

811.001

Subpart 811.6—Priorities and Allocations

811.602 General.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

811.001 Definitions.

For the purposes of this part:

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

Salient characteristics means those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are features that are identified in the specifications as a mandatory requirement that a proposed “equal” product or material must possess for the bid to be considered responsive.

Subpart 811.1—Selecting and Developing Requirements Documents

811.103 Market acceptance.

811.103–70 Technical industry standards.

Where items are required to conform to technical industry standards, such as those adopted by: Underwriters Laboratories, Inc.; Factory Mutual Laboratories; American Gas Association; American Society of Mechanical Engineers; National Electrical Manufacturers Association; American Society of Heating, Refrigerating and Air-Conditioning Engineers; or similar organizations, where such standards are generally recognized and accepted in the industry involved, the invitation for bids, request for proposals or request for quotations will so state. In no instance, where there is a multiple choice of laboratories, shall the invitation for bid, request for proposal, or request for quotation indicate that the label or certificate of only one such laboratory is acceptable. The contracting officer shall include the provision at 852.211–72, Technical industry

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standards, in solicitations requiring conformance to technical industry standards unless comparable provisions are contained in the item specification.

811.104 Use of brand name or equal purchase descriptions.

811.104–70 Brand name or equal purchase descriptions.

(a) The specification writer may use purchase descriptions that contain references to one or more brand name products only in accordance with 811.104–71 through 811.104–75.

(b) Purchase descriptions that contain references to one or more brand name products must be followed by the words “or equal,” except when the acquisition of a specific brand name is fully justified under FAR Subpart 6.3 and 806.3. If more than one brand name is acceptable, the contracting officer should list the known acceptable brand name products in the solicitation.

(c) Where a “brand name or equal” purchase description is used, the contracting officer must give bidders an opportunity to offer products other than those specifically referenced by brand name. Following bid opening or receipt of offers, the contracting officer must determine if non-“brand name” substitute products fully meet the salient characteristics listed in the solicitation.

(d) When using a “brand name or equal” purchase description, the specification writer must set forth those salient physical, functional, or other characteristics of the referenced products that are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, the specification writer must specify this requirement. The purchase description must contain the following information to the extent available:

(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.

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

(4) Any other information necessary to describe the item required.

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(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.