



# CICA Case Study

## [50 FR 52428](#)

December 23, 1985

Rules and Regulations

### Reporter

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**Title:** Federal Acquisition Regulation

**Action:** Final rule.

## Agency

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FEDERAL REGISTER

**Identifier:** [Federal Acquisition Circular 84-13]

## Administrative Code Citation

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48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52

## Synopsis

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SUMMARY: Federal Acquisition Circular (FAC) 84-5, was published in the Federal Register on January 11, 1985 ([50 FR 1726](#)) as an interim rule and request for comment. As a result of public comments received the coverage was revised and is hereby published as a final rule.

## Text

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### SUPPLEMENTARY INFORMATION:

#### A. Background

Federal Acquisition Circular (FAC) 84-5 amended the FAR to implement the Competition in Contracting Act of 1984 (CICA). FAC 84-5 was published in the Federal Register on January 11, 1985 ([50 FR 1726](#)) as an interim rule and request for comment.

Having carefully considered all comments provided, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) have revised the interim CICA coverage. A summary of the major changes to the interim regulation follows:

a. FAR Subpart 4.6 is revised to require each agency to establish and maintain a computer file of information regarding the agency's procurements.

b. In [FAR 5.202](#) the exceptions to the requirement to publish notices of proposed contract actions have been revised to clarify their relationship to the exceptions to full and open competition in FAR Part 6. In addition, the blanket exception to publicizing acquisitions outside the United States, its possessions, or Puerto Rico, has been replaced by [FAR 5.202\(a\)\(12\)](#), which restricts the exception to defense agencies' contracts that will be made and performed outside the United States, its possessions, or Puerto Rico when only local sources will be solicited.

c. The regulations in [FAR 5.207\(b\)](#) regarding the preparation of synopses have been revised to require that synopses contain a provision that reflects whether the solicitation requires an offeror, its product, or service meet a qualification requirement and identifies the office from which additional information about the qualification requirement may be obtained. In addition, [FAR 5.207\(b\)\(6\)](#) has been clarified to require that synopses contain a statement of the reason justifying other than full and open competition.

d. [FAR 6.001](#), [6.302-5](#), and 19.809-1 have been revised to reflect changes made by [Pub. L. 98-577](#) that contracts awarded under the Small Business Administration 8(a) program are excepted from the requirement for full and open competition under [FAR 6.302-5](#), Authorized or Required by Statute. [FAR 6.302-5\(c\)\(2\)](#) states that such contracts need not be supported by written justifications and approvals.

e. The title of [FAR 6.302-1](#) is revised to clarify that the first exception to providing for full and open competition applies when the required supplies or services are available from only one responsible source and no other supplies or services will satisfy agency requirements. Further, the subsection is amended to clarify the exception's specific application to unsolicited research proposals and follow-on contracts and possible application to other listed examples.

f. [FAR 6.303-1](#) is revised to require that contracting officers ensure and document that each contract action not providing for full and open competition taken pursuant to the authority of a class justification and approval is within the scope of that class justification and approval. Further, [FAR 6.303-2](#), which specifies the contents of justifications, is revised to include information regarding the publicizing of the requirement in the Commerce Business Daily.

g. [FAR 6.304](#) is revised to clarify that contracts not exceeding \$25,000 do not require approval of the justification for other than full and open competition, and to require the inclusion of the estimated dollar value of all options in determining the approval level of justifications.

h. FAR Part 7 is revised to clarify that agencies are required to perform acquisition planning and market surveys for all acquisitions, and to remove the requirement for concurrence in the plan by the cognizant competition advocate. Coordination by this official is still required.

i. [FAR 10.002\(b\)](#) required that defense agencies include descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required. This preference for functional or performance specifications has been revised to apply governmentwide, rather than just to defense agencies.

j. FAR Subpart 15.5 prescribes the policies and procedures for the submission, receipt, evaluation, and acceptance of unsolicited proposals. This coverage is revised to specify that the subpart does not govern the competitive selection of basic research proposals and to refer the reader to FAR Subpart 6.3.

k. FAR 15.1001 discusses notifications to unsuccessful offerors. FAR 15.1001(a) is revised to remove the exceptions to notifying unsuccessful offerors that had been inadvertently retained in the interim rule.

l. FAR Part 34, Major System Acquisition, requires agencies to sustain effective competition between alternative system concepts and sources. In order to clarify this requirement, the definition of effective competition has been added to [FAR 34.001](#).

## B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by [44 U.S.C. 3501](#) et seq. and have been assigned clearance number 9000-0013 (see [FAR 1.105](#)).

## C. Final Regulatory Flexibility Act Analysis

FAC 84-13, Item I, Competition in Contracting Act of 1984, amends the FAR to implement [Pub. L. 98-369](#), the Competition in Contracting Act of 1984 (CICA), and sections 302 and 303 of [Pub. L. 98-577](#), Small Business and Federal Competition Enhancement Act of 1984. Under the new coverage, agencies will be required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or use other competitive procedures, unless a statutory exemption permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. This coverage also requires the appointment of competition advocates and enumerates their responsibilities.

Because of the tight statutory deadlines for implementation of the Acts and the significant changes to the basic statutes underlying the Federal procurement systems, a notice was published in the Federal Register on July 25, 1984 ([49 FR 29982](#)) requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the initial implementation of CICA in the FAR.

On October 1, 1984, a Federal Register ([49 FR 38680](#)) notice was published making available for comment, changes to the FAR implementing the CICA. Copies of the draft proposal were sent to Government agencies, private firms, and associations.

On October 3, 1984, a Federal Register ([49 FR 39151](#)) notice was published announcing the CAAC and DARC would hold a public meeting on proposed changes to the FAR resulting from CICA.

On January 11, 1985, an interim rule and request for comment was published in the Federal Register ([50 FR 1726](#)) with respect to FAR changes required to implement CICA.

As a result of the notices and public meeting, over 250 comments were received and considered. No comments were received from small entities indicating that the coverage would have a significant economic impact.

This coverage will have a beneficial impact on a substantial number of small entities, since it will increase competitive opportunities for those entities by restricting the award of noncompetitive contract actions to those situations specifically authorized by statute, and by requiring public announcement, with limited exceptions, of all proposed contract actions. These changes will provide small entities with the opportunity to respond to and be considered for all such contract actions including those publicized as noncompetitive.

## Regulations

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List of Subjects in 48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, 52

Government procurement.

Dated: December 19, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-13 is effective February 3, 1986.

Eleanor R. Spector,

Deputy Assistant, Secretary of Defense for Procurement.

December 18, 1985.

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 84-13 is effective February 3, 1986.

Terence C. Golden,

Administrator.

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-13 is effective February 3, 1986.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAR) 84-13 amends the Federal Acquisition Regulation (FAR) as specified below.

**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 acquisition system. Any solicitation for bids or proposals issued on or after April 1, 1985, was required to comply with CICA's new requirements.

Therefore, 48 CFR Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 are amended as follows:

Chapter 1 of Title 48, Code of Federal Regulations, the interim rule, published on January 11, 1985 ([50 FR 1726-1753](#)) is adopted as a final rule with the following changes:

1. The authority for Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 continues to read as follows:

Authority: [40 U.S.C. 485\(c\)](#); 10 U.S.C. Chapter 137; and [42 U.S.C. 2453\(c\)](#).

#### **PART 4 -- ADMINISTRATIVE MATTERS**

##### **4.601** [Redesignated as 4.602]

2. Section 4.601 is redesignated as section 4.602, and a new section 4.601 is added to read as follows:

##### **4.601** Record requirements.

- (a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases.
- (b) with respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:
  - (1) The date of contract award.
  - (2) Information identifying the source to whom the contract was awarded.
  - (3) The property or services obtained by the Government under the procurement.
  - (4) The total cost of the procurement.
  - (5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

- (c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file --
  - (1) The reason under Subpart 6.3 for the use of such procedures; and
  - (2) The identity of the organization or activity which conducted the procurement.
- (d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

## **PART 5 -- PUBLICIZING CONTRACT ACTIONS**

- 3. Section 5.002 is revised to read as follows:

### **5.002 Policy.**

Contracting officers shall publicize contract actions in order to --

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns, small disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

- 4. 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 expected to exceed \$10,000 by --

\* \* \* \* \*

- 5. Section 5.201 is amended by revising paragraphs (a) and (b) 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 Commerce Business Daily (CBD) notices of proposed contract actions expected to exceed \$10,000 as specified below.
- (b) For acquisitions of supplies and services 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 --

\* \* \* \* \*

- 6. Section 5.202 is amended by revising the introductory text and paragraph (a) 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 synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

- (2) The contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203(a) (see also 5.203(b));
- (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 or international organizations, 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 Small Business Administration (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 other than telecommunications 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](#));
- (8) The contract action results from the acceptance of 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, or would disclose proprietary information associated with the proposal;
- (9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;
- (10) 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, or 6.302-7, and advance notice is not appropriate or reasonable;
- (11) The contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; or
- (12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited.

\* \* \* \* \*

7. Section 5.203 is 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 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 an 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 publication 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.

8. Section 5.205 is amended by revising paragraph (c) to read as follows:

**5.205 Special situations.**

\* \* \* \* \*

(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) Synopsise each proposed contract action 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, 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).

\* \* \* \* \*

9. Section 5.207 is amended by revising paragraphs (b)(4)(iv) and (b)(6) to read as follows:

**5.207 Preparation and transmittal of synopses.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

- (iv) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

\* \* \* \* \*

- (6) In the case of a contract action under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and the identity of the intended source(s) (see 5.207(d)(3)).

\* \* \* \* \*

10. Section 5.301 is revised to read as follows:

**5.301 General.**



Except for classified contract actions that were 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 any 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.

## **PART 6 -- COMPETITION REQUIREMENTS**

### **11. Section 6.001 is revised to read as follows:**

#### **6.001 Applicability**

This part applies to all acquisitions except --

- (a) Contracts awarded using the small purchase procedures of Part 13;
- (b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (c) Contract modifications that are within the scope and under the terms of an existing contract;
- (d) Orders placed under requirements contracts or definite-quantity contracts; or
- (e) 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 the 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.

### **12. Sections 6.302, 6.302-1, 6.302-2, 6.302-3, 6.302-4, 6.302-5, 6.302-6, and 6.302-7, are revised to read as follows:**

#### **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 and no other supplies or services will satisfy agency requirements.**

##### **(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.
  - (i) Supplies or services may 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 (A) is not otherwise available to the Government, and (B) does not resemble the substance of a pending competitive acquisition. (See [10 U.S.C. 2304\(d\)\(1\)\(A\)](#) or [41 U.S.C. 253\(d\)\(1\)\(A\)](#).)
  - (ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) substantial duplication of cost to the



Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See [10 U.S.C. 2304\(d\)\(1\)\(B\)](#) or [41 U.S.C. 253\(d\)\(1\)\(B\)](#).)

**(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. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not constitute authority in and of themselves):

- (1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities.
- (2) The existence of limited rights in data, 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).
- (3) 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.
- (4) 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. (See 15.402(g).)

**§ 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 justifications 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 engineering, developmental, or research capability.****(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 paragraph (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, where 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 paragraph (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 paragraphs (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 Subpart 8.6);
- (2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped -- [41 U.S.C. 46-48c](#) (see Subpart 8.7);
- (3) Government Printing and Binding -- [44 U.S.C. 501-504](#), [1121](#) (see Subpart 8.8); or
- (4) 8(a) Program -- [15 U.S.C. 637](#) (see Subpart 19.8).

(c) **Limitations.**

- (1) The authority in paragraph (a)(2)(ii) above may be used only for purchases 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 paragraphs (b)(2) and (b)(4) 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 paragraph (c)(1) above.
- (4) This Determination and Finding (D & F) shall not be made on a class basis.

13. Section 6.303-1 is amended by revising paragraph (c) as follows:

**6.303-1 Requirements.**

\* \* \* \* \*

- (c)** Justifications required by paragraph (a) above may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

\* \* \* \* \*

14. Section 6.303-2 is amended by revising paragraphs (a)(6) and (a)(9)(ii) to read as follows:

**6.303-2 Content.**

\* \* \* \* \*

**(a) \* \* \***

- (6)** A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

\* \* \* \* \*

**(9) \* \* \***

- (ii)** When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

\* \* \* \* \*

- 15.** Section 6.304 is amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

**6.304 Approval of the justification.****(a) \* \* \***

- (1)** For a proposed contract not exceeding \$100,000, at a level above the contracting officer. This 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;
  - (iii)** Contracts for educational services from nonprofit institutions; or
  - (iv)** Contracts not exceeding \$25,000.

\* \* \* \* \*

- (d)** The estimated dollar value of all options shall be included in determining the approval level of a justification.

**PART 7 -- ACQUISITION PLANNING**

- 16.** Section 7.102 is revised to read as follows:

**7.102 Policy.**

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions in order 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.

- 17.** 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 the cognizant competition advocate.

\* \* \* \* \*

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

- 18. Section 10.002 is amended by revising paragraph (b) to read as follows:

**10.002 Policy.**

\* \* \* \* \*

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

**PART 13 -- SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES**

- 19. Section 13.103 is amended by revising paragraph (b) to read as follows:

**13.103 Policy.**

\* \* \* \* \*

- (b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit the use of small purchase procedures.

\* \* \* \* \*

**PART 15 -- CONTRACTING BY NEGOTIATION**

- 20. Section 15.500 is revised to read as follows:

**15.500 Scope of subpart.**

This subpart prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals. It does not govern the competitive selection of basic research proposals (see 6.102(d)(2)).

- 21. Section 15.502 is revised to read as follows:

**15.502 Policy.**

Agencies may accept unsolicited proposals in accordance with 15.507. To award a contract based on an unsolicited proposal without providing for full and open competition requires that appropriate authority exists in subpart 6.3. In this connection, 6.302-1(a)(2)(i) provides special authority for unsolicited research proposals.

- 22. Section 15.303 is amended by revising paragraph (c)(5) to read as follows:

**15.503 General.**

\* \* \* \* \*

(c) \* \* \*

- (5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

\* \* \* \* \*

- 23. Section 15.507 is amended by adding the following sentence at the end of paragraph (b)(5) to read as follows:

**15.507 Contracting methods.**

\* \* \* \* \*

(b) \* \* \*

- (5) \* \* \* (For unsolicited research proposals, see 6.302-1(a)(2)(i). A valid unsolicited proposal for other than research may be accepted only if otherwise permissible under other provisions of Subpart 6.3.)

\* \* \* \* \*

- 24. Section 15.1001 is amended by revising paragraphs (a) and (b)(2) to read as follows:

**15.1001 Notifications to unsuccessful offerors.**

- (a) **General.** The Contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) \* \* \*

- (2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

\* \* \* \* \*

**PART 17 -- SPECIAL CONTRACTING METHODS**

- 25. Section 17.207 is amended by revising paragraph (g) to read as follows:

**17.207 Exercise of options.**

\* \* \* \* \*

- (g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

- 26. Section 17.602 is amended by revising paragraph (a) to read as follows:

**17.602 Policy.**

- (a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance



with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

\* \* \* \* \*

## **PART 19 -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

27. Section 19.809-1 is amended by revising paragraph (b)(1) to read as follows:

### **19.809-1 General.**

\* \* \* \* \*

#### **(b) \* \* \***

- (1) The award form shall cite [41 U.S.C. 253\(c\)\(5\)](#) or [10 U.S.C. 2304\(c\)\(5\)](#) (as appropriate) as the authority for use of other than full and open competition.

\* \* \* \* \*

## **PART 34 -- MAJOR SYSTEM ACQUISITION**

28. Section 34.001 is amended by adding in alphabetical sequence the following definition:

### **34.001 Definitions.**

"Effective competition," as used in this part, is a market condition which exists when two or more contractors, acting independently, actively contend for the Government's business in a manner which ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

\* \* \* \* \*

29. 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 as required by Part 6 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.

## **PART 52 -- SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

30. Section 52.214-19 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(FEB 1986)"; and by revising paragraph (a) of the provision to read as follows:

### **52.214-19 Contract Award -- Sealed Bidding -- Construction.**

\* \* \* \* \*

- (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.

\* \* \* \* \*

- 31.** Section 52.245-16 is amended to correct the heading and text that appeared incorrectly in the interim rule as follows:

**52.245-16 Facilities Equipment Modernization.**

As prescribed in 45.302-7(e), insert the following clause:

\* \* \* \* \*

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## Dates

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EFFECTIVE DATE: February 3, 1986.

## Contacts

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