
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)(ii), 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), 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 margins.

Subsec. (c)(4)(A)(i), Pub. L. 116–283, §1813(b)(2)(D)(ii), substituted “subsections (b), (c), and (d) of section 2305b” for “subparas. (B) and (C)”.

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 2305b” for “section 2305b(4)”.


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 “(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 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.”

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 two-phase selection procedure, approves the contracting officer’s justification 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 procedures.”

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 subparagraph (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.”


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


EFFECTIVE DATE

For effective date and applicability of section, see section 4611 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 2202 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 recom-
mended 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. 479; Pub. L. 
117–81, div. A, title XVII, §1701(b)(5), Dec. 27,
2021, 135 Stat. 2153.)

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 235(1)” for “section 2303(a)” and re-
formatted subpars. (A) and (B) to add line breaks before
the end of the 180-day period beginning on the date of
section (a) [enacting this section] shall take effect at
2601, provided that: "The amendment made by sub-
tract.

completed by an offeror before award of a con-
quality assurance demonstration that must be
this section, the term "qualification require-
ment and specify why the qualification
requirement must be demonstrated before con-
checking the procuring activity responsible for the
procuring activity responsible for the
caution, or under contract, or other methods ap-
agency obtained through interagency agree-
ment, or under contract, or other methods ap-

(Added 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. 2153.)

Statutory Notes and Related Subsidiaries

Effective Date of 2021 Amendment

Amendment by Pub. L. 117–81 applicable as if in-
cluded 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

2601, provided that: "The amendment made by sub-
section (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: qualifi-
cation requirement

(a) Qualification Requirement Defined.—In
this section, the term "qualification require-
ment" means a requirement for testing or other
quality assurance demonstration that must be
completed by an offeror before award of a con-
tract.

(b) Actions Before Establishing Qualifica-
tion Requirement.—Except as provided in sub-
section (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 con-
tract award;

(2) specify in writing and make available to
a potential offeror upon request all require-
ments which a prospective offeror, or its prod-
uct, 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 require-
ment;

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

(4) ensure that a potential offeror is pro-
vided, 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 fa-
cilities of the agency concerned or of another
agency obtained through interagency agree-
ment, or under contract, or other methods ap-
proved by the agency (including use of ap-
proved testing and evaluation services not
provided under contract to the agency);

(5) if testing and evaluation services are pro-
vided under contract to the agency for the
purposes of paragraph (4), provide to the ex-
tent 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 as-
serted by the potential offeror seeking qualifi-
cation; 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 prompt-
ly furnished specific information why qualifi-
cation was not attained.

(c) Applicability, Waiver Authority, and Re-
feral of Offers.—

(1) Applicability.—Subsection (b) does not
apply with respect to a qualification require-
ment established by statute or administrative
action before October 19, 1984, unless such re-
quirement is a qualified products list.

(2) Waiver Authority.—

(A) Submission of Determination of
Unreasonableness.—Except as provided in sub-
paragraph (C), if it is unreasonable to
specify the standards for qualification which
a prospective offeror or its product must satis-
fy, 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 qualifi-
cation requirement.

(B) Authority to Grant Waiver.—After
considering any comments of the advocate
for competition reviewing such determina-
tion, 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 po-
tential 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 con-
tracting 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