



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Management Services
Division

Contracting Policy No. 11.105
Brand Name Item Descriptions

Purpose: This Contracting Policy provides guidance on the special requirements associated with buying an item peculiar to just one manufacturer, typically by specifying a particular brand name, product, or a feature of a product. It does NOT apply to the use of a “brand name or equal” item description, which is discussed in paragraph 11.104 of the Federal Acquisition Regulation (FAR).

Effective Date: Immediately

Expiration Date: None. (May only be cancelled or superseded.)

Background:

FAR 11.105 indicates that “Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company,” unless:

- The 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;
- The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1); and
- The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.

Three points need to be emphasized here:

- (1) Specifying a particular feature of a product that that is peculiar to one manufacturer makes the entire product a sole-source buy. So if a requiring organization asks you to buy a personal computer with a Pentium chip (microprocessor) in it, for example, the entire buy must be treated as sole source because of the chip specification.
- (2) Since a brand-name description or similar qualifier restricts purchase of the item from one specific manufacturer, competition among distributors of that product does not eliminate the sole-source nature of the acquisition. It may result in a lower price or better terms, but the buy is still by definition sole-source.
- (3) File documentation required to support a brand-name specification is a justification for other than full and open competition (JOFOC), because specification of a brand name

means purchase on a sole-source basis.

The U.S. Office of Management and Budget (OMB) provided additional guidance on the subject, and levied additional requirements, in a memorandum entitled “Use of Brand Name Specifications,” dated April 11, 2005. (A copy of the memorandum is attached.) To summarize:

- In general, use item descriptions that emphasize the necessary physical, functional, and performance characteristics of a product, not brand names.
- When purchasing information technology (IT) try either to articulate a benchmark for performance or specify the requirements for applications and interoperability, rather than using a brand-name description. Benchmarks for microprocessors, for example, 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.
- Be careful not to use an item number that may be unique to one manufacturer.
- If you do use a brand-name specification, you must post the JOFOC on the Federal Business Opportunities (FedBizOpps) website when you post the solicitation.

Below are the specific steps to take when you are asked to buy an item that is brand-name specific or in some other way limited to one manufacturer.

The Policy:

- 1) If you are asked to purchase an item by brand name or other feature that is specific to one manufacturer, contact the requiring organization and make sure that the item must be described this way. Suggest possible alternatives, such as (a) using a brand name or equal item description; (b) describing the item by physical, functional or performance characteristics; or, in the case of IT products, (c) using a benchmark for performance or specifying the requirements for applications and interoperability.
- 2) If you must use a brand name or other manufacturer-specific item identifier, prepare obtain approval of the necessary justification in accordance with Contracting Policy no. 6.3, JOFOCs—Format and Approval Process. Please note that FAR 6.303-1(c) allows us to prepare JOFOCs on a both an individual and class basis. So, if you have a regularly-recurring requirement, or are buying brand-name-specific items to support an on-going project (such as enterprise architecture), consider using a class JOFOC to cover all future buys in one document.
- 3) If you buy the item on an open-market basis, post the approved JOFOC on FedBizOpps when you post the solicitation. If cannot post the JOFOC because of national security, trade secrets, or similar concerns, send a copy of it to the Office of Federal Procurement Policy, Office of Management and Budget, Washington DC 20503.

Point of Contact:

Please direct questions concerning this CP to Tina B. McGuire, Chief, Contracting Group, by telephone at (202) 606-4591 or by e-mail at tina.mcguire@opm.gov.

Appendix

OMB Memorandum dated June 11, 2005

< next page >