

# 706.302-70 Impairment of foreign aid programs.

Link to an amendment published at 89 FR 4205, Jan. 23, 2024.

## (a) *Authority.*

(1) Citation: 40 U.S.C. 113.

(2) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief, and rehabilitation.

## (b) *Application.* This authority may be used for:

(1) An award under section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, involving a personal services contractor serving abroad;

(2) An award of \$250,000 or less by an overseas contracting activity;

(3)

(i) An award for which the Assistant Administrator responsible for the project or program makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program; or

(ii) Awards for countries, regions, projects, or programs for which the Administrator of USAID makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the foreign assistance program.

(4) Awards under (48 CFR) AIDAR 715.370-1 (Title XII selection procedure—general) or 715.370-2 (Title XII selection procedure—collaborative assistance).

(5) An award for the continued provision of highly specialized services when award to another resource would result in substantial additional costs to the Government or would result in unacceptable delays.

## (c) *Limitations.*

(1) Proposals must be requested from as many potential offerors as is practicable under the circumstances. Additionally, as required in (48 CFR) FAR 5.201, the contracting officer must publicize the intended award when using the exceptions above, including when using the authority at 706.302-70(b)(5) where the contracting officer has determined that the incumbent contractor is the only practicable, potential offeror.

(2) The contract file must include appropriate explanation and support justifying the award without full and open competition, as provided in (48 CFR) FAR 6.303, except that determinations made under 706.302-70(b)(3) will not be subject to the requirement for contracting officer certification or to approvals in accord with (48 CFR) FAR 6.304.

(3) The authority in 706.302-70(b)(3)

(i) shall be used only when no other authority provided in (48 CFR) FAR 6.302 or (48 CFR) AIDAR 706.302 is suitable. The specific foreign assistance objective which would be impaired must be identified and explained in the written determination and finding. Prior consultation with the Agency Competition Advocate (see 706.501) is required before executing the written determination and finding, and this consultation must be reflected in the determination and finding.

(4) Use of the authority in 706.302-70(b)(5) for proposed follow-on amendments in excess of one year or over \$250,000 is subject to the approval of the Agency Competition Advocate. For all other follow-on amendments using this authority, the contracting officer's certification required in (48 CFR) FAR 6.303-2(b)(12) will serve as approval.

**Parent topic:** Subpart 706.3—Other Than Full and Open Competition