

SUBPART 201.1—PURPOSE, AUTHORITY, ISSUANCE

(Revised September 9, 2013)

201.104 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.105 Issuance.

201.105-3 Copies.

The DFARS and the DFARS Procedures, Guidance, and Information (PGI) are available electronically via the World Wide Web at <http://www.acq.osd.mil/dpap/dars/index.htm>.

201.107 Certifications.

In accordance with 41 U.S.C. 1304, a new requirement for a certification by a contractor or offeror may not be included in the DFARS unless—

(1) The certification requirement is specifically imposed by statute; or

(2) Written justification for such certification is provided to the Secretary of Defense by the Under Secretary of Defense (Acquisition, Technology, and Logistics), and the Secretary of Defense approves in writing the inclusion of such certification requirement.

201.109 Statutory acquisition-related dollar thresholds – adjustment for inflation.

(a) Section 814(b) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) requires that the threshold established in 10 U.S.C. 2253(a)(2) for the acquisition of right-hand drive passenger sedans be included in the list of dollar thresholds that are subject to adjustment for inflation in accordance with the requirements of 41 U.S.C. 1908, and is adjusted pursuant to such provisions, as appropriate.

(d) A matrix showing the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available at [PGI 201.109](#).

201.170 Peer reviews.

(a) *DoD peer reviews.*

(1) The Office of the Director, Defense Procurement and Acquisition Policy, will organize teams of reviewers and facilitate peer reviews for solicitations and contracts, as follows using the procedures at [PGI 201.170](#)—

(i) Preaward peer reviews for competitive procurements will be conducted in three phases for all solicitations valued at \$1 billion or more;

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(ii) Preaward peer reviews for noncompetitive procurements will be conducted in two phases for new contract actions valued at \$500 million or more; and

(iii) Postaward peer reviews will be conducted for all contracts for services valued at \$1 billion or more.

(2) To facilitate planning for peer reviews, the military departments and defense agencies shall provide a rolling annual forecast of acquisitions that will be subject to DoD peer reviews at the end of each quarter (i.e., March 31; June 30; September 30; December 31), to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) via email to osd.pentagon.ousd-atl.mbx.peer-reviews@mail.

(b) *Component peer reviews.* The military departments and defense agencies shall establish procedures for—

(1) Preaward peer reviews of solicitations for competitive procurements valued at less than \$1 billion;

(2) Preaward peer reviews for noncompetitive procurements valued at less than \$500 million; and

(3) Postaward peer reviews of all contracts for services valued at less than \$1 billion.

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SUBPART 206.3—OTHER THAN FULL AND OPEN COMPETITION
(Revised September 9, 2013)

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.*

(2)(i) Section 8059 of Pub. L. 101-511 and similar sections in subsequent defense appropriations acts, prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR Subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(1) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(i) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(ii) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(iii) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(2) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(3) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

206.302-2 Unusual and compelling urgency.

(b) *Application.* For guidance on circumstances under which use of this authority may be appropriate, see PGI 206.302-2(b).

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

206.302-3-70 Solicitation provision.

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Use the provision at 252.206-7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

206.302-4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document that describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition.

206.302-5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b)(1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

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

(c) *Limitations.*

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

(A) The statute authorizing or requiring award specifically—

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

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

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

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

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

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

206.302-7 Public interest.

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

206.303 Justifications.

206.303-70 Acquisitions in support of operations in Iraq or Afghanistan.

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

206.304 Approval of the justification.

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

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

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

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