

**Department of Energy**  
**Washington, DC**

**ORDER**

**DOE O 542.1**

Approved: 6-30-97  
Sunset Review: 6-30-99  
Expires: 6-30-01

**SUBJECT: COMPETITION IN CONTRACTING**

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**1. OBJECTIVES.**

- a. To ensure Department of Energy compliance with the Competition In Contracting Act of 1994, the Federal Acquisition Streamlining Act of 1994, the Clinger-Cohn Act of 1996, the Federal Procurement Regulation (FAR) and other applicable laws and regulations.
- b. To ensure that the acquisition of all goods and services, with certain exceptions as listed in FAR part 6.302, be made by full and open competition.
- c. To encourage the acquisition of commercial items.

**2. CANCELLATION.** DOE Order 4200.1C, COMPETITION IN CONTRACTING, of 1-9-87.

**3. APPLICABILITY.** This order applies to all DOE elements.

**4. REQUIREMENTS.**

- a. The Department shall specify needs, develop specifications, and solicit offers and award contracts in a manner designed to achieve full and open competition.
- b. The Department shall state requirements in terms of function to be performed; performance required; or essential physical characteristics or in terms that enable and encourage the supply of commercial items.
- c. Property and services shall be acquired by full and open competition unless circumstances permitting other than full and open competition as described in FAR Part 6.302, or Department of Energy Acquisition Regulation (DEAR), Part 906.3 are present, or the simplified acquisition procedures of FAR Part 13 are used, or contracting procedures that are expressly authorized by statute such as those in accordance with Section 8(a), of the Small Business Act are used.

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**DISTRIBUTION:**

All Departmental Elements

**INITIATED BY:**

Office of Procurement and  
Assistance Management

- d. Acquisitions shall not be processed unless there is evidence of adequate market research as required by FAR part 7 or FAR part 10. If other than full and open competition is indicated, the appropriate official(s), listed in paragraph g. below, shall be consulted and their concurrence/ approval obtained.
- e. Under no circumstances shall Departmental personnel direct work to a particular source through, or accept work for, any of the Department's contractors for the purpose of avoiding the Competition in Contracting Act, or as a means of satisfying a requirement which should be contracted for by the Government.
- f. All work assignments to a laboratory or other contractor where the Department of Energy requires performance by a specific subcontractor(s) must be supported by a justification for other than full and open competition as if the work were being contracted directly by the Department. The justification shall include a determination by the initiating program official that such work is consistent with the contractor's assigned program responsibilities and that the contractor has technical capability to perform the work assigned.
- g. A proposed acquisition of goods and services without full and open competition must be justified in writing (see FAR Part 6.303 for justification requirements). The total estimated dollar value including any options or orders that may be placed under the contract shall be included in determining the approval level of a justification. The following approval levels are the levels specified in FAR Part 6.304 and in effect for DOE. The award levels for justifications for other than full and open competition are as follows:
  - 1. Not exceeding \$500,000, by the contracting officer.
  - 2. Over \$500,000 but not exceeding \$10,000,000, by the contracting activity competition advocate.
  - 3. Over \$10,000,000 but not exceeding \$50,000,000, by the head of the contracting activity; [This authority may be delegated to a designee in the Senior Executive Service or a comparable or higher position.]
  - 4. Over \$50,000,000 by the Deputy Assistant Secretary for Procurement and Assistance Management.
- h. Justifications for other than full and open competition for acquisitions greater than \$1,000,000 shall be reviewed and coordinated by legal counsel.

## **5. RESPONSIBILITIES.**

### **a. Senior Program Officials are responsible for:**

1. Assuring proper and effective acquisition planning including the conduct of market surveys.
2. Promoting full and open competition to the maximum practical extent.
3. Ensuring the accuracy, adequacy, and completeness of the Justifications for Other than Full and Open Competition that they review.
4. Promoting the acquisition of commercial items as defined in FAR Part 2.101 or, if not available, nondevelopmental items to the maximum extent practicable.

### **b. Initiators of Acquisitions are responsible for:**

1. Stating requirements in terms of functions to be performed, performance required, or essential physical characteristics.
2. Conducting market research as required by FAR Part 7 or FAR Part 11 and coordinating with and securing the concurrence of the contracting activity and the contracting activity's competition advocate if the plan proposes using other than full and open competition.
3. Advising the contracting officer of the adequacy of the responses received to published notices.
4. Preparing the required justifications in the format required by FAR Part 6.303 when recommending acquisition by other than full and open competition. Insuring that the statements made in the justifications are accurate and complete.

### **c. Deputy Assistant Secretary for Procurement and Assistance Management**

1. Appoints the Department's competition advocate.
2. Develops acquisition policy and procedures that promote full and open competition and use of commercial or nondevelopmental items.

### **d. Agency Competition Advocate is responsible for:**

Duties as described in FAR Part 6.502

**e. Heads of Contracting Activities are responsible for:**

1. Appointing contracting activity competition advocates with the concurrence of the Agency Competition Advocate.
2. Providing necessary staff to contracting activity competition advocate to carry out responsibilities.

**f. Contracting Activity Competition Advocate is responsible for:**

1. Duties as described in FAR 6.502.
2. Promoting the acquisition of commercial items.
3. Reviewing and approving, and/or disapproving or if above the Contracting Activity competition Advocate's authority, reviewing and making recommendations concerning noncompetitive acquisition plans and requests.
4. Providing information to the agency competition advocate for use in the preparation of the annual report to the procurement executive.

**6. REFERENCES:**

DOE-O-481.1, WORK FOR OTHERS, of 9-30-96, which establishes policies and procedures for non-DOE funded work performed under DOE contracts.

DOE 4700.1, PROJECT MANAGEMENT SYSTEM, of 3-6-87, which establishes the project management system for the Department's major system acquisitions and other major projects, and includes detailed requirements for acquisition planning for such projects.

Executive Order 12352, Federal Procurement Reforms, Title 3 Code of Federal Regulations 137, of 3-17-82, which directs all Federal agencies to take positive steps to increase competition and to improve their procurement systems.

Public Law 98-369, the Competition in Contracting Act of 1984, which, among other things, seeks full and open competition through the use of competitive procedures in the acquisition of property and services and directs that agencies establish a competition advocacy program.

Public Law 103--355, the Federal Acquisition Streamlining Act, of 1994 which among other things, requires a preference for commercial items requires market research and assigns responsibilities to procuring activity competition advocates.

Public Law 104-208-the Clinger-Cohn Act of 1996, (formerly know as the the Federal Acquisition Reform Act of 1996), which among other things, increases the apporval thresholds for justifications of other than full and open competition.

Public Law 98-577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, which, among other things, seeks to eliminate procurement practices which unnecessarily inhibit full and open competition.

Title 48 Code of Federal Regulations Chapter 1, Federal Acquisition Regulation, which is the uniform, Government-wide regulation concerning acquisition.

Title 48 Code of Federal Regulations Chapter 9, Department of Energy Acquisition Regulation, which is the Department of Energy regulation supplementing and implementing the Federal Acquisition Regulation.

BY ORDER OF THE SECRETARY OF ENERGY:



ARCHER L. DURHAM  
Assistant Secretary for  
Human Resources and Administration