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*(Revised April 20, 2015)*

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### **206.000 Scope of part.**

For information on the various approaches that may be used to competitively fulfill DoD requirements, see [PGI 206.000](#) ([DFARS/PGI view](#)).

### **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 competition 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.

## **SUBPART 206.1--FULL AND OPEN COMPETITION**

*(Added February 15, 2019)*

### [206.102 Use of competitive procedures.](#)

#### **206.102 206.102 Use of competitive procedures.**

(d) *Other competitive procedures.*

(2) In lieu of FAR 6.102(d)(2), competitive selection of science and technology proposals resulting from a broad agency announcement with peer or scientific review, as described in [235.016\(a\)](#) (10 U.S.C. 2302(2)(B)).

## **SUBPART 206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES**

*(Revised October 14, 2014)*

### [206.202 Establishing or maintaining alternative 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\(b\)](#) ([DFARS/PGI view](#)), as applicable, and any other information that may be pertinent, in the supporting documentation.

## SUBPART 206.3--OTHER THAN FULL AND OPEN COMPETITION

(Revised May 31, 2019)

[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.](#)

[206.302-2 Unusual and compelling urgency.](#)

[206.302-3 Industrial mobilization, engineering, developmental, or research capability, or expert services.](#)

[206.302-3-70 Solicitation provision.](#)

[206.302-4 International agreement.](#)

[206.302-5 Authorized or required by statute.](#)

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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—

(1) 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.

(c) *Application for brand-name descriptions.*

(2) Notwithstanding FAR 6.302-1(c)(2), in accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use brand name or equal descriptions.

(d) *Limitations.* Follow the procedures at [PGI 206.302-1\(d\)](#) ([DFARS/PGI view](#)) prior to soliciting a proposal without providing for full and open competition under this authority.

(S-70) *Application for proprietary specifications or standards.* In accordance with section 888(a) of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), the justification and approval addressed in FAR 6.303 is required in order to use proprietary specifications and standards.

## **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\(b\)](#) ([DFARS/PGI view](#)).

## **206.302-3 Industrial mobilization, engineering, developmental, or research capability, or expert services.**

### **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.

**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.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in [237.7401](#) (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160)).

(c) *Limitations.*

(i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(1) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(2) Identifies the particular college or university involved, and

(3) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement and Acquisition Policy and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a

case-by-case basis.

### **206.302-7 Public interest.**

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

### **206.303 Justifications.**

#### **206.303-2 Content.**

(b)(i) Include the information required by [PGI 206.303-2\(b\)\(i\)](#) ([DFARS/PGI view](#)) in justifications citing the authority at FAR 6.302-1.

#### **206.303-70 Acquisitions in support of operations in Afghanistan.**

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in [225.7703-1\(a\)](#).

### **206.304 Approval of the justification.**

(a)(4) The Under Secretary of Defense (Acquisition, Technology, and Logistics) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who<sup>3/4</sup>

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(S-70) For a non-competitive follow-on acquisition to a previous award for the same supply or service supported by a justification for other than full and open competition citing the authority at FAR 6.302-1, follow the procedures at [PGI 206.304\(a\)\(S-70\)](#) ([DFARS/PGI view](#)).

### **206.305 Availability of the justification.**

See [PGI 206.305 \(DFARS/PGI view\)](#) for further guidance on the requirements for preparing, obtaining approval, and posting justification and approval documents for contracts awarded using the authority of FAR 6.302-2.