

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discretion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that

organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitations for consulting services.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Department of Veterans Affairs contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate administrations and staff offices when such pools are approved.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

PART 810—SPECIFICATIONS, STANDARDS AND PURCHASE ORDER DESCRIPTIONS

Sec.

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 52 FR 281, Jan. 5, 1987, unless otherwise noted.

810.001 Definitions.

(a) *Brand name product* means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer or distributor.

(b) *Salient characteristics* are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such "equality".

810.004 Selecting specifications or descriptions for use.

(a) Specifications shall be written in accordance with FAR 10.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 10.004(b)(2)) or that a "brand name or equal" purchase description will be used (see FAR 10.004(b)(3)), the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government's requirements or why the "brand name or equal" purchase description is necessary. The contracting officer shall make the final determination whether specifications in FAR 10.004(b)(2) and (3), will be included in the solicitation.

(c) Purchase descriptions which contain references to one or more brand name products may be used only when authorized by FAR 10.004(b) and

10.006(a) and in accordance with 810.004-70, 810.004-71, and 810.004-72. In addition, purchase descriptions which contain references to one or more brand name products shall be followed by the words "or equal," except when the acquisition is fully justified under FAR 6.3 and VAAR 806.3. Acceptable brand name products should be listed in the solicitation. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) "Brand name or equal" purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required;

(2) Applicable model, make or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(3) Name of manufacturer, producer or distributor of each brand name product referenced (and address if not well known).

(e) When necessary to describe adequately the item required, an applicable commercial catalog description or pertinent extract may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(f) Except as noted in paragraph (c) of this section, purchase descriptions shall not include either minimum or maximum restrictive dimensions, weights, materials or other salient characteristics which are unique to a brand name product or which would tend to eliminate competition or other products which are only marginally outside the restrictions, unless such restrictions are determined in writing by the user to be essential to the Government's requirements, the brand name of the product is included in the purchase description and all other determinations required by 810.004 have been made.

810.004-70 Sealed bidding.

(a) When any purchase description, including a "brand name or equal" purchase description, is used in a solicitation for a supply contract to describe required items of mechanical equipment, the solicitation will include the clauses in 852.210-70 (Service Data Manual) and in 852.210-71 (Guarantee).

(b) Solicitations using "brand name or equal" purchase descriptions will contain the "brand name or equal" provision in 852.210-77, and the provision set forth at FAR 52.214-21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202-5(d) when utilizing the descriptive literature provision.

(c) Except as provided in 810.004-70(d), when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the solicitation, for completion by the bidder:

Bidding on:
Manufacturer name _____
Brand _____
No. _____

(d) When component parts of an end item are described in the solicitation by a "brand name or equal" purchase description and the contracting officer determines that the clause in 810.004-70(b) is inapplicable to such component parts, the requirements of 810.004-70(c) shall not apply with respect to such component parts. In such cases, if the clause is included in the solicitation

for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts: (list the component parts to which the clause does not apply).

In the alternative, if the contracting officer determines that the clause in 810.004-70(c) shall apply to only certain such component parts, the requirements of 810.004-70(b) shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (list the component parts to which the clause applies).

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214-20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name of Equal" clause, 852.210-77(c)(1) and (2), even though bid samples may not be required.

[52 FR 281, Jan. 5, 1987, as amended at 53 FR 7755, Mar. 10, 1988]

810.004-71 Bid evaluation and award.

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 852.210-77 that the offered products are clearly identified in the bids and are equal in all material respects to the products specified.

(b) Award documents shall identify, or incorporate by reference, an identification of the specific products which the contractor is to furnish. Such identification shall include any brand name

and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the descriptions of the end items contain "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 852.210-77 was applicable to such component parts or accessories (see 810.004-70(e)).

810.004-72 Procedure for negotiated procurements.

(a) The policies and procedures prescribed in 810.004-70 and 810.004-71 should be used as a guide in developing adequate purchase descriptions for negotiated procurements.

(b) The clause at 852.210-77 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all material respects to the products referenced.

810.006 Using specifications and standards.

(a) *Exceptions to mandatory use of Federal specifications.* The exception to the mandatory use of Federal specifications, with respect to purchases not exceeding the small purchase limitation authorized by FAR 10.006(a)(ii) does not apply to items (1) purchased from GSA stock, (2) available from a Federal supply schedule contract, or (3) identified by a VA X-Series Specification.

(b) *Optional use of interim Federal specifications.* (1) Interim Federal specifications, developed by VA, as indicated in the preamble, are mandatory under the same conditions and with the same exceptions as provided for Federal specifications.

(2) Suggested changes to interim Federal specifications used on an optional basis will be handled as in 810.007.

(c) *Military and departmental specifications.* (1) The monetary exemption to the use of Federal specifications con-

tained in FAR 10.006(a)(ii) is equally applicable to Department of Veterans Affairs, military and departmental specifications. Contracting officers may, when they deem it to be advantageous to the Department of Veterans Affairs, utilize these specifications when procuring supplies and equipment costing less than the small purchase limitation. However, when purchasing items of perishable subsistence, contracting officers shall observe only those exemptions set forth in paragraphs (c) (5) and (6) of this section.

(2) When circumstances will not permit a field station to use a Department of Veterans Affairs specification without deviation, the contracting officer shall, prior to taking any procurement action, submit to the Deputy Assistant Secretary for Acquisition and Materiel Management, or Director, VA Marketing Center, Hines, Ill., whichever is appropriate, a request for authority to deviate from the specification. The request will specifically detail the reasons why the deviation is essential to the facility's operation. The approving authority will coordinate the request with the using service in Central Office. The contracting officer will be advised as to the approval or disapproval of the request. If approved the letter of approval will be filed in the appropriate purchase or contract file.

(3) The Department of Veterans Affairs has adopted for use in the procurement of packinghouse products, the purchase descriptions and specifications set forth in the Institutional Meat Purchase Specifications (IMPS), and the IMPS General Requirements, which have been developed by the U.S. Department of Agriculture. Purchase descriptions and specifications for dairy products, poultry, eggs, fresh and frozen fruits and vegetables, as well as certain packinghouse products selected from the IMPS especially for Department of Veterans Affairs use, are contained in the Federal Hospital Subsistence Guide. A copy of this guide and the IMPS may be obtained from any Department of Veterans Affairs contracting officer.

(4) Contract terms and conditions governing the procurement of subsistence items are listed in the Federal Hospital Subsistence Guide and IMPS.

These provisions shall be made a part of each solicitation for such items when applicable.

(5) The military specifications for meat and meat products contained in Federal Hospital Subsistence Guide shall be used by the Department of Veterans Affairs only when purchasing such items of subsistence from the Defense Logistics Agency (DLA). Military specifications for poultry, eggs, and egg products contained in Federal Hospital Subsistence Guide may be used when purchasing either from DLA or from local dealers.

(6) Except as authorized in part 846 of this chapter, contracting officers shall not deviate from the specifications contained in Federal Hospital Subsistence Guide, and the IMPS without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(7) Items of meat, cured pork and poultry, not listed in either the Federal Hospital Subsistence Guide or the IMPS, will not be purchased without prior approval of the Deputy Assistant Secretary for Acquisition and Materiel Management.

(8) In the absence of mandatory documents, specifications or purchase descriptions of other agencies may be used by the various Marketing Divisions when appropriate. These specifications or purchase descriptions may be modified to meet the needs of the Department of Veterans Affairs. If repeated use of a modified specification or purchase description is required, the Director, VA Marketing Center shall consider converting it to a Department of Veterans Affairs specification.

(9) A field facility may use a specification or purchase description of another agency without prior approval when the specification or description will, without modification, satisfy its needs. If, however, the specification or description must be modified to meet the facility's needs, the procedure set forth in paragraph (c)(2) of this section will be followed.

(10) The Director, Publications Service, is responsible for developing, publishing, and distributing Department of Veterans Affairs specifications covering printing and binding.

(11) Department of Veterans Affairs specifications, as they are revised, are placed in stock in the VA Forms and Publications Depot. Facility requirements of these specifications will be requisitioned from that source.

(d) *Government paper specification standards.* Invitations for bids, requests for proposals, purchase orders, or other procurement instruments covering the purchase of paper stocks to be used in duplicating or printing, or which specify the paper stocks to be used in buying printing, binding, or duplicating will require that such paper stocks be in accordance with the government Paper Specification Standards issued by the Joint Committee on Printing of Congress.

(e) *Department of Veterans Affairs binding specifications.* (1) All binding or rebinding of books, magazines, pamphlets, newspapers, slip cases and boxes will be procured in accordance with Government Printing Office (GPO) specifications and will be procured from the servicing GPO Regional Printing Procurement Office or, when appropriate, from commercial sources as prescribed in Subpart 808.8.

(2) There are three types of binding/rebinding: (i) Class A (hard cover); (ii) Perfect (glued); and (iii) Lumbinding (sewn). The most suitable type of binding will be procured to satisfy the requirements, based upon the intended use of the bound material.

(f) *Mandatory use and applications of Federal standards.* (1) Requests for exceptions to Federal Standards not authorized by FAR 10.006(a)(ii) will be submitted with adequate justification to the Deputy Assistant Secretary for Acquisition and Materiel Management (91A) for submission to General Services Administration.

(2) Federal standards do not preclude the use of existing Government stocks or acceptance of excess property not in full conformity with the standard items.

[49 FR 12597, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989]

810.007 Deviations.

(a) *Deviations from Federal specifications—(1) Field facility.* When a deviation from a Federal specification is

deemed necessary because of a specific requirement, the contracting officer will request such authority from the Deputy Assistant Secretary for Acquisition and Materiel Management, prior to procurement. The request will specify exactly how the facility proposes to deviate from the current specification and why the particular deviation is essential to the facility's operations. The contracting officer will be advised as to approval or disapproval of the request. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will, when necessary, forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

(2) *Marketing center.* When the essential needs of the Department of Veterans Affairs are not adequately covered by an existing Federal specification, the Chief of the Marketing Division concerned will:

(i) Document the reasons why the deviation is essential, and obtain the approval of the Director, VA Marketing Center, who will report the approval to the Deputy Assistant Secretary for Acquisition and Materiel Management.

(ii) When the required deviation affects other than packing, packaging, marking, or labeling, coordinate the required deviation with the using service in Central Office. If approved by the using service, a request for authority to deviate will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management through the Director, VA Marketing Center, Hines, Ill. It will specify in detail why the specific deviation is essential to the Department of Veterans Affairs' operations and be accompanied by a copy of the using service's comments. The appropriate marketing division chief will be advised as to the approval or disapproval of the request. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will when necessary forward the notice required by FAR 10.007(a)(4) to the General Services Administration.

[49 FR 12597, Mar. 29, 1984, as amended at 54 FR 30044, July 18, 1989; 54 FR 40063, Sept. 29, 1989; 61 FR 20492, May 7, 1996]

810.011 Solicitation provisions and contract clauses.

Specifications. When product specifications are cited in an invitation for bids or requests for proposals, the citation shall include: (1) desired options, (2) deviations authorized in accordance with 810.007, listed in numerical sequence, and (3) shall conform to the following:

Shall be type _____, grade _____, in accordance with (type of specification) No. _____, dated _____ and amendment _____ dated _____, except paragraphs _____ and _____ which are amended as follows.

[49 FR 12597, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985; 54 FR 40063, Sept. 29, 1989]

PART 812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 812.1—Delivery or Performance Schedules

Sec.

812.104 Contract clauses.

Subpart 812.2—Liquidated Damages

812.202 Policy.

812.204 Contract clauses.

Subpart 812.3—Priorities, Allocations, and Allotments

812.302 General.

AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12598, Mar. 29, 1984, unless otherwise noted.

Subpart 812.1—Delivery or Performance Schedules

812.104 Contract clauses.

When delivery is required by or on a particular date, the time of delivery clause set forth in FAR 52.212-1 as it relates to f.o.b. destination contracts will state that the delivery date specified is the date by which the shipment is to be delivered, not the shipping date. In f.o.b. origin contracts, the clause will state that the date specified is the date shipment is to be accepted by the carrier.