

PART 4

SPECIFICATIONS

SUBPART 4-1 -- GENERAL PROVISIONS

4-101 General Purpose and Policies.

(1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

(2) Use of Functional or Performance Descriptions. Specifications shall to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

(3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.

4-102 Availability of Documents.

Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

4-103 Emergency Authority.

In the event of an emergency, as determined by the purchasing agent, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these regulations.

4-104 Procedures for the Development of Specifications.

(1) Provisions of General Application.

(a) Application of Section. This Section applies to all persons who may prepare a specification.

(b) Specification of Alternates May be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.

(c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with Subsection (2)(a) of this section or a qualified products list has been developed in accordance with Subsection (2)(d) of this Section for a particular supply, service, or construction item, or need, it shall be used unless the purchasing agent makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.

(e) The purchasing agent should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:

(i) the state of the art;

(ii) the characteristics of the available supplies, services, or construction items; or

(iii) needs of the using agency.

(f) The purchasing agent may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the purchasing agent.

(2) Special Additional Procedures.

(a) Specifications for Common or General Use Items.

(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.

(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the purchasing agent.

(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the purchasing agent.

(b) Brand Name or Equal Specification.

(i) Brand name or equal specifications may be used when the purchasing agent determines that such a specification is in the purchasing agency's best interest.

(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.

(iii) Required Characteristics. Unless the purchasing agent authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.

(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(c) Brand Name Specification.

(i) Use. Since use of a brand name specification is restrictive, such a specification may be used when the purchasing agent or designee makes a written determination. Such determination may be in any form deemed acceptable to the chief purchasing agent, such as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.

(ii) Competition. The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63-56-23 of the Utah Procurement Code.

(d) Qualified Products List.

(i) Use. A qualified products list may be developed with the approval of the purchasing agent, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.

(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.

(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.