

**852.211-76**

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985. Redesignated at 63 FR 17338, Apr. 9, 1998]

**852.211-76 Noncompliance with packaging, packing, and/or marking requirements.**

The following clause will be included in contracts for supplies for delivery to supply distribution warehouses or depots for storage and subsequent issue to a using activity. It may also be included when appropriate when delivery is direct to a using activity.

**NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING REQUIREMENTS (JUL 1989)**

Failure to comply with the packaging, packing, and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the contractor, to perform the required repackaging, repacking, and/or marking services and charge the contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking, and/or marking services.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985; 54 FR 30045, July 18, 1989; 61 FR 11587, Mar. 21, 1996. Redesignated at 63 FR 17338, Apr. 9, 1998]

**852.211-77 Brand name or equal.**

The brand name or equal clause when used as prescribed by 811.104 will be as follows:

**BRAND NAME OR EQUAL (NOV 1984)**

(NOTE: As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one de-

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scribed by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his/her bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his/her bid all descriptive material (such as cuts, illustration, drawings or other information) necessary for the purchasing activity to: (i) Determine whether the product offered meets the salient characteristics requirement of the Invitation for Bids, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he/she shall: (i) Include in his/her bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

[50 FR 796, Jan. 7, 1985, as amended at 53 FR 7756, Mar. 10, 1988. Redesignated and amended at 63 FR 17338, Apr. 9, 1998]

**852.211-78 Liquidated damages.**

As prescribed in 811.504 and 836.206, the contracting officer may insert the following clause when appropriate:

## Department of Veterans Affairs

852.214-73

### PARTIAL PERFORMANCE AND ACCEPTANCE (APR 1984)

If any unit of the work contracted for is accepted in advance of the whole, the rate of liquidated damages assessed will be in the ratio that the value of the unaccepted work bears to the total amount of the contract. If a separate price for unaccepted work has not been stated in the contractor's bid, determination of the value thereof will be made from schedules of costs furnished by the contractor and approved by the contracting officer, as specified elsewhere in the contract.

(End of clause)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985. Redesignated and amended at 63 FR 17338, Apr. 9, 1998]

### 852.214-70 Caution to bidders—bid envelopes.

As provided in 814.201, the following provision will be prominently placed on all IFB's:

#### CAUTION TO BIDDERS—BID ENVELOPES (APR 1984)

It is the responsibility of each bidder to take all necessary precautions, including the use of a proper mailing cover, to insure that the bid price cannot be ascertained by anyone prior to bid opening. If a bid envelope is furnished with this invitation, the bidder is requested to use this envelope in submitting the bid. The bidder may, however, when it suits a purpose, use any suitable envelope, identified by the invitation number and bid opening time and date. If a bid envelope is not furnished, the bidder will complete and affix the enclosed Optional Form 17, Sealed Bid Label, to the lower left-hand corner of the envelope used in submitting the bid.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, Jan. 7, 1985]

### 852.214-71 Alternate items.

As prescribed in 814.201, consideration of alternate items may be appropriate. The following provisions may be used under the specified conditions:

(a) When an alternate item is to be considered only if no bids or insufficient bids are received on the item desired, the following will be included in the invitation:

#### ALTERNATE ITEM(S) (APR 1984)

Bids on \_\_\_\_\_<sup>5</sup> will be considered only if acceptable bids on \_\_\_\_\_<sup>6</sup> are not received or do not satisfy the total requirement.

(End of provision)

(b) When an alternate item will be considered on an equal basis with the item specified, the following will be included in the invitation:

#### ALTERNATE ITEM(S) (APR 1984)

Bids \_\_\_\_\_<sup>5</sup> will be given equal consideration along with the \_\_\_\_\_<sup>6</sup> and any such bids received may be accepted if to the advantage of the Government. Tie bids will be decided in favor of.<sup>6</sup>

(End of provision)

(c) In addition to the clause in paragraph (a) or (b) of this section, the following provision will be included in the invitation when bids will be allowed on different packaging, unit designation, etc.

#### ALTERNATE PACKAGING AND PACKING (APR 1984)

The bidder's offer must clearly indicate the quantity, package size, unit, or other different feature upon which the quote is made. Evaluation of the alternate or multiple alternates will be made on a common denominator such as per ounce, per pound, etc., basis.

(End of provision)

[49 FR 12629, Mar. 29, 1984, as amended at 50 FR 794, 796, Jan. 7, 1985]

### 852.214-73 Bid samples.

As prescribed in 814.202-4, insert the following provision:

#### BID SAMPLES (SEP 1993)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all charges pertaining to the preparation and transportation of bid sample(s) must be prepaid by \_\_\_\_\_

<sup>5</sup>Contracting officer will insert an alternate item that is considered acceptable.

<sup>6</sup>Contracting officer will insert the required item and item number.