PART 706—COMPETITION REQUIREMENTS

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp., p. 435; 40 U.S.C. 474.

Subparts 706.1-706.2 [Reserved]

Subpart 706.3—Other Than Full and Open Competition

706.302-5 [Reserved]

706.302-70 Impairment of foreign aid programs.

706.302-71 [Reserved]

Subpart 706.5—Competition Advocates

706.501 Requirement.

Parent topic: SUBCHAPTER B—ACQUISITION PLANNING

Subparts 706.1-706.2 [Reserved]

Subpart 706.3—Other Than Full and Open Competition

706.302-5 [Reserved]

706.302-70 Impairment of foreign aid programs.

(a) *Authority.*

(1) The authority is 40 U.S.C. 113.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

(b) *Application.* This authority may be used for:

(1) Personal services performed abroad by an individual under the authorities of section 636(a)(3) of the Foreign Assistance Act of 1961, as amended;

(2) Supplies or services with a total value of $250,000 or less by an overseas contracting activity;

(3)

(i) Supplies or services when the cognizant Assistant Administrator makes a formal written Determination and Findings (D&F)(see FAR subpart 1.7), that compliance with full and open competition procedures to procure the goods or services through one or more contract actions

would impair foreign assistance objectives and would be inconsistent with the fulfillment of one or more foreign assistance programs for which the Assistant Administrator is responsible; or

(ii) Supplies or services for countries, regions, or programs for which the Administrator of USAID makes a D&F (see FAR subpart 1.7) that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of foreign assistance programs;

(4) Supplies or services awarded under 715.370-1 or 715.370-2; and

(5) A specific contract for the continued provision of highly-specialized services when an award to another contractor would result in substantial additional costs to the Government or cause unacceptable delays.

(c) *Limitations.*

(1) A contract awarded using the authority in paragraph (a) of this section must be supported by a written justification and approval (J&A) meeting the requirements of FAR 6.303 and 6.304, except that a determination made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals required in FAR 6.304.

(2) Proposals must be requested from as many potential offerors as is practicable under the circumstances.

(3) When using the authorities in paragraphs (b)(4) and (5) of this section the contracting officer must publicize the advance notice of the proposed contract action as required in FAR 5.201. However, when the authorities at paragraphs (b)(1) through (3) of this section are used, advance notice of proposed contract action is not required in accordance with AIDAR 705.202.

(4) The authority in paragraph (b)(3) of this section shall be used only when no other authority provided in FAR 6.302 or AIDAR 706.302 is suitable. The specific foreign assistance objective that would be impaired must be identified and explained in a written D&F. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written D&F, and this consultation must be reflected in the D&F. In addition, the contracting activity must prepare a J&A as required in paragraph (c)(1) of this section.

(5) Use of the authority in paragraph (b)(5) of this section for proposed follow-on contracts or modifications to extend contracts for the continued provision of highly-specialized services in excess of one year or over $250,000 is subject to the approval of the Agency Competition Advocate. For all other extensions and follow-on contracts relying on the authority in paragraph (b)(5), the contracting officer's certification required in FAR 6.303-2(b)(12) will serve as approval.

706.302-71 [Reserved]

Subpart 706.5—Competition Advocates

706.501 Requirement.

The USAID Administrator delegated the authority to designate the Agency Competition Advocate

and a competition advocate for each agency procuring activity (see 702.170 of this chapter) to the M/OAA Director. The M/OAA Director, under the Administrator's delegation, has designated the M/OAA Deputy Director for Accountability, Compliance, Transparency, and Support as the Agency Competition Advocate and the deputy head of each contracting activity as the competition advocate for each activity. The competition advocate for USAID/W is the Deputy Director for M/OAA Operations. If there is no deputy, the head of the contracting activity is designated the competition advocate for that activity. The competition advocate's duties may not be redelegated, but can be exercised by persons serving as acting deputy (or acting head) of the contracting activity. For definitions of contracting activity and head of the contracting activity, see 702.170 of this chapter.