

Section A8.255 Sole Source Procurement

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A8.255

A8.200 Procurement

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A8.255 Sole Source Procurement

1. Conditions for Use

- a. University purchases of \$25,000 or more are made following competitive sealed bids, proposals or negotiations. However, when there is only one source available from which particular goods, services or construction may be obtained, University policy permits purchases from qualified vendors without advertising for goods, services and construction that are \$25,000 or more, if the following criteria are met:
 - 1) The University department has a unique requirement which is essential in order for the department to accomplish its work.
 - 2) This requirement can only be met by particular goods, services, or construction which have the required unique feature, characteristic, or capability, e.g.,
 - a) Proprietary items;
 - b) Compatibility with existing equipment; or
 - c) Public utility repairs or construction that can only be provided by the utility company.
 - 3) The particular goods, services, or construction having the unique feature, characteristic, or capability are available from only one supplier or source.
- b. When goods or services are necessary in a limited quantity for test or evaluation, the purchase of the item or service may be on a sole source basis with the approval of the Office of Procurement, Real

- Property and Risk Management (OPRPRM).
- c. When an item is referred to by an exact brand, but there are other brands that qualify as "acceptable alternates" or "equals," the purchase shall be subject to bidding.
 - d. When an item is unique, but is available from more than one supplier, the purchase shall be considered a "restrictive" purchase rather than a sole source purchase and shall be subject to bidding. The required item, however, will be designated by brand name and model number.
 - e. The fact that a person or organization is or has been furnishing services to a purchasing agency does not, by itself, render such person or organization the only source for the type of service required.
 - f. The potential loss of funds at the end of a fiscal year shall not be a basis for sole source exemption.
 - g. When an item is specified by brand name and model number in a Federal grant, this merely constitutes approval to use such funds for acquisition of the item and does not constitute approval for a sole source purchase.
 - h. For expenditures less than the above bid levels, programs shall refer to Section A8.250.14, Sole Source Expenditures Under \$25,000 for Goods, Services and Construction.
 - i. The Office of Procurement, Real Property and Risk Management (OPRPRM) shall maintain a list of sole source procurements that may be procured without obtaining a sole source exemption pursuant to item 2 of this section. The list is attached at the end of this section as Exhibit A titled "Procurements Approved for Sole Source", dated 08/01/99.

University programs shall cite on the purchase order or on the contract as "Approved for Sole Source Procurement pursuant to Administrative Procedure A8.255.1.i,(cite sole source number from attached list)".

2. Requesting Sole Source Approval

a. When requesting a sole source purchase, the requisitioner must complete and submit the following **typed documents** to the OPRPRM:

- 1) Request For Sole Source, OPRPRM Form 65 (**Attachment 255.1**). An authorized designee shall certify to the best of his/her knowledge that the information provided is true and correct;
- 2) If a rush review of a request is needed, a written explanation and justification as to the reason for the rush review;
- 3) Original Approvals from any other administrative directive, circular, or guideline (i.e. telecom approval, President's approval, etc.);
- 4) Determination of Cost or Price Reasonableness, OPRPRM Form 95 (**Attachment 285.1**), to verify that price offered is considered fair and reasonable;
- 5) If federal funds will be expended, Authorization to Purchase Equipment with Federal Contract or Grant Funds, UH Form 39 (See APM Section A8.290), and copies of the award document from the granting agency and budget sheet indicating the approved line item;
- 6) Notice of Sole Source, OPRPRM Form 110 (**Attachment 255.2**), which shall serve as a notice of intent to issue a sole source purchase order/contract for purchases greater than \$25,000 for goods, services and construction. A copy of the Notice of Sole Source shall be posted for public notice by the Office of Procurement, Real Property and Risk Management for a period of at least seven calendar days prior to any approval action. Instructions for preparation of this form are at **Attachment 255.3**.

- 7) A completed requisition or a completed Contract Encumbrance and Payment Form, Form FMIS-41 (**Attachments 275.1, 275.1a and 275.1b**), if a contract is to be written; and
 - 8) An original or a FAX original of a written firm quotation which should include method of delivery, freight costs, delivery time, insurance, all applicable taxes, and discounts, if any.
- b. If contracting for services, departments shall also complete and submit:
- 1) Contracting for Services, OPRPRM Form 74 (**Attachment 230.3**); and
 - 2) A draft of University of Hawaii, Negotiated Agreement for Services, OPRPRM Form 107G (**Attachment 230.4**);
- c. If federal funds will be expended under this contract, the program shall submit copies of the award document from the granting agency and budget sheet indicating the approved line item.

Departments shall notify OPRPRM of any special federal provisions which must be included in the contract terms, and, if necessary, secure clearance by the Office of Research Services.

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 to the contract:

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

- d. A sixty-day lead time, prior to commencement of services, should be provided to OPRPRM for processing of sole source service contracts.
- e. Upon review and approval of sole source justification and contract terms, OPRPRM will forward a purchase order (Refer to APM Sections

A8.250.13, A8.250.14, and A8.250.17) or contract documents to the contractor for execution.

- f. A particular goods, services, or construction requirement will be considered for sole source purchase only if clear and unequivocal documentation is furnished by the requisitioner to the OPRPRM.

3. Amendments to Sole Source Contracts

- a. Amendments to sole source contracts that would change the original scope of the contract or the original contract price may only be made with the approval of the OPRPRM. The annual renewal of a sole source contract for services should not be submitted as an amendment.

- b. When requesting an amendment to a sole source purchase order/contract, the requestor shall complete and submit the following typed documents to the OPRPRM:

- 1) A written explanation for the amendment including reasons why a change is required and detailed specifications to be included in the contract modification. An authorized designee shall certify to the best of his/her knowledge that the information provided is true and correct; and

- 2) A Notice Of Amendment To Sole Source Contract OPRPRM Form 111 (**Attachment 255.4**).

Instructions for preparation of this form are at **Attachment 255.5**.

- 3) If the expenditure was subject to approval from any other administrative directive, circular, or guideline, the University department must obtain an **amended** approval and submit the original with their "Notice of Amendment To Sole Source Contract" form.

- 4) A copy of the original purchase order or reference to the appropriate contract number between the department and the contractor.

- 5) Determination of Cost or Price Reasonableness, OPRPRM Form 95.
 - 6) A completed Purchase Order Change Form (**Attachment 250.9**) or a Contract Adjustment Form, Form FMIS-41A (**Attachment 275.3 and 275.3a**), whichever is applicable.
- c. A copy of the Notice of Amendment To Sole Source Contract form shall be posted by the OPRPRM for public notice at least seven calendar days prior to any approval action.

4. Renewal of Sole Source Contracts

- a. Annual renewals of sole source contracts are not considered amendments. Therefore, the procedure for annual renewal of a sole source contract shall be as follows:
 - 1) For new renewable sole source contracts that amount to \$25,000 or more for goods, services, and construction, annually, the procedure for annual renewal shall be in accordance with Section 2, Requesting Sole Source Approval, above.
 - 2) For renewal of an existing sole source contract that was initially less than \$25,000, the renewal term amount shall be added to the initial term amount to determine if the cumulative total amount is equal to or greater than \$25,000. If the cumulative total amount is equal to or greater than \$25,000, the renewal shall be processed in accordance with Section 2, Requesting Sole Source Approval, above. If the total is less than \$25,000, the renewal shall be processed in accordance with Section A8.250.14, Sole Source Expenditures Under \$25,000 for Goods, Services, and Construction.
 - 3) For renewal of a sole source contract of \$25,000 or more for which a Notice of Sole Source was never posted, the renewal shall be processed in accordance with Section 2, Requesting Sole Source Approval, above.

- b. Contracts which were previously awarded based on purposes which were considered as not admitting of competition are no longer permissible. If renewal of a previously awarded, non-competitive contract is contemplated, programs should first consider award by competitive solicitation in accordance with Small Purchases procedures or Competitive Sealed Bidding/Proposals, whichever is applicable.

- c. However, if a sole source basis for award can be clearly and unequivocally established, the program may request renewal of the contract in accordance with Section 2, Requesting Sole Source Approval, above, for each renewal period, except that a new contract document (as referenced in Section 2.b.2 above) is not required. OPRPRM will prepare a Modification of Contract.

EXHIBIT A

PROCUREMENTS APPROVED FOR SOLE SOURCE
08/01/99

The following procurements are not subject to the procedure for obtaining sole source approval, APM Section A8.255.2:

Sole
Source
Number

Sole Source

1. For the repair, replacement, installation (connection, activation or hookup), or relocation of public utility company equipment or facilities.

Criteria: When the equipment or facilities are owned or controlled by utility companies such as an electric, telephone, gas, or cable television company.

2. Annual license renewal and maintenance for computer software.

Criteria: When the license renewal and maintenance can be obtained from only a single source, normally the developer of the software.

3. Procurement of computer software conversions, modifications, and maintenance for existing programs from the manufacturer of the software.

Criteria: When the conversion, modification, or maintenance can only be obtained from the manufacturer of the software.