

Federal Acquisition Regulation

6.302-5

(vi) Continue in production, contractors that are manufacturing critical items, where there would otherwise be a break in production; or

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

(2) Use of the authority in paragraph (a)(2)(ii) above may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) above.

(3) Use of the authority in paragraph (a)(2)(iii) of this section may be appropriate when it is necessary to acquire the services of either—

(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:

(A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency, or

(B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or

(ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.

(c) *Limitations.* Contracts awarded using this authority shall be supported

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]

6.302-4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(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]

6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(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 item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require