

Chapter 4

Specifications

4.101 Definition of Terms Used in this Chapter

4.101.01 Definitions

- (1) Brand Name Specification – a specification limited to one or more items by manufacturers' names or catalog numbers.
- (2) Brand Name or Equal Specification – a specification which uses two or more manufacturer's names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet Mississippi requirements and which provides for the submission of equivalent products. The use of Brand Name or Equal Specifications that contain less than two manufacturer's names or catalog numbers may be cause for rejection of the purchase request by the Office of Purchasing, Travel and Fleet Management.
- (3) Qualified Products List – an approved list of supplies, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.
- (4) Specification – any description of the physical, functional, or performance characteristics or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (5) Specification for a Common or General Use Item – a specification which has been developed and approved for repeated use in procurements in accordance with the provisions of Subsection 4.104.01, Procedures for the Development of Specifications.

4.102 Duties of the Office of Purchasing, Travel and Fleet Management

The Office of Purchasing, Travel and Fleet Management shall promulgate regulations with approval of the Public Procurement Review Board (PPRB) governing the preparation, maintenance, and content of specifications for commodities and equipment required by the State.

4.102.01 General Purpose and Policies

4.102.01.1 Purpose

The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item adequate and suitable for the State's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the State's requirements.

4.102.01.2 Use of Functional or Performance Descriptions

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the State. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.

4.102.01.3 Preference for Commercially Available Products

It is the general policy of this State to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

4.102.02 Availability of Documents

Except as provided in Subsection 4.104.01, Procedures for the Development of Specifications, regarding testing and confidential data, specifications, and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to Section 1.108, Public Access to Procurement Information.

4.103 Duties of the Chief Procurement Officer

The Chief Procurement Officer or their designee shall prepare, issue, revise, maintain, and monitor the use of specifications for commodities and equipment required by the State.

4.103.01 Authority to Prepare Specifications**4.103.01.1 Authority of the Chief Procurement Officer and State Agencies**

The Chief Procurement Officer is authorized to prepare specifications. The Chief Procurement Officer may delegate the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of commodities and equipment provided such delegations may be revoked by the Chief Procurement Officer.

4.103.01.2 Authority to Contract for Preparation of Specifications

When a determination is made by the Chief Procurement Officer or the head of a purchasing agency authorized to prepare such specifications that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the State, a contract to prepare specifications for State use in procurement of commodities or equipment may be entered into provided such officer has the authority to approve the specifications.

4.103.01.3 Small Purchase and Emergency Authority

If a specification for general or common use or a qualified products list exists for an item to be procured under Section 3.108, Purchases less than \$50,000.01, it may be used except as otherwise provided by the Chief Procurement Officer or the head of a purchasing agency. If no

such specification exists, purchasing and using agencies are hereby granted the authority to prepare specifications for use in such purchases. In an emergency under Section 3.110, Emergency Procurements, any necessary specifications may be utilized by the purchasing or using agency without regard to the provisions of this chapter.

4.104 Procedures for the Development of Specifications

4.104.01.1 Provisions of General Application

(1) Application of Section

This section applies to all persons who may prepare a specification for State use, including the Chief Procurement Officer, the head of a purchasing agency, the head of a using agency, and the designees of such officers.

(2) Specification of Alternates

A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will adequately meet the State's requirements.

(3) Use of Existing Specifications

If a specification for a common or general use item has been developed in accordance with Subsection 4.104.01, Procedures for the Development of Specifications, or a qualified products list has been developed in accordance with Subsection 4.104.01.2 (4), Qualified Products List, for a particular commodity or equipment item, it may 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.

Commentary

The Chief Procurement Officer may provide for the periodic review of certain specifications to determine whether any existing specification needs revision or a new specification is needed to reflect changes in:

- (1) The state-of-the-art;
- (2) The characteristics of the available supplies, services, or construction items; or
- (3) Needs of the using agency.

4.104.01.2 Special Additional Procedures

(1) Specifications for Common or General Use Items

- (a) Preparation and Utilization

A specification for common or general use items shall, to the extent practicable, be prepared to be utilized when:

- (i) A commodity or equipment item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the commodity or equipment item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;
- (ii) The State's recurring needs require uniquely designed or specially produced items; or
- (iii) 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.

In the event a using agency requests the preparation of a specification for a common or general use item, the Chief Procurement Officer may prepare such a specification if such officer determines the conditions in Subsections 4.104.01.2 (1)(a)(i), (ii), or (iii), Preparation and Utilization, have been met.

(b) 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 may provide the using agencies, and a reasonable number of manufacturers and suppliers as such officer deems appropriate, an opportunity to comment on the draft specification.

(c) 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.

(d) 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 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 specifications. All other revisions shall be made in accordance with 4.104.01.2 (1)(b), Comments on the Draft, and Subsection 4.104.02.2 (1)(c), Final Approval.

(e) 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.

(2) Brand Name or Equal Specification

(a) Applicability of this Subsection

Subsection, 4.104.01.2(2), Brand Name or Equal Specification, shall apply whenever brand names are used in specifications except as provided in Subsection 4.104.01.2(3), Brand Name Specification.

(b) Use

Brand name or equal specifications may be prepared to be used when the Chief Procurement Officer or the head of a purchasing agency determines that:

- (i) No specification for a common or general use item or qualified products list is available;
- (ii) Time does not permit the preparation of another form of specification, not including a brand name specification;
- (iii) 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
- (iv) Use of a brand name or equal specification is in the State's best interest.

(c) Designation of Several Brand Names

Brand name or equal specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(d) Required Characteristics

Unless the Chief Procurement Officer or the head of a purchasing or using agency authorized to approve specifications determines that the essential characteristics of the brand names 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.

(e) Non-restrictive Use of Brand Name or Equal Specifications

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.

(3) Brand Name Specification

(a) Use

Since use of a brand name specification is restrictive, it may be used only when the Chief Procurement Officer makes a determination that only the identified brand name item or items will satisfy the State's needs.

(b) Competition

The Agency Procurement Officer shall seek to identify sources from which the designated brand name item or items 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 Section 3.109, Sole-Source Procurement.

(4) Qualified Products List

(a) 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 commodities prior to issuance of the solicitation is desirable or necessary in order to best satisfy the requirements.

(b) 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 Subsections 4.104.01.2 (1) (b), Comments on the Draft, through 4.104.01.2 (1) (e), Cancellation, applicable to specifications for common or general use items.

(c) Solicitation

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.

(d) Testing and Confidential Data

Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in

writing by the supplier. However, qualified products lists test results shall be made public but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.

Commentary

The obligation to keep data confidential is not intended to create any liability that would not otherwise exist under State law.

4.105 Relationship with Using Agencies

The Chief Procurement Officer may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

4.106 Formulation and Restriction

Specifications written to invite bidding for term contracts when issued for the first time will be sent to selected competitive vendors for their review and comment prior to the request for formal bid. A standard form will be furnished with these specifications with questions that should be answered by all those surveyed and a request for comments if appropriate.

It will not be the intent of the Office of Purchasing, Travel and Fleet Management to either write or approve any specifications that are restrictive and preclude competitive bidding. Neither will it be the intent or policy of the Office of Purchasing, Travel and Fleet Management to write or allow to be written specifications that are so open and nonspecific as to invite participation by vendors offering less than quality products.

In the formulation of specifications, we would both welcome and invite vendor participation, but we would have it clearly understood that we will not tolerate vendor dictations.

In some cases, it will be absolutely necessary that the specifications be written in a manner that would invite bids on a single product or service or major repair part so as to conform to and be compatible with items of equipment or furnishings presently in use. When such cases arise, no consideration will be given to an alternate bid.

4.107 Maximum Practicable Competition

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs, and shall not be unduly restrictive. Specifications shall not be written so as to exclude equipment of domestic manufacture as provided for in [Section 31-7-13\(c\), Mississippi Code of 1972, Annotated](#).

4.107.01 Non-restrictiveness Requirement

All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary commodity or equipment item, or procurement from a sole source, unless no other manner of description will suffice. In that event,

a written determination shall be made that it is not practicable to use a less restrictive specification.

4.108 Specifications Prepared by Architects and Engineers

The requirements of this chapter regarding the purposes and non-restrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

4.108.01 Specifications Prepared by Other Than State Personnel

The requirements of this chapter shall apply to all specifications prepared by other than State personnel including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than State personnel shall require the specification writer to adhere to such requirements. When persons other than State personnel prepare specifications, the State shall not be relieved from the comment and review requirements of this chapter.