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A8.275 Contract Administration

1. General

Contract administration consists of the management of all facets of contracts and purchase orders to assure that the contractor's total performance is in accordance with its contractual commitments and that the obligations of the University are fulfilled. It includes the monitoring and supervision of contract actions from award of the contract to completion of the work required. It also includes, but is not limited to, the following:

a. Insuring timely delivery;
b. Inspection and acceptance of goods and services;
c. Reconciling of invoices with orders;
d. Making payment (progress payments for construction);
e. Obtaining State and Federal tax clearance before making final payment on contracts of $25,000 or more for goods, services and construction;
f. Clarifying contract plans and drawings;
g. Issuing amendments or contract modifications, if necessary;
h. Resolving disputes;
i. Processing claims;
j. Issuing stop work orders;
k. Interpreting contract provisions;
l. Assessing liquidated damages;
m. Terminating contracts; and
n. Closing the contract file.

Contract administration requires awareness of the current status of contractual actions throughout the performance period of the contract. The fiscal officer shall remain current on contract progress to insure that necessary remedial action is taken in a timely manner.

Contract administration begins at the time specifications are developed because the clarity and completeness of specifications have significant bearing on the extent of administration required. Inclusion of the proper terms in the contract is perhaps equally important since performance by and relations with the contractor are largely influenced by them. Therefore, programs are encouraged to begin the procurement process as early as possible by discussing their plans with the fiscal officer and the OPRPRM. Early planning of contract requirements will do much to prevent inappropriate awards and inadequate contract provisions.

2. Role of Office of Procurement, Real Property and Risk Management

When required, only the OPRPRM will take remedial action in accordance with the terms of the contract and information supplied by the program. Actions that may be taken by the OPRPRM include:

a. Issuance of cure letters, contract modifications, stop work orders or suspensions, and show cause letters;

b. Contract interpretations;

c. Imposition of liquidated damages;

d. Termination for default;

e. Recommendation for legal action;

f. Suspension and/or debarment of bidders; and

g. Novation/assignment agreements.

3. Technical Representative of the Procurement Officer (TRPO)

A TRPO is designated for all University of Hawaii advertised procurements for the following purposes:
a. To address matters within the technical specifications of 
the Invitation for Bids;

b. To perform a technical evaluation of all bids and to 
make a recommendation for award;

c. To evaluate the contractor's total performance 
throughout the contract period, and to notify the 
Director, OPRPRM, when such performance is less than 
satisfactory; and

d. To certify that goods have been delivered or services 
have been performed satisfactorily by the contractor.

It should be noted that a TRPO does not have contracting 
authority, and therefore care should be exercised by a TRPO in 
dealing with contractors in order to avoid a misunderstanding 
or contractual dispute.

4. Contract

a. Encumbrance of Contracts Beyond the Fiscal Officer's 
Purchasing Authority

The "FMIS-41, Contract Encumbrance and Payment Form" 
(Attachments 275.1, 275.1a and 275.1b) shall be used:  1) 
to record contract encumbrance transactions; and 2) to 
initiate payment processing. Contract renewals also 
require the use of this form. The "FMIS-41A, Contract 
Adjustment Form" (Attachments 275.3 and 275.3a) shall be 
used:  1) to liquidate a remaining balance on a completed 
contract; 2) to record changes in encumbrance data, e.g., 
account code/object code/amount; or 3) to record 
applicable changes to contract period, payment terms, 
contractor's name.

1) Instructions for Completion of the FMIS-41, Contract 
Encumbrance and Payment Form. (See Attachment 
275.2)

Initiated by Fiscal Officer - The fiscal officer 
initiates this form in three copies prior to the 
formation of the contractual agreement, depending 
upon the availability of information. The majority 
of information will be entered by the fiscal officer 
with the OPRPRM verifying the contract and 
encumbrance specifications.
When prepared - Upon the initiation of any payable contractual document beyond the fiscal officer's purchasing authority. Also, when a change affects funds from a different account code.

Source of Data - The contractual document.

Copies Required - In triplicate. The basis for initiating the form(s) for each contract is as follows:

a) Origination of a contract or agreement; or

b) Additional monies required during the life of the contract where a new account code is to supply the additional money. This would apply to renewals whether occurring during the fiscal year or at fiscal year end.

The FMIS-41A, Contract Adjustment Form (Attachments 275.3 and 275.3a) is used for item (b) above when an increase or decrease in encumbered dollars is required on an account code/object code that is established for the contract.

Routing and Distribution

The fiscal officer initiates the form and Routes it intact, together with the appropriate number of contract copies, to the OPRPRM which makes the appropriate distribution as follows:

a) The original is maintained in the OPRPRM files;

b) The first copy is provided to the fiscal officer for her/his files; and

c) The second copy is provided to the fiscal officer for use in payment processing.

The OPRPRM establishes the encumbrance in the University's Financial Management Information System (FMIS).

Responsibilities for Completion of the FMIS-41, Contract Encumbrance and Payment Form are at Attachment 275.2.
2) Instructions for Completion of the FMIS-41A, Contract Adjustment Form (See Attachment 275.4)

Initiated By - fiscal officer

When Prepared - To record adjustments to encumbrance and/or non-cost data for existing contracts. Usage is for one of the following purposes:

a) Upon final payment, if there is an encumbrance balance, to liquidate the remaining balance on a completed contract. After final payment, any outstanding encumbrance amount will remain as an outstanding encumbrance in FMIS until this form is submitted;

b) To record changes in encumbrance data, e.g., account code/object code/amount; or

c) To record applicable changes to contract terms which may affect payment processing, e.g., changes in contract period, payment terms, contractor's name.

Copies Required - In triplicate.

Routing and Distribution - The fiscal officer initiates the form and routes it intact to the OPRPRM which makes appropriate distribution as follows:

i. The original is kept with the contract in the OPRPRM;

ii. The first copy is forwarded to the Disbursing Office; and

iii. The second copy is provided to the fiscal officer.

The OPRPRM makes necessary changes to the University's Financial Management Information System (FMIS).

Responsibilities for Completion of the FMIS-41A, Contract Adjustment Form are at Attachment 275.4.
b. **Contract Numbering**

The OPRPRM is responsible for assigning identifying numbers to all contracts beyond the fiscal officer's purchasing authority and other instruments related thereto, including Invitation for Bids and Requests for Proposals.

The procurement instrument identification number should be retained unchanged for the life of the particular instrument and shall consist of numeric or alpha-numeric characters, as applicable, with major elements separated by dashes.

An illustration of the numbering system is as follows:

1) Invitation For Bids (IFB)

   **Number Configuration:** 99-100

   Position 1-2: = Identification of FY (99)
   Position 3-5: = Three position UH Serial Number (100)

2) Contracts

   **Number Configuration:** C000123

   Position 1: = Identification of Alpha prefix (C) for contracts
   Position 2-3 = Identification of FY (00 for FY 2000)
   Position 4-7 = Four position Serial Number (0123)

3) Modifications

   Supplemental Agreement 1, 2, etc.

c. **Distribution**

   The basic contract and modifications shall be distributed only by the OPRPRM as specified below:

   1) Original copy to the OPRPRM
2) One copy to each of the following:

a) Contractor/Lessor;

b) fiscal officer; and

c) Requiring Organization.

Requests for copies of contractual documents, in addition to the above, shall be referred to the OPRPRM.

d. Modifications

Contract modifications include administrative changes, supplemental agreements, notices of exercising an option, and notices of termination. Contract modifications of contracts beyond the fiscal officer's purchasing authority shall only be issued by the OPRPRM. No additional work shall be authorized or additional equipment ordered without the issuance of a contract modification by the OPRPRM.

e. Timely Submittal of Contractual Documents--Renewals and Modifications

Section 103-10, HRS, requires the payment of interest to vendors commencing on the thirtieth day following the satisfactory delivery of goods or performance of services or the receipt of an invoice. Therefore, contract renewals and modifications must be submitted to the OPRPRM in sufficient time for review, execution, and encumbrance of funds.

It is University policy not to accept goods or services without a contract. The University cannot and will not process payment for goods and services acquired prior to the existence of a valid contract.

In order to assure non-interrupted service to University programs, Deans, Directors and fiscal officers shall submit their requests (memorandum) to the OPRPRM for renewal of contracts beyond the fiscal officer's purchasing authority, together with the FMIS-41, Contract Encumbrance and Payment Form for funding the renewal period, at least ninety (90) days prior to the contract expiration date or, in the case of new services contracts, at least ninety (90) days prior to the beginning of the contract period,
unless otherwise notified.

f. Tax Clearance

1) Prerequisite tax clearances

a) In accordance with section 103-53, HRS, prior to entering into any contract of $25,000 or more for goods, services or construction, a tax clearance (Form A-6, Tax Clearance Application) from the State of Hawaii Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) must be submitted by the contractor.

b) Inasmuch as it is the contractor's responsibility to obtain a tax clearance for contracts issued as a result of an advertised Invitation for Bids (IFB) or Request for Proposals (RFP), all offerors are advised of the tax clearance requirement in the terms and conditions of the IFB or RFP.

c) For those contracts of $25,000 or more for goods, services or construction awarded not as a result of an IFB or an RFP, e.g., sole source purchases, emergency purchases, etc., the contractor should be made aware of the requirement for a tax clearance certificate by including the following statement in the request for quotation or any other pre-contract correspondence:

   In accordance with section 103-53, Hawaii Revised Statutes, before the University may award a contract to vendor, the vendor must submit tax clearances from the State of Hawaii Department of Taxation and the Internal Revenue Service.

2) Final payment tax clearances

a) In accordance with section 103-53, HRS, the University shall withhold final payment of a contract for goods, services or construction of $25,000 or more until the receipt of tax clearances from the DOTAX and the IRS.
b) Notwithstanding sections 40-57 and 40-58, HRS, if a contractor fails to provide the requisite tax clearances within six months of the completion date of the contract, the University shall first notify the DOTAX which in turn will notify the IRS, of amounts payable to the contractor on completed contracts. The DOTAX and the IRS shall, within thirty days, request the University to offset the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the DOTAX or the IRS or both. No final bill or invoice from the contractor shall be required as a condition to the offset. Any remaining contract balance shall revert to the appropriation under which it was encumbered.

c) The Disbursing Office will not process final payment for any affected contract unless a tax clearance is submitted.

3) Tax clearances shall certify that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under the Title 14 that are administered by the DOTAX and under the Internal Revenue Code have been paid.

4) Notwithstanding the provisions under sections 40-57 and 40-58, HRS, if a contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the State or IRS during the term of a contract, the University shall immediately assign any progress payment due to the contractor, if any (provided such payment is not subject to any restriction or encumbrance), to the State payable to the DOTAX or to the IRS to the credit of the contractor, whichever the case may be; provided that the DOTAX may first offset its tax debt against the sum owed to the contractor. The University shall assign as many progress payments as necessary to cover the amount of the tax delinquency.

5) The above requirements shall not apply to a contractor if the DOTAX certifies that the contractor is in good standing under a plan in which delinquent taxes, interest, and penalties are being
paid to the DOTAX (and the IRS, if applicable) in installments.

6) Tax clearances shall not be required for:

a) Any procurement of less than $25,000 or is considered a small purchase under Administrative Procedure A8.250 and any state or county department contract of less than $25,000;

b) Emergency purchases for the procurement of goods, services, or construction under Administrative Procedure A8.260, disaster relief under chapter 127, HRS, or a civil defense emergency under chapter 128, HRS;

c) Grants and subsidies disbursed by the University pursuant to chapter 42F, HRS, or in accordance with standards provided by law as required by article VII, section 4, of the State Constitution;

d) Contracts or agreements between government agencies;

e) Contracts or agreements to disburse funds:

(1) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;

(2) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;

(3) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;

(4) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;

(5) For deposit, investment, or safekeeping,
including sums to pay expenses related to their deposit, investment, or safekeeping;

(6) For loans under government-administered loan programs;

(7) To make periodic, recurring payments for utility services; and

f) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility;

7) If any vendor, especially an out-of-state vendor, needs assistance in obtaining a tax clearance, fiscal officers should assist the vendor in order to expedite the contracting and payment process. Form A-6, Application for Tax Clearance, which may be obtained from any district tax office or downloaded from DOTAX's website (http://www.state.hi.us/tax/tax.html), must be completed and submitted by mail, by facsimile (fax) or in person to any district tax office. First the DOTAX and then the IRS will review and if the tax records are clear, will approve the application. Anyone may submit the application in person for the vendor as long as it is signed by the vendor. If a vendor's tax record is current, the vendor will receive a tax clearance certificate, the front page of Form A-6, in approximately ten to fifteen working days after mailing or faxing the application, or if the application was submitted in person, the tax clearance certificate may be issued that day.

8) A tax clearance certificate is valid for six months (for final payment purposes, the period of validity is two months) from date of issuance by the DOTAX and the IRS. Tax clearance information and forms may be obtained from:

State of Hawaii
Department of Taxation
Oahu District Office
P.O. Box 259
Honolulu, Hawaii 96809-0259
or
830 Punchbowl Street
Completion of Contract/Purchase Order of $25,000 or More for Goods, Services, and Construction

The contract completion date specified in the notice to proceed/purchase order shall be strictly adhered to and shall not be allowed to lapse. Follow-up contact with the vendor shall be maintained to assure timely completion of a contract/purchase order. If timely completion of a contract/purchase order cannot be made due to excusable delays, a request for extension of the contract/purchase order completion date shall be submitted to the OPRPRM. This request shall include information and documentation as to the cause of the contractor's delay in performance.

There should be no discrepancy between the completion date specified in the notice to proceed or purchase order and the actual completion date, since extension(s) of the contract/purchase order completion date should have been requested and accomplished by issuance of a modification to the contract or purchase order change.

If no excusable delay exists, the fiscal officer shall provide the OPRPRM with information and documentation so
that a determination can be made as to whether liquidated damages should be assessed whenever the contractor fails to complete the contract in accordance with the contract/purchase order completion date.

Fiscal officers are not authorized to process payment documents when the contract or purchase order is not completed (except where progress payments are specified in the contract) or is completed after the contract completion date.

h. Closing

The following actions must be taken by the fiscal officer to close a contract/purchase order file when performance is completed and accepted:

1) Submittal of Completion Report OPRPRM Form 127 (Attachment 275.5) to the OPRPRM; and

2) Submittal of completed payment section of FMIS-41, Contract Encumbrance and Payment Form, final original invoice and appropriate supporting documents (e.g., tax clearance, etc.) to the Disbursing Office.

i. Termination for Default

Default termination is the University's exercise of its right to terminate a contract when the Contractor fails to meet all commitments in accordance with the contract specifications and does not remedy any such default within a certain period of time. Any such failure of the Contractor that cannot be resolved by the department shall promptly be reported to the OPRPRM by telephone followed by a memorandum detailing the Contractor's delinquencies. The OPRPRM will then issue a letter giving the Contractor a reasonable opportunity, usually 30 days after receipt of written notice, to explain the contractor's failure to perform and corrective measures to be taken before any action is taken to effect default termination.

The decision to terminate a contract for default will be made by the Director, OPRPRM, only after consideration of, but not limited to, the following:
1) The nature and seriousness of the default;

2) The availability of other sources to satisfy the requirement;

3) The urgency of the procurement; and

4) Whether the other available sources would be able to produce the item before the existing contractor can make delivery.

In some instances, default may be justified but not advisable. The contract must then be carefully administered to preserve the right to terminate for default should this action become necessary at a later date.

j. Disputes and Claims

1) Disputes usually arise as a result of mistakes, ambiguities, misunderstandings, unauthorized commitments, fraud, nonperformance or delinquencies. Ambiguous bid specifications can often result in disputes as to what is required in the contract.

2) Disputes may be avoided by:

   a) A clear written understanding of what the contracting parties are required to do;

   b) Periodic follow-up on progress of the contract requirements and remedy of noted deficiencies;

   c) Educating personnel of the acquiring program in proper dealings with the contractor;

   d) Being firm and businesslike with the contractor;

   e) Dealing with reputable firms;

   f) Directing the contractor to the OPRPRM for the interpretation of contract terms; and

   g) Timely notification to the OPRPRM of any potential problems with the contractor.
3) All contract disputes shall be immediately referred to the OPRPRM. Referred disputes shall be resolved as follows:

   a) An informal resolution will be sought through discussions with the contractor. If not satisfied, the contractor may be advised to file a claim in writing to the Director, OPRPRM, for a written decision;

   b) The Director, OPRPRM, shall make a finding of fact and render a decision. The finding and decision shall be written and shall be mailed or otherwise furnished to the Contractor; and

   c) The decision by the Director, OPRPRM, shall be final and conclusive, unless fraudulent, or the contractor brings an action seeking judicial review of the decision.

k. Labor-Management Disputes

When progress is impeded by a labor-management dispute, the contractor should notify the University. It is incumbent upon the contractor to keep the University informed of events while the dispute is in effect. Since the University desires to maintain equitable relations with both Labor and Management, it does not take sides in a dispute nor attempt any acts toward mediation. To prevent interruption of work, voluntary agreements may be obtained from both sides. However, prudence must be observed in any such approach.

Delays caused by labor disputes may be excusable under the contract. However, if the contractor is responsible for delays that are reasonably avoidable, the contractor will not be excused from performing the contract. It is the responsibility of the contractor to document this claim for non-responsibility in any labor-management dispute affecting contract progress.

l. Vendor Evaluation

An effective State and University purchasing program is dependent on dealing with reliable and competent suppliers having stability, high ethical standards and a sense of competitiveness. A vendor's poor performance, while evident to the acquiring program, may be unknown to
the OPRPRM unless it is advised of the deficiencies. Acquiring programs are encouraged to report a poor performance by a contractor or to commend a contractor for superior performance. OPRPRM Form 98, Vendor Evaluation (Attachment 275.6) may be used for this purpose.

m. Suspension and Debarment

Where the Contractor has been convicted under state or federal statutes relating to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other criminal offense indicating a lack of business integrity, or where the contractor has a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts or where there is compelling reason to do so, the OPRPRM may suspend or debar an individual or organization from bidding on University contracts.

n. Assignment of Payment

On occasion, a vendor/contractor to whom the University has awarded a purchase order or a contract requests that payment(s) under the specific purchase order or contract be assigned to a third party. Pursuant to section 40–58, HRS, the vendor/contractor may not assign payment(s) for a specific purchase order or contract to a third party unless the assignment is first approved by the Senior Vice President for Administration. The University's form for assignment, Assignment of Money by Party to Whom University is Directly Indebted (OPPRM Form 90), may be found at Attachment 275.7.

The OPRPRM Form 90 including the instructions and explanation for filling the form should be provided to the vendor/contractor wishing to assign payment(s) under a purchase order or contract. Upon completion of the form by the vendor/contractor with the appropriate signature and notarization, the fiscal officer shall submit three (3) copies of the form to the OPRPRM for review and transmittal to the Senior Vice President for Administration for execution. Following approval by the Senior Vice President for Administration, the OPRPRM will distribute the three copies to 1) OPRPRM, 2) Payee, and 3) Vendor/Contractor. In addition, the OPRPRM will
provide a copy of the approved OPRPRM Form 90 to the fiscal officer and the Disbursing Office. Since the responsibility for fulfilling the purchase order or contract remains with the vendor/contractor, the vendor/contractor name will not be changed.