

205.303

205.303 Announcement of contract awards.

(a) *Public announcement.* (i) The threshold for DoD awards is \$5.5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than \$5.5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than \$5.5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding unexercised options, is more than \$5.5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than \$5.5 million.

(C) Do not report the same work twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD-LA- (AR) 1279;

(D) Including, as a minimum, the following—

(1) *Contract data.* Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(2) *Competition information.* Number of solicitations mailed and number of offers received;

(3) *Contractor data.* Name, address, and place of performance (if significant work is performed at a different location);

(4) *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

(5) *Miscellaneous data.* Identification of the contracting office, the con-

48 CFR Ch. 2 (10–1–09 Edition)

tracting 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]

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 expected to exceed \$1,000,000,000. This clause implements 10 U.S.C. 2416.

[69 FR 63328, Nov. 1, 2004, as amended at 70 FR 8537, Feb. 22, 2005]

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.

206.001 Applicability.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

206.203 Set-asides for small business concerns.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

Defense Acquisition Regulations System, DOD

206.302-1

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; or engineering, development, or research capability.

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.

206.303-70 Acquisitions in support of operations in Iraq or Afghanistan.

206.304 Approval of the justification.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

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

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.

(S-70) Also excepted from this part are follow-on production contracts for products developed pursuant to the "other transactions" authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2) (A) and (B) (see 32 CFR 3.9(d)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

[70 FR 2361, Jan. 13, 2005]

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]

206.203 Set-asides for small business concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as historically black college and university and minority institution set-asides (see 226.7003).

[63 FR 41973, Aug. 6, 1998]

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

206.302-2

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.

[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]

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; or engineering, development, or research capability.

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. 2304(f)(2)(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]

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 sub-

48 CFR Ch. 2 (10-1-09 Edition)

ject 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. 2361 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. 2361,

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

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(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 Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(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]

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.

206.303-70 Acquisitions in support of operations in Iraq or 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]

206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition, Technology, and Logistics) 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.

[61 FR 10285, Mar. 13, 1995, as amended at 61 FR 50451, Sept. 26, 1996; 65 FR 39704, June 27, 2000]

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.
- 207.170 Consolidation of contract requirements.
- 207.170-1 Scope.
- 207.170-2 Definitions.
- 207.170-3 Policy and procedures.
- 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 207.4—Equipment Lease or Purchase

- 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. 421 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 item definition has been met when using FAR Part 12 procedures.

[73 FR 4114, Jan. 24, 2008]

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