

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.

[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; 69 FR 77872, Dec. 28, 2004]

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 require-

ments 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 synopsis 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.

[50 FR 35476, Aug. 30, 1985, as amended at 53 FR 34227, Sept. 2, 1988]

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.

[53 FR 34227, Sept. 2, 1988]

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 under-

going 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) *Postsolicitation.* 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)).

[50 FR 35476, Aug. 30, 1985, as amended at 60 FR 34737, July 3, 1995]

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 resubmitted 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.,