

(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, OML's, or QBL's or the qualification requirements themselves to prospective offerors and the public upon request (see 9.202(a)(2)(i) above).

(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.

[50 FR 35476, Aug. 30, 1985, as amended at 66 FR 27413, May 16, 2001; 68 FR 56679, Oct. 1, 2003]

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, including eligible products from designated countries under the terms of the Trade Agreements Act (see Subpart 25.4).

[50 FR 35476, Aug. 30, 1985, as amended at 64 FR 72418, Dec. 27, 1999; 66 FR 27413, May 16, 2001; 68 FR 56679, Oct. 1, 2003]

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 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 assure 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.