




U.S. Department of Justice

Washington, D.C. 20530

April 25, 2005

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: 
H.B. Myers
Assistant Director
Procurement Policy and Review

SUBJECT: DOJ Procurement Guidance Document 05-03
Use of Brand Name Specifications

The Office of Federal Procurement Policy is concerned that the use of brand name specifications in agency solicitations has increased significantly and perhaps inappropriately. As a result, OFPP issued a memorandum on April 11, 2005 (copy attached) intended to reinforce the need to maintain vendor and technology neutral contract specifications and strictly adhere to FAR requirements in this regard.

They have asked that agencies take specific steps to mitigate brand name usage. Therefore, please assure your acquisition workforce understands and complies with the following:

1. As a general rule, contract specifications should emphasize the necessary physical, functional, and performance characteristics of a product, not brand names. In cases where the use of a brand name associated with a single manufacturer is warranted, the FAR requires a written justification.
2. Effective immediately, that justification must be published with the contract solicitation when the solicitation is posted on the Federal Business Opportunities website (www.fedbizopps.gov).
3. If publication of the justification is inappropriate because of national security, trade secrets, or similar concerns, a copy of the justification is to be provided to this office. We will forward a copy to the Office of Federal Procurement Policy (OFPP).
4. This guidance applies to all acquisitions, including simplified acquisitions, GSA purchases, and sole source procurements.

Please make this information immediately available to the appropriate people in your organization and add this document to your collection of DOJ Procurement Guidance Documents. Questions should be directed to me at 202/616-3758.

Attachment



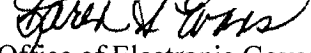
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

April 11, 2005

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
CHIEF INFORMATION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM:

David H. Safavian 
Administrator for Federal Procurement Policy

Karen S. Evans 
Administrator, Office of Electronic Government and
Information Technology

SUBJECT: Use of Brand Name Specifications

The purpose of this memorandum is to reinforce the need to maintain vendor and technology neutral contract specifications and to comply with the requirements in the Federal Acquisition Regulation (FAR) regarding the use of brand name specifications.

FAR 11.105 states "agency requirements shall not be written so as to require a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company ..." An exception to this rule is allowed only if there is a written justification and a "particular brand name, product or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs."

We are concerned the use of brand name specifications in agency solicitations may have increased significantly in recent years, particularly for information technology procurements. For example, some Federal agencies have issued solicitations with specifications for brand name microprocessors associated with a single manufacturer. Rather than issue brand name specifications for microprocessors, agencies should either: 1) articulate a benchmark for performance; or 2) specify the requirements for applications and interoperability. Benchmarks for microprocessors can be specific for functions such as Internet content creation, office applications, or mail servers. Benchmarks may also measure the overall performance of computers. Consistent with the requirements of OMB Circular A-119, agencies should use voluntary consensus standards to help define the performance requirements.

The increased use of brand name specifications is not limited to information technology procurements. For example, last year a Federal agency issued a request for quotations (RFQ) for approximately \$81 million in office supplies. Throughout the RFQ, office supplies were identified by a vendor number unique to one large office supply company.

In these examples, the use of brand name specifications limited competition and diminished the likelihood the agency purchased the best value product. There is also a significant risk of severely limiting small business participation in these cases. To ensure agencies are providing for maximum competition and are purchasing the best products to meet agency needs, solicitations should limit the use of brand names in accordance with the FAR.

Accordingly, we are requesting that agencies take steps to mitigate brand name usage. As a general rule, contract specifications should emphasize the necessary physical, functional, and performance characteristics of a product, not brand names. In cases where the use of a brand name associated with a single manufacturer is warranted, the FAR currently requires a written justification. Effective immediately, we are asking agencies to publicize the justification with the contract solicitation when the solicitation is posted on the Federal Business Opportunities website (www.fedbizopps.gov). If publication of the justification is inappropriate because of national security, trade secrets, or similar concerns, agencies should provide a copy of the justification to the Office of Federal Procurement Policy (OFPP).

Please note that this guidance applies to all acquisitions, including simplified acquisitions, GSA purchases, and sole source procurements. Please contact Rob Burton, Associate Administrator, OFPP, if you have any questions regarding this memorandum. He can be reached on 202-395-7579.