR 193, Jan. 3, 2012; 79 FR 24198, Apr. 29, 2014; 84 FR 19842, May 6, 2019; 87 FR 73896, Dec. 1, 2022]

EDITORIAL NOTE: At 79 FR 24198, Apr. 29, 2014, §6.302-1 was amended; however, the amendment could not be incorporated because of the inaccurate amendatory instruction.

6.302-2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: 10 U.S.C. 3204(a)(2) or 41 U.S.C. 3304(a)(2).

(2) 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 unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from

as many potential sources as is practicable under the circumstances.

(d) *Period of Performance.* (1) The total period of performance of a contract awarded or modified using this authority—

(i) May not exceed the time necessary—

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

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

(ii) May not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply. This determination must be documented in the contract file.

(2)(i) Any subsequent modification using this authority, which will extend the period of performance beyond one year under this same authority, requires a separate determination. This determination is only required if the cumulative period of performance using this authority exceeds one year. This requirement does not apply to the exercise of options previously addressed in the determination required at paragraph (d)(1)(ii) of this section.

(ii) The determination shall be approved at the same level as the level to which the agency head authority in paragraph (d)(1)(ii) of this section is delegated.

(3) The requirements in paragraphs (d)(1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(4) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

[50 FR 52431, Dec. 23, 1985, as amended at 74 FR 52851, Oct. 14, 2009; 74 FR 65615, Dec. 10, 2009; 79 FR 24198, Apr. 29, 2014; 80 FR 38309, July 2, 2015; 84 FR 19842, May 6, 2019; 87 FR 73896, Dec. 1, 2022]