

11.103 Market acceptance.

(a) 41 U.S.C. 3307(e) provides that, in accordance with agency procedures, the head of an agency *may*, under appropriate circumstances, require *offerors* to demonstrate that the items offered-

(1) Have either-

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and *solicitation*.

(b) Appropriate circumstances *may*, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items *may* meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the *contracting officer shall* ensure the criteria in the *solicitation*-

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an *offeror's* capability;

(3) Are supported by *market research*;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance *shall* not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the *contracting officer shall* document the file to-

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

Parent topic: Subpart 11.1 - Selecting and Developing Requirements Documents