

Department of Veterans Affairs

811.104-74

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

(f) Except as noted in paragraph (d) of this section, the specification writer must not include in a purchase description either minimum or maximum restrictive dimensions, weights, materials, or other salient characteristics that are unique to a brand name product or that would tend to eliminate competition or other products that are only marginally outside the restrictions. However, the specification writer may include in a purchase description restrictive dimensions, weights, materials, or other salient characteristic if:

(1) The user determines in writing that the restrictions are essential to the Government's requirements;

(2) The specification writer includes the brand name of the product in the purchase description; and,

(3) The contracting officer makes all other determinations required by 811.105.

(g) The contracting officer must include in the contract file, as appropriate, written justifications for using the "brand name or equal" description, the contracting officer's determinations, and bidder submissions.

811.104-71 Purchase description clauses.

(a) When a solicitation uses "brand name or equal" purchase descriptions, the contracting officer must include in the solicitation the clause at 852.211-73, Brand name or equal, and the provision set forth at FAR 52.214-21, Descriptive Literature. The contracting officer must review the requirements at FAR 14.202-5 when using the descriptive literature provision.

(b) When a "brand name or equal" purchase description is included in an invitation for bids, the contracting officer shall insert the following after

each item so described in the solicitation, for completion by the bidder:

Bidding on:

Manufacturer name _____

Brand _____

No. _____

811.104-72 Limited application of brand name or equal.

If the contracting officer determines that the clause at 852.211-73, Brand name or equal, applies to only certain line items of a solicitation, the requirements of 811.104-71(b) apply to those line items and the contracting officer must include a statement in the solicitation as follows:

The clause entitled "Brand name or equal" applies only to the following line items: [*List the line items to which the clause applies*]

811.104-73 Bid samples.

(a) When a solicitation contains "brand name or equal" purchase descriptions, the contracting officer must not require a bidder who offers brand name products, including component parts, referenced in the descriptions to furnish bid samples of the referenced brand name products.

(b) A solicitation may require the submission of bid samples in the case of a bidder offering "or equal" products. If bid samples are required, the contracting officer must include in the solicitation the provision set forth at FAR 52.214-20, Bid Samples.

(c) A bidder must furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name or Equal" clause, 852.211-73(c)(1) and (c)(2), even though bid samples may not be required.

811.104-74 Bid evaluation and award.

(a) A bid offering products that differ from brand name products referenced in a "brand name or equal" purchase description must be considered for award if the contracting officer determines in accordance with the terms of the clause at 852.211-73, Brand name or equal, that the offered products are clearly identified in the bid and are equal in all material respects to the products specified.