

PART 6

COMPETITION REQUIREMENTS

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6.003 Definitions.

"Procuring activity," as used in this Part and in FAR Part 6 and DFARS Part 206, means the contracting activities defined in DFARS 202.101 and the following:

Defense Distribution Region East.
Defense Distribution Region West.
Defense Reutilization and Marketing Service.
Defense National Stockpile Center.
Television-Audio Support Activity.
Defense Automated Printing and Support Center

SUBPART 6.1 - FULL AND OPEN COMPETITION

6.101 Policy.

(a) An acquisition provides for full and open competition if:

(90) The solicitation contains or references a complete, unrestrictive technical data package.

(91) Such data can be used for a determination of responsiveness/technical acceptability.

(92) The solicitation and the circumstances of the solicitation contain no limiting restrictions other than those required by law or regulation; and

(93) The Government has taken all reasonable steps to promote full and open competition:

(i) Ensured that specifications are not unduly restrictive in that they reflect the Government's minimum needs, and are, to the maximum degree possible, functional in nature.

(ii) Performed market surveys and/or market research, as appropriate.

(iii) Complied with FAR Subpart 5.2.

(iv) Otherwise taken all reasonable steps to inform potential suppliers of its requirement.

The number of offers expected or received against the solicitation is not relevant to the determination that an acquisition does or does not provide for full and open competition. For example, if all the above conditions are met, an acquisition for an item on a Qualified Products List is full and open competition regardless of the number of products qualified (see FAR 9.2).

SUBPART 6.2 - FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

6.202 Establishing or maintaining alternative sources.

(b)(1) Authority to sign determinations and findings (D&Fs) required by FAR 6.202(b)(1) has been delegated to the Executive Director, Procurement **Management**. Proposed D&Fs shall be forwarded to MMPO for signature by the Executive Director, Procurement **Management**. Requests to sign proposed D&Fs shall be forwarded by a letter of transmittal signed by the Commander of the requesting component or the Administrator, DNSC or the Administrator, **DAPSC**. The letter of transmittal shall include:

(i) The proposed D&F in the format specified in DFARS 206.202(b)(ii) and supporting documentation in accordance with DFARS 206.202(b)(i).

(ii) The acquisition plan (see FAR Subpart 7.1).

6.203 Set-asides for small business.

(b)(90) Notwithstanding the criteria for full and open competition in 6.101, when an acquisition (or portion thereof) is set -aside for small businesses in accordance with FAR Subpart 19.5, and complete, unrestrictive technical data is not available, no justification for other than full and open competition is required.

SUBPART 6.3 - OTHER THAN FULL AND OPEN COMPETITION

6.302-2 Unusual and compelling urgency.

(b)(90) Justifications and Approvals (J&A) for Issue Priority Group I (IPG I) requirements (i.e. Priority Designators 01, 02 and 03) citing Not Mission Capable Supply indicators (MILSTRIP position 62 -64) of 999, N** or E** and/or Office of the Secretary of Defense/Joint Chiefs of Staff projects codes (MILSTRIP position 57-58) beginning with "9" shall cite the priority and these additional indicators of urgency as the basis for limiting competition. No additional information is required to show harm to the Government. Contracting Officers shall accept the assignment of these indicators (which are assigned by the Commanding Officer of the requisitioning unit or his designated representative) as the certification of urgency and harm to the Government by technical or requirements' personnel required by FAR Subpart 6.303-2. The requirements certification, in such cases, resides with the customer. Such certifications do not have to be on the J&A.

(b)(91) Requirements citing a priority designator 01, 02 or 03 with no other indicator of urgency may also cite the priority alone as the basis for urgency. If the circumstances of such procurements seem questionable (for example, the item being procured seems routine in nature or items are repeatedly requisitioned with high priority designators), it may be appropriate to obtain additional information from the customer to further explain the urgency. Although DLAD 4410.1, Uniform Material Movement and Issue Priority System, states that priorities will not be challenged in DSC processing, the request for additional information to support the J&A does not constitute a challenge to the priority assigned. If misapplication of priority is suspected, these instances should be reported in accordance with DLAD 4410.1.

(c) Limitations.

(2) Whenever competition is limited pursuant to this authority, the historically lowest priced source(s) shall be solicited. An award may be made to other than the lowest priced offeror provided the premium paid is reasonable and consistent with the extent to which delivery is required to be expedited. Quoted prices and delivery terms for each source solicited shall be fully documented, along with rationale which clearly supports source selection. (See 13.106(c)(1).)

6.302-3 Industrial mobilization; or engineering, developmental, or research capability; or expert services.

(90) Supporting industrial mobilization through the broad agency announcement (BAA). The procedures in this Subsection are appropriate only when it is necessary to make noncompetitive awards in response to broad agency announcements in order to maintain defense readiness, that is, to have in place and operational a source or sources capable of responding adequately to current supply requirements and to surge requirements in the event of future emergencies. An award resulting from a BAA is only competitive when made in accordance with the procedures at FAR 35.016 for acquisitions for basic and applied research (see definition at FAR 35.001). Consequently, awards made using the procedures of this Subsection are considered noncompetitive, and the determination to proceed without full and open competition must be supported by a justification and approval (J&A) prepared in accordance with FAR Subpart 6.3 (see 6.303 -2(a)(91) for how to prepare the J&A).

(1) Objectives. The BAA facilitates eliciting, submitting and awarding innovative concepts for reengineering the agency's business processes that will ensure that the agency can respond adequately to current supply requirements and surge requirements in the event of future emergencies. The BAA is most appropriate for use when it is not possible to describe the agency's needs precisely, in advance, in a common statement of work. Generally, the BAA elicits ideas or concepts over a broad range of items or services (e.g., subsistence items, automotive supplies, inventory management) within which individual awards may be made of items or services and concepts proposed.

(2) Content. The BAA shall:

(a) Describe the agency's requirements; this can be a general statement of need (vice a detailed statement of work);

(b) Describe criteria for selecting proposals, their relative importance, and the method of evaluation.

(c) Specify the period of time that the BAA will remain in effect and during which proposals may be submitted; and

(d) Contain instructions for preparing and submitting proposals.

(3) The applicability of such conditions as source restrictions, socioeconomic program requirements, or item/manufacturer qualifications requirements shall be addressed in the BAA. However, the contracting officer shall consider whether it is appropriate to apply such conditions when it is possible to define requirements only in broad terms, and applying such conditions will likely result in fewer submissions of innovative proposals.

(4) Procedures.

(i) The BAA shall be published in the Commerce Business Daily; if deemed appropriate, the contracting officer should make available similar notices electronically, or in industry publications or other print media (See FAR Subpart 5.5).

(ii) Proposals may be submitted at any time while the BAA remains in effect, although a common cutoff date may be established at various intervals over the duration of the BAA for administrative purposes in order to maintain oversight of the process. Proposals received after the deadline for a given interval may be evaluated and considered for award as soon as practicable thereafter, provided the BAA is still in effect.

(iii) The contracting officer shall assess proposals against the criteria set forth in the BAA, but need not evaluate them against each other. In this environment, sources submitting proposals are not

necessarily competing against each other, but rather are attempting to demonstrate that their proposed approach has potential application to the agency's defense readiness needs. The primary bases for the award decision(s) should be the technical merit of individual concepts (i.e., viability, compatibility with strategic objectives, and value of expected benefits), the availability of item or service requirements sufficient to demonstrate the approach, and the availability of funds. Cost/price reasonableness shall be assessed in each proposal. Other factors, such as the extent of socioeconomic program participation, surge capability, and past performance, should also be considered.

(iv) The procedures in this Subsection contemplate that award(s) may be made to a targeted source or sources to test concepts for their potential applicability to, and effectiveness in, supporting the industrial base. After assessing the merits of proposals received, the contracting officer may negotiate contracts with one (or more) sources at any time during the period the BAA is in effect. Generally, production of items or performance of services awarded to demonstrate concepts are considered incidental to the concepts themselves. Quantities are normally awarded only in amounts sufficient to explore the viability of future application of the concept(s) to the agency's defense mobilization needs; however, quantities awarded may vary. When determining the appropriate amounts to be awarded under a BAA, the contracting officer should carefully consider a) the impact that a reduction in quantities available for competitive solicitation may have on other programs (e.g., socioeconomic program goals), b) the potential need to test additional concepts linked to that same item or service while the BAA remains in effect, and c) the capabilities of the targeted source(s). Available case law suggests that the contracting officer will be given some leeway in determining what producers are needed to support the item or program and what quantities are appropriate for each awardee under a mobilization base rationale. Generally, the contracting officer should solicit competitively any remaining requirements not awarded under contracts demonstrating proposed concepts.

(91) Contracts awarded under the authority of 10 U.S.C. 2304(c)(3), (see FAR 6.302-3(a)(2)(i)) shall include a surge option clause (see DFARS 217.208-70(b)) or some other type of surge readiness provision.

6.302-7 Public interest.

(c) Limitations.

(1)(i) Requests for making determinations and findings (D&Fs) under authority of 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7, shall be forwarded to MMPO by a letter of transmittal signed by the Commander of the component for submission, through the USD(A&T), to the Secretary of Defense.

(3) Every request to exercise the authority of FAR 6.302-7(a) shall be accompanied by a justification (see FAR 6.303) supporting the D&F.

6.303 Justifications.

6.303-1 Requirements.

(b) DLA contracting offices shall establish approval levels for the certifications required by FAR 6.303-1(b).

(d) The agency point of contact with the Office of the United States Trade Representative is MMPPP.

6.303-2 Content.

(a)(11) The justification shall include, when applicable, a description of (i) the action being taken to obtain a data package adequate to establish competitive acquisition of the item and (ii) market research efforts to eliminate impediments to subsequent acquisitions.

(a)(90) The following is an illustrative justification format.

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

1. The Defense Logistics Agency, Defense (Insert Activity Name), is the contracting activity.

2. The action being approved is the acquisition of supplies/services on other than a full and open competition basis.

3. The supplies/services required to meet the using activity's needs are described as follows:

Brief Description	NSN/P/N	Quantity	Est. Value
_____	_____	_____	_____
_____	_____	_____	_____

4. The statutory authority permitting other than full and open competition is:

/ / 10 U.S.C. 2304(c)(1) - Available from only one or a limited number of sources.

/ / 10 U.S.C. 2304(c)(2) - Urgency.

The use of this authority is appropriate because (Check one or more, as appropriate):

/ / The requisitioner has assigned a priority designator within Issue Priority Group I.

/ / The requisitioner has also cited an expedited handling signal of 999, N** or E** or an Office of the Secretary of Defense/Joint Chiefs of Staff project code beginning with a "9". (DoD 4000.25 -1-M describes the circumstances where these codes may be assigned.)

/ / The supplies are urgently required to maintain _____, and the using Services' military capability will be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not delay award of the contract.

/ / 10 U.S.C. 2304(c)() - _____.

5. The use of the authority cited is based on: (Competition may be restricted only where the requirement reflects actual minimum needs. Therefore, this element must include an explanation of why the requirement reflects actual minimum needs.)

/ / (Insert firm name(s) is/are the only firm(s) known to manufacture or supply the item(s) which meet the unique feature(s) of the Government's minimum needs. The unique feature(s) of the item(s) required is/are _____. No other method of expressing minimum needs is acceptable because _____. Only the specified manufacturer's (source's) product or brand name will satisfy actual minimum needs because_____.

/ / The item is source controlled.

/ / The item is a part numbered item for which the Government does not possess complete unrestricted technical data which can be included/referenced in the solicitation.

/ / The assignment of a priority designator within IPG I is controlled by the procedures of Department of Defense Directive 4410.6 and indicates that the Services' military capability will be seriously injured unless the agency is permitted to limit the number of sources from which it solicits proposal. Requirements citing an IPG I priority are certified as accurate by review of the commanding officer of the requisitioning unit or designated representative. Only the most urgent requirements are properly coded within IPG I.

/ / The supplies are urgently required to maintain _____, and the using Services' military capability will be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not delay award of the contract.

6. Efforts to ensure that offers are solicited from as many sources as practicable are:

/ / The acquisition will be synopsised.

/ / Manufacturers of similar products identified in the market survey will be solicited.

/ / Dealers of the manufacturer will be solicited.

/ / Other. (Explain)_____.

7. I hereby determine that the anticipated cost to the Government will be fair and reasonable.

8. A market survey (see FAR 7.101), which consisted of _____,

/ / was conducted, and firms indicating an interest in the acquisition will be solicited. Market research efforts, if any, include:

/ / was not conducted due to the unusual and compelling urgency of the requirement.

9. Additional facts supporting other than full and open competition are:

/ / As stated in the attached technical certification, technical data are not available and cannot be developed to permit full and open competition. The data presently available reflect the minimum needs of the Government.

/ / As stated in the attached certification by the requiring activity, the Military Service(s) will be seriously injured if contract award is delayed. The extent and nature of harm is detailed in the attached certification.

/ / Other _____
10. A listing of sources, if any, indicating an interest in the acquisition are: (If none, so state.)

11. The actions, if any, being taken to overcome barriers to competition before any subsequent acquisitions are made are (e.g., describe action being taken to identify and evaluate less restrictive methods of expressing the requirement). Also include, when appropriate, a description of the action being taken to obtain a data package adequate to establish competitive acquisition of the item. I hereby certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief.

Date

Contracting Officer

Approval: I have reviewed and approve__disapprove__this justification:

1. Up to **\$500,000**: Contracting Officer. _____
Signature and Date

2. Over **\$500,000**, but not exceeding \$10 million:
Activity Competition Advocate. _____
Signature and Date

3. Over \$10 million, but not exceeding \$50 million:
Head of the Procuring Activity. _____
Signature and Date

4. Over \$50 million:
Senior Procurement Executive (Deputy Director, Acquisition (AQ)).

Signature and Date

(a)(91) Justifications and approvals (J&A's) for awards made under broad agency announcements that support industrial mobilization.

(1) J&A's for noncompetitive awards in response to broad agency announcements made in support of industrial mobilization must properly address the compelling reasons for limiting awards to a particular source or sources (e.g., a noncompetitive award made after evaluating only a single proposal) and the unique capabilities of the targeted source(s) to support the industrial base. FAR 6.302-3(a)(2) requires that the contracting officer demonstrate that other than full and open competition is necessary in order to "keep vital facilities or suppliers in business or make them available" in case of a national emergency or to achieve industrial mobilization. Generally, the J&A must contain sufficient information about the item or service and the supporting industrial sector to demonstrate clearly that the contracting officer's determination to include a particular source or sources in, and exclude others from, the supply base for that item or service is appropriate. When the award rationale includes the need to test an unproven concept for future application to the agency's defense mobilization needs (e.g., an innovative manufacturing, distribution or management process), the J&A should focus on this objective rather than on the need to acquire the item or service.

(2) The contracting officer shall address the following considerations in the J&A:

(a) the relationship between the agency's program objectives and the acquisition strategy employed, i.e., how the BAA facilitates eliciting innovative concepts for reengineering the agency's business processes;

(b) the nature of the item or service (e.g., complexity, criticality, unique features) and the supporting industrial sector (e.g., industry capacity, are sources domestic or foreign, small or large, planned producers, dependent on government business);

(c) the need for the technological enhancements or process improvements proposed in such areas as manufacturing, distribution, or management, in order to maintain defense readiness in the new logistics environment (e.g., mobilization requires that the agency have available both the parts and the production/supply mechanism for getting those parts);

(d) the current supply environment (e.g., if the item is currently stocked in inventory, discuss why the agency cannot continue to buy this item in quantity and stock it; further, discuss why the agency must employ a different supply method, such as quick response or direct vendor delivery, in order to maintain defense readiness); and

(e) the unique capabilities of a particular source (or sources) to meet agency mobilization requirements, such as 24 hour delivery, surge capability, or dual-use technology, that make it necessary to exclude from consideration other sources that may be capable or who submitted responses (e.g., because of its unique capabilities - and describe what these are - the concept proposed can only be provided by the targeted source(s); or, even though the concept proposed can also be provided by others, the agency must also target an item to test the concept, so award must be made to the source(s) that can provide both the item and the concept).

(3) The J&A shall also include the following information:

(a) a description of how the specific item or service was selected to test the proposed concept;

(b) how the volume of requirements to be awarded was determined appropriate;

(c) volume and proposed disposition of any remaining requirements for the designated item or service;

(d) the estimated duration of the concept test period; and

(e) future plans for implementing successful strategies using full and open competition.

(4) The contracting officer shall consult with his/her Office of Counsel in the preparation of J&A's in support of industrial mobilization.

(b)(90) In addition to the examples provided in FAR 6.303-2(b), requirements personnel shall certify that:

(i) The purchase request covers only that quantity needed to satisfy an unusual and compelling urgency; and

(ii) For stocked items, the items are out of stock or existing stock is insufficient to satisfy the requirement, and, if possible, an explanation of why existing stocks are insufficient or the item is out of stock; for non-stocked items, a statement to that effect.

6.304 Approval of the justification.

(a)(4)(A)(1) The authority to approve justifications for other than full and open competition for a proposed contract over \$10 million but not exceeding \$50 million is delegated to any officer or employee at each procuring activity who --

(i) if a member of the Armed Forces, is a general or flag officer, or

(ii) if a civilian, is serving in a position in Grade GS -16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees).

(a)(4)(A)(1)(90) Justifications requiring approval by the Senior Procurement Executive (including class justifications based on estimated total value of the class) shall be forwarded to MMPO by a letter of transmittal signed by the Commander of the activity requesting approval (Administrator for DAPSC and DNSC). **The letter of transmittal shall be forwarded sufficiently early as to allow for headquarters review and approvals prior to the commencement of negotiations. This procedure applies as well to negotiations using the procedures described in DLAD 6.302-3 (90).** The letter of transmittal shall include:

(i) The proposed justification (see FAR 6.303).

(ii) The acquisition plan (see FAR Subpart 7.1).

(iii) Any other pertinent supporting facts or information bearing on a decision to approve the justification.

(a)(4)(A)(1)(91) The DLA competition advocate shall review and recommend approval/disapproval of justifications exceeding \$50 million.

SUBPART 6.4 - SEALED BIDDING AND COMPETITIVE PROPOSALS

6.401 Sealed bidding and competitive proposals.

The contract file documentation of the reason for not using sealed bids need not consist of more than a check in the appropriate block(s) on the acquisition plan (see 90.1102).

SUBPART 6.5 - COMPETITION ADVOCATES

6.502 Duties and responsibilities.

Additional duties and responsibilities are contained in DoDI 5000.2, Defense Acquisition Management Policies and Procedures, and DLAD 4105.17, Competition Advocate Program.

(b)(3) When a supporting staff exists, performs market research efforts to identify and/or develop existing and potentially new sources of supply (i.e., sources research and sources development efforts) (i) on a continuing, programmatic basis, for selected items such as those that are newly managed, have high payback potential, or have unfinished efforts related to a prior acquisition, and (ii) when requested by the contracting officer in connection with a specific acquisition.