

SUPPORTING STATEMENT FOR 0505-0014

Brand Name or Equal Provision and Clause

A. Justification.

1. Need for data collection. In order to obtain goods or services, USDA, like other Federal agencies, has established agency contracting offices to enter into Federal contracts. These offices employ contracting officers, who request bids or offers for work from businesses in the private sector using solicitations. Contracting officers award contracts to successful bidders or offerors (contractors) based on their bids or offers, which use the government solicitation as a bid or offer form. Clauses in the solicitation are called "provisions" when they are not to be incorporated in the contract and "clauses" when they become parts of the contract terms and conditions. Contracting officers may use less formal procedures for requirements of \$100,000 or less; they may use written or oral requests for quotations (RFQs) to obtain quotations from vendors.

When it issues a formal solicitation to acquire products, the contracting office includes a specification or purchase description in the solicitation that describes the product sought and desired characteristics of the product. Contracting offices also include purchase descriptions in RFQs for products. Contracting officers may avoid using lengthy purchase descriptions to describe commonly available products by establishing a particular brand name product as a benchmark and inviting offerors to offer that product or products which are equal to the named product. Brand name or equal purchase descriptions must include a listing of the salient characteristics which offered products must have to be considered equal to the benchmark product. The provision entitled "Brand Name or Equal" and the "Equal Products Offered" clause are prescribed by the Agriculture Acquisition Regulation (AGAR) (48 CFR Ch. 4) to obtain information about offerors' products. The prescription (48 CFR 411.171), provision (48 CFR 452.211-70), and clause (48 CFR 452.211-71) are attached as Attachment A. The contracting officer needs information about the salient characteristics of an offeror's product to evaluate whether the offered product is equal to the benchmark product.

2. Purpose for which information will be used. "Brand Name or Equal" information requests require the offeror on a supply procurement to identify the "equal" item being offered and to indicate how that item meets salient characteristics stated in the purchase description. The contracting officer determines from the information furnished whether the offered item meets the Government's requirements.

3. Use of improved information technology. Use of electronic commerce for solicitation and submission of offers may allow submission of this information through electronic networks. The information required would not change.

4. Efforts to identify duplication. In August 1999, the Federal Acquisition Regulation (FAR) was amended to include a “Brand Name or Equal” provision (48 CFR 11.107(a); 48 CFR 52.211-6). There is some duplication between the text of the FAR provision and the Brand Name or Equal provision used in USDA solicitations. However, the information collection accomplished by USDA’s provision does not duplicate an information collection performed by the FAR provision. There is no OMB approval number assigned to the FAR provision (see 48 CFR 1.106). Therefore, USDA must secure approval of this collection independently. Amending the text of USDA’s Brand Name or Equal provision will not reduce the information collection burden.

The information required about the commercial product is unique to each solicitation and contract incorporating the clause.

5. Impact on small entities and efforts to minimize burden. This information collection will not have a significant economic impact on a substantial number of small entities.

6. Program consequences if collection is not conducted or conducted less frequently. Agencies would expend more time developing detailed purchase descriptions. Offerors would spend more time reading and interpreting the purchase descriptions. Offerors may submit unnecessarily elaborate responses to RFQs or solicitations. In some cases, offerors may lose contract opportunities through misinterpretation of the purchase description.

7. Special circumstances. There are no special circumstances that require information collection inconsistent with 5 CFR 1320.5.

8. 5 CFR 1320.8(d) Solicitation of Comments. A 60 day Notice was published in the Federal Register on May 30, 2006, pages 30650 and 30651. No public comments were received in response to the Notice. A copy of the notice is attached as Attachment B.

9. Payments or gifts to respondents. No payments or gifts have been, or will be, made to respondents.

10. Confidentiality. No assurance of confidentiality is included in the provision which requests the information to be collected or in the AGAR. However, business and technical information provided by offerors is protected by the Trade Secrets Act (18 U.S.C. 1905), exception 4 to the Freedom of Information Act (5 U.S.C. 552(b)(4)), section 821 of the National Defense Authorization Act for 1997 (Pub. L. 104-201 sec. 821), and/or the Procurement Integrity Act (41 U.S.C. 423). The FAR protects the confidentiality of business and technical information by restricting the disclosure of such information (see 48 CFR subpart 3.1).

11. Sensitive questions. There are no sensitive questions involved in this information collection.

12. Estimation of information collection burden. If a solicitation or RFQ contains the "brand name or equal" provision and clause, offerors may be required to furnish information about the characteristics of the product offered. Only offerors providing an equal product rather than the brand name product identified in the solicitation or RFQ are required to furnish such information. Offerors offering the identified brand name product need not respond to this information collection. Based on Fiscal Year 2005 data on competitive procurements for products, we estimate that 4,446 solicitations may require offerors to furnish "brand name or equal" information annually. Based on six responses per solicitation or RFQ, we estimate that 26,678 respondents provide the information annually. As estimated in the last justification statement, the time required collecting and adding this information to an offer or quotation is 6 minutes per response. The estimated annual hour burden is 2,668 hours. The estimated annualized burden hour cost to respondents is \$66,610, calculated as follows:

Burden hours are estimated at 75 percent professional hours and 25 percent clerical hours. Hourly Federal equivalent pay rates (January 2006) at GS 11/1 and GS 4/1 respectively were used in calculations.

Direct costs (labor):

Professional: (75% of 2,668 hrs @ 24.90) =	\$49,825
Clerical: (25% of 2,668 hrs @ 12.14) =	<u>8,097</u>
Subtotal:	\$57,922

Indirect Costs:

Overhead @ 15% of direct costs	<u>8,688</u>
Total Respondent costs:	\$66,610

13. Estimates of annualized cost to respondents (excluding burden hour costs).

- (a) There are no capital or start up costs associated with this collection.
- (b) There are no operation and maintenance costs associated with this collection.

14. Estimates of annualized cost to the Federal Government. The estimated annual cost to the Federal Government, is \$61,280, calculated as follows:

Government burden is estimated as equal to the number of respondent burden hours. Burden hours are split 75 percent at an average GS-1102-10/2 and 25 percent clerical at an average GS 4/1. USDA solicitations are now available to prospective offerors electronically through a single Government-wide point of entry (FedBizOpps), thus requiring neither printing nor mailing. Costs to the Government are offset by savings realized from efficient allocation of administrative resources. Labor costs attributable to the collection are estimated as follows:

Direct costs (labor):

Professional: (75% of 2,668 hrs @ 23.42) =	\$46,863
Clerical: (25% of 2,668 hrs @ 12.14) =	<u>8,097</u>

Subtotal:	\$54,960
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Indirect Costs:

Benefits @ 11.5% of direct costs	<u>6,320</u>
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Total Government costs:	\$61,280
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15. Reasons for changes in items 13 and 14. The changes in 13 and 14 reflect the changes in the Federal hourly rate schedule.

16. Planned publication. The results of this collection of information will not be published.

17. Expiration date on form. The requested information collection is required by solicitation provision and does not involve a form.

18. Exception(s) to certification statement.

We are able to certify compliance with all the provisions of the Act.