A8.235

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 by law, all contracts of $25,000 or more for goods, services, and construction shall be awarded by competitive sealed bidding except as provided by the other five methods of source selection, i.e., competitive sealed proposals, professional services procurement, small purchases, sole source procurement or emergency 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 is $25,000 or more;

2) the lease agreement includes an option to purchase and the total expenditure under this option is $25,000 or more (including lease payments); or
3) the total expenditure for a multi-year contract is $25,000 or more even though the total annual expenditure does not amount to $25,000 or more (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 amounting to $25,000 or more are also subject to competitive bidding. Similarly, the purchase of a number of related items (e.g., audio-visual equipment) amounting to $25,000 or more would require advertised procurement.

b. Exemptions from Competitive Bidding

(Refer to APM Section A8.220.10)


a. Requisitioner:

1) Prepares memorandum requesting purchase and completes and attaches OPRPRM 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 requisition for legal advertisement. Completes as much of the requisition as possible;

2) Certifies availability of funds and obtains authorizing signature; and

3) Transmits to Office of Procurement, Real Property and Risk Management (OPRPRM).

c. Office of Procurement, Real Property and Risk Management:

1) Reviews specifications;
2) Prepares 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, requisitioner submits Contract Encumbrance and Payment Form (Attachment 275.1, 275.1a and 275.1b) or requisition, as appropriate, and the OPRPRM prepares contract documents or purchase order as determined by the Director, OPRPRM;

5) 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:

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 processing for payment, referencing contract number; and

2) When determined that a purchase order shall be used, the procedures outlined in APM Section A8.250.13, Preparing 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 OPRPRM 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 (Reference Section A8.220.2, Procurement Planning).

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 OPRPRM.
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. Brand name specifications may only be used when the OPRPRM 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. Although the University normally requires a minimum bidding time of 10 days, bidding times shall be set by the OPRPRM to provide bidders a reasonable time to prepare their bids, whenever possible.

6. **Advertisement for Bids**

Where the expenditure is $25,000 or more for goods, services or construction, a public notice of availability of the solicitation shall be publicized. At a minimum, a one-time legal advertisement shall be published either in a newspaper of general circulation within the State or in a newspaper 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 OPRPRM.

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.

8. Prequalification of Bidders

All prospective bidders on construction projects of $25,000 or more are required to submit a written notice of intention to bid not less than ten calendar days prior to the bid opening date. The OPRPRM shall insure that the prospective bidder has the financial ability, resources, skills, capability, and business integrity necessary to perform the work specified. The OPRPRM may require an intent to bid for other requirements 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 OPRPRM prior to the time and date set for bid opening.

11. Late Bids

Any bid received by the OPRPRM after the time set for opening of bids is a late bid and will be rejected.

12. Cancellation of Invitation for Bids

In the event any goods, services or construction which was requested is no longer required, the department will promptly notify the OPRPRM 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 OPRPRM and shall remain sealed until the time designated for bid opening. At such time, bids shall be
open, publicly read, and recorded.

14. Bid Evaluation and Award

Following bid opening, bids are evaluated by the OPRPRM 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 OPRPRM when it is determined to be in the best interest of the University.

a. Confirmation of Bid

When the OPRPRM 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 OPRPRM.

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. OPRPRM 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 OPRPRM may determine that it is neither practicable nor advantageous to the University to again solicit sealed bids. To enable the OPRPRM 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 OPRPRM will select and proceed with a more cost effective alternative procurement method, e.g., informal solicitation of bids, sole source, direct negotiations, etc.

h. **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 OPRPRM, 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, OPRPRM. 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 OPRPRM 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 OPRPRM staff. When necessary to clarify ambiguities, or correct mistakes or omissions, an amendment to the solicitation shall be issued by the OPRPRM 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 OPRPRM for the general public for thirty (30) days. Telephone inquiries will not be answered unless the inquirer is a neighbor island or out-of-state bidder and there is a small number of bids. The local inquirer should be advised to visit the OPRPRM and review or pick up a copy of the bid results.

If a bidder designates that portions of its bid contain trade secrets or other proprietary data that are to remain confidential, the OPRPRM 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 OPRPRM 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 Senior Vice President for Legal Affairs and University General Counsel for confidentiality. If the 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 unless the bidder files a protest in duplicate with the Director, OPRPRM, within five working days after the protestor knows or should have known of the facts leading to the filing of a protest.