



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Bureau of Point and Non-Point Source Management

## Competitive Procurement (“Or Equal” Requirement)

### General

The Pennsylvania Infrastructure Investment Authority (PENNVEST) requires all Borrowers to maximize competition in their procurement processes as described below:

PENNVEST “Or Equal” Condition (approved by the PENNVEST Board on February 5, 2002):

“Borrower agrees that no specifications for bids in connection with any project financed by PENNVEST (Authority) shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to satisfy physical restrictions of the site or to provide for necessary interchangeability of parts and equipment. When brand or trade names appear in specifications, Borrower shall include two manufacturers/suppliers of comparable quality or utility (if available) followed by the words “or equal.””

To satisfy this requirement project specifications shall, to the extent practicable, provide for maximum use of products, materials, and equipment that are readily available through competitive procurement, or through standard or proven production techniques, methods and processes. Failure to adhere to the requirements could result in the lack of participation by PENNVEST or the requirement to re-bid the project.

### Specifications Guidance

- a. Specifications should include a clear description of the performance criteria that are relevant to the product, material or equipment. Performance criteria should only include descriptive information that is relevant to performance.
- b. Brand names can be used in a specification to describe products only if a minimum of two brand names are listed. In addition, the phrase “or equal” following the last brand name identified should be inserted. The engineer will need to consider all “or equals” and should be prepared to reject unacceptable alternates for good cause, if applicable.
- c. In rare instances, “sole source” identification in the bid specifications may be necessary. “sole source” in the bid specifications can only be utilized when unique or special circumstances exist, such as:
  - There is only one item that will meet the required performance requirements.

- The item is patented and no known substitute will meet the requirement.
- Compatibility with existing equipment is essential due to operation and maintenance reasons such as: the operation of other existing equipment/systems requires this item, the interchangeability of spare parts, or the need for uniform maintenance and uniform performance.
- Physical restrictions such as dimensional limitations for installation in existing facilities.

The use of “sole source” procurement has to be reviewed by the DEP Project Manager and approved by PENNVEST before procurement.

- d. It is the responsibility of the funding recipient and the recipient’s licensed project engineer to defend the specifications and bidding format against any protests that may arise during the bidding process.
- e. It is recommended to discuss the bid specifications with the DEP Project Manager at the earliest possible point in time to avoid impacts to design or bid document preparation. The funding recipient’s licensed project engineer will be required to describe in writing how the above requirements are met in the Specification Certification form, 3850-FM-BCW0034). This form is submitted to the DEP Project Manager prior to the application cutoff date.
- f. Except for an approvable sole sourced purchase, a bid document structure that forces a bidder to select a brand-named piece of equipment without consideration of another brand-named piece of equipment and an “or equal” piece of equipment is not in conformance with the PENNVEST “or equal” condition.