6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) Authority.

(1) Citations: 10 U.S.C. 3204(a)(3) or 41 U.S.C. 3304(a)(3).

(2) *Full and open competition* need not be provided for when it is necessary to award the contract to a particular source or sources in order-

(i) To maintain a facility, producer, manufacturer, or other supplier available for furnishing *supplies* or services in case of a national *emergency* or to achieve industrial mobilization;

(ii) To establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or

(iii) To acquire the services of an expert or *neutral person* for any current or anticipated litigation or dispute.

(b) Application.

(1) Use of the authority in paragraph (a)(2)(i) of this section *may* be appropriate when it is necessary to-

(i) Keep vital facilities or suppliers in business or make them available in the event of a national *emergency*;

(ii) Train a selected supplier in the furnishing of critical *supplies* or services, prevent the loss of a supplier's ability and employees' skills, or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of *acquisition* programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that *must* be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for *full and open competition*, as appropriate, under this part);

(iv) Create or maintain the required domestic capability for production of critical *supplies* by limiting competition to items manufactured in-

(A) The *United States* or its *outlying areas*; or

(B) The *United States*, its *outlying areas*, or Canada.

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

(vi) 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) of this section *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 paragraph (b)(2)(i) or (ii) of this section.

(3) Use of the authority in paragraph (a)(2)(iii) of this subsection *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.

Parent topic: 6.302 Circumstances permitting other than full and open competition.