

WRITING SPECIFICATIONS

Arkansas Procurement Law defines a “specification” as follows:

(a) Definition.

- (1) “Specification” means any technical or purchase description or other description of the physical or functional characteristics, or of the nature, of a commodity or service.
- (2) “Specification” may include a description of any requirement for inspecting, testing, or preparing a commodity or service for delivery.

Ark. Code Ann. § 19-11-241. This definition is broad enough to encompass a technical description, a purchase description, or other description of the commodity or service that is being solicited. Specifications may describe the commodity or service in very technical terms as to its purpose, technical design, parts, and other key details, but they do not always need to. What matters is that they clearly describe what is being purchased.

Specifications are supposed to notify potentially interested bidders and offerors of what is being procured. They are also used to assess the responsiveness of bids and proposals. They may also become the standard by which a contractor’s performance is measured a success or a failure, whether it is delivery of a commodity or performance of a service. All good reasons why you should do your best to ensure the specifications are easy to read and understand.

An enemy to clarity is verbal clutter. Be concise. Try using only those details essential to an adequate description. Bear in mind that Arkansas Procurement Law requires all specifications to be drafted “so as to assure the maximum practicable competition for the state’s actual requirements.” Ark. Code Ann. 19-11-241(c).

While you should try to be concise, you must also ensure that the specifications cover all essential aspects of a commodity or service. Isolating essentials and winnowing away fluff often requires consulting with the requesting state institution or department.

Note: A specification statement that requires a party to do something should use the word “shall” to signal that it is something a party has an obligation to do. (Ex. Contractor shall deliver the Commodity to the Delivery Address on or before the Delivery Date.) A rule of thumb is that you can generally use the word “shall” where it can be replaced with “has an obligation to.” Where the phrase “has an obligation to” doesn’t make sense because the requirement is a physical description or a characteristic that must be satisfied and not an action that someone has an obligation to perform, then “must” is probably more appropriate. (Ex. The Commodity must be Made in America.)

You should use the active voice to identify when the contractor is responsible for doing something. For example, an end user may provide a specification that reads: “The reports are to be delivered by the 15th of the month.” To clarify that the contractor is the party who has an obligation to deliver the reports, you should rewrite the specification in the active voice and identify the contractor as the actor. For example: “The Contractor shall provide reports by the 15th of each month.”

Good Example: Contractor personnel shall wear company identification while on State property.

Bad Example: Company identification must be worn on State property.