**Section 1600.2050 Specifications**

a) The OLG may use specifications or qualified products lists established or used by CMS.

b) Brand Name or Equal Specification

1) Brand name or equal specifications may be used when the Procurement Officer determines in writing that:

A) no specification for a common or general use specification or qualified products list is available;

B) time does not permit the preparation of another form of specification, not including a brand name specification;

C) the nature of the product or the nature of the State's requirement makes use of a brand name or equal specification suitable for the procurement; or

D) use of a brand name or equal specification is in the State's best interest.

2) Brand name or equal specifications shall seek to designate more than one brand as "or equal", and shall further state that substantially equivalent products to those designated will be considered for award.

3) Unless the Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics that are required.

4) Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. "Or equal" submissions will not be rejected because of minor differences in design, construction or features that do not affect the suitability of the product for its intended use. Burden of proof that the product is equal is on the bidder.

c) Brand Name Only Specification

1) Determination. A brand name only specification may be used only when the Procurement Officer makes a written determination that only the identified brand name item or items will satisfy the State's needs.

2) Use. Brand name alone may be specified in order to fill medical prescription needs, to stock State retail-type operations, to ensure compatibility in existing systems, to preserve warranty, to ensure maintenance, or as authorized in writing by the CPO. An agency may, pursuant to an authorized competitive procedure, select a particular vendor to provide supplies or services for a specified period of time, and for that period the supplier of additional, related and updated supplies and services may be limited to the selected vendor or the brand initially selected.

3) Competition. The Procurement Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 1600.2025 (Sole Economically Feasible Source Procurement) of this Part.

4) Small and Emergency Procurements. Brand name only specifications may be used when procuring items under the small (see Section 1600.2020 of this Part) and emergency (see Section 1600.2025 of this Part) provisions of this Part.

d) Proven Products

The supply or service may be rejected if it has not been offered to other governmental or commercial accounts for at least one year. Specifications may require that the supply or services have been used in business or industry for a specified period of time to be considered.