combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(a) Documents mandated for use by law or regulation pursuant to law.

(b) Performance-oriented documents:

(1) Nongovernment standards.

(2) Commercial item descriptions.

(3) Federal specifications and standards.

(4) Military specifications and standards.

(c) Design-based documents:

(1) Nongovernment standards.

(2) Federal specifications and

standards.

(3) Military specifications and standards.

(d) Agency-unique standards, specifications and related publications issued by the government outside the military or Federal series for the nonrepetitive acquisition of nondevelopmental items.

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and DOD 4120.3–M, Defense Standardization Program Policies and Procedures.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103–355 provides that in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) The criteria to be considered in determining commercial market acceptance include—

(1) The minimum need of the agency concerned; and

(2) The entire relevant commercial market, including small business.

11.104 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to specify a particular brand-name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or can not be modified to meet, the agency's minimum needs; and

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302– 1).

Subpart 11.2—Using Requirements Documents

11.201 Identification and availability of specifications.

(a) Solicitations citing requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index shall identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Contracting offices will not normally furnish these cited documents with the solicitation, except when-

(1) The requirements document must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the documents in reasonable time to respond to the solicitation; or

(3) A prospective contractor requests a copy of the requirements document.

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. Such documents shall be furnished with the solicitation.

(c) When documents refer to other documents, such references shall: (1) Be restricted to documents, or appropriate portions of documents, that apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other documents and provisions of the solicitation; and (4) identify all applicable first tier references.

(d) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions and DoDISS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

11.202 Acquiring used or reconditioned material, former Government surplus property and residual inventory.

(a) Generally, all contractually furnished supplies and their components, including former Government property, will be new, including recycled (see 48 CFR part 23, FAR subpart 23.4 for policy on recovered materials). However, agencies may acquire used or reconditioned material, former Government surplus property, or residual inventory conforming to the solicitation's requirements, if the contracting officer determines that it is acceptable. When acquiring commercial items, the contracting officer should determine the customary practice in the industry before including a requirement for new materials. When such a determination is made, the solicitation shall clearly identify the supplies or their components that need not be new, along with the necessary details on their acceptability. Offerors wishing to provide such used or reconditioned material, former Government surplus property, or residual inventory shall do so in accordance with the clause at 52.211-5, New Material, or the provision at 52.211-6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.211-7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Contracting officers shall consider the following when determining whether used or reconditioned materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(3) Performance requirements.

(4) Availability and cost of new materials and components.

(c) With regard to former Government surplus property, the contracting officer shall ensure that the prices paid for such items are reasonable considering overall cost savings to the Government. When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.