

SPECIAL PROVISIONS

Scope

The furnishing of Security Attendant Services for HiSAM, shall be in accordance with these Special Provisions, the attached Specifications.

Contract Administrator

For the purpose of this contract, the Executive Director of the State Foundation on Culture and the Arts, or designee, is designated Contract Administrator (CA). The telephone number for contact is (808) 586-0300

State's Commitment

In return for prices submitted, the museum will purchase all of their requirements for the services specified herein from the successful lowest, responsible bidder. Provided however, when performance level is unsatisfactory, the Contract Administrator may grant an exception to this commitment.

Term of contract

The term of contract shall be for twelve (12) month period commencing from the official date on the Notice to Proceed, but no earlier than January 31, 2023.

Unless terminated, the contract may be extended without re-bidding, upon mutual agreement in writing between the State and the Contractor, prior to the expiration date, for not more than five (5) additional twelve (12) month periods, or parts thereof. Provided, however, the contract price for the extended period shall remain the same or lower than the initial contract price, subject to any price increase allowed by the contract.

The contractor or the State may terminate any extended contract period at any time upon ninety (90) days prior written notice.

Responsibility of Offerors

Offeror is advised that if awarded a contract under this solicitation, Offerer shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310©, HRS:

- Chapter 237, Tax Clearance
- Chapter 383, Unemployment Insurance
- Chapter 386, Workers' Compensation
- Chapter 392, Temporary Disability Insurance
- Chapter 393, Prepaid Health Care, and
- Chapter 103-D-310©, Certificate of Good Standing (COGS) for entities doing business in the state

Offerors must register with Hawai'i Compliance Express and bids will only be accepted through the Hawai'i eProcurement website

Offeror Qualifications

In addition to meeting the legal and other requirements to the IFB, the bidder must meet these bidder qualification requirements to be considered for award

- Offeror must have a valid guard service license registered with the Hawai'i State Department of Commerce and Consumer Affairs at the time of bid submittal. The guard services license number shall be noted on Offer Form
- Offeror must have been in the security guard business for a minimum of two (2) consecutive years.
- Offeror shall have a permanent office and representative(s) in the State of Hawai'i at the time of bid opening.

Background Check

All security guards assigned to this contract shall have the following clearances:

- Federal and State criminal clearance check. Documents of background checks shall be current and dated within thirty (30) days of submission of bid and submitted to the CA within fourteen (14) days after notice of Award.
- Traffic abstract (no Driving Under the Influence of Alcohol or Drugs or careless driving conviction)
- No documented emotional or mental disorder
- No criminal convictions which might deem the candidate unsuitable for employment

Contractor, at no extra cost to HiSAM, shall provide necessary evidence of compliance in this area. Upon review of a security guard's background check, HiSAM reserves the right to request additional background information.

Certification of Independent Cost Determination

By submission of a bid in response to this IFB, bidder certifies as follows

- The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
- Unless otherwise required by law, the cost which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
- Not other attempt has been made or will be made by the bidder to indicate any other person of firm to submit or not to submit for the purpose of restricting competition.

Site Inspection

Prior to submittal of an offer, Offeror may inspect the Hawai'i State Art Museum and it's grounds to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed.

Bid Preparation

Offers shall be received electronically through the HlePRO system. Offers received outside of the HlePRO shall be rejected and not be considered for award. To register for HlePRO, go to the State of Hawai'i eProcurement website: <https://hiepro.ehawaii.gov/welcome.html> vendor registration (sign up), login, and Helpful Information about the HlePRO system can be found from this page. Offeror's electronic response to this solicitation shall be deemed an offer to provide the specified work to the State at the prices shown in the response and under the terms and conditions of this solicitation.

It is recommended that Offerors register with HCE prior to responding to a solicitation to ensure timely submittal when requested. Offerors should be aware that it takes approximately thirty (30) working days to establish a compliance status.

Vendors/contractors and service providers should register online with Hawai'i Compliance Express prior to submitting an offer. The annual registration fee is \$12.00 payable to Hawai'i Information Consortium, LLC (HIC).

If you have any questions, please call:

Hawai'i Information Consortium, LLC

Phone No. 695-4620

Email: info@ehawaii.gov

Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and to indicate exact legal name in the appropriate space on offer. Failure to do so may delay proper execution of the contract.

Bid Quotation- Unit bid price per man-hour per attendant shall be the all inclusive hourly cost to the State (including all applicable taxes) for providing the services specified. Unit price per man-hour shall be applicable to the museum, restaurant and gift shop designated during the contract period, and shall also be applicable to additional security services provided during or after work hours, subject to the State Department of Labor and Industrial Relations overtime regulations, when regularly assigned officers are specifically requested by the State.

Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawai'i General Excise tax (GET) either at the current 4.712% for work done on Oahu. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Offeror's Authority to Submit an Offer

The State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product

or service, the Offeror shall resolve that question prior to submitting an offer. If an Offeror offers a product that meets the specifications, is acceptable and the price submitted is the lowest, responsible price offered, the contract will be awarded to that Offeror.

Required Review

Before submitting an offer, each Offeror must thoroughly and carefully examine this solicitation, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the solicitation. Offeror must also become familiar with State, local, and federal laws, statutes, ordinances, rules and regulations that may in any manner affect cost, progress, or performance of the work required.

Should Offeror find defects and questionable or objectionable items in the solicitation, Offeror shall notify the solicitor as soon as possible. This will allow the issuance of any necessary corrections and/or amendments to the solicitation by addendum and mitigate reliance of a defective solicitation upon which award could not be made.

Offer Preparation Costs

Any and all costs incurred by the Offeror in preparing or submitting an offer shall be the Offeror's sole responsibility whether or not any award results from this solicitation. The State shall not reimburse such costs.

Offer Guaranty

A proposal security deposit is NOT required for this IFB

Tax Liability

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawai'i GET at the current 4.5% for sales made on O'ahu, and at the 4% rate for the islands of Hawai'i, Maui, Moloka'i, and Kaua'i. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Federal I.D. Number and Hawai'i General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawai'i General Excise Tax License I.D. number thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

Certification of Offeror Concerning Wages, Hours and Working Conditions of Employees Supplying Services

All Offerors for service contracts shall comply with section 103-55, Hawai'i Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of **Contractor** supplying services: Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, 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.

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 the contract to perform services shall result in cancellation of the contract.

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.

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

This section shall not apply to:

- Managerial, supervisory, or clerical personnel.
- Contracts for supplies, materials, or printing.
- Contracts for utility services.
- Contract to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16 Paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawai'i Revised Statutes, (HRS).
- Contracts for professional services
- Contract to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- Contracts with nonprofit institutions.

Bid Quotation. Unit bid price shall include labor, equipment, installation, transportation, storage, training, all applicable taxes and any other costs incurred to provide services specified including the transaction fee for processing this procurement electronically.

Wage Certificate. The Offeror shall complete and submit a Wage Certificate by which the Offeror certifies that services required will be performed pursuant to §103-55, HRS.

Statutory Requirements of HRS §103-55. Offeror is advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offeror is further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Contractor will be obliged to provide wages no less than those increased wages.

Contractor shall be further obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of

business accessible to all employees, or Contractor may include such notice with each paycheck or pay envelope furnished to the employee.

Modification prior to submittal deadline or withdrawal of offers

The Offeror may modify or withdraw an offer before the due date and time.

Any change, addition, deletion of attachment(s) of an offer may be made prior to the deadline for submittal of offers in the electronic system.

Contract Award and Terms

Method of Award

Award, if made, shall be to the responsive, responsible Offeror submitting the lowest Total Estimated Sum Bid Price.

Responsibility of Offerors

Offeror is advised that in order to be awarded a contract under this solicitation, Offeror will be required, to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310 (c):

- Chapter 237, General Excise Tax Law
- Chapter 383, Hawai'i Employment Security Law
- Chapter 386, Worker's Compensation Law
- Chapter 392, Temporary Disability Insurance
- Chapter 393, Prepaid Health Care Act
- §103D-310 (c), Certificate of Good Standing (COGS) for entities doing business in the State
- Provide a Certificate of Insurance in accordance with Comptroller Memorandum 2010-08

All Contractors must provide a General Liability Insurance policy with a single occurrence limit of \$1,000,000, with \$1,000,000 in the aggregate, containing the same clauses stated in sections one and two below, three weeks prior to the event date. If the permittee and / or subcontractors are not transporting themselves to the site, automobile liability coverage is not required. Written notification is required.

Permittee shall be responsible for providing a Certificate of Insurance to cover themselves and their contractors in compliance with the provisions set forth in this document

- 1) General Liability (which includes Liquor Liability and Products and Completed Operations coverage); \$1,000,000 per occurrence, and \$1,000,000 in the aggregate.

Policies are to include the following clauses:

- This insurance shall not be cancelled, limited in scope of coverage or non-renewed until 30 days written notice has been given to the State of Hawai'i, Department of Accounting and General Services, State Foundation on Culture and the Arts, 250 S. Hotel St. Second Floor Honolulu, Hawai'i 96813.

- The State of Hawai'i is added as an additional insured as respects to operations performed for the State of Hawai'i.
 - It is agreed that any insurance maintained by the State of Hawai'i will apply in excess of, and not contribute with, insurance provided by this policy.
- 2) Automobile Liability Coverage; \$1,000,000 combined single limit (or any combination of insurance that will meet this requirement), and \$1,000,000 in the aggregate. State to be named as additional insured.
 - 3) Worker's Compensation (per statute).

Indemnification. Contractor agrees to defend, indemnify, and hold harmless the State, HiSAM, HSFCA, and their officers, employees, and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees, and all claims, suits, and demands, therefore, arising out of or resulting from the acts or omissions of the Contractor or the Contractor's employees, officers, agents, or subcontractors under this Agreement.

INSURANCE OF PERMITTEE'S CONTRACTORS/VENDORS REQUIRED.

The Contractor shall require all sub-contractor/vendor of any tier to procure and maintain without interruption insurance equivalent to the required coverages discussed herein. The Contractor shall be required to maintain a record of all such sub-contractors/vendors coverages and, at the written request of the State, the Permittee shall furnish the Visitor Services Manager of HiSAM appropriate documentary evidence of such coverage for any or all such sub-contractors/vendors.

FINANCIAL RESPONSIBILITY: The Contractor accepts financial responsibility for the artwork and shall pay for repair or replacement cost of the artwork should damage or loss occur as a result of gross negligence. HSFCA reserves the right to adjust the value of any object based on the appraised market value.

DAMAGE OR LOSS: If artwork is damaged or lost, the Contractor must notify the HSFCA immediately, followed by a written report, giving the circumstances involved. The HSFCA may also require completion of a physical evaluation form. If a theft occurs, the VSM or security guard must notify the police, obtain a police report, and forward the report to the HSFCA Collections Manager for inventory purposes.

Hawai'i Compliance Express The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov> The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE as soon as possible. If a vendor/contractor/services provider is not compliant on HCE at the time of award/ an offeror will not be eligible for the award.

Protest Procedures

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer.

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 based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Officer's debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO Website:

<http://www.hawaii.gov/spo2/source>.

Approvals

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

Contract Execution

Successful Offeror receiving award shall enter into a formal written contract to be signed by the Contractor and returned within ten (10) days.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State of Hawai'i is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

Notice to Proceed

Work will commence on the official commencement date specified on the Notice to Proceed.

Insurance

The Contractor shall deposit with the SPO, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the SPO that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the SPO during the entire term of the Contract. Upon request by the SPO, the Contractor shall furnish a copy of the policy or policies.

The Contractor will immediately provide written notice to the SPO and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed up expiration.

Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

Permits, Licensed, and Taxes

The Contractor shall procure all permits and licenses, during the original or extended contract term, pay all charges, fees, and taxes and give notices necessary and incidental to the due and lawful prosecution of the work.

Failure to procure and maintain valid permits and licenses required by law and these specifications may be cause for the State to terminate the contract.

Invoicing and Payment

Contractor shall submit original and three copies of the invoice to the following address:

State Foundation on Culture and the Arts
250 South Hotel Street, Second Floor
Honolulu, HI 96813

Invoice should reference both the contract number and the IFB Number.

Hawai'i GET. Contractor(s) shall forward invoices, original and three (3) copies directly to the ordering agency for those agencies issuing purchase orders. For all orders placed against this contract, Contractor(s) must include applicable taxes as in the total hourly bid price.

Contract Invalidation

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

Price Adjustment Due to Wage Increase to State Employees

Contract price adjustment shall be considered:

- Only upon request by the Contractor accompanied by proof satisfactory to the State that its employees have been paid comparable wages to State employees.
- Only if there is a wage increase to public employees performing comparable work.
- Only for the contract period in which the price adjustment request is submitted (current contract period only).

Subcontractors

The contractor shall not delegate any duties listed in this solicitation to any subcontractor unless the Contract Administrator has given written approval. The State reserves the right to approve all subcontractors and shall require the primary contractor to replace any subcontractors found to be unacceptable. The primary contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract, and shall be responsible for all services whether or not the primary contractor performs them.

Offeror shall provide the names and addresses of each person or firm to be engaged by the Offeror as subcontractor, if any, and shall indicate the scope of the work to be performed by the subcontractor. No subcontract or assignment shall, under any circumstances, relieve the Contractor of their obligation and liability under the contract with the State, and all persons engaged in performing the work covered by the contract shall be considered employees of the Contractor. If the entire job will be done by the Offeror, Offeror must indicate so. Failure to comply with this request may result in rejection of bid.

Re-Execution of Work

The Contractor shall re-execute any work that fails to conform to the requirements of the contract and shall immediately remedy any defects due to faulty workmanship by the Contractor. Should the Contractor fail to comply, the State reserves the right to engage the services of another company to perform the services and to deduct such costs from monies due to the Contractor.

Opening, and Recording of Bids

Bids shall be reviewed at the time and date specified in the IFB. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the procurement officer or his designated representative, shall be made available. If practicable, such information shall also be recorded; that is, the bids shall be tabulated, or a bid abstract made.

Mistakes in Bid

When the procurement officer knows or has reason to conclude before award that a mistake has been made, the procurement officer should request the Offeror to confirm the bid. If the Offeror alleges mistake, the bid may be corrected or withdrawn.

Technical irregularities are minor informalities that have no effect on price, quantity, quality, delivery, or contractual conditions. These irregularities/informalities can be waived or corrected without prejudice to other Offerors.

Correction or withdrawal of an offer after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the offer 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 offer may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the governmental agency or the fair treatment of other offerors.

When, after bid review but before award, the procurement officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the offer or an offer unreasonably lower than the other offers is submitted, such officer should request the offeror to confirm the offer. If the offeror alleges mistake, the offer may be corrected or withdrawn by the offeror if the conditions of this section are met and if the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the procurement officer or corrected by the offeror without prejudice to other offerors depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. An example includes the failure of an offer to acknowledge receipt of an amendment to the IFB (if such acknowledgment is required by the IFB) but only if it is clear from the offer that the offeror received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.

If the mistake and the intended correct offer are clearly evident on the face of the bid document, the offer shall be corrected to the intended correct offer and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.

An offeror may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct offer is not similarly evident; or the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

An offeror may not correct a mistake in an offer discovered after award of the contract except where the chief procurement officer or the head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be corrected.

When an offer is corrected or withdrawn, or correction or withdrawal is denied, the chief procurement officer or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with HAR §3-122-31, subchapter 5 except that the procurement officer shall prepare the determination required under subsection (c).

Offer Inspection

During the evaluation and award recommendation period, offers will not be available for inspection. For competitive sealed bids, except for confidential portions, the offers shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.