

306.302-7 Public interest.

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

(c) *Limitations.* When using the authority cited in FAR 6.302-7(a)(1), the Secretary's approval must be obtained. Therefore, an "approval package" must be prepared and staffed through departmental acquisition channels to the Secretary. The package shall include:

(1) A determination and findings, prepared by the contracting officer, for the Secretary to sign.

(2) A letter for the Secretary to sign notifying Congress of the determination to award a contract under the authority of 41 U.S.C. 253(c)(7). This letter must be received by Congress at least 30 days before contract award.

(3) A "Justification for Other than Full and Open Competition" (JOFOC).

(4) A briefing paper presenting background, need, etc.

(5) Any other pertinent papers or documents required by the Department.

306.303 Justifications.**306.303-1 Requirements.**

(b) Preliminary arrangements or agreements with the proposed contractor made by someone other than the contracting officer shall have no effect on the rationale used to support an acquisition for other than full and open competition.

(f) The program office should discuss prospective other than full and open competition requests with their supporting contracting office as early as possible during the acquisition planning stage (see FAR Subpart 7.1 and Subpart 307.1), and before submitting the requisition or request for contract. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the acquisition, and avoid delays which might otherwise occur should it be determined that the request for other than full and open competition is not justified.

(g) When a program office desires to obtain certain goods or services by contract without full and open competition, it shall, at the time of forwarding the requisition or request for contract, furnish the contracting office a justification explaining why full and open

competition is not feasible. All justifications shall be initially reviewed by the contracting officer.

(1) Justifications in excess of the small purchase limitation shall be in the form of a separate, self-contained document, prepared in accordance with FAR 6.303 and 306.303, and called a "JOFOC" (Justification for Other than Full and Open Competition). Justifications of \$25,000 or less may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(2) Justifications, whether over or under the small purchase limitation, shall fully describe what is to be acquired, offer reasons which go beyond inconvenience, and explain why it is not feasible to obtain competition. The justifications shall be supported by verifiable facts rather than mere opinions. Documentation in the justifications should be sufficient to permit an individual with technical competence in the area to follow the rationale.

[50 FR 23127, May 31, 1985, as amended at 57 FR 11689, Apr. 7, 1992]

306.303-2 Content.

(a)(1) The program office and name, address, and telephone number of the project officer shall also be included.

(2) This item shall include project identification such as the authorizing program legislation, to include citations or other internal program identification data such as title, contract number, etc.

(3) A full description of the requirement and its dollar amount is to be included. It may be in the form of a statement of work, purchase description, or specification. A statement is to be included to explain whether the acquisition is an entity in itself, whether it is one in a series, or part of a related group of acquisitions.

(c) Each JOFOC shall conclude with at least the following signatory lines (other concurrence lines may be added as deemed necessary by the contracting activity):

Recommended, Project Officer _____
 Date _____
 Concur, Project Officer's Immediate Supervisor _____
 Date _____
 Concur, Contracting Officer _____

Date _____
 Approved, Approving Official _____
 Date _____

306.304 Approval of the justification.

(a)(1) For purchases in excess of 10 percent of the small purchase limitation but not over the small purchase limitation, the contracting officer is authorized to review and approve (or disapprove) the justification (see 313.106(c)(2)). For acquisitions over the small purchase limitation, but not exceeding \$100,000, the JOFOC shall be submitted to the contracting officer for review. The contracting officer will either concur or nonconcur, and forward the JOFOC to the principal official responsible for acquisition for approval. (When the contracting officer and principal official responsible for acquisition are the same individual, the approval will be made by the respective official listed in 306.501.) The principal official responsible for acquisition may redelegate approval for acquisitions between the small purchase limitation and \$50,000 to the chief of the contracting office, provided that individual is at least one level above the contracting officer who will sign the contract.

(2) The competition advocates are listed in 306.501.

(3) The following shall serve as the approving officials referenced in FAR 6.304(a)(3):

HCFA—Administrator for Health Care Financing
 OHDS—Assistant Secretary for Human Development Services
 OS—Assistant Secretary for Management and Budget
 PHS—Assistant Secretary for Health (may be delegated to the Deputy Assistant Secretary for Health Operations)
 SSA—Commissioner of Social Security
 RO's—Regional Director

This authority is not delegable, except as indicated for PHS.

(4) The senior procurement executive of the Department is the Assistant Secretary for Management and Budget.

(c) A class justification shall be processed the same as an individual justification.

(d) The contracting officer who receives a JOFOC for processing shall, after ascertaining that the document is complete, request advice from pricing, audit, legal, and other appropriate staff

offices, and forward the JOFOC with his or her concurrence or nonconcurrence, to the appropriate approving official. When the contracting officer does not concur with the JOFOC, a written explanation setting forth the reasons must be provided the approving official. If the JOFOC is disapproved by the approving official, the contracting officer shall promptly notify the concerned program office.

(e) It is the responsibility of the approving official to determine whether a contract may properly be awarded without full and open competition. The program office and project officer are responsible for furnishing the contracting officer and approving official with pertinent supporting information necessary to make such determinations. Other staff offices shall advise the contracting officer and approving official as requested.

(f) As each justification is reviewed, the approving official should ask: why the acquisition cannot be competed, are there sufficient grounds for excluding all other actual or potential sources, what actions can be taken to obtain full and open competition in the instant acquisition, and what actions are needed to avoid the need for a subsequent or continuing acquisition that is for other than full and open competition?

[50 FR 23127, May 31, 1985, as amended at 56 FR 47002, Sept. 17, 1991]

Subpart 306.4—Sealed Bidding and Competitive Proposals

306.401 Sealed bidding and competitive proposals.

The requirement in FAR 6.401 to document the reasons sealed bidding is not appropriate may be accomplished by adding a sentence to the negotiation memorandum (see 315.672) specifying which criterion (or criteria) listed in FAR 6.401(a) is (are) not applicable to the acquisition.

Subpart 306.5—Competition Advocates

306.501 Requirement.

The Department's competition advocate is the Deputy Assistant Secretary