

Federal Acquisition Regulation

6.301

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

[63 FR 70267, Dec. 18, 1998]

6.206 Set-asides for service-disabled veteran-owned small business concerns.

(a) To fulfill the statutory requirements relating to the Veterans Benefits Act of 2003 (15 U.S.C. 657f), contracting officers may set-aside solicitations to allow only service-disabled veteran-owned small business concerns to compete (*see* 19.1405).

(b) No separate justification or determination and findings are required under this part to set aside a contract action for service-disabled veteran-owned small business concerns.

[69 FR 25276, May 5, 2004]

6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(a) To fulfill the statutory requirements relating to 15 U.S.C. 637(m), contracting officers may set aside solicitations for only EDWOSB concerns or WOSB concerns eligible under the WOSB Program (*see* 19.1505).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for EDWOSB concerns or WOSB concerns eligible under the WOSB Program.

[76 FR 18308, Apr. 1, 2011]

6.208 Set-asides for local firms during a major disaster or emergency.

(a) To fulfill the statutory requirements relating to 42 U.S.C. 5150, contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (*see* Subpart 26.2).

(b) No separate justification or determination and findings is required under this part to set aside a contract action. The set-aside area specified by the contracting officer shall be a geographic

area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.

[72 FR 63086, Nov. 7, 2007. Redesignated at 76 FR 18308, Apr. 1, 2011]

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) 41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(c). Other executive agencies are subject to 41 U.S.C. 253(c). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency. (*See* 6.302.)

(c) Contracting without providing for full and open competition shall not be justified on the basis of (1) a lack of advance planning by the requiring activity or (2) concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102 (a) or (b), if appropriate, or any

6.302

other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

[50 FR 52431, Dec. 23, 1985]

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

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

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that:

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) and 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B) or 41 U.S.C. 253(d)(1)(B).)

48 CFR Ch. 1 (10-1-11 Edition)

(iii) For DoD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B)).

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities; or, (ii) for DoD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see part 27).

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy