

## 205.470

### 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. 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

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206.304 Approval of the justification.

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

## 48 CFR Ch. 2 (10–1–12 Edition)

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 226.370).

[63 FR 41973, Aug. 6, 1998, as amended at 76 FR 76319, Dec. 7, 2011]

### **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—

(I) 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 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 subject 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.