

A View from the Back of the Bus

Minneapolis-St. Paul CSI *specifics* December 2001

Michael D. Chambers FCSI CCS
Contributing Editor

Proprietary (Sole Source) Product Specifications

In my perspective from the back of the bus, I have observed that most manufacturers and product reps are not very strategic about getting one-of-a-kind, sole source, or proprietary products specified for public “or equal” types of projects. Of course, most everyone can get their product specified by conventional means. One way is to write a “No Sub” specification by adding the words “no substitutions” after the product name. Another is to write a performance specification whose requirements can only be met by their product. While both of these methods appear to offer successful outcomes, they are the easiest to break by offering a lower cost, superficially competitive, substitute product. Unless the Owner has specifically required or requested a sole source product, no sub specs are merely a red flag indicating easy substitutions.

It is possible to argue that if the architect or specifier had any guts they would stand behind and hold their specs. The reality is that most specifiers are not knowledgeable enough about specific products and industry issues to successfully argue holding a spec, especially against a lower cost but functionally equivalent product. Most product reps try to “sell” specifiers features and benefits rather than real, industry based, technical info focusing on use and application. Since each product’s features and benefits are different, it is typically impossible to hold a spec. When specifications are based on competitive “apples-for-apples” technical data, the ability of the specifier to hold the spec against non-competitive pricing is significantly enhanced. Experience indicates that well researched (read product rep supported) competitive specifications are practically impossible to substitute against.

What happens then, when a manufacturer has an innovative, solution driven products that have no direct competition or reasonable functional equivalents? Writing performance or no sub specs in a highly competitive market is rarely successful. What then is the answer, do we give up bidding public work or architects whose policy requires competitive specs? No, the answer often can be found in a series of specification scenarios that have been used successfully to bid proprietary, sole source products in a required public “or equal” specification.

Multiple Product Specifications as Alternates

In 1982, the Post Office Department constructed a 1 million square foot General Mail Facility in Stockton, California. USPS projects are required by law to be “or equal” specifications and sole source products are not acceptable. In this case, the USPS was very interested in using an IRMA type roofing system with several types of single ply roofing systems, one of them having no equals of any type. Obviously, this was not legally possible, so an interesting work around was proposed, accepted, and bid. The specifier wrote a section for the proprietary peel and stick/IRMA roofing system, a competitive IRMA/EPDM roofing system, and a conventional competitive BUR/IRMA roofing system. Each section was listed as an additive alternate to the base bid. In the final analysis, the most competitive system was the BUR and it was installed. However, each of the systems were specified and had a chance to demonstrate their competitive value. This process has been used successfully on many public and “or equal” type projects. The key for product manufacturers and reps in this scenario is the ability to write the alternate specs since the specifier will often indicate they are too busy to fool around with the extra work.

Installer Based Specifications

In some cases, sole source and highly proprietary products can be successfully bid by using competitive installers. The basic specification indicates the proprietary product but then lists the acceptable installers and appropriate qualities for approving installer substitutions. The critical issue for this procedure to be successful is that each installer must be able to obtain the product at the same cost, so that competition is solely based on the installer’s competitive ability. If it is not possible to confirm or mandate the product

cost, using an product allowance can be considered to keep the competition based on installation cost rather than product cost. A legal opinion from the public client probably should be considered for this type of bid specification. Industry knowledge and expertise is critical for the success of this scenario and must be provided by the product representative.

True Performance Specifications

While rarely successful, a true performance specification is a fair way of obtaining a competitive shot at getting a proprietary product installed in an "or equal" type project. The key to success is that performance criteria must be able to be met by other competitive products within a reasonable and competitive set of limitations. Also, truly competitive performance specifications must be validated by industry recognized (ASTM, ANSI, etc.) testing procedures conducted by an independent 3rd party testing agency. This can be very time consuming and costly, but can offer a leading edge, innovative product manufacturer an opportunity to get new products designed into significant public and institutional projects. The keys to success include other product systems that can be produced to meet functionally equivalent criteria using different materials and methods. Mock-ups are highly recommended for quality assurance under this scenario.

After suffering dozens of comments from angry manufacturers and reps about having to be competitive when products are cutting edge, innovative, and solve significant owner problems, what should be done? Why spend mega-bucks on research and development while the competition just follows along, etc., etc. Consider the following points. First, if you are not the lead dog, the view never changes. Change and innovation are inseparable factors in any successful venture. Second, and more to the point, while low bid is certainly not good construction business, it is sound, proven public policy. Consider product specification and bidding processes for public work in other parts of the world. Experience shows that quality and innovation are not even serious considerations. Rather than complain about reasonable public policy, look for innovative ways to support public policy and creative ways to get innovative products specified. Successful will be rare and require much time and energy, however the results can be significant recognition and expanded opportunities for leadership and innovation in the public sector.

That's my view from the back of the bus, welcome aboard, come on back, and let me hear from you.

Michael D. Chambers FCSI AIA, CCS is actively engaged in designing, producing, and presenting continuing education programs, guide specifications, and sales training for the construction product industry. He is active nationally in AIA, CSI, DHI, SCIP, and WDMA. Michael is principal of MCA Specifications, Construction Product Marketing Group of Eden Prairie, MN and a specifier for ATS&R Architects of Minneapolis, MN. He can be reached at 952-941-2750 or at mca@isd.net.