

Federal Acquisition Regulation

11.002

part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use part 12 for the acquisition (see 5.207(e)).

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

[60 FR 48237, Sept. 18, 1995, as amended at 68 FR 43863, July 24, 2003; 68 FR 56679, 56682, Oct. 1, 2003]

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AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 60 FR 48238, Sept. 18, 1995, unless otherwise noted.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

Reconditioned means restored to the original normal operating condition by readjustments and material replacement.

Remanufactured means factory rebuilt to original specifications.

[62 FR 44810, Aug. 22, 1997, as amended at 63 FR 9051, Feb. 23, 1998; 65 FR 36017, June 6, 2000]

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or

to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, establish requirements for acquiring—

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services;

(iv) Products and services that utilize renewable energy technologies; and

(v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see Subparts 23.2 and 23.4, and 23.703(b)) when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for supplies and services; and

(iii) Developing source-selection factors.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with Section 508 of the Rehabilitation Act of 1973 (29

U.S.C. 794d), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.2).

[60 FR 48238, Sept. 18, 1995, as amended at 61 FR 39192, July 26, 1996; 62 FR 263, Jan. 2, 1997; 62 FR 44810, Aug. 22, 1997; 62 FR 51230, Sept. 30, 1997; 65 FR 36017, June 6, 2000; 66 FR 20897, Apr. 25, 2001; 66 FR 65352, Dec. 18, 2001; 68 FR 43858, July 24, 2003]

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

- (1) Documents mandated for use by law.
- (2) Performance-oriented documents.
- (3) Detailed design-oriented documents.
- (4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) Agencies shall prepare requirements documents to achieve maximum practicable—

- (1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and
- (2) Use of recovered material, other materials that are environmentally preferable, energy- and water-efficient products, and renewable energy technologies (see subparts 23.2, 23.4, and 23.7).

(c) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except

where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (e.g., industry standards such as ISO 9000).

[60 FR 48238, Sept. 18, 1995, as amended at 62 FR 44810, Aug. 22, 1997; 64 FR 51834, Sept. 24, 1999; 66 FR 65352, Dec. 18, 2001; 68 FR 43858, July 24, 2003]

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001, and, for DoD components, DoD 4120.3-M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.3-M may be obtained from DoD (see address in 11.201(d)(2)).

[63 FR 34062, June 22, 1998]

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

- (1) Have either—
 - (i) Achieved commercial market acceptance; or
 - (ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and
- (2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved