

PROCEDURAL REQUIREMENTS  
GOVERNING REQUESTS FOR PROPOSALS (RFPs)  
AND INVITATIONS FOR BIDS (IFBs)  
THE JUDICIARY, STATE OF HAWAII  
May 2003

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## SECTION ONE - DEFINITIONS

- 1.1 **Addenda.** Additions or supplements to an RFP or IFB.
- 1.2 **Administrative Director of the Courts.** Person appointed by the Chief Justice, responsible for overseeing and directing the administrative operations of the Judiciary.
- 1.3 **Bid.** An offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.
- 1.4 **Contract Bond.** The approved form of security furnished by Contractor or Contractor's surety or sureties or by Contractor alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.
- 1.5 **Contractor.** Any individual, firm, corporation, joint venture, or other legal entity, acting directly or through its or their agents, employees or subcontractors, entering into a contract with the Judiciary.
- 1.6 **Days.** Calendar days, unless otherwise specified.
- 1.7 **Financial Services Administrator.** The Financial Services Administrator (FSA) of the Judiciary, or the FSA's designee, who is in charge of the financial affairs of the Judiciary, including procurement, contracts and solicitations, and is responsible for supervising the activities of the Contract and Purchasing Branch, which handles the procurement activities of the Judiciary.
- 1.8 **General Conditions.** The "General Conditions Governing Contracts with the Judiciary, State of Hawai'i, for Goods and Services."
- 1.9 **Goods.** All property, including but not limited to: equipment, equipment leases, materials, supplies, printing, insurance; and processes, including computer systems and software, but excluding land or a permanent interest in land, leases of real property, and office rentals.
- 1.10 **Hawai'i Administrative Rules (HAR).** The compilation of rules promulgated by various state boards, commissions, departments, agencies, or officers authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches.
- 1.11 **Hawai'i Revised Statutes (HRS).** The codified collection of general and permanent laws of the State of Hawai'i, including any supplements thereto.

- 1.12 **Invitation for Bids (IFB).** All documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection process described in HRS § 103D-302.
- 1.13 **Judiciary.** Hawai'i State Judiciary, including the Administrative Director of the Courts (ADC) or ADC's designee.
- 1.14 **Offer.** A bid submitted in response to an IFB or proposal submitted in response to an RFP.
- 1.15 **Offeror.** An individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to an RFP or IFB.
- 1.16 **Officer-In-Charge.** The person(s) designated by the Judiciary to oversee that the goods or services provided by Contractor comply with the Specifications, Special Provisions, General Conditions, Procedural Requirements, and any addenda thereto.
- 1.17 **Priority-Listed Offerors.** The three or more responsive and responsible offerors who submit the highest ranked proposals in response to an RFP.
- 1.18 **Procedural Requirements.** These "Procedural Requirements Governing Requests for Proposals (RFPs) and Invitations for Bids (IFBs)."
- 1.19 **Proposal.** The executed document submitted by an Offeror in response to an RFP.
- 1.20 **Purchase Description.** The words used in the solicitation to describe the goods or services to be purchased, and includes specifications attached to, or made a part of, the solicitation.
- 1.21 **Request for Proposals (RFP).** All documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection process described in HRS § 103D-303.
- 1.22 **Responsible Offer.** An offer submitted by a person or entity that has the capability in all respects to fully perform the requirements of an IFB or RFP, and the integrity and reliability to assure good faith performance.
- 1.23 **Responsive Offer.** An offer that conforms in all material respects to the IFB or RFP.
- 1.24 **Scope of Work.** The scope of work, also known as the work statement, statement of work, or statement of service, is a description of the services to be delivered. The term is sometimes used to refer to a complete RFP document. (See also Specifications.)

- 1.25 **Services.** The furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.
- 1.26 **Solicitation.** An IFB used in the competitive sealed bidding process or an RFP used in the competitive sealed proposal process, for the purpose of obtaining offers to perform a Judiciary contract.
- 1.27 **Special Provisions.** The terms and conditions pertaining to the specific solicitation in which they are contained, setting forth particular conditions or requirements applicable to the particular project or contract under consideration. If any special provisions conflict with the general conditions or these procedural requirements, the special provisions shall take precedent.
- 1.28 **Specifications.** Any description of the physical or functional characteristics, nature, quantity and quality of the goods or services to be furnished under the contract. Specifications include descriptions of the method and manner of performing services under the contract, as well as directions and requirements for inspecting, testing, or preparing goods for delivery or installation. (See also Scope of work.)

## **SECTION TWO - PRE-OFFER CONFERENCES**

Pre-offer conferences may be conducted to explain RFP or IFB procurement requirements. Judiciary shall inform prospective offerors of the conference(s) either in the solicitation itself or by written notice. If attendance at the conference is mandatory, that condition shall be stated prominently in the solicitation.

If Judiciary's decision to hold a pre-offer conference is made after the issuance of the solicitation, the conference shall be announced through an addendum to the solicitation. The conference is intended to clarify the solicitation requirements. Nothing stated at the pre-offer conference(s) shall change the solicitation unless a change is made by written addendum as provided in section 3.3 below. A summary of the conference, as well as any addendum issued as a result of the conference, shall be supplied to all those prospective offerors known to have received a solicitation.

## **SECTION THREE - OFFER REQUIREMENTS AND CONDITIONS**

- 3.1 **Competency of Offeror.** A prospective offeror must be capable of performing the work for which offers are being solicited. Either before or after the deadline for an offer, Judiciary may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to offeror's ability to satisfactorily furnish the goods or services being solicited by the Judiciary. Any such inquiries shall be made and response provided in writing; responses shall be submitted over the signature of the person who signs the offer. Any offer

submitted by an offeror who refuses to answer such inquiries shall be considered non-responsive. All answers to such questions shall be handled by Judiciary on a confidential basis and shall be returned after they have served their purpose.

In order to facilitate evaluation of offeror's performance capabilities, Judiciary has the right to visit an offeror's place of business to inspect offeror's facilities and equipment and to observe offeror's methods of operation. Judiciary also has the right to visit or communicate with a place of business where offeror has performed services similar to that being solicited by Judiciary.

3.2 **Examination of General Conditions, Procedural Requirements, Special Provisions, Specifications, Site of Work, etc.**

Offeror shall carefully examine the site of the contemplated work, the solicitation, General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, required contract and bond forms, etc. before submitting offers. The submission of an offer shall be considered as a warranty that offeror has made such careful examination and is satisfied with the existing conditions for performing the work and with the requirements of the solicitation, General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, amendments, and required contract and bond forms.

If offeror is awarded a contract following its offer in response to a solicitation, no extra compensation shall be given by reason of offeror's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

3.3 **Questions by Offeror; Clarification of Solicitation Requirements; Addenda.**

Questions or requests for clarification by offeror regarding discrepancies, omissions, or the meaning of the General Conditions, Procedural Requirements, Specifications or Special Provisions should be communicated in writing to and received by the FSA no later than five (5) calendar days prior to the date fixed for opening of offers, or such other date as may be specified in the solicitation. Any clarification or interpretation, if made, and any supplemental instructions, if any, will be in the form of written addenda to the solicitation, which will be either mailed or sent by facsimile or electronic mail to, or made available for pick-up by, or made available for downloading off of the Judiciary website ([www.hawaii.state.hi.us/jud](http://www.hawaii.state.hi.us/jud)) by all prospective offerors, prior to the date fixed for opening of offers. It shall be presumed that any addenda so issued have been received by an offeror, and such addenda shall become a part of the contract documents.

### 3.4 **Preparation and Submission of Offers.**

#### 3.4.1 Proposals submitted in response to an RFP shall be in the format described by the RFP.

All bids submitted in response to an IFB must be prepared in ink or typed and made on the offer form furnished by Judiciary in the solicitation IFB, or an exact copy thereof, in full accordance with the instructions given. A bid that contains any omission, erasure, alteration, addition not called for, conditional bid, or irregularity of any kind, may be rejected.

An offer submitted in response to a solicitation shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on behalf of the offeror.

A signed offer, together with an offer guaranty, if required, and any other certificates required to be submitted by offeror, shall be submitted in a sealed envelope plainly identifying the bid or proposal number, the item or items to which the offer relates, and offeror's business address and telephone number. Offers shall be received until the hour and date set in the solicitation and shall be received by Judiciary no later than the time indicated, whether mailed or hand-delivered.

The General Conditions, Procedural Requirements, Specifications, Special Provisions, other documents referenced in or attached to the solicitation, as clarified or amended by any addenda issued prior to the due date for submission of offers, shall be considered a part of an offer, whether attached to the offer or not at the time of its submission. Such documents, as clarified or amended in the addenda, shall not be altered in any way when an offer is submitted and any alterations or exceptions made by offeror to the terms, conditions, or requirements contained in said documents may result in rejection of the offer.

Offeror shall request in writing nondisclosure of trade secrets or other proprietary data designated as confidential. Offerors shall ensure that data designated as confidential shall be readily separable from the offers in order to facilitate eventual public inspection of the nonconfidential portion of the offer.

#### 3.4.2 Where an IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods shall be made by duly authorized personnel. The bid price shall be

all-inclusive. In case of error in the extension of the unit prices, the unit price shall govern.

All prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

- 3.4.3 Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name shall be accepted. If more than one bid is offered for the same work, the lowest priced bid may be considered; all others will be automatically rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals that may be accepted for evaluation and award only if accompanied by a certificate of non-collusion, sworn to before a notary, acknowledging that the bid or proposal is submitted without collusion.

3.5 **Use of Facsimiles.** (REFER TO SOLICITATION'S SPECIAL PROVISIONS)

~~3.5.1 Offers transmitted by offerors via facsimile machine shall be permitted only if the offer is under \$25,000, only if a facsimile transmission is specifically authorized in the solicitation, and only if the following requirements are met: (1) the facsimile offer is received in hand at the designated office by the time and date set for receipt of offers; (2) the complete original offer with the bond, if required, is received within forty-eight hours or two working days from the date and time set for receipt of offers; (3) the facsimile offer contains: the identification number of the IFB or RFP; the time; the quantity; the price for the offer; all pages of the offer requiring an original signature; and a signed statement that offeror agrees to all terms, conditions and provisions of the IFB or RFP.~~

~~3.5.2 Modification or withdrawal of an offer may be by facsimile transmission pursuant to section 3.9 below.~~

- 3.6 **Offer Guaranty.** Unless required by the Special Provisions, an offer guaranty is not required for any offer for goods or services.

If an offer guaranty is required by the Special Provisions, an acceptable offer guaranty shall be an amount equal to at least five percent (5%) of the amount offered and shall be limited to: a bond in a form satisfactory to Judiciary, underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000,

provided however, if the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as non-responsive, unless the failure to comply is determined by the Administrative Director, FSA, or their designee to be non-substantial pursuant to section 3-122-223, Hawai'i Administrative Rules (HAR).

- 3.7 **Tax Clearance.** No contracts of \$25,000 or more shall be binding or effective until Contractor secures and Judiciary receives a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor or accrued under Title 14, HRS, relating to taxation that are administered by the Department of Taxation and under the Internal Revenue Service have been paid. The tax clearance shall be obtained on the two-part "TAX CLEARANCE APPLICATION", Form A-6, that combines Department of Taxation and Internal Revenue Service clearances.
- 3.8 **Certification by Offeror of Services in Excess of \$25,000 Concerning Wages Hours, and Working Conditions of Offeror's Employees.** Before any offeror enters into a contract to perform services in excess of \$25,000, the offeror shall comply with section 103-55, HRS, and any amendments thereto, which presently provides<sup>1</sup>:

**§ 103-55. Wages, hours, and working conditions of employees of contractors performing services.** (a) Before any offeror enters into a contract to perform services in excess of \$25,000 for any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

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<sup>1</sup> Offeror should check the statute to make sure there are no amendments.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 78-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

### 3.9 **Modification or Withdrawal of Offers.**

3.9.1 Offers may only be modified or withdrawn prior to the deadline for submission of offers, and only with Judiciary's consent.

Any offer, notice of withdrawal of offer, or modification of offer received by Judiciary after the deadline set for opening of offers shall not be considered and shall be returned to offeror unopened, as soon as practicable, with a letter explaining the reason for the return. However, an offeror may request in writing withdrawal of an offer that contains an obvious error, provided such request is received by Judiciary prior to acceptance of the offer by Judiciary. After acceptance of the offer, no request for withdrawal shall be considered.

3.9.2 Modification of offers shall be made by written notice, signed by offeror or a duly authorized representative and submitted to the office designated in the solicitation, explaining that a modification to the original offer is being made and providing the actual modification. If offeror wishes to provide written notice of modification by facsimile, the facsimile shall explain that a modification is being made and provide the actual modification; additionally, the originally signed written notice and modification shall be submitted to the office designated in the solicitation within forty-eight hours or two working days of receipt of the facsimile by the office.

3.9.3 Withdrawal of offers shall be made by made by submission to the office designated in the solicitation of a written notice of withdrawal, signed by offeror or a duly authorized representative. Pursuant to section 3-122-9, HAR, written notice of withdrawal may be sent by facsimile machine; however, the originally

signed withdrawal notice shall be submitted to the office designated in the solicitation within forty-eight hours or two working days of receipt of the facsimile notice by the office. The withdrawal of an offer shall not prejudice the right of an offeror to submit a new, timely received, offer.

- 3.10 **Receipt and Opening of Bids.** For IFBs, all bidders are invited to attend the opening of bids. The FSA shall open all bids at the time and place stated in the IFB and in the presence of all bidders who attend. Bids may be inspected by those present, provided that only one bid is inspected at a time and except that trade secrets or other proprietary data designated as confidential by a bidder pursuant to section 3.4.1 and readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid, may not be reviewable.

A Judiciary representative(s) shall examine the bids to determine the validity of any bidder's written request for nondisclosure of designated trade secrets and other proprietary data. If a bidder's request for nondisclosure of data is challenged, the Judiciary representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the staff attorney for confidentiality. If the staff attorney determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder files a protest pursuant to section 3-126-3, HAR.

Prices, makes, models, and catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. No bid leaves the bid opening room, no award decision shall be made, and no discussion shall be allowed at a bid opening.

- 3.11 **Receipt and Registration of Proposals.** Proposals or modifications submitted in response to RFPs shall NOT be opened publicly, but shall be opened in the presence of two or more procurement officials. A register of proposals shall be prepared and shall include: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. Offerors shall ensure that data designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. Proposals shall be available for public inspection after the contract is signed by all parties.
- 3.12 **Disqualification of Offerors.** An offeror shall be disqualified and the offer automatically rejected for any one or more of the following reasons: proof of collusion, in which case all proposals involved in the collusive action shall be rejected and any participant to such collusion shall be barred from future solicitations until reinstated; offeror's lack of responsibility and cooperation as shown by past work or services;

offeror's being in arrears on existing contracts with any branch, department, agency, or board of the State of Hawai'i or having defaulted on previous contracts; offeror having being debarred or suspended; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror's lack of proper license to cover the type of work contemplated, if required; offeror's delivery of the proposal after the deadline specified in the public notice calling for proposals, or as amended, except as allowed in section 3-122-29 (1), HAR; offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former State contracts at the time of issuance of the solicitation; or offer not accompanied by proposal guaranty, as required.

## **SECTION FOUR - EVALUATION OF OFFERS**

### **4.1. Competitive Sealed Bidding.**

4.1.1 **Evaluation of Bids Submitted in Response to an IFB.** The award shall be made to the lowest responsive, responsible bidder and shall be based on the criteria set forth in the IFB. Only objectively measurable criteria which are set forth in the IFB shall be applied in determining the lowest bidder. Special adjustments and preferences, as established by law, may affect the evaluation of the bid price, including the following:

- (A) Taxpayer Preference, sections 103D-1001, 103D-1001.5, 103D-1008, HRS;
- (B) Preference for Hawai'i Products, sections 103D-1001, 103D-1002, HRS;
- (C) Printing, Binding and Stationery Work Preference, sections 103D-1001, 103D-1001.5, 103D-1003 HRS;
- (D) Reciprocal Preference, sections 103D-1001, 103D-1001.5, 103D-1004, HRS;
- (E) Recycled Products Preference, sections 103D-1001, 103D-1001.5, 103D-1005, HRS;
- (F) Software Development Businesses Preference, sections 103D-1001, 103D-1001.5, 103D-1006, HRS.
- (G) Preference to Bidders on State Agency Contracts for Public Works Projects, sections 103D-1007, HRS.
- (H) Preference for Qualified Community Rehabilitation Programs, sections 103D-1001, 103D-1001.5, 103D-1009, 103D-1010, 103D-1011, HRS.

4.1.2 **Low Tie Bids.** Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the IFB. At Judiciary's discretion, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

- (a) Award of the contract to a business providing goods produced or manufactured in this state or to a business that otherwise maintains a place of business in this state;
- (b) Award of the contract to the bidder offering a low tie bid who received the previous award; and
- (c) If no permissible method will be effective in resolving tie bids and a written determination by Judiciary so stating is made, award may be made by drawing lots.

4.1.3 **Mistakes in Bids.** A bidder may correct a mistake if the mistake is discovered before the time and date set for bid opening by withdrawing or correcting the bid, as provided in section 3.9, above. Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible if it is not contrary to Judiciary's interest or the fair treatment of other bidders.

Correction or withdrawal of a bid because of an obvious mistake in the bid is permissible if Judiciary deems that it is not contrary to its best interests, or to the fair treatment of other bidders. Mistakes shall not be corrected after award of the contract.

## 4.2 **Competitive Sealed Proposals.**

4.2.1 **Evaluation of Offers Submitted in Response to an RFP.** The FSA, or an evaluation committee selected in writing by the Administrative Director of the Courts, shall evaluate proposals. A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file. Numerical rating systems may be used, but are not required. When used, the evaluation shall be based only on the evaluation factors set out in the RFP. The relative priority to be applied to each evaluation factor shall also be set out in the RFP. If numerical rating systems are not used, the FSA or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing, which shall then be placed in the procurement file. Evaluation factors not specified in the RFP shall not be considered. The

written ranking evaluations or explanations shall be available for public inspection after the contract is signed by all parties.

When applicable, cost shall be an evaluation factor. The proposal with the lowest cost factor shall receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost. If a numerical rating system is used to evaluate the cost factor, the points allocated to higher-priced proposals shall be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price. An evaluation factor shall be included that takes into consideration whether an offeror qualifies for any applicable procurement preferences.

A proposal from a debarred or suspended offeror shall be rejected.

Evaluation meetings may be held by an evaluation committee to discuss the RFP, the evaluation process, the weighing of evaluation factors, and proposals received, before evaluations.

4.2.2 **Discussions with Offerors.** Before conducting discussions, a “priority list” shall be generated by the FSA or evaluation committee. In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list. If numerous acceptable and potentially acceptable proposals have been submitted, the FSA or the evaluation committee may rank the proposals and limit the priority list to at least three responsible offerors who submitted the highest-ranked proposals. Those responsible offerors who are selected for the priority list are referred to as the “priority-listed offerors.” Discussions shall be limited to only “priority-listed offerors” and are held to:

- (a) Promote understanding of Judiciary’s requirements and priority-listed offerors’ proposals; and
- (b) Facilitate arriving at a contract that will be most advantageous to Judiciary, taking into consideration the evaluation factors set forth in the RFP.

The FSA shall establish procedures and schedules for conducting discussions and keep a record of the date, place, purpose of meetings and those attending.

Proposals may be accepted on evaluation without discussion. Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to priority-listed offerors. Priority-listed offerors shall be permitted to submit new proposals or to amend those submitted.

If in the FSA's or the evaluation committee's opinion, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP issued.

During the discussion and negotiation process, the contents of any proposal shall not be disclosed to competing offerors.

- 4.2.3 **“Best and Final Offers” in Response to RFPs.** When “best and final offers” are solicited, Judiciary shall establish a date and time for the priority-listed offerors to submit their “best and final offers” in response to an RFP. “Best and final offers” shall be submitted only once unless the Administrative Director or the FSA determines in writing that it is in Judiciary's best interest to conduct additional discussions or change Judiciary's requirements and require another submission of best and final offers; otherwise, no discussion of or changes to the “best and final offers” shall be allowed prior to award.

Priority-listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous proposal shall be construed as their best and final offer.

After best and final offers are received, final evaluations will be conducted for an award pursuant to section 3-122-57, HAR.

- 4.2.4 **Mistakes in Proposals.** If the FSA knows or has reason to conclude before award of a contract that a mistake has been made in a proposal, the FSA shall request that offeror confirm the proposal. If offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section. Mistakes shall not be corrected after award of the contract.

If discussions are commenced with, or after best and final offers are requested from, priority-listed offerors, any priority-listed offeror may freely correct any mistake in a proposal by modifying or withdrawing the proposal up until the time and date set for receipt of best and final offers. If discussions are not held with priority-listed offerors, or if best and final offers upon which the award will be made have been received and the date and time that best and final offers are due has passed, mistakes shall be corrected to the intended correct proposals only

when the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

If discussions with priority-listed offerors are not held, or if the best and final offers upon which award will be made have been received beyond the date and time that best and final offers are due, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if:

- (a) The mistake is clearly evident on the face of the proposal but the intended correct proposal is not; or
- (b) The offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Judiciary shall review offeror's request for correction or withdrawal of a proposal, and shall prepare a written decision granting or denying offeror's request. Technical irregularities that are matters of form rather than substance evident from the proposal document, or insignificant mistakes may be waived or corrected if they are without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final proposals upon which award shall be made have been received by the date and time due, Judiciary may waive such irregularities or allow offeror to correct them if Judiciary deems that it is not contrary to its best interests, or to the fair treatment of other offerors, and the correction involved has no effect on price, quality, or quantity. Examples of situations where waiver of irregularities may be in Judiciary's best interest include the failure of an offeror to:

- (a) return the number of signed proposals required by the RFP;
- (b) sign the proposal, but only if the unsigned proposal is accompanied by other material indicating offeror's intent to be bound; or
- (c) acknowledge receipt of an amendment to the RFP, but only if it is clear from the proposal that offeror received the amendment and intended to be bound by its terms.

## **SECTION FIVE - ACCEPTANCE OF OFFERS AND AWARD AND EXECUTION OF CONTRACT**

### **5.1 Acceptance and Award:**

5.1.1 **Acceptance and Award of an IFB.** Acceptance of an offer in response to an IFB, if any, shall be made with reasonable promptness to the lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in the IFB. In determining the responsive and responsible offeror, offers shall be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purposes of Judiciary, as specified in the solicitation. Offeror must have the ability to perform as called for in the contract terms. Judiciary shall be the sole judge of product or offeror capability. The successful offeror shall be notified by letter that the offer has been accepted and that offeror is being awarded the contract.

If the offer is rejected or if offeror to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, Judiciary may, at its discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, Judiciary may negotiate with such offeror to reduce the scope of work, if available funds are exceeded, and to award the contract at a price reflecting the reduction in the scope of work.

Judiciary further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

5.2 **Availability of Funds.** An award shall be contingent upon the availability of funds, and any contract awarded shall be subject to cancellation by Judiciary at any time, if funds are unavailable.

### **5.3 Execution of Contract by the Selected Offeror.**

5.3.1 This section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded.

5.3.2 Judiciary shall forward a contract to the successful offeror for execution. The contract shall be signed by the successful offeror and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten (10) days following receipt of the contract by offeror or within such further time as the FSA may allow.

- 5.4 **Return of Offer Guaranty.** All offer guaranties except surety bonds (if submitted as required) shall be returned immediately after execution of the contract. If a contract is not executed, the offer guaranties, except surety bonds, shall be returned after the FSA decides to publish another call for offers.
- 5.5 **Failure to Execute and Return Contract.** If offeror to whom a contract is awarded fails to enter into a contract and to furnish satisfactory security (as required) within ten (10) days after such award or within such further time as the FSA may allow, the FSA shall pay the amount of offeror's proposal guaranty, if any, into the State Treasury as a government realization of the State. The FSA may then award the contract to the next lowest responsive and responsible offeror or may publish another call for offers, whichever method the FSA deems to be in Judiciary's best interest.
- 5.6 **Non-Performance of Contract.** In the event Contractor fails to perform the work in accordance with each requirement of the General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, and other provisions forming a part of this contract, Judiciary, in addition to any other recourse, reserves the right to suspend Contractor from submitting offers on any or all of Judiciary's purchases for such period of time as it deems appropriate.

## SECTION SIX - LEGAL RELATIONS AND RESPONSIBILITY

- 6.1 **Statutes and Rules to be Observed.** Contractor shall at all times observe and comply with all applicable federal, state and local laws, ordinances, rules, and regulations which in any manner affect those engaged or employed in the performance of the work under this contract, the goods required under this contract, or the conduct of the work being contracted for. Contractor shall also comply with all orders and decrees of bodies or tribunals having any jurisdiction or authority over the work.
- 6.2 **Incorporation of Statutes and Rules.** The applicable provisions of chapters 103 and 103D, HRS, as amended, provisions of Hawai'i and federal law, and the rules promulgated by the State Procurement Policy Board, Title 3, HAR, as amended, shall be deemed to be a part of the contract as though fully set forth therein. If any provision of the IFB, RFP, or contract is inconsistent with the statutes or rules, the provision is void and of no effect. However, any void provision shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of the IFB, RFP, and contract are severable.

## SECTION SEVEN - LEGAL AND CONTRACTUAL REMEDIES

### 7.1 Authority to Resolve Protested Solicitations and Awards.

- 7.1.1 Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to Judiciary or a designee as specified in the solicitation. A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five (5) working days after the posting of award of the contract either under section 103D-302 or 103D-303, HRS, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.
- 7.1.2 Judiciary, or its designee, prior to the commencement of an administrative proceeding under section 103D-709, HRS, or an action in court pursuant to section 103D-710, HRS, may settle and resolve a protest concerning the solicitation or award of a contract. This authority shall be exercised in accordance with Title 3, chapter 126, subchapter 3, HAR.
- 7.1.3 If the protest is not resolved by mutual agreement, Judiciary or its designee shall promptly issue a decision in writing to uphold or deny the protest. The decision shall:
- (a) State the reasons for the action taken; and
  - (b) Inform the protestor of the protestor's right to an administrative proceeding as provided in this part, if applicable.
- 7.1.4 A copy of the decision under paragraph 7.1.3 shall be mailed or otherwise furnished immediately to the protestor and any other intervening party.
- 7.1.5 A decision under paragraph 7.1.3 shall be final and conclusive, unless any person adversely affected by the decision commences an administrative proceeding under section 103D-709, HRS.
- 7.1.6 In the event of a timely protest under paragraph 7.1.1, no further action shall be taken on the solicitation or the award of the contract until Judiciary issues a written determination that the award of the contract without delay is necessary to protect substantial interests of Judiciary.
- 7.1.7 In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but was not, the protestor shall be entitled to the actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs, but not attorney's fees.