

purchasing agency, the head of a using agency, the designees of such officers, and also consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

2. Specification of Alternates May Be Included. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §309. Definitions and Use

#### A. Proprietary Specifications

1. Definition. *Proprietary Specification*• a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

#### 2. Use

a. Since use of a proprietary specification is restrictive, it may be used only when the chief procurement officer or the head of a purchasing agency makes a written determination that only the identified brand name item or items will satisfy the state's needs.

b. Some examples of circumstances which could necessitate proprietary procurement are:

- i. revolving fund purchases for resale, such as groceries, canned good, packing house products, drug sundries, candy, tobacco and other similar items;
- ii. revolving fund purchases of foods for cafeterias, dining halls or dormitories;
- iii. standard replacement parts such as automobiles, machinery, and equipment;
- iv. repairs to automobiles, machinery, equipment, etc.

3. Competition. The procurement officer shall seek to identify sources from which the designated brand name item 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 Chapter 9 (Sole Source Procurement) of this Part.

4. Reports. The chief procurement officer shall submit reports to the commissioner or cabinet department head within 90 days after the end of the fiscal year stating any brand name contracts used; the number of suppliers solicited; the identity of these suppliers; the supplier awarded the contract; and the contract price.

#### B. Brand Name or Equal Specification

1. Definition. A specification that cites brand names, model number, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

2. Use. Some examples of circumstances which could necessitate the use of brand name or equal specifications are:

- a. no specification for a common or general use item or qualified products list is available; or
- b. time does not permit the preparation of another form of specification, not including a brand name specification; or
- c. the nature of the product or the nature of the state's requirements makes use of a brand name or equal specification suitable for the procurement; or
- d. use of a brand name or equal specification is in the state's best interest;
- e. specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall state that substantially equivalent products to those designated will be considered for award.

#### 3. Competition

a. 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 describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

b. Unless the chief procurement officer or the head of a purchasing or using agency authorized to finally approve specifications determines that the essential characteristics of the brand name 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, functional, or performance characteristics which are required.

#### C. Qualified Products List

1. Definition. *Qualified Products List*• a specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on Approved Brands List.

2. Use. A qualified products list may be developed with the approval of the chief procurement officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

3. Comments, Final Approval, Revisions, and Cancellation. Comments on final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedures of Subparagraphs D.3.b-e of this Section applicable to specifications for common or general use items.

4. Solicitation

a. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing 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 its products for consideration.

b. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

D. Common or General Use Item

1. Definition. *Specification for a Common or General Use Item* a specification which has been developed and approved for repeated use in procurement in accordance with the provisions of R.S. 39:1651.A and B.

2. Use. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, or major repair item, or need, it shall be used unless the chief procurement officer or the head of a purchasing agency makes a written determination that its use is not in the state's best interest and that another specification shall be used.

3. Special Additional Procedures

a. Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized:

i. when a supply, service, or major repair item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or major repair item as commercially produced or provided remain relatively stable while the frequency or volume of procurement is significant;

ii. where the state's recurring needs require uniquely designed or specially produced items; or

iii. when the chief procurement officer, or the head of a purchasing or using agency authorized to prepare such specifications, finds it to be in the state's best interest.

b. In the event a using agency requests the preparation of a specification for a common or general use item, the chief procurement officer shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii have been met.

c. Comments on the Draft. The chief procurement officer, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to comment on the draft

specification to the using agencies, and as reasonable a number of manufacturers and suppliers as such officer deems appropriate.

d. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the chief procurement officer, or by the head of a purchasing or using agency authorized to give such approval.

e. Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications but which are necessary for clarification may be made upon approval of the chief procurement officer, or the head of a purchasing or using agency authorized to approve such specifications. Interim revisions to fit the requirements for a particular procurement which change the technical elements of the specification may be made by the chief procurement officer, or the head of a purchasing or using agency authorized to approve such a specification. All other revisions shall be made in accordance with Subparagraphs D.3.a-d of this Section.

f. Cancellation. A specification for a common or general use item may be canceled by the chief procurement officer, or by the head of a purchasing or using agency authorized to give final approval to such specifications.

E. Use of Functional or Performance Descriptions. State agencies should emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the state to the extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

## Chapter 5. Competitive Sealed Bidding

### §501. Content of the Invitation for Bids

#### A. Invitation for Bids

1. Purchases where the estimated cost is over \$5,000 shall be made by sending out written Invitations for Bids to at least five responsible bidders, and if feasible, use should be made of state purchasing's computerized vendor list. Purchases where the estimated cost is over \$25,000 shall be advertised in accordance with R.S. 39:1594. All advertisements or written invitations for bids shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

a. the date and time when bids will be received, opened and publicly read;

b. the names and locations of the state agencies for which the purchases are to be made;

c. where and how specifications and bid forms may be obtained.