

Prepared by Office of Procurement and Real Property Management.
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A8.290 Requirements of Federally Funded Purchases

1. Federal Flowdown Provisions

When expending Federal funds, certain Federal Acquisition Regulation (FAR) and OMB Circular A-110 provisions must be included in any subcontract or purchase order issued by the University. The Office of Procurement and Real Property Management (OPRPM) maintains the following current listings of federal flowdown provisions:

- a. FEDERAL PROVISIONS (SEPTEMBER 2009)—GOVERNMENT SUBCONTRACT PROVISIONS INCORPORATED IN ALL SUBCONTRACTS/PURCHASE ORDERS (UNDER FEDERAL PRIME CONTRACTS) shall be attached to all federally funded subcontracts and purchase orders under federal prime contracts (**Attachment 290.1**).
- b. TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDERS (UNDER FEDERAL GRANTS) (SEPTEMBER 2009) shall be attached to all federally funded purchase orders under federal grants (**Attachment 290.2**).
- c. TERMS AND CONDITIONS APPLICABLE TO SUBCONTRACTS (UNDER FEDERAL GRANTS) (SEPTEMBER 2009) shall be attached to all federally funded subcontracts under federal grants (**Attachment 290.2a**).

All federally funded purchases shall cite the following statement on the subcontract or purchase order:

"Federally funded purchase pursuant to (cite federal contract or grant/cooperative agreement), and attached (cite applicable federal flowdown provisions from the above list."

A copy of the applicable federal flowdown provisions shall be retained in the procurement file.

2. Federal Flowdown Provisions Applicable when Subcontractor is in Possession of Government Property

Under cost-type prime cost reimbursable contracts, if the subcontractor is in possession of Government property, the following federal flowdown provisions must be included in any subcontract or purchase order issued by the University:

- a. If subcontractor is an educational or nonprofit organization, FEDERAL PROVISIONS APPLICABLE WHEN SUBCONTRACTOR (EDUCATIONAL OR NONPROFIT ORGANIZATION) IS IN POSSESSION OF GOVERNMENT PROPERTY (SEPTEMBER 2009) - GOVERNMENT SUBCONTRACT PROVISIONS INCORPORATED IN ALL SUBCONTRACTS/PURCHASE ORDERS (UNDER COST-TYPE PRIME COST REIMBURSABLE CONTRACTS) shall be attached to all federally funded subcontracts and purchase orders under cost-type prime cost reimbursable contracts (**Attachment 290.1a**).
- b. If subcontractor is a commercial entity, FEDERAL PROVISIONS APPLICABLE WHEN SUBCONTRACTOR (COMMERCIAL ENTITY) IS IN POSSESSION OF GOVERNMENT PROPERTY (SEPTEMBER 2009) - GOVERNMENT SUBCONTRACT PROVISIONS INCORPORATED IN ALL SUBCONTRACTS/PURCHASE ORDERS (UNDER COST-TYPE PRIME COST REIMBURSABLE CONTRACTS) shall be attached to all federally funded subcontracts and purchase orders under cost-type prime cost reimbursable contracts (**Attachment 290.1b**).

All federally funded purchases under which the subcontractor is in possession of government property shall cite the following statement on the subcontract or purchase order:

"Federally funded purchase pursuant to (cite cost-type prime cost reimbursable contract), and attached (cite applicable federal flowdown provisions from the above list)."

A copy of the applicable federal flowdown provisions shall be retained in the procurement file.

3. Purchases Utilizing Federal Funds

Prior to purchasing with Federal funds, fiscal officers should be aware of certain requirements, including but not limited to the following:

a. All Purchases

- 1) OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;"
- 2) OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions;"
- 3) OMB Circular A-21, "Cost Principles for Educational Institutions;"
- 4) OMB Circular A-122, "Cost Principles for Not for Profit Organizations;"
- 5) Agency specific requirements; and
- 6) Agency documentation standards.

b. Subcontracts

- 1) Identify Catalog of Federal Domestic Assistance (CFDA) Number.

c. Advance Notification

Federal Acquisition Regulation 52.244-2, Subcontracts, Alternate II, requires that notification shall be made to the federal contracting officer in advance of entering into subcontracts that exceed \$100,000 under all non-DOD and non-NASA prime contracts. After verifying that the Alternate II requirement is included in the prime contract, fiscal officers and principal investigators shall notify the federal contracting officer reasonably in advance of entering into such subcontracts. The notification shall include the information required by paragraphs

(f) (1) (i) through (f) (1) (iv) of the FAR clause, as follows:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.

If Federal funds will be expended under a contract, the program shall submit copies of the award document from the granting agency and budget sheet indicating the approved line item to the OPRPM.

If required by a federal agreement, departments shall incorporate specific requirements into any subcontracts within departmental purchasing authority. For subcontracts to be processed by OPRPM, departments shall notify OPRPM of any special federal provisions which must be included in the contract terms, and, if necessary, secure clearance from the Office of Research Services (ORS).

The Agreement should also cite the name of the granting agency and grant/contract number, and the following statement should be included as a special provision in the contract:

"Federal funds will be expended under this contract; the CONTRACTOR shall comply with the applicable provisions of the attached FEDERAL PROVISIONS."

4. Acquisition

The University may acquire property as a direct charge to a Federal contract or grant only when specified in the contract or grant or when authorized in writing by a Federal contracting or granting officer. For Federal grants falling under the guidelines of the Federal Demonstration Partnership (FDP), i.e., NSF, NIH, Air Force, DOE, EPA, NASA, ONR, the principal investigator may rebudget among budget categories and purchase equipment not

specified in the grant and without obtaining agency approval. For subcontracts within departmental purchasing authority, the department shall include in the subcontract the appropriate government property clause based on the type of award and the clause contained in the prime agreement. For subcontracts to be processed by OPRPM, the department shall notify OPRPM of the appropriate government property clause consistent with the type of award and the clause contained in the prime agreement to be included in the subcontract.

a. Screening Procedure Preparatory to Acquisition of Equipment on Federal Government Projects

The Federal Government requires that University of Hawaii equipment resources be screened for available capacity prior to the purchase of such equipment.

- 1) The policy of the University is to utilize its research equipment to the greatest degree practicable and to acquire such equipment only when required capacity does not exist within the University, considering geographical and any other restrictive factors. Arrangements for the use of such equipment shall be the responsibility of the proposing department or principal investigator.
- 2) It shall be the responsibility of the principal investigator with administrative assistance from the fiscal officer to conduct the required screening as follows:
 - a) For items of equipment estimated to cost at least \$5,000 but less than \$25,000, screening shall be conducted throughout the department.
 - b) For items of equipment estimated to cost \$25,000 or more, University-wide screening against total assets shall be conducted, regardless of the source of funds.
 - c) Upon the initiation of a purchase request, pages 1 and 2 of UH Form 39, Authorization

to Purchase Equipment with Federal Contract or Grant Funds, **Attachment 290.3**, shall be completed and certified to by the principal investigator. The certification statement shall specify the extent and scope of the screening effort if the estimated cost is \$5,000 or more. This form shall be attached to the procurement documents.

- d) The principal investigator with the assistance of the fiscal officer must ensure that a reasonable cost allocation plan is completed prior to purchase when there are multiple federal sponsors, as required by UH Form 39, **Attachment 290.3**.

3) Equipment screening - Federal

- a) The Department of Defense (DOD) operates and maintains large equipment depots throughout the continental U.S. for Industrial Plant Equipment (IPE).

Before initiating a purchase under any DOD agency contract for Industrial Plant Equipment expected to have an acquisition price of \$15,000 and above, the principal investigator is responsible for completing a DOD form (DD Form 1419) and forwarding the form via the fiscal office and ORS to the cognizant Administrative Contracting Officer (ACO). The ACO will forward the form to the Defense Industrial Plant Equipment Center (DIPEC). DIPEC will perform an automated search of the DOD worldwide depot inventory of Industrial Plant Equipment to determine if such asset is available to the research project without cost. If the to-be-requisitioned Industrial Plant Equipment is not available within the DOD inventory, the DIPEC will send a Non-Availability Certification to the ACO, who will in turn advise the project, thus enabling purchasing action to proceed to acquire the requisitioned asset.

Industrial Plant Equipment is defined as plant equipment having an acquisition cost of \$15,000 or more and used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of material, components, or end items entailed in manufacturing, maintenance, supply, processing, assemble, or research and development operations. IPE is further described by noun name in several DOD publications listed in the DOD FAR Supplement (DFARS) paragraph 245.301.

- b) Prior to issuing a requisition under any NASA contract, the acquisition cost of which is expected to exceed \$5,000 for centrally reportable equipment (CRE) which the NASA defines as plant equipment, special test equipment (including components), special tooling and non-space hardware, screening action is required to be initiated by the principal investigator. The above types of equipment components and hardware are limited to goods which are:
- (1) Generally commercially available and used as a separate item or component of a system; and
 - (2) Identifiable by a manufacturer and model number.

To initiate required screening action, the principal investigator shall complete a Department of Defense form DD 1419 or equivalent format and forward via the fiscal office and ORS, the data required to the NASA Contracting Officer or the assigned ONR Administrative Contracting Officer. The DD Form 1419 shall be forwarded to the NASA Equipment Management System revitalization coordinator at the cognizant NASA Center.

The office will screen existing NASA automated inventory records to ascertain the availability of the equipment being screened within the NASA inventory system. If available, consideration will be given to furnishing the equipment to the University. If not available, a Certification of Non-Availability will be transmitted which will enable the purchase of equipment to proceed.

- 4) For equipment screening requirements under DOD and NASA Federal Demonstration Program contract awards, the special provisions within the contract instrument shall govern.

b. General Services Administration (GSA) as a Source of Property

With respect to acquisition of property from the General Services Administration (GSA), specific guidelines are normally outlined in each Federal contract to spell out what the University can or cannot do. If the contract instrument makes no mention of this subject, the University may request authorization from the sponsoring contracting agency.

c. Waiver of State General Excise Tax Provisions

Section 237-26, Hawaii Revised Statutes, provides for exemption from the State of Hawaii General Excise Tax for purchases made in conjunction with certain contracts and grants with the U.S. Government for the performance of scientific work.

For purposes of this section, "scientific work" shall be defined as work involving primarily the research and development for, or the design, manufacture, instrumentation, installation, maintenance, or operation of aerospace, agricultural, astronomical, biomedical, electronic, geophysical, oceanographic, test range, or other scientific facilities. Maintenance or operation, for purposes of this section, shall include housekeeping functions in

providing certain nonscientific logistic and support services.

In addition to income derived by the University under these scientific contracts/grants with the Federal Government and/or its agencies, this exemption from State of Hawaii general excise tax would apply to the following purchases:

- i. Subcontracts with vendors for the performance of scientific work under the contract/grant; and
- ii. Purchases of tangible personal property under the contract, provided that such tangible personal property will be affixed to or become a physical, integral part of the scientific facility or will be entirely consumed during the performance of the service required by the contract/grant.

Two methods are available for obtaining tax exemption. The vendor (taxpayer) may make application directly to the Department of Taxation or the University may make a preliminary determination of exempt status based on the prime contractual instrument and the vendor may rely upon the University's determination. Normally, the latter method will be used.

- 1) Procedure for University determination of exemption under qualifying scientific contract/grant
 - a) Upon receipt of scientific contracts and grants awarded by the U.S. Government, the principal investigator and fiscal officer shall identify those contract elements that, in her/his opinion, would support an exemption from the payment of the tax for qualifying purchases under the contract/grant. A memorandum to support the exemption shall be prepared for each contract document on which the dean/director will make a determination.
 - b) In the event the dean/director is unable to make a decision regarding the exemption from

the information available, OPRPM may be contacted for assistance in making the determination.

- 2) Procedure for exempt purchases made under qualifying scientific contracts/grants
- a) The responsible fiscal officer shall advise vendors that a proposed purchase made under a scientific contract or grant awarded by the U.S. Government is considered exempt from the payment of general excise tax. This shall be accomplished by affixing the following clause to the request for quotation form:

EXEMPTION FROM STATE OF HAWAII GENERAL
EXCISE TAX

The University has determined that this purchase is exempt from the payment of State of Hawaii general excise tax in accordance with section 237-26, HRS. Therefore, the vendor shall exclude such tax from the quotation price.

- b) For purchases which exceed the department's purchase authority, the fiscal officer shall advise OPRPM of the exemption applicability in order that OPRPM may include an appropriate statement in the procurement solicitations.
- c) For exempt purchases made under qualifying scientific contracts/grants, the following clause shall be included in the payment provision of the contract or affixed to the purchase order:

EXEMPTION OF PURCHASE FROM STATE OF HAWAII
GENERAL EXCISE TAX

The University of Hawaii has determined that this purchase is exempt from the payment of State of Hawaii general excise tax in

accordance with section 237-26, HRS. The price of this purchase shall not include such tax. In the event of disallowance by the State Department of Taxation, the University will be liable for payment of the amount disallowed.

5. Contracting with Vendors Debarred, Suspended, or Proposed for Debarment by the Federal Government

When utilizing federal funds, the University is prohibited from contracting with or making subawards under procurement contracts for goods or services and nonprocurement transactions (e.g., subawards to subrecipients) to parties that are debarred, suspended or proposed for debarment. For this purpose, Federal regulations require that the University either obtain signed certifications regarding debarment, suspension, proposed debarment, and other responsibility matters or check the government Excluded Parties List at <http://epls.arnet.gov> to ensure that the vendors are not included on the list. Either action shall be documented in the procurement file prior to award.

In accordance with these requirements, all procurement contracts and purchase orders for goods and services of \$30,000 or more shall include either a signed Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, OPRPM Form 94 (**Attachment 290.4**), certifying that the contractor or subcontractor is not debarred or suspended from doing business with the Federal Government or documentation indicating that the University checked the government Excluded Parties List and the contractor or subcontractor was not included on the list.

In addition, for all grants and subgrants, any purchase order, contract or other transaction using object codes 7150 and/or 7172 (nonprocurement transactions such as subawards to subrecipients), requires either a signed Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, OPRPM Form 94 (**Attachment 290.4**) from all subrecipients regardless of the amount of the subaward or documentation in the procurement file indicating that the University checked the government

Excluded Parties List and the subrecipient was not included on the List.

6. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

- a. Federal regulations require that all contracts, subcontracts, and purchase orders exceeding \$100,000 have a signed statement from the contractor or subcontractor certifying that they have not used federal funds to influence federal transactions, or require them to so disclose if they have. **Attachment 290.5**, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be used for this purpose. The University shall not do business with a contractor or subcontractor who has been sanctioned under this provision.
- b. In addition, for all grants and subgrants, any purchase order, contract or other transaction using object codes 7150 and/or 7172 (nonprocurement transactions such as subawards to subrecipients), requires a signed Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, (**Attachment 290.5**) from all subrecipients regardless of the amount of the subaward.

7. Resource Conservation and Recovery Act (RCRA)

RCRA §6002 established the federal government's buy-recycled program. This program sets minimum recovered materials content standards for certain designated items and requires state government agencies that use appropriated federal funds for procurement of a designated item, to purchase those items composed of the highest percentage of recovered materials practicable.

The Environmental Protection Agency (EPA) designates these items in the Comprehensive Procurement Guideline (CPG) and specifies minimum recovered content levels in a Recovered Materials Advisory Notice (RMAN) which may be viewed at: <http://www.epa.gov/cpg/products.htm>

Only procuring agencies utilizing federal funds to purchase \$10,000 or more worth of a designated item during the course of a fiscal year, or that purchased at least \$10,000 worth of a procurement item during the preceding fiscal year, are subject to these procurement requirements.

However, procuring agencies need not purchase designated items if the designated items will not be available within a reasonable period of time, will not meet the agency's reasonable performance standards, or will not be available at a reasonable price.

8. Small Business Solicitation Documentation

For all subcontracts and purchase orders of more than \$100,000 under federal prime contracts, the following small business solicitation documentation shall be included in the procurement file:

- a. Whether small business concerns were solicited and, if not, why not;
- b. Whether veteran-owned small business concerns were solicited and, if not, why not;
- c. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- d. Whether HUBZone small business concerns were solicited and, if not, why not;
- e. Whether small disadvantaged business concerns were solicited and, if not, why not;
- f. Whether women-owned small business concerns were solicited and, if not, why not; and
- g. If applicable, the reason award was not made to a small business concern.

9. Close-Out Procedures for Federally Funded Subcontracts

When closing-out federally funded subcontracts, the following procedures shall be adhered to:

- a. Obtain final report of inventions when subcontract involves research and a report is required;
- b. Obtain final report of government property when applicable and obtain government disposition instructions;
- c. When classified information is provided, ensure proper disposition; and
- d. Ensure that required financial reports and/or final vouchers with release and assignment are submitted and that costs are determined to be reasonable and allowable in accordance with award requirements.

10. Defense Priority and Allocation Requirements

In accordance with Federal Acquisition regulation 52.211-15, Defense Priority and Allocation Requirements, for all subcontractors and purchase orders under Department of Defense (DoD) prime contracts, the following elements must be included in the subcontract or purchase order:

- a. The prime DoD contract DPAS (Defense Priorities and Allocations System) rating (located at the top right side of the SF26 award document);
- b. A required delivery date for deliverable items (or performance period for a service or R&D contract);
- c. A signature of an individual authorized to sign the award; and
- d. A statement that reads: This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15CFR350).
- e. Purchases under \$50,000 are not required to have a rating used provided timely delivery can be obtained without it.
- f. Commercial items are exempt, except for computer equipment that will be integral to an end item that is necessary for use at a governmental site.

11. Payment of Allowable Costs and Fixed Fee

When preparing a cost plus fixed fee subcontract, in addition to incorporating/adapting FAR 52.216-7, Allowable Cost & Payment and FAR 52.216-8, Fixed Fee, identify in the subcontract the amount of the fixed fee (as well as the amount of the estimated cost). A fee rate shall not be specified in the subcontract since it would violate the prohibition against awards of cost-plus-percentage of cost contracts and subcontracts. The following clause shall be incorporated as a special provision in the subcontract:

Payment of Allowable Costs and Fixed Fee

As consideration for the proper performance of the work and services required under this contract, the Contractor shall be paid as follows:

- a. Costs, as provided for under the contract clause entitled "Allowable Cost and Payment," shall not exceed the amount set forth as "Estimated Cost" in the contract and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever is applicable.
- b. A fixed fee, in the amount set forth as "Fixed Fee" in the contract, in accordance with the contract clause FAR 52.216-8 "Fixed Fee", shall be paid upon completion of the work and services required under this contract and upon final acceptance by the Contracting officer. However, the Contractor, shall bill on each voucher the amount of the fee bearing the same percentage to the total fixed fee as the amount of cost billed bears to the total estimated cost not to exceed the amount set forth as "Estimated Cost" in the contract. The total fixed fee billed, shall not exceed the total fixed fee specified in the contract and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever applies.

In accordance with FAR 52.216-8, and in order to protect the Government's interest, the Contractor is hereby directed to withhold 10% of the fixed fee amount as set

forth in the contract or until a reserve is set aside in the amount of \$100,000, whichever is less. The Administrative Contracting Officer shall release 75% of the fixed fee reserve upon acceptance of the final deliverables identified in this contract. The remainder 25% of the fixed fee reserve will be released after completion of any final audits, submission of the final patent and royalty reports and if the contractor is not delinquent in submitting final vouchers for prior years' settlements.