

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 (JULY 2002)—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) 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) shall be attached to all federally funded subcontracts under federal grants (**Attachment 290.2a**).

2. 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.

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."

3. 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) and Automatic Data Processing Equipment (ADPE).

Before initiating a purchase under any DOD agency contract for Industrial Plant Equipment expected to have an acquisition price of \$10,000 and above, the principal investigator is responsible for completing a DOD form (DD Form 1851) 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 \$10,000 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 a DOD contract for ADPE, the acquisition cost of which is expected to exceed \$25,000, the same screening process via the ACO shall be completed. The definition of ADPE is general purpose, automatic data processing components and equipment systems created from them, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specifically designed (rather than configured) for any specific application. ADPE is further described in the DFARS, Part 270.
- c) 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.

4. 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 obtain signed certifications regarding debarment, suspension, proposed debarment, and other responsibility matters.

In accordance with these requirements, all procurement contracts and purchase orders for goods and services of \$25,000 or more shall include 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.

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 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.

5. 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.

6. 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.