Subpart 11.1 - Selecting and Developing Requirements Documents

Parent topic: Part 11 - Describing Agency Needs

11.101 Order of precedence for requirements documents.

(a) Agencies *may* select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(1) Documents mandated for use by law.

(2) Performance-oriented documents (*e.g.,* a PWS or SOO). (See 2.101.)

(3) Detailed design-oriented documents.

(4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive *acquisition* of items.

(b) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 (15 U.S.C. 272 note), agencies *must* use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (*e.g.*, industry standards such as ISO 9000, and IEEE 1680).

11.102 Standardization program.

Agencies *shall* select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001; for DoD *components*, DoD Manual 4120.24, Defense Standardization Program (DSP) Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual *may* be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD Manual 4120.24 *may* be obtained from DoD (https://www.esd.whs.mil/Directives/Issuances/dodm or see 11.201(d)(2) or (3)). FIPS PUBS *may* be obtained from the Government Publishing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in 11.201(d)(4)).

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.

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage *offerors* to propose innovative solutions, the use of brand name or equal purchase descriptions *may* be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions *must* include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item *must* meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.105 Items peculiar to one manufacturer.

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-

(a)

(1) 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;

(2)

(i) The authority to contract without providing for *full and open competition* is supported by the required justifications and approvals (see 6.302-1); or

(ii) The basis for not providing for maximum practicable competition is documented in the file (see 13.106-1(b)) or justified (see 13.501) when the *acquisition* is awarded using *simplified acquisition procedures*.

(3) The documentation or justification is posted for *acquisitions* over $25,000. (See 5.102(a)(6).)

(b) For multiple award schedule orders, see 8.405-6.

(c) For orders under indefinite-quantity contracts, see 16.505(a)(4).

11.106 Purchase descriptions for service contracts.

In drafting purchase descriptions for service contracts, agency requiring activities *shall* ensure that *inherently governmental functions* (see subpart 7.5) are not assigned to a contractor. These purchase descriptions *shall*-

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

11.107 Solicitation provision.

(a) Insert the provision at 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a *solicitation*.

(b) Insert the provision at 52.211-7, Alternatives to Government-Unique Standards, in *solicitations* that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.