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SESSION GUIDE
SEASON 2023, EPISODE THREE
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FAR PARTS 5 AND 6:
PUBLICATION AND
COMPETITION

I. Introduction

Parts 5 and 6 are unified by the concept of competition. **Part 6**, called “Competition Requirements,” introduces us to the concept of *full and open competition*. It also explains how this concept applies to acquisition procedures and explains when the use of non-competitive procedures is justified. **Part 5**, called “Publicizing Contract Actions,” discusses how the Government should notify potential bidders of contracting opportunities. To encourage meaningful competition, the Government must reach as many potential bidders as possible. In our discussion of competition, it helps to understand how the rules reflect important differences between the federal procurement marketplace and commercial markets in our free-market system.

In 1984, the same year the FAR was published, Congress passed the **Competition in Contracting Act** (CICA), which amended prior procurement statutes in several important respects. CICA added the competitive requirements that we find in **Part 6**. In addition, CICA provided the Government Accountability Office (GAO), then called the “General Accounting Office,” with formal authority to hear bid protests (which we’ll learn about in our discussion of **Part 33** later in the season) and gave greater prominence to the use of competitive negotiations. (Previously, GAO has issued bid protest decisions based on a somewhat amorphous authority to review Government payments.) According to Professor Ralph Nash, one of the foremost authorities in Government contracts, CICA was “the first major revision to the procurement statutes since the 1940s.” CICA only applies to procurement contracts, not to purchases made under certain agencies’ “other transaction authority.” This “OTA” authority mainly applies to a handful of agencies for research and development contracts and the development of prototypes. Since 1984, the Government has begun to use more sophisticated techniques to capitalize on established competitive markets, such as buying commercial products.

II. Publicizing Contract Actions

Part 5 discusses requirements for publicizing contracting opportunities and awards. But what does that mean? Essentially, it boils down to making certain procurement-related information public. The Government usually does this using the Government-wide Point of Entry, or GPE. The GPE is called SAM – the system for award management – and can be found at <https://sam.gov/content/home>. There are several categories of information the Government must publish on the GPE. These include synopses, solicitations, and various contract actions such as contract award. There are several goals that publication seeks to accomplish; publication increases transparency in contracting in line with the Guiding Principles of the FAR, and it increases opportunities for competition. If the Government can get

lots of contractors interested in an opportunity, then there will be more competition, which is definitely in the Government's interest!

Note that the GPE isn't the only place where the Government can publish contract actions. The Government is often required to publish on the GPE, per **5.101(a)**, but it may also publish using other methods, including paid advertisements. (The highly specific guidelines surrounding paid advertisements are in **Subpart 5.5**.) These other methods include preparing and displaying physical handouts, making brief announcements to newspapers, trade journals, and other mass media sources, and placing paid advertisements. We can find the guidelines and limitations surrounding these alternative methods in **5.101(b)**.

A. Synopses and Solicitations

So, what are solicitations and synopses? A *solicitation* is a detailed invitation or request for contractors to submit ideas or proposals for evaluation. There are two main types of solicitations that correspond with the two principal procurement methods. An *Invitation for Bids* (IFB) is a solicitation for a sealed bid procurement, a contracting technique discussed in Part 14. A *Request for Proposals* (RFP) is a solicitation for a negotiated procurement, discussed in Part 15.¹ A *synopsis* is merely an announcement of a future solicitation. Synopses provide enough information for contractors to determine whether an opportunity is within their capability and interest. **5.207** tells us all about the requirements for publicized synopses. Note that the Government doesn't always have to issue a synopsis. There are quite a few major exceptions to the synopsis requirement, which we can find in **5.202**.

Question 1 –Identify where in **FAR 5.202** you can find the specific notice exception that is available under each of the following circumstances:

- A contract action related to an indefinite delivery/indefinite quantity contracts issued under FAR Part 16

- A contract action related an unsolicited proposal

- A contract action related to the performance of a DoD contract outside the United States

- A contract action related to an SBA 8(a) contract

But what about contractors? All the information here relates to the Government's side of the equation. What do contractors have to do? The primary responsibilities for contractors in **Part 5** simply lie in responding to solicitations in a timely manner. Solicitations contain specific deadlines, which are measured from "publication" of the solicitation on the GPE. **5.203(a)**. Publication here simply means the solicitation's appearance on the GPE. Many actions published on the GPE will allow weeks or months to

¹ Please note, there are other acquisition procedures we will discuss, such as architect-engineering services, competitive selection of basic research proposals, and multiple-award contracts, among others.

respond. Of course, the amount of time allowed for a response usually depends on the complexity of the required response! It wouldn't make sense for an extremely complex solicitation to only allow a few days for contractor responses. In fact, that might actually run afoul of several other portions of the FAR, like **Part 6**, which we will discuss later in this chapter.

Question 2 – Under what circumstance is the Government required to give contractors more than 30 days to respond to a solicitation? [Hint: Check out **5.203**]

B. Other Procurement Related Information

We know that COs have to publicize solicitations and synopses, but what about information regarding other procurement-related actions? **Part 5** is primarily concerned with actions that take place before contract award. Certain actions actually *must* be published on the GPE! Others simply *may* or *should* be published. (If you need some clarification regarding the usage of those words, go back to Chapter 1 and **Part 1**.) In general, the FAR requires a “high level of business security” to ensure the integrity of the procurement process. **5.401(a)**. As we discussed in the Episode 2 Session Guide, the Government shouldn't release contractors' proprietary information, or any other kind of information that might give potential offerors (or the public) an improperly close look at internal procurement procedures or plans. As long as the information in question wouldn't violate procurement integrity rules **5.401(b)**, COs *may* make it available to the public. COs are also permitted to respond to various requests for information from the public (**5.402**) and members of Congress (**5.403**). We'll talk in greater detail about such requests when we get to our discussion of **Part 24**.

Question 3 – **FAR 5.406** identifies three types of “justification” documents that are required to be disclosed to support certain contract actions. Under normal circumstances, how soon after award must a justification and approval be posted? (HINT: **5.406** references another part of the FAR)

III. Competition Requirements

Competition is a fundamental feature of federal procurement policy, as we noted briefly in our discussion of publicizing contract actions. Benefits of competition include, among others, driving down prices and increasing the quality and ingenuity of procurement solutions. To achieve these outcomes,

the FAR encourages using “Full and Open Competition” as often as practicable. Government policy acknowledges, however, that the unique circumstances of federal procurement may justify deviating from some competitive procedures. Even where deviations are justified, there may still be creative methods to reap the rewards of competition in the procurement.

A. Full and Open Competition

For the most part, full and open competition is exactly what it sounds like. **2.101** says that full and open competition, when used regarding a contract action, simply means that “all responsible sources are permitted to compete.” Note the word “responsible,” which limits the openness of the competition. Full and open competition does *not* mean that any “Joe Schmoe” can submit a bid for a highly complex major system procurement. The Government is permitted, and in fact often is required, to restrict competition to only qualified and responsible offerors. We’ll talk a lot more about contractor responsibility and qualifications in upcoming chapters. The important thing to know at this time is that the Government, under certain circumstances, can establish a minimum threshold for offerors, but can’t use preferential treatment beyond that minimum threshold. **6.102** tells us where to go for procedures surrounding basic competitive situations, such as sealed bids or competitive proposals. **Subpart 6.2** tells us what to do when using full and open competition, but excluding certain sources, and **Subpart 6.4** gives us a few extra details regarding sealed bidding and competitive proposals. **Subpart 6.5** outlines the requirements, duties, and responsibilities for agencies’ advocates for competition.

Question 4 – When excluding sources for purposes other than a small business set-aside, the decision to do so much be supported by a document. What is this document and who must sign it? [Hint: Check out **FAR 6.202**] Where in **FAR Part 1** can you find specific guidance on this type of document?

B. Other Than Full and Open Competition

Is the Government always required to use full and open competition when procuring goods and services? The short answer is no. There are seven specific situations in which agencies can use “other than full and open competition,” each with their own particular set of requirements and restrictions. We can find those situations in **6.302**.

*Question 5 – Which exception to full and open competition identified at **6.302** must be reported to Congress?*

Who verifies whether a circumstance truly permits the use of other than full and open competition? For that, we turn to **6.303** and **6.304**, which tells us that COs have to justify their use of these procedures and have that justification approved by a cognizant agency official. This documentation and approval process is (unsurprisingly) known as a justification and approval, or J&A. Whether the CO must have the justification in writing, and the extent of the justification required, depends on the specific category. Each of the categories in **6.302** indicates whether the justification must be in writing. COs can't begin negotiations for a contract that will use other than full and open competition before undertaking this justification. They must also first certify the accuracy and completeness of the justification and obtain whatever approval **6.304** requires. **6.303-1(a)**. A CO can make a justification on an individual or class basis, depending on the category. **6.303-1(d)**. In other words, the CO can make a justification for a single contract or for an entire class of contracts. The specific requirements for the contents of each variety of justification are in **6.303-2**. The different categories of justifications have different approval requirements; however, the unifying requirement is that all but one of them must be in writing. **6.304(a)**. The exception—which requires “urgent and compelling needs”—is explained at **6.304(b)**. Once the justification has been approved, it must also be made published and made known to the general public. The publication requirements can be found at **6.305**.

*Question 6 – Unlike the other exceptions, when may a contracting officer seek approval of a sole source contract award supported by “unusual and compelling urgency”? [Hint: check out **6.302-2(d)**]*

C. Requirement to Use Sealed Bidding and to Assign an Advocate for Competition

Now that we know the full and open competition requirements of the FAR (and exceptions to it), it is important to note that the FAR prescribes which contracting method a contracting officer must use under certain circumstances. **6.401**. This section mandates contracting officers to solicit sealed bids (more on sealed bidding when we get to **FAR Part 14**) when all of the following apply: “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 a reasonable expectation of receiving more than one sealed bid.” **6.401(a)**. Should a contracting officer answer any of the preceding in the negative, they may contract by negotiation (more on this when we get to FAR Part 15). **6.401(b)**. Pay particular attention to 2 and 3 above as these are the most common reasons for not using sealed bidding.

Full and open competition is so important that the FAR requires the head of each executive agency to designate “an advocate for competition for the agency and for each procuring activity of the agency.”

6.501. These individuals are generally responsible for the promotion and challenging barriers to both full and open competition and the acquisition of commercial products and commercial services. **6.502(a).** Agency advocates also must prepare and submit an annual report while recommending goals and plans for increasing competition within their agency. **6.501(b)(2)-(3).**

Discussion Questions

1. What are the benefits of Contracting Officers publicizing contract actions? [Hint: Check out **5.002**]

2. Can contractors use the GPE to publicize subcontracting opportunities? If so, what must those “notices” contain? Explain your answer. [Hint: check out **5.206**]

3. What exclusive category of contractors are permitted to receive other than full and competition contract awards during a major disaster or emergency? [Hint: Check out **FAR 6.208**]

4. True or False. Sole Source contracts awarded on the basis of “unusual and compelling urgency” must be limited to one year. Explain your answer.

5. True or False? The senior procurement executive is permitted to take on the role of advocate for competition for his/her agency? Explain your answer.

6. What specific reason cannot be used to support a sole source award based upon “urgent and compelling circumstances”. [Hint: see Resources on justification]

Answer Key

Answer 1 –

- A contract action related to an indefinite delivery/indefinite quantity contracts issued under FAR Part 16
FAR 5.202(a)(6)
- A contract action related an unsolicited proposal
FAR 5.202(a)(8)
- A contract action related to the performance of a DoD contract outside the United States
FAR 5202(a)(12)
- A contract action related to an SBA 8(a) contract
FAR 5.202(a)(4)

Answer 2 – Agencies must allow at least a 45-day response time for receipt of bids or proposals for proposed contract actions categorized as research and development if the proposed contract action is greater than the simplified acquisition threshold.

Answer 3 – 14 days. (a)The agency shall make publicly available the justification required by **6.303-1** as required by **10 U.S.C. 2304(l)** and **41 U.S.C. 3304(f)**. Except for the circumstances in paragraphs (b) and (c) of this section, the justification shall be made publicly available within 14 days after contract award.

Answer 4 – Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) signed by the head of the agency or designee. This D&F shall not be made on a class basis. Specific guidance on D&Fs can be found at **FAR 1.7**.

Answer 5 – The Public Interest exception set forth at **FAR 6.302-7**.

Answer 6 – After award of the contract.

Discussion Questions Answer Key

1. Publicizing contract actions increases competition, broadens industry participation, and assists small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in getting contracts and subcontracts.
2. A contractor awarded a contract exceeding the simplified acquisition threshold that is likely to result in the award of any subcontracts may use the GPE to publicize subcontracting opportunities. The notices must describes: (1) the business opportunity, (2) any prequalification requirements; and (3) where to obtain technical data needed to respond to the requirement.
3. Contractors residing in the areas affected by such major disaster or emergency.
4. False. See FAR 6.302-2(d)(ii).
5. False. See FAR 6.501(a).
6. A lack of advanced planning by the requiring activity.

Appendix of Resources

All of the following materials are linked below to PCI's website or to an online link.

[SAM Quick Start Guide](#)

The quick start guide to assist contractors in registering their entity to be eligible for contracts in SAM.

[DAU Synopsis Description](#)

Defense Acquisition University's acquisition encyclopedia's description of synopses. The description includes the definition, general information, requirements for synopses, related policies and regulations, best practices and links to training resources.

[DPAP J&A Checklist](#)

Defense Procurement and Acquisition Policy Justification and Approval checklist containing fifteen important questions and steps for the justification process.

[GAO Sole Source Award Protest: Raytheon](#)

U.S. Government Accountability Office decision in Raytheon Company and Kongsberg Defence & Aerospace AS (B-409615; B-409615.2) from June 24, 2014. The decision is illustrative of a holding regarding the requirements necessary to justify a sole source award for deemed urgent contracts.

[Interagency Contract Directory Portal](#)

The homepage to the Interagency Contract Directory (ICD) which is central repository of Indefinite Delivery Vehicles (IDV) that have been awarded by the Federal agencies where IDV is available for use at interagency and intra agency levels.

[SBA Authority for WOSB and EDWOSB](#)

Small Business Administration's Women-Owned Small Business and Economically Disadvantaged WOSB Federal Contract Program updated rule. 13 CFR Part 127; 85 Fed. Reg. 27650 (May 11, 2020).

[FAR Part 5: Publicizing Contract Actions](#)

[FAR Part 6: Competition Requirements](#)

FUN WITH THE FAR
Episode 3
FAR Parts 5 & 6
Summary Outline

I. Introduction

II. FAR PART 5

A. General Observations

1. Competition in Contracting Act

B. Publication Requirements

C. Synopses, Solicitations, and Other Actions

III. FAR PART 6

A. General Observations

B. Full and Open Competition

C. Other Than Full and Open Competition

D. J&As, D&Fs, and Other Alphabet Soups

IV. Closing Remarks