

July 1, 1997

PROCUREMENT CIRCULAR NO. 1997-05

TO: All Chief Procurement Officers  
All Executive Departments (Except UH and DOE)

SUBJECT: Requirements Contracts

The purpose of this circular is to address the practice of agencies issuing "requirements contracts" that include a provision which allows other State agencies (not specifically named and committed to the contract) an option to purchase from the contract.

1. First, we should clarify our terminology:

- a. "Fixed-price contracts" are the only type of contracts that can be used in competitive sealed bidding. They place responsibility on the contractor for the delivery of the goods or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually specified adjustments. They are appropriate for use when the extent and type of work necessary to meet the purchasing agency's requirements can be specified and the cost can be reasonably estimated. The fixed price contract is the preferred contracting method for agencies to use as it provides for the best competitive pricing.
- b. "Requirements contracts" are contracts for an indefinite quantity of goods or services and may be issued by Chief Procurement Officers (CPOs) or heads of purchasing agencies. These contracts should be used only when quantities must be estimated. They specify the items to be purchased, the prices, estimated quantities when available, and the vendor(s) awarded the contract. Since quantities are indefinite or are not identified, prices may be less favorable than those from fixed quantity contracts.

- c. "Price lists" which are similar to requirements contracts, follow the concept of volume buying by consolidating the requirements for commonly used goods or services. As per section 3-121-6, HAR, price lists are only issued by CPOs. Price lists specify the items to be purchased, the prices, the vendor(s) awarded the contract, and usually commit all the agencies under the CPO's jurisdiction and/or any cooperative agreement with agencies from another jurisdiction.
- d. "Cooperative procurements" pursuant to section 3-128-2, HAR, requirements contracts that involve more than one purchasing agency either within the same or different procurement jurisdictions such as the Executive Branch, the University of Hawaii or the several counties, or are between a purchasing agency and a nonprofit health and human service organization are considered "cooperative procurements".

Cooperative procurements specify the items to be purchased, the prices, estimated quantities when available, the vendor(s) awarded the contract, and identify those agencies named in the bid solicitation and are therefore committed to purchase from the contract.

2. Use of requirements/cooperative procurement contracts:

- a. There have been instances where an agency's contract has been made available to other agencies (not identified in the bid) because of a general clause allowing this to occur. This practice of "piggybacking" on another agency's contract is not a proper procurement practice and shall be discontinued. The bid solicitation for a cooperative procurement should clearly indicate that a cooperative procurement is being conducted and all participating agencies should be named along with their estimated quantities whenever possible. If the full requirement is not identified in a solicitation, the prices offered may be less favorable.
- b. If an agency is contracting for a specific project and all participating agencies are not known, the solicitation should indicate that the contract will also be made available to other participants of the

project. These participating agencies are permitted to buy from the contract only if they become part of the specified project and are not using the contract as a means to circumvent the bid process.

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Should you have any questions, please call the State Procurement Office staff at 586-0554.

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