

Prepared by Office of Procurement and Real Property Management.
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A8.235 Competitive Sealed Bidding

1. 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 (responsibility) or who takes exception to the specifications, terms or conditions in the Invitation for Bids (responsiveness) shall have its bid rejected.

a. When Is Competitive Sealed Bidding Required?

Unless otherwise authorized, all procurements of \$25,000 or more for goods, services, and construction shall be awarded by competitive sealed bidding except as otherwise provided in these procedures, i.e., competitive sealed proposals, professional services procurement, small purchases, sole source procurement, emergency procurement or exempt procurement.

The parceling of a purchase to avoid the competitive bidding requirements is prohibited. Therefore, lease and lease-purchase contracts for equipment, maintenance contracts, or any other multi-year contracts are subject to the competitive bidding requirements if:

- 1) the total expenditure for one year equals or exceeds the bidding threshold set forth herein;

- 2) the lease agreement includes an option to purchase and the total expenditure under this option equals or exceeds the bidding threshold (including lease payments); or
- 3) the total expenditure for a multi-year contract exceeds the bidding threshold even though the total annual expenditure falls below the bidding threshold (e.g., if the first annual lease or maintenance payment is \$15,000 but there is a provision for renewal and if exercised, the total expenditure for two years will be \$30,000, this purchase requires competitive sealed bidding).

Foreseeable purchases of the same item processed by a fiscal officer within one year which would equal or exceed the bidding threshold are also subject to competitive bidding. Similarly, the purchase of a number of related items (e.g., audio-visual equipment) equaling or exceeding the bidding threshold would require competitive bidding.

2. Procedures for Competitive Sealed Bidding: An Overview.

a. Requisitioner:

- 1) Prepares memorandum requesting purchase and completes and attaches OPRPM Form 68, Information Required for Formal Bid (**Attachment 235.1**);
- 2) Prepares and attaches technical specifications; and
- 3) Transmits required number of copies to the appropriate Fiscal Officer.

b. Fiscal Officer:

- 1) Prepares electronically generated or hard copy requisition (if applicable), completed to the extent possible, for legal advertisement;
- 2) Certifies availability of funds and obtains authorizing signature;

- 3) Generates electronic purchase order (transfer and submit to encumber). If hard copy requisition prepared, send carbon purchase order with package; and
- 4) Forward package to Office of Procurement and Real Property Management (OPRPM).

c. Office of Procurement and Real Property Management:

- 1) Reviews specifications;
- 2) Finalizes legal specifications and provisions for the Invitation for Bids and advertises the requirement;
- 3) Receives and reviews bids and determines the lowest responsible and responsive bidder; makes award recommendation to requisitioner;
- 4) If award of contract is desired, fiscal officer should submit Contract Encumbrance and Payment Form (**Attachment 275.1a**), and the OPRPM will prepare contract documents or purchase order as determined by the Director, OPRPM;
- 5) If a contract will be issued, obtains signature of Contractor and obtains performance bond, if applicable;
- 6) Executes contract on behalf of the University; and
- 7) After execution, issues Notice to Proceed and sends copy of the contract to the contractor, and the fiscal officer or requisitioner, as appropriate.

d. Requisitioner/Fiscal Officer:

- 1) Upon completion of the contract or phases of the contract, signs invoice indicating satisfactory completion of contract or phase and returns invoice with tax clearance, if applicable, to Disbursing Office for payment processing, referencing contract number; and

- 2) When determined that a purchase order shall be used, the procedures outlined in Section A8.250, for the preparation of a purchase order shall apply.

3. 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, and technical specifications 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 goods or 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:

- a. A formal written request for information which shall include, but not be limited to:
 - 1) The objective of the procurement;
 - 2) Instructions that the response is to provide the University with recommendations that will serve to accomplish the work required by the procurement;
 - 3) 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

- 4) Disclaimer that neither the University nor the supplier responding has any obligation under the request for information; or
- b. An informal written, oral, or electronic media request to obtain information for a solicitation; or
- c. 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 doomed 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 advertising rest with the OPRPM.

4. Technical Specifications

a. Purpose

The purpose of a specification is to serve as a basis for obtaining goods, services, or construction 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 policy 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 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.

b. Performance and Functional Specifications

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.

c. Brand Name Specifications (Sole Brand)

"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. OPRPM Form 144, Sole Brand Justification (**Attachment 255.2**) shall be submitted for this purpose. Brand name specifications may only be used when the OPRPM determines that only the identified brand name item(s) will satisfy the University's needs.

d. 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.

e. 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 is the least desirable description, causes the most misunderstanding, confusion and protest and is to be used only when no other specification is available. If those specifications are used, it is recommended that more than one brand be named.

5. 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.

6. Advertisement for Bids

Where the procurement for goods, services or construction shall be made through competitive bidding, a public notice

of availability of the solicitation shall be publicized. At a minimum, the public notice shall be placed on a University or State internet site. Optionally, and in addition to internet posting, a one-time 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.

7. 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. If conference attendance is mandatory for submission of an offer, the requirement shall be stated in the public notice and in the solicitation.

Pre-Bid conferences are required for solicitations for construction or design-build projects with estimated contract values of \$500,000 or more and shall be held at least 15 days prior to bid submission.

8. Notice of Intent to Offer

All 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. The OPRPM shall insure that the prospective bidder has the financial ability, resources, skills, capability, and business integrity necessary to perform the work specified.

The OPRPM may require an intent to bid for other procurements if deemed appropriate.

9. 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.

10. 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.

11. 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.

12. Cancellation of Invitation for Bids

In the event any goods, services or construction which were requested are no longer required, the department will promptly notify the OPRPM which shall notify all prospective bidders of the cancellation and return all unopened bids to bidders.

13. 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.

14. 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. Minor mistakes in bids which do not

affect price, quantity, quality, delivery, or contractual conditions may be waived by the OPRPM when it is determined to be in the best interest of the University.

a. Confirmation of Bid

When the OPRPM knows or has reason to conclude that a mistake has been made, such office shall request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn upon submission of data to substantiate the mistake if correction or withdrawal is not contrary to the best interest of the University or to the fair treatment of other bidders.

b. Apparent Mistakes

If the mistake and intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

c. 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 and shall provide clear and convincing evidence establishing the existence of the mistake. The bidder may be permitted to withdraw the bid upon written determination by the OPRPM.

d. 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:

- 1) 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;
- 2) Award the contract to the identical 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
- 3) Award may be made by the drawing of cards. The bidder drawing the highest card shall be awarded the contract. The drawing shall be witnessed by at least one person and the file shall be documented with the name of the witness and the person supervising the drawing.

e. Only One Bid Received

Where only one bid is received in response to an Invitation for Bids, there must be a determination of cost or price reasonableness. OPRPM Form 95, **(Attachment 285.1)** shall be submitted for this purpose.

f. Rejection of Bids

Bids in response to a solicitation are offers to the University. Therefore, the University always has the option of rejecting all bids and calling for new bids.

Late or non-conforming bids may also be rejected and award made to the next lowest bidder.

g. No Bids Received

If no bids or no responsive bids are received for an Invitation for Bids, the OPRPM may determine that it is neither practicable nor advantageous to the University to again solicit sealed bids. To enable the OPRPM to make this determination, the program shall provide reasons why it would be neither

practicable nor advantageous, e.g., time constraints, 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. If this determination is made, the OPRPM will select and proceed with a more cost effective alternative procurement method, e.g., informal solicitation of bids, sole source, direct negotiations, etc.

h. Preferences

In the evaluation of bids, consideration shall be given to all applicable preferences as provided under Chapter 103D and Chapter 3-124, HAR, at <http://www.hawaii.gov/spo/SPO/Code/AdminRules/SPO/Code/AdminRules/3-124s.pdf>

i. 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 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.

15. 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. Disclosure of records identifying the potential vendors who obtained a copy of the Invitation for Bids, attended a pre-bid conference, or submitted a notice of intent to bid or a bid itself shall not be made 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 in the OPRPM for the general public for 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.