

## Brand-Name Specifications: The Prior Approval Companion

by H. Maynard Blumer

Brand-name specifications, when joined with "Prior Approval," combine what the CSI *Manual of Practice* refers to as proprietary and reference standards methods of specifying, with a bit of performance and descriptive methods thrown in. Justification for this hybrid specification form is found in its objective—a specification more easily understood in the marketplace, thereby reducing bidder risk. This lowers project bid amount and simplifies both project administration and specifications writing. The result is the shortest specification form still considered a long-form specification, one as open to substitutions as any other specification within the bidding period, one as exacting as desired, and the most user-friendly specification form in use.

### Limitations, Options

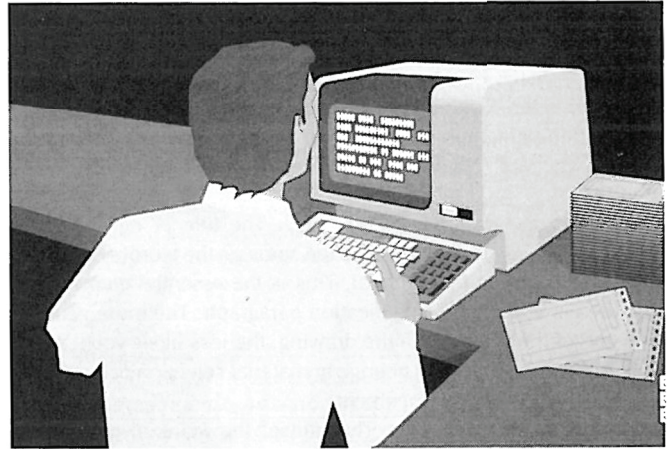
This specification form is limited to specifications for manufactured products easily identified by manufacturers' literature. It is, therefore, not often used for materials such as cast-in-place concrete (although I once specified, by name, concrete from the transit-mix concrete supplier that an owner preferred). However, it is common to use a brand-name specification for elements within a broadscope cast-in-place concrete section, such as admixtures, additives, color, and accessories.

A specification is immediately labeled proprietary when the manufacturer's name is included. However, when used with a prior approval system\* for approval of competitive products before submission of bids, the specification becomes a reference standard without the risks of bidding and the problems of administering the old "or-equal" specification form.

This specification form must closely follow certain common practices to avoid misunderstanding and to achieve the full benefit of their intended meaning. The most important principle is brevity. If the specification is long, the user may begin to assume the specification is written out in complete form. Brevity clarifies the intent to include the detailed description of the product by reference rather than by full description. Therefore a descriptive specification has been written by inference.

A writer may include additional description of some product features in a brand-name specification for specific purposes. Such descriptions may add requirements to the specified product when they go beyond or replace features otherwise required by reference to the product. Taken to an extreme, the specification may require the manufacturer to recommend that the product meet project requirements, or to create a new product similar to its standard product.

Optional writing may include a partial listing of features already included by general reference without reducing or increasing the importance of such features. They are written into the specification for the user's convenience. They may aid when identifying suitable



**The objective of writing brand-name specifications is to be easily understood in the marketplace, thereby reducing bidder risk.**

substitutions or other features the writer wanted when selecting the product.

### "Housekeeping Details"

In the standard Three-Part Section Format published by CSI, Part 1, General, covers what I refer to as the housekeeping elements of the section. Brand-name specifications have little effect on this section except with respect to quality control and warranty provisions, which may include manufacturers' participation. (In those instances, this specification form is significant, and is similar to requirements with respect to Part 3 of the specification, discussed below.)

Part 3, Execution, deals primarily with on-site labor, installation, erection, workmanship, and the like. In the brand-name specification, Part 3 will usually include a clause such as "Install in accordance with manufacturer's recommendations," "Installed by manufacturer's approved applicator," or similar wording drafted to incorporate the manufacturer's control or influence on the manner in which the product is incorporated into the work. In certain instances these clauses may be the single most restricting aspect of the specification; for establishing the quality, value, or acceptance of the work, they may be the most important element. If the work is to be guaranteed by the manufacturer, this provision may be essential.

Before specifying or bidding a material, establish whether the manufacturer has ongoing programs of installation recommendations, approved applicator programs, or conditions to its guarantee. If the manufacturer has such programs, or if you wish manufacturer expertise and want to involve the manufacturer in the installation or guarantee, include the appropriate clauses and refer to the man-



ufacturer of the material supplied.

Including this provision (that the contractor supply the manufacturer's expertise) may be interpreted as creating a direct relationship between the owner and the manufacturer. In this relationship, the contractor (and subcontractor) contract to provide an agency role (act as liaisons) for a limited portion of the work. In this case, one acknowledges that the owner and the contractor knew the contractor did not have the expertise specified when entering into the contract to provide that expertise.

Part 2 of the Three-Part Section Format is Products. This normally establishes whether the specification is a "brand-name" specification. The writing style of Part 2, Products, of the brand-name specification is critical.

### Guidelines

The following are writing style guidelines for writing a single Part 2 specification paragraph for a single material. These product specification paragraphs should be consistently written in the sequence listed below.

1. *Title of the material (or product).* The title or name of the specification paragraph should be the same as the word(s) used on drawings to identify the material. This is the essential element for tying the drawing to the specification paragraph. The more generic the name of the material on the drawing, the less likely you'll need to change it should a slight change in material selection occur while developing the contract documents.

2. *Name of manufacturer.* The title of the material should be followed by a logical sequence of information that the reader of the

specification will need for determining the material required. It is reasonable to assume that the estimator is the first reader; the first information needed, then, is the name of the manufacturer so that the estimator will know in what catalog he will find the material.

3. *Model name, number, or other naming description.* After giving the manufacturer's name, state the model name, number, or the like that names the item within the manufacturer's group of products. Word-names are preferable to number-names since they are less likely to become an error.

4. *Options or extras if offered.* After the estimator has found the

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right manufacturer, product line, and model, he needs to narrow the desired options such as size, edge type, etc. Extras are accessories or enhancements, such as an optional icemaker on a refrigerator. The specifier must carefully review the manufacturer's offering to determine whether the manufacturer will automatically supply all the features desired or what selections of options and extras must be made. If there are no electives to be identified, the specification may be ended after point 3 above, and the estimator will know exactly what product he is to provide to meet the specification

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## Specifying Supplemental Performance or Descriptive Provisions

Once the specification includes everything necessary to precisely order the product, the specification can be considered complete. If you are unsure of whether to include additional description, first ask yourself these questions:

- Is there a certain performance critical to the successful use of this product that might unwittingly be lost through substitution of another manufacturer or modification in the manufacturer's model? If so, write it in.
- Was there a certain performance or feature on which this selection was made? If so, should it be noted here so that it will be remembered in the future if the selection comes into question? If so, write it in.
- Was there a certain reason for selecting this product—one that was in the product presentation but not clear in the manufacturer's printed literature? If so, write it in.
- Are there custom features that you need added to the model selected? If so, identify them clearly as custom features or modifications.

These supplemental descriptions may be more critical than the first four points of the specification description. They may have made the brand-name specification also a performance specification to be met by not only substituted manufacturers but also by the originally specified manufacturer. Supplemental descriptions may bring out claims that were made in selling the specifier on using the product and make them contractual obligations. This will help guard against the clause, "Manufacturer reserves the right to make minor modifications in the product." They also provide the manufacturer with a chance to protect itself should a salesperson oversell the product. Finally, violation of this portion of the specification may constitute consumer fraud because it states what the specifier believed was represented to him, and it is what the provider represents as being provided. □

—H.M.B.

5. *Supplemental performance or descriptive provisions.* This is where the intention of the writer must be understood by the reader. The first four components of the specification are mandatory decisions to be made. Once the specification has included everything necessary to precisely order the product, the specification can be rendered complete. Whether to give additional description not required to pick the product out of the catalog becomes the writer's judgment. The writer asks a series of questions that determine whether he continues the description. Keep in mind that brevity is the key to a successful brand-name specification. (See box.)

Supplemental descriptions may override the brand name and model portion of the specification. A product could be delivered with the correct name and model number, yet be rejected because it failed to comply with desired supplemental performance or descriptive specification provisions. That determination will happen more readily if desired performance is stated in the specification; however, the inclusion or exclusion of a supplemental descriptive element in a brand-name specification is not a valid test of a specification's completeness, especially if the point in question is a normally standard product feature. Everything stated or claimed in the manufacturer's sales or technical literature and presentations (written or verbal), as the specifier understood them, is included in the brand-name specification by reference and is required as if stated in full in the specification.

Verbal presentation claims are difficult to substantiate. Documenting them by inclusion in the specification makes them specification requirements. If the specified manufacturer can not make good such claims, he should immediately, upon reading the specification, notify the specifier and, if necessary, withdraw from bidding the project. The wise specifier will make an advance copy of this specification available to the specified manufacturer to prevent this possibility.

## Reducing Risk

The brand-name specification is the shortest, most precise, and most easily used specification form. Therefore, it can be bid with less risk of misunderstanding and administered with more precision, when appropriate, than any other form of specification, provided these simple guidelines are understood and followed by both readers and writers. □

### Note

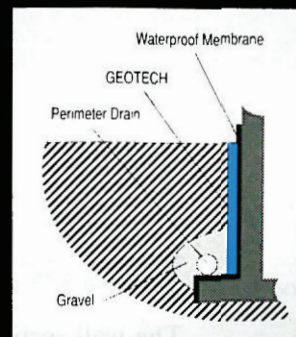
\* "Prior Approval" provides for substitution of materials prior to the bidding process. It resembles the "or-equal" system, but reduces risks. For more information on "prior approval," see H. Maynard Blumer, "Prior Approval: A Specifications System," *The Construction Specifier*, April 1986, pp. 80-87.

H. MAYNARD BLUMER, FCSI, CCS, AIA, is a consulting architect practicing in the Phoenix, Arizona, area. His practice is in architectural technology, including construction contract relations, forensic consulting, construction dispute mediation, construction problem troubleshooting, investors' real estate reports, and specifications writing.

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