

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

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.

§ 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.)

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), 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.

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.

§ 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 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 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.