

Federal Acquisition Regulation

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by the written justifications and approvals described in 6.303 and 6.304.

[50 FR 52431, Dec. 23, 1985, as amended at 60 FR 42654, Aug. 16, 1995; 60 FR 44548, Aug. 28, 1995; 62 FR 235, Jan. 2, 1997; 63 FR 58594, 58602, Oct. 30, 1998; 66 FR 2128, Jan. 10, 2001; 68 FR 28080, May 22, 2003; 77 FR 56741, Sept. 13, 2012; 79 FR 24198, Apr. 29, 2014; 84 FR 19842, May 6, 2019; 87 FR 73896, Dec. 1, 2022]

6.302-4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 3204(a)(4) or 41 U.S.C. 3304(a)(4).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Except for DoD, NASA, and the Coast Guard, contracts awarded using this authority shall be supported by written justifications and approvals described in 6.303 and 6.304.

[50 FR 52432, Dec. 23, 1985, as amended at 55 FR 52790, Dec. 21, 1990; 79 FR 24198, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]

6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 10 U.S.C. 3204(a)(5) or 41 U.S.C. 3304(a)(5).

(2) Full and open competition need not be provided for when—

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

(ii) The agency's need is for a brand name commercial product for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see subpart 8.6).

(2) Qualified nonprofit agencies for the blind or other severely disabled—41 U.S.C. chapter 85, Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7).

(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see subpart 8.8).

(4) Sole source awards under the 8(a) Program (15 U.S.C. 637), but see 6.303 for requirements for justification and approval of sole-source 8(a) awards over \$25 million. (See subpart 19.8.)

(5) Sole source awards under the HUBZone Act of 1997—15 U.S.C. 657a (see 19.1306).

(6) Sole source awards under the Veterans Benefits Act of 2003 (15 U.S.C. 657f).

(7) Sole source awards under the WOSB Program—15 U.S.C. 637(m) (see 19.1506).

(c) *Limitations.* (1) This authority shall not be used 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;

(ii) Refers to 10 U.S.C. 3201(e) for armed services acquisitions or 41 U.S.C. 3105 for civilian agency acquisitions; and

(iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in 10 U.S.C. 3201(e) or 41 U.S.C. 3105, as appropriate. However, this limitation does not apply—

(A) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or

(B) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon

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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.

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for—

(i) Contracts awarded under paragraph (a)(2)(ii) or (b)(2) of this section;

(ii) Contracts awarded under paragraph (a)(2)(i) of this section when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source); or

(iii) Contracts less than or equal to \$25 million awarded under paragraph (b)(4) of this section.

(3) The authority in paragraph (a)(2)(ii) of this section may be used only for purchases of brand name commercial products for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

[50 FR 52432, Dec. 23, 1985, as amended at 51 FR 36971, Oct. 16, 1986; 54 FR 46005, Oct. 31, 1989; 60 FR 42654, Aug. 16, 1995; 61 FR 39200, July 26, 1996; 63 FR 70267, Dec. 18, 1998; 67 FR 13068, Mar. 20, 2002; 69 FR 25276, May 5, 2004; 71 FR 44547, Aug. 4, 2006; 76 FR 14561, Mar. 16, 2011; 79 FR 24198, Apr. 29, 2014; 80 FR 38296, July 2, 2015; 80 FR 81890, Dec. 31, 2015; 84 FR 19842, May 6, 2019; 85 FR 62487, Oct. 2, 2020; 86 FR 61020, Nov. 4, 2021; 87 FR 73896, Dec. 1, 2022]

6.302-6 National security.

(a) *Authority.* (1) Citations: 10 U.S.C. 3204(a)(6) or 41 U.S.C. 3304(a)(6).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used mere-

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ly because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

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

(2) See 5.202(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

[50 FR 52432, Dec. 23, 1985, as amended at 79 FR 24198, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]

6.302-7 Public interest.

(a) *Authority.* (1) Citations: 10 U.S.C. 3204(a)(7) or 41 U.S.C. 3304(a)(7).

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

(b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.

(c) *Limitations.* (1) A written determination to use this authority shall be made in accordance with subpart 1.7, by (i) the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) above.

(4) This Determination and Finding (D & F) shall not be made on a class basis.

[50 FR 52432, Dec. 23, 1985, as amended at 68 FR 69258, Dec. 11, 2003; 79 FR 24198, Apr. 29, 2014; 87 FR 73896, Dec. 1, 2022]