

Date: February 5, 2002

PENNVEST “Or Equal” Condition

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”.

PENNVEST “Or Equal” Condition Guidance

Background:

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.

The “or equal” condition and the Specification Certification (copy attached) have been adopted by PENNVEST to promote competitive bidding. All Borrowers are required to take the appropriate actions necessary to develop nonrestrictive specifications and avoid sole-source restrictions. This Condition requires Borrowers to certify that bid specifications will allow “or equal” products except in special circumstances. It is the Borrower’s responsibility to ensure that bid specifications meet the intent of this condition. The Specification Certification is to be provided to the Department of Environmental Protection (DEP) prior to advertising for bids.

When the “or equal” clause applies:

The “or equal” clause should be used in all cases where the product, material, or equipment is specified using brand or trade names. In these cases, the specified item requires standard performance criteria, can be supplied by more than one manufacturer and is not unique or special. Examples of such items are conventional pumping, filtering, screening and grit removal equipment, clarifiers and belt presses.

When the “or equal” clause does not apply:

The “or equal” clause may be omitted when unique or special circumstances are involved such as:

1. Sole Source Specifications

Sole source products, materials, or equipment are specified from a single manufacturer for such reasons as:

- a. Only known item that will meet the required performance requirements.
- b. The item is patented and no known substitute will meet the requirement.
- c. Compatibility with existing equipment is required 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.
- d. Physical restrictions such as dimensional limitations for installation in existing facilities.

2. Process or Special Product Specifications

The “or equal” clause may be omitted for projects where a process or special product is being specified for which there may not be a true “or equal” in terms of type or system components. There may be alternate processes or products that meet the performance requirements but they utilize different components to achieve the required result. In these cases, Base Bid with Add/Deduct Alternates may be used. The Base Bid is the specified and named process or special product around which the design has been prepared. The Alternate manufacturer(s) may be named or unnamed in the bid specifications. If unnamed, the bidder shall be required to name the manufacturer prior to award. The Alternate may require some degree of redesign from that shown for the Base Bid process or product to fit the project conditions. The redesign is the responsibility of the Bidder and occurs after contract award. The Alternate(s) may cost more or less than the Base Bid and the difference (add or deduct) is determined by the bidding process.

BID ALTERNATES MUST BE CONSIDERED PRIOR TO CONTRACT AWARD.

NOTE: ANY BASE BID FORMAT OF SOLICITATION FOR PRODUCTS, MATERIALS, OR EQUIPMENT THAT REQUIRES ALTERNATES TO BE DEDUCTS ONLY DOES NOT CONFORM TO THE PENNVEST “OR EQUAL” CONDITION AND SHALL NOT BE USED.

Justification required when the “or equal” clause is not used:

For any item where a brand or trade name(s) is specified without the “or equal” clause, the Borrower must be prepared to provide written justification, if requested. This justification must clearly explain the circumstances that led to the necessity for a non-competitive procurement. It must also include a full cost review. **NOTE: It remains the Borrower’s responsibility to defend the specifications and bidding format against any protests that may arise during the bidding process.**

Consequence of non-compliance with “or equal” condition:

PENNVEST will not participate in the funding of any product, material, or equipment which is not procured in accordance with this guidance.

Contract Awards

In awarding the project, the Borrower reserves the right to reject any and all bids, to waive any and all informalities, and the right to disregard all nonconforming, non-responsive or conditional bids. PENNVEST and DEP assume no liability regarding the award of contract, or the quality or performance of equipment. The Borrower should award to the lowest responsible bidder whose evaluation by Borrower indicates to the Borrower that the award will be in the best interests of the project.

SPECIFICATION CERTIFICATION

Section I – Instructions

All Borrowers that receive PENNVEST Financial Assistance must sign this form. This form must be submitted to the appropriate DEP Regional Office prior to advertising for bids. A list of Regional DEP addresses is provided with this form.

Section II – Certification

Project Name: _____

County: _____

Indicate which of the following conditions have been used in the specifications for your project by placing a checkmark in the pertinent block(s). Your signature below certifies that you understand and have complied with the conditions that you used for your project.

- For products, materials, or equipment that require standard performance criteria and are not unique or special, two manufacturers/suppliers of comparable quality or utility (if available) have been named, followed by the words "or equal".

- Sole source specifications have only been used when:
 - Only one item will meet the required performance requirements.
 - An item is patented and no known substitute will meet the requirement.
 - Compatibility with existing equipment is required due to operation and maintenance considerations.
 - Physical restrictions of the site dictate the use of a certain item.

- The Base Bid with Add/Deduct Alternates format has only been used where a process or special product was specified for which there may not be a true "or equal". Alternates are either named in the specification or must be identified by the Bidder prior to bid award. Redesign costs associated with the alternate are the Bidder's responsibility. Alternates may cost more or less than the Base Bid, as determined by the bidding process, and **bid alternates will be considered prior to contract award.**

Name of the Borrower's Authorized Representative	Signature	Date
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Name of Professional Engineer	Firm represented
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P.E. Stamp

Signature	Date
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