



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

MAY 30 2008

MEMORANDUM FOR DISTRIBUTION

Subj: BRAND NAME SPECIFICATIONS AND COMPETITION

Ref: (a) DASN (ACQ) memo dated November 28, 2006

Encl: (1) DPAPSS memo dated May 13, 2008

Reference (a) emphasizes the need for the acquisition workforce to comply with current policy and regulation governing the use of brand name specifications in our contracts. The Federal Acquisition Regulation (FAR) establishes the requirement to justify and document, in writing, why a particular brand name, product, or feature is essential in meeting the Government's needs. If the proposed contract action exceeds \$25,000, the FAR also requires contracting officers to post the approved justification or documentation with the solicitation through the government-wide point of entry (GPE) available at <http://www.fedbizopps.gov> or, if ordering under the Federal Supply Schedules, through e-Buy at <http://www.ebuy.gsa.gov>. Enclosure (1) re-emphasizes the Department's position to strictly adhere to these requirements.

Please remind your acquisition workforce that the use of brand name specifications in solicitations and contracts discourages innovation, limits competition and impacts the final price or cost of the requirement. To the maximum extent practicable, contract requirements must be written in a manner that promotes full and open competition. If this is not possible, the acquisition team must justify and document the use of brand name specifications for the particular contract. Contracting officers are responsible for publicizing through the appropriate Web site any approved justification or documentation to use brand name specifications in a proposed contract action that is expected to exceed \$25,000.

My point of contact for this memorandum is Evelyn Ortiz at (703) 614-9640 or evelyn.ortiz@navy.mil.


M. F. LAGGARD
Chief of Staff/Policy
for DASN (A&LM)

Distribution: See page 2

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ACQUISITION
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OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

MAY 13 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITIONS EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Brand Name Specifications and Competition

The Office of Management and Budget (OMB) issued policy memoranda in April 2005 and April 2006 implementing brand name posting requirements for all federal acquisitions (including simplified acquisitions and sole source procurements) over \$25,000.00. OMB issued a follow up policy memorandum in November 2007, based on complaints received regarding the inappropriate use of brand name or equal purchase descriptions

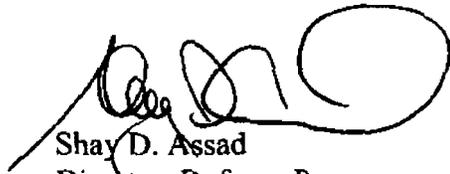
I am concerned that DoD components may not be properly following the brand name or equal policy. My office was presented with the results of a sampling of solicitations issued by the Department of Defense (DoD) from May 12, 2007, through November 12, 2007. In that period, there were 139 solicitations issued by DoD components on FedBizOpps that specified a particular brand name microprocessor. Of the 139 brand name microprocessors, 102 or 73% did not allow for the use of an equivalent. While the survey we received dealt with information technology (IT), the increased use of brand name specifications is not limited to procurements for IT.

The purpose of this memorandum is to reinforce the need to maintain neutral contract specifications and to ensure that the Department strictly complies with the requirements in the Federal Acquisition Regulation (FAR) regarding the use of brand name specifications and providing for full and open competition in soliciting offers and

awarding Government contracts. Contracting Officers shall provide for full and open competition through use of competitive procedure(s) that are best suited to the circumstances of the contract action and are consistent with the need to fulfill the Government's requirements efficiently.

The use of brand name specifications limits competition and discourages innovation. However, if it is necessary to use brand name specifications, contracting officers must prepare and publicize brand name justification or documentation on the appropriate Web site in accordance with FAR 5.102(a)(6) and 8.405-6.

This guidance applies to all acquisitions made by or on behalf of the DoD, including simplified acquisitions, GSA schedule purchases, and sole source procurements. My point of contact for this memorandum is Susan M. Hildner at 703-697-0895 or susan.hildner@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', written over a horizontal line.

Shay D. Assad
Director, Defense Procurement,
Acquisition Policy, and
Strategic Sourcing

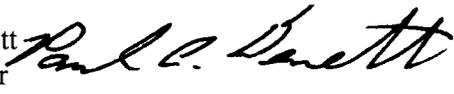


OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 28, 2007

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM: Paul A. Denett 
Administrator

SUBJECT: Appropriate Use of Brand Name or Equal Purchase Descriptions

The Office of Management and Budget (OMB) issued policy memorandums in April 2005 and April 2006, implementing brand name posting requirements for acquisitions (including simplified acquisitions and sole source procurements) over \$25,000. The Federal Acquisition Regulation (FAR) was revised in September 2006 to incorporate this new policy. However, we are concerned that agencies are not preparing and posting the brand name justification or documentation in accordance with the new FAR requirements. Complaints have also been received by this office on the inappropriate use of brand name or equal purchase descriptions in solicitations. Agencies are reminded that the FAR provides the following guidance on the use of brand name or equal purchase descriptions:

- Ensure acquisition planning addresses *why* the capability or performance characteristics for the supplies or services are not available for incorporation in the solicitation, see FAR 7.105;
- Conduct market research to ensure the brand name or equal specification solicited is the only brand that can meet agency needs, see FAR 10.001;
- Advise program officials and requiring officials on the appropriate use of brand name or equal purchase descriptions in solicitations, see FAR 11.104(b); and
- Prepare and publicize the brand name justification or documentation on the appropriate website in accordance with FAR 5.102(a)(6) and 8.405-6.

To enhance transparency and competition, agencies should also establish internal controls to monitor the issuance of brand name purchase descriptions and the publication of the justification or documentation in accordance with the FAR.

Brand name or equal purchase descriptions should be properly used. Misuse of these purchase descriptions can limit competition, impact prices, and ultimately, affect how taxpayer dollars are spent. If you have any questions regarding this memorandum, please contact Julia Wise on (202) 395-7561 or jwise@omb.eop.gov.