

Part I Chapter 13 Specification/Statement of Work

- A. Common Standard.** Central to all competitive procurements is the common standard. Bidders must submit bids on an equal basis. In competitive sealed bidding, the term "lowest bidder" implies a common standard under which bids must be received. The common standard implies a specification (or statement of work ("SOW")) and terms and conditions that are freely accessible to all competitors. The bids must be based upon the specification (or SOW) and the terms and conditions.
- B. Purpose of Common Standard.** A common standard is necessary to ensure fair and just competition, thus eliminating as much as possible, any question of favoritism. The purpose of competitive procurement is frustrated where there is no common standard. The common standard provides a level playing field for those who want to compete for Commonwealth contracts.
- C. Ambiguous Specification or SOW.** If bidders are misled by specifications or statement of work requirements, the bidding was not on a common basis, and the lowest figures submitted would not, in law, be the lowest bid since it lacked fair competition.
- D. Modifications Prohibited.** In the competitive bidding method of procurement, discussions between the Commonwealth and a bidder resulting in modification of the specification or scope of work is not in keeping with the purpose of competitive bidding. When an Agency deviates from the requirements of competitive bidding by changing the terms of its IFBs, the proper procedure is to set aside all of the bids, readvertise, and secure new bids so that all of the bidders would be on an equal footing.
- E. Conformance with Specification/SOW.** If bids could depart from the specification/SOW, the result would be the defeat of competition and a contract in which there was no competitive bidding. If the bid does not conform to the specification or SOW in all elements, it is not a bid at all; but a new proposition.
- F. Proprietary Specification or SOW.** Since the purposes for competitive bidding require that all responsible bidders shall have the opportunity to compete, a specification or SOW that has the effect of putting unnecessary obstacles in the way of potential bidders is faulty and illegal. A proprietary specification or SOW has the effect of severely restricting competition. The fact that only one bidder may be able to meet the requirements of the specification or SOW does not, in and of itself, make the specification or SOW invalid.
- 1. Legitimate Needs vs. Mere Preferences.** The Commonwealth should seek to meet legitimate and valid needs. The specifications or SOW should represent a bonafide attempt to satisfy those needs. "Real needs" refer to an item which will fully satisfy the Agency's requirements and not effect mere references. Anything desired which would exceed minimum needs is subject to question. If there is a legitimate and valid need, the specification is not faulty even if only one manufacturer makes the item which meets the specification.

2. **Discretion in Preparation of Specifications/SOW.** The Commonwealth has some latitude of discretion in preparing the specification or SOW. Unless the specification or SOW is prepared in a hasty or capricious manner, or are not founded upon the exercise of a reasoned judgment, and absent fraud or collusion, courts will not disturb an award.
- G. "Or Equal" Specification.** The words "or equal" in a specification mean that the bidder is given the opportunity to substitute an item in place of the specified manufacturer's product named in the invitation to bid. Thus, when the words "or equal" are used, the specifications do not strictly limit competitive bidding to suppliers of the designated manufacturer's type. Any substituted item must, however, in the opinion of the purchasing agency, be equal to the referenced item in terms of character, quality, and performance.
1. **Minimum Standard.** The reference to the specified manufacturer's product provides a minimum standard of character, quality, and performance.
 2. **Missing "Or Equal" Words.** If the words "or equal" or "or approved equal" are not inserted after the manufacturer trade name and number, they shall be implied. Therefore, bidders can offer substitutes.
 3. **Identification and Descriptive Literature.** A bidder quoting on a material other than the referenced make and model should:
 - a. Furnish complete identification in the bid of the product it is offering by the trade name, brand, and/or model number.
 - b. Furnish descriptive literature and data with respect to the substitute material.
 - c. Indicate any known specification deviations from the referenced material.
 4. **Purchasing Agency Responsibility.** It is incumbent upon the purchasing agency to evaluate the information on the substitute material to determine if it is equal in character, quality, and performance.
- H. No Substitute Specification.** When a "no substitute" is requested, the purchasing agency will consider bids for the referenced material only. When a "no substitute" is specified, the purchasing agency must have written justification to show that only the referenced material will fully satisfy the Agency's needs.
- I. Alternatives.** An alternate is a product that deviates from the requirements of the written specification or SOW in its composition, qualities, performance, size, dimensions, etc. Since an alternate does not meet the requirements of the specification or SOW, a bid offering an alternate must be rejected.
- J. Specification or SOW Preparation Guidelines.**
1. Unless there is satisfactory justification for a superior product, an industry standard specification or SOW should generally be used.

2. Specifications that merely reference a manufacturer's product should be used sparingly and only when necessary.
3. A specification or SOW should generally be performance and/or quality driven to describe the performance and/or quality parameters that are required to meet the Agency's legitimate needs.
4. Satisfactory justification for no substitute specification or SOW is required.
5. Adequate time must be allowed for bidders to prepare and submit bids. If insufficient time is not given, the bidder may not have adequate time to fully read and comprehend the bid requirements.