



CICA Case Study

50 FR 1726

January 11, 1985

Rules and Regulations

Reporter

50 FR 1726

[Federal Register](#) > [1985](#) > [January](#) > [January 11, 1985](#) > [Rules and Regulations](#) > [FEDERAL REGISTER](#)

Title: Federal Acquisition Regulation

Action: Interim rule and request for comment.

Agency

FEDERAL REGISTER

Identifier: [Federal Acquisition Circular 84-5]

Administrative Code Citation

48 CFR Ch. 1

Synopsis

SUMMARY: Federal Acquisition Circular (FAC) 84-5 amends the Federal Acquisition Regulation (FAR) with respect to the changes required to implement the Competition in Contracting Act of 1984 (CICA).

Text

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 84-5 (FAC 84-5) contains changes to the FAR to conform the regulation to CICA. The FAR revisions are effective for solicitations to be issued on or after April 1, 1985.

Under the new coverage, agencies will be required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or using other competitive procedures; unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. The coverage also requires appointment of competition advocates and enumerates their responsibilities.

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration that FAC 84-5 must be issued as a temporary regulation. In order to comply with the changes made by CICA, all solicitations for bids or proposals that are issued on or after April 1, 1985, must be in compliance with FAC 84-5. Because of the varying lead times necessary for the preparation and approval of solicitations, it will be necessary for agencies to promptly begin implementing the coverage. In addition, agencies will have to issue required internal operating procedures and ensure that procurement personnel are provided appropriate training and education in these new procedures. These regulations were previously published for a brief comment period and comments received were considered.

FAC 84-5 does not address CICA's new requirements relating to bid protests. The CICA requirements relating to bid protests become effective for protests filed on or after January 15, 1985, and will be implemented in a separate FAC issued prior to that date.

Regulations

List of Subjects in 48 CFR Ch. 1

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

December 20, 1984.

Federal Acquisition Circular

[Number 84-5]

December 20, 1984

Federal Acquisition Circular (FAC) 84-5 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The material contained in FAC 84-5 is effective for solicitations to be issued on or after April 1, 1985.

Ray Kline,

Acting Administrator, General Services Administration.

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management), Department of Defense.

Stuart J. Evans,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Federal Acquisition Circular 84-5 amends the Federal Acquisition Regulation as specified below. The following is a summary of the amendments and procedures:

Item I -- Competition in Contracting Act of 1984.

The Competition in Contracting Act of 1984 (CICA), Title VII of *Pub. L. 98-369*, substantially changes the basic statutes underlying the Federal procurement system. Any solicitation for bids or proposals issued on or after April 1, 1985, must comply with CICA's new requirements.

Therefore, 48 CFR is amended as set forth below.

1. The Authority for 48 CFR Chapter 1 is:

Authority: [40 U.S.C. 486\(c\)](#) 10 U.S.C. Chapter 137; and [42 U.S.C. 2453\(c\)](#).

PART 1 -- FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1 is amended by adding a new Subpart 1.7 to read as follows:

Subpart 1.7 -- Determinations and Findings

1.700 Scope of subpart.

This subpart prescribes general policies and procedures for the use of determinations and findings (D&F's). Requirements for specific types of D&F's can be found with the appropriate subject matter.

1.701 Definition.

"Determination and Findings" (D&F) means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

1.702 General.

- (a) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&F's may be executed for classes of contract action (see 1.703). The approval granted by a D&F is restricted to the proposed contract action(s) reasonably described in that D&F. D&F's may be provided for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.
- (b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

- (a) A class D&F provides authority for a class of contracting actions. A class may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.
- (b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.
- (c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

- (a) Identification of the agency and of the contracting activity and specific identifications of the document as a "Determination and Findings".
- (b) Nature and/or description of the action being approved.
- (c) Citation of the appropriate statute and/or regulation upon which the D&F is based.
- (d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.
- (e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.
- (f) Expiration date of the D&F, if required (see 1.706(b)).
- (g) The signature of the official authorized to sign the D&F (see 1.706) and the date signed.

1.705 Supersession and modification.

- (a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.

- (b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

1.706 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from that solicitation.

1.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&F's is as shown in the applicable FAR part.

PART 2 -- DEFINITIONS OF WORDS AND TERMS

Subpart 2.1 -- [Amended]

- 3. Subpart 2.1 is amended by designating the existing text as 2.100 and by removing in the definition of "Offer" the words "(formal advertising)" and inserting in their place the words "(sealed bidding)" and adding the words "or sealed bids" following the word "bids" and before the word; "responses" in the second sentence; and by alphabetically adding the definition of "Senior procurement executive" to read as follows:

2.100 Definitions.

* * * * *

"Senior procurement executive" means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([41 U.S.C. 414\(3\)](#)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

* * * * *

PART 3 -- IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.103-1 [Amended]

- 4. Section 3.103-1 is amended by removing in paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

3.301 [Amended]

- 5. Section 3.301 is amended by removing the second sentence in paragraph (b) and removing in the third sentence the word "also" and the words "either advertised or competitively negotiated".
- 6. Section 3.303 is amended by revising paragraph (a) to read as follows:

3.303 Reporting suspected antitrust violations.

- (a) Agencies are required by [41 U.S.C. 253\(B\)\(e\)](#) and [10 U.S.C. 2305\(b\)\(5\)](#) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by Subpart 9.4.

* * * * *

3.403 [Amended]

- 7. Section 3.403 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

3.404 [Amended]

- 8. Section 3.404 is amended by removing in paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding".

3.406 [Amended]

- 9. Section 3.406 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

PART 4 -- ADMINISTRATIVE MATTERS

4.702 [Amended]

- 10. Section 4.702 is amended by removing in paragraph (a)(2) the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

- 11. Section 4.803 is amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

- (2)** Justifications and approvals, determinations and findings, and associated documents.

* * * * *

- (5)** The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

* * * * *

- 12. Section 4.805 is amended by removing and reserving paragraph (c) and revising (d) of the table to read as follows:

4.805 Disposal of contract files.

* * * * *

Document	Retention Period
(c) [Reserved] (d) Signed originals of justifications and approvals and determinations and findings required by Part 6, and copies of supporting documents and data	6 years and 3 months after final payment.

* * * * *

* * * * *

- 13. Section 5.001 is redesignated as section 5.002 and new section 5.001 is added to read as follows:

5.001 Definition.

"Contract action," as used in this part, means an action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the

scope and under the terms of the contract, such as contract modifications issued pursuant to the Change clause, or funding and other administrative changes.

14. Section 5.101 is amended by revising the introductory text of paragraph (a) to read as follows:

5.101 Methods of disseminating information.

- (a) Except as provided in 5.202, contracting officers shall disseminate information on proposed contract actions in amounts of \$10,000 and above by --

* * * * *

15. Section 5.102 is amended by revising paragraph (a)(2); removing in paragraphs (a)(4)(ii) the word "agency" and inserting in its place the words "contracting office"; adding paragraph (a)(5) and (a)(6); and removing in paragraph (b) the reference "5.202(a)" and inserting in its place the reference "5.202(a)(1)" as follows:

5.102 Availability of solicitations.

- (a) * * *

- (2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

* * * * *

- (5) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

- (6) Agencies may require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation documents.

* * * * *

Subpart 5.2 [Amended]

16. Subpart 5.2 is amended by removing in the title the word "CONTRACTS" and inserting in its place the words "CONTRACT ACTIONS".

17. Section 5.201 is amended by revising paragraphs (a) through (c) to read as follows:

5.201 General.

- (a) As required by the Small Business Act ([15 U.S.C. 637\(c\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 416](#)), agencies shall furnish for publication in the CBD notices of proposed contract actions of \$10,000 and above as specified below.

- (b) For acquisition of supplies and services in the United States, its possessions, or Puerto Rico, other than those covered by the exceptions in 5.202 and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed --

- (1) Contract action meeting the threshold in 5.201(a);
- (2) Effort to locate private commercial sources for cost comparison purposes under OMB Circular A-76 (see 5.205(d));
- (3) Modification to an existing contract for additional supplies or services that meets the threshold in 5.201(a); or
- (4) Contract action in any amount when advantageous to industry or the Government.

- (c) The primary purposes of the CBD notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

* * * * *

18. Section 5.202 is revised to read as follows:

5.202 Exceptions.

The contracting officer need not submit the notice required by 5.201 when --

- (a) The Contracting officer determines that --
 - (1) The contract action is of a classified nature, and the synopsis cannot be worded to preclude the disclosure of classified information; or disclosure of the agency's needs would compromise the national security. Other proposed classified contract actions shall be published in the CBD, even though access to classified matter might be necessary to submit a proposal or perform the contract;
 - (2) The contract action is to fulfill a need for supplies or services that is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not comply with the time periods specified in 5.203;
 - (3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, has the effect of requiring that the acquisition shall be from specified sources;
 - (4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the SBA using the authority of section 8(a) of the Small Business Act, or from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;
 - (5) The contract action is for utility services and only one source is available;
 - (6) The contract action is an order placed under a requirements contract;
 - (7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 ([Pub. L. 97-219](#)), or an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research;
 - (8) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;
 - (9) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, and advance notice is not appropriate or reasonable; or
 - (10) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action.
- (b) The head of the agency determines in writing after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

19. Section 5.203 and its title are revised to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

- (a) A proper notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.
- (b) Agencies shall allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.
- (c) Agencies shall allow at least 30 days response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of a unilateral sole source order under a basic ordering agreement or similar arrangement.

- (d) Agencies shall allow at least 45 days response time for receipt of bids or proposals from the date of issuance of the notice required in 5.201 for contract actions categorized as research and development.
- (e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.
- (f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD.

20. Section 5.204 is revised to read as follows:

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.302). Synopsizing is still required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

21. Section 5.205 is amended by revising the first sentence in paragraph (a); removing and reserving paragraph (b); and revising paragraphs (c) and (d) to read as follows:

5.205 Special situations.

- (a) * * * Contracting officers shall publish in the CBD advance notices of their interest in R&D fields, subject to the exceptions in 5.203. * * *

* * * * *

- (b) [Reserved]

- (c) **Architect-engineer services.** Except when exempted by 5.202, contracting officers shall publicize notices of intent to contract for architect-engineer services as follows:

- (1) Synopsize each proposed contract action to be made in the United States, its possessions, and Puerto Rico for which the total fee (including phases and options) is expected to exceed \$10,000.
- (2) When the total fee is not expected to exceed \$10,000, or when the contract action is to be made outside the United States, its possessions, and Puerto Rico, the contracting officer may display a notice of the proposed contract action at the contracting office and use other optional publicizing methods authorized by 5.101(b).

- (d) **Effort to locate commercial sources under OMB Circular A-76.** When determining the availability of commercial sources under the procedures prescribed in Subpart 7.3 and OMB Circular A-76, the contracting officer shall not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement in the CBD at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two publications in the CBD in a 30 calendar-day period, with a minimum of 15 calendar days between each.

5.206 [Amended]

- 22. Section 5.206 is amended by removing in the title the words "Synopsis of" and inserting in their place the word "Publicizing", and in paragraph (a)(2) removing the words "formally advertised" and inserting in their place the words "sealed bid".

23. Section 5.207 is amended by removing in the introductory text of paragraph (a) the word "contracts" and inserting in its place the words "contract actions"; revising the second sentence of paragraph (b)(1); revising the third sentence of paragraph (b)(2); revising paragraphs (b)(3), (b)(4)(iv), (b)(4)(vii) and (b)(5); adding paragraph (b)(6); removing in paragraph (d)(2) the number "5.207(b)(5)" and inserting in its place the words "Part 25"; adding paragraph (d)(3); revising the title in paragraph (e)(1) and removing paragraph (e)(4), to read as follows:

5.207 Preparation and transmittal of synopses.

- (b) * * *

- (1) * * * Prepare the synopsis to ensure that it includes a clear description of the supplies or services to be contracted for, is not unnecessarily restrictive of competition, and will allow a prospective offeror to make an informal business judgment as to whether a copy of the solicitation should be requested.

(2) * * * Put each separate proposed contract action in a separate paragraph. * * *

(3) **Contracting office and address.** Begin the name, address, and telephone number of the contracting office on the first line of the text. Do not abbreviate except for the names of States. The address shall include an attention phrase, including title, code, and telephone number, that identifies the person(s) to contact for further information and for obtaining a copy of the solicitation. In addition, the contracting officer's name, business address, and telephone number shall be included if different from that of the person to contact for further information.

* * * * *

(4) * * *

(vi) Size, dimensions, or other form, fit, or function.

(vii) Predominant material of manufacture.

* * * * *

(5) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(6) In the case of a contract action under Subpart 6.3, insert a statement of the authority and justification, and the identity of the intended source(s) (See 5.207(d)(3)).

* * * * *

(d) * * *

(3) If the synopsis is for a proposed contract action intended to be awarded on a sole source basis, the synopsis shall include reference to Numbered Note 22.

* * * * *

(e) * * *

(1) **Availability of specification, plans, drawing, or other technical data.** * * *

* * * * *

24. Section 5.301 is revised to read as follows:

5.301 General.

Except for classified contract actions that were not synopsisized in accordance with 5.202(a), contracting officers shall synopsisize in the CBD awards exceeding \$25,000 that are likely to result in the award of subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

5.303 [Amended]

25. Section 5.303 is amended by removing wherever they appear in paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding".

5.403 [Amended]

26. Section 5.403 is amended by removing in the title of paragraph (b) the word "solicitations" and inserting in its place the word "solicitation".

27. A new Part 6 is added to read as follows:

PART 6 -- COMPETITION REQUIREMENTS

Sec.

6.000 Scope of part.

6.001 Applicability.

6.002 Limitations.

6.003 Definitions.

Subpart 6.1 -- Full and Open Competition

6.100 Scope of subpart.

6.101 Policy.

6.102 Use of competitive procedures.

Subpart 6.2 -- Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

6.201 Policy.

6.202 Establishing or maintaining alternative sources.

6.203 Set-asides for small business and labor surplus area concerns.

Subpart 6.3 -- Other Than Full and Open Competition

6.300 Scope of subpart.

6.301 Policy.

6.302 Circumstances permitting other than full and open competition.

6.302-1 Only one responsible source.

6.302-2 Unusual and compelling urgency.

6.302-3 Industrial mobilization; or experimental, developmental, or research work.

6.302-4 International agreement.

6.302-5 Authorized or required by statute.

6.302-6 National security.

6.302-7 Public interest.

6.303 Justifications.

6.303-1 Requirements.

6.303-2 Content.

6.304 Approval of the justification.

6.305 Availability of the justification.

Subpart 6.4 -- Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Subpart 6.5 -- Competition Advocates

6.501 Requirement.

6.502 Duties and responsibilities.

Authority: [40 U.S.C. 486\(c\)](#); Chapter 137, 10 U.S.C., and [42 U.S.C. 2453\(c\)](#).

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and

open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results of competition (e.g., adequate price competition), which are addressed in other parts (e.g., Part 15).

6.001 Applicability.

This part applies to all acquisitions except --

- (a) Contracts awarded using the small purchase procedures of Part 13;
- (b) Contracts awarded under the 8(a) program (see Subpart 19.8);
- (c) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (d) Contract modifications that are within the scope and under the terms of an existing contract;
- (e) Orders placed under requirements contracts or definite-quantity contracts; or
- (f) Orders placed under indefinite-quantity contracts that were entered into pursuant to this Part when --
 - (1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for all requirements contained in the order; or
 - (2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

"Full and open competition," when used with respect to a contract action, means that all responsible sources are permitted to compete.

"Sole source acquisition" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

"Procuring activity," as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in subpart 2.1.

Subpart 6.1 -- Full and Open Competition

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

- (a) [10 U.S.C. 2304](#) and [41 U.S.C. 253](#) require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.
- (b) Contracting officers shall provide for full and open competition through use of the competitive procedure or combination of competitive procedures contained in this subpart that is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) **Sealed bids.** (See 6.401(a).)
- (b) **Competitive proposals.** (See 6.401(b).) If sealed bids are not appropriated under (a) above, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) below.
- (c) **Combination of competitive procedures.** If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).
- (d) **Other competitive procedures.**
 - (1) Selection of sources for architect-engineer contracts in accordance with the provisions of [Pub. L. 92-582 \(40 U.S.C. 541 et seq.\)](#) is a competitive procedure (see Subpart 36.6 for procedures).
 - (2) Competitive selection of basic research proposals for award (see Part 35 for procedures) is a competitive procedure if award results from --
 - (i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and
 - (ii) A peer of scientific review.
 - (3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of [41 U.S.C. 259 \(b\)\(3\)\(A\)](#) for the multiple award schedule program of the General Services Administration is a competitive procedure if ordering offices follow the procedures in 8.405-1 in placing orders under this program.

Subpart 6.2 -- Full and Open Competition After Exclusion of Sources

§ 6.200 Scope of subpart.

This subpart prescribes policies and procedures for providing for full and open competition after excluding one or more sources.

§ 6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

§ 6.202 Establishing or maintaining alternative sources.

- (a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would --
 - (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services;
 - (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or
 - (3) Be in the interest of national defense in establishing or maintaining 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.
- (b)
 - (1) Every proposed contract action under the authority of paragraph (a) above shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

- (2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.
- (3) When the authority in (a)(1) above is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

§ 6.203 Set-asides for small business and labor surplus area concerns.

- (a) To fulfill the statutory requirements relating to small business concerns and labor surplus area concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under [Pub. L. 97-219](#).
- (b) No separate justification or determination and findings is required under this part to set aside a contract action for small business or labor surplus area concerns.
- (c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to small business set-asides.
- (d) Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.

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 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.

6.302-1 Only one responsible source.

(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 and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(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. This authority may be used in situations such as the following (these examples are not intended to be all-inclusive):

- (1) The required supplies or services are available from only one source.
- (2) Follow-on contracts for the continued development or production of a major system or highly specialized equipment, including major components thereof, may be deemed to be available only from the original source when it is likely that award to any other source would result in --
 - (i) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or
 - (ii) Unacceptable delays in fulfilling the agency's requirements.
- (3) Contracts for supplies or services that result from acceptance of an unsolicited research proposal shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which --
 - (i) Is not otherwise available to the Government; and
 - (ii) Does not resemble the substance of a pending competitive acquisition.
- (4) The existence of 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).
- (5) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304-5(d)); 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.
- (6) 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 the agency's needs for additional units or replacement items, and only one source is available.

(c) Limitations.

- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.
- (2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

6.302-2 Unusual and compelling urgency.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(2\)](#) or [41 U.S.C. 253\(c\)\(2\)](#).
- (2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) Application. This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) Limitations.

- (1) Contracts awarded using this authority shall be supported by the written justification and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

- (2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 Industrial mobilization; or experimental, developmental, or research work.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(3\)](#) or [41 U.S.C. 253\(c\)\(3\)](#).
- (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, or (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.

(b) Application.

- (1) Use of the authority in (a)(2)(i) above 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) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;
 - (v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;
 - (vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production;
 - (vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or
 - (viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.
- (2) Use of the authority in (a)(2)(ii) above 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 (b)(2) (i) or (ii) above.

(c) Limitations. Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

§ 6.302-4 International agreement.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(4\)](#) or [41 U.S.C. 253\(c\)\(4\)](#).
- (2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) Application. This authority may be used in circumstances such as --

- (1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or
- (2) When a contemplated acquisition is for services to be performed, or supplies to be used in, the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) Limitations. Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

§ 6.302-5 Authorized or required by statute.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(5\)](#) or [41 U.S.C. 253\(c\)\(5\)](#).
- (2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.

(b) Application. This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

- (1) Federal Prison Industries (UNICOR) -- [18 U.S.C. 4124](#) (see 8.6);
- (2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped -- [41 U.S.C. 46-48c](#) (see 8.7);
- (3) Government Printing and Binding -- [44 U.S.C. 501-504](#), [1121](#) (see 8.8); or
- (4) Utility Services -- [40 U.S.C. 481](#) (see 8.3).

(c) Limitations.

- (1) The authority in (a)(2)(ii) above may be used only for purchase of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).
- (2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for those contracts awarded under (b)(2) above.

6.302-6 National security.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(6\)](#) or [41 U.S.C. 253\(c\)\(6\)](#).
- (2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) Application. This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) Limitations.

- (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.
- (2) See 5.202(a)(1) for synopsis requirements.
- (3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-7 Public interest.

(a) Authority.

- (1) Citations: [10 U.S.C. 2304\(c\)\(7\)](#) or [41 U.S.C. 253\(c\)\(7\)](#).
- (2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) Application. This authority may be used when none of the other authorities in 6.302 apply.

(c) Limitations.

- (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by (i) The Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.
- (2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.
- (3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under (c)(1) above.
- (4) This D & F shall not be made on a class basis.

6.303 Justifications.

6.303-1 Requirements.

- (a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer --
 - (1) Justifies, if required in 6.302, the use of such actions in writing;
 - (2) Certifies the accuracy and completeness of the justification; and
 - (3) Obtains the approval required by 6.304.
- (b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.
- (c) Justifications required by (a) above may be made on an individual or class basis. However, any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis.
- (d) Contract actions subject to the Agreement on Government Procurement (see Subpart 25.4, Foreign Acquisition) may be made without providing for full and open competition only when permitted and justified pursuant to this subpart. If, in such a contract action, the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition, a copy of the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.
- (e) The justification for contracts awarded under the authority cited in 6.302-2 may be prepared and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

6.303-2 Content.

- (a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:
- (1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."
 - (2) Nature and/or description of the action being approved.
 - (3) A description of the supplies or services required to meet the agency's needs (including the estimated value).
 - (4) An identification of the statutory authority permitting other than full and open competition.
 - (5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.
 - (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.
 - (7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.
 - (8) A description of the market survey conducted (see 7.101) and the results or a statement of the reasons a market survey was not conducted.
 - (9) Any other facts supporting the use of other than full and open competition, such as:
 - (i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.
 - (ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(b)(2), an estimate of the cost that would be duplicated and how the estimate was derived.
 - (iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.
 - (10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.
 - (11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.
 - (12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.
- (b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

- (a) Except for (b) below, the justification for other than full and open competition shall be approved in writing --
- (1) For a proposed contract not exceeding \$100,000, at a level above the contracting officer. This review and approval is not required for --
 - (i) Contracts under the authority cited in 6.302-4 or 6.302-5;
 - (ii) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source; or
 - (iii) Contracts for educational services from nonprofit institutions.
 - (2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501. This authority is not delegable.

- (3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000, by the head of the procuring activity, or a designee who --
 - (i) If a member of the armed forces, is a general or flag officer; or
 - (ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).
- (4) For a proposed contract over \$10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act ([41 U.S.C. 414\(3\)](#)) in accordance with agency procedures. This authority is not delegable.
- (b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.
- (c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

6.305 Availability of the justification.

- (1) The justification required by 6.303-1 and any related information shall be made available for public inspection as required by [10 U.S.C. 2304\(f\)\(4\)](#) and 41 U.S.C. 303(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act ([5 U.S.C. 552](#)) in determining whether other data should be removed.
- (2) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

Subpart 6.4 -- Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15 are both acceptable procedures for use under Subparts 6.1., 6.2 and, when appropriate, under Subpart 6.3. Contracting officers shall exercise good judgment in selecting the method of contracting that best meets the need of the Government, if sealed bidding is not appropriate.

- (a) **Sealed bids.** (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if --
 - (1) Time permits the solicitation, submission, and evaluation of sealed bids;
 - (2) The award will be made on the basis of price and other price-related factors;
 - (3) It is not necessary to conduct discussions with the responding offerors about their bids; and
 - (4) There is reasonable expectation of receiving more than one sealed bid.
- (b) **Competitive proposals.** (See Part 15 for procedures.)
 - (1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.
 - (2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States, its possessions, or Puerto Rico. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

Subpart 6.5 -- Competition Advocates

6.501 Requirement.

Ad required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall --

- (a) Be in positions other than that of the agency senior procurement executive;
- (b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and
- (c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the advocate's duties and responsibilities.

6.502 Duties and responsibilities.

- (a) Agency competition advocates shall --
 - (1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the agency;
 - (2) Review the contracting operations of the agency and identify and report to the agency senior procurement executive --
 - (i) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; and
 - (ii) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency.
 - (3) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing --
 - (i) Such advocate's activities under this subpart;
 - (ii) New initiatives required to increase competition;
 - (iii) Any barriers to full and open competition that remain; and
 - (iv) Other ways in which the agency has emphasized competition in areas such as acquisition training and research.
 - (4) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and
 - (5) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.
- (b) Procuring activity competition advocates designated pursuant to 6.501 shall be responsible for --
 - (1) Promoting full and open competition in the procuring activity; and
 - (2) Challenging barriers to such competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

PART 7 -- ACQUISITION PLANNING

28. Section 7.101 is amended by alphabetically adding the following definition to read as follows:

7.101 Definitions.

* * * * *

"Market survey" means attempts to ascertain whether other qualified sources capable of satisfying the Government's requirement exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results

of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals, or the Commerce Business Daily), or solicitations for information or planning purposes. (See 15.405)

* * * * *

29. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys to promote and provide for full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2301\(a\)\(5\)](#) and [41 U.S.C. 253A\(a\)\(1\)](#)). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

30. Section 7.103 is amended by redesignating the existing paragraphs (a) through (h) as (c) through (j) and adding new paragraphs (a) and (b) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

- (a) Ensuring that in no case is a contract entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available to the agency for acquisitions ([10 U.S.C. 2304\(f\)\(5\)](#) and [41 U.S.C. 253\(f\)\(5\)\(A\)](#)).
- (b) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 253A\(a\)\(1\)](#)). (See Part 6 and 10.002.)

* * * * *

31. Section 7.104 is amended by revising paragraph (c) to read as follows:

7.104 General procedures.

* * * * *

- (c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with and concurred in by the cognizant competition advocate.

32. Section 7.105 is amended by revising the second sentence in paragraph (a)(5); removing in the first sentence of paragraph (b)(1) the word "will" and inserting in its place the word "can"; adding a sentence at the end of paragraph (b)(1); revising paragraph (b)(2); removing from paragraph (b)(4) the words "formal advertising" and inserting in their place the words "sealed bidding"; removing paragraph (b)(5) and redesignating paragraphs (6) through (20) as (5) through (19); adding paragraph (b)(12)(iv); and revising the milestone steps of new paragraph (b)(18) as follows:

7.105 Contents of written acquisition plans.

* * * * *

- (a) * * *
 - (5) * * * Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

* * * * *

(b) * * *

(1) * * * If the acquisition or part of it is for other than commercial or commercial-type products, address the extent and results of the market survey conducted or the reasons one was not or will not be conducted.

(2) **Competition.**

(i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

* * * * *

(12) * * *

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

* * * * *

(18) * * *

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of acquisition-package preparation.

Purchase request.

Justification and approval for other than full and open competition where applicable and/or any required D&F approval.

Issuance of synopsis.

Issuance of solicitation.

Evaluations of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

* * * * *

.304 [Amended]

33. Section 7.304 is amended by removing in paragraph (d)(1)(ii) the words "formally advertised" and inserting in their place the words "sealed bid".

7.305 [Amended]

34. Section 7.305 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding" and removing the word "(Advertised)" and inserting in its place the words "(Sealed-Bid)".

7.306 [Amended]

35. Section 7.306 is amended by removing from the title in paragraph (a) the words "Formal advertising:" and inserting in their place the words "Sealed bidding:".

PART 8 -- REQUIRED SOURCES OF SUPPLIES AND SERVICES

36. Section 8.001 is amended by revising paragraph (b) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

- (b) Sources other than those listed in paragraph (a) may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

37. Section 8.304-5 is amended by adding a second sentence in paragraph (a), adding the words "6 and" in the first sentence of paragraph (c) following the word "Parts"; removing the second sentence in paragraph (c); and removing in the second sentence in paragraph (d) the words "competitive bids or" and inserting in their place the words "sealed bids or competitive".

8.304-5 Agency acquisition.

- (a) * * * DOD contracting offices shall proceed in accordance with agency procedures.

* * * * *

8.401 [Amended]

38. Section 8.401 is amended by removing in paragraph (a) the word "primarily" and inserting in its place the word "including".

39. Section 8.405-1 is amended by adding an introductory paragraph to read as follows:

8.405-1 Ordering from multiple-award schedules.

When ordering from multiple-award schedules, ordering offices shall use the procedures set forth below. When these procedures are followed, orders placed against schedules will result in the lowest overall cost alternative to meet the needs of the Government.

* * * * *

PART 9 -- CONTRACTOR QUALIFICATIONS

40. Section 9.206-1 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

9.206-1 General.

- (c) * * *

- (5) * * * As a minimum, contracting officers shall comply with 5.203.

PART 10 -- SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

41. Section 10.001 is amended by alphabetically adding the definition "Market research", revising the second sentence in the definition of "Specification", and revising the third sentence in the definition of "Standard" as follows:

10.001 Definitions.

* * * * *

"Market research" means the process used for collecting and analyzing information about the entire market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

* * * * *

* * * Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

* * * Standards may be used in specifications, invitations for bids, proposals, and contracts.

* * * * *

42. Section 10.002 is revised to read as follows:

10.002 Policy.

- (a) In fulfilling requirements of [10 U.S.C. 2305\(a\)\(1\)](#) and [41 U.S.C. 253A\(a\)](#) regarding the preparation for acquisition of supplies and services:

- (1) Agencies shall specify needs in a manner designed to promote full and open competition (see Part 6) for acquisitions.
- (2) Agencies shall develop specifications and purchase descriptions using market research in a manner designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.
- (3) In solicitations, agencies shall include specifications and purchase descriptions that --
 - (i) Permit full and open competition; and
 - (ii) Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.
- (4) Agencies shall prepare specifications and purchase descriptions which reflect the minimum needs of the agency and the market available to satisfy such needs. Specifications and purchase descriptions may be stated in terms of --
 - (i) Function, so that a variety of products or services may qualify;
 - (ii) Performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or
 - (iii) Design requirements.

- (b) Acquisition policies and procedures of defense agencies shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.

10.004 [Amended]

43. Section 10.004 is amended by removing in paragraph (a)(1) the words "that will encourage maximum practicable" and inserting in their place the words "designed to promote full and open".

10.006 [Amended]

44. Section 10.006 is amended by removing in paragraph (a)(1)(i) the words "a public exigency" and inserting in their place the words "an unusual and compelling urgency,".

PART 11 -- ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

11.001 [Amended]

45. Section 11.001 is amended by removing the definition "Market research and analysis".

11.002 [Amended]

46. Section 11.002 is amended by removing the words "governing regulations" and inserting in their place the words "the requirements of Part 6" and by adding a second and third sentence as follows:

11.002 Policy.

*** In a manner consistent with statutes, Executive Orders, and the requirements of Part 6 regarding competition, agencies shall acquire commercial products and use commercial distribution systems whenever these products or distribution systems adequately satisfy the Government's needs (except see Part 8, Required Sources of Supplies and Services). DoD, NASA, and the Coast Guard are required by [10 U.S.C. 2301\(b\)](#) to promote the use of commercial products whenever practicable consistent with the requirements of Part 6.

11.004 [Amended]

47. Section 11.004 is amended by removing in the first sentence of paragraph (b) the words "assure adequate" and inserting in its place the words "ensure full and open".

PART 12 -- CONTRACT DELIVERY OR PERFORMANCE

12.201 [Amended]

48. Section 12.201 is amended by inserting a period following the word "construction" and removing the remainder of the sentence.

PART 13 -- SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.101 [Amended]

49. Section 13.101 is amended by removing in paragraph (c)(1), under the definition "Small purchase procedures", the words "formal advertising" and inserting in their place the words "sealed bidding".

50. Section 13.104 is amended by removing the first sentence in paragraph (a) and by adding paragraph (g) to read as follows:

13.104 Procedures.

* * * * *

- (g) When proposed purchases covered by this part are required to be publicized under 5.201, the contracting officer shall proceed in accordance with 5.203.

51. Section 13.106 is amended by revising paragraph (b)(1); removing in the first sentence of paragraph (b)(3) the word "Reasonable" and inserting in its place the words "Maximum practicable"; and revising the first sentence of paragraph (b)(5) as follows:

13.106 Competition and price reasonableness.

* * * * *

(b) Purchase over \$1,000.

- (1) Contracting officers shall solicit quotations from a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, price and other factors considered, including the administrative cost of the

purchase. Solicitations may only be limited to one source if the contracting officer determines that only one source is reasonably available.

* * * * *

- (5) Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable. * * *

* * * * *

13.204 [Amended]

52. Section 13.204 is amended by removing in paragraph (c) the words "sole source" and inserting in their place the words "from only one source" and in paragraph (d) removing the word "adequate" and inserting in its place the words "maximum practicable".
53. Section 13.502 is amended by revising paragraph (b)(3)(ii) to read as follows:

13.502 Unpriced purchase orders.

* * * * *

(b) * * *

(3) * * *

- (ii) Material available from only one source and for which cost cannot be readily established; or

* * * * *

13.505-3 [Amended]

54. Section 13.505-3 is amended by removing in the first sentence of paragraph (b)(1) the words "public exigency circumstances," and inserting in their place the words "unusual and compelling urgency,".

PART 14 -- SEALED BIDDING

55. The title of Part 14 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

14.000 [Amended]

56. Section 14.000 is amended by removing in paragraphs (a) and (e) the words "formal advertising" and inserting in their place the words "sealed bidding".

Subpart 14.1 [Amended]

57. The title of Subpart 14.1 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".
58. Section 14.101 is amended by removing in the title and introductory text the words "formal advertising" and inserting in their place the words "sealed bidding"; by revising the second sentence of paragraph (a), by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d), and revising new paragraph (e) to read as follows:

14.101 Element of sealed bidding.

* * * * *

- (a) * * * Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. * * *

* * * * *

- (d) **Evaluation of bids.** Bids shall be evaluated without discussions.

(e) **Contract award.** After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

59. Section 14.103-1 is amended by revising paragraph (a), removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), and revising new paragraphs (c) and (d) to read as follows:

154.103-1 General.

(c) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.

* * * * *

(d) Sealed bidding may be used for classified acquisitions (see 4.401) if its use does not violate agency security requirements.

(d) The policy for pricing modifications of sealed bid contracts appears in 15.804-2.

60. Section 14.103-2 is amended by removing in the introductory text the words "formal advertising" and inserting in their place the words "sealed bidding" and revising paragraphs (c) and (d) to read as follows:

14.103-2 Limitations.

* * * * *

(c) The requirements of 1.602-1(b) and Part 6 have been met; and

(d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price-related factors included in the invitation, as provided in Subpart 14.4.

14.104 [Amended]

61. Section 14.104 is amended by removing in the first sentence the words "formal advertising" and inserting in their place the words "sealed bidding".

14.201-2 [Amended]

62. Section 14.201-2 is amended by removing in paragraph (c) the word "free" and inserting in its place the word "open".

63. Section 14.201-5 is amended by adding a sentence at the end of paragraph (b) and revising paragraph (c) to read as follows:

14.201-5 Part IV -- Representations and instructions.

* * * * *

(b) *** Invitations shall include the time and place for bid openings, and shall advise bidders that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(c) **Section M, Evaluation factors for award.** Identify the price-related factors other than the bid price that will be considered in evaluating bids and awarding the contract. (See 14.201-8.)

64. Section 14.201-6 is amended by removing all references to the words "formal advertising" throughout the section and inserting in their place the words "sealed bidding"; by removing in paragraph (k) the word "fair" and inserting in its place the word "full"; and by revising the second sentence of paragraph (n) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(n) *** See 15.407(b) regarding use of this provision in sealed bidding.

* * * * *

14.201-7 [Amended]

65. Section 14.201-7 is amended by removing all references to the words "formal advertising" wherever they appear in the section and inserting in their place the words "sealed bidding" and by removing in paragraphs (b)(1) and (c)(1) the figure "\$500,000" and inserting in its place the figure "\$100,000".

66. Section 14.201-8 is added to read as follows:

14.201-8 Price-related factors.

The factors set forth in paragraphs (a) through (e) below may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable. (See 14.201-5(c).)

- (a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see 47.303 and 47.305), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.
- (b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under 14.404.
- (c) Advantages or disadvantages to the Government that might result from making more than one award (see 14.201-6(q)). The contracting officer shall assume, for the purpose of making multiple awards, that \$250 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.
- (d) Federal, State, and local taxes (see Part 29).
- (e) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 25).

67. Section 14.202-1 is amended by revising paragraph (a) and by removing in paragraph (b) the word "preinvitation" and inserting in its place the word "presolicitation" as follows.

14.202-1 Bidding time.

(a) **Policy.** A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.303(a).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided when synopsis is required by Subpart 5.2.

* * * * *

14.202-4 [Amended]

68. Section 14.202-4 is amended by removing in paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

69. Section 14.203-1 is amended by revising the first sentence to read as follows and by removing the second sentence as follows:

14.203-1 Mailing or delivery to prospective bidders.

Invitations for bids or presolicitation notices shall be mailed or delivered to prospective bidders as specified in 14.205, and shall be provided to others in accordance with 5.102. * * *

70. Section 14.203-2 is amended by revising paragraph (b) to read as follows:

14.203-2 Dissemination of information concerning invitations for bids.

* * * * *

- (b) For procedures that apply to publishing notices in the Commerce Business Daily to determine whether commercial sources are available, as prescribed by OMB Circular A-76, see 5.205(d) and 7.303(b).

14.205-2 [Amended]

- 71. Section 14.205-2 is amended by removing in paragraph (a) the word "preinvitation" wherever it appears out the paragraph and inserting in its place the word "presolicitation".

14.205-4 [Amended]

- 72. Section 14.205-4 is amended by removing in paragraphs (b) and (c) the word "preinvitation" wherever it appears the paragraphs and inserting in its place the word "presolicitation."

- 73. Section 14.211 is amended by removing, in the titles of paragraphs (a) and (b), the words, "synopsis or"; and by revising the first sentence of paragraph (a) to read as follows:

14.211 Release of acquisition information.

- (a) *** Information concerning proposed acquisition shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205-4(c) or 36.302, or long-range acquisition estimates in accordance with 5.404,

or synopses in accordance with

5.201. ***

14.301 [Amended]

- 74. Section 14.301 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

- 75. Section 14.404-1 is amended by removing in paragraph (a)(3) the word "readvertised" and inserting in its place the word "resolicited", by revising the introductory text of paragraph (c) and paragraph (c)(6), by removing in paragraph (c)(9) the word "Government's" and inserting in its place the word "public's", by removing in paragraph (d) the word "readvertisement" and inserting in its place the word "resoliciting", and by revising paragraph (e) to read as follows:

14.404-1 Cancellation of invitations after opening.

- (c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with paragraph (a)(1) above, the agency head determines in writing that --

- (6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder;

- (e) Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

- (1) If the invitation for bids has been cancelled for the reasons specified in (c) (6) or (7) above, and the agency head has authorized in the determination in (c) the completion of the acquisition through negotiation, the contracting officer shall proceed in accordance with 15.103.

- (2) If the invitation for bids has been cancelled for the reasons specified in (c) (1), (2), (4), (5), or (9), or for the reasons in (c) (6) or (7) and completion through negotiation is not authorized under (e)(1), the contracting officer shall proceed with a new acquisition.

14.406-4 [Amended]

76. Section 14.406-4 is amended by removing in the introductory text the reference "Part 33" and inserting in its place the reference "Subpart 33.2".
77. Section 14.407-1 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 14.407-1 General.

- (a) The contracting officer shall make a contract award (1) by written notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. * * *
- (b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. * * *

* * * * *

14.407-5 [Removed]

78. Section 14.407-5 is removed and reserved.

14.408-1 [Amended]

79. Section 14.408-1 is amended by removing in the introductory text of paragraph (a), in the first sentence of paragraph (c), and in the first sentence of paragraph (d) the word "office" and inserting in its place the word "officer".

Subpart 14.5 -- [Amended]

80. The title of Subpart 14.5 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".
81. Section 14.501 is amended by revising the first sentence of the introductory text and by removing in the second sentence of the introductory text the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. * * *

* * * * *

82. Section 14.502 is amended by revising the introductory text of paragraph (a), by removing in paragraph (a)(1) the words "to permit full and free competition", and by removing in the introductory text of paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.502 Conditions for use..

- (a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

* * * * *

83. Section 14.503-1 is amended by revising the first two sentences of paragraph (a) by removing in the third sentence of paragraph (f)(1) the word "office" and inserting in its place the word "officer", and by removing in the first sentence of paragraph (i) the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.503-1 Step one.

- (a) Requests for technical proposals shall be distributed in accordance with 14.203-1. In addition, requests shall be synopsisized in accordance with Part 5.

* * * * *

- 84. Section 14.503-2 is amended by revising the introductory text of paragraph (a), and by removing in paragraph (b) the reference "5.206(b)" and inserting in its place the reference "5.206(a)(2)" as follows:

14.503-2 Step two.

- (a) Sealed bidding procedures shall be followed except that invitations for bids shall --

* * * * *

- 85. Section 15.101 is revised to read to follows:

15.101 Definition..

"Negotiation" means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract (see 14.101).

- 86. Section 15.102 is amended by revising the first sentence to read as follows:

15.102 General.

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords an opportunity to revise their offers before award of a contract. * * *

- 87. Section 15.103 is revised to read as follows:

15.103 Converting from sealed bidding to negotiation procedures.

When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate without issuing a new solicitation subject to the following conditions --

- (a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;
- (b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and
- (c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the invitation for bids.

15.104 [Removed]

- 88. Section 15.104 is removed and reserved.

15.105 [Removed]

- 89. Section 15.105 is removed and reserved.

15.106-1 [Amended]

- 90. Section 15.106-1 is amended by removing in the introductory text of paragraph (b) the words "(including small business restricted advertising)".

Subpart 15.2 [Removed]

- 91. Subpart 15.2 is removed and reserved.

Subpart 15.3 [Removed]

- 92. Subpart 15.3 is removed and reserved.

15.401 [Amended]

93. Section 15.401 is amended by adding after paragraph (a) the word "and", by removing paragraph (b), by redesignating paragraph (c) as paragraph (b), and by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

94. Section 15.402 is amended by adding a new paragraph (g) to read as follows:

15.402 General.

* * * * *

(g) If, after considering any responses to a proper notice of proposed sole source contract action (see 5.207(d)(3)), the contracting officer determines that more than one source can meet the Government's needs, the contracting officer shall solicit offers using competitive procedures. The contracting officer shall proceed in accordance with 5.203 for publicizing and response times.

15.406-1 [Amended]

95. Section 15.406-1 is amended by removing in the first sentence of paragraph (a) the reference "Table 15-2" and inserting in its place the reference "Table 15-1" and by redesignating the Table 15-2 as Table 15-1.

96. Section 15.406-5 is amended by revising paragraph (c) to read as follows:

15.406-5 Part IV -- Representations and instructions.

* * * * *

(c) **Section M, Evaluation factors for award.** Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract (see 15.605(e)) and state the relative importance the Government places on those evaluation factors and subfactors.

15.407 [Amended]

97. Section 15.407 is amended by removing in the first sentence of paragraph (b) the reference "(see 15.213(d))" and the words "for applications specified in 15.213(b)(1)".

15.408 [Amended]

98. Section 15.408 is amended by removing in paragraph (a) the words "the policy in 15.105 and" and by removing in paragraph (a) the words "Part 5" and inserting in their place the words "Parts 5 and 6".

15.411 [Amended]

99. Section 15.411 is amended by removing in the first sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

100. Section 15.501 is amended by revising the definition of "Unsolicited proposals" to read as follows:

15.501 Definitions.

* * * * *

"Unsolicited proposal" means a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs).

101. Section 15.502 is revised to read as follows:

15.502 Policy.

Agencies shall encourage the submission of unsolicited research proposals and avoid organizational or regulatory constraints that may inhibit generation and acceptance of innovative and unique research ideas from prospective contractors. Other unsolicited proposals may be accepted (see 15.507).

15.503 [Amended]

102. Section 15.503 is amended by removing in paragraph (c)(1) the word "or" and inserting in its place the word "and", by removing in paragraph (d) the words "broad agency announcements" and inserting in their place the words "a publicized general statement of agency needs", and by removing in paragraph (e) the word "or" and inserting in its place the word "and".

103. Section 15.506-2 is amended by revising paragraph (a)(1) and by adding in paragraph (a)(2) a comma after the word "technical" as follows:

15.506-2 Evaluation.

(a) * * *

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

* * * * *

104. Section 15.507 is amended by revising paragraphs (a) and (b) to read as follows:

15.507 Contracting methods.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. Agency contact points shall return an unsolicited proposal to the offeror, citing reasons, when its substance --

- (1) Is available to the Government without restriction from another source;
- (2) Closely resembles a pending competitive acquisition requirement; or
- (3) Does not demonstrate an innovative and unique method, approach, or concept.

(b) The contracting officer may commence negotiation only when --

- (1) The unsolicited proposal has received a favorable comprehensive evaluation;
- (2) The unsolicited proposal is not of the character described in 15.507(a);
- (3) The agency technical office sponsoring the contract supports its recommendation with facts and circumstances that preclude competition, including consideration of the evaluation factors in 15.506-2(a), furnishes the necessary funds, and provides the certification required by 6.303-2(b);
- (4) The contracting officer has complied with the synopsis requirements of Subpart 5.2; and
- (5) The contracting officer has executed any justification and obtained any approval or determination and findings that is required by Subpart 6.3.

* * * * *

105. Section 15.601 is amended by revising the definition of "Discussion" to read as follows:

15.601 Definitions.

* * * * *

"Discussion," as used in this subpart, means any oral or written communication between the Government and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

* * * * *

15.602 [Amended]

106. Section 15.602 is amended by removing in paragraph (b) the words "sole source award or to".

107. Section 15.605 is amended by revising paragraph (e) to read as follows:

15.60 Evaluation factors.

* * * * *

- (e) The solicitation shall clearly state the evaluation factors, including price or cost and any significant subfactors, that will be considered in making the source selection and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

15.606 [Amended]

108. Section 15.606 is amended by removing in paragraph (c) the reference "15.407(b)(8)" and inserting in its place the reference "15.407(c)(8)".

109. Section 15.608 is amended by redesignating the introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), and redesignating paragraphs (b)(1) through (b)(4) as paragraphs (a)(2)(i) through (a)(2)(iv); by adding a sentence in paragraph (a) following the first sentence; and by adding a new paragraph (b) to read as follows:

15.608 Proposal evaluation.

- (a) * * * An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

* * * * *

- (b) All proposals received in response to a solicitation may be rejected if the agency head determines in writing that --

- (1) All otherwise acceptable proposals received are at unreasonably prices;
- (2) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);
- (3) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical; or
- (4) For other reasons, cancellation is clearly in the Government's interest.

15.609 [Amended]

110. Section 15.609 is amended by removing in the second sentence of paragraph (a) the word "is" and inserting in its place the words "shall be" and by revising the reference in paragraph (c) to read "15.1001(b)".

111. Section 15.610 is amended by removing paragraphs (a)(1), (a)(3), and (a)(5); by redesignating paragraph (a)(2) as paragraph (a)(1), redesignating paragraph (a)(4) as paragraph (a)(2), and redesignating paragraph (a)(6) as paragraph (a)(3); by adding after paragraph (a)(2) the word "or"; and by revising the introductory text of paragraph (a)(3) to read as follows:

15.610 Written or oral discussion.

- (a) * * *

- (3) In which it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government at a fair and reasonable price; *provided*, that --

15.611 [Amended]

112. Section 15.611 is amended by removing in paragraph (d) the words "consistent with the established evaluation factors" and inserting in their place the words "considering price and the other factors included in the solicitation (but see 15.608(b))".

15.612 [Amended]

113. Section 15.612 is amended by removing in the second sentence of paragraph (d)(2) the word "recommendation" and inserting in its place the word "decision" and by removing in paragraph (f) the reference "15.1002" and inserting in its place the reference "15.1003".

15.800 [Amended]

114. Section 15.800 is amended by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

115. Section 15.802 is amended by revising paragraph (a) to read as follows:

15.802 Policy.

(a) [10 U.S.C. 2306\(f\)](#) and [41 U.S.C. 254\(d\)](#) provide that all executive agencies shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.

* * * * *

15.804-1 [Amended]

116. Section 15.804-1 is amended by removing in the first sentence of paragraph (b) the word "Regulation".

15.804-2 [Amended]

117. Section 15.804-2 is amended by removing all references to the figure "\$500,000" throughout the section and inserting in its place the figure "\$100,000"; by removing in the first sentence of paragraph (a)(1)(ii) the words "formally advertised" and inserting in their place the words "sealed bid"; by removing in the second sentence of paragraph (a)(1)(ii) the figures "\$150,000", "\$350,000", and "\$200,000" and inserting in their places the figures "\$30,000", "\$70,000", and "\$40,000", respectively.

15.804-3 [Amended]

118. Section 15.804-3 is amended by removing in the second sentence of paragraph (c)(7) and in the first sentence of paragraph (e) the figure "\$500,000" and inserting in its place the figure "\$100,000".

15.804-4 [Amended]

119. Section 15.804-4 is amended by removing in paragraphs (h)(1) and (h)(2) the figure "\$500,000" and inserting in its place the figure "\$100,000".

15.804-6 [Amended]

120. Section 15.804-6 is amended by removing in paragraph (b)(2) the reference to "Table 15-3" and inserting in its place a reference to "Table 15-2", by redesignating "Table 15-3" as "Table 15-2", by removing in the paragraph of Table 15-2 entitled "Subcontracted Items" the figure "\$500,000" and inserting in its place the figure "\$100,000", and by removing in paragraph (g)(2)(ii) the figure "\$500,000" and inserting in its place the figure "\$100,000".

15.805-2 [Amended]

121. Section 15.805-2 is amended by removing in paragraph (a) the words "price quotations" and inserting in their place the words "proposed prices" and by removing throughout paragraph (b) the word "quotations" and inserting in its place the words "proposed prices".

15.806 [Amended]

122. Section 15.806 is amended by removing throughout paragraph (b) the figure "\$500,000" and inserting in its place the figure "\$100,000".

15.808 [Amended]

123. Section 15.808 is amended by removing in paragraphs (a)(6) and (a)(7) the figure "\$500,000" and inserting in its place the figure "\$100,000".

Subpart 15.10 [Amended]

124. Subpart 15.10 is amended by revising the title to read: "Subpart 15.10 -- Preaward, Award, and Postaward Notifications, Protests, and Mistakes".

15.1001 [Amended]

125. Section 15.1001 is amended by revising the title to read "15.1001 Notifications to unsuccessful offerors."; removing the references after paragraphs (a)(2) through (a)(4); and removing in paragraph (c)(3) the words "and subject to the exceptions in 15.1001(a)".

15.1002, 15.1003, 15.1004 [Redesignated]

126. Sections 15.1002, 15.1003, and 15.1004 are redesignated as sections 15.1003, 15.1004, and 15.1005, respectively. New section 15.1002 is added to read as follows:

15.1002 Notification to successful offeror.

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written notice of the award to that offeror (but see 15.608(b)).

15.1003 [Amended]

127. Newly redesignated section 15.1003 is amended by adding in paragraph (a) the word "alone" after the word "price".

15.1004 [Amended]

128. Newly redesignated section 15.1004 is amended by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 16 -- TYPES OF CONTRACTS

129. Section 16.102 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding"; and revising the second sentence of paragraph (d) to read as follows:

16.102 Policies.

* * * * *

(d) * * * Minimum requirements for the content of D&F's required by this part are specified in 1.704.

130. Section 16.103 is amended by revising paragraph (d)(3) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(3) Awards made on the set-aside portion of sealed bid solicitations partially set aside for either small business or labor surplus area concerns.

131. Section 16.104 is amended by removing in the first sentence of paragraph (b) the parenthetical reference "(see 15.805-2)."; and revising the second sentence of paragraph (b) to read as follows:

16.104 Factors in selecting contract types.

* * * * *

(b) * * * The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See 15.808-2.)

* * * * *

16.203-2 [Amended]

132. Section 16.203-2 is amended by removing in the fourth sentence of the introductory text the words "formally advertised" and inserting in their place the words "sealed bid".

16.301-3 [Amended]

133. Section 16.301-3 is amended by removing in paragraph (c)(2) the reference "[41 U.S.C. 254\(b\)](#), [257\(c\)](#)," and inserting in its place the reference "[41 U.S.C. 254\(b\)](#), [257\(b\)](#)"; and in paragraph (d) removing the reference "15.903(e)" and inserting in this place the reference "15.903(d)".

16.306 [Amended]

134. Section 16.306 is amended by removing in paragraph (c)(2) the reference "(see 15.903(c))," and inserting in its place the reference "(see 15.903(d))."

16.603-3 [Amended]

135. Section 16.603-3 is amended by removing in paragraph (b) the words "practicable, or" inserting in their place the words "is required by Part 6; or".

136. Section 16.703 is amended by removing paragraph (c)(2), redesignating paragraph (c)(3) as (c)(2), revising paragraphs (d)(1)(i), (d)(1)(iii), and (d)(2)(iii), and adding paragraph (d)(2)(iv) as follows:

16.703 Basic ordering agreements.

(d) ***

(1) ***

(i) Obtain competition in accordance with Part 6;

(iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, in accordance with 1.602-1(b), and comply with other requirements, as if the order were a contract awarded independently of a basic ordering agreement.

(2) ***

(iii) If applicable, cite the authority under 6.302 in each order.

(iv) Comply with 5.203 when synopsis is required by 5.201.

PART 17 -- SPECIAL CONTRACTING METHODS

17.102-2 [Amended]

137. Section 17.102-2 is amended by removing in the second sentence of paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bidding"; and removing the words "(either competitive or noncompetitive)".

137a. Section 17.102-3 is amended by revising the fifth sentence of paragraph (d)(4) to read as follows:

17.102-3 Objectives.

(d) ***

(4) *** The head of a contracting activity or a designee may authorize the use of a solicitation requesting only multiyear prices provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives listed in 17.102-3(a).

17.103-1 [Amended]

138. Section 17.103-1 is amended by removing in paragraphs (c) and (e) in four places, the words "formal advertising" and inserting in their place, the words "sealed bidding".

17.103-4 [Amended]

139. Section 17.103-4 is amended by removing in paragraph (c) the word "noncompetitive" and inserting in its place the words "sole source".

140. Section 17.104-2 is amended by revising paragraph (b) to read to follows:

17.104-2 Multiyear subcontracts.

* * * * *

(b) Multiyear subcontracts may be particularly desirable under a multi-year prime contract awarded without full and open competition, since effective competition at the subcontract level may be enhanced and the attendant cost reductions realized the prime contractor and the Government.

141. Section 17.205 is amended by revising paragraph (b) to read as follows:

17.205 Documentation.

* * * * *

(b) Any justifications and approvals and any determination and findings required by Part 6 shall specify both the basic requirement and the increase permitted by the option.

142. Section 17.207 is amended by removing in paragraph (c)(2) the word "and"; adding in paragraph (c)(3), following "considered," the word "and"; adding paragraph (c)(4); and revising the first sentence of paragraph (f) as follows:

17.207 Exercise of options.

* * * * *

(c) * * *

(4) The option was synopsisized in accordance with Part 5 unless exempted by 5.202(a)(10) or other appropriate exemptions in 5.202.

* * * * *

(f) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option, the requirements of this section, and Part 6. * * *

* * * * *

143. Section 17.504 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

17.504 Ordering procedures.

* * * * *

(d) * * *

(1) If a justification and approval or a determination and findings (D&F) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and the D&F.

* * * * *

- (3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract including (i) having adequate statutory authority for the contractual action and (ii) complying fully with the competition requirements of Part 6 (see 6.002).

PART 19 -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.101 [Amended]

144. Section 19.101 is amended by removing the definition of the term "Small business restricted advertising".

19.302 [Amended]

145. Section 19.302 is amended by removing in paragraph (d)(1) the words "formally advertised" and inserting in their place the words "sealed bid".

19.501 [Amended]

146. Section 19.501 is amended by adding at the end of paragraph (a) the reference "(see 6.203)"; and removing in the fourth sentence of paragraph (c) the reference "19.502-2(a)" and inserting in its place the reference "19.502-2".

147. Section 19.502-4 is revised to read as follows:

19.502-4 Methods of conducting set-asides.

- (a) Total and partial small business set-asides may be conducted by using sealed bids (see Part 14) or competitive proposals (see Part 15). (See Part 6 for competition requirements.)
- (b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

19.507 [Amended]

148. Section 19.507 is amended by removing from the second sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

19.702 [Amended]

149. Section 19.702 is amended by removing in the first sentence of paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid".

19.705-4 [Amended]

150. Section 19.705-4 is amended by removing in the first sentence of paragraph (b) the words "formally advertised" and inserting in their place the words "sealed bid".

19.705-5 [Amended]

151. Section 19.705-5 is amended by removing in paragraph (b) the reference "19.703(a) (2) and (3)" and inserting in its place the reference "19.702(a) (1) and (2)"; and removing the reference "19.705" and inserting in its place the reference "19.704".

19.708 [Amended]

152. Section 19.708 is amended by removing in the second sentence of paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

19.809-1 [Amended]

153. Section 19.809-1 is amended by removing the third sentence in paragraph (a) and removing and reserving paragraph (b)(1).

PART 20 -- LABOR SURPLUS AREA CONCERNS

154. Section 20.204 is amended by revising paragraph (a) and removing the first sentence of paragraph (b) as follows:

20.204 Award procedures.

- (a) The contracting officer shall award contracts involving total LSA set-asides by using sealed bids (see Part 14) or competitive proposals (see Part 15). See Part 6 for competition requirements.

* * * * *

20.205 [Amended]

- 155. Section 20.205 is amended by removing in paragraph (a) the word "advertising" and inserting in its place the words "sealed bidding".

20.206 [Removed]

- 156. Section 20.206 is removed.

PART 25 -- FOREIGN ACQUISITION

- 157. Section 25.402 is amended by adding paragraph (d) to read as follows:

25.402 Policy.

* * * * *

- (d) Acquisitions of eligible products are subject to the requirements of Part 6. The use of the authorities cited in 6.302-3(a)(2)(i) or 6.302-7 requires compliance with 6.303-1(d).

PART 27 -- PATENTS, DATA, AND COPYRIGHTS

- 158. Section 27.104 is amended by revising paragraph (e) to read as follows:

27.104 General guidance.

* * * * *

- (e) The Government acquires supplies or services on a competitive basis in accordance with Part 6, but it is important that the efforts directed toward full and open competition not improperly demand or use data relating to private developments.

* * * * *

27.203-1 [Amended]

- 159. Section 27.203-1 is amended by removing in paragraph (b)(2)(i) the words "formally advertised" and by removing in paragraph (b)(2)(ii) the words "formal advertising" and inserting in their place the words "sealed bid".

27.203-2 [Amended]

- 160. Section 27.203-2 is amended by removing in the title and in paragraph (a) the words "formerly advertised" and inserting in their place the words "sealed bid".

27.302 [Amended]

- 161. Section 27.302 is amended by removing in the second sentence of paragraph (a)(1) the words "free competition and" and inserting in their place the words "full and open competition and free".

27.304-1 [Amended]

- 162. Section 27.304-1 is amended by removing in paragraph (a)(2) the words "free competition and" and inserting in their place the words "full and open competition and free".

PART 28 -- BONDS AND INSURANCE

28.000 [Amended]

- 163. Section 28.000 is amended by removing the word "advertised" from the first sentence and inserting in its place the words "sealed bid".

PART 29 -- TAXES**29.401-3 [Amended]**

164. Section 29.401-3 is amended by removing the word "Advertised" from the title and inserting in its place the words "Sealed bid"; and removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 30 -- COST ACCOUNTING STANDARDS**30.000 [Amended]**

165. Section 30.000 is amended by removing the words "formally advertised" from the third sentence and inserting in their place the words "sealed bid".

30.301 [Amended]

166. Section 30.301 is amended by removing in paragraph (b)(1) the words "Formally advertised" and inserting in their place the words "Sealed bid".

PART 32 -- CONTRACT FINANCING**32.401 [Amended]**

167. Section 32.401 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

168. Section 32.405 is amended by removing in the section title the words "formally advertised" and inserting in their place the words "sealed bid" and revising the second sentence of paragraph (a) to read as follows:

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

- (a) * * * These advance payments may be made at or after award of sealed bid contracts as well as negotiated contracts.

* * * * *

32.410 [Amended]

169. Section 32.410 is amended by removing in paragraph (a)(1) of the clause the words "(formally advertised)" and inserting in their place the words "(sealed bid)".

PART 34 -- MAJOR SYSTEM ACQUISITION

170. Section 34.002 is amended by revising paragraphs (a) and (b) to read as follows:

34.002 Policy.

* * * * *

- (a) Promote innovation and full and open competition in the development of major system concepts by (1) expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms of specified systems to satisfy needs, and (2) focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and
- (b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial. (See Part 6 for competition policies.)

171. Section 34.005-1 is amended by revising the first sentence of paragraph (a) to read as follows:

34.005-1 Competition.

- (a) The program manager shall, throughout the acquisition process, promote full and open competition and sustain effective competition between alternative major system concepts and sources, as long as it is economically beneficial and practicable to do so. * * *

* * * * *

172. Section 34.005-2 is amended by revising paragraph (a)(2) and the introductory text of paragraph (b); and removing from paragraph (c) the acronym "RFP" and inserting in its place the word "solicitation".

34.005-2 Mission-oriented solicitation.

(a) * * *

(2) If appropriate, hold a presolicitation conference (see 15.404) and/or send copies of the proposed solicitation to all prospective offerors for their comments. After evaluation of these comments, the solicitation should be revised, if appropriate.

(b) The contracting officer shall send the final solicitation to all prospective offerors. It shall --

* * * * *

173. Section 35.006 is amended by revising paragraph (a) to read as follows:

35.006 Contracting methods and contract type.

(a) In R&D acquisitions, the precise specifications necessary for sealed bidding are generally not available, thus making negotiation necessary. However, the use of negotiation in R&D contracting does not change the obligation to comply with Part 6.

* * * * *

PART 36 -- CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

174. Section 36.103 is amended by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) Contracting officers shall acquire construction using sealed bid procedures if the conditions in 6.401(a) apply, except that sealed bidding need not be used for construction contracts to be performed outside the United States, its possessions, or Puerto Rico. (See 6.401(b)(2).)

* * * * *

36.203 [Amended]

175. Section 36.203 is amended by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

36.205 [Amended]

176. Section 36.205 is amended by removing in paragraph (b) the parenthetical phrase "(both invitations for bids and requests for proposals)".

Subpart 36.3 -- [Amended]

177. Subpart 36.3 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

36.301 [Amended]

178. Section 36.301 is amended by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

179. Section 36.302 is amended by removing in paragraph (b)(6) the word "preinvitation" and inserting in its place the word "presolicitation"; and adding paragraph (b)(9) to read as follows:

36.302 Presolicitation notices.

* * * * *

(b) * * *

(9) Be publicized in the Commerce Business Daily in accordance with 5.204.

36.303 [Amended]

180. Section 36.303 is amended by adding in paragraph (a), following the parenthetical sentence, another parenthetical statement "(but see 5.203 and 14.202-1)"; and removing in paragraph (d) the word "preinvitation" and inserting in its place the word "presolicitation".

36.401 [Reserved]

181. Section 36.401 is removed and reserved.

182. Section 36.601 is amended by removing in the third sentence the words "formal advertising" and inserting in their place the word "solicitation" and adding a fourth sentence as follows:

36.601 Policy.

* * * Compliance with the procedures in this subpart will constitute a competitive procedure in the acquisition of architect-engineer services (see 6.102(d)(1)).

PART 37 -- SERVICE CONTRACTING

183. Section 37.105 is revised to read as follows:

37.105 Competition in service contracting.

- (a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met (except see 6.401(b)).
- (b) The provisions of statute and Part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

184. Section 37.205 is amended by revising paragraph (b)(3) to read as follows:

37.205 Management controls.

* * * * *

(b) * * *

(3) Contracts are competitively awarded in accordance with Part 6 to ensure that costs are reasonable and to avoid charges of favoritism;

* * * * *

PART 38 -- FEDERAL SUPPLY SCHEDULE CONTRACTING

185. Section 38.101 is amended by revising the second sentence of paragraph (a) to read as follows:

38.101 General.

(a) * * * Indefinite delivery contracts including requirements contracts are awarded, using competitive procedures, to commercial firms to provide supplies and services at stated prices for given periods of time.* * *

* * * * *

186. Section 38.102-1 is amended by adding a sentence to paragraph (a) following the first sentence, to read as follows:

38.102-1 Single-award schedules.

(a) * * * All responsible firms may submit offers in response to a solicitation for a single-award schedule contract.* * *

* * * * *

187. Section 38.102-2 is amended by adding a sentence to paragraph (a), following the first sentence, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

38.102-2 Multiple-award schedules.

(a) * * * All responsible firms may submit offers in response to a solicitation for multiple award schedule contracts. * * *

* * * * *

(c) Prices under the multiple-award schedule program are based on discounts from commercial pricelists. Contracts are awarded after the schedules contracting officer determines that the prices, terms, and conditions offered are fair and reasonable. Orders placed by ordering offices in accordance with 8.405-1 will result in the lowest overall cost alternative to meet the needs of the Government (see 6.102(d)(3).)

* * * * *

188. Section 38.102-3 is amended by removing paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and revising the first sentence of redesignated paragraph (b) to read as follows:

38.102-3 New Item Introductory Schedule.

* * * * *

(b) The NIIS is published approximately four times a year and is cumulative. * * *

* * * * *

189. Section 38.203 is amended by adding two new sentences in paragraph (a) preceding the first sentence as follows:

38.203 Solicitation preparation.

(a) Schedule contracting officers shall comply with the policies and procedures of Part 5 and Part 6. All responsible sources shall be allowed to submit offers in response to solicitations for Federal Supply Schedule contracts. * * *

* * * * *

PART 42 -- CONTRACT ADMINISTRATION

190. Section 42.1105 is amended by revising the criterion of Criticality Designator A to read as follows:

42.1105 Assignment of criticality designator.

* * * * *

Criticality designator

Criterion

A

Critical contracts, including DX-rated contracts (see Subpart 12.3), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems.

* * * * *

PART 44 -- SUBCONTRACTING POLICIES AND PROCEDURES

44.201-2 [Amended]

191. Section 44.201-2 is amended by removing in paragraph (b)(2) at the end of the sentence, the "period" and adding "; except that for DOD, Coast Guard, and NASA, the amounts shall be the greater of the small purchase limitation in Part 13 or 5 percent of the total estimated cost of the prime contract."
192. Section 44.204 is amended by adding a sentence to paragraph (b) following the first sentence, and by removing in paragraph (e) the word "appropriate" as follows:

44.204 Contract clauses.

* * * * *

- (b) *** If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. ***

* * * * *

193. Section 44.302 is amended by revising the first and second sentences in paragraph (a) to read as follows:

44.302 Requirements.

- (a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures are expected to exceed \$10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). ***

* * * * *

PART 47 -- TRANSPORTATION

47.200 [Amended]

194. Section 47.200 is amended by removing in the introductory text of paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid".

47.206-1 [Amended]

195. Section 47.206-1 is amended by removing the section number and title and redesignating the text as section 47.206.

47.206-2 [Removed]

196. Section 47.206-2 is removed.

47.301-2 [Amended]

197. Section 47.301-2 is amended by removing in the first sentence the word "bids" and inserting in its place the word "offers".

PART 49 -- TERMINATION OF CONTRACTS

198. Section 49.402-6 is amended by revising paragraph (b) to read as follows:

49.402-6 Repurchase against contractor's account.

* * * * *

- (b) If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the contracting officer to use any terms and acquisition method deemed appropriate for the repurchase. However, the contracting officer shall obtain competition to the maximum extent practicable for the repurchase. The contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.

199. Section 49.405 is amended by revising the second sentence to read as follows:

49.405 Completion by another contractor.

* * * The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure.*
* *

PART 50 -- EXTRAORDINARY CONTRACTUAL ACTIONS

200. Section 50.203 is amended by revising paragraph (a)(3) and adding to the end of the second sentence of paragraph (c) ", or FAR 15.103."

50.203 Limitations on exercise of authority.

* * * * *

(a) * * *

(3) Providing for other than full and open competition for award of contracts for supplies or services; or

* * * * *

PART 52 -- SOLICITATION PROVISIONS AND CONTRACT CLAUSES

201. Section 52.203-2 is amended by revising the introductory text; by removing in the title of the provision the date "1984" and inserting "1985" in its place; by removing in paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid"; and by removing both derivation lines following "(end of provisions)" as follows:

52.203-2 Certificate of Independent Price Determination.

As prescribed in 3.103-1, insert the following provision. If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror."

* * * * *

52.203-4 [Amended]

202. Section 52.203-4 is amended by removing from the second sentence of the introductory text the words "Offeror" and "Offer" and inserting in their place the words "Offer" and "Offeror."

203. Section 52.207-1 is amended by removing in the section title the word "(Advertised)" and inserting in its place the words "(Sealed-Bid)"; revising the introductory paragraph; removing in the title of the provision the words "(ADVERTISED) (APR 1984)" and inserting in their place the words "(SEALED-BID) (APR 1985)"; and by removing following the derivation line "(End of provision)". as follows:

52.207-1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

* * * * *

52.214-1 [Amended]

204. Section 52.214-1 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the introductory text the words "in all invitations, for bids"; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; removing the definition "Advertised"; removing in the definitions "Offer" and "Solicitation" the words "formal advertising" and inserting in their place the words "sealed bidding"; and removing the derivation line following "(End of provision)".

52.214-2 [Amended]

205. Section 52.214-2 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the title of the provision the words "FORMAL

ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; and removing both derivation lines following "(End of provision)".

52.214-3 [Amended]

206. Section 52.214-3 is amended by inserting a colon after the word "provision" in the introductory text and removing the remainder of the sentence.
207. Section 52.214-10 is amended by removing in the Section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the introductory text the words "in invitations for bids except those for construction"; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; revising paragraph (a); and by removing the derivation line following "(End of provision)" as follows:

52.214-10 Contract Award -- Sealed Bidding.

* * * * *

- (a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

* * * * *

52.214-11 [Amended]

208. Section 52.214-11 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; by removing in the introductory text the words "in invitations for bids to which the uniform contract format applies"; and by removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)"; inserting in their place the words "SEALED BIDDING (APR 1985)"; and removing the derivation line following "(End of provision)".

52.214-14 [Amended]

209. Section 52.214-14 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; and by removing both derivation lines following "(End of provision)".

52.214-17 [Amended]

210. Section 52.214-17 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence.

52.214-19 [Amended]

211. Section 52.214-19 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; inserting a colon after the word "provision" in the introductory text and removing the remainder of the sentence; removing in the title of the provision the words "FORMAL ADVERTISING" and "1984" and inserting in their place the words "SEALED BIDDING" and "1985"; removing in paragraph (a) the words "price and other factors considered" and inserting in their place the words "considering only price and the price-related factors specified in the solicitation"; and removing the derivation line following "(End of provision)".

52.214-23 [Amended]

212. Section 52.214-23 is amended by removing the words "Formal Advertising" wherever they appear in the section title & text and inserting in their place the words "Sealed Bidding"; removing in the title of the provision the figure "1984" and inserting in its place "1985"; and removing the derivation line following "(End of provision)".

52.214-24 [Amended]

213. Section 52.214-24 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence.

52.214-25 [Amended]

214. Section 52.214-25 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence; removing in the provision title the figure "1984" and inserting in its place the figure "1985"; and removing both derivation lines following "(End of provision)".

215. Section 52.214-26 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; and removing both derivation lines following "End of clause" as follows:

52.214-26 Audit-Sealed Bidding.

As prescribed in 14.201-7(a), insert the following clause:

* * * * *

216. Section 52.214-27 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the clause title the figure "1984" and inserting in its place the figure "1985"; and removing in paragraph (a) the figure "\$500,000" and insert in its place the figure "\$100,000"; and removing both derivation lines following "(End of clause)" as follows:

52.214-27 Price Reduction for Defective Cost or Pricing Data -- Modifications -- Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

* * * * *

217. Section 52.214-28 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the title of the clause the figure "(1984)" and inserting in its place the figure "(1985)"; removing the figure "\$500,000" wherever it appears and inserting in its place the figure "\$100,000"; revising paragraph (b)(1); and removing both derivation lines following "(End of clause)" as follows:

52.214-8 Subcontractor Cost or Pricing Data -- Modifications -- Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause:

* * * * *

(b) * * *

(1) Based on adequate price competition;

* * * * *

218. Section 52.215-1 introductory text, is revised to read as follows:

52.215-1 Examination of Records by Comptroller General.

As prescribed in 15.106-1(b), insert the following clause:

* * * * *

219. Section 52.215-4 is revised to read as follows:

52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), insert the following provision:

Notice of Possible Standardization (APR 1985)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be awarded without providing for full and open competition under [section 6.302-1 of the Federal Acquisition Regulation](#)

(End of Provision)

- 220.** Section 52.215-16 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence; removing in the title of the provision the figure "1984" and inserting in its place the figure "1985"; revising paragraph (b)(1) of the provision; and removing the derivation line following "(End of provision)" as follows;

52.215-16 Contract Award.

(b) ***

- (1)** reject any or all offers if such action is in the public interest, ***

- 221.** Section 52.215-23 is amended by revising the introductory text; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; removing in paragraph (a) the figure "\$500,000" and inserting in its place "\$100,000"; and removing both derivation lines following "(End of clause)" as follows:

52.215-23 Price Reduction for Defective Cost or Pricing Data -- Modifications.

As prescribed in 15.804-8(b), insert the following clause:

52.215-24 [Amended]

- 222.** Section 52.215-24 is amended by inserting a colon following the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; removing in the title of the clause the figure "1984" and inserting the figure "1985"; removing the figure "\$500,000" wherever it appears and inserting in its place the figure "\$100,000"; and removing both derivation lines following "End of clause)".

52.215-25 [Amended]

- 223.** Section 52.215-25 is amended by inserting a colon following the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; removing from the title the figure "1984" and inserting in its place the figure "1985"; removing the figure "\$500,000" wherever it appears, and inserting in its place the figure "\$100,000"; and removing both derivation lines following "(End of clause)".

- 224.** Section 52.225-6 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the paragraph; removing in the title of the provision the figure "1984" and inserting in its place the figure "1985"; revising paragraph (b) of the provision; and removing the derivation line following "(End of provision)" as follows:

52.225-6 Balance of Payments Program Certificate.

- (b)** For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.

52.229-2 [Amended]

225. Section 52.229-2 is amended by removing the derivation line following "(End of clause)".

226. Section 52.229-3 is amended by revising the introductory text to read as follows:

52.229-3 Federal, State, and local taxes.

As prescribed in 29.401-3, insert the following clause:

227. Section 52.244-2 is amended by adding, following the last derivation line, an Alternate I to the clause, as follows:

52.244-2 Subcontracts Under Cost-Reimbursement and Letter Contracts.

* * * * *

Alternate I (APR 1985). If the contracting office is in DOD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:

(a)

(2) The proposed subcontract is fixed-price and exceeds the greater of (i) the small purchase limitation in Part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.

228. Section 52.245-16 is amended by revising the introductory clause; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; removing in the third sentence of paragraph (a) of the clause the words "formally advertised" and inserting in their place the words "sealed bid"; and removing the derivation line following "(End of clause)".

52.245-16 Contract Award.

As prescribed in 15.407(d)(4), insert the following provision:

* * * * *

PART 53 -- FORMS

229. Section 52.200 is amended by removing twice in the third sentence the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

53.214 [Amended]

230. Section 52.214 is amended by removing in the title and in the introductory paragraph the words "Formal advertising" and inserting in their place the words "Sealed bidding"; removing in paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid"; and removing in paragraph (c) the date "(10/83)" and inserting in its place the date "(4/85)".

53.215-1 [Amended]

231. Section 53.215-1 is amended by removing in paragraph (b) the date "(10/83)" and inserting in its place the date "(4/85)".

53.236-1 [Amended]

232. Section 53.236-1 is amended by removing in paragraphs (a) and (d) the date "(10/83)" and inserting in its place the date "(4/85)".

233. Section 53.236-2 is amended by adding in paragraph (a) a second sentence as follows:

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

* * * * *

(a) *** [Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.]

234. Sections 53.301-26 (Standard Form 26), 53.301-33 (Standard Form 33), 53.301-1417 (Standard Form 1417) and 53.301-1442 (Standard Form 1442) are revised to read as follows:

BILLING CODE 6820-61-M

[See Material in original]

[FR Doc. 85-806 Filed 1-10-85; 8:45 am]

BILLING CODE 6820-61-C

Dates

EFFECTIVE DATE: April 1, 1985.

DATE: Comments must be received on or before March 12, 1985. Please cite FAR Case 84-52 in all correspondence related to this issue.

Contacts

ADDRESS: Interested parties should submit comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th and F Streets, NW., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

FEDERAL REGISTER