

811.001

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

SOURCE: 63 FR 17335, Apr. 9, 1998, unless otherwise noted.

811.001 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”.

Subpart 811.1—Selecting and Developing Requirements Documents

811.104 Items particular to one manufacturer.

(a) Specifications shall be written in accordance with FAR 11.002 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 11.104) or that a “brand name or equal” purchase description will be used, 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 restrictive specifications or “brand name or equal” purchase descriptions will be included in the solicitation.

(c) Purchase descriptions that contain references to one or more brand name products may be used only in accordance with 811.104-70, 811.104-71, and 811.104-72. In addition, purchase descriptions that 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

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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 (d) 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. However, purchase description may include restrictive dimensions, weights, materials or other salient characteristics if 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 811.104 are made.

811.104-70 Purchase descriptions.

- (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 852.211-70 (Service Data Manual) and in 852.211-71 (Guarantee).
- (b) Solicitations using "brand name or equal" purchase descriptions will

contain the "brand name or equal" clause in 852.211-77, 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 paragraph 811.104-70(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)(1) 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 811.104-70(b) is inapplicable to such component parts, the requirements of 811.104-70(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): and

(2) In the alternative, if the contracting officer determines that the clause in 811.104-70(b) shall apply to only certain such component parts, the requirements of 811.104-70(c) 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