

Panama Canal Commission

3510.004-70

information in paragraph (a) of this section, the Commission will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* When the contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

3509.507 Procedures.

(a) The contracting officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the General Counsel prior to award. If the organizational conflict of interest cannot be resolved, the contracting officer shall disqualify the prospective contractor from receiving the contract award.

(b) The General Counsel shall review and make the final decision required at FAR 9.507(c)(4) on any contractor request for higher review of the contracting officer's decision.

3509.508 Solicitation provision and contract clause.

3509.508-1 Solicitation provision.

The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure in solicitations that in the contracting officer's judgment may be susceptible to organizational conflicts of interest.

3509.508-2 Contract clause.

The contracting officer shall insert the clause at 3552.209-71, Organizational Conflict of Interest, in solicitations and contracts that will include the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure.

PART 3510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

3510.001 Definitions.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

3510.007 Deviations.

3510.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7644, Mar. 2, 1990, unless otherwise noted.

3510.001 Definitions.

Salient characteristics mean those particular characteristics that specifically describe the essential physical and/or functional features of a brand name product. They are those essential physical and/or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product must possess in order for the product to be considered responsive. The term excludes those physical and/or functional features of a brand name product that:

(a) Are not essential to the needs of the Commission, or

(b) Do not affect the suitability of the product for its intended use.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only under the conditions indicated in FAR 10.004(b)(2) and (3) and shall be in accordance with this subsection. The office initiating the "brand name or equal" purchase request is responsible for documenting to the contracting officer's satisfaction that the conditions for its use are valid. Where feasible, all known acceptable brand name products should be referenced.

(b) The words "or equal" should not be added when the contracting officer has determined, with the concurrence of the General Counsel and the signed approval of the cognizant HCA, that only a particular product meets the essential requirements of the Commission.

(c) Brand name or equal purchase descriptions shall include, in addition to those characteristics set forth in FAR

10.004(b)(1) to the extent they are applicable, the following type of information to clearly identify the specific item named by brand(s) and its salient characteristics:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity, if applicable, of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand name product reference (and address if company is not well known); and

(4) All salient characteristics of the brand name product or products which have been determined by the initiating office, with the concurrence of the contracting officer, to be essential to meet the Commission's minimum physical and/or functional requirements. The purchase description shall state or otherwise indicate that the salient characteristics are mandatory features which proposed equal products must possess in order to be considered responsive.

(d) Except as provided in paragraph (e) of this subsection, when a brand name or equal purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation schedule for completion by the offeror:

To be completed by offeror:

Manufacturer's Name: _____

Manufacturer's Address: _____

Brand Name of Product (if any): _____

NOTE: Offerors are cautioned and advised to read provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, prior to completing the above. As indicated therein, offerors proposing to furnish an "equal" product must furnish all descriptive material necessary to determine the acceptability of such product.

(e) Where component parts of an end item are described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 3552.210-70 to such component parts would be impracticable, the requirements of paragraph (d) of this subsection and 3510.011(h) shall not apply with respect to such component parts. However, if the provision is included in the solicitation for other reasons, there shall also be included in the solici-

tion a statement to identify either the component parts (described by brand name or equal purchase descriptions) to which the provision applies or those to which it does not apply. Depending upon whether the former or latter alternative is used, the statement should be substantially as follows:

The provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, applies to the following component parts: (List the component parts to which the provision applies.)

or

The provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, does not apply to the following component parts: (List the component parts to which the provision does not apply.)

This paragraph (e) also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of the end item.

(f) When considered appropriate by the contracting officer, solicitations incorporating brand name or equal purchase descriptions may require the submission of offer samples in the case of offerors proposing to furnish "equal" products; such samples shall not be required from offerors who offer brand name products referenced in purchase descriptions.

(g) Offers proposing to furnish products other than those specifically referenced by brand name shall be considered for award when the contracting officer determines under provision 3552.210-70 that the offered products meet the salient characteristics identified in the purchase description. Offers shall not be rejected as nonresponsive for failure of the product to equal a characteristic of a brand name product if such characteristic was not specified as a salient characteristic in the brand name or equal purchase description. However, if it is clearly established that the unspecified characteristic is essential to the intended use, the solicitation is defective and no award shall be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth all salient characteristics.

(h) The brand name or equal policies and procedures in this subsection may

Panama Canal Commission

3510.011

be used in small purchase acquisitions to the extent that they are applicable and practicable.

(i) This subsection is not applicable to construction contracts since the use of equal equipment, materials, articles, or processes are covered by FAR clause 52.236-5, Material and Workmanship.

3510.007 Deviations.

Heads of Contracting Activities are designated to authorize the deviations permitted under FAR 10.007 and are responsible for ensuring that the actions required by FAR 10.007 are accomplished.

3510.011 Solicitation provisions and contract clauses.

(h) The contracting officer shall insert the provision at 3552.210-70, Brand Name Products or Equal, in solicitations that call for the delivery of a brand name or equal product, selecting the language that is appropriate for (1) invitation for bids, or (2) requests for proposals, as parenthetically indicated in the provision. (However, see 3510.004-70(e) regarding the applicability of the provision to component parts of an end item and to accessories related to an end item.)