Subpart 9.2 - Qualifications Requirements

Parent topic: Part 9 - Contractor Qualifications

9.200 Scope of subpart.

This subpart implements 10 U.S.C. 3243 and 41 U.S.C.3311 and prescribes policies and procedures regarding *qualification requirements* and the *acquisitions* that are subject to such requirements.

9.201 Definitions.

As used in this subpart-

Qualified bidders list (QBL) means a list of bidders who have had their *products* examined and tested and who have satisfied all applicable *qualification requirements* for that product or have otherwise satisfied all applicable *qualification requirements*.

Qualified manufacturers list (QML) means a list of manufacturers who have had their *products* examined and tested and who have satisfied all applicable *qualification requirements* for that product.

9.202 Policy.

(a)

(1) The *head of the agency* or designee *shall*, before establishing a *qualification requirement*, prepare a written justification-

(i) Stating the necessity for establishing the *qualification requirement* and specifying why the *qualification requirement must* be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential *offeror* to become qualified; and

(iii) Specifying all requirements that a potential *offeror* (or its product) *must* satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the *qualification requirements shall* be specified.

(2) Upon request to the *contracting activity*, potential *offerors shall* be provided-

(i) All requirements that they or their *products must* satisfy to become qualified; and

(ii) At their expense (but see 9.204(a)(2) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements or under contract, or other methods approved by the agency (including use of approved

testing and evaluation services not provided under contract to the agency).

(3) If the services in paragraph (a)(2)(ii) of this section are provided by contract, the contractors selected to provide testing and evaluation services *shall* be-

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on *technical data* asserted by the potential *offeror* seeking qualification.

(4) A potential *offeror* seeking qualification *shall* be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity responsible for establishing a *qualification requirement shall* submit to the advocate for competition for the *procuring activity* responsible for purchasing the item subject to the *qualification requirement*, a determination that it is unreasonable to specify the standards for qualification which a prospective *offeror* (or its product) *must* satisfy. After considering any comments of the advocate for competition reviewing the determination, the head of the *procuring activity may* waive the requirements of paragraph (a)(1)(ii) through (a)(4) of this section for up to 2 years with respect to the item subject to the *qualification requirement*. A copy of the waiver *shall* be furnished to the *head of the agency* or other official responsible for actions under paragraph (a)(1) of this section. The waiver authority provided in this paragraph does not apply with respect to *qualification requirements* contained in a QPL, QML, or QBL.

(c) If a potential *offeror* can demonstrate to the satisfaction of the *contracting officer* that the potential *offeror* (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential *offeror may* not be denied the opportunity to submit and have considered an *offer* for a contract solely because the potential *offeror*-

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a *qualification requirement* established after October 19,1984, by DoD or NASA; or

(3) Has not been identified as meeting a *qualification requirement* established by a civilian agency (not including NASA).

(d) The procedures in subpart 19.6 for referring matters to the Small Business Administration are not mandatory on the *contracting officer* when the basis for a referral would involve a challenge by the *offeror* to either the validity of the *qualification requirement* or the *offeror*'s compliance with such requirement.

(e) The *contracting officer* need not delay a proposed award in order to provide a potential *offeror* with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a *procurement* need not be delayed in order to comply with paragraph (a) of this section.

(f) Within 7 years following enforcement of a QPL, QML, or QBL by DoD or NASA, or within 7 years after any *qualification requirement* was originally established by a civilian agency other than NASA,

the *qualification requirement shall* be examined and revalidated in accordance with the requirements of paragraph (a) of this section. For DoD and NASA, *qualification requirements* other than QPL's, QML's and QBL's *shall* be examined and revalidated within 7 years after establishment of the requirement under paragraph (a) of this section. Any periods for which a waiver under paragraph (b) of this section is in effect *shall* be excluded in computing the 7 years within which review and revalidation *must* occur.

9.203 QPL's, QML's, and QBL's.

(a) Qualification and listing in a QPL, QML, or QBL is the process by which *products* are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, or manufacturers or potential *offerors*, are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful *products*, manufacturers, or potential *offerors* are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific *acquisition* action. After qualification, the *products*, manufacturers, or potential *offerors* are included in a Federal or Military QPL, QML, or QBL. (See 9.202(a)(2) with regard to any product, manufacturer, or potential *offeror* not yet included on an applicable list.)

(b) Specifications requiring a qualified product are included-

(1) In the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions; and

(2) On the Department of Defense *Acquisition* Streamlining and Standardization Information System (ASSIST) website at *https://assist.dla.mil*.

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Manual, FSPM-0001.

(2) Department of Defense Manual 4120.24, Defense Standardization Program (DSP) Procedures, (*www.esd.whs.mil/Directives/Issuances/dodm*) as amended by Military Standards 961 and 962 (*https://assist.dla.mil*).

(d) The publications in paragraphs (b)(1) and (c)(1) of this section *may* be obtained from the address in 11.201(d)(1).

9.204 Responsibilities for establishment of a qualification requirement.

The responsibilities of agency activities that establish *qualification requirements* include the following:

(a) Arranging publicity for the *qualification requirements*. If active competition on anticipated future *qualification requirements* is likely to be fewer than two manufacturers or the *products* of two manufacturers, the activity responsible for establishment of the *qualification requirements must*-

(1) Periodically furnish through the *Governmentwide point of entry (GPE*) a notice seeking additional

sources or *products* for qualification unless the *contracting officer* determines that such publication would compromise the national security.

(2) Bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. However, such costs *may* be borne only if it is determined in accordance with agency procedures that such additional qualified sources or *products* are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements. A prospective contractor requesting the *United States* to bear testing and evaluation costs *must* certify as to its status as a small business concern under Section 3 of the Small Business Act in order to receive further consideration.

(b) Qualifying *products* that meet specification requirements.

(c) Listing manufacturers and suppliers whose *products* are qualified in accordance with agency procedures.

(d) Furnishing QPL's, QML's, or QBL's or the *qualification requirements* themselves to prospective *offerors* and the public upon request (see 9.202(a)(2)(i)).

(e) Clarifying, as necessary, *qualification requirements*.

(f) In appropriate cases, when requested by the *contracting officer*, providing concurrence in a decision not to enforce a *qualification requirement* for a *solicitation*.

(g) Withdrawing or omitting qualification of a listed product, manufacturer or *offeror*, as necessary.

(h) Advising persons furnished any list of *products*, manufacturers or *offerors* meeting a *qualification requirement* and suppliers whose *products* are on any such list that-

(1) The list does not constitute endorsement of the product, manufacturer, or other source by the Government;

(2) The *products* or sources listed have been qualified under the latest applicable specification;

(3) The list *may* be amended without notice;

(4) The listing of a product or source does not release the supplier from compliance with the specification; and

(5) Use of the list for advertising or publicity is permitted. However, it *must* not be stated or implied that a particular product or source is the only product or source of that type qualified, or that the Government in any way recommends or endorses the *products* or the sources listed.

(i) Reexamining a qualified product or manufacturer when-

(1) The manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of previous qualification is questionable;

(2) The requirements in the specification have been amended or revised sufficiently to affect the

character of the product; or

(3) It is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

9.205 Opportunity for qualification before award.

(a) If an agency determines that a *qualification requirement* is necessary, the agency activity responsible for establishing the requirement *must* urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity *must*, before establishing any *qualification requirement*, furnish notice through the GPE. The notice *must* include-

(1) Intent to establish a *qualification requirement*;

(2) The specification number and name of the product;

(3) The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) *should* be submitted;

(4) The anticipated date that the agency will begin awarding contracts subject to the *qualification requirement*;

(5) A precautionary notice that when a product is submitted for qualification testing, the applicant *must* furnish any specific information that *may* be requested of the manufacturer before testing will begin; and

(6) The approximate time period following submission of a product for qualification testing within which the applicant will be notified whether the product passed or failed the qualification testing (see 9.202(a)(4)).

(b) The activity responsible for establishing a *qualification requirement must* keep any list maintained of those already qualified open for inclusion of additional *products*, manufacturers, or other potential sources.

9.206 Acquisitions subject to qualification requirements.

9.206-1 General.

(a) Agencies *may* not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a). However, *qualification requirements* themselves, whether or not previously embodied in a in a QPL, QML, or QBL, *may* be enforced without regard to 9.202(a) if they are in either of the following categories:

(1) Any *qualification requirement* established by statute prior to October 30,1984, for civilian agencies (not including NASA); or

(2) Any *qualification requirement* established by statute or administrative action prior to October 19,1984, for DoD or NASA. *Qualification requirements* established after the above dates *must* comply with 9.202(a) to be enforceable.

(b) Except when the *agency head* or designee determines that an *emergency* exists, whenever an agency elects, whether before or after award, not to enforce a *qualification requirement* which it established, the requirement *may* not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a *qualification requirement* applies, the *contracting officer* need consider only those *offers* identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an *offeror* can satisfactorily demonstrate to the *contracting officer* that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a *qualification requirement* is to be acquired as a *component* of an end item, the *contracting officer must* ensure that all such *components* and their *qualification requirements* are properly identified in the *solicitation* since the product or source *must* meet the standards specified for qualification before award.

(e) In *acquisitions* subject to *qualification requirements*, the *contracting officer shall* take the following steps:

(1) Use presolicitation notices in appropriate cases to advise potential suppliers before issuing *solicitations* involving *qualification requirements*. The notices *shall* identify the specification containing the *qualification requirement* and establish an allowable time period, consistent with delivery requirements, for prospective *offerors* to demonstrate their abilities to meet the standards specified for qualification. The notice *shall* be publicized in accordance with 5.204. Whether or not a presolicitation notice is used, the general synopsizing requirements of subpart 5.2 apply.

(2) Distribute *solicitations* to prospective contractors whether or not they have been identified as meeting applicable *qualification requirements*.

(3) When appropriate, request in accordance with agency procedures that a *qualification requirement* not be enforced in a particular *acquisition* and, if granted, so specify in the *solicitation* (see 9.206-1(b)).

(4) Forward requests from potential suppliers for information on a *qualification requirement* to the agency activity responsible for establishing the requirement.

(5) Allow the maximum time, consistent with delivery requirements, between issuing the *solicitation* and the contract award. As a minimum, *contracting officers shall* comply with the time frames specified in 5.203 when applicable.

9.206-2 Contract clause.

The *contracting officer shall* insert the clause at 52.209-1, Qualification Requirements, in *solicitations* and contracts when the *acquisition* is subject to a *qualification requirement*.

9.206-3 Competition.

(a) *Presolicitation*. If a *qualification requirement* applies to an *acquisition*, the *contracting officer shall* review the applicable QPL, QML, or QBL or other identification of those sources which have met the requirement before issuing a *solicitation* to ascertain whether the number of sources is adequate for competition. (See 9.204(a) for duties of the agency activity responsible for establishment of the *qualification requirement*.) If the number of sources is inadequate, the *contracting officer shall* request the agency activity which established the requirement to-

(1) Indicate the anticipated date on which any sources presently undergoing evaluation will have demonstrated their abilities to meet the *qualification requirement* so that the *solicitation* could be rescheduled to allow as many additional sources as possible to qualify; or

(2) Indicate whether a means other than the *qualification requirement* is feasible for testing or demonstrating quality assurance.

(b) *Post solicitation*. The *contracting officer shall* submit to the agency activity which established the *qualification requirement* the names and addresses of concerns which expressed interest in the *acquisition* but are not included on the applicable QPL, QML, or QBL or identified as meeting the *qualification requirement*. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)).

9.207 Changes in status regarding qualification requirements.

(a) The *contracting officer shall* promptly report to the agency activity which established the *qualification requirement* any conditions which *may* merit removal or omission from a QPL, QML, or QBL or affect whether a source *should* continue to be otherwise identified as meeting the requirement. These conditions exist when-

(1) *Products* or services are submitted for *inspection* or acceptance that do not meet the *qualification requirement*;

(2) *Products* or services were previously rejected and the defects were not corrected when submitted for *inspection* or acceptance;

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the *qualification requirement* was manufactured (see the clause at 52.209-1, *Qualification Requirements*);

(4) A manufacturer of a product which met the *qualification requirement* has discontinued manufacture of the product;

(5) A source requests removal from a QPL, QML, or QBL;

(6) A condition of meeting the *qualification requirement* was violated; *e.g.,* advertising or publicity contrary to 9.204(h)(5);

(7) A revised specification imposes a new *qualification requirement*;

(8) Manufacturing or design changes have been incorporated in the *qualification requirement*;

(9) The source is listed in the *System for Award Management* Exclusions (see subpart 9.4); or

(10) Performance of a contract subject to a *qualification requirement* is otherwise unsatisfactory.

(b) After considering any of the above or other conditions reasonably related to whether a product or source continues to meet the standards specified for qualification, an agency *may* take appropriate action without advance notification. The agency *shall*, however, promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL, or will no longer be identified as meeting the standards specified for qualification. This notice *shall* contain specific information why the product or source no longer meets the *qualification requirement*.