

## **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.

**Parent topic:** Subpart 9.2 - Qualifications Requirements