

52.209-2

item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____
(Address) _____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____
Manufacturer's Name _____
Source's Name _____
Item Name _____
Service Identification _____
Test Number _____

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of

48 CFR Ch. 1 (10-1-10 Edition)

the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

[53 FR 34229, Sept. 2, 1988; 53 FR 36028, Sept. 16, 1988, as amended at 59 FR 67056, Dec. 28, 1994]

52.209-2 Prohibition on Contracting with Inverted Domestic Corporations—Representation.

As prescribed in 9.108-5, insert the following provision:

PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS—REPRESENTATION (JUL 2009)

(a) *Definition.* *Inverted domestic corporation* means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

(b) *Relation to Internal Revenue Code.* A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at 26 U.S.C. 7874 (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of 6 U.S.C. 395 and for this solicitation provision (see FAR 9.108).

(c) *Representation.* By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(End of provision)

[74 FR 31564, July 1, 2009]

52.209-3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1 (a) and (b), insert the following clause:

Federal Acquisition Regulation

52.209-4

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (SEP 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall test ___ unit(s) of Lot/Item ___ as specified in this contract. At least ___ calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within ___ calendar days from the date of this contract to ___ [insert address of the Government activity to receive the report] marked "FIRST ARTICLE TEST REPORT: Contract No. ___, Lot/Item No. ___." Within ___ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c)

above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

Alternate I (JAN 1997). As prescribed in 9.308-1 (a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

Alternate II (SEP 1989). As prescribed in 9.308-1 (a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989; 55 FR 25531, June 21, 1990; 62 FR 238, Jan. 2, 1997]

52.209-4 First Article Approval—Government Testing.

As prescribed in 9.308-2 (a) and (b), insert the following clause: