

A8.281     Construction

1.     General

- a.     Pursuant to Act 87, Session Laws of Hawaii 2013, the Administrator of the State Procurement Office is the Chief Procurement Officer (CPO) for contracts for construction. The Administrator of the State Procurement Office has delegated procurement authority to the President; however, the State Procurement Office (SPO) will provide oversight, assistance, and guidance to the University for all procurement activities conducted by the University relating to this section.
  
- b.     For purposes of this section, "construction" shall mean the process of building, altering, repairing, improving or demolishing any University structure, building or improvement to real property, including painting and decorating. The term includes the routine operation, repair or maintenance of existing University structures, buildings, or real property.

Significant alterations or structural changes that increase the usefulness, efficiency or asset life of existing buildings, including all permanently attached fixtures, machinery and other appurtenances that cannot be removed without cutting into walls, ceilings or floors, or otherwise damaging the building or the items so removed shall be capitalized to increase the cost of the building. Components which can be removed without the need for costly or extensive repairs or alterations to the building shall be capitalized as equipment.

Fiscal administrators shall be responsible for making the determination to capitalize building improvements as part of the building or as equipment and shall utilize the proper object code to reflect this determination.

1) Construction Requirements

- a) Requests for construction requirements must be made through one of the following: University of Hawaii at Manoa Facilities Planning and Management Office, Community Colleges Facilities Planning Office, or University of Hawaii at Hilo Facilities Planning Office, whichever is applicable. Each Facilities Planning Office will assist the requesting program in developing design specifications.
- b) Upon receipt of approved plans, specifications and quotations from the appropriate Facilities Planning Office, fiscal administrators are authorized to issue purchase orders for construction requirements within their purchasing authority. Purchases of construction exceeding a fiscal administrator's purchasing authority should be directed to the appropriate Facilities Planning Office for processing.
- c) If a campus department has demonstrated sufficient expertise, responsibility, and staffing to process certain construction projects at its own direction, the campus facilities planning office may, with the concurrence of the Chancellor and pertinent Vice Chancellors, delegate responsibility to such department to administer such construction without review by the campus facilities planning office. OPRPM shall be advised in writing by the campus facilities planning offices of the terms and conditions of any such delegations.

- 2) Construction projects exceeding \$2,000 shall:
- a) State the scope of work to be performed in the Request for Quotation, the purchase order, and/or other purchasing document or mechanism.
  - b) Incorporate the following clause in the Request for Quotation and the purchase order:  
  
"All work shall be performed by skilled tradespersons using the best standard practices for each trade. Contractor shall protect the existing facilities and correct and/or repair any defects/damages caused by its operation at no cost to the University."
  - c) Incorporate the following clause pertaining to the minimum wage requirements in the Request for Quotation, the purchase order, and/or other purchasing document or mechanism:  
  
"All work shall be performed in accordance with the Minimum Wage Rate Schedule and Chapter 104, HRS."
  - 4) The minimum wage requirements (**Attachment 281.1**) shall be made a part of the Request for Quotation, the purchase order, and/or other purchasing document or mechanism.
- 3) Construction projects of \$4,000 and more shall incorporate the liability insurance requirements (**Attachment 265.2**) and the following clause in the Request for Quotation and the purchase order:  
  
"Contractor shall deposit with the University, on or before the issuance of a contract or purchase order for this project, certificates of insurance necessary to satisfy the University that the insurance provisions of the University have been complied with (See Attachment A)."

- 4) It shall be the responsibility of individuals awarding purchase orders and contracts for construction requirements to ensure that contractors possess the proper contractor's license(s) pursuant to Chapter 444, HRS, and the rules and regulations of the Contractor's License Board.
- 5) Performance and payment bonds in an amount equal to one hundred percent of the amount of the contract price shall be required for all construction contracts exceeding \$50,000 as provided in Section 103D-324, HRS.

2. Small Purchases

a. Conditions for Use

Any procurement less than \$250,000 for construction may be made in accordance with procedures set forth herein. The purpose of these procedures is to promote economy, efficiency, and effectiveness in the procurement of goods and services and the construction of public works for the University.

Multiple expenditures shall not be created at the inception of a transaction so as to evade the bidding procedures for formally advertised procurements, and procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

Expenditures made pursuant to these procedures do not require public notice or public bid openings. These procedures shall not apply to exempt, sole source, or emergency procurements.

b. Adequate and Reasonable Competition

The University buys on a competitive basis to obtain fair and reasonable prices for quality construction. Programs should solicit quotations with the intention of obtaining adequate and reasonable competition.

This phrase means the amount of vendors solicited should be based upon the number of vendors available and the value or price of the construction being

procured. Because of variations in circumstances, it is not possible to define what is adequate and reasonable competition for every purchase. However, in general, the more vendors available who can meet the needs of the University and/or the higher the price of the goods, services, or construction being procured, the greater the number of vendors who should be solicited.

c. Solicitation of Quotations for Construction

Small purchases of construction shall be made in accordance with the procedures set forth below.

1) Purchases Not Exceeding \$2,500

Although University programs should seek to obtain adequate and reasonable competition through the solicitation of quotations, no minimum number of quotations is required for such purchases.

2) Purchases Totaling More Than \$2,500 But Less Than \$15,000

Based on the University's specifications and with adequate and reasonable competition, no less than three written quotations shall be obtained.

3) Purchases of \$15,000 But Less Than \$250,000

Based on the University's specifications, adequate and reasonable competition shall be solicited via SuperQUOTE, the electronic on-line request for quotations system.

Instructions for the use of SuperQuote may be accessed at [www.commercepoint.com](http://www.commercepoint.com).

d. Schedule of Thresholds for Purchases of Construction

The following schedule shall be used for soliciting quotations for small purchases of construction:

<u>Dollar Amount</u>	<u>No./Type of Quotations</u>
0 - \$2,500	No minimum number of quotations required.
\$2,500.01 - < \$15,000	3 or more written quotations obtained
\$15,000 - < \$250,000	All electronic quotations via SuperQUOTE.

e. Request for Quotations (RFQ)

The following guidelines for soliciting and evaluating quotations shall apply when utilizing SuperQUOTE or when soliciting written quotations by other means as permitted:

1) Solicitation of Quotations

- a) When obtaining quotations, a complete description of the work to be performed should be provided, including plans and drawings if applicable. If the construction work also requires the vendor to provide equipment, the description should set forth the minimum essential characteristics of the items required. Unduly restrictive specifications that specify a particular feature of a product that is unique to one manufacturer shall not be used, unless the particular feature is required to meet the program's needs.
- b) Brand name specification followed by the words "or acceptable alternate" may be used, but its use shall be limited as much as possible. If brand name specifications are used, it is recommended that more than one brand be named. When using brand name specifications, state the brand name(s) or catalog number(s).

If only one brand is solicited and alternate brands are not acceptable, a sole brand justification must be provided stating reasons why only that brand will satisfy the program's requirements. (See Section A8.255 and OPRPM Form 144, **Attachment 255.2.**)

- c) Quotations shall include all charges and applicable taxes; recommended language is as follows: "All prices include all material and non-material costs, labor costs, equipment costs, foreign taxes, transportation costs, vehicle costs, air freight costs, shipping costs, supply costs, mobilization costs, insurance premiums, warranty costs, administrative support costs, rental costs, overhead costs, expediting fees and all applicable taxes (Federal and State)."
- d) Treat all vendors fairly and equitably.
- e) Provide sufficient time for the vendors to prepare a quotation. The length of time will vary with the particular circumstances and the vendor must not be "pressured" into preparing an insufficient or erroneous quotation.
- f) The RFQ shall specify the date and hour for the desired reply date. Eliminate indefinite words such as "ASAP" or "reply immediately".
- g) Quotations are confidential until the time and date set for receipt of all quotations and after evaluation of the quotations has been completed. At the time that the purchase order is issued or the purchasing card order is placed, the quotations shall be made available to the public, if requested.

h) The Office of Procurement and Real Property Management (OPRPM) will assist programs having difficulties in obtaining quotations or making award(s) after quotations are received for purchases within their delegated purchasing authority. If OPRPM determines that the solicitation of quotations was inadequate or otherwise improper for any purchase and that the best interests of the University so require, OPRPM may direct the resolicitation of quotations for the subject expenditure. Moreover, OPRPM may direct the award to a vendor other than the one recommended by the program. Any such action by OPRPM will be coordinated with the program concerned.

2) Evaluation of Quotations

Quotations shall be evaluated, and the purchase shall be awarded to the vendor submitting the lowest responsive quotation. To be considered for award, responsive quotations must meet all the specifications and terms and conditions set forth in the Request for Quotations. Features, capabilities, and terms that are not stated in the RFQ shall not be considered in the evaluation of quotations. All costs of freight, insurance and taxes shall be included in the RFQ and determined before making an award. Programs having difficulties in making an award after quotations are received may contact the OPRPM for assistance.

In the event that the vendor submitting the lowest quotation does not meet the specifications and/or terms and conditions set forth in the Request for Quotation, the low quote shall be rejected and the vendor shall be notified of the reasons for rejection. Justification shall be included in the procurement file regarding reasons for non-selection of the lowest quotation. The remaining quotations shall be considered until award can be made to the vendor submitting the lowest quotation that meets or exceeds all specifications, terms and conditions.



Evaluate and award promptly. Keep in mind that many quotations have an expiration date. If the expenditure exceeds the fiscal administrator's purchasing authority, the period of time that the quotation is available for acceptance must be sufficient to allow review by a designated departmental fiscal administrator with greater purchasing authority or by OPRPM, as applicable.

a) Firm Price vs. Estimated Price

Firm prices and estimated prices should be distinguished when evaluating quotations.

Purchase orders should not be awarded based on an estimated price. Firm Price and Estimated Prices are distinguished as follows:

1) Firm Price

A firm price offer is an offer by a vendor to provide construction services in a signed, written quotation which shall be valid for a specific time period or, if no such time is stated, for a reasonable time, but in no event to exceed three months.

The price agreed to by the vendor and the University when the order is placed will not change until the construction project is completed.

2) Estimated Price

Estimated price is an approximate calculation only and the vendor is not bound by the price provided.

b) Taxes

(Refer to Section A8.220).

Since Hawaii permits the vendor to pass excise taxes on to the consumer, requests for quotations should include the phrase "including all applicable taxes."

c) Delivery and Shipping Charges

For furniture, fixtures, and equipment, Request for Quotations should state that prices are f.o.b. destination, which is defined as free on board and point where title passes. It is to the advantage of the University to have the title pass in Hawaii. The seller assumes the responsibility for risk of transportation including the filing of claims for losses or damages. If title passes before it is shipped to the University, the University assumes this responsibility. If shipping charges are not included in the price, it should be quoted as a separate line item.

d) Only One Quotation Received

For purchases of \$2,500 or more where vendors are solicited but only one quotation is received, award of a purchase order may be made to the vendor submitting the sole quotation if the price is determined to be fair and reasonable and the basis for the decision is included in the procurement file. This determination may be based on a comparison of the proposed price with prices found reasonable on previous expenditures for similar items, discounts given to the University from the vendor's normal fee, comparisons with expenditures of similar institutions, comparisons with catalog prices, the University department's or fiscal administrator's personal knowledge of the item being purchased, or any other means. OPRPM Form 95, (**Attachment 285.1**), should be utilized to establish price

reasonableness and maintained in the procurement file.

e) No Quotations Received

If no quotations are received, it shall be determined whether it is neither practicable nor advantageous to the University to issue another request for quotations. For purposes of this determination, consideration shall be given to whether the preparation of revised specifications for the request could result in quotations being received, as well as the reasons why it would be neither practicable nor advantageous, e.g., time constraints, lack of competition in the marketplace, etc. If this determination is made, an alternative procurement method, e.g., informal solicitation of quotations, direct negotiations, etc., may be used to make the purchase. The foregoing determination may be made by fiscal administrators when acting within their purchasing authority; otherwise, the matter shall be forwarded to the OPRPM for review and determination. Documentation of the alternative procurement determination shall be made part of the procurement file.

f. Written Quotations

Written quotations should generally be obtained by utilizing the SuperQUOTE system. For purchases not subject to the use of SuperQUOTE as specified in Sections 2(c) and 2(d), the standard University of Hawaii "Request for Quotation (RFQ)" form (**Attachment 250.3**) may be used to obtain written quotations from vendors. All quotations received shall be retained in a procurement file.

Electronic (e-mail/Internet) and Facsimile (fax) quotations are acceptable for those purchases that require written quotations.

g. Preparing a Hard Copy Request for Quotation Form

(Refer to **Attachment 250.4**).

h. Authority for Issuance of Purchase Orders

1) Approval of Purchase Request

Each purchase request must be authorized by a responsible official in charge of the applicable program to certify that the purchase is consistent with the program it is intended to support.

2) Certification of Funds and Compliance with University Policies and Procedures

The fiscal administrator responsible for the funds of the applicable program shall certify that sufficient funds are available to pay for the construction services, and that the purchase is in accordance with applicable University policies and procedures.

3) Delegated Purchasing Authority

Fiscal administrators receive their delegated purchasing authority from the SPO via the President or designee. Only individuals who have been granted purchasing authority can issue purchase orders within their delegated limits.

Individuals who issue purchase orders which exceed their delegated limits may have their purchasing authority revoked, may be held personally responsible for the purchase, and may be subject to disciplinary action.

i. Requisitions and Purchase Orders

1) General

The requisition should be used to request the expenditure of funds for goods, services, or construction by purchase order. Requisitions shall be submitted through appropriate staff and fiscal administrators for approval and purchasing action.

2) Action by Program

- a) Prepare the requisition pursuant to instructions in this section for Preparing Electronically Generated Purchasing Documents.
- b) Complete pertinent supporting documents as appropriate and obtain approvals by pertinent approving authorities.
- c) Route requisition package to fiscal administrator for further processing.

3) Action by Fiscal Administrator

- a) Verify purchase specifications, including but not limited to, vendor name/address, delivery method and deadlines, special order instructions, amounts, account code(s), object code(s), and addresses.
- b) Ensure that description is adequate and precise.
- c) Verify that purchase is in accordance with state and federal laws, rules and regulations and University policy.
- d) Examine and verify request for quotations.
- e) Verify basis for award.
- f) Verify requisite approvals.
- g) Certify fund availability and policy compliance by approving requisition.
- h) Approve requisition to generate purchase order.
- i) Ensure that pertinent policy statements are properly noted on the purchase order as required by policy.

- j) If requirement is within fiscal administrator's approving authority, sign and issue purchase order.
- k) If requirement exceeds departmental purchasing authority, the requisition, request for quotations, and supporting documents shall be routed to the OPRPM for approval and issuance of a purchase order.

j. Action by OPRPM, Where Applicable

- 1) Verify amounts, and addresses.
- 2) Ensure that description is adequate and precise.
- 3) Examine and verify request for quotations.
- 4) Verify requisite approvals.
- 5) Verify that purchase is in accordance with University policies and procedures.
- 6) Verify basis for award.
- 7) Issue purchase order or contract.

k. Administration of Purchase Orders

1) Procurement File

All quotations received shall be recorded and placed in a procurement file. When a specified number of quotations are required but are not obtained, e.g., sufficient sources are not available, Form SPO-10 (**Attachment 281.4**), Part C justification for inability to obtain three quotes due to insufficient sources shall be completed and placed in the procurement file.

The procurement file should contain the following documents, where applicable:

- 1) Requisition;
- 2) Quotations - written, Request for Quotation Form (**Attachment 250.3**) or alternative form;
- 3) Abstract of prices from each vendor;

- 4) Written justification when award is made to other than the vendor submitting the lowest quotation;
- 5) Purchase order and/or other contractual document;
- 6) Purchase order change form and any modifications to the specifications;
- 7) Evidence of purchase completion and date;
- 8) Copy of payment document; and
- 9) Correspondence

1. Purchase Order Amendments

1) General

- a) A purchase order amendment (as referred to in the Quali Financial System) is written documentation of a change or modification to a purchase order after it has been issued to the vendor. Purchase order amendments serve as formal notification to the vendor of a change to a previously issued purchase order, and should be used to clarify the order specifications, thereby minimizing potential liability to University departments and personnel relating to the order. Accordingly, while a purchase order amendment would generally not be required for minor or non-substantial modifications, purchase order amendments should be issued when there are significant modifications to material elements of the order, as determined by the fiscal administrator, which affect price (e.g., changes to the scope of work total dollar amount, etc.), delivery (e.g., extension of delivery date etc.), or terms (e.g., technical specifications, payment terms, etc.). In addition, when the modification, even if minor, would result in a purchase which exceeds the limits of a fiscal administrator's purchasing authority, a purchase order amendment should be issued.

- b) Examples of conditions which would call for the issuance of a purchase order amendment to the vendor include, but are not limited to:
- 1) Increase or decrease in the work to be performed;
  - 2) Significant increase in total dollar amount;
  - 3) Changes to purchase orders issued by OPRPM;
  - 4) Changes to purchase orders which result in a purchase which exceeds the limits of a fiscal administrator's purchasing authority;
  - 5) Changes which would significantly alter the original specifications of the work to be performed or would significantly modify the terms of the purchase;
  - 6) Significant changes in completion date;
  - 7) Partial or total cancellation of the work to be performed.

2) Procedure

The procedure for issuing a purchase order amendment is as follows:

- a) If the changed order results in a purchase which remains within the limits of a fiscal administrator's purchasing authority, the purchase order amendment should be issued by the fiscal administrator.
- b) If the changed order results in a purchase which exceeds the limits of a fiscal administrator's purchasing authority, the fiscal administrator should initiate the purchase order amendment and forward it, together with any required supporting documentation, to a designated departmental



fiscal administrator with greater purchasing authority or to the OPRPM, as applicable, for review and execution.

- c) The purchase order amendment should not be used to change the vendor with whom you are doing business or to add new work outside the original scope of work. In these instances, another purchase order should be issued to the new vendor. However, a purchase order amendment may be used to add taxes, shipping charges or insurance to the purchase order.
- d) Purchase order amendments may also be used as a processing document to record internal University changes, e.g., account/object code changes, addition of new account/object codes, vendor code changes, etc. If the purchase order amendment is being used to record internal University changes only, a copy should not be issued to the vendor.

3) Preparation of Purchase Order Amendment

Refer to Kualifinancial System, User Guides, which are available at the following website: <http://www.hawaii.edu/kualifinancial>, to prepare electronically generated purchase order amendments.

m. Status of Purchase Orders

After purchase orders are awarded, fiscal administrators shall be responsible for maintaining their status to assure that vendors perform services, and complete the construction project in accordance with the delivery time specified in the purchase orders. To preclude long outstanding purchase orders, fiscal administrators shall maintain a suspense file which will indicate delinquency one day after the due date. On the day following the due date, fiscal administrators shall initiate follow-up by telephone, if feasible, or by letter with a requirement for the vendor to reply by a specified date. If telephone inquiry is made, fiscal administrators shall document the purchase order file to show the date, name of

person contacted, and record of conversation, for future reference. When inquiries reveal excessive delays in the completion time without valid reason(s), consideration shall be given to canceling the order and resoliciting the remaining construction services from another vendor. Any problem regarding delivery shall be brought to the attention of the OPRPM.

Where a large, complex and important construction project has been placed with a vendor of uncertain capability, follow-up shall be made periodically between award and completion date to detect any probable difficulties in advance. Complete files shall be maintained on these cases to support the University in any subsequent dispute action.

n. Receipt and Acceptance of Supplies or Services

1) Inspection and Acceptance of Furniture, Fixtures and Equipment

The University department has the right before payment or acceptance to inspect the goods at any reasonable place and time and in any reasonable manner. Expenses of inspection shall be borne by the buyer. The procedure for inspection is as follows:

- a) Check all packages and weights against shipper's manifest.
- b) Observe and record the condition of packing or other evidence of rough or faulty handling, with the carrier's representative present, prior to acceptance.
- c) Check all items to ascertain conformance with the supplier's packing slip.
- d) Open all packages immediately after delivery and check to determine that goods received are as ordered.
- e) Record overages, shortages, and damaged and incorrect materials.
- f) If necessary, perform testing of the goods.

- g) If goods are damaged:
  - 1) Do not dispose of shipping containers;
  - 2) Do not move the goods until the carrier's claim representative has made an inspection.
  
- h) Notify the carrier immediately (by telephone and follow-up in writing) of any shipment problems.
  - 1) Maintain a "log" of all events, stating names, dates and locations. If the goods are conforming, the University department has an obligation to pay for the goods accepted. However, if the goods are nonconforming, the University department must immediately notify the vendor that the goods are unacceptable and specify the reason for rejection if the defects are ascertainable by inspection. Failure to notify the vendor immediately of any defect(s) may constitute acceptance and the buyer may have no legal recourse. In general, the parties to a contract are excused from their performance obligations when performance has been rendered impossible or unreasonably burdensome by circumstance beyond the control of the parties at the time the contract was consummated. Under these circumstances, the vendor must notify the University department immediately that the vendor is unable to fulfill the terms of the contract and state the reason for nonperformance. When this situation occurs, the University department shall notify the OPRPM immediately. Because of legal implications, the OPRPM will determine the course of action to be taken. The burden of proving nonconformity rests with the University department.

2) Inspection and Acceptance of Overall Construction Project

All materials, equipment, and workmanship shall be subject to inspection at any and all times during the construction project. The University has the right to reject defective or non-conforming material, equipment and workmanship. Rejected material and equipment shall be promptly removed from the job site and satisfactorily replaced by the vendor. Rejected workmanship shall be satisfactorily corrected. Upon completion of the job, the vendor shall notify the University, in writing, to arrange for final inspection and acceptance.

3) Receipt and Certification of Goods, Services, and Construction

Refer to Kualif Financial System, User Guides, which are available at the following website: <http://www.hawaii.edu/kualifinancial>

4) Receipt of Damaged, Defective, or Discrepant Goods

After conducting the inspection as outlined in subparagraph 1, Inspection and Acceptance, and defects are noted, the University department shall retain all bills of lading, airway bills, packing slips, damaged containers or goods, and copies of invoices and forward them to the fiscal administrator. The fiscal administrator will contact the vendor for replacement.

5) Report of Discrepant Shipping or Invoicing

Mistakes in invoicing or shipping shall be reported to the fiscal administrator, referring to the order number and vendor involved, so that negotiations or corrections can be conducted. Fiscal administrators shall maintain a detailed report of negotiations or attempts at correction.

k. Preparing Electronically Generated Purchasing Documents

Refer to Kualifinancial System, User Guides, which are available at the following website:

<http://www.hawaii.edu/kualifinancial>

l. Performance and Payment Bond

Procurements of greater than \$50,000 for construction shall be secured by a performance and payment bond in a manner satisfactory to the University and in an amount equal to one hundred percent of the price specified in the contract.

m. Other Requirements

All requirements provided in Section 1(b)(1) of this procedure, shall be included in the solicitation.

n. Inability to Solicit or Obtain Minimum Quotations

When the minimum quotations are not obtained for reasons such as insufficient sources, etc. written justification for the inability to obtain three quotes and shall be placed in the procurement file. Form SPO-010 (**Attachment 281.4**) shall be utilized for this purpose.

o. Small Purchases of Construction of \$15,000 or More

Small purchases of construction of \$15,000 or more which are not processed through the SuperQUOTE system shall be conducted through Competitive Sealed Bidding (Section A8.235) or Competitive Sealed Proposals (Section A8.240).

p. Posting of Awards

Small purchase awards of \$2,500 and greater shall be reported on the SPO Awards Reporting System. Fiscal administrators are required to complete OPRPM Form 155 (**Attachment 281.5**) and submit to OPRPM within TWO (2) days of purchase for all awards made within their delegated purchasing authority over \$2,500.

3. Competitive Sealed Bidding

a. Conditions for Use

"Competitive sealed bidding" is a procurement method by which vendors submit sealed bids (offers) in response to an advertised solicitation. The solicitation is in the form of an Invitation for Bids and sets forth with specificity what the University is interested in acquiring and under what terms and conditions. Use of the Invitation for Bids precludes negotiation, and award of a contract is always made to the lowest responsive and responsible bidder. A bidder who is not financially or otherwise qualified to perform (responsible) or who takes exception to the specifications, terms or conditions in the Invitation for Bids (responsive) shall have its bid rejected.

1) When Is Competitive Sealed Bidding Required?

Unless otherwise authorized, all procurements for construction not qualifying as small purchases as set forth in Section 2 shall be awarded by competitive sealed bidding except as otherwise provided in these procedures, i.e., competitive sealed proposals, sole source procurement, emergency procurement or exempt procurement.

The parceling of a construction project into several smaller projects to avoid the competitive bidding requirements is prohibited as provided in Section A8.220(7).

b. Procedures for Competitive Sealed Bidding: An Overview.

1) Requisitioner:

- a) Prepares memorandum requesting purchase;
- b) Prepares and attaches technical specifications and required special provisions; and
- c) Transmits required number of copies to the appropriate fiscal administrator.

- 2) Fiscal Administrator:
  - a) Prepares requisition and purchase order, completed to the extent possible, for legal advertisement (if applicable);
  - b) Certifies availability of funds and obtains authorizing signature;
  - c) Forward package to Office of Procurement and Real Property Management (OPRPM).
- 3) Office of Procurement and Real Property Management:
  - a) Reviews specifications and special provisions;
  - b) Finalizes legal specifications and provisions for the Invitation for Bids and advertises the requirement (if applicable);
  - c) Receives and reviews bids and determines the lowest responsible and responsive bidder; forwards to the requisitioner and/or fiscal administrator for review and recommendation;
  - d) If award of contract is desired, fiscal administrator should submit a purchase order for contract encumbrance purposes, and the OPRPM will prepare contract documents or issue the purchase order as determined by the Director, OPRPM;
  - e) Obtains certificate of compliance, signature of Contractor, and performance and payment bonds, if applicable;
  - f) Executes contract on behalf of the University; and
  - g) After execution, issues Notice to Proceed and sends copy of the contract to the contractor, and the fiscal administrator or requisitioner, as appropriate.

4) Requisitioner/Fiscal Administrator:

- a) Upon completion of the contract or phases of the contract, signs invoice indicating satisfactory completion of contract or phase and returns invoice with certificates of compliance as addressed in Section A8.275, if applicable, to Disbursing Office for payment processing, referencing contract number; and
- b) When determined that a purchase order shall be used, the procedures outlined in Section 2, for the preparation of a purchase order shall apply.

c. Preparing the Invitation for Bids

The Invitation for Bids is the means by which competitive bids are solicited. The Invitation for Bids is a key document in the procurement process because it contains the terms, general provisions, special provisions, technical specifications, and plans to be used by bidders in preparing their bids. It also forms the basis for determining bidders' responsiveness and determining the successful bidder. Finally, its terms, general provisions, special provisions, and technical specifications are incorporated into the contract itself.

The construction of the Invitation for Bids is critical to competition. It is essential that complete and explicit specifications precisely define the University's requirements. Care must be exercised by the University purchasing team to assure that specifications are not overly restrictive so as to preclude competition. At the same time, the specifications must restrict the competition only to those whose construction services are suitable to the University's requirements.



When it is considered impractical to initially prepare a definitive purchase description or when informal discussions with offerors are not productive, the OPRPM may, prior to issuing an Invitation for Bids, issue:

- 1) A formal written request for information which shall include, but not be limited to:
  - a) The objective of the procurement;
  - b) Instructions that the response is to provide the University with recommendations that will serve to accomplish the work required by the procurement;
  - c) Reservation by the University of the right to incorporate in a solicitation, if issued, any recommendations presented in the response to the request for information; and
  - d) Disclaimer that neither the University nor the supplier responding has any obligation under the request for information; or
- 2) An informal written, oral, or electronic media request to obtain information for a solicitation; or
- 3) A combination of formal and informal requests.

The entire tone of the solicitation and the future course of any resulting contract are cast in the Invitation for Bids. Unless sufficient time is devoted to the preparation of the Invitation for Bids, not only is competition restricted, but the acquisition may be subject to legal and procedural problems.

Although coordination and technical assistance among the various programs of the University are necessary to prepare the technical specifications and supporting documentation, final review, approval, and public notice rest with the OPRPM.

d. Technical Specifications

1) Purpose

The purpose of a specification is to serve as a basis for obtaining the construction services which are adequate and suitable for the University's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the intent of the University that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the University's requirements. Any specification which restricts competition must be justified.

Developing specifications is one of the most important elements of the purchasing process. To provide a common basis for bidding, specifications shall set out the required scope of work for the construction project, and if the project requires fixtures, furniture, and equipment, the minimum essential characteristics of what is being purchased so that all bidders know exactly what the University wants to buy and can accurately compute their bids. Both underspecifying and overspecifying can be troublesome. Underspecifying may result in the acquisition of items which do not adequately meet program requirements while overspecifying may restrict competition and result in a legal challenge to the procurement action.

The OPRPM should be consulted early in the planning stage so that preparation of the technical specifications can proceed in an orderly fashion. Careful consideration shall be given to providing adequate lead time for developing definitive and nonrestrictive specifications for effective competition.

2) Performance and Functional Specifications for  
Fixtures, Furniture and Equipment

The use of functional or performance descriptions is the preferred form of specifications. Such specifications shall set forth minimum functional or performance criteria to meet the needs of the University. To facilitate the use of such criteria, requisitioners should endeavor to include as a part of their requests the principal functional or performance needs to be met. In order to provide a common basis for bidding, specifications must set out the essential characteristics of the item(s) to be purchased or the specific services the contractor is required to perform. It should be kept in mind that vendors whose products do not meet established functional or performance criteria may challenge the specifications as being preclusive. Specifications shall not call for features or a quality level which is not necessary to an intended use or need. Therefore, it is important to insure that all such criteria can be justified from an institutional standpoint.

3) Brand Name Specifications (Sole Brand also referred to as Restrictive Specifications)

"Brand name" specifications may be used where only one manufacturer's product is capable of meeting University requirements and the product is available from several vendors. The use of a brand specification is inherently restrictive. Therefore, all requests for use of brand name specifications must be justified. Form SPO-014(**Attachment 281.2**) shall be submitted to OPRPM for this purpose. Brand name specifications may only be used when the SPO determines that only the identified brand name item(s) will satisfy the University's needs.

4) Qualified Products List

"Qualified products list" is a form of specification in which various brands are examined, approved, and placed on a list. When an Invitation for Bids (IFB) is issued, the bidding is limited to vendors whose products are on the list. The purpose of this type of specification is to determine in advance those products which meet specifications.

5) Brand Name or Acceptable Alternate Specifications

"Brand name or acceptable alternate" specifications involve naming one or more commercial products by brand names, makes or model numbers, or some other designation that identifies a specific product of a manufacturer as an example of the quality level desired. Items equaling or surpassing this quality are understood to be acceptable. The "brand name or acceptable alternate" specification should be used only when functional or performance specifications are not available. If those specifications are used, it is recommended that more than one brand be named.

e. Bidding Time

Bidding time is the period of time between the date of publication of the Invitation for Bids and the time and date set for the opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids as provided in HAR 3-122-16.02. In any event, bid opening shall be set no sooner than seventeen (17) days after any scheduled pre-bid conference.

f. Public Notice for Bids

Where the procurement for construction shall be made through competitive bidding, a public notice of availability of the solicitation shall be publicized as provided in HAR 3-122-16.03. At a minimum, the public notice shall be placed on the SPO Procurement Notices System (PNS) internet site. Optionally, and in

addition to internet posting, a legal advertisement may be published either in a daily or weekly publication of general circulation within the State or in a daily or weekly publication of local circulation in a county of the State, if available, pertinent to the procurement.

In order to encourage competition, Invitations for Bids may be mailed to neighbor island or out-of-state bidders. Bidders on Oahu may pick up copies of the Invitations for Bids from the OPRPM.

g. Pre-Bid Conferences

Pre-bid conferences may be conducted to explain the procurement requirements. All prospective bidders shall be notified of the pre-bid conference in the Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment.

At least seventeen days prior to submission of bids pursuant to Section 103D-302, HRS for a construction or design-build project with a total estimated contract value of \$500,000 or more, the University shall hold a pre-proposal conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend as provided in HAR 3-122-16.05.

h. Notice of Intent to Bid

As provided in HAR 3-122-111, prospective bidders on construction projects may be required to submit a written notice of intention to bid not less than ten calendar days prior to the bid opening date. Such requirement shall be noted in the solicitation.

i. Amendment of Invitation for Bids

If, after issuance of an Invitation for Bids but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

j. Pre-Opening Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written notice received in the OPRPM prior to the time and date set for bid opening as provided in HAR 3-122-16.07.

k. Late Bids

Any bid received by the OPRPM after the time set for opening of bids is a late bid and will not be considered for award.

l. Cancellation of Invitation for Bids

Cancellation of an Invitation for Bids may be made when in the best interest of the University as provided in Section 103D-308, HRS, and HAR 3-122-96.

m. Bid Submission and Bid Opening

Bids submitted in response to an Invitation for Bids shall be submitted to the OPRPM and shall remain sealed until the time designated for bid opening. At such time, bids shall be opened, publicly read, and recorded.

n. Bid Evaluation and Award

Following bid opening, bids are evaluated by the OPRPM for legal sufficiency and by the requisitioner for technical compliance. Bids which do not meet statutory requirements or which take exception to or do not meet specifications shall be rejected.

1) Mistakes in Bids

A mistake in a bid may be corrected, withdrawn, or waived only to the extent permitted under HAR 3-122-31.

2) Withdrawal of Bids

Withdrawal of bids after bid opening but prior to award may be made if the mistake is attributable to an obvious error which shall affect price, quantity, quality, delivery, or contractual conditions. The bidder shall request permission to withdraw a bid by submitting documentation that demonstrates that a mistake was made. The bidder may be permitted to withdraw the bid upon written determination by the OPRPM.

3) Low Tie Bids

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

In the event of low tie bids, award shall be decided in the following manner:

- a) Award the contract to a business providing goods produced or manufactured in Hawaii or to a business that otherwise maintains a place of business in Hawaii;
- b) Award the contract to the bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical; and
- c) If neither of the above methods will resolve the tie bid, award may be made by the drawing of cards as provided in HAR 3-122-34. The bidder drawing the highest card shall be awarded the contract.

4) Only One Bid or No Bids Received

If only one bid is received or if no bids or no responsive bids are received for an Invitation for Bids, the SPO may determine that it is neither practicable nor advantageous to the University to again solicit sealed bids. To enable the SPO to make this determination, the program shall provide reasons why it would be neither practicable nor advantageous, e.g., time constraints, limited competition in the marketplace, and whether the additional potential cost of preparing, soliciting and evaluating competitive sealed bids is expected to exceed the benefits normally associated with the solicitations. Form SPO-15 (**Attachment 281.3**) shall be completed and submitted to OPRPM for this purpose. If this determination is made, the SPO will select a more cost effective alternative procurement method, e.g., informal solicitation of bids, sole source, direct negotiations, etc.

5) Preferences

In the evaluation of bids, consideration shall be given to all applicable preferences as provided under Chapters 103 and 103D, HRS, and Chapter 3-124, HAR.

6) Award

The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The award shall be posted for five working days.

The award of the contract shall be made by the OPRPM, and only that office shall authorize the contractor to commence work by issuing a Notice to Proceed. Programs shall not authorize the contractor to commence work under the contract.



o. Release of Information Prior To and After Award

Information concerning proposed procurements shall not be released outside the University prior to solicitation unless authorized by the Director, OPRPM. A bid shall not be disclosed until the deadline for receipt and opening of bids. Such information shall be released to all potential vendors at the same time, as nearly as possible, so that one potential vendor shall not be given unfair advantage over another.

After the solicitation has been issued, discussions with prospective contractors regarding a procurement and the transmission of technical or other information shall be conducted only by the OPRPM staff or by other specifically authorized personnel. Such personnel shall not furnish any information to a potential bidder which alone or together with other information may afford the bidder an advantage over others. However, general information which would not be prejudicial to other bidders may be furnished upon request.

Requests for information such as an explanation of a particular contract clause, general or special provision, or a particular condition in the Invitation for Bids shall be provided only by the OPRPM staff. When necessary to clarify ambiguities, or correct mistakes or omissions, an amendment to the solicitation shall be issued by the OPRPM and furnished to all to whom the solicitation has been furnished.

After bid opening, the results become public information and may be examined by other bidders and the general public. The recorded results shall be displayed on the OPRPM website for the general public for no less than thirty (30) days.

If a bidder designates that portions of its bid contain trade secrets or other proprietary data that are to remain confidential, the OPRPM shall examine the bid to determine the validity of the request for nondisclosure of trade secrets and other proprietary data. If the parties do not agree as to the disclosure of data, the OPRPM shall inform the bidders present at the bid opening that the material designated for

nondisclosure shall be subject to written determination by the Office of the University General Counsel for confidentiality. If that office determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders who were present at the bid opening shall be so notified in writing and the material shall be open to public inspection.

p. Posting of Awards

Notices of Award shall be posted on the SPO's Awards Reporting System.

4. Competitive Sealed Proposals

a. Conditions for Use

The competitive sealed proposal method of source selection may be used when it is determined by the President in writing that competitive sealed bidding is neither practicable nor advantageous to the University.

- 1) Factors to be considered in determining whether competitive sealed bidding is not practicable or advantageous include:
  - a) Whether the primary consideration in determining award may not be price;
  - b) Whether the requirements for the goods, services or construction are unable to be as sufficiently described as in an invitation for bids;
  - c) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
  - d) Whether offerors may need to be afforded the opportunity to revise their proposals, including price; and

- e) Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offer to the University. Quality factors include technical and performance capability and content of the technical proposal.

Design-build construction projects may be procured using competitive sealed proposals as approved by the State Procurement Policy Board pursuant to HAR 3-122-45.

b. Preparing a Request for Proposals

- 1) The request for proposals is used to initiate a competitive sealed proposal procurement and shall include:
  - a) The specifications, in as much detail as possible, for the goods, services, or construction to be procured, including a description of the objective of the procurement;
  - b) All contractual terms and conditions applicable to the procurement;
  - c) A statement as to the manner in which prices are to be submitted;
  - d) A statement on whether the proposal shall be accompanied by a proposal security or other evidence of financial responsibility;
  - e) The term of the proposed contract and conditions of renewal or extension, if any;
  - f) Instructions and information to offerors, including pre-proposal conferences, and the date, time, and location where proposals are to be received;

- g) The specific evaluation criteria, and their relative weighting, to be used in the evaluation of proposals which may include but are not limited to:
  - 1) Technical capability and approach for meeting performance requirements;
  - 2) Competitiveness and reasonableness of price; and
  - 3) Managerial capabilities.
- h) A statement that offerors may designate in writing those portions of the proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to disclosure as may be required by law, and that the material designated as confidential should be readily separable from the proposal in order to facilitate inspection of the nonconfidential portion of the proposal.

- 2) Public notice for a request for proposals shall be made in the same manner provided for distributing an invitation for bids.
- 3) At least seventeen days prior to submission of proposals as described in Section 103D-303, HRS, for a construction or design-build project with a total estimated contract value of \$100,000 or more, the University shall hold a pre-proposal conference and shall invite all potential interested offerors, subcontractors, and union representatives to attend as provided in HAR 3-122-16.05.

c. Amendments to a Request for Proposals

Amendments to requests for proposals may be made in the same manner as provided for invitations for bids.

d. Modifications or Withdrawals of Proposals

Proposals may be modified or withdrawn prior to the established due date as provided for invitations for bids. For the purposes of this section, the established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any.

e. Late Proposals, Late Withdrawals, and Late Modifications

Any proposal, withdrawal request, or modification received after the established due date may only be considered as provided for invitations for bids.

f. Receipt of Proposals

- 1) Proposals and modifications shall be submitted to the OPRPM and held in a secure place until the established due date. Other methods of receipt may be used when in the best interest of the University.
- 2) Proposals and modifications shall not be opened publicly, but shall be opened in the presence of two or more procurement officials.
- 3) Proposals and modifications shall be shown only to members of the evaluation committee and University personnel having legitimate interest in them.
- 4) After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals:
  - a) The name of each offeror;
  - b) The number of modifications received, if any; and
  - c) A description sufficient to identify the construction offered.

g. Evaluation of Proposals

- 1) An evaluation committee consisting of at least three University employees with sufficient qualifications in the subject area of the construction shall evaluate proposals. OPRPM shall validate the qualifications of the members of the evaluation committee by completion of Form SPO-044 (**Attachment 281.6**) which shall be maintained in the procurement/contract file. In addition, all members of the evaluation committee shall attest to their impartiality by completing Form SPO-024 (**Attachment 246.1**), which shall be maintained in the procurement/contract file.
- 2) The evaluation of proposals shall be based only on the evaluation factors set out in the request for proposals. The relative priority to be applied to each evaluation factor shall also be set out in the request for proposals. Evaluation factors not specified in the request for proposals may not be considered. The evaluated ranking of the proposals shall be available for public inspection after the contract is signed by all parties.
- 3) With respect to price as an evaluation factor, the proposal with the lowest cost factor should receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest should have a lower rating for cost. The points allocated to higher-priced proposals should be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.
- 4) In the evaluation of proposals, consideration shall be given to all applicable preferences as provided under Chapters 103 and 103D and Chapter 3-124, HAR.

h. Discussions with Offerors

- 1) Based on the evaluation, a "priority list" of the offerors submitting proposals may be created as follows:
  - a) In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
  - b) All responsive, responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list.
  - c) If numerous acceptable and potentially acceptable proposals have been submitted, the OPRPM or the evaluation committee may rank the proposals and limit the priority list to at least three responsive, responsible offerors who submitted the highest-ranked proposals.
- 2) Discussions should be limited to only "priority-listed" offerors and may be held to:
  - a) Promote understanding of the University's requirements and priority-listed offerors' proposals; and
  - b) Facilitate arriving at a contract that will be most advantageous to the University, taking into consideration the evaluation factors set forth in the request for proposals.
- 3) Proposals may be accepted on the basis of the evaluation without discussion.
- 4) Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

- a) Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror.
  - b) If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by an addendum to incorporate the clarification or change.
- 5) Addenda to the request for proposals shall be distributed only to priority-listed offerors who shall be permitted to submit new proposals or to amend those submitted.
  - 6) The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion and negotiation process.

i. Best and Final Offers

- 1) Priority-listed offerors may be afforded the opportunity to submit best and final offers on or before a date and time established by the OPRPM.
- 2) If priority-listed offerors do not submit a new offer, their immediate previous offer should be considered as their best and final offer.
- 3) After the best and final offers are received, final evaluations should be conducted for purposes of award of the contract.

j. Mistakes in Proposals

- 1) When the OPRPM knows or has reason to conclude before award that a mistake has been made, the OPRPM shall request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn.
- 2) If discussions are commenced or best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or



withdrawing the proposal until the time and date set for receipt of best and final offers.

- 3) If the date and time for best and final offers have passed, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- 4) If the date and time for best and final offers have passed, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if the OPRPM determines that:
  - a) the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or
  - b) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- 5) Technical irregularities that are matters of form rather than substance evident from the proposal document, and insignificant mistakes that have no effect on price, quality or quantity, may be waived or corrected by the OPRPM if either is in the best interest of the University.
- 6) Mistakes shall not be corrected after award of contract.

k. Cancellation of Solicitations and Rejection of Proposals

Cancellation of a request for proposals and/or rejection of proposals may be made when in the best interest of the University as provided in Section 103D-308, HRS, and HAR 3-122-96.

1. Award of Contract

A contract shall be awarded under competitive sealed proposals to the responsive, responsible offeror whose proposal is determined in writing to provide the best value to the University taking into consideration price and the evaluation criteria provided in the request for proposals. Other criteria may not be used in the evaluation. The award shall be posted for five working days.

m. Receipt of One or No Proposals

- 1) If for a given request for proposals, there is only one responsive, responsible offeror submitting an acceptable proposal:
  - a) An award may be made to the single offeror, provided that it is determined that the price submitted is fair and reasonable;
  - b) The proposed procurement may be cancelled; or
  - c) An alternative procurement method may be conducted to include, but not be limited to, direct negotiations with the sole offeror first, and then with any contractor or vendor should negotiations with the sole offeror fail, provided the SPO determines in writing that the need for the construction continues, but that the price of the one offer is not fair and reasonable. Form SPO-015 (**Attachment 281.3**) shall be completed and submitted to OPRPM for this purpose.
- 2) If for a given request for proposals, there are no proposals received or there are no responsive and responsible offerors submitting acceptable proposals, the SPO may determine that it is neither practical nor advantageous to issue a new solicitation. In the event of this determination, an alternative procurement method may be selected, to include but not be limited

to, direct negotiations. Form SPO-015  
(**Attachment 281.3**) shall be completed and  
submitted to OPRPM for this purpose.

n. Public Inspection

- 1) The existing contract file, except those portions which the offeror designates in writing as trade secrets or other proprietary data to be confidential, shall be available for public inspection upon posting of award. The contract file shall include but not be limited to the following:
  - a) The register of proposals received;
  - b) A listing of all vendors to whom copies of the request for proposals were distributed;
  - c) Name of successful offeror and dollar amount of offer;
  - d) The basis on which the award was made;
  - e) A copy of the request for proposals;
  - f) A copy of the successful offeror's proposal;
  - g) A copy of all unsuccessful offerors' proposals; and
  - h) A copy of the executed contract resulting from the request for proposals.
- 2) If a person requests to inspect the portions of an offeror's proposal designated as confidential, the inspection shall be subject to written determination by the Office of the University General Counsel for confidentiality in accordance with Chapter 92F, HRS.
- 3) If the Office of the University General Counsel determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public

inspection, subject to appeal by the offeror whose proposal is being inspected pursuant to Chapter 92F, HRS.

o. Debriefing

- 1) The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and contract award.
- 2) A written request for a debriefing by a nonselected offeror shall be made within three working days after the posting of the award of the contract.
- 3) Debriefing shall be held by the procurement officer or designee, to the maximum extent practicable, within seven working days; provided the procurement officer or designee may determine whether or not to conduct individual or combined debriefings.

p. Posting of Awards

Notices of Award shall be posted on the SPO Awards Reporting System.

5. Sole Source

a. Conditions for Use

- 1) When there is only one source available from which particular construction services may be obtained, University policy permits purchases from qualified vendors without soliciting competitive quotations, if the following criteria are met:
  - a) The proposed construction has a unique requirement which is essential in order for the construction to serve its intended purpose.

- b) This requirement can only be met by a particular construction service provider which has the capability to satisfy the unique requirement or provide:
    - 1) Proprietary items;
    - 2) Compatibility with existing equipment;  
or
    - 3) Public utility repairs or construction that can only be provided by the particular service provider.
  - c) The particular construction having the unique requirement is available from only one supplier or service provider.
- 2) When an item is referred to by an exact brand, but there are other brands that qualify as "acceptable alternates" or "equals," the purchase shall be subject to a competitive solicitation.
  - 3) When an item is unique, but is available from more than one supplier, the purchase shall be considered a "sole brand" purchase rather than a sole source purchase and shall be subject to a competitive solicitation. The required item, however, will be designated by brand name and model number. Except for purchases not exceeding \$2,500 and exempt purchases under Section A8.220, all requests for sole brand purchases must be justified. SPO Form-015(**Attachment 281.3**) shall be completed and submitted to OPRPM for this purpose.
  - 4) The fact that a person or organization is or has been furnishing services to a purchasing agency does not, by itself, render such person or organization the only source for the type of service required.
  - 5) The potential loss of funds at the end of a fiscal year shall not be a basis for sole source exemption.

- 6) When an item is specified by brand name and model number in a federal grant, this merely constitutes approval to use such funds for acquisition of the item and does not constitute approval for a sole source purchase.

b. Requesting Sole Source Approval

- 1) When requesting a sole source purchase in any dollar amount, the requisitioner must complete and submit the following documents:
  - a) Notice & Request For Sole Source, Form SPO-001 (**Attachment 281.7**). This form shall be completed and submitted to OPRPM for review, approval, and certification by the President as Department Head prior to submission to SPO for approval;
  - b) Memorandum from the requesting department. A memorandum transmitting the sole source request form shall be routed to the Chancellor or Vice President under whose jurisdiction the request originates for acknowledgement and approval of the Request for Sole Source prior to submission to the OPRPM;
  - c) Original approvals from any other administrative directive, circular, or guideline (i.e. telecom approval, President's approval, etc.);
  - d) Determination of Cost or Price Reasonableness, OPRPM Form 95 (**Attachment 285.1**), to verify that price offered is considered fair and reasonable;
  - e) If federal funds will be expended, Authorization to Purchase Equipment with Federal Contract or Grant Funds, UH Form 39, and copies of the award document from the granting agency and budget sheet indicating the approved line item;

- f) A requisition and Purchase Order completed to the extent possible or a requisition for encumbrance purposes if a contract is to be issued;
  - g) A written original quotation which should include method of delivery, freight costs, delivery time, insurance, all applicable taxes, and discounts, if any; and
  - h) A copy of the Request & Notice of Sole Source shall be posted for public notice by the Office of Procurement and Real Property Management on the SPO Reporting System for a period of seven calendar days prior to any approval action by the SPO.
- 2) If federal funds will be expended under this contract, the program shall submit copies of the award document from the granting agency and budget sheet indicating the approved line item.

Departments shall indicate any special federal provisions which must be included in the contract terms, and, if necessary, secure clearance from the Office of Research Services.

The Request should also cite the name of the granting agency and grant/contract number.

- 3) All sole source requests shall be reviewed and approved by the Chancellor or Vice President under whose jurisdiction the request originates prior to submission to the OPRPM. All Sole source purchases shall be submitted to the OPRPM for review and forwarding to SPO for approval. Upon review and approval of sole source justification and contract terms, a purchase order or contract documents shall be issued to the contractor for execution.

c. Amendments to Sole Source Contracts

- 1) Amendments to sole source contracts that would change the original scope of the contract or increase the original contract price by ten percent or more may only be made with the approval of the SPO. The annual renewal of a sole source contract for services should be submitted as a new request.
- 2) When requesting an amendment to a sole source purchase order/contract, the requestor shall complete and submit the following documents to the Office of Procurement and Real Property Management:
  - a) A written explanation for the amendment including reasons why the sole source basis for the contract is still valid, why a change is required, and detailed specifications to be included in the contract modification. An authorized designee shall certify to the best of his/her knowledge that the information provided is true and correct. The request shall be reviewed and approved by the Chancellor or Vice President under whose jurisdiction the request originates; and
  - b) If the expenditure was subject to approval from any other administrative directive, circular, or guideline, the University department must obtain and submit an amended approval.
  - c) A copy of the original purchase order or reference to the appropriate contract number between the department and the contractor.
  - d) Determination of Cost or Price Reasonableness, OPRPM Form 95 (**Attachment 285.1**).
  - e) A Notice of Amendment to Sole Source Contract, Form SPO-001B (**Attachment 281.8**).



d. Objections to a Request for Sole Source Procurement

- 1) Any objections to the request for sole source shall be submitted in writing and received by the SPO within seven calendar days from the date the notice was posted. All documents relating to the objection, including a written summary of the disposition of the objection, shall be kept with the sole source file.
- 2) The determinations by the SPO required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

e. Posting of Awards

Sole Source awards of \$2,500 and greater shall be reported on the SPO Awards Reporting System. Fiscal administrators are required to complete OPRPM Form 155 (**Attachment 281.5**) and submit to OPRPM within TWO (2) days of purchase for all sole source purchases approved by the SPO and issued within their delegated purchasing authority over \$2,500.

6. Emergency Procurement

a. Conditions for Use

Normal procurement procedures may be suspended for the purchase of construction in emergency situations. Emergency procurement may be utilized only to purchase that which is necessary to cover the emergency; subsequent requirements shall be obtained using normal purchasing procedures.

For this purpose, emergency procurement shall be considered only when the following conditions exist:

- 1) A situation of unusual or compelling urgency exists which creates a threat to public health, welfare, or safety; and
- 2) The existence of such condition creates an immediate and serious need for construction

services that cannot be met through normal procurement methods, and the lack of such goods, services or construction would seriously threaten the continued function of the University or its programs and operations, the preservation or protection of property, or the health or safety of any person.

b. Procedures

- 1) All requests for emergency expenditures shall be reviewed and approved by the Chancellor or Vice President under whose jurisdiction the request originates prior to submission to the OPRPM. Emergency expenditures regardless of dollar amount shall be submitted to the OPRPM for review and forwarding to the SPO for approval.
- 2) For purposes of securing approval of an emergency expenditure, the following information shall be obtained:
  - a) Nature of the emergency;
  - b) Work to be done for construction to be procured;
  - c) Name of contractor and reason for selection of the particular contractor;
  - d) Estimated amount of expenditure.

Form SPO-002, Emergency Procurement (**Attachment 281.9**) shall be used for this purpose.

Fiscal administrators are authorized to approve all emergency expenditures which must be made after normal working hours and for which the OPRPM and/or the SPO cannot be reached for review and approval purposes. For such purchases, Form SPO-002 (**Attachment 281.9**) should be completed and provided to the OPRPM as soon thereafter as reasonably possible along with a memorandum requesting approval of the emergency expenditure. The memorandum shall be routed to the Chancellor

or Vice President for approval prior to submission of Form SPO-002 to the OPRPM.

- 4) Such competition as is practicable shall be obtained to assure that the required construction is procured in time to meet the emergency. If an award is made on the basis of only one quote, OPRPM Form 95 (**Attachment 285.1**), Determination of Cost or Price Reasonableness, shall be completed.
  - 5) The program shall monitor the emergency work and, upon completion, submit a confirming purchase order (Refer to Section A8.250) and all supporting documentation to the designated departmental fiscal administrator or OPRPM, as applicable.
- c. Emergency purchase awards of \$2,500 and greater shall be reported on the SPO Awards Reporting System. Fiscal administrators are required to complete OPRPM Form 155 (**Attachment 281.5**) and submit to OPRPM within TWO (2) days of purchase for all emergency purchases approved by the SPO and issued within their delegated purchasing authority over \$2,500.

7. Requests for Exemption from Chapter 103D, HRS

a. Conditions for Use

If a University department believes that a situation exists wherein procurement by standard competitive methods would be either not practicable or not advantageous, a request to procure the construction services by exemption may be made to the OPRPM, regardless of dollar amount, for forwarding to the SPO for approval. The Request for Exemption from Chapter 103D, HRS, shall include the following information:

- 1) An explanation describing how procurement of construction services by standard competitive means is either not practicable or not advantageous to the University;

- 2) Details of the process or procedures to be followed in selecting the vendor to ensure as fair and open competition as practicable; and
- 3) A list of University personnel, by position title, who will be involved in conducting and managing the procurement.

b. Requesting an Exemption from Chapter 103D, HRS

- 1) Form SPO-007, Notice of Request for Exemption from HRS Chapter 103D (**Attachment 281.10**), shall be used for this purpose. This form shall be completed and submitted to OPRPM for review, approval, and certification by the President as Department Head prior to submission to SPO for approval.
- 2) A memorandum transmitting the request for exemption form shall be routed to the Chancellor or Vice President under whose jurisdiction the request originates for acknowledgement and approval of the request for exemption prior to submission to the OPRPM.

c. Posting of a Request for Exemption from Chapter 103D

SPO will post the request for exemption on the SPO Reporting System for a period of seven calendar days. Any objections to the request for the exempted procurement shall be made in writing to SPO within seven calendar days from the date that the notice was posted.

- d. All purchases made pursuant to an approved Request for Exemption from Chapter 103D, HRS, should cite for audit purposes, the following statement on the purchase order or contract:

"Exempt purchase, pursuant to approval of the Administrator of the State Procurement Office under APM Section A8.281."

A copy of the approved Exemption request should be maintained in the procurement file.

e. Requesting Amendments to Contracts or Purchase Orders Exempted from HRS Chapter 103D

- 1) Amendments to contracts or purchase orders exempted by the Administrator of the SPO from Chapter 103D, HRS, that would change the original scope of the contract may only be made with the further approval of the Administrator of the SPO. When requesting such an amendment to an exempt purchase order/contract, the requestor shall complete and submit Form SPO-007B (**Attachment 281.11**), Notice of Request to Amend and Exemption from HRS Chapter 103D Contract. This form shall be completed and submitted to OPRPM for review, approval, and certification by the President as Department Head prior to submission to SPO for approval.
- 2) A memorandum transmitting the request for amendment to a contract or purchase order exempted from 103D shall be routed to the Chancellor or Vice President under whose jurisdiction the request originates for acknowledgement and approval of the request for exemption prior to submission to the OPRPM.

f. Posting of a Request for Amendment to an Exemption from HRS Chapter 103D Contract

SPO will post the request for amendment on the SPO Reporting System for a period of seven calendar days. Any objections to the request for amendment to the exempted procurement shall be made in writing to SPO within seven calendar days from the date that the notice was posted.

- g. The amendment issued to the contract or purchase order made pursuant to an approved request for amendment should cite for audit purposes, the following statement on the purchase order amendment or contract modification:

"Amendment to exempt purchase, pursuant to approval of the Administrator of the State Procurement Office under APM Section A8.281."

A copy of the approved Amendment to the Exemption request should be maintained in the procurement file.

- h. Posting of Awards

Exemption awards of \$2,500 and greater shall be reported on the SPO Awards Reporting System. Fiscal administrators are required to complete OPRPM Form 155 (**Attachment 281.5**) and submit to OPRPM within TWO (2) days of purchase for all exempt purchases approved by the SPO and issued within their delegated purchasing authority over \$2,500.