

Prepared by Office of Procurement and Real Property Management.
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A8.220

A8.200 Procurement

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A8.220 General Principles

1. System-wide Procurement Organization

a. Delegation of Authority

Executive Policy E8.105 Authority to Execute Contractual Documents for Procuring Goods, Services, and Construction, Granting Concessions on University Property, and Entering into Cooperative Agreements delegates to the Vice President for Budget and Finance/Chief Financial Officer authority to carry out the responsibilities relating to the procurement of goods, services, and construction and authority to execute all contractual documents relating to such procurement actions. The Vice President for Budget and Finance/Chief Financial Officer has further delegated this authority to the Director of Financial Management and Controller, and the Director, Office of Procurement and Real Property Management (OPRPM).

Executive Policy E8.107 Authority to Execute Contractual Documents for Procuring Goods, Services and Construction delegates to Vice Presidents and Chancellors authority to execute contractual documents for procuring goods, services, and construction in amounts designated therein. Vice Presidents and Chancellors may further delegate this authority to fiscal administrators of departmental units under their direction and jurisdiction. Only University personnel specifically delegated purchasing authority as set forth above are authorized to commit the institution contractually and only within the limits of their purchasing authority.

b. Director, Office of Procurement and Real Property Management (OPRPM)

The procurement function of the University is under the jurisdiction of the Director, OPRPM, who reports to the Director of Financial Management and Controller.

The Director, OPRPM, has system-wide responsibility for implementing and administering the provisions of this administrative procedure and for establishing and maintaining a purchasing system for the University of Hawaii. These responsibilities include, but are not limited to, the following:

- 1) Formulating procurement policies, procedures and practices;
- 2) Developing procurement forms;
- 3) Providing guidance on procurement matters to University personnel;
- 4) Resolving vendor complaints and procurement protests;
- 5) Providing central purchasing services as appropriate;
- 6) Supervising the purchasing activities of the University;
- 7) Training of personnel engaged in purchasing and related activities; and
- 8) Taking any other action necessary for the proper direction and control of the procurement function of the University.

c. Fiscal Administrators

Fiscal administrators are appointed in accordance with and perform the financial functions outlined in Administrative Procedure A8.025, Organizational Responsibilities within the Fiscal System. One of these functions is to support the acquisition of

goods, services, and construction for their organizations. Fiscal administrators shall be guided in this endeavor by these procedures. Fiscal administrators, in addition to supporting the acquisition, may be delegated limited authority to purchase goods, services, and construction. The fiscal administrator may exercise such purchasing authority only after completion of a briefing and training, and approval in writing, by the Financial Management Office. Fiscal administrators shall be responsible for contacting this office to schedule briefings and training.

Requirements for goods, services and construction beyond departmental purchasing authority, except purchases of materials, supplies, and books by University of Hawaii bookstores for resale, shall be submitted to the OPRPM for procurement action.

In the acquisition of goods, services, and construction with costs above their delegated authority, fiscal administrators shall act as a liaison between their organizations and the OPRPM and shall advise and assist requisitioners on the various aspects of procurement and work preliminary to contract award as required or within their capacity. This may include procurement planning, assisting in specification formulation, obtaining quotations, recommending award, obtaining tax clearances, and contract administration. In this respect, fiscal administrators should be cognizant of special and unique problems affecting their departments to which general instructions do not provide a satisfactory resolution. In such cases, the problem should be brought to the attention of the OPRPM with pertinent information and any proposed resolution. It must be borne in mind that fiscal administrators are better able to detect problem situations than System officials and are expected to be the initiators of corrective action.

It shall be the responsibility of fiscal administrators to apprise personnel in their departments of University procurement procedures. Failure of fiscal administrators to comply with procedures in the Administrative Procedures Manual may

result in revocation of their purchasing authority or other disciplinary action.

1) Approval of Contracts and Certification as to Availability of Funds

Fiscal administrators shall obtain the signature of the appropriate approving authority and certify as to the availability of funds for purchases from accounts serviced by them. This certification may be accomplished on the requisition form, or separate correspondence, as appropriate. The fiscal administrator's signature constitutes a certification as to availability of funds, whether or not the document itself so stipulates.

Pursuant to Section 103-9, HRS, False certificates or approval; penalty, any public officer or employee who causes or authorizes the purchase of any materials or supplies or the performance of any service or labor on behalf or for the benefit of the University, in the absence of any appropriations, or in excess of any appropriations made for such purposes, with the intent that the materials or supplies so purchased or the service or labor so performed shall be paid for by the University shall be fined not more than \$500, or imprisoned not more than one year, or both.

2) Accountability for Hard Copy Purchase Order Forms

Pre-numbered hard copy purchase order forms for use with time sensitive purchases when the University's Quali Financial System is not available for use may be issued to authorized fiscal administrators who are accountable to the OPRPM for all such purchase orders issued to them. Distribution of these purchase orders by the fiscal administrator to subordinate members of the respective departments shall not relieve the fiscal administrator of responsibility and accountability.

The importance of the proper and accurate accountability of hard copy purchase order forms cannot be overemphasized. Since completed purchase orders obligate the University to pay varying sums of money, they must be properly controlled and used judiciously. Fiscal administrators shall exercise diligence in controlling purchase order forms that are issued to them so as to preclude "unaccounted for" or "missing" purchase order forms at fiscal year end. This shall be accomplished by maintaining a log of the block of hard copy purchase order forms issued to the fiscal administrator. The log (**Attachment 220.1**) shall be maintained so as to show the up-to-date status of each purchase order form as "Used/Canceled," "Voided," "On Hand/Unused," or "Missing". The total number in these categories shall, at all times, equal the total number issued to the fiscal administrator.

At the end of each fiscal year, but no later than July 10, each fiscal administrator shall submit a consolidated report, using **Attachment 220.1**, to the OPRPM.

A copy of each "canceled" or "voided" hard copy purchase order form shall be retained by the fiscal administrator and the OPRPM copy promptly forwarded to the OPRPM.

2. Procurement Planning

In order to insure that goods, services and construction are available when needed, advance planning of requirements is necessary. Though funds are not always on hand, programs usually have general knowledge of the expected amount and of receipt of funds and can tentatively plan their procurements based on this information. Backlogs of work usually occur immediately prior to the expiration of fund allotments. To minimize peak purchasing workloads with their consequent delays, programs should process their requirements at the earliest practicable date. Processing requirements near the end of the fiscal year may result in the lapsing of funds.

The procurement process consists of three phases: 1) the funding and preparation of requirements by the using program; 2) the purchasing of requirements by either the OPRPM or the fiscal administrator; and 3) the manufacture, fabrication and delivery by the vendor. Because of its geographic location, Hawaii is especially vulnerable to shipment delays.

3. Standards of Conduct

University personnel who deal with any phase of contracting should be familiar with Chapter 84, HRS, Standards of Conduct, and shall abide by the following:

- a. Gifts. No employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the employee in the performance of the employee's official duties or is intended as a reward for any official action on the employee's part.
- b. Confidential information. No employee shall disclose information which by law or practice is not available to the public and which the employee acquires in the course of the employee's official duties, or use the information for the employee's personal gain or for the benefit of anyone.
- c. Fair treatment. No employee shall use or attempt to use the employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others including, but not limited to, the following:
 - 1) Seeking other employment or contract for services for oneself by the use or attempted use of the employee's office or position;
 - 2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the employee's official duties or responsibilities except as provided by law;

- 3) Using state time, equipment or other facilities for private business purposes; and
- 4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the employee inspects or supervises in the employee's official capacity.

d. Conflicts of Interest.

- 1) No employee shall take any official action directly affecting:
 - a) A business or other undertaking in which the employee has a substantial financial interest; or
 - b) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.
- 2) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.
- 3) No employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the University.
- 4) No employee shall assist any person or business or act in a representative capacity for a fee or other compensation to obtain a contract, claim, or other transaction or proposal in which the employee has participated or will participate as an employee, nor shall the employee assist any person or business or act in a representative capacity for a fee or other compensation on such contract, claim, or other transaction or proposal within the University.

- e. Disclosure. Chapter 84, HRS, requires certain State officials to submit Disclosure of Financial Interest forms to the Ethics Commission. Upon notification, those falling within the category requiring submittal of the form will be advised by the Commission.
- f. Kickbacks. When expending federal funds, the University of Hawaii is required to comply with the Anti-Kickback Act of 1986, which prohibits the making or accepting of payments for the purpose of improperly obtaining or rewarding favorable treatment.

The following procedures have been established to comply with the requirements of the law:

1) Definitions

Kickback: any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to the University of Hawaii, University employee, contractor or contractor employee for the purpose of improperly obtaining or rewarding favorable treatment.

Contractor: any person who offers to furnish or furnishes any supplies, materials, equipment, or service of any kind under a contract with the University.

Person: a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

2) Responsibility

No person shall:

- a) Provide, attempt to provide, or offer to provide any kickback;
- b) Solicit, accept, or attempt to accept any kickback; or

- c) Charge the federal government or the University, directly or indirectly, the amount of any kickback.

3) Penalties

- a) Any person who knowingly and willfully engages in the conduct proscribed in subparagraph 2) above may be subject to criminal penalties.
- b) Civil penalties may be recovered from any person who knowingly engages in such prohibited conduct.

4) Audit Procedures

Fiscal administrators and other University personnel in contracting or related activities shall submit an annual Anti-Kickback Declaration, OPRPM Form 89 (**Attachment 220.4**), to the OPRPM.

5) Procedures to Report Kickbacks

- a) When any person has reasonable grounds to believe that a violation of the Anti-Kickback Act has occurred, he/she shall promptly report in writing the possible violation to the Director, OPRPM.
- b) University personnel shall cooperate fully with any Federal agency investigating a possible violation of the Act.

6) Procedures to Offset Kickbacks

The federal Contracting Officer may:

- a) Offset the amount of any kickback against any monies owed under the contract with the University; and/or
- b) Direct that the University withhold from sums owed a contractor the amount of any kickback; and

- c) Order that monies withheld under subparagraph b) above be paid over to the federal government unless it has already offset those monies under subparagraph a) above. In either case, the University is required to notify the federal Contracting Officer whenever monies are withheld.

- g. Contracts. A state agency shall not enter into any contract to procure goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless the contract is awarded by competitive sealed bidding or competitive sealed proposal or a notice of intent to award the contract is posted and a copy filed with the State Ethics Commission.
 - 1) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

4. Fiscal Year-End Contracting

To insure the completion and recording of all fiscal transactions at the close of the fiscal year, the following cut-off dates shall be observed for the submission of documents to OPRPM for procurement transactions exceeding fiscal administrator authority, except emergency requirements:

- a. Construction services that require competitive solicitation: December 31;

- b. Goods and/or services (non-construction) that require competitive solicitation by OPRPM, including solicitations utilizing SuperQUOTE: April 1;

- c. Sole Source and Professional Services procurements: April 15;

- d. Exempt procurements: May 1;
- e. Small purchase procurements above the fiscal administrator's purchasing authority where the competitive solicitation has been completed: May 1
- f. Contract modifications (including renewals): May 1

5. Vendor Demonstration of Equipment

Because knowledge of equipment characteristics cannot be gained solely from technical literature or verbal descriptions, the University encourages departments to take advantage of vendor demonstrations.

a. Guidelines to consider for vendor demonstrations:

- 1) Whenever possible, University employees should visit vendor advertised displays to view equipment for which they may have a need;
- 2) Equipment may be viewed, and sometimes demonstrated, at the vendor's place of business;
- 3) The vendor may consent to bring the equipment to the University and demonstrate it. In such instances, wide attendance is encouraged; and
- 4) The vendor may, at his/her own volition, ask to have the equipment installed for a trial period.

b. Procedures:

If equipment installation is accepted, University personnel should be guided by the following:

- 1) Such installation and trial period must be at the volition of the vendor;
- 2) The trial period must be for the minimum time necessary to acquire operating knowledge of the equipment and the period must be specified and agreed to by both parties before installation;

- 3) The vendor shall be responsible for third party liability or any damage caused by the vendor's negligence or acts;
- 4) Prior to installation at a University location, the vendor should be advised that the risk of loss of the equipment is with the vendor;
- 5) The vendor must be advised that permission to install equipment and its subsequent trial usage by the University does not in any way obligate the University to purchase the equipment, nor will there be any charge associated with this installation; and
- 6) The vendor should be asked to sign a statement similar to the following:

STATEMENT

Whereas the undersigned is an authorized representative of _____ (Company Name) with authority to commit the company, and

Whereas the undersigned is desirous of installing _____ (Equipment/Model No.) at _____ (Univ. Location) for a period of _____ (#) days, beginning _____ (Date) for the purpose of the University using the equipment to determine its suitability for (purchase) (lease) other use ().

Therefore, _____ (Company Name) agrees to hold the University harmless from all costs and liability during this period and agrees that installation and operation of the equipment at this location does not obligate the University to acquire this equipment.

(To Be Signed by Company Rep)

- 7) If any operating costs are involved, the transaction shall be regulated in accordance with University procurement policy. Any questions on procedure and agreements beyond

departmental purchasing authority shall be referred to the OPRPM; and

- 8) Any agreement requiring execution by the University will be forwarded to the OPRPM.

6. Taxes

- a. For an overview of State tax laws, refer to Publication-1, Information on Hawaii State Taxes Administered by the Department of Taxation (**Attachment 220.2**). The publication provides information on State tax laws pertaining to general excise and use taxes which affect vendors doing business in the State. It is suggested that fiscal administrators familiarize themselves with these laws in order that they be able to advise vendors, especially out-of-state vendors who may not be aware that the goods and services they provide to the University may be subject to taxation. Further, to provide out-of-state vendors with an overview of Hawaii tax laws and to assist them in formulating their quotations, you may wish to provide them with a copy of Publication-1 when soliciting quotations. If additional copies are needed, existing copies may be photocopied. This awareness of tax liability is especially crucial in those situations when a tax clearance certificate is required, (Refer to Section A8.275).
- b. In the State of Hawaii, the general excise and use taxes are applicable, as follows:
 - 1) General Excise Tax (Chapter 237, HRS) is levied on gross receipts or gross income derived from all business activities in the State, e.g., sale or leasing of tangible personal property; contracting; the rendering of services, including professional services; commissions; and the rental of real property. The general excise tax is not a sales tax. It is imposed on persons (individuals, corporations, partnerships, or other entities) receiving the income for the privilege of doing business in Hawaii and may be passed on to the University.

Out-of-state vendors as well as vendors located in Hawaii are subject to the general excise tax on activities in the State or sources within Hawaii. An out-of-state vendor is subject to the general excise tax if the vendor has sufficient presence in the State; presence in the State is established if the vendor has an office, inventory, property, employees, or other representation located in the State or if services in conjunction with sales of property, such as training, installation, or repairs, are provided in the State. Other factors which are considered in determining if the sale of goods or services of out-of-state vendors is taxable are where delivery and acceptance of goods takes place and where title or risk of loss passes from the seller to the buyer.

- 2) Use Tax (Chapter 238, HRS) is a tax on the landed value of tangible personal property imported into Hawaii for use in the State. If tangible personal property is imported into Hawaii for resale at the retail level or for lease or rental to another person or business, the vendor will be subject to the use tax at the rate of 1/2 of 1% of the landed value of the property, i.e., the invoiced or manufactured cost of the property, plus freight and insurance.
- c. Although the University is a tax exempt educational institution, there is no numbered University of Hawaii tax exemption certificate.
- d. Sales taxes of other states are payable when title passes in such states (FOB source).
- e. Questions pertaining to Hawaii State Taxes should be directed to the State of Hawaii, Department of Taxation, Taxpayer Services Branch, 830 Punchbowl Street, Honolulu, Hawaii 96813-5045, telephone: toll free (800) 222-3229 or (808) 587-4242.

7. Procurement Violations

- a. Most procurement violations are normally inadvertent, and the result of administrative error, lack of knowledge, or simple carelessness. However, some violations may involve intentional action or conduct which an employee knows to be contrary to these procurement procedures.
- b. Parceling of Purchases. These procedures specifically prohibit parceling which is defined as the artificial or intentional division or fragmentation of a purchase of same, like, or related items of goods, services, or construction into several purchases of smaller quantities, in order to evade procurement requirements or the limits of delegated purchasing authority.
 - 1) When deciding if the purchase of items should be consolidated, the fiscal administrator shall consider the following:
 - a) The higher the price of a group of purchases, the more likely they should be consolidated;
 - b) The more similar the goods, services, or construction or the more possible it is to find a group of goods, services, or construction from one type of vendor, the more likely they should be consolidated; and
 - c) The more foreseeable the procurement of similar goods, services, and construction is, the more likely they should be consolidated.
 - 2) It shall be the responsibility of the fiscal administrator to ensure that departmental purchasing requirements are consolidated for procurement purposes.
- c. The OPRPM shall conduct investigations of procurement violations and its findings shall be forwarded to the Vice President for Budget and Finance/Chief Financial Officer for corrective action. Appropriate action may be taken in accordance with the relevant collective bargaining agreements and Board of Regents' Policies.

- d. Procurement violations which have been determined to be intentional in nature shall be referred to the Office of the University General Counsel for coordination with appropriate law enforcement authorities for possible criminal prosecution.
- e. Hawaii Administrative Rules governing procurement violations (Chapter 3-131) may be found at <http://www.hawaii.gov/spo/statutes-and-rules/har-for-hrs-103d/har-3-131>

8. Methods of Source Selection

Unless exempt by administrative procedure, all purchases utilizing public funds, irrespective of their source, shall be made in accordance with one of the following methods of source selection:

- a. Competitive sealed bidding;
- b. Competitive sealed proposals;
- c. Professional services procurement;
- d. Small purchases;
- e. Sole source procurement; and
- f. Emergency procurement.

These standard methods of source selection are discussed in detail in sections to follow.

9. Exempt Procurements

- a. The following procurements are exempt from the requirements of Chapter 103D, HRS:
 - 1) Disbursement of funds for grants or subsidies as defined in Section 42F-101, HRS;
 - 2) Payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;

- 3) Payment of obligations that the University is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the University as trustee, custodian, or bailee;
- 4) Disbursement of funds for entitlement programs, including public assistance, unemployment, and workers compensation programs, established by state or federal law;
- 5) Payment of dues or fees of organizations of which the University or its officers and employees are members as provided in these procedures;
- 6) Disbursement of funds for deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
- 7) Disbursement of funds to governmental bodies of the State of Hawaii;
- 8) Disbursement of funds as loans, under loan programs administered by a governmental body;
- 9) Disbursement of funds for contracts awarded in accordance with Chapter 103F, HRS;
- 10) Procurement of goods, services, or construction from a governmental body, other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivisions;
- 11) Services of expert witnesses for potential and actual litigation of legal matters involving the University or its officers and employees, including administrative quasi-judicial proceedings;
- 12) Works of art for museum or public display;
- 13) Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in

print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;

- 14) Opponents for athletic contests;
- 15) Utility services whose rates or prices are fixed by regulatory processes or agencies;
- 16) Performances, including entertainment, speeches, and cultural and artistic presentations;
- 17) Goods and services for commercial resale by the University;
- 18) Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the University's bonds;
- 19) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the University, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
- 20) Financing agreements under Chapter 37D, HRS;
- 21) Services of lecturers, speakers, trainers, facilitators and scriptwriters when the provider possesses specialized training methods, techniques or expertise in the subject matter;
- 22) Insurance to include insurance broker services;
- 23) [Reserved]
- 24) New or used items which are advantageous and available on short notice through an auction, bankruptcy, or foreclosure;
- 25) Food and fodder for animals;

- 26) Facility costs for conferences, meetings, and training sessions;
- 27) Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
- 28) Arbitrator and mediator services;
- 29) Interpreter services;
- 30) Procurement of repair services when dismantling is required to assess the extent of repairs;
- 31) Radio and television airtime, when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc.);
- 32) [Reserved]
- 33) Subscription costs and registration or workshop fees for conferences or training;
- 34) Court reporter services;
- 35) Burial services consisting of mortuary, crematory, cemetery, or other essential services for deceased indigent persons or unclaimed corpses;
- 36) Specific procurements expressly exempt from any or all of the requirements of Chapter 103D, HRS, by references in state or federal law to provisions of Chapter 103D;
- 37) Any other goods or services which the State Procurement Policy Board determines by rules are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous.

All purchases processed on the basis of any of the above exemptions should cite the following statement on the purchase order or contract:

"Exempt purchase, pursuant to APM Section A8.220, Exemption No. _____ (cite exemption number from the above list)."

- b. 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 goods or services by exemption may be made to the Office of Procurement and Real Property Management for forwarding to the President or his/her designee for approval. The Request for Exemption from Chapter 103D, HRS shall include the following information:
- 1) An explanation describing how procurement 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 description of the department's internal controls and approval requirements for the exempted procurement, and a list of University personnel, by position title, who will be involved in the approval process and administration of the contact.

OPRPM Form 138, Request for Exemption from Chapter 103D, HRS (**Attachment 220.3**) shall be used for this purpose. All requests shall be reviewed and approved by the Chancellor or Vice President under whose jurisdiction the request originates prior to submission to the Office of Procurement and Real Property Management.

Notice of Exemption from Chapter 103D, HRS, OPRPM Form 150 (**Attachment 220.6**) and the request shall be posted on an internet site accessible to the public for seven calendar days. Any objections to the request for the exempted procurement shall be submitted in writing to the Office of Procurement and Real Property Management within seven days from the date that the notice was posted. All objections timely received shall be

forwarded to the President for review and consideration.

In determining whether to approve the Request for Exemption from Chapter 103D, HRS, the President shall consider the circumstances of each individual case.

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 President under APM Section A8.220."

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

For requests to procure construction by exemption, please refer to Section A8.281(7).

- c. Amendments to contracts exempted by the President from Chapter 103D, HRS, that would change the original scope of the contract may only be made with the further approval of the President. When requesting such an amendment to an exempt purchase order/contract, the requestor shall complete and submit OPRPM Form 149, Request for Amendment to Exemption from Chapter 103D, HRS (**Attachment 220.5**).

OPRPM Form 151, Notice of Amendment to Exemption from Chapter 103D, HRS (**Attachment 220.7**) and the Request for Amendment shall be posted on an internet site accessible to the public for seven days. Any objections to the request for the exempted amendment shall be submitted in writing to the Office of Procurement and Real Property Management within seven days from the date that the notice was posted. All objections timely received shall be forwarded to the President for review and consideration.

In determining whether to approve the Request for Amendment to an Exempt Contract, the President shall consider the circumstances of each individual case.

The Amendment issued pursuant to an approved Request for Exemption should cite, for audit purposes, the following statement on the document:

"Amendment to exempt purchase, pursuant to approval of the President under APM Section A8.220."

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

- d. Pursuant to Section 304A-2259, HRS, the expenditure of funds from the revolving fund of the University of Hawaii Alumni Activities for all costs associated with conducting alumni affairs activities and programs for the University System, including but not limited to, expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, banners and signs, plaques and awards, airfare and per diem, leis, rental of audio-visual, musical and stage equipment, and activity supplies and materials, are exempt from statutory competitive bidding requirements.

All purchases processed on the basis of this exemption should cite, for audit purposes, the following statement on the purchase order or contract:

"Exempt purchase, pursuant to Section 304A-2259, HRS."

- e. Pursuant to Section 304A-2273, HRS, the expenditure of funds from the revolving funds of Conference Center programs conducted by the various community colleges for all costs associated with conducting conferences, seminars, and courses, including but not limited to, honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audio-visual equipment, and conference supplies and materials, are exempt from statutory competitive bidding requirements.

All purchases processed on the basis of this exemption should cite, for audit purposes, the following statement on the purchase order or contract:

"Exempt purchase, pursuant to Section 304A-2273, HRS."

- f. Pursuant to Section 304A-2251, HRS, the expenditure of funds from the revolving funds of commercial enterprises for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, are exempt from the requirements of Chapter 103D, HRS.

All purchases processed on the basis of this exemption should cite, for audit purposes, the following statement on the purchase order or contract:

"Exempt purchase, pursuant to Section 304A-2251, HRS."

- g. Fiscal administrators shall issue purchase orders for "exempt" purchases within their delegated purchasing authority only. All purchase orders exceeding this authority shall be submitted to a designated departmental fiscal administrator with greater purchasing authority or to OPRPM, as applicable, for review and processing. Purchases of insurance and out-of-state legal services (Exemption Nos. 22 and 19) shall be processed through the Office of Risk Management and the Office of the University General Counsel, respectively, pursuant to Section A8.265.
- h. For all purchases exempted from Chapter 103D, HRS and/or statutory competitive bidding requirements, which exceed \$2,500, a determination of price reasonableness as required under Section A8.285, must be made to insure that public funds are being expended to the best advantage of the University. Form 95, Determination of Cost or Price Reasonableness (**Attachment 285.1**) shall be used for this purpose.

10. Procurement Protests

- a. Protests concerning a University procurement action shall be filed and decided in accordance with Chapter 103D, Hawaii Revised Statutes, and the requirements of the Hawaii Administrative Rules governing legal and contractual remedies (Chapter 3-126) at <http://www.hawaii.gov/spo/statutes-and-rules/har-for-hrs-103d/har-3-126>
- b. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest.
- c. Protestors may file a protest on any phase of solicitation or award including but not limited to the preparation and issuance of the solicitation document, the evaluation of offers, and the award of a contract or purchase order.
- d. A protest shall be submitted in writing within five working days after the aggrieved party knows or should have known of the facts giving rise thereto; provided that a protest regarding an award or proposed award shall in any event be submitted within five working days after the posting of award of the contract. In no event shall a protest based upon the content of the solicitation be considered if submitted after the date set for the receipt of offers. Protests which are not timely filed shall not be considered
- e. To expedite handling of protests, the protestor should submit the written protest in an envelope labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the Procurement Officer. The written protest shall include at a minimum the following:
 - 1) The name and address of the protestor;
 - 2) Appropriate identification of the procurement, and, if a purchase order or contract has been awarded, its number;
 - 3) A statement of reasons for the protest; and

- 4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the time provided for filing, in which case the expected availability date shall be indicated.
- f. The Chief Procurement Officer or designee shall render a decision on a protest as expeditiously as possible after receiving all relevant information as requested. A copy of the decision shall be mailed or otherwise furnished promptly to the protestor. The decision shall be final. Any administrative appeal by the protestor of the final decision shall be filed in accordance with Chapter 103D, HRS, and Chapter 3-126, HAR.

11. Set-Asides for Small Businesses

In the acquisition of goods, services, and construction, the University shall comply with the rules adopted pursuant to Section 103D-906, HRS, by the Procurement Policy Board established under Section 103D-201, HRS, with respect to set-asides and criteria for the use of small businesses.