

amended Pub. L. 105-85, div. A, title X, §1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107-217, §3(b)(4), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108-178, §4(b)(3), Dec. 15, 2003, 117 Stat. 2641; Pub. L. 108-375, div. B, title XXVIII, §2807, Oct. 28, 2004, 118 Stat. 2123; Pub. L. 109-163, div. B, title XXVIII, §2807, Jan. 6, 2006, 119 Stat. 3508; Pub. L. 113-291, div. A, title VIII, §814, Dec. 19, 2014, 128 Stat. 3430; Pub. L. 115-91, div. A, title VIII, §823, Dec. 12, 2017, 131 Stat. 1465; Pub. L. 116-92, div. A, title XVII, §1731(a)(38), Dec. 20, 2019, 133 Stat. 1814; renumbered §3241 and amended Pub. L. 116-283, div. A, title XVIII, §1813(b), Jan. 1, 2021, 134 Stat. 4177.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1813(b), renumbered section 2305a of this title as this section.

Subsec. (b). Pub. L. 116-283, §1813(b)(1), inserted dash after “or work when”, reorganized remainder of former introductory provisions of subsec. (b) into designated pars. (1) to (4), and redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (4) and realigned margins.

Subsec. (c)(1), (2). Pub. L. 116-283, §1813(b)(2)(A), (B), inserted headings.

Subsec. (c)(3). Pub. L. 116-283, §1813(b)(2)(C)(i), (ii), inserted par. heading, designated first, second, and third sentences of existing provisions as subpars. (A), (B), and (C), respectively, and inserted subpar. headings.

Subsec. (c)(3)(A). Pub. L. 116-283, §1813(b)(2)(C)(iii), inserted dash after “and include—” and reorganized remainder of subpar. (A) into designated cls. (i) to (iv).

Subsec. (c)(4). Pub. L. 116-283, §1813(b)(2)(D)(i), (ii), (iv), inserted par. heading, designated first sentence as subpar. (A), inserted subpar. heading, and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and designated concluding provisions as subpar. (B) and realigned margin.

Subsec. (c)(4)(A)(ii). Pub. L. 116-283, §1813(b)(2)(D)(iii), substituted “subsections (b), (c), and (d) of section 3206” for “paragraphs (2), (3), and (4) of section 2305(a)”.

Subsec. (c)(4)(B). Pub. L. 116-283, §1813(b)(2)(D)(v), substituted “clauses (i) and (ii) of subparagraph (A)” for “subparagraphs (A) and (B)”.

Subsec. (c)(5). Pub. L. 116-283, §1813(b)(2)(E), inserted heading and substituted “section 3303” for “section 2305(b)(4)”.

2019—Subsec. (d)(1). Pub. L. 116-92 substituted “an indefinite” for “a indefinite”.

2017—Subsec. (d). Pub. L. 115-91 substituted “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless—” and pars. (1) and (2) for “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer’s justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government’s interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the purposes and objectives of the two-phase selection procedures.”

2014—Subsec. (d). Pub. L. 113-291 substituted “If the contract value exceeds \$4,000,000, the maximum number specified in the solicitation shall not exceed 5 unless the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity, approves the contracting officer’s justification with respect to an individual solicitation that a number greater than 5 is in the Federal Government’s interest. The contracting officer shall provide written documentation of how a maximum number exceeding 5 is consistent with the pur-

poses and objectives of the two-phase selection procedures.” for “The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government’s interest and is consistent with the purposes and objectives of the two-phase selection process.”

2006—Subsec. (f)(2). Pub. L. 109-163, §2807(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed the actual costs incurred as of the termination date.”

Subsec. (f)(4). Pub. L. 109-163, §2807(b), substituted “2008” for “2007” wherever appearing.

2004—Subsec. (f). Pub. L. 108-375 added subsec. (f).
2003—Subsec. (c)(1). Pub. L. 108-178 substituted “chapter 11 of title 40” for “the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)”.

2002—Subsec. (a). Pub. L. 107-217 substituted “chapter 11 of title 40” for “the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)”.

1997—Subsec. (a). Pub. L. 105-85 substituted “(40 U.S.C.” for “(41 U.S.C.”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-178 effective Aug. 21, 2002, see section 5 of Pub. L. 108-178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 2220 of this title.

§ 3242. Supplies: economic order quantities

(a) QUANTITY TO PROCURE.—

(1) An agency referred to in section 3063 of this title shall procure supplies in such quantity as—

(A) will result in the total cost and unit cost most advantageous to the United States, where practicable; and

(B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) OPINION OF OFFEROR WITH RESPECT TO QUANTITY TO BE PROCURED.—

Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the

unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98-525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600, § 2384a; renumbered § 3242 and amended Pub. L. 116-283, div. A, title XVIII, § 1813(c), Jan. 1, 2021, 134 Stat. 4179; Pub. L. 117-81, div. A, title XVII, § 1701(b)(5), Dec. 27, 2021, 135 Stat. 2133.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, § 1813(c), renumbered section 2384a of this title as this section.

Subsec. (a). Pub. L. 116-283, § 1813(c)(1), as amended by Pub. L. 117-81, § 1701(b)(5), inserted heading, in par. (1), substituted “section 3063” for “section 2303(a)” and reformatted subpars. (A) and (B) to add line breaks before each subpar. designation, and, in par. (2), realigned margin.

Subsec. (b). Pub. L. 116-283, § 1813(c)(2), inserted heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and note below.

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE

Pub. L. 98-525, title XII, § 1233(b), Oct. 19, 1984, 98 Stat. 2601, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].”

§ 3243. Encouragement of new competitors: qualification requirement

(a) **QUALIFICATION REQUIREMENT DEFINED.**—In this section, the term “qualification requirement” means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) **ACTIONS BEFORE ESTABLISHING QUALIFICATION REQUIREMENT.**—Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable

basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, 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);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of paragraph (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c) APPLICABILITY, WAIVER AUTHORITY, AND REFERRAL OF OFFERS.—

(1) **APPLICABILITY.**—Subsection (b) does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2) **WAIVER AUTHORITY.**—

(A) **SUBMISSION OF DETERMINATION OF UNREASONABLENESS.**—Except as provided in subparagraph (C), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement.

(B) **AUTHORITY TO GRANT WAIVER.**—After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(C) **INAPPLICABILITY TO QUALIFIED PRODUCTS LIST.**—The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) **SUBMISSION AND CONSIDERATION OF OFFER NOT TO BE DENIED IN CERTAIN CASES.**—A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer (or, in the case of a contract for the procurement of an aviation critical safety item or ship critical safety item, the head of the design control activity for such