

requiring activity should ascertain through discussions with DHS whether a block designation or block certification exists for the technology being acquired.

(1) If one does exist, the requiring activity should request that the contracting officer notify offerors.

(2) If one does not exist, see 50.205-2, Pre-qualification designation notice.

(b) *Early consideration of the SAFETY Act.* Acquisition officials shall consider SAFETY Act issues as early in the acquisition cycle as possible (see 7.105(b)(20)(v)). Normally, this would be at the point where the required capabilities or performance characteristics are addressed. This is important because the processing times for issuing determinations on all types of SAFETY Act applications vary depending on many factors, including the influx of applications to DHS and the technical complexity of individual applications.

(c) *Industry outreach.* When applicable, acquisition officials should include SAFETY Act considerations in all industry outreach efforts including, but not limited to, requests for information, draft requests for proposal, and industry conferences.

(d) *Reciprocal waiver of claims.* For purposes of 6 CFR 25.5(e), the Government is not a customer from which a contractor must request a reciprocal waiver of claims.

[72 FR 63030, Nov. 7, 2007, as amended at 74 FR 2738, Jan. 15, 2009; 76 FR 14547, Mar. 16, 2011]

**50.205-2 Pre-qualification designation notice.**

(a) *Requiring activity responsibilities.*

(1) If the requiring activity determines that the technology to be acquired may qualify for SAFETY Act protection, the requiring activity is responsible for requesting a pre-qualification designation notice from DHS. Such a request for a pre-qualification designation notice should be made once the requiring activity has determined that the technology specifications or statement of work are established and are unlikely to undergo substantive modification. DHS will then determine whether the technology identified in the request either affirmatively or presumptively satisfies the technical criteria for

SAFETY Act designation. An affirmative determination means the technology described in the pre-qualification designation notice satisfies the technical criteria for SAFETY Act designation as a QATT. A presumptive determination means that the technology is a good candidate for SAFETY Act designation as a QATT. In either case, the notice will authorize offerors to—

(i) Submit a streamlined application for SAFETY Act designation; and

(ii) Receive expedited review of their application for SAFETY Act designation.

(2) The requiring activity shall make requests using the procurement pre-qualification request form available at <http://www.SAFETYAct.gov>. The website includes instructions for completing and submitting the form.

(3) The requiring activity shall provide a copy of the request, as well as a copy of the resulting pre-qualification designation notice or DHS denial, to the contracting officer.

(b) *Contracting officer responsibilities.* Upon receipt of the documentation specified in paragraph (a)(3) of this subsection, the contracting officer shall—

(1) Include in any pre-solicitation notice (Subpart 5.2) that a pre-qualification designation notice has been—

(i) Requested and is under review by DHS;

(ii) Denied by DHS; or

(iii) Issued and a copy will be included with the solicitation; and

(2) Incorporate the pre-qualification designation notice into the solicitation.

[72 FR 63030, Nov. 7, 2007, as amended at 74 FR 2738, Jan. 15, 2009]

**50.205-3 Authorization of offers contingent upon SAFETY Act designation or certification before contract award.**

(a) Contracting officers may authorize such contingent offers, only if—

(1) DHS has issued—

(i) For offers contingent upon SAFETY Act designation, a pre-qualification designation notice or a block designation; or

(ii) For offers contingent upon SAFETY Act certification, a block certification;

(2) To the contracting officer's knowledge, the Government has not provided advance notice so that potential offerors could have obtained SAFETY Act designations/ certifications for their offered technologies before release of any solicitation; and

(3) Market research shows that there will be insufficient competition without SAFETY Act protections or the subject technology would be sold to the Government only with SAFETY Act protections.

(b) Contracting officers shall not authorize offers contingent upon obtaining a SAFETY Act certification (as opposed to a SAFETY Act designation), unless a block certification applies to the class of technology to be acquired under the solicitation.

[72 FR 63030, Nov. 7, 2007, as amended at 74 FR 2738, Jan. 15, 2009]

**50.205-4 Authorization of awards made presuming SAFETY Act designation or certification after contract award.**

(a) When necessary to award a contract prior to DHS issuing SAFETY Act protections, contracting officers may award contracts presuming that DHS will issue a SAFETY Act designation/certification to the contractor after contract award only if—

(1) The criteria of 50.205-3(a) are met;

(2) The chief of the contracting office (or other official designated in agency procedures) approves the action; and

(3) The contracting officer advises DHS of the timelines for potential award and consults DHS as to when DHS could reasonably complete evaluations of offerors' applications for SAFETY Act designations or certifications.

(b) Contracting officers shall not authorize offers presuming that SAFETY Act certification will be obtained (as opposed to a SAFETY Act designation), unless a block certification applies to the class of technology to be acquired under the solicitation.

[72 FR 63030, Nov. 7, 2007, as amended at 74 FR 2738, Jan. 15, 2009]

**50.206 Solicitation provisions and contract clause.**

(a) Insert the provision at 52.250-2, SAFETY Act Coverage Not Applicable, in solicitations if—

(1) The agency consulted with DHS on a questionable case of SAFETY Act applicability to an acquisition in accordance with 50.205-1(a), and after the consultation, the agency has determined that SAFETY Act protection is not applicable for the acquisition; or

(2) DHS has denied approval of a pre-qualification designation notice.

(b)(1) Insert the provision at 52.250-3, SAFETY Act Block Designation/Certification, in a solicitation when DHS has issued a block designation/certification for the solicited technologies.

(2) Use the provision at 52.250-3 with its Alternate I when contingent offers are authorized in accordance with 50.205-3.

(3) Use the provision at 52.250-3 with its Alternate II when offers presuming SAFETY Act designation or certification are authorized in accordance with 50.205-4. If this alternate is used, the contracting officer may increase the number of days within which offerors must submit their SAFETY Act designation or certification application.

(c)(1) Insert the provision at 52.250-4, SAFETY Act Pre-qualification Designation Notice, in a solicitation for which DHS has issued a pre-qualification designation notice.

(2) Use the provision at 52.250-4 with its Alternate I when contingent offers are authorized in accordance with 50.205-3.

(3) Use the provision at 52.250-4 with its Alternate II when offers presuming SAFETY Act designation or certification are authorized in accordance with 50.205-4. If this alternate is used, the contracting officer may increase the number of days within which offerors must submit their SAFETY Act designation or certification application.

(d) Insert the clause at 52.250-5, SAFETY Act—Equitable Adjustment—

(1) In the solicitation, if the provision at 52.250-3 or 52.250-4 is used with its Alternate II; and