

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

## PART 410 [RESERVED]

### PART 411—DESCRIBING AGENCY NEEDS

#### Subpart 411.1—Selecting and Developing Requirements Documents

Sec.

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#### Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

#### Subpart 411.1—Selecting and Developing Requirements Documents

##### **411.103 Market acceptance.**

(a) The head of the contracting activity (HCA) may determine that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered.

(b) The contracting officer shall place a copy of this determination, signed by the HCA, in the solicitation file.

##### **411.105 Purchase descriptions for service contracts.**

When contract personnel are to be used, the requiring official shall record on the requisition his or her determination whether harm to the Government might occur should contractor personnel fail to identify themselves as non-Government officials.

##### **411.170 Brand name or equal.**

(a) A “brand name or equal” purchase description shall include the following type of information:

(1) Identification of the item by generic description.

(2) Make, model number, catalog designation, or other description, and identification of a commercial catalog where it is listed.

(3) Name of manufacturer, producer, or distributor of the item and complete address.

(4) All salient characteristics of the “brand name or equal” product or products which have been determined by the requisitioner to be essential to the Government’s minimum requirements.

(b) [Reserved]

##### **411.171 Solicitation provisions and contract clauses.**

(a) Contracting officers shall insert the provision at 452.211-70, Brand Name or Equal, in solicitations, other than those for construction, where “brand name or equal” purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211-71, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211-70 is included.

(c) Contracting officers shall insert the clause at 452.211-72, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211-73, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

[63 FR 26995, May 15, 1998]

**Subpart 411.2—Using and Maintaining Requirements Documents**

**411.202 Maintenance of standardization documents.**

Recommendations for changes to standardization documents are to be submitted through the Senior Procurement Executive, who will coordinate the submission of these recommendations to the cognizant preparing activity.

**Subpart 411.4—Delivery or Performance Schedules**

**411.404 Contract clauses.**

(a) The contracting officer shall insert the clause at 452.211-74, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(b) The contracting officer shall insert the clause at 452.211-75, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

[63 FR 26995, May 15, 1998]

**Subpart 411.6—Priorities and Allocations**

**411.600 Scope of subpart.**

The Defense Priorities and Allocation System (DPAS) excludes USDA activities (see 15 CFR 700.18(b)). USDA Contracting Officers are not authorized to place rated orders under DPAS.

**PART 412—ACQUISITION OF COMMERCIAL ITEMS**

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

**Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

**412.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

The head of the contracting activity is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.

[61 FR 53646, Oct. 15, 1996]