



**State of Hawaii  
Department of Commerce and  
Consumer Affairs  
Public Utilities Commission**

RELEASE DATE: January 10, 2023

**REQUEST FOR PROPOSALS  
No. RFP-PUC-23-01**

**SEALED PROPOSALS AND PRICING FOR AN ENERGY  
EFFICIENCY MANAGER FOR THE HAWAII ENERGY  
EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII.**

**WILL BE RECEIVED UP TO 4:30 PM (HST) ON**

**MONDAY FEBRUARY 27, 2023**

DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO JACLYN YOUNG, VIA E-MAIL

AT [jaclyn.n.young@hawaii.gov](mailto:jaclyn.n.young@hawaii.gov).

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Jodi Endo Chai  
Procurement Office  
Hawaii State Public Utilities Commission

## NOTICE TO INTERESTED PARTIES

This solicitation is provided to you for information purposes. If interested in responding to this solicitation, you must register your company as specified in **Section 1.4**. If you do not register your company your offer will be automatically rejected and not considered for award.

### Administrative Information

Title:	ENERGY EFFICIENCY MANAGER FOR THE HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII.
Project Description	The State of Hawaii Public Utilities Commission (“PUC” or “Commission”) is issuing this Request for Proposals (“RFP”) to select an Energy Efficiency Manager to provide energy efficiency consultancy and contract management services for the Public Benefits Fee Administrator (“PBFA”) programs, the State’s energy efficiency portfolio standard and related policies and programs.
Point of Contact	JACKIE YOUNG EMAIL <a href="mailto:Jaclyn.N.Young@hawaii.gov">Jaclyn.N.Young@hawaii.gov</a>
Submit proposals electronically via Hawaii Electronic Procurement System (HlePRO):	Electronic Submission <a href="http://hiepro.ehawaii.gov">http://hiepro.ehawaii.gov</a>
Closing Date & Time:	<b>MONDAY FEBRUARY 27, 2023 4:30pm HST</b>
Cost:	State is seeking a contractor to accomplish the requirements, not to exceed \$1,500,000.00 Proposal cost should include all fees, taxes, and subscriptions.
Term of Contract:	The term of the Contract will be approximately 38 months (3 years, 2 months) with up to 2 optional 3-year extensions.
NOTE THE MANDATORY .75% TRANSACTION FEE TO HAWAII INFORMATION CONSORTIUM, LLC (HIC) BASED ON QUARTERLY SALES FOR AWARDS MADE IN HIEPRO TO HAWAII AGENCIES ONLY AND LIMITED TO THE FIRST YEAR. (DETAILED IN SECTION 1.8 ELECTRONIC PROCUREMENT AND SECTION 1.22 PAYMENT OF HlePRO Fee.)	

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## **SECTION 1 – INTRODUCTION**

The State of Hawaii Public Utilities Commission is requesting proposals for the services of an Energy Efficiency Manager who will be responsible for: 1) providing expert consulting services relating to the PBF Program and energy efficiency; 2) managing the contract between the Commission and the Program Administrator of the Hawaii Energy Efficiency Program; 3) managing the independent evaluation, measurement, and verification of the Hawaii Energy Efficiency Program; and 4) providing expert services relating to the Energy Efficiency Portfolio Standard.

This RFP is issued pursuant to the provisions of the Hawaii State Procurement Code (HRS Chapter 103D), and the State Procurement Office's applicable directives, circulars, and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all legal authorities. These and other pertinent materials are available on the State of Hawaii web site at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Submission of a valid executed offer by any Offeror shall constitute admission of such knowledge on the part of such Offeror.

Any agreement arising out of this RFP is subject to the approval of the State Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

This RFP is issued by the Commission. The Commission is the sole point of contact concerning this RFP.

All materials and documents submitted in response to this RFP shall become the property of the State and will not be returned.

### **1.1 Terms and Acronyms**

"BAFO" means Best and Final Offer.

"BREG" means the State of Hawaii Department of Commerce and Consumer Affairs, Business Registration Division.

"Contract" means the contract awarded to the Successful Offeror for Energy Efficiency Manager as described in this RFP.

"Consumer Advocate" means the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, as defined under HRS § 269-52.

"Contract Administrator" means the Commission staff member designated by the State of Hawaii Public Utilities Commission to administer the Contract for this solicitation.

"Contracting Officer" means the Executive Officer of the State of Hawaii Public Utilities Commission.

“Cost Benefit Tests” means the cost-benefit tests outlined in the California Standard Practice Manual, Economic Analysis of Demand-Side Programs and Projects (2001)<sup>1</sup>

“DLIR” means the State of Hawaii Department of Labor & Industrial Relations.

“DOTAX” means the State of Hawaii Department of Taxation.

“DSM” means demand-side management.

“Energy Efficiency” means using less energy to provide the same service, or using the same energy to provide more or superior services.

“Energy Efficiency Portfolio Standard” or “EEPS” in Hawaii refers to the standard set forth by Act 155, Session Laws of Hawaii 2009, and promulgated as HRS § 269-96. Hawaii’s EEPS requires electricity use reductions totaling at least 4,300 gigawatt-hours (GWh) statewide by 2030.

“Energy Efficiency Portfolio Standard Framework” or “EEPS Framework” means the *Framework for Energy Efficiency Portfolio Standards* approved by the State of Hawaii Public Utilities Commission in Decision and Order No. 30089, filed January 3, 2012 within Docket No. 2010-0037.

“EM&V” means evaluation, measurement and verification.

“EM&V Contractor” means the entity designated by the Commission to provide independent evaluation services for the Program and/or other programs pursuant to HRS § 269, Part VII, and/or for related activities.

“Ex ante” means initial energy savings and/or other assumptions and parameters used to calculate Program accomplishments prior to any ex post evaluation.

“Ex post” means evaluation conducted to assess Program accomplishments or parameters after the installation of efficient measures and/or implementation of efficient practices, and/or other Program practices.

“Fiscal Agent” means the entity designated by the Commission to assist the Commission with the financial management of the Public Benefits Fee.

“GC” means the General Conditions, issued by the State of Hawaii Department of the Attorney General.

“GIA” means the Green Infrastructure Authority.

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<sup>1</sup> [https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc\\_public\\_website/content/utilities\\_and\\_industries/energy\\_-\\_electricity\\_and\\_natural\\_gas/cpuc-standard-practice-manual.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/utilities_and_industries/energy_-_electricity_and_natural_gas/cpuc-standard-practice-manual.pdf)

“Green Infrastructure Fee” or “GIF” means the nonbypassable fees and charges authorized by HRS§ 269-166 to be imposed on and collected from all existing and future customers of electric utilities or any successor.

“Green Energy Market Securitization” or “GEMS” means the financing model designed to make clean energy improvements, such as photovoltaic panels, affordable and accessible to underserved community members using a rate-reduction bond structure. See Act 211, Session Laws of Hawaii 2013.

"GET" means State of Hawaii General Excise Tax.

“HAR” means State of Hawaii Administrative Rules.

“HCE” means State of Hawaii Compliance Express.

“Hawaii Clean Energy Initiative” or “HCEI” means the partnership between the State of Hawaii and the U.S. Department of Energy. <http://www.hawaiicleanenergyinitiative.org/>

“Hawaii Energy Efficiency Program” or “HEEP” means the conservation and energy efficiency program operating under the auspices of the Hawaii Public Utilities Commission. The Hawaii Energy Efficiency Program began operations in 2009.

“HECO” means Hawaiian Electric Company, Inc. HECO is a Hawaii corporation initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii and is a public utility as defined by HRS § 269-1.

“HECO Companies” means the Hawaiian Electric Company (HECO) and its subsidiaries Hawaii Electric Light Company (HELCO), and Maui Electric Company (MECO).

“HECO Companies’ service territory” means the islands of Oahu, Hawaii, Maui, Molokai and Lanai, which are serviced by the HECO Companies.

“HELCO” means Hawaii Electric Light Company, Inc. HELCO is a Hawaii corporation initially organized under the laws of the Republic of Hawaii on or about December 5, 1895. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii and is a public utility as defined by HRS § 269-1.

"HRS" means Hawaii Revised Statutes.

"HST" means Hawaii Standard Time.

“HVAC” means heating, ventilation and air conditioning.

“IRP” means integrated resource planning or integrated resource plan.

“IRS” means the Internal Revenue Service.

“KIUC” means Kauai Island Utility Cooperative. KIUC is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. The cooperative currently serves more than 32,000 electric accounts and operates its own energy efficiency programs.

“Load management” means direct control or management of the load.

“MECO” means Maui Electric Company, Ltd. MECO is a Hawaii corporation initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, distribution, and sale of electricity on the island of Lanai.

"Offeror" means any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the goods, service, or construction contemplated in this RFP.

“PBF” means the Public Benefits Fee established by the Commission, pursuant to HRS § 269-121, that includes money collected by the HECO Companies from ratepayers to support clean energy technology, demand response technology, energy use reduction, and demand-side management infrastructure, programs, and services, subject to Commission review and approval.

“PBF Docket” means State of Hawaii Docket No. 2007-0323, Instituting a Proceeding to Investigate the Issues and Requirements Raised by, and Contained in, Hawaii’s Public Benefits Fund, Part VII of Chapter 269, Hawaii Revised Statutes.

“PBF Program(s)” or “Program(s)” means the PBF-supported programs, including the Hawaii Energy Efficiency Program.

“Performance indicator” means a mutually defined objective measure of energy efficiency resource acquisition that explicitly links Program performance with the Commission’s Program objectives.

“Performance award” means an incentive proposed by a prospective bidder that is linked to the accomplishment of HEEP Performance Indicators.

"Procurement Officer" means the State of Hawaii Public Utilities Commission Executive Officer or other personnel so-authorized.

“Program Year” means a one-year implementation cycle for the PBF Programs. Currently, the PBF Programs are implemented from July 1 through June 30 of the following year.

“Program Administrator” or “PBF Administrator” means the third-party administrator of the PBF Programs in the HECO Companies’ service territories, selected by the Commission under HRS Chapter 269, Part VII.

“Public Utilities Commission” or “Commission” means the State of Hawaii Public Utilities Commission as defined under HRS 269-2, a Hawaii state agency administratively attached to the Department of Commerce and Consumer Affairs.

“Renewable energy integration” means the incorporation of renewable energy, distributed generation, energy storage, and demand response into the electric distribution and transmission system.

"RFP" means Request for Proposals.

"State" means the State of Hawaii.

"Successful Offeror" means the entity offered a Contract for Energy Efficiency Manager services as described in this RFP.

“Technical Advisory Group” or “TAG” means an advisory group made up of representatives from the Program Administrator, the Consumer Advocate, the HECO Companies, the Energy Efficiency Manager, and other interested energy efficiency stakeholders as designated by the Commission Chairman.

“Total Resource Benefits” or “TRB” means the present value in dollars of the stream of energy savings attributable to an energy efficiency program or portfolio.

“Technical Reference Manual” or “TRM” means the technical description of all prescriptive and/or custom calculation methodologies for energy efficiency measures and Program assumptions, and potentially for other demand-modifying programs. The TRM serves as a basis for energy savings claims for the Program.

"Working day" means Commission office hours, every day from 7:45 a.m. to 4:30 p.m., Hawaii Standard Time, except Saturday, Sunday, and any Federal or State of Hawaii holiday.

## **1.2 Official Commission Contact**

The official Commission contact information is:

Hawaii Public Utilities Commission  
Attention: Jaclyn Young, Contract Specialist  
465 South King Street, Room 103  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2020  
Email: [Jaclyn.N.Young@hawaii.gov](mailto:Jaclyn.N.Young@hawaii.gov)

### 1.3 RFP Schedule and Significant Dates

Table 1 below represents the Commission's estimated schedule for the RFP process and completion of the Contract. The schedule may be modified at the Commission's discretion. Prospective Offerors should be aware of the specified time that an item is due, in addition to the date that it is due. While these dates are subject to change, prospective Offerors must be prepared to meet them as they currently appear in this RFP. Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance in the work phase may result in the State refusing to consider the proposal of the Offeror.

Table 1: Schedule and Significant Dates

Activity	Scheduled Dates*
Advertisement of RFP	Tuesday January 10, 2023
Offeror registration deadline and deadline to submit written inquiries	Friday January 27, 2023
Issuance of responses to written inquiries and of RFP addendums (if applicable)	Friday February 3, 2023
Closing date – proposal due	Monday February 27, 2023
Optional discussions with priority-listed Offerors	Not later than Friday March 10, 2023
Best & Final Offers due (if required)	By Friday March 24, 2023
Provider selection and award	By Thursday April 6, 2023
Contract start date (work begins)	On or around Monday May 1, 2023

*\*note: all deadlines are 4:30pm HST*

*Potential Offerors must adhere to the specified time that an item is due.*

### 1.4 Registration Requirement

Prospective Offerors must register by the date specified in **Section 1.3** to ensure receiving any addenda that are issued and to have written inquiries addressed. Registration must include:

- Company Name
- Mailing Address
- Name of Contact Person
- Contact Telephone
- Contact Email
- RFP Number

Registration must be submitted via email to the official Commission contact (also as indicated in Section 1.2) for this RFP:

Jaclyn Young  
Email: [jaclyn.n.young@hawaii.gov](mailto:jaclyn.n.young@hawaii.gov)

Telephone calls **WILL NOT BE ACCEPTED**. Failure to register according to the instructions in this RFP will result in automatic rejection of Offeror's proposal.

It is the Offeror's responsibility to confirm that the Commission has received the registration submittal.

### 1.5 Inquiries Regarding this RFP

Written inquiries must be received by the deadline specified in **Section 1.3**. Written inquiries must state the page, paragraph, and line or sentence to which the question relates, when applicable. Such written inquiries shall be made addenda to the RFP.

Written inquiries must be submitted on HlePRO or via email to the official Commission contact found in **Section 1.2**:

Jaclyn Young  
Email: [jaclyn.n.young@hawaii.gov](mailto:jaclyn.n.young@hawaii.gov)

Informal questions and responses over the telephone or in-person shall not be construed as addenda to the RFP.

Replies to Offerors' inquiries will be considered official only if:

1. The Offeror submits and inquiry in writing by the date specified in **Section 1.3**; and
2. The Commission provides a written reply; and
3. Such questions and answers are made a part of the RFP by addendum.

Any RFP addenda shall be publicly posted, and registered Offerors will be notified by email, provided that the Offeror's email was given to the Commission. The Commission shall not be responsible for notifying those prospective Offerors who have failed to provide an email address.

### 1.6 Proposal Submission

Offeror's proposals must be received on HlePRO no later than the closing date and time stated in **Section 1.3**.

Proposals will be received, and receipt automatically verified by the State of Hawaii eProcurement system (HlePRO), which is available on the SPO website: <https://hiepro.ehawaii.gov/welcome.html>, on or after the date and time specified in Section 1.4, RFP Schedule and Significant Dates, as amended.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection

upon posting of award pursuant to section 103D-701, HRS.

Submission of a Proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of the performance of the work. Before submitting a Proposal, each prospective Offeror should:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, addenda, and other relevant documentation.
2. Become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work specified herein.

### **1.7 Proposal Modifications and Withdrawals**

Proposals may be modified or withdrawn prior to the deadline for submission of Proposals found in **Section 1.3**. For any Proposal modification or withdrawal, the Offeror must notify the official Commission contact listed in **Section 1.2** via email, of a pending modification or withdrawal.

Timely receipt of modifications and withdrawals shall be evidenced by the date and time registered by the Commission time stamp clock. Modification requests received after the RFP closing date as specified in **Section 1.3** shall be returned.

**Modifications:** A written notice from the Offeror to the official Commission contact listed in **Section 1.2** must accompany the actual modification, sealed in a separate envelope or container.

**Withdrawal:** A written withdrawal notice from the Offeror to the official Commission contact listed in **Section 1.2** must state that the Offeror wishes to withdraw a Proposal that has been received by the Commission.

### **1.8 Proposal Costs**

The Offeror shall be responsible for all costs incurred in preparing or responding to this RFP.

The State will not be liable for any costs, including discussions, incurred by any Offeror in responding to this RFP, even if the State cancels this RFP or does not award a Contract through this process.

### **1.9 Mandatory Requirements for the Successful Offeror**

Potential Offerors should consider the following prior to responding to this RFP:

1. The Energy Efficiency Manager must be an organization independent of the

Program Administrator, any Hawaii gas or electric utility, or any agency of the State.

2. The Energy Efficiency Manager must be prepared to act in an independent capacity and not as officers or employees of the State. The Energy Efficiency Manager must indemnify, defend and hold harmless the State and its officers and employees from liability and any claim, suit, judgment, and damages arising as a result of the Energy Efficiency Manager's acts and/or omissions in the performance of duties under the Contract.
3. The Energy Efficiency Manager must agree to multi-year Contract with the State according to the Contract term specified herein.

## SECTION 2 – BACKGROUND AND SCOPE OF SERVICES

All services by the Energy Efficiency Manager for the Commission shall be in accordance with this RFP, including its attachments and any addenda. The Commission reserves the right to amend the requirements herein in response to legislative changes and regulatory changes that affect this RFP.

### 2.1 State of Hawaii and Energy Efficiency

The Commission is responsible for regulating public utilities, motor carriers, water carriers and other regulated companies. Through its mandated activities, including those described below for which the Commission seeks an Energy Efficiency Manager through this RFP, the Commission also supports the State's goal of 100% renewable energy generation by 2045.

In 2006, the State authorized the Commission to establish the Public Benefits Fee ("PBF")<sup>2</sup>, a demand-side management surcharge collected from Hawaiian Electric Companies customers. The PBF moneys are used<sup>3</sup> to support the Hawaii Energy Efficiency Program ("HEEP")<sup>4</sup>. In 2007, the Commission opened the PBF Docket to select and contract with a Program Administrator for the HEEP and to implement a new market structure for energy efficiency demand-side management. Through the PBF Docket, the Commission has overseen the PBF and HEEP for approximately thirteen (13) consecutive years. The PBF collections, Program impacts, budgets, Annual Plans, and reports are filed in the PBF Docket.<sup>5</sup>

In 2008, the State established the HCEI to meet state clean energy goals.<sup>6</sup> In 2009, the Legislature passed Act 155, which required the Commission to establish an Energy Efficiency Portfolio Standard ("EEPS") to maximize cost-effective energy-efficiency programs and technologies.<sup>7</sup> The State set a statewide EEPS goal of 4,300 gigawatt hours by 2030, based on utility sales forecast and a goal of a 30% reduction due to energy

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<sup>2</sup> Act 162, 2006 Session Laws of Hawaii (as amended by Act 118, 2008 Session Laws of Hawaii, and codified as HRS Chapter 269 Part VII), authorizes the Commission, by order or rule, to redirect all or a portion of the moneys collected by Hawaii's electric utilities from ratepayers through a demand-side management surcharge to a third-party administrator contracted by the Commission.

<sup>3</sup> HRS §§ 269-121 through 269-123 describe the Commission's authorization to use PBF moneys, to contract for a third-party administrator to operate and manage PBF Programs, and the requirements for such an administrator.

<sup>4</sup> The PBF is used to support clean energy technology, demand response technology, and energy use reduction, and demand-side management infrastructure, programs, and services, subject to the review and approval of the Commission (Haw. Rev. Stat. Ann. § 269-121)

<sup>5</sup> See Docket No. 2007-0323 in PUC Document Management System (DMS, link: <https://dms.puc.hawaii.gov/dms/>)

<sup>6</sup> The HCEI initially had a goal of meeting 70% of the State's energy needs through renewable energy and energy efficiency by 2030. This goal has since been revised to achieve 100% clean energy by 2045. <http://www.hawaiicleanenergyinitiative.org/>

<sup>7</sup> HRS § 269-96 (a), (b).

efficiency.<sup>8</sup> Pursuant to Act 155, the Commission opened Docket No. 2010-0037, since closed, that approved an EEPS Framework and established an EEPS Technical Working Group that continues to meet on an ad hoc basis. The Commission has submitted two reports to the Hawaii State Legislature (in 2014 and 2019) on Hawaii's EEPS, which document progress toward interim and long term EEPS goals. In 2020, the Commission completed a State of Hawaii Energy Efficiency Market Potential Study that incorporated updated baseline data and technology information; estimated the cost-effective statewide Energy Efficiency potential in 2030 at 6,400 gigawatt hours; and stated that, in effect, the State must achieve approximately 67% of this potential to meet its EEPS goals with market transformation and codes and standards providing a share of savings.<sup>9</sup>

## 2.2 Stakeholders

In addition to the role of the Commission, outlined above, potential Offerors must understand the roles and responsibilities of the following important stakeholders in the Hawaii regulatory system, and in particular, their relationship to the PBF Programs. The Commission, in Order No. 23681<sup>10</sup> and Decision and Order No. 23258<sup>11</sup> describes the roles of various participants in the delivery of energy efficiency services. Potential Offerors should refer to those orders for further information.

*Consumer Advocate.* The Consumer Advocate is a division of the State Department of Commerce and Consumer Affairs, and serves to represent, protect, and advance the interests of all consumers of utility services in the State. The Consumer Advocate evaluates the utilities' services and performance; participates in creation and implementation of energy policy and advocacy for energy efficiency programs; reviews proposals for service modifications and new programs or services, and makes recommendations to the Commission on such issues, as appropriate.

*Program Administrator.* The Program Administrator is responsible for delivering energy efficiency services throughout the HECO Companies' service territories; and development and administration of the HEEP; and also provides ongoing redesign and modification of the Program, with approval from the Commission. For more information on Program Administrator requirements, duties, and responsibilities, refer to HRS § 269-123. This role is also titled the Public Benefits Fee Administrator (PBFA), and is publicly known as "Hawaii Energy." More information about Hawaii Energy and the PBFA activities can be found at <https://hawaiienergy.com>.

The Commission is currently contracting PBFA services through Program Year 2024 with Leidos, Inc. (previously SAIC). This contract will expire on December 31, 2025.

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<sup>8</sup> HRS § 269-96 (a), (b).

<sup>9</sup> Applied Energy Group, *State of Hawaii Market Potential Study*, Honolulu, HI, August 5, 2020. See link: <https://www.hawaiieeps.org/8-5-2020-market-potential-study-rel>

<sup>10</sup> See Docket No. 2007-0323 in PUC Document Management System (DMS link: <https://dms.puc.hawaii.gov/dms/>)

<sup>11</sup> See Docket No. 2005-0069 in PUC Document Management System (DMS link: <https://dms.puc.hawaii.gov/dms/>)

*Fiscal Agent.* The Fiscal Agent is an independent contractor to the Commission who assists the Commission with the financial management of the Program. The Fiscal Agent reports directly to the Commission and provides the Commission with monthly and annual financial statements and accounting reports. The Commission is currently contracting services with Bank of Hawaii as the PBF Fiscal Agent.

*Technical Advisory Group.* The Technical Advisory Group comprises representatives from the Program Administrator, the Consumer Advocate, the HECO Companies, and other interested energy efficiency stakeholders, as determined by the Commission. The Technical Advisory Group assists the Energy Efficiency Manager and the Commission in the following areas:

1. Development of periodic evaluation plans for the portfolio of energy efficiency programs;
2. Review of evaluation studies;
3. Review and input on a Technical Reference Manual; and
4. Review and input on EM&V protocols used to measure and verify Program impacts.

### **2.3 Required Expertise and Equipment**

The Energy Efficiency Manager must demonstrate current national and international expertise regarding energy efficiency programs and DSM programs, including funding sources, known challenges and complexities, and current trends and developments. The Energy Efficiency Manager must also demonstrate a deep understanding of current energy and energy efficiency issues in Hawaii.

The Energy Efficiency Manager must possess strong management and negotiation skills, and strong oral and written communication skills. The Energy Efficiency Manager must also have experience in contract and program administration.

The Energy Efficiency Manager must have expertise in the field of evaluation, measurement and verification of energy efficiency programs, including familiarity with the cost benefit analysis and assessment methodology. The Energy Efficiency Manager must have the ability to manage independent measurement and evaluation studies.

The Energy Efficiency Manager must be familiar with Hawaii's EEPS legislation and background material, relevant EEPS docket filings, and the history of the docket parties, including the roles of the stakeholders.

The Energy Efficiency Manager must provide its own equipment, office space, and materials; be familiar with Windows operating systems; have the capability to store financial records pertaining to the key tasks below, using Windows-based accounting software; and have a secure computer backup system.

### **2.4 Scope of Services**

The Energy Efficiency Manager shall perform the following key tasks:

- HEEP advisory services, including consultation with the Commission and stakeholders to develop and review HEEP plans;
- Contract management of the contract between the Commission and the Program Administrator, including directing and reviewing performance under that contract;
- EM&V advisory services and EM&V Contractor management;
- EEPS advisory services; and
- Energy efficiency advisory services.

The Energy Efficiency Manager shall also interact with utilities, state agencies, and the general public concerning issues around energy efficiency, HEEP, EEPS, and EMV appropriate or as directed by the Commission.

#### 2.4.1 HEEP Advisory Services

The Energy Efficiency Manager shall provide advisory services to assist the Commission with development and review of the HEEP. This includes but is not limited to:

1. Research and analysis, particularly for energy efficiency (but also in areas of demand flexibility), including Program costs and benefits, cost effectiveness and avoided cost, legislative and Hawaii-specific analysis as needed;
2. Presentation and recommendations to the Commission. This may include Program planning and development, collaboration opportunities, and recommendations for general Program direction, including the role of the HEEP and energy efficiency planning as part of resource planning;
3. Commission conduit. The Energy Efficiency Manager is the primary link between the Commission and the Program Administrator. As a conduit for the Commission, the Energy Efficiency Manager's tasks may include translating broader Commission directives into actionable items and Program development for the Program Administrator. This may include, for example, working with the Commission to develop a framework for energy efficiency as part of longer-term utility planning, taking part in collaboration efforts with the utility and the Program Administrator, and guiding the Program Administrator to implement such a framework;
4. Regular communication with the Commission. This communication will include, at a minimum, monthly meeting with the Commission regarding Program updates and outcomes, Program development, and Program advisement as relevant.

The Energy Efficiency Manager must be informed of, and may attend, Commission proceedings or other formally organized activities that could potentially affect the HEEP. This may include, for example, meetings concerning integrated resource planning and building energy code development.

#### 2.4.2 Program Administrator Contract Management and Other Administrative Duties

The Energy Efficiency Manager shall provide oversight and day-to-day management of the contract between the Commission and the Program Administrator. This work includes but is not limited to tracking and monitoring Program Administrator performance, budget and invoice review, and ongoing communication with the Program Administrator.

Contract management includes but is not limited:

1. Monitoring the Program Administrator for compliance with its contract requirements. The Energy Efficiency Manager shall review the Program Administrator's compliance and performance under the terms of the contract, and provide monthly reports or updates on such to the Commission. In the event the Program Administrator does not meet its contractual requirements, the Energy Efficiency Manager shall make recommendations to the Commission on corrective strategies, including necessary actions and a time frame for implementation;
2. Overseeing Program achievements and goals. This includes tracking results and deliverables, including the Program Administrator's progress towards meeting Commission-approved goals and any contractual performance indicators, and review and approval of Program implementation procedures;
3. Reviewing Program Administrator invoices and serve as point of contact for approval of invoices;
4. Reviewing Program Administrator monthly reports;
5. Participating in meetings and maintaining weekly or more frequent communication with the Program Administrator; and
6. Addressing Program inquiries from stakeholders and the public.

Other related administrative duties include but are not limited to the following:

*Program Administrator Procurement.* The Energy Efficiency Manager may assist the Commission with the competitive procurement process for a Program Administrator, including evaluation of potential contractors and development of the contract. This work includes but is not limited to:

1. Assisting in solicitation process, including assisting the Commission with preparation of solicitation documents;
2. Assisting in contract development, including review of and comment on draft contracts, and administrative and management tasks necessary for contract execution;
3. Assisting in contractor selection, including attending evaluation committee meetings; and
4. Participating in contract negotiations with the selected contractor.

*Dispute Resolution.* The Energy Efficiency Manager shall be responsible for resolving disputes or complaints regarding the Program Administrator's performance. The Energy Efficiency Manager shall settle such disputes or complaints as is possible; and if not possible shall bring those disputes to the Commission for review and resolution. The

Energy Efficiency Manager shall file an annual report with the Commission detailing all complaints, issues and their respective resolutions.

*Fiscal Agent Coordination.* The Energy Efficiency Manager shall coordinate with the Fiscal Agent to:

1. Ensure payment of Program Administrator and EM&V Contractor invoices;
2. Facilitate communication between Program Administrator and Fiscal Agent;
3. Review fiscal audit results and communicate findings therein to the Commission;
4. Respond to requests from the Commission for information regarding PBF under or over-collections; and
5. Complete any other PBF Program tasks involving the Fiscal Agent.

#### 2.4.3 Energy Efficiency EM&V Advisory Services and EM&V Contractor Management

The Energy Efficiency Manager shall advise the Commission on EM&V for energy efficiency, including but not limited to assisting in development of an Evaluation Plan and recommending any necessary or beneficial EM&V studies. The Energy Efficiency Manager shall also manage the EM&V Contractor on behalf of the Commission.

*Evaluation Plan.* The Energy Efficiency Manager shall oversee the development and implementation of the evaluation plans associated with the EM&V contract. These evaluation plans shall propose specific evaluation, monitoring, verification, and market assessment studies, including estimates of associated budget, scope of work, and prioritization of activities. To oversee the evaluation plan, the Energy Efficiency Manager will coordinate with and receive input from the Technical Advisory Group.

*EM&V Studies.* The Energy Efficiency Manager shall understand, assess, recommend, and report to the Commission on the following studies and any other relevant studies: measure savings characterization studies<sup>12</sup> and market characterization and baseline studies<sup>13</sup>.

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<sup>12</sup> These studies focus on the process of advance specification of generic assumptions and algorithms for calculating savings for individual electricity-saving measures as adopted and documented in a Technical Review Manual, to be developed and maintained by the Program Administrator. For prescriptive measures, this includes specification of any assumed energy and demand values, hours of use, adjustment (in -service rates, free rider rates, etc.) and other factors that affect electrical savings. For custom measures, it may specify only key variables that need to be calculated or measured often and the formulas to be used in calculating savings. The Energy Efficiency Manager (and any evaluation contractors) may review and comment upon the inputs, methods, and savings values proposed by the Program Administrator.

<sup>13</sup> These studies are processes of gathering and analyzing information about the characteristics of different markets to support assessment of demand-side resource potential, development of market intervention strategies and establishment of baselines from which efficiency savings can be measured. They include building, appliance and equipment saturation surveys, sales data, consumer attitude and behavior surveys and market structure analysis. The Energy Efficiency Manager may propose specific Market Characterization and Baseline studies in the Evaluation Plan. The Energy Efficiency Manager shall consult and coordinate with the Technical Advisory Group in planning and developing a prioritized list of Market Characterization and baseline Studies. The Program Administrator may carry out additional market characterization work necessary to plan their services and initiatives, as well as to support their long-range resource planning responsibilities.

*EM&V Contractor Management.* The Energy Efficiency Manager shall coordinate the work of the EM&V Contractor, including the following, as directed by the Commission.

Per statutory mandate, the EM&V Contractor shall verify energy and capacity savings and incremental renewable energy production savings associated with the PBF Programs at minimum every three years, pursuant to HRS § 269-124(7). The Energy Efficiency Manager shall coordinate this work by the EM&V Contractor.

Currently, the EM&V Contractor assesses the Program Administrator's savings claims in an annual savings verification process. This savings verification includes analysis of measurements and project data from the Program Administrator's tracking systems, results from a review of project files, and results from relevant field verification visits. Based on the savings verification, the Energy Efficiency manager shall recommend to the Commission quantitative adjustments to the Program Administrator's claims regarding performance incentives.

#### 2.4.4 EEPS Advisory Services

The Energy Efficiency Manager shall provide EEPS advisory services, including but not limited to the following services, as directed by the Commission.

*EEPS Planning and Development.* The Energy Efficiency Manager shall assist with inclusive EEPS planning and development. The Energy Efficiency Manager shall identify synergies and gaps between the entities, programs, and initiatives working in related fields with goals and policies relevant to energy efficiency. This work requires understanding and developing the relationship between EEPS and Renewable Portfolio Standard goals; and the relationship between HEEP and utility planning. The Energy Efficiency Manager shall use EEPS planning and development to assist the Program Administrator to maximize its resources to best meet the EEPS goals and to minimize the HEEP costs.

Inclusive EEPS planning and development services include but are not limited to the following:

1. Planning and facilitating technical stakeholder meetings (Technical Working Group);
2. Working with stakeholders and the Commission to iterate/adjust roles and responsibilities for future EEPS work. This may include guiding the Program Administrator relationships to other entities;
3. Developing frameworks and plans for integrating EEPS goals into utility planning processes for Commission review;
4. Reviewing and developing EEPS goals with respect to the State's other clean energy goals, for example, the Renewable Portfolio Standard;
5. Report to the Commission on the stakeholder relationships and policy interplay. Such reporting may include listing of pertinent issues or conflicts found, and proposed updates for EEPS policy.

*Evaluation and Revision of EEPS Goals.* The Energy Efficiency Manager shall evaluate progress toward EEPS goals; and report on such progress periodically or at specific milestones. This reporting may include EEPS results per service territory, including breakouts as directed by the Commission;

Additionally, the EEPS goals are evaluated and may be updated every five years as new information becomes available and results of existing programs and laws manifest themselves through energy impacts. The Energy Efficiency Manager shall provide guidance to the Commission and stakeholders regarding the procedures for evaluation of EEPS standards and goals, including how to acquire information, who will report and track progress, and how to determine if goals remain effective and achievable.

*Determination of EM&V Needs and Requirements.* The Energy Efficiency Manager shall determine EM&V needs and requirements for EEPS, understanding the complexity of such and the impact of overlapping jurisdictions and agencies. The EM&V needs may include assessment and agreement on approaches and reporting formats. The EM&V requirements shall address efforts to minimize costs while producing reliable savings estimates that can be attributed to EEPS intervention.

1. The Energy Efficiency Manager shall review EEPS goals by service territory for each of the participating counties/utilities by period (upcoming periods include calendar years ending 2020, 2025, 2030).
2. The Energy Efficiency Manager shall report on the following EEPS framework details:
  - a. Energy goals by service territory for each participant;
  - b. EM&V guidelines that describe methodologies for measuring and accounting for energy savings that count towards the EEPS goal;
  - c. Recommendations for incentive or penalty structures and options.

*EEPS Reporting.* The Energy Efficiency Manager shall be responsible for an annual impact evaluation report that summarizes and analyzes the energy efficiency savings, the total resource and PBF Program costs, and the societal benefits of the portfolio of energy efficiency programs. This report is intended for Hawaii policymakers and legislators. The Energy Efficiency Manager shall also be responsible for an evaluation report, every three years, to verify the reported energy and capacity savings and incremental renewable energy production savings associated with the PBF Programs, pursuant to HRS § 269-96.

#### 2.4.5 Energy Efficiency Advisory Services

The Energy Efficiency Manager shall assist the Commission in its planning and decision making processes by providing energy efficiency research and analysis, reporting and advisement as directed. The Energy Efficiency Manager may also work with the Commission to investigate opportunities for the use of PBF Program budgets to support broader energy efficiency goals. This work may include the following:

1. Detailed analysis and discussion of the cost effectiveness associated with the HEEP and the amount of cost effective energy savings in relation to PBF surcharge amounts; and
2. Developing and applying for funding sources where relevant.

## **2.5 Confidential Program Information**

Some of the information used by the Energy Efficiency Manager may be customer-specific or could provide an unfair competitive advantage to an entity delivering electricity or services outside of the services to be delivered by the Program Administrator. The Energy Efficiency Manager must safeguard any such confidential information using systems that provide appropriate protection in the collection, processing, storage and retrieval of such information.

## **2.6 Property Owned by the State**

All products of the Energy Efficiency Manager's work under the Contract, including outlines, reports, charts, sketches, drawings, artwork, plans, photographs, specifications, estimates, computer programs, databases, e-mails, and similar documents or records, will be the sole property of the State and may not be copyrighted or resold by the Energy Efficiency Manager. Any equipment purchased by or furnished to the Energy Efficiency Manager by the State under this Contract is provided on a loan basis only and remains the property of the State.

## **2.7 Term of Contract**

The Successful Offeror shall be required to enter into a formal written State contract to commence work on this project. The term of the Contract is expected to start approximately **May 2022**, and end **June 30, 2025**, with an option to extend, by mutual agreement, for up to two additional three-year periods, or any portion thereof. The Commission may terminate the Contract at any time, if in the best interest of the State.

In the event the Commission chooses to contract with another vendor to provide the services of the Energy Efficiency Manager at the end of this Contract term or upon cancellation of the Contract, or in the event that the Energy Efficiency Manager chooses not to renew after the expiration of the Contract, the existing Energy Efficiency Manager must provide reasonable transition assistance to the Commission at reasonable rates of compensation. Under no circumstances will the existing Energy Efficiency Manager have any right to compensation for investments or other expenditures that were undertaken pursuant to, or in anticipation of, the extension of the Contract.

## **2.8 Compensation**

Payment will be made to the Energy Efficiency Manager on a time and materials basis. Proposals shall include hourly rates and a total fixed cost for the various functions included in the Proposal, and an estimated cost for materials. The Commission or the State shall not be liable or responsible for any compensation to the EM for the services provided under its Proposal that is greater than the total Contract amount.

## **2.9 Contract Administrator**

For the purposes of this RFP and Contract, Jaclyn Young (email: [jaclyn.n.young@hawaii.gov](mailto:jaclyn.n.young@hawaii.gov)), is designated as the Contract Administrator.

## SECTION 3 – PROPOSAL FORMAT AND CONTENT

Offerors must present their proposals in accordance with this section. Proposals must be complete, including, without limitation, all of the information requested in this RFP. All materials and documents submitted in response to this RFP shall become the property of the State and will not be returned.

The Commission expects Offerors to provide clear, concise proposals demonstrating creativity, expertise, experience, and a clear understanding of the key tasks described in **Section 2.1** with respect to the energy efficiency goals of the State. The proposal must detail plans and methods for completing the key tasks, including a detailed description of the first year of work. These plans may include discussion of overarching principles and best practices, as well as ongoing development and iterations, strategies, and goals over the Contract term. The proposal must also include planned transitional activities within the timeline. If a proposal is significantly different than the scope described herein, the Offeror must provide detailed plans to ensure minimal market disruption. In addition, Offerors should address any and all anticipated difficulties and/or problem areas, along with potential approaches to their resolution.

Proposals must include all the following sections:

1. Transmittal Letter;
2. Table of Contents;
3. Executive Summary;
4. Offeror Organization, Competence, and Experience;
5. Key Task Response;
6. Budget and Cost Proposal;
7. Local Participation in Hawaii; and
8. Assumptions and Exceptions.

If an Offeror chooses not to respond to any section of the Proposal Format and Content, the Offeror should then, in place of the appropriate section, indicate reason(s) for the omission of a response.

**Offerors may make certain assumptions or use simplifying conditions in their proposals. However, those assumptions or conditions must be clearly identified and the rationale behind them fully explained.**

If any additional information is required by the State regarding any aspect of an Offeror's proposal, it must be provided in a timely manner as specified by the Commission.

For information regarding proposal submission, including means of submission, see **Section 1.6**. For Proposal evaluation criteria, see **Section 4**.

### 3.1 Transmittal Letter

The transmittal letter must be on the Offeror's official business letterhead and must be in the form of a standard business letter that is signed by an individual or individuals authorized to legally bind the Offeror.

The Transmittal Letter must include all the following items:

1. Terms and Conditions;
2. Legal Entity;
3. Federal Tax Identification Number;
4. Provider;
5. Subcontractors;
6. Non-discrimination;
7. Approval of Offeror's Recommendations; and
8. Contact Person.

### 3.1.1 Terms and Conditions

A statement indicating that the Offeror understands and will comply with all terms and conditions in this RFP.

### 3.1.2 Legal Entity

A statement indicating that the Offeror is a corporation or other legal entity (which must be specified, i.e., corporation, partnership, joint venture, etc.) and indicating the jurisdiction where the Offeror is organized.

### 3.1.3 Federal Tax Identification Number

A statement setting forth the Offeror's Federal tax identification number.

### 3.1.4 Provider

A statement that the Offeror maintains an active and current certificate of registration. A true and certified copy of its certificate of registration must be provided and a State GET identification number must also be provided.

The Successful Offeror shall be required to assume responsibility for the life of the Contract for all contractual activities, products, and deliverables identified in the RFP and offered in the Successful Offeror's accepted Proposal whether or not the Successful Offeror directly performs or provides them. The Successful Offeror shall be considered the sole point of contact with regard to contractual matters.

### 3.1.5 Non-discrimination

A statement of affirmative action that the Offeror does not discriminate in its employment and collection practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap, or disability.

### 3.1.6 Approval of Offeror's Recommendations

A statement that the Offeror agrees that the Commission reserves the right to disapprove Offeror recommendations without penalty, when they conflict with the policy or fiscal interests of the Commission, as determined by the Commission.

### 3.1.7 Contact Person

The name and telephone number of a person who may be contacted during the evaluation process to discuss the Offeror's proposal.

## 3.2 Table of Contents

Proposals must include a table of contents listing the sections and corresponding page numbers. Proposals must number all pages and use tabs to separate each of the sections.

## 3.3 Executive Summary

The executive summary must clearly and concisely summarize and highlight the contents of the proposal. The executive summary must include all the following items:

1. Benefits to the State;
2. Offer Form Page OF-1;
3. Wage Certificate;
4. Tax Liability; and
5. Evidence of Insurance.

### 3.3.1 Benefits to the State

A concise synopsis of the overall benefits of the proposal to the State. This synopsis should not exceed three (3) pages in length.

### 3.3.2 Offer Form OF-1

Proposals must use the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and Offerors must indicate that exact legal name in the appropriate spaces on Offer Form OF-1. Failure to do so may delay proper execution of the Contract.

Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, 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.

The authorized signature on the first page of the Offer Form must be an original signature in ink. If the Offer Form is unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Refer to **Section 6** of this RFP for the Offer Form OF-1.

### 3.3.3 Wage Certificate

Offerors must submit a completed Wage Certificate. Refer to **Section 6** of this RFP for the Wage Certificate form.

### 3.3.4 Tax Liability

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and the Energy Efficiency Manager shall be liable for the State GET. 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.

### 3.3.5 Evidence of Insurance

A certificate of insurance, evidencing commercial general liability insurance (occurrence form) and professional liability insurance. Refer to **Section 5.2.2** of this RFP for information on insurance requirements.

## 3.4 Offeror Organization, Competence, and Experience

Offerors must address all of the following items:

1. Offeror Background;
2. Offeror Financial Stability and Financial Commitment;
3. Offeror Management and Organization;
4. Offeror Experience and Competence;
5. Offeror Performance;
6. Client References.

### 3.4.1 Offeror Background

The Offeror Background section must include the following information:

1. Legal name of Offeror;
2. Physical address of principal place of business and all other offices including the location of the office which will perform work on behalf of the Commission;
3. Contact email address and mailing address (if the mailing address is different from above);

4. Date established;
5. Ownership (public or private company, partnership, subsidiary, etc.);
6. Offeror's primary line of business;
7. Number of employees;
8. Number of employees engaged in tasks directly related to the requirements listed in this RFP;
9. History of company name changes and dates associated with each name; and
10. Location where incorporated or otherwise legally established.

### 3.4.2 Offeror Financial Stability and Financial Commitment

The Offeror must provide information on the Offeror's financial stability, including the following:

1. Annual revenues over the last five (5) years (or the number of years the Offeror has been in business, whichever is less), number of employees for each of the last five (5) years, years in business, evidence of business insurance for professional liability;
2. Two years of audited financial statements and annual reports, if any, for Offeror's firm and any significant subcontractors, which should include a profit and loss statement, a cash flow statement, and a balance sheet (e.g., SEC form 10-K is acceptable). If unaudited financial statements are submitted, copies of filed tax returns shall be provided to support the statements; and
3. Offerors must clearly identify the accounting method that they propose to utilize throughout the term of the Contract.<sup>12</sup>

A public or non-profit entity shall provide adequate information comparable to the information required above, which allows an assessment of financial status and capability. In the event an Offeror is forming a new organization to bid on this RFP, the Offeror should provide comparable documents from investors, partners, and/or principals.

As with trade secrets or other proprietary data, an Offeror may request in writing and in accordance with Section 5, Special Provisions, that the financial information provided be kept confidential. Otherwise contents of all proposals shall be made public as provided in HAR § 3-122-58, upon posting of award.

### 3.4.3 Offeror Management and Organization

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<sup>12</sup> Offerors must provide annual financial statements to the Commission that use accrual basis accounting.

The Offeror Management and Organization section shall describe the Offeror's management system, provide an overview of the structure of the team that will perform the key tasks, define the roles of key personnel on that team, and generally provide transparency regarding Offeror's the team.

The Offeror Management and Organization section must include all the following items:

1. A description of the business structure under which the Offeror typically operates (i.e., for-profit corporation, not-for-profit corporation, partnership, etc.). If a new organizational structure is planned by an Offeror for this bid, that structure should be described fully and clearly;
2. Organizational charts of proposed personnel, including key team members, job titles and responsibilities;
3. A proposed lead staff member to coordinate the services of the Energy Efficiency Manager; and
4. A list of all subcontractors.

*Subcontractors.* If it is known that a part of the work is to be subcontracted or provided by a third party, the Offeror's proposal must include, at a minimum, the following information:

1. List of all known subcontractors, including names and addresses;
2. Description of work to be subcontracted or provided by other parties;
3. Descriptive information concerning the organization of all subcontractors including previous relevant experience, resumes, and two (2) professional references each;
4. Descriptive information relating to the nature and duration of the previous relationship of all subcontractors with the Offeror; and
5. Explanation of any existing contractual relationships between the Offeror and subcontractors, or among subcontractors.

If one or more subcontractors will be used, a statement shall be submitted by each subcontractor, signed by an individual authorized to legally bind the subcontractor, and stating the following:

1. The general scope of work to be performed by the subcontractor; and
2. The subcontractor's willingness to perform the work indicated.

In addition, each subcontractor shall submit to the Commission, a tax clearance certificate from the DOTAX and the IRS showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the subcontractor have been paid.

If the Offeror chooses to subcontract any work required by this RFP within its proposal, the Offeror is responsible for including appropriate provisions and Contractual obligations to ensure the successful fulfillment of all Contractual obligations agreed to by the Offeror and the State, and to ensure that the State is indemnified against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in

those matters described in the Contract between the State and the Offeror. The Offeror shall expressly understand and agree that it shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The Offeror shall agree and understand that utilization of a subcontractor to provide any of the products/services in the Contract shall in no way relieve it of the responsibility for providing the products/services as described and set forth herein, and in the Contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the Successful Offeror, such that the customers, the Program Administrator, and the Commission perceive a single Energy Efficiency Manager service entity.

The Successful Offeror must provide the State with notice prior to establishing any new subcontracting arrangements and before changing any subcontractors. The Commission reserves the right to require the Energy Efficiency Manager to replace subcontractors, as well as staff members, found to be unacceptable to the Commission for any reason.

*Key Personnel.* Offerors must identify key personnel who will be assigned the work required by this RFP, describe the individuals' primary responsibilities, and provide résumés describing each individuals' experience and qualifications in management and delivery of energy efficiency programs. The Commission reserves the right to disqualify any Offeror that changes key personnel assigned to perform the Energy Efficiency Manager's responsibilities, prior to the execution of the Contract. During the term of the Contract, the Successful Offeror must provide the State with notice prior to changing any key personnel.

Proposals must include all of the following items:

1. Résumés for key personnel, including name, address, telephone number, and email address; and
2. Estimated assigned hours of key personnel, per key task, and key personnel level of engagement as characterized in the Budget and Cost Proposal.

Résumés should include information relating to experience, education, and skills, and relevant responsibilities from other projects that will help the Commission evaluate the qualifications and experience of key personnel. Each résumé shall be no more than three (3) pages in length.

#### 3.4.4 Offeror Experience and Competence

The Offeror shall provide detailed information on the relevant experience and capabilities of the Offeror, including subcontractor(s) with respect to the key tasks. The section should include narrative describing how the Offeror's team experience and background will enable successful completion of key tasks. Offeror capability includes that of in-house staff, subcontractors, or a combination of both.

This section should include, at a minimum, discussion of capability and experience in all of the following areas:

1. Advisement and/or consulting services, particularly with regards to energy efficiency and demand side management;
2. Contract management and program monitoring, including development and tracking of deliverables, ongoing communications and document control, and fiscal document/invoice review and processing;
3. EM&V expertise, including advisement and best practices regarding metrics and evaluation frameworks; and
4. Energy efficiency expertise, including development of frameworks for efficiency goals, tracking and reporting, assessing baselines and/or potential, and ongoing revision as necessary;
5. Working with regulatory commissions or government entities in areas relevant to the key tasks; and
6. Working with advisory groups, stakeholders and other relevant entities in areas relevant to the key tasks.

### 3.4.5 Offeror Performance

The Offeror must provide information to demonstrate the following:

1. Responsiveness to previous clients;
2. Timeliness of meeting schedules;
3. Adherence to contract requirements of previous clients; and
4. Availability and accessibility to previous clients.

The Offeror must provide the following information relative to the past seven (7) years (or the number of years the Offeror has been in business, whichever is less):

1. Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number.
2. Whether the Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental entity). If so, the Offeror must provide complete details, including the name of the other organization, the reason for the penalty, and the penalty amount for each incident.
3. Whether the Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity.
4. Whether trading in the stock of the company has ever been suspended with the date(s) and explanation(s).
5. Whether the Offeror, any officer of the Offeror, or any owner of a 20% or greater interest in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
6. Whether the Offeror, any officer of the Offeror, or any owner with a 20% or greater interest in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of the Evaluation Committee, such an answer and a review of the background details may result in a rejection of the Offeror's proposal. The Evaluation Committee will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance of the work, and the best interests of the State.

#### 3.4.6 Client References

The Offeror must include two (2) references for each of the Offeror's proposed key personnel and subcontractors. Such references must have experience with projects similar in their nature, size, and scope of work to the key tasks.

Offerors must use the Vendor Reference Form to provide references. The Vendor Reference Form may be recreated electronically, but all fields and formats must be retained. Failure to recreate the forms accurately may lead to the rejection of the Offeror's proposal. By listing the references, Offerors and their subcontractors grant the State authorization to contact these client references to assess the Offeror's quality of work performed. Refer to **Section 6** of this RFP for the Vendor Reference Form.

### 3.5 Key Task Response

The Key Task Response section must include a detailed discussion of the Offeror's approach, including a work schedule, for each of the key tasks listed in **Section 2.4**. This section allows the Offeror to showcase an understanding of the PBF Program objectives, and the role of the Energy Efficiency Manager within Hawaii's energy efficiency regulatory and policy framework. Offerors are encouraged to propose additional services that will effectively and efficiently assist the Commission, the Program Administrator, or Program; and to provide any additional information that may assist in evaluating the proposal.

This section must also include a discussion of any conflict of interest the Offeror may have in providing the services described in its proposal and any problems or concerns that the Offeror wishes to bring to the Commission's attention. Offerors should note that conflicts of interest may be grounds for disqualification from consideration.

In particular, the Key Tasks Response section must address all the following items as part of the appropriate key task discussion:

- Offeror's experience in program management, development and/or administration within a regulatory framework, including key challenges and successes.
- Offeror's approach to the management of a large contract.
- Offeror's experience with competitive bidding within regulatory systems.

- Offeror’s proposed method to administer the Commission’s contract with the Program Administrator, including processes and procedures for:
  - Multi-year budget planning;
  - Management and monitoring of spending;
  - Timely and accurate invoicing and payment;
  - Record keeping of financial documents;
  - Dispute resolution;
  - Timely delivery and review of reports and other deliverables;
  - Identifying and implementing standards and safeguards for protecting customer-specific information; and
  - Managing customer-specific or competitively sensitive information.
- Offeror’s proposed work plan and timeline for the transfer of the responsibilities from currently responsible parties to the new Energy Efficiency Manager.
- Offeror’s proposed method to deliver EM&V services, including:
  - Program improvement using EM&V results and findings;
  - Managing EM&V reports;
  - Identifying and implementing standards and safeguards for protecting customer-specific information; and
  - Managing customer-specific or competitively sensitive information.
- Offeror’s knowledge of the existing EEPS framework and status of current EEPS work.
- Offeror’s vision for next steps in EEPS tracking, reporting, and development.
- Offeror’s proposed work plan and timeline for tracking and development of EEPS, including any research plans, working groups, stakeholder and outreach groups, and other work as necessary.
- Offeror’s relevant current expertise and understanding (technical or policy) of the Hawaii DSM/ EE market, including specific examples demonstrating this expertise and understanding and how it assisted regulatory agencies and/or other stakeholder entities in their decision making processes.

### **3.6 Budget and Cost Proposal**

Offeror must include a Budget and Cost section. The Budget and Cost section must include a proposed annual budget for each year of the initial Contract period, reconciling

to a summary budget for the Contract period. Offeror shall propose sub-budgets for each of the key tasks. The Offeror shall include hourly rates, or where appropriate, a unit rate, e.g., data collection or travel, as well as material and other expenses, to be performed under the Contract.

Offerors' budget and cost should clearly separate start-up costs (such as software purchases and system development costs) from ongoing operational costs.

Offerors' proposals should also include costs (time and travel) associated with the meetings scheduled with the Commission in Honolulu, Hawaii, during the Contract term.

Offerors are cautioned that, should their proposal be selected and the proposal cost fails to account for all services specified in this RFP, Offerors will be required to provide those services at no additional cost to the Commission. It is the responsibility of the Offeror to ascertain that the cost information presented is accurate, complete, and all-inclusive. Neither the Commission nor the State shall be liable or responsible for any compensation to the Energy Efficiency Manager for the services provided under its proposal or in the Contract that exceeds the total Contract amount. The Energy Efficiency Manager shall be paid in accordance with the State's General Conditions, attached hereto as Exhibit A, and the Billing Requirements and Travel Guidelines, attached hereto as Exhibit B.

Offerors must provide their budget and cost information in the following formats:

1. A live Microsoft Office Excel spreadsheet including:
  - a. Hourly rates;
  - b. Estimated travel budgets;
  - c. Estimated material and other expense budgets; and
  - d. Estimated start up and transition costs.
2. Adobe PDF format

### **3.7 Assumptions and Exceptions**

The Offeror must list any assumptions made and exceptions taken to the terms, conditions, specifications, or other requirements listed here. The Offeror must reference the relevant section of the RFP where assumptions are made or exceptions are taken, a description of the assumption made or exception taken, and the proposed alternative, if any. Any revision or exception to the work or work products requested must also be supported by a description of the proposed benefit to the State.

Further, the Offeror must state that there are no further assumptions or exceptions related to meeting requirements of the RFP other than those enumerated in this section of the proposal. **Offeror is advised that any assumptions made or exceptions taken may adversely affect Offeror's evaluation score.**

## SECTION 4 – PROPOSAL EVALUATION

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

### 4.1 Evaluation Committee

The evaluation committee is responsible for the review and evaluation of proposals. The evaluation committee is formed of at least three (3) State employees, selected by the Commission, with experience in and knowledge of the Commission’s duties and powers, and the Energy Efficiency Manager Scope of Services and requirements, and the specific requirements set forth under HRS Chapter 269.

The evaluation committee may have the proposals (or portions of proposals) reviewed and evaluated by other State personnel and/or Commission consultants, with technical or professional experience that relates to the Program or to a criterion in the evaluation process.

### 4.2 Phases of Evaluation

The evaluation of proposals will be conducted in six (6) phases shown in the table below:

*Table 2: Phases of Proposal evaluation.*

<b>Phase</b>	<b>Task</b>
Phase 1	Evaluation of General Requirements
Phase 2	Evaluation of Proposals
Phase 3	Establishment of Priority List of Offerors
Phase 4	Optional Discussions/Presentations with Priority-listed Offerors
Phase 5	Submission of Best and Final Offers (if deemed necessary by the Commission)
Phase 6	Recommendation for Award

#### 4.2.1 Phase 1: Evaluation of General Requirements

The evaluation of general requirements as specified herein shall be on a “pass/no pass” basis; no points shall be assigned for these requirements.

The purpose of this phase is to determine whether an Offeror’s proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the general requirements (no pass) will be grounds for deeming the proposal non-responsive to the RFP, and may result in non-consideration of the proposal. Proposals meeting the general requirements (pass) of Phase 1 will be considered in Phase 2. The general requirements for proposal responsiveness are listed in **Section 4.3.1**.

#### 4.2.2 Phase 2: Evaluation of Proposals

During this phase, the evaluation committee shall conduct evaluations of the Offeror's proposal against the services and requirements specified in this RFP. Based on a 100-point scale, proposals must score a minimum of 70 points for further award consideration. Proposals scoring less than 70 points shall not be considered for project awards. Evaluation criteria are described in **Section 4.3**.

#### 4.2.3 Phase 3: Establishment of Priority-Listed Offerors

The evaluation committee scores for each proposal, as determined in Phase 2: Evaluation of Proposals, shall be ranked and averaged to determine if the proposal is acceptable, potentially acceptable or unacceptable. No more than three (3) acceptable or potentially acceptable proposals with the highest average ranking will be designated as the priority-listed Offerors, as set forth under HAR § 3-122-53.

#### 4.2.4 Phase 4: Optional Discussion with Priority-Listed Offerors

During this phase, the evaluation committee may conduct discussions with priority-listed Offerors. Proposals may be accepted without such discussions. These discussions are intended to allow priority-listed Offerors to answer any questions the evaluation committee may have regarding a priority-listed Offeror's proposal. The evaluation committee may request other State personnel, and/or Commission consultants to participate in this process.

The evaluation committee will not indicate to a priority-listed Offeror a price that it must meet in order to obtain further consideration, nor will it advise a priority-listed Offeror of its price standing relative to another priority-listed Offeror. However, the evaluation committee may inform a priority-listed Offeror that its price is considered too high or unrealistic.

If during the discussions there is a need for any substantial clarification or change of the RFP, the RFP shall be amended by an addendum. Such addenda to the RFP shall be distributed only to the priority-listed Offerors. The priority-listed Offerors shall be permitted to submit new proposals or amend those submitted.

#### 4.2.5 Phase 5: Submission of Best and Final Offers

If deemed necessary by the Commission, the priority-listed Offerors' best and final offers shall be submitted on HlePRO no later than the date and time specified by the Commission. If a best and final offer is not submitted, the previous submittal will be construed as the best and final offer.

#### 4.2.6 Phase 6: Recommendation for Award

The evaluation committee will prepare and submit a recommendation on which Offeror should be awarded the Contract for the Procurement Officer's review and approval.

### 4.3 Proposal Evaluation Criteria and Scoring

The evaluation committee will assess the proposals in terms of the scope of services described in **Section 2**, and the format and content as described in **Section 3**. This area of evaluation includes an assessment of the detailed proposal, including the experience and assets of the Offeror, the logic of the Offeror's response, the planned interfacing with the Commission and the Program Administrator, realism of the tasks and schedules, the Offeror's approach to management, and the Offeror's control methods and tools to successfully operate as the Energy Efficiency Manager. Overall, proposals must demonstrate that the Offeror understands the issues and has the ability to meet and satisfactorily produce all Contractual requirements listed in this RFP, including all Contractual services. The budget and cost must be realistic given the tasks proposed.

Proposals will also be evaluated for the adequacy of the Offeror's understanding of state and federal laws, regulations, and policies and procedures relating to the Energy Efficiency Manager's responsibilities. The Offeror shall address, and proposals will be assessed, on the following aspects:

1. Offeror Organization, Competence and Experience;
2. Key Task Response; and
3. Budget and Cost Proposal.

Proposals will be scored according to evaluation criteria listed in Table 3. Based on a 100-point scale, proposals must score a minimum of 70 points for further award consideration. Proposals scoring less than 70 points shall not be considered for award. This section further describes each of the evaluation criteria shown in Table 3.

*Table 3: Evaluation Criteria and Scoring*

<b>Evaluation Criteria</b>	<b>Scoring</b>
General Requirements	Pass/No Pass
Offeror Organization, Competence and Experience	35 points
Key Task Response	35 points
Budget and Cost Proposal	20 points
Local Participation	10 points
<b>Total points possible</b>	<b>100 points</b>

#### 4.3.1 General Requirements

To satisfy general requirements, the proposal must include, without limitation, all of the information requested in this RFP in the order specified, with each section labeled and separated into headings as listed in **Section 3**.

#### 4.3.2 Offeror Organization, Competence and Experience

As the tasks the Energy Efficiency Manager will perform are complex and often difficult to measure quantitatively, the demonstration of organizational ability and administrative competence, and the experience of the organization and its staff and subcontractors, will be part of selection criteria. The evaluation committee will evaluate the Offeror's experience in acting in a similar capacity in similar circumstances to the Energy Efficiency Manager. The Offeror's organization and team will be evaluated on the following aspects and characteristics:

1. Demonstrated financial resources to perform proposed work;
2. Management approach and capability of proposed team's management and organizational structure to perform the tasks described in the scope of services;
3. Demonstrated experience of proposed project team;
4. Clarity of work assignments and organizational roles, responsibilities, and authorities;
5. Project control approach (including demonstrated previous use of control methods and tools to successfully provide service);
6. Approach to ensuring completion of tasks and fulfillment of responsibilities;
7. Demonstrated responsiveness to previous clients and ability to deliver timely, high quality deliverables; and
8. Methods for ensuring security.

This area of evaluation includes an assessment of the detailed work plan, including the logic of the work plan, the interfacing with the Commission, and realism of the tasks and schedules. In addition, this part of the evaluation assesses the Offeror's approach to management and control methods and tools to successfully operate as the Energy Efficiency Manager.

#### 4.3.3 Key Task Response

The evaluation committee will evaluate the Offeror's Key Task Response section for clarity, practicality, and adequacy of the Offeror's approach to meeting the requirements specified in **Section 2**, including consider the following areas:

1. The Offeror has demonstrated a thorough understanding of the purpose and scope of the Energy Efficiency Manager's responsibilities;
2. The Offeror understands the Program Administrator's responsibilities and has proposed a logical and clear way to manage the contract between the Program Administrator and the Commission;
3. The Offeror has demonstrated ability to provide general program administration and coordination including budget planning and tracking, financial management, contract management, and reporting;
4. The Offeror has demonstrated ability to facilitate and lead program development and planning involving multiple participants, including a

- demonstrated capacity for program development and design, and annual and multi-year program plans and budgets;
5. The Offeror has identified pertinent issues and potential problems where relevant;
  6. The Offeror demonstrates that it understands the timeliness and ability to meet the reporting deadlines to the Commission; and
  7. The Offeror has an understanding of state and federal laws, regulations, policies and procedures.

Proposals will also be evaluated for the adequacy of the Offeror's understanding of state and federal laws, regulations, policies and procedures relating to Energy Efficiency Manager's responsibilities. Such requirement may affect the ability of the timeliness of the tasks of the Contract. The evaluation committee must be assured that the Offeror is capable of dealing with the requirements of State and federal laws.

#### 4.3.4 Budget and Cost Proposal

Budgets should correlate approximately with scale of proposed work for each key task. The Commission will evaluate budget in terms of clarity, thoroughness, cost effectiveness and budget distribution, including the amounts allocated to each key task.

The evaluation committee will analyze the Offeror's proposed cost utilizing a numerical rating system. Of the qualifying proposals, the one with the lowest hourly price will be awarded the maximum possible points for this component. Other proposals will be awarded points for this component equal to the lowest proposed price multiplied by the maximum possible points for this component, divided by the higher proposed price.

#### 4.3.5 Local Participation

Offerors that have Hawaii-based experience and expertise are viewed favorably.

## SECTION 5 – SPECIAL PROVISIONS

### 5.1 Overview of RFP Process

The Offeror's proposal shall be in accordance with the RFP in its entirety; including these Special Provisions and the General Conditions included by reference in **Section 6** of this RFP.

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS § 103D-303.
2. The procurement process begins with the issuance of the RFP.
3. Changes to the RFP will be made only by addendum.
4. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offeror's proposals shall be open to public inspection after posting of the award.
5. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.
6. A committee of at least three (3) State employees selected by the Commission shall evaluate the proposals in accordance with the evaluation criteria in **Section 4.3**. The committee may have the proposals or portions of them reviewed and evaluated by independent third parties or other State personnel with technical or professional experience that relates to the Program or to a criterion in the evaluation process. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. This review will be a pass/no pass determination with no points assigned.
7. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary, prior to entering into discussions, a priority list of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list shall be limited to a maximum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
8. 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 such clarification or change. Addenda to the RFP shall be distributed only to priority-listed Offerors who submit acceptable or potentially acceptable proposals.
9. Following any discussions, priority-listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or the committee reserves the right to have additional rounds of discussions with the priority-listed Offerors prior to the submission of the BAFO.
10. The date and time for Offerors to submit their BAFO, if any, will specified by the Commission. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

11. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in **Section 4.3**, the Evaluation Committee will make its recommendation to the Contracting Officer. If approved by the Contracting Officer, the Executive Officer will award the Contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in **Section 4**.
12. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the Commission agree are confidential and proprietary should be identified by the Offerors and shall be excluded from access.
13. The Contracting Officer or the Evaluation Committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer and the committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
14. The RFP, any addenda issued, and the Successful Offeror's proposal shall become a part of the Contract. All proposals shall become the property of the State of Hawaii.

## **5.2 Responsibility of Offerors**

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

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. Chapter 103D-310(c), Certificate of Good Standing ("CoGS") for entities doing business in the State.

**Although proof of compliance with these requirements is required prior to entering into a contract with the Commission, due to the compressed timeline of this RFP, it is highly recommended that Offerors furnish this proof of compliance with their proposal.**

### **5.2.1 Hawaii Compliance Express**

It is strongly recommended that Offerors utilize Hawaii Compliance Express ("HCE"). HCE is an online system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. Using this system 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. HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of HRS § 103D-310(c) shall be accepted for both contracting purposes and final payment. Vendors/contractors/service providers may register with HCE prior to submitting an offer, at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00.

Offerors are advised to register on HCE soon as possible. If an Offeror is not compliant on HCE at the time of award, that Offeror will not receive the award.

### 5.2.2 Evidence of Insurance

Offerors must provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a Contract.

Prior to Contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The type of insurance coverage is listed as follows:

1. Commercial General Liability Insurance. Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law:
  - a. Bodily Injury and Property Damage coverage – \$1,000,000 minimum per occurrence;
  - b. Personal and advertising injury of \$1,000,000 per occurrence;
  - c. Broadcasters' liability insurance of \$1,000,000 per occurrence;
  - d. Aggregated limit of \$5,000,000.

The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

2. Automobile Liability Insurance, covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.
3. Professional Liability (Errors and Omissions)
  - a. \$1 million per claim;
  - b. \$2 million annual aggregate;

- c. Professional liability coverage will be required of all consultants providing expert services to the State. Retroactive date of coverage must be prior to start of professional service.
4. Workers' Compensation, Temporary Disability, and Prepaid Health Care:
  - a. Mandatory coverages detailed in and per HRS Chapters 383, 386, 392, and 393; and
  - b. Coverages required of business entities employing an individual(s) whose services are localized in the State and/or an individual(s) whose residence is in the State per HRS § 383-2 and § 383-3.
5. Additionally, Certificates of Insurance shall:
  - a. Be completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form;
  - b. Be kept current for the entire term of the Contract and written notice shall be provided immediately to the State should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration; failure to secure and maintain the required insurance shall be considered a breach of contract; should the State be forced to expend funds that would have been covered under the specified insurance, the Successful Offeror shall reimburse the State for such funds;
  - c. Reflect the State as an additional insured;
  - d. Reflect subcontractor(s) as additional insureds or shall be required of subcontractor(s) by the Successful Offeror in addition to the Successful Offeror's own policy(s), if appropriate; and
  - e. Be in compliance with State Comptroller's Memorandum 2010-06.
6. The certificates of insurance shall include the following clauses:
  - a. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
  - b. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

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.

### 5.2.3 HRS Chapters 383, 392, and 393

See **Section 5.2.1**, otherwise, instructions are as follows:

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) Requirements for Award. Instructions are as follows:

Pursuant to HRS §103D-310(c), the Successful Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations. The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Commission. A photocopy of the certificate is acceptable to the Commission.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR Section 3-122-112, Form LIR#27 which is available at <http://labor.hawaii.gov/ui/files/2012/12/LIR27.pdf>. The DLIR will return the form to the Offeror who in turn shall submit it to the Commission.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the Commission. However, the certificate shall be submitted to the Commission.

Offerors may submit the Hawaii Compliance Express Certificate of Vendor Compliance with Compliant status in lieu of the above requirements.

#### 5.2.4 Entity Doing Business in the State

See **Section 5.2.1**, otherwise, instructions are as follows:

Offerors must be compliant with HRS § 103D- 310(c) and HAR § 3-122-112. Pursuant to HAR § 3-122-112 the Offeror shall be required to submit a Certificate of Good Standing issued by the BREG. The CoGS is valid for six (6) months from date of issue and must be valid on the date it is received by the Commission. A photocopy of the CoGS is acceptable to the Commission.

To obtain the CoGS, the Offeror must first be registered with the BREG. A sole proprietorship is not required to register with the BREG, and therefore not required to submit the CoGS. On-line business registration and the CoGS are available at <https://cca.hawaii.gov/breg/>. To register or obtain the CoGS by phone, call (808) 586-2727 (M-F 7:45 a.m. to 4:30 p.m. HST). Offerors are advised that there are costs associated with registering and obtaining the CoGS.

Offerors may submit the Hawaii Compliance Express Certificate of Vendor Compliance with Compliant status in lieu of the above requirements.

### 5.3 Required Review

Offerors shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable

matter must be made in writing and should be received by the Commission at least one week prior to the proposals due date. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made.

#### **5.4 Confidential Offeror Information**

If the Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Executive Officer should be so advised in writing and provided with justification to support the confidentiality claim. Compensation methodology is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, pursuant to HAR § 122-46(9). Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

If a person requests to inspect the portions of an Offeror's proposal designated as confidential, pursuant to HAR § 3-122-46(9), the inspection shall be subject to written determination by Attorney General for confidentiality in accordance with HRS Chapter 92F consistent with HAR § 3-122-58. If the request for confidentiality is denied by the Attorney General, such information shall be disclosed as public information, unless the person requesting that such information be determined confidential appeals the denial to the Office of Information Practices in accordance with HRS § 92F-42(1).

#### **5.5 Cancellation of RFP and Rejection of Proposals**

The State reserves the right to cancel this RFP and seek to perform the proposed scope of work through a new RFP or other means when it is determined to be in the best interest of the State, pursuant to HAR § 3-122-96.

The State also reserves the right to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, including that the State believes the proposal is excessive in price.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

#### **5.6 Disqualification of Proposals**

The State reserves the right to consider acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and the scope of work. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included

in this RFP, may be disqualified without further notice.

An Offeror will be disqualified and the proposal automatically rejected for any one or more of the following non-exclusive reasons:

1. Proof of collusion among Offerors, in which case all proposals and Offerors involved in the collusive action will be rejected;
2. The proposal demonstrates noncompliance with applicable law;
3. The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning;
4. The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation;
5. The delivery of the proposal after the deadline specified in the timetable; or
6. The Offerors being in arrears on existing contracts with the State or having defaulted on previous contracts.

### **5.7 Right to Waive Minor Irregularities**

The evaluation committee reserves the right to waive minor irregularities. The evaluation committee also reserves the right to waive general requirements provided that all the otherwise responsive proposals failed to meet the general requirements and the failure to do so does not materially affect the procurement. This right is at the sole discretion of the evaluation committee.

### **5.8 Offer Acceptance Period**

The State's acceptance of offer, if any, will be made within ninety (90) calendar days after the opening of proposals. Offeror's proposal shall remain firm for the ninety (90) day period.

### **5.9 Award of Contract**

#### **5.9.1 Method of Award**

The award, if any, shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in this RFP.

#### **5.9.2 Responsibility of Successful Offeror**

See **Section 5.2** above for the responsibility of all offerors. If compliance documents have not been submitted to the Commission prior to award, the Successful Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this HRS Chapter 103D-310(c).

The Successful Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein prior to

commencing work under this Contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

### 5.9.3 Timely Submission of All Compliance Documents

The required compliance documents should be applied for and submitted to the Commission as soon as possible. If a valid compliance document(s) is not submitted on a timely basis for award of the Contract, an Offeror otherwise responsive and responsible may not receive the award.

#### HRS Chapter 237 Tax Clearance Requirement for Award

See **Section 5.2.1**, otherwise, instructions are as follows:

Pursuant to HRS §103D-328, the Successful Offeror shall be required to submit an original tax clearance certificate issued by the DOTAX and the Internal Revenue Service ("IRS"). Offerors are urged to submit a valid tax clearance certificate together with their proposals. If this is not feasible, the certificate should be applied for at DOTAX or the IRS and submitted to the Commission as soon as possible. If a valid certificate is not submitted on a timely basis prior to award of the Contract, an offer otherwise responsive and responsible may be rejected and not considered for award.

The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Commission.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms): [http://www.hawaii.gov/tax/a1\\_1alphalist.htm](http://www.hawaii.gov/tax/a1_1alphalist.htm)

DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the Commission. However, the tax clearance certificate shall be submitted to the Commission.

Offerors may submit the Hawaii Compliance Express Certificate of Vendor Compliance with Compliant status in lieu of the above requirements.

#### **5.9.4 Final Payment Requirements**

The Successful Offeror is required to submit an HCE “Certificate of Vendor Compliance” showing compliant status or a tax clearance certificate with an original green certified copy stamp for final payment on the Contract. Such a “Certificate of Vendor Compliance” or tax clearance certificate, not over two months old, must accompany the invoice for final payment on the Contract.

In addition, an original “Certification of Compliance for Final Payment” (SPO Form-22) will be required for final payment. A copy of this form is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select “Forms for Vendors/Contractors” from the menu.

#### **5.10 Protest Procedure**

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. 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 of the Contract.

Any protest shall be submitted in writing to the Procurement Officer, Public Utilities Commission, 465 South King Street, Room 103, Honolulu, Hawaii 96813.

#### **5.11 Contract Execution**

The Successful Offeror receiving an award will be notified by letter and shall be required to enter into a formal written contract. The Commission shall forward the Contract to the Successful Offeror for execution. Contract negotiations shall be completed and Contract shall be executed prior to Contract Start Date specified by the Commission.

No contract shall be considered binding upon the Commission until the Contract has been fully and properly executed by all parties thereto. A performance bond in an amount not to exceed fifty (50) per cent of the amount of the Contract price is required for this Contract pursuant to HAR § 3-122-224.

Any work undertaken or paid for by the Successful Offeror prior to the official Contract commencement date specified on the Contract shall be the responsibility of the Successful Offeror.

#### **5.12 Proposal as Part of the Contract**

All of this RFP and the successful proposal shall be incorporated into the Contract.

### **5.13 Ownership Rights and Copyright**

The State shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the Successful Offeror pursuant to the Contract, and all such material shall be considered "works made for hire." The State shall also have complete ownership of all software that is purchased under the Contract in order to support a fully operational Program.

All such material and software shall be delivered to the State upon expiration or termination of the Contract. The State, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the Successful Offeror pursuant to the Contract.

### **5.14 Contract Modification – Unanticipated Amendments**

During the course of the Contract, the Energy Efficiency Manager may be required to perform additional work that will be within the general scope of the Contract. When additional work is required, the Commission will provide the Energy Efficiency Manager a written description of the additional work and request the Energy Efficiency Manager to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the Contract may be modified only by written document (supplemental contract or contract modification) signed by the Contracting Officer and Energy Efficiency Manager personnel authorized to sign contracts on behalf of the Energy Efficiency Manager. The Energy Efficiency Manager will not commence additional work until a signed contract modification has been issued.

### **5.15 Subcontracting**

No work or services shall be subcontracted without the prior written approval of the Contract Manager. No subcontract shall under any circumstances relieve the Successful Offeror of its obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Successful Offeror.

### **5.16 Governing Law – Cost of Litigation**

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of the Contract shall be brought in the First Circuit Court of the State of Hawaii in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the Energy Efficiency Manager in connection with this Contract, the Energy Efficiency Manager shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

### **5.17 Additional Contract Terms and Conditions**

The Commission reserves the right to add terms and conditions during the Contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

### **5.18 Contract Invalidation**

If any provision of the Contract is found to be invalid, such invalidity will not be construed to invalidate the entire Contract.

### **5.19 Inspection & Modifications – Reimbursement for Unacceptable Deliverables**

The Successful Offeror is responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and approval by the Contract Manager and Procurement Officer. The State may employ all reasonable means to ensure that the work is being performed in compliance with the Contract.

Should the Contract Manager determine that corrections or modifications are necessary in order to accomplish its intent; the Successful Offeror may be directed to make such changes.

Substantial failure of the Successful Offeror to perform the Contract requirements may cause the State to terminate the Contract. In this event, the State may require the Successful Offeror to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

### **5.20 Non-Discrimination**

The Energy Efficiency Manager shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Energy Efficiency Manager or in participation in the benefits of any program or activity funded in whole or in part by the State.

Waiver

The failure of the Commission to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Commission's right to enforce the same in accordance with the Contract.

### **5.21 Severability**

In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Contract.

## **5.22 Termination**

The Commission reserves and has the right, at any time during the term of the Contract, in its sole discretion, to terminate and cancel the Contract in the public interest or for the convenience of the State. The Successful Offeror's obligation under the Contract shall continue until the specified termination date.

## **5.23 Default**

Pursuant to HAR § 3-125-17, if the Successful Offeror refuses or fails to perform any of the provisions of the Contract with such diligence to ensure that Contract provisions are met, within any time requirements specified in the Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of the Contract, the Procurement Officer may notify the Successful Offeror in writing of the delay or non-performance. If the delay or non-performance is not cured in ten (10) days, or any longer time specified in writing by the Procurement Officer, the Contract may be terminated in whole or in part, as applicable.

## **5.24 Special Conditions**

### **1. INDEMNITY**

The State does not indemnify parties to a contract.

The CONTRACTOR Shall Be Responsible For Its Own Wrongful Acts Only. CONTRACTOR shall be responsible for damage or injury caused by the CONTRACTOR 's officers and employees acting within the scope of their employment, provided that the CONTRACTOR 's liability for such damage or injury has been determined by a court or agreed to by the CONTRACTOR. The CONTRACTOR shall pay for such damage and injury, provided that funds are appropriated and allotted for that purpose.

2. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The execution and delivery of this Contract by electronic mail of the signature of a contracting party or an officer of a contracting party hereto shall constitute due execution and delivery by that party and shall bind that party to the terms and conditions contained in this Contract.
3. "CONTRACTOR" means the same as the appointment of "other assistants" in HRS § 269-3, provided that, consistent with Paragraph 2 of the General Conditions,

CONTRACTOR is an independent contractor and CONTRACTOR and its employees and agents are not employees or agents of the STATE for any purpose.

4. General Conditions, Subparagraph 2.f., regarding insurance coverage, is supplemented as follows:

The CONTRACTOR shall immediately provide written notice to the STATE should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

5. General Conditions, Subparagraph 3.b., regarding CONTRACTOR experience, is supplemented as follows:

The CONTRACTOR acknowledges that the issues the STATE must address and resolve under this Contract are multiple and complex, involving disciplines that include, but are not limited to, information technology, accounting, economics, and utility regulation.

6. General Conditions, Paragraph 5., Conflicts of Interest, is supplemented as follows:

The CONTRACTOR acknowledges that it has no conflicts of interest in working as a consultant or expert for the STATE on matters under this Contract. If, while working as a consultant or expert for the STATE, the CONTRACTOR should identify any potential or actual conflicts of interest in future dockets or other proceedings before the Commission, the CONTRACTOR shall immediately notify the STATE about the existence and nature of such potential or actual conflicts.

7. General Conditions, Subparagraph 14.c., Right to goods and work product, is amended by replacing the phrase "Any completed goods or work product" with the phrase "Any completed or partially completed goods or work product[.]"

8. General Conditions, Subparagraph 24.b., regarding the Uniform Information Practices Act, is replaced by:

"b. To the extent permitted or required by the Uniform Information Practices Act, chapter 92F, HRS, any and all information, data, or other material, including ideas, views, expressions, opinions, work papers, reports, and draft orders, decisions, and other documents that implement and enforce the STATE's decision-making, provided by the CONTRACTOR to the STATE under this Contract, in connection with the quasi-judicial or deliberative duties and functions of the STATE, shall not be subject to public disclosure."

9. General Conditions, Paragraph 37., Entire Contract, is supplemented by stating that the entire Contract consists of:

- a. Contract for Goods and Services;
- b. Contractor's Standards of Conduct Declaration;

- c. Scope of Services, Attachment-S1;
- d. Contractor's Proposal, Exhibit A;
- e. Compensation and Payment Schedule, Attachment-S2;
- f. Time of Performance, Attachment-S3;
- g. Certificate of Exemption from Civil Service, Attachment-S4;
- h. Special Conditions, Attachment-S5;
- i. General Conditions; and
- j. "Billing Requirements and Travel Guidelines," Exhibit B.

## **SECTION 6 – ATTACHMENTS AND EXHIBITS**

Attachment 1	Offer Form
Attachment 2	Wage Certificate
Attachment 3	Vendor Reference Form
Exhibit A	General Conditions
Exhibit B	Billing Requirements and Travel Guidelines

OFFER FORM OF-1  
SEALED PROPOSALS AND PRICING FOR AN ENERGY EFFICIENCY MANAGER FOR THE  
HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII  
RFP-PUC-23-01

Procurement Officer  
Public Utilities Commission  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

- Sole Proprietor     Partnership     \*Corporation     Joint Venture  
 Other \_\_\_\_\_  
\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

Date: \_\_\_\_\_ (x) \_\_\_\_\_  
Authorized (Original) Signature

Telephone No.: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
Name and Title (Please Type or Print)

E-mail Address: \_\_\_\_\_  
\*\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

WAGE CERTIFICATE

WAGE CERTIFICATE  
FOR SERVICE CONTRACTS  
(See Special Provisions)

Subject: RFP-PUC-23-01, SEALED PROPOSALS AND PRICING FOR AN ENERGY EFFICIENCY MANAGER FOR THE HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. 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; and
2. 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, with the exception not professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by federal and state laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by Section 103-55 HRS.

**Offeror**

**Signature**

**Title**

**Date**

VENDOR REFERENCE FORM

**Name of Key Personnel or Subcontractor**

Subject: RFP-PUC-23-01, SEALED PROPOSALS AND PRICING FOR AN ENERGY EFFICIENCY MANAGER FOR THE HAWAII ENERGY EFFICIENCY PROGRAM HRS CHAPTER 269, PART VII

Reference 1

Company Name / Address / Phone Number / Fax Number / Website  
Contact Person / Phone Number / Email Address  
Project Name  
Beginning Date of Project MM/YYYY  
Ending Date of Project MM/YYYY  
Description of Related Services Provided

Reference 2

Company Name / Address / Phone Number / Fax Number / Website  
Contact Person / Phone Number / Email Address  
Project Name  
Beginning Date of Project MM/YYYY  
Ending Date of Project MM/YYYY  
Description of Related Services Provided

GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the

"Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, 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 Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop

all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);

- (3) Place of performance of services;
    - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
  - a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit

the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law

or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.

- a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

## **Billing Requirements and Travel Guidelines**

### **I. Billing Requirements**

As set forth in the Compensation and Payment Schedule, all expenses must be pre-approved by the Hawaii Public Utilities Commission (“Commission”), to the extent reasonably possible.

- Request for Compensation and/or Reimbursement:

All requests for compensation and/or reimbursement shall be submitted on official company letterhead/invoice and supported by the following:

1. Timesheets of each personnel assigned to the project that includes, but not limited to, the following:

- Name of the project
- Name of person, title, and company incurring cost
- Description of task compensation represents
- Hourly rate of each compensated personnel
- Number of hours (per task) for which compensation is requested (in .1 hour increments)
  - Subtotal for each task
- Total compensation hours per each timesheet

2. Receipt or invoice that includes, but is not limited to, the following:

- Date of receipt or invoice
- Name of company and address, if feasible, where goods or services rendered
- Description of business related expense item(s)

All payments for compensation and/or reimbursement must be supported by original or certified copies of original timesheets, receipts and invoices. Reimbursement will be made for personnel work time and business-related expenses that are authorized as reasonable and acceptable by the Commission.

- Request for Authorization of Expenses:

All requests for authorization to expend funds must be forwarded through the Procurement Officer, or designee, either via e-mail or letter.

**For travel related expenses, authorized business start dates and times must be agreed upon by the Commission prior to making travel arrangements. Adherence to the Travel Guidelines, or prior approval from the Commission for any alternate travel arrangements, is required in order to receive reimbursement for travel expenses.**

- Billing Periods:

Please submit an original plus two (2) copies of reimbursement invoices with supporting documentation to the following:

Public Utilities Commission  
ATTN: Executive Officer  
465 South King Street, Room #103  
Honolulu, HI 96813

All requests for payments will be reviewed for accuracy, completeness, and authorized expenses. Payment requests will be processed upon completion of agreed upon milestones, to the satisfaction of the Commission.

## **II. Travel Guidelines**

Authorized travel will be reimbursable by the Commission for arrival and departure no more than twelve hours prior to and after the agreed upon work schedule.

- **Hotel Arrangements:**

The following recommended hotel is authorized by the Commission for business-related travel. Any charges that are not applicable to Commission business or any costs in excess of what the Commission deems to be authorized and reasonable expenses (e.g., selecting another hotel, extending the length of stay for personal reasons) shall be the responsibility of the traveler. If rooms are not available at the Executive Centre Hotel during required travel dates, prior approval must be obtained before making alternate reservations at other State-approved hotels or comparably priced hotels on the island.

**Executive Centre Hotel—**

When making hotel arrangements at the following hotel, mention that you are making reservations under the Hawaii Public Utilities Commission Aston Corporate Travel Club membership:

Executive Centre Hotel ([www.astonexecutivecentre.com](http://www.astonexecutivecentre.com))  
1088 Bishop Street  
Honolulu, HI 96813  
Phone: 1-800-949-3932/(808) 539-3000 (Main Reservation Desk)

All reimbursements for hotel accommodations must be supported by original hotel bill showing a \$0.00 balance due (original receipt acceptable if reservation and payment is being made through the internet) to ensure that payment was made. Reimbursement will not be made on recreational expenses and other non-business related items.

- **Car Rental:**

If reservations are made at the Executive Centre Hotel, pre-approval must be obtained for car rentals.

If transportation to and from the airport upon arrival and departure is via taxi, no reimbursement for tips will be made and all reimbursements must be supported by an original taxi receipt.

If transportation is via car rental, reasonably priced rental reservations should be made under the following conditions:

1. No car insurance shall be reimbursable by the Commission.
2. Types of car rentals will be permissible under the following guidelines—
  - Compact car for 1-2 passengers
  - Midsize car for 3-4 passengers
3. Reimbursement will be made only for the following, unless otherwise pre-approved by the Commission —
  - Time and mileage
  - Vehicle licensing fee

- State and airport taxes
- Airport concession fee
- Additional driver fee for Commission authorized travelers only

4. Original car rental agreement and receipt of payment is required to receive reimbursement of car rental related expenses.

- Airfare:

All airfare arrangements must be made utilizing the most direct and cost efficient route. Any charges that are not applicable to Commission business, including but not limited to, any additional costs relating to personal stopovers and preferential upgrades to flight accommodations will not be reimbursed. Original receipt of payment is required to receive reimbursement for airfare accommodations.

- Meal Claims:

Meal expenses incurred during authorized Commission related business travel are reimbursable up to a maximum of \$60.00/day.

All reimbursements for meals should be identified separately and included in the original bill for reimbursement on an official company letterhead/invoice (“invoice”). Reimbursement will not be made for alcoholic beverages and tips related to meal expenses.

- Travel Reimbursement Claims:

Please submit your bill for reimbursement on an official company invoice with the address listed on the contract and supported by all applicable original receipts as listed above underlined in red.

Please submit an original plus two (2) copies of reimbursement invoice with supporting documentation to the address stated above under Billing Requirements.

*PUC Rev (11/2017)*