



**RELEASE DATE: July 9, 2024**

**The State of Hawai'i  
Department of Business, Economic Development, and Tourism  
Hawai'i Tourism Authority**

**REQUEST FOR PROPOSALS  
RFP NO. 25-05**

**HAWAII TOURISM DESTINATION BRAND MARKETING SERVICES FOR THE  
KOREA MAJOR MARKET AREA**

**OFFERS ARE DUE AT 2:00 P.M. HAWAII STANDARD TIME (HST) ON  
August 19, 2024**

(Or such later date as may be established by the State of Hawai'i by an Addendum to this RFP)

**ELECTRONIC SUBMISSION TO THE STATE OF HAWAII ePROCUREMENT SYSTEM  
(HIePRO) ONLY.**

QUESTIONS RELATING TO THIS RFP, ISSUES RELATING TO THE ACCESSIBILITY OF THIS RFP, AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFP SHALL BE COMMUNICATED THROUGH HIePRO.

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Tracey Fermahin  
Procurement Manager  
HAWAII TOURISM AUTHORITY

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For screen reader users, the Hawai'i Tourism Authority uses Hawaiian orthography. Please note that screen readers may not read or pronounce the Hawaiian words correctly.

## SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, AND KEY DATES

### 1.1 INTRODUCTION

The Hawai‘i Tourism Authority (HTA) is the state agency responsible for representing The Hawaiian Islands around the world and holistically managing tourism in Hawai‘i sustainably, consistent with community desires, economic goals, cultural values, preservation of natural resources, and visitor industry needs.

The HTA was established in 1998 under Chapter 201B, Hawai‘i Revised Statutes (HRS). The HTA is administratively attached to the Department of Business, Economic Development and Tourism (DBEDT). The HTA’s President and Chief Executive Officer reports directly to the HTA Board of Directors and is responsible for assisting the Board in its responsibility to execute the mandate of HRS 201B.

The HTA works with the community and industry to ensure that we live up to Mālama Ku‘u Home – caring for our beloved home – by guiding Hawai‘i’s transition to a regenerative model of tourism. The agency does this through visitor education, brand management, community reinvestment, and collaboration to maximize tourism’s economic benefit while mitigating its negative impacts. Partners include visitor industry businesses and organizations, community groups, and government agencies at the county, state, and federal levels.

Representation of the Hawaiian Islands in our primary visitor source markets, known as Major Market Areas (MMAs), is through contracted firms collectively known as our Global Marketing Teams (GMTs). HTA currently engages GMTs in the USA, Canada, Oceania (Australia & Aotearoa-New Zealand), Europe, Japan, Korea, and China markets.

In addition, the HTA creates, manages, and supports the development of unique tourism experiences such as community and cultural festivals, sporting events, natural resources, and community and cultural programs. The HTA also evaluates its programs on their impacts and return on investment (ROI) of public funds. The HTA also directly affects the visitor experience through its support of workforce development, visitor assistance programs, the integration of community and residents’ considerations, and a deep respect for Native Hawaiian culture.

The 2020 – 2025 HTA Strategic Plan frames our work with four interacting pillars: Hawaiian Culture, Natural Resources, Community, and Branding. Emphasis on the three pillars that support and uphold the integrity of Hawai‘i as our home is critical to maintaining the Hawaiian Islands brand globally. The 2020 – 2025 HTA Strategic Plan also adopted four Key Performance Indicators (KPIs) that the agency and its Contractors are responsible for advancing:

- **Resident Sentiment:** Improved resident sentiment toward tourism as measured in the Resident Sentiment Survey.
- **Visitor Satisfaction:** Improved prospective/returning visitor satisfaction with visiting Hawai‘i as measured by the Visitor Satisfaction Survey.
- **Average Daily Visitor Spending:** The average dollars spent by visitors.
- **Total Visitor Expenditures:** The U.S. dollar amount spent in Hawai‘i attributed to visitors. Includes direct spending by visitors while in Hawai‘i as well as any prepaid package purchased before arrival.

The HTA Strategic Plan pillars, priorities and KPIs, Destination Management Action Plans, and the HTA board’s commitment to the Aloha+ Challenge and the ‘Āina Aloha Economic Futures Declaration are considered when designing and implementing all HTA programs and activities.

**1.2 TERMS AND ACRONYMS**

Authority	The Hawai‘i Tourism Authority. Also referred to as “HTA.”
AG	Attorney General
BAFO	Best and Final Offer
Board	Board of Directors of the Hawai‘i Tourism Authority
Contract Administrator	The individual designated to manage the various facets of the contract to ensure the Contractor’s total performance is in accordance with the contractual commitments and obligations are fulfilled.
CPO	Chief Procurement Officer, Hawai‘i State Procurement Office
CVC	Certificate of Vendor Compliance. A single document that shows compliance with the IRS, DLIR, DCCA, and DOTAX. All four approvals are required in order to contract with the State.
DAGS	Hawai‘i Department of Accounting and General Services
DBEDT	Hawai‘i Department of Business, Economic Development and Tourism
DCCA	Hawai‘i Department of Commerce and Consumer Affairs
DLIR	Hawai‘i Department of Labor & Industrial Relations
DMAP	Destination Management Action Plan
DOTAX	Hawai‘i Department of Taxation
GC	General Conditions. Rules enacted by the Hawai‘i Attorney General’s Office.
GET	General Excise Tax
GMT	Global Marketing Team. The HTA term given to its various Contractors for their respective markets.
GP	General Provisions
HAR	Hawai‘i Administrative Rules. State rules outlining procedures for applying statutes.
HCC	Hawai‘i Convention Center
HCE	Hawai‘i Compliance Express
HiEPRO	Hawai‘i State eProcurement System
HOPA	Head of the Purchasing Agency. The Director of the Department of Business, Economic Development and Tourism is the HOPA for HTA.
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
HTA	Hawai‘i Tourism Authority

HTK	Hawai‘i Tourism Korea (Contractor will be referred to in all marketing materials at HTK)
IRS	Internal Revenue Service
IDMS	Island Destination Marketing & Management Services refers to the Island Chapters in each County across the State who provide island-based marketing and management services.
Knowledge Bank	HTA’s digital asset library of licensed creative assets accessible to the public. Registration and agreement to terms and conditions apply.
KPI	Key Performance Indicator
LOS	Length of Stay. The average number of days a visitor stays in Hawai‘i.
MCI	Meetings, Conventions & Incentives
Ma‘ema‘e Toolkit	A collection of resources and instructions to represent Native Hawaiian language and culture accurately and respectfully.
Mindful Traveler	Travelers who are respectful, responsible, and environmentally conscious. They seek to explore and make meaningful memories, respect the culture and environment of the places they visit, and desire to support something bigger than themselves.
MMA	Major Market Area. The geographic area to be covered under this RFP and contract. Also referred to as simply “the market.”
Offeror	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 and/or services contemplated in this RFP.
OIP	Hawai‘i Office of Information Practices
PPPD\$	Per Person Per Day Spending. The average dollars (USD) spent per day per person in Hawai‘i by visitors.
Procurement Manager	The procurement and contracting manager for the Hawai‘i Tourism Authority.
Regenerative Tourism	Regenerative tourism is “creating the conditions for life to continuously renew itself, to transcend into new forms, and to flourish amid ever-changing life conditions” (Hutchins and Storm, 2019) - through tourism. It “recognizes its communities and places are living systems, constantly interacting, evolving, self-organizing, efficient, learning, distinct, and vital to creating abundance, balance, and conditions to support other life, resilience and contribute to a greater system of well-being.” (Earth Changers, 2020).
Resident Sentiment Survey	The surveys gathered and reports published regarding Hawai‘i resident sentiment towards tourism in the State.
RFP	Request for Proposals, including all parts, Sections, Exhibits, Attachments, and Addenda.
ROI	Return on Investment
SPO	Hawai‘i State Procurement Office
State	State of Hawai‘i, including its departments, agencies, and political subdivisions.
Total Arrivals	The total number of visitors that arrive from the market.

Total Expenditures	The U.S. dollar amount spent in Hawai‘i attributed to a visitor. Includes direct spending by visitors while in Hawai‘i as well as any prepaid package purchased before arrival. Does not include transpacific air costs to and from Hawai‘i, commissions paid to travel agents, or portions of the package in another state or country.
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### 1.3 ELECTRONIC PROCUREMENT

- 1.3.1 The State has established the Hawai‘i State eProcurement System (HIePRO) to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HIePRO. Registration information is available at the State Procurement Office (SPO) website: <http://spo.hawaii.gov/HIePRO>, then select HIePRO Vendor Registration Guide. For online assistance, on the HIePRO (<https://hiepro.ehawaii.gov/welcome.html>) landing page, select ‘Help Chat – online’ at the top of the page. Tyler Technologies can be reached at (808) 695-4620 or by email at: [hiepro@ehawaii.gov](mailto:hiepro@ehawaii.gov).
- 1.3.2 The State will use HIePRO to issue the RFP, receive all Offers, and issue any addenda to the RFP. Addenda and the other information and materials shall be provided by the State through HIePRO, including additions or changes with respect to the dates in Section 1.4 RFP Schedule and Significant Dates. The State is not responsible for any delay or failure of any Offeror to receive any materials updated through the RFP process on a timely basis.
- 1.3.3 As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through the HIePRO and shall therefore be subject to a mandatory .75% (.0075) transaction fee, not to exceed \$5,000 for the total contract term. This transaction fee is payable to Tyler Technologies (formerly known as NIC Hawai‘i) and shall be based on the original award amount. Refer to the “Instructions” tab in the HIePRO solicitation for more details. The mandatory transaction fee shall be at the Contractor’s sole cost and expense.
- 1.3.4 Offerors shall review all special instructions located in HIePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline. Offerors are advised that they should not wait until the last minute to submit their proposal on HIePRO. Offerors should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline. The State shall not be responsible for responses/attachments that were not uploaded by the due date/time.
- 1.3.5 Changes to the RFP, including but not limited to answers to questions and procurement requirements, shall be changed via formal written addenda issued by the State. The State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor HIePRO to obtain any RFP addenda or other information relating to the RFP.
- 1.3.6 Tyler Hawai‘i is the vendor contracted by the State of Hawai‘i to provide the HIePRO application only and cannot respond to any questions regarding procurement or a particular solicitation. Payment must be made to Tyler Hawaii within thirty (30) days of receipt of invoice. The invoice is generated based on the date the award is posted.

### 1.4 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the State’s best estimate of the schedule that will be followed. All times indicated are Hawai‘i Standard Time (HST). If a component of this schedule, such as "Proposal Due Date/Time," is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in

an addendum. No questions will be received after the Written Questions deadline.

Release of Request for Proposals	July 9, 2024
Deadline to Submit Written Questions (must be submitted in HiePRO)	July 16, 2024, @ 4:30 PM HST
State’s Response to Written Questions (will be posted in HiePRO)	July 19, 2024
Deadline to Submit Notice of Intent to Offer	July 23, 2024, @ 4:30 PM HST
<b>Proposal Due Date/Time, Evaluation Period Begins</b>	<b>August 19, 2024 @ 2:00 PM HST</b>
Priority Listed Offeror Selection & Notification	Week of August 26, 2024
Oral Presentation with Priority Listed Offerors	August 30, 2024
Best and Final Offer Deadline (if necessary)	Week of September 2, 2024
Notice of Award (estimate)	September 9, 2024
Start of Contract Performance	January 1, 2025

**1.5 NOTICE OF INTENT TO OFFER**

**Notice of intent to offer is not required but is highly encouraged.** By registering your company, any applicable addenda will be sent to you. If you are interested in responding to this solicitation, for confidentiality reasons, please email the information specified below to [procurement@gohta.net](mailto:procurement@gohta.net) with “HTA RFP 25-05 Notice of Intent to Offer” in the subject line by the deadline noted in the RFP Schedule. This email will serve as your intent to submit an offer. Submission of your intent to offer does not mean you must submit an offer.

<ul style="list-style-type: none"> <li>• Name of Company</li> <li>• Name of Contact Person</li> <li>• Email Address</li> </ul>	<ul style="list-style-type: none"> <li>• Company Address</li> <li>• Telephone Number</li> <li>• Solicitation (RFP) Number</li> </ul>
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**1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS**

All questions must be submitted through HiePRO. Questions must be submitted by the deadline shown in RFP Schedule. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of the RFP to which the question applies. HTA reserves the right to consolidate, reconfigure and address questions as we deem appropriate, or to disregard questions altogether. Answers shall be issued as an addendum to the RFP via HiePRO and become part of the RFP, as appropriate.

**1.7 PROTEST OF RFP CONTENT**

Protest of RFP content must be received prior to the proposal’s due date. Offerors are encouraged to raise any concerns by the deadline for submission of written questions or as soon as possible.

**1.8 CANCELLATION**

The RFP may be canceled, and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State, pursuant to HRS 103D-308 and HAR §3-122-96 thru §3-122-97.

## 1.9

**WEBSITE REFERENCE**

<b>Item</b>	<b>Website</b>
Hawai'i Electronic Procurement System	<a href="https://hiepro.ehawaii.gov/welcome.html">https://hiepro.ehawaii.gov/welcome.html</a>
HTA RFP Website	<a href="http://www.hawaiiauthority.org/RFPs">http://www.hawaiiauthority.org/RFPs</a>
HTA Website	<a href="https://www.hawaiiauthority.org/">https://www.hawaiiauthority.org/</a>
HTA Strategic Plan	<a href="https://hawaiiauthority.org/who-we-are/our-strategic-plan/">https://hawaiiauthority.org/who-we-are/our-strategic-plan/</a>
HTA Destination Management Action Plans (DMAPS)	<a href="https://www.hawaiiauthority.org/what-we-do/destination-management/">https://www.hawaiiauthority.org/what-we-do/destination-management/</a>
HTA Brand Assets/Knowledge Bank (photos, videos, b-rolls)	<a href="https://hawaii.barberstock.com/">https://hawaii.barberstock.com/</a>
Ma'ema'e Toolkit	<a href="https://bit.ly/2MrqonN">https://bit.ly/2MrqonN</a>
HTA Programs	<a href="https://www.hawaiiauthority.org/what-we-do/">https://www.hawaiiauthority.org/what-we-do/</a>
HTA Research	<a href="https://www.hawaiiauthority.org/research/">https://www.hawaiiauthority.org/research/</a>
HTA Resident Sentiment Surveys	<a href="https://hawaiiauthority.org/research/evaluation-performance-measures/">https://hawaiiauthority.org/research/evaluation-performance-measures/</a>
HTA Annual Reports	<a href="https://www.hawaiiauthority.org/who-we-are/annual-report/">https://www.hawaiiauthority.org/who-we-are/annual-report/</a>
Consumer Website	<a href="http://www.gohawaii.com">www.gohawaii.com</a>
Travel Trade Website	<a href="https://agents.gohawaii.com/">https://agents.gohawaii.com/</a>
Media Website	<a href="http://media.gohawaii.com/statewide/">http://media.gohawaii.com/statewide/</a>
MCI Website	<a href="https://www.meethawaii.com/">https://www.meethawaii.com/</a>
YouTube – GoHawai'i Channel	<a href="https://www.youtube.com/gohawaii">https://www.youtube.com/gohawaii</a>
Aloha+ Challenge	<a href="https://alohachallenge.hawaii.gov/">https://alohachallenge.hawaii.gov/</a>
Sustainable Development Goals	<a href="https://sdgs.un.org/goals">https://sdgs.un.org/goals</a>
'Āina Aloha Economic Futures	<a href="https://www.ainaalohafutures.com/">https://www.ainaalohafutures.com/</a>
Hawai'i Compliance Express	<a href="https://vendors.ehawaii.gov/">https://vendors.ehawaii.gov/</a>
eHawaii.gov YouTube Channel	<a href="https://www.youtube.com/user/eHawaiiGov1/videos">https://www.youtube.com/user/eHawaiiGov1/videos</a>
Hawai'i State General Conditions	<a href="https://hiepro.ehawaii.gov/static-resources/103D-1%20General%20Conditions.pdf">https://hiepro.ehawaii.gov/static-resources/103D-1%20General%20Conditions.pdf</a>
HRS Chapter 201B HRS. HTA's inception statute.	<a href="https://www.capitol.hawaii.gov/hrscurrent/vol04_ch0201-0257/HRS0201B/HRS_0201B-.htm">https://www.capitol.hawaii.gov/hrscurrent/vol04_ch0201-0257/HRS0201B/HRS_0201B-.htm</a>

*The Hawai'i Tourism Authority is not responsible for broken links.*



## SECTION TWO: BACKGROUND AND SCOPE OF WORK

### 2.1 MARKET OVERVIEW AND BACKGROUND

According to preliminary 2023 data, the industry generated more than \$20.78 billion in total visitor spending, up from \$17.72 billion (+17.3%) in 2019. Visitor arrivals reached 9,644,519, a 7.1% decrease when compared to 2019.

**Korea MMA**

	2019	2020	2021	2022	2023 Preliminary
Total Expenditures (in Millions)	\$497.9	NA	\$41.6	\$283.5	\$436.7
PPPD\$	\$285.2	NA	\$278	293.1	\$316.1
Total Arrivals	229,056	46,884	10,652	111,863	164,005
Length of Stay	7.62	8.62	14.03	8.65	8.42

The HTA will track actual data throughout the contract term and will review them against historical data and forecasts for the applicable period to assist in assessing the appropriateness and the success of the Contractor’s programs and activities.

To ensure the Hawaiian Islands remain globally competitive, the HTA’s 2025 overall brand marketing strategies are as follows:

- Target mindful and high-value travelers in specific geographic regions
- Revitalize the higher-spending international markets
- Stabilize U.S. and Canada market, particularly visitation to Maui
- Support recovery or growth of air seats from key markets
- Create brand messaging that delivers and communicates the following destination attributes that have been shown to strengthen Hawai‘i’s competitive advantage:
  - Hawai‘i’s people, place and culture
  - Sustainable Destination
  - Beautiful Scenery
  - Relaxation
  - New Things to Explore
  - Volunteer/Giveback Opportunities
- Deploy the most effective channels for paid and earned media
- Focus on digital/social content marketing
- Leverage local voice/ambassadors /influencers
- Inform, educate and motivate travel trade and media
- Seek out strategic partnerships to increase destination marketing capacity
- Support Hawai‘i’s progress towards regenerative tourism

### 2.2 SCOPE OF WORK

The HTA is seeking a Contractor to provide a full range of comprehensive brand marketing services for the Hawaiian Islands in the Korea market.

The key brand marketing objectives for this RFP are as follows:

- Brand marketing campaigns and programs shall be guided and informed by the Hawaiian values of aloha, mālama, ho‘okipa and kuleana.
- Maintain the cultural integrity of the Hawaiian language, customs and practices, cultural

and historic sites, and imagery in all brand marketing initiatives. Highlight the diversity of Hawai‘i’s people, place, and culture.

- Drive destination brand awareness. Manage the brand of the Hawaiian Islands as well as the specific brands of Kaua‘i, O‘ahu, Lāna‘i, Moloka‘i, Maui, and Hawai‘i Island.
- Take advantage of market insights and intelligence on trends, distribution dynamics, consumer insights, and competitive analysis. Stay adaptable to changing market trends and continuously innovate to keep the brand relevant.
- Cultivate the next generation of mindful travelers.
- Increase per person expenditures and total spending in alignment with the HTA’s KPIs.
- Educate visitors pre-arrival with specific information about safe and respectful/mindful travel. This should be coordinated with the HTA’s Destination Stewardship Branch to provide a seamless message throughout the entire visitor journey.
- Develop airline relationships with the goal of monitoring and optimizing load factors and supporting routes as directed.
- Focus marketing and support tour product development to build a desire to visit during shoulder periods and encourage multi-island itineraries.
- Assist the HTA’s Global MCI Contractor “Meet Hawai‘i” in securing MCI group business with special focus on the state-owned Hawai‘i Convention Center (HCC) and citywide convention growth.
- Emphasis should be to drive visitor spending into Hawai‘i based businesses and organizations as a means to support a healthy economy, in partnership with the HTA, DBEDT, the private sector, etc.
- Assist the HTA and other designated entities with crisis management and communication related to the visitors and/or visitor industry.
- At the HTA’s direction, support Hawai‘i-based projects, programs, and initiatives.
- Where necessary, engage local communities and/or stakeholders to ensure their support and participation.
- Ensure that initiatives are metrics-driven.

### **2.3 KEY PERFORMANCE INDICATORS & PERFORMANCE MEASURES**

The key performance indicators for brand marketing in the Korea market for 2025 are as follows:

- By the end of Calendar Year 2025, grow Total Visitor Expenditures to 0.48 billion (Forecast for 2024: 0.44 billion).
- Maintain or exceed percentage of “visitors recall hearing or seeing information about safe and responsible travel prior to arrival” compared to 2024.
- Maintain or exceed percentage of "visitors recall hearing or seeing information about caring for and respecting Hawai‘i’s culture, people, and environment prior to arrival" compared to 2024.
- Maintain or exceed percentage of "visitors recall hearing or seeing information about support local/shop local prior to arrival" compared to 2024.
- Maintain or exceed percentage of people “consider Hawai‘i as their next vacation destination” compared to 2024.
- Maintain or exceed percentage of people “choose Hawai‘i as a vacation destination that they most likely to go” compared to 2024.
- Maintain or exceed percentage of people “plan to book a trip to the Hawai‘i this year” compared to 2024.

In addition, Offerors are also required to propose quarterly targets for Performance Measures for

the Brand Marketing Plan, subject to HTA's review and approval.

HTA may fund a 3rd party study to measure the incremental trips generated, incremental spending generated, and the taxes generated on spending as a result of the major campaign(s).

## 2.4 **COMPENSATION**

This is a Fixed-Price contract, inclusive of all taxes and expenses, for an amount not to exceed **EIGHT HUNDRED TWENTY-FOUR THOUSAND AND NO/100 DOLLARS (\$824,000.00 USD)**, tax inclusive, for Calendar Year 2025 and shall be funded with Hawai'i State General Funds.

- For January to June 2025, the total amount shall not exceed **FOUR HUNDRED NINETEEN THOUSAND AND NO/100 DOLLARS (\$419,000.00 USD)**, tax inclusive.
- For July to December 2025, the total amount shall not exceed **FOUR HUNDRED FIVE THOUSAND AND NO/100 DOLLARS (\$405,000.00 USD)**, tax inclusive.

The fixed price is inclusive of all aspects of the contract, including all expenses directly related to the scope of work, such as the required insurance coverage. (Additional coverage, over and above the required coverage, would be at the Contractor's expense.) Annual Administrative Costs, inclusive of staffing and office expenses and Contractor profit/retainer, must be included in the fixed amount and may not exceed twenty-two percent (22%) of the total annual fixed price.

Notwithstanding anything in other sections of this RFP, the not-to-exceed amounts listed in this section shall prevail.

At its sole discretion, HTA may exercise its option to increase the compensation for Calendar Year 2025 by **FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00 USD)** that may be available during the second quarter of Calendar Year 2025 or later.

### **Cost Factor & Cost Reasonableness Determination**

In accordance with HAR §3-122-52 and HRS Chapter 103D, the proposal with the lowest cost factor must receive the highest available rating allocated to cost.

The awardee will be required to submit a Certificate of Current Cost or Pricing Data Form, after which the HTA will make a Cost Reasonableness Determination.

No award is final until a contract is signed. If HTA and the awardee fail to come to an agreement, HTA may enter into an agreement with the next highest-scoring Offeror.

## 2.5 **TERM OF CONTRACT**

The initial term of the contract shall be one year, January to December 2025, with the option to extend for an additional four years or parts thereof.

The previous paragraph notwithstanding, the contract term cannot exceed five (5) years total in accordance with Hawai'i Revised Statutes section 201B-3(a)(3).

The Contractor acknowledges and agrees that the availability of funds to HTA for any fiscal year (July 1 to June 30) shall initially be subject to the passage of a budget appropriation of public funds by the Legislature, and subsequently to the approval of an allotment of the budgeted funds by the Governor, through the Director of the Department of Budget & Finance, State of Hawai'i, and final allocation and approval by the HTA Board of Directors. If there are insufficient funds appropriated, allotted, or otherwise made available to the State to pay the Contractor under this

Contract, the State may, without any liability to the State, including consequential damages, reduce and amend the contracted amount of compensation previously payable to the Contractor, upon written notification by the State to the Contractor and amendment of this Contract. All State funds not expended in accordance with the provision set forth in the Contract shall be returned to the State.

## **2.6 HTA CONTRACT MONITORING & EVALUATION**

HTA contract monitoring and performance evaluations will be conducted in accordance with HTA Contract Management Policy 400-20 and HTA Contract Management Procedures 400-20.01 – 400-20.05, or its equivalent, which may be subject to change periodically. Contractor performance will be monitored and assessed monthly, and HTA direction will be given as necessary.

HTA staff will conduct written evaluations twice a year. These evaluations will determine whether the State wishes to continue the contract. When the best interests of the State so require, the State may issue a stop work order, termination for default, or termination for convenience. See the General Conditions for details.

Each Evaluation Review will cover the following topics:

- KPIs and Performance Measures – Review results against targets.
- Campaigns and Programs – Review the actual campaigns and programs conducted and how they tie into regenerative tourism.
- Brand Integrity – Review Contractor's ability to maintain the brand integrity and cultural authenticity.
- Communication – Review Contractor's communication with HTA and industry partners.
- Financial Accountability – Review significant budget variances vs. actual, if any.

Evaluation meetings, either in person or virtually, will be conducted as deemed necessary by HTA.

## **2.7 OWNERSHIP RIGHTS**

Pursuant to the General Conditions attached to and made a part of the RFP, the State shall have complete ownership of all material developed, prepared, assembled, or conceived by the Contractor under this Contract. The Contractor shall not use such materials outside of the contract scope unless authorized in writing by the State.

## **2.8 SUCCESSION OF ADDITIONAL CONTRACTORS**

In the event, the State chooses to contract with another vendor to provide the services of the Contractor at the end of this contract term or upon cancellation of the Contract, or if the State contracts with one or more additional vendors, the Contractor must provide reasonable transition assistance to the State and cooperation with one or more Contractors. Under no circumstances will the existing Contractor have any right to compensation for investments or other expenditures that were undertaken pursuant to, or in anticipation of, an extension of the Contract.

## **2.9 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS**

Unless otherwise provided in this RFP, the Contractor is responsible for obtaining all official licenses, approvals, clearances, and similar authorizations required by any local, State, or federal agency to perform the work required in this RFP.

## **2.10 INHERENT GOVERNMENT FUNCTIONS**

However, it is important to recognize that the State has fundamental inherent government functions that should not be delegated to a Contractor. Governmental personnel should be the only people making final decisions on the proposed Contractor's services. Federal Procurement Law defines inherent functions to be performed only by government employees. The HTA considers

the following responsibilities inherently governmental:

- Determining what supplies or services are to be acquired by the Government;
- Approving any solicitation documents, to include documents defining requirements, specifications, incentives, and evaluation criteria. This includes issuance and conduct of this procurement pursuant to HRS section 103D-303, competitive sealed proposals;
- Negotiating cost and pricing;
- Awarding contracts;
- Approving post-award contract changes to include, but not be limited to, ordering changes in contract scope, schedule, and budget;
- Responding to evaluations of Contractor performance and accepting or rejecting Contractor products or services; and
- Terminating contracts.

#### **2.11 HAWAII TOURISM AUTHORITY RESPONSIBILITIES**

- Provide direction and guidance as required.
- Provide general information in a timely manner.
- Pay invoices within 30 days upon verification of satisfactory performance.
- Maintain an oversight and advisory role for each task outlined above.

#### **2.12 POINT OF CONTACT**

The Procurement Manager or its designee is the single point of contact (POC) during the procurement process. Offerors shall direct all questions regarding the procurement process and any other procedural questions that may arise related to this solicitation to be submitted in HIePRO by the due date/time referenced in the RFP Schedule. The reference number is **RFP-25-05**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

## SECTION THREE: PROPOSAL CONTENT AND SUBMISSION

### 3.1 PROPOSAL CONTENT

#### 3.1.1 Content Format

- Slide shows and PowerPoint Presentations will not be accepted. The proposal should be compact and substantive. Proposals may include a web address that evaluators will have the option of reviewing. However, evaluators will not be required to review your website, so do not omit essential information in reliance on website content. Video, audio, or other similar multimedia materials will not be considered during the evaluation of written proposals, although they may be accepted or even requested in Round 2 of the procurement process.
- The format must be U.S. standard 8.5 by 11 inches. This is a U.S. buyer and, therefore must be oriented to U.S. document sizes. Orientation should be primarily portrait, though landscape is welcome for data or visual presentations as appropriate. No odd-sized pages allowed.
- Page limit. The body of the proposal must not exceed the page limit outlined below. Proposals exceeding the page limit may be disqualified, or the extra pages may be excised prior to review.
- Font size should be 12 pts.
- Ensure all content is submitted in the proper format as described below and note that **the maximum single file size that HIEPRO can accept is 100MB; multiple files may be uploaded.**
- All submittals must be provided in English.

#### 3.1.2 Content List

All proposals shall include the following documents and titles to be considered for this RFP. Proposals that fail to submit any of these documents may be considered non-responsive.

- **Items 1-6** are to be individually labeled accordingly and submitted as one PDF file in the order listed below that is no more than fifty (50) pages to be titled Offeror Name\_Proposal Part 1:
  - 1) Cover Page
  - 2) Table of Contents
  - 3) Cover Letter
  - 4) Organizational Capacity
  - 5) Professional Experience
  - 6) Brand Marketing Plan (BMP)
- **Items 7-9** are to be submitted separately as Excel/Word files to be titled individually as Offeror Name\_(insert titles below):
  - 7) Brand Marketing Budget Plan Worksheet (Attachment 01)
  - 8) Performance Measures Worksheet (Attachment 02)
  - 9) Subcontractor References (Attachment 03)
- **Items 10-17** are to be individually labeled accordingly and submitted as one PDF file in the order listed below to be titled Offeror Name\_Proposal Part 2:
  - 10) Offeror Check List (Attachment 04)
  - 11) Proposal Transmittal Letter (Attachment 05)
  - 12) Corporate Resolution (Attachment 06)
  - 13) Standard Qualifications Questionnaire (Attachment 07)
  - 14) Contractor References (Attachment 08)
  - 15) Partnership Opportunities (Attachment 09)

- 16) Certificate of Vendor Compliance or Proof of Application for CVC
- 17) Confidential Information List - if applicable (Attachment 10)

### 3.1.3 Content Explanation

#### **Cover Page**

The cover page should include the following:

- The name and number of the RFP: RFP 25-05 Hawai'i Tourism Destination Brand Marketing Services for the Korea Major Market Area.
- Name and address of Company.
- Company Federal and State Tax ID #s.
- Name, email address, and phone number of contact person.

#### **Table of Contents**

Please present the materials in the order outlined above. Please include page numbers for your table of contents.

#### **Cover Letter**

The cover letter is your opportunity to make a personal statement to the HTA and the Evaluation Committee. Please limit this to one to two pages maximum.

#### **Organizational Capacity**

- a) Personnel Management
  - i) Physical Office. The Offeror must have or must establish an office in Korea.
  - ii) Organizational chart of proposed staffing, including position titles, names, lines of responsibility/supervision. In addition, please indicate full-time positions dedicated to the HTA account. For the other positions, please indicate time allocation.
  - iii) Project Manager (“Key HTA Point of Contact”) to be assigned to the HTA account. As part of this contract, HTA will require a full-time project manager 100% dedicated to the HTA account. The project manager shall not represent destinations other than Hawai'i nor perform administrative duties other than those related to the HTA account. List detailed qualifications, including experience, time with the organization, and resume/bio demonstrating qualifications related to this RFP.
  - iv) Additional Staffing. The Offeror shall identify other key members assigned to the HTA account. List detailed qualifications for each position (including experience, time with the organization, resume/bio demonstrating qualifications related to this RFP), proposed time allocation of staff and their geographic locations. Although a Contractor, as a legal entity, may represent a competing destination within the MMA, the staff assigned to HTA account may not represent a competing destination.
    - Project Manager (“Key HTA Point of Contact”): Full-Time Exclusive/100% Dedicated to HTA Account
    - Staff: Non-Exclusive (shall not represent a competing destination)

#### **Note:**

The Contractor is expected to be fully staffed and operational to begin the implementation of the destination brand marketing services. Any activity, such as training and orientation, that occurs prior to the execution of an agreement with the selected Contractor shall be at the Contractor's sole cost and expense. Also, the Contractor is required to attend HTA's meetings and conferences as directed by HTA during their time of performance of the contract.

- v) Supervision and Training. The Offeror shall describe its ability to supervise, train and provide administrative direction relative to the delivery of the proposed services.
- b) Accounting System. Describe how the Offeror’s accounting system will:
  - i) Accurately estimate and timely record actual expenditures for this contract;
  - ii) Accurately allocate and timely record all actual expenditures to the various budget categories defined in the attachment for the Budget Plan Worksheets;
  - iii) Accurately estimate and timely record actual expenditures of change orders and modifications; and,
  - iv) Make certain that only allowable and allocable expenses are charged against any change order or modification of the contract issued under this RFP.
- c) Firewalls and other Protections
  - i) Offeror shall describe processes and procedures to provide an information barrier, such as a “white room” or other form of firewall, within Contractor's company to prohibit the disclosure of competitively sensitive information acquired or provided through the performance of this contract on behalf of the HTA to any of the Contractor’s clients or affiliates representing or associated with a competitor list agreed to by HTA.
  - ii) Offeror shall describe specific directives and procedures for its employees and other personnel assigned to the HTA to prevent the respective team, group, or individuals from using HTA information for the advantage of a competitor, either by exchanging information in either formal or informal settings with employees assigned to competing markets, or by independent use of information by those who may have other assignments outside of HTA.
  - iii) Management and executive decisions must not disadvantage HTA against other clients. Hawai‘i’s best interests must be judged independent of other company interests or, if not, must be placed at the highest priority within the organization.

**Professional Experience**

The Offeror shall provide a complete description of its relevant experience in destination brand marketing services described below:

- a) Describe the Offeror’s experience and past performance history in destination brand marketing services:
  - i) Within the Korea Market
  - ii) Within the Hawai‘i tourism industry
  - iii) In general
- b) Creative Content: Offeror shall provide no fewer than six (6) examples of creative content representing the following areas. Examples must be reduced to 8.5 x 11 form. The Offeror may, in addition, reference web addresses; however, evaluators are not obligated to view websites.
  - i) Provide at least three (3) past examples of creative content prepared for clients by the Offeror.
  - ii) Provide at least three (3) examples of proposed creative content to be used in a future Hawai‘i campaign(s) if awarded this contract.
- c) Case Studies: Offeror shall provide no fewer than two (2) case studies representing the following areas:
  - i) Demonstrating your familiarity with both this market and with Hawai‘i’s tourism industry.



- ii) Demonstrating your familiarity with the Hawaiian Islands, the Native Hawaiian culture, the multi-ethnic culture and communities.
  - iii) Demonstrating experience in finding and using market research conducted within this MMA.
  - iv) Demonstrating experience in creating integrated target marketing campaigns and projects deployed within the MMA.
- d) Performance Measures: Describe a minimum of three (3) past work experiences within the past five years that reflect the tracking of performance measures to targeted results, including the measurement methodology used.

**Brand Marketing Plans (BMP)**

Offeror shall present a Brand Marketing Plan for Calendar Year 2025 for the contract amount described in Section 2.4. The Offeror will be responsible for formulating and executing the BMP that describes what will be created and executed with anticipated deliverables aimed at fulfilling Key Performance Indicators. The BMP should be clear and concise in communicating initiatives and sought outcomes supporting the KPIs identified in Section 2.3. See Exhibit A for BMP Outline.

**BMP Budget Plan Worksheets**

Offeror shall submit a detailed budget breakdown of monthly budget plans for Calendar Year 2025. January to June 2025 budget amount shall not exceed **FOUR HUNDRED NINETEEN THOUSAND (\$419,000.00 USD)**; July to December budget amount shall not exceed **FOUR HUNDRED EIGHTY THOUSAND (405,000.00 USD)**. See Attachment 01 for budget instructions.

**Performance Measures Worksheets**

Offerors shall propose quarterly targets for Performance Measures for the Brand Marketing Plan, subject to HTA’s review and approval. See Attachment 02 for details.

**Subcontractor References**

If Subcontractors will be used for this contract, Offerors shall submit Subcontractor References forms (see Section 3.1.2) for each Subcontractor and ensure all requirements of the General Conditions outlined in this RFP are followed.

**In addition, the Offeror shall attach to the Subcontractor References form a letter or statement from each Subcontractor, signed by a legally authorized representative, stating:**

1. The general scope of work to be performed by the Subcontractor; and,
2. The Subcontractor’s willingness to perform the indicated work.
3. The number of years this Subcontractor has been used by your company, if applicable.

All subcontracts require HTA’s prior written approval. Requests for written approval to subcontract shall include:

1. An explanation of the need for the goods or services to be subcontracted;
2. A statement regarding the subcontractor’s qualifications to provide the goods or services;
3. A summary of the process used to procure the goods or services, including the material terms of bids or other responses to provide the goods or services; and
4. The reason(s) for the selection of the subcontractor, including information used

to determine the reasonableness of the contract amount.

Note: Contractors are asked to include a force majeure clause in all their subcontracts where possible. Please use the same language as it appears in Special Provisions.

**Offeror Checklist**

The offeror must complete the checklist and submit all items noted on the form. See Attachment 04 for details.

**Proposal Transmittal Letter**

On the Offeror's business letterhead, include a transmittal letter to confirm that the Offeror will comply with the requirements, provisions, terms, and conditions specified in this RFP. The Offeror shall use the exact legal name as registered with the Department of Commerce and Consumer Affairs. The price shall be submitted on the transmittal letter and shall be the all-inclusive cost, including the GET, and not to exceed \$824,000.

The Offeror represents that neither the Offeror, nor its principals, employees, or agents of the Offeror, 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 their performance of this Contract, if awarded. Should any conflict exist, it must be disclosed. If no conflict exists, state no conflict on the transmittal letter.

The Offeror must certify that neither the Offeror nor its principals, employees, or agents of the Offeror are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the State. If no debarment action exists, state no debarment on the transmittal letter.

This form must have an electronic signature, which is required before an award, if any, can be made. If unsigned, the offer will be automatically rejected. See Attachment 05 for details.

**Corporate Resolution**

On the Offeror's business letterhead, include a copy of the corporate resolution or written authorization of the Offeror's representative to sign this proposal, and contract, if awarded. See Attachment 06 for details.

**Standard Qualifications Questionnaire**

Offeror must respond to all questions on the Qualifications Questionnaire form. See Attachment 07 for detailed questions.

**Contractor References**

Offeror must use this form to provide three (3) references for previous work performed as the Prime Contractor and similar to this project. More recent and more relevant performance usually has a greater impact on the confidence assessment than less recent and less relevant projects. See Attachment 08 for details.

**Partnership Opportunities**

Offeror shall provide a list of partnership opportunities for the Calendar Year 2025, including tradeshows, trade familiarization trips (FAMs), travel trade education, public relations, consumer promotions, and consumer shows. See Attachment 09 for details.

**Certificate of Vendor Compliance or Proof of Application for CVC**

Offeror shall submit a copy of the Certificate of Vendor Compliance from Hawai'i Compliance Express or proof that one has been applied for from Hawai'i Compliance Express. (See Section 5.2)

**Confidential Information List (if applicable)**

Offeror shall provide a list of all confidential information referenced in the Offeror's proposal, including page numbers and sections in a separate attachment. Material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the non-confidential portion of the proposal pursuant to HAR 3-122-46. If not applicable, the offeror shall state so. (See Section 3.2.6 and Attachment 10 for details).

**3.2 PROPOSAL SUBMISSION**

**3.2.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER**

The State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror must resolve that question prior to submitting a proposal.

**3.2.2 REQUIRED REVIEW**

Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachments, addendum, and other relevant documents to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect the cost, progress, or performance of the work required.

Should Offeror find defects and questionable or objectionable items in the RFP, Offeror must notify HTA in writing prior to the deadline for written questions as stated in Section 1.4 RFP Schedule and Significant Dates, as may be amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance on a defective solicitation and distribution of proposal(s) upon which an award could not be made.

**3.2.3 PROPOSAL PREPARATION COSTS**

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

**3.2.4 TAX LIABILITY**

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawai'i 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 must state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

Federal I.D. Number and Hawai'i General Excise Tax License I.D. Offeror must submit its current Federal I.D. number and Hawai'i General Excise Tax License I.D. number in the space provided on the Proposal Transmittal Letter, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made in the State.

**3.2.5 PROPERTY OF STATE**

All proposals become the property of the State of Hawai‘i.

**3.2.6 CONFIDENTIAL INFORMATION**

All government records are open to the public unless access is restricted by law. Identification of confidential information shall be the sole responsibility of the offeror.

The Uniform Information Practices Act requires an agency to make a government record available for inspection and copying unless the agency can show that an exception to disclosure under Chapter 92F-13, HRS, authorizes the agency to restrict or deny access to that record.

All Offerors are advised that confidential information in a proposal, offer, specification, protest, or correspondence may be subject to disclosure. The State may only restrict or deny access to items deemed confidential pursuant to Chapter 92F, HRS. Any data submitted to the State that the Offeror wishes to remain confidential shall be clearly marked and be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion of the submittal. Any page of an offeror’s submittal containing confidential information shall only include confidential information. In addition, Offeror shall provide a list of all confidential information referenced in the Offeror’s proposal, including page number and sections in a separate attachment. See Attachment 10 for details.

If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure pursuant to § 92F-13 HRS, then the Offeror shall inform the Procurement Manager named on the cover of this RFP in writing and provide the Procurement Manager with justification to support the Offeror’s confidentiality claim at the time of submittal. Price is not considered confidential and will not be withheld; however, actual costs or pricing information that would enable competitors to estimate profit margins and production costs may be marked as confidential. These include selling prices, inventory balances, profit margins, purchase activity, cost of goods and freight charges.

Pursuant to §3-122-58, HAR, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination on any request for confidentiality in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information unless the person appeals the denial to the Office of Information Practices in accordance with § 92F-15.5(a), HRS.

**3.2.7 EXCEPTIONS**

Should an Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, the Offeror must attach a written explanation including the RFP section where the exception is taken, a description of the exception, and the proposed alternative, if any. If none, state so in the proposal transmittal letter.

Further, the nature of the exceptions will be considered when evaluating proposals. In the sole discretion of the State, exceptions may be evaluated to determine the extent to which the alternative language or approach poses unreasonable and/or additional risk to the State, inhibits achieving the objectives of the RFP, or creates ambiguity making evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP.

### 3.2.8 **SUBMITTAL REQUIREMENTS**

**ELECTRONIC SUBMITTAL ONLY VIA HiePRO.** Proposals shall be submitted and received electronically through HiePRO by the date and time listed in the procurement timeline. This electronically submitted offer shall be considered the original. Any offers received outside the HiePRO, including faxed or e-mailed bids, shall not be accepted or considered for award. Any offer received after the due date and time shall be rejected. **The maximum single file size that HiePRO can accept is 100MB; multiple files may be uploaded.**

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

Offerors are advised to carefully read Section 3.1.2 Content List and Section 3.1.3 Content Explanation and submit all necessary documents required for this RFP.

### 3.2.9 **RECEIPT AND REGISTER OF PROPOSALS**

Proposals will be received on HiePRO, and the Offeror will receive an email directly from HiePRO confirming receipt of the offer. Once the solicitation closes, two or more procurement officials will verify all proposals and attachments on or after the date and time specified in the RFP schedule or as amended. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of an award pursuant to HRS §103D-303 and HAR §3-122-58.

### 3.2.10 **MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS**

The Offeror may modify or withdraw a proposal before the proposal's due date and time. Any change, addition, deletion of attachment(s), or data entry of a proposal must be made prior to the deadline for the submittal of proposals.

### 3.2.11 **MISTAKES IN PROPOSALS**

Mistakes may not be corrected after the award of the Contract. When the Procurement Manager knows or has reason to conclude before award that a mistake has been made, the Procurement Manager should request the Offeror to confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.

Once discussions are commenced or after best and final offers are requested, any Priority Listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

Technical irregularities that are matters of form rather than substance evident from the proposal document or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if the best and final offers upon which award will be made have been received, the Procurement Manager may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include, but are not limited to: failure of an Offeror to return the correct number of signed proposals required by request for proposals; failure to sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an incorrect number of amendments to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendments and intended to be bound by its terms; or if the missing amendment involved had no effect on

price, quality or quantity.

If the State requests additional information regarding aspects of an Offeror's Offer, the Offeror shall provide the same within five (5) Business Days of the State's request, unless the State specifies another time period. Each Offeror shall submit only one (1) Offer. If an Offeror submits more than one (1) Offer, then the State reserves the right to reject and or dismiss the Offeror from the RFP process.

**3.2.12 NO LATE SUBMITTALS AFTER DEADLINE**

Proposals received after the due date and time will be marked late and shall be ineligible for this solicitation. Any offers received outside of the HIePRO shall not be accepted. No hard copies will be accepted.

**3.2.13 OFFER GUARANTY**

An offer guaranty or performance bond is NOT required for this RFP.

## SECTION FOUR: EVALUATION CRITERIA

### 4.1 REJECTION OF PROPOSALS

- 1) Requirements must be met: HTA reserves the right to consider as acceptable, responsible, and responsive only those proposals submitted in accordance with the requirements set forth in this RFP.
- 2) Reasons: A proposal may be automatically rejected, without further review, for the following reasons:
  - a) Late proposals. Late proposals are automatically disqualified unless the delay was due to the action or inaction of the procuring agency and only if the proposal was received before award;
  - b) Non-Responsiveness. Failure to submit in accordance with the RFP requirements or failure to supply an adequate response to the RFP;
  - c) Non-Responsibleness. Including:
    - (i) Lack of a Certificate of Vendor Compliance (CVC) upon award;
    - (ii) Refusal to abide by the State of Hawai‘i’s General Conditions as amended in this RFP by the HTA;
    - (iii) Failure to meet the terms of agreement on any previous HTA contract;
  - d) Failure to cooperate with HTA or deal in good faith;
  - e) Failure to maintain standards of responsibility: falsification of information; suspension or debarment by State; felony conviction related to procurement contracting with any unit of government; failure to maintain necessary licensure or meet it’s tax or other obligations to a government agency;
  - f) Any effort to lobby any member or employee of the Hawai‘i State Legislature.

### 4.2 PROPOSAL EVALUATION CRITERIA AND SCORING GUIDE

Written proposals will be reviewed, evaluated, and scored by an Evaluation Committee based on scoring criteria. Scoresheets will be filled out as outlined in the following evaluation criterion and scoring guidelines:

EVALUATION CRITERION	Scoring Weight Maximum Score
<p><b>OVERALL CAPABILITIES OF FIRM &amp; QUALIFICATIONS OF PERSONNEL</b></p> <p>The evaluation will include an assessment of the company, considering factors listed in Section 3 of this RFP and in SPO Form 21 (Standard Qualifications Questionnaire), including but not limited to the depth of experience and demonstrated success with similar projects, capabilities, and company resources, experience working with State, county, and federal agencies, and professional work experience in Hawai‘i.</p> <p>The evaluation will also include an assessment of the qualifications, experience, and specific knowledge of Offeror’s managerial team, staff, and subcontractors as it relates to the requirements of this RFP and the full-time equivalent positions dedicated to the HTA account.</p>	35

<p><b>BRAND MARKETING PLAN (BMP)</b></p> <p>The evaluation will include an assessment of the quality of the proposed marketing strategies, targets set for KPIs, performance measures, campaign/program creativity and innovation, the incremental program, and the value received, such as the maximum services provided in relation to the administrative fees charged.</p>	45
<p><b>FAMILIARITY WITH HAWAI'I BRAND AND PRODUCT</b></p> <p>The evaluation will include an assessment of Offeror's understanding of the Hawaiian Islands, its people, the Native Hawaiian culture, Hawai'i's multi-ethnic culture, and the HTA; and how Offeror integrates this knowledge throughout the proposal. Note: this is not a separate section of the proposal but is an analysis of the whole proposal.</p>	15
<p><b>COST</b></p> <p>In accordance with HAR §3-122-52 and HRS Chapter 103D, the proposal with the lowest cost factor, based on the total cost for the initial contract period (<b>not to exceed \$824,000.00 USD</b>), must receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost. Additionally, the points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price.</p>	5
<b>TOTAL</b>	<b>100</b>

<b>Assessment</b>	<b>Overall Scoring Guidelines</b>	<b>Total Score</b>
<b>Poor</b>	<p>Proposal is inadequate in many basic aspects for the scored category.</p> <p>Evaluator has very low confidence in the Offeror's ability to perform as promised or as required.</p>	<b>0-19</b>
<b>Marginal</b>	<p>Proposal minimally addresses the requirements, but one or more major considerations of the category are not addressed, or lacking in some essential aspects for the specific criteria.</p> <p>Evaluator has low confidence in the Offeror's ability to perform as promised or as required.</p>	<b>20-40</b>
<b>Adequate</b>	<p>Proposal adequately meets the minimum requirements for the category and is generally capable of meeting the State's needs for specific criteria.</p> <p>Evaluator has confidence in the Offeror's ability to perform as promised or as required.</p>	<b>41-60</b>



<b>Good</b>	<p>Proposal more than adequately meets the minimum requirements of the specific criteria, and exceeds those requirements in some aspects.</p> <p>Evaluator has high confidence in the Offeror's ability to perform as promised or as required.</p>	<b>61-80</b>
<b>Excellent</b>	<p>Proposal fully meets all requirements and exceeds most requirements.</p> <p>Evaluator has extremely high confidence in the Offeror's ability to perform as promised or as required.</p>	<b>81-100</b>

**4.3 EVALUATION COMMITTEE**

The HTA intends to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. The HTA will use an Evaluation Committee to review and evaluate the proposals. The Offeror's contact person is the Procurement Manager. The Procurement Manager for this RFP, identified in the Introduction, serves as the arbitrator and referee. The Procurement Manager does not have a vote. However, the Procurement Manager, in accordance with the Hawai'i Administrative Rules §3-122-53, will classify proposals as acceptable, potentially acceptable, or unacceptable. Those proposals determined to be acceptable and potentially acceptable will be provided to the Evaluation Committee for scoring.

An evaluation committee of at least 3 qualified State employees approved by the Procurement Manager shall evaluate proposals for the contract. The evaluation will be based solely on the Evaluation Criteria and the process described.

Evaluation committee member identities are kept confidential during the RFP process. Offerors are forbidden from contacting any member of the Evaluation Committee regarding this RFP during the RFP process. Offerors will not be penalized for inadvertent or unrelated communication with committee members. However, Offerors may be disqualified if they seek the identities of the committee members or knowingly seek out or contact committee members for advice or favor.

**4.4 EVALUATION AND AWARD PROCESS**

Submittals shall not be examined for evaluation purposes until the submittal deadline. Deadlines will be enforced even-handedly. The RFP evaluation process may consist of two rounds.

Round 1: The Procurement Manager, in accordance with Hawai'i Administrative Rules §3-122-53, will classify proposals as acceptable, potentially acceptable, or unacceptable. All responsible Offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list. In Round 1 of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive, not conforming to the RFP requirements) will be eliminated from further consideration. In Round 1, the Evaluation Committee will evaluate and score all acceptable and potentially acceptable proposals using the criterion and scoring guidelines described in Section 4.2 of the RFP. The proposals will be ranked by combined-weighted score. The Evaluation Committee will then select no more than three (3) Offerors from the highest-ranked proposals who will advance to Round 2. These selected Offerors will be referred to as "Priority Listed Offerors."

Round 2: In the second round, the Evaluation Committee may conduct discussions with Priority Listed Offerors and request "Additional Information," which may consist of any combination of question-and-answer sessions, oral presentations, requests for clarification, best and final offers

(BAFO), or anything else that the Evaluation Committee may find useful in coming to a decision. The date for oral presentations is listed in the RFP Schedule and Significant Dates found in Section 1.4. The Evaluation Committee reserves the right to perform reference checks but is not required.

In this second round, evaluators will turn in new score sheets using the same evaluation criteria and scoring guidelines in Section 4.2 of the RFP. The Round 2 score sheet shall reflect the evaluator's overall assessment of the Offeror, inclusive of the written proposals and the oral presentations and/or any clarifications from Round 2.

Pursuant to HAR §3-122-53(c), proposals may be accepted on evaluation without the second-round discussion. The evaluation committee reserves the right to dispense with a second round and to base its recommendation solely on the first round proposals.

#### **4.5 IN THE EVENT OF A SCORING TIE**

Should a tie in total average score occur, the tied proposals will be compared, and the one with the higher average BMP score will be ranked higher. If that, too, is a tie, then the one with the higher average Overall Capabilities of Firm and Qualifications of Personnel – will be ranked higher.

**The contract will be awarded to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in Section 4.2 of the RFP.**

## SECTION FIVE: CONTRACT AWARD

### 5.1 AWARD OF CONTRACT

Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP pursuant to HRS §103D-303(g).

### 5.2 RESPONSIBILITY OF OFFERORS

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

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

If an Offeror is not compliant with the above HRS chapters at the time of award, the Offeror may not receive the award. The State reserves the right to move on to the next responsive, responsible Offeror who is compliant. The State will verify compliance on Hawai'i Compliance Express (HCE). Offerors who do not participate in HCE may submit paper compliance certificates to HTA at the time of award.

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

Vendors/Contractors/Service Providers intending to use HCE to demonstrate compliance are encouraged to register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00, and the 'Certificate of Vendor Compliance' is accepted for the execution of a contract and final payment.

Timely Registration on HCE. Vendors/Contractors/Service Providers are advised to register on HCE immediately. Although not a requirement for submission, if a Vendor/Contractor/Service Provider is not compliant at the time of award, an Offeror may not receive the award.

All certificates must be valid on the date the HTA receives it. Timely application for all applicable clearances is the responsibility of the Offeror.

Upon receipt of compliance documents, the HTA reserves the right to verify their validity with the respective issuing agencies. The Contractor shall maintain their compliance throughout the term of the Contract.

### **5.3 PROPOSAL AS PART OF THE CONTRACT**

This RFP and all or part of the successful proposal may be incorporated into the Contract.

### **5.4 PUBLIC EXAMINATION OF PROPOSALS**

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to HAR § 3-122-58. If a person is denied access to a State procurement record, the person may appeal the denial to the Office of Information Practices in accordance with HRS §92F-15.5.

### **5.5 DEBRIEFING/PROTEST**

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the source selection decision and contract basis.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Manager or his/her designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor following a debriefing shall be filed within five (5) working days, as specified in HRS §103D-303(h).

Pursuant to HRS §103D-701 and HAR §3-126-3 and 4, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing, hand delivered or sent via registered or certified mail, return receipt requested (the envelope should be labeled “PROTEST”) to the Procurement Manager at:

Procurement Manager  
Hawai‘i Tourism Authority  
Hawai‘i Convention Center, First Level  
1801 Kalākaua Avenue  
Honolulu, Hawai‘i 96815

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; provided further, that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Manager’s debriefing was completed.

At a minimum, the protest shall contain the following information:

- Name and address of the protestor;
- Appropriate identification of the procurement;
- A statement of the reasons for the protest; and
- Supporting exhibits, evidence, or documents to substantiate any claims unless not available with the required filing time, in which case the expected availability date shall be indicated.

Awards, if any, resulting from this solicitation shall be posted to the SPO website via HIePRO.

### **5.6 APPROVALS**

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

## 5.7 CONTRACT EXECUTION / NOTICE TO PROCEED

The successful Offeror receiving an award shall enter into a formal written Contract. Work will commence on the official commencement date specified on the Notice to Proceed. No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed. If the Contractor wishes to engage in preparation and planning, all work performed by the Contractor prior to the date specified on the Notice to Proceed shall be at the Contractor's sole cost and expense. The State of Hawai'i is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to this date.

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

## 5.8 INSURANCE

5.8.1 Prior to the Contract start date, the Contractor shall obtain and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Contractor shall provide proof of insurance for the following minimum required insurance coverage(s) and limit(s) in order to be awarded a Contract. The type of insurance coverage is listed as follows:

a. 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: bodily injury and property damage coverage with a minimum of \$3,000,000 per occurrence; personal injury of \$3,000,000 per occurrence; and with an 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.

b. Automobile Liability Insurance

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, or a \$2,000,000 single limit.

c. Errors and Omissions Insurance

Errors and omissions insurance coverage of \$3,000,000 per occurrence; and with an annual aggregated limit of \$5,000,000.

5.8.2 The Contractor shall deposit with the HTA, upon notification of award, certificate(s) of insurance necessary to satisfy the HTA that the provisions of the Contract have been complied with and to keep such insurance in effect and provide the certificate(s) of insurance to the HTA during the entire term of the Contract. Upon request by the State, the Contractor must furnish a copy of the policy or policies.

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

- 5.8.4 Each insurance policy required by this contract, including a Subcontractor's policy, shall contain the following clauses:
- “The State of Hawai‘i is added as an additional insured with respect to operations performed for the State of Hawai‘i.”
  - “It is agreed that any insurance maintained by the State of Hawai‘i will apply in excess of, and not contribute to, insurance provided by this policy.”
- 5.8.5 A Waiver of Subrogation shall apply to the General Liability, Automobile Liability, and Worker’s Compensation insurance policies and shall be in favor of the State of Hawai‘i.
- 5.8.6 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.
- 5.8.7 In addition, the Contractor is responsible for securing all employee-related insurance coverage for the Contractor and the Contractor’s employees and agents that are or may be required by law and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage at their own expense.

## 5.9 FEDERAL FUNDS

If this Contract is payable in whole or in part from federal funds, the 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, unless so determined by the State. 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.

## 5.10 PAYMENT

The awarded Contractor shall submit all invoices via email in accordance with the State’s invoicing guidelines. Pursuant to HRS 103-10, the State shall have thirty (30) calendar days after receipt of the invoice and satisfactory completion of deliverable to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period of time.

The State has allocated a maximum amount of funds for this contract. It is expected that the Contractor will be able to achieve all the goals set out in the Proposal without the need for any additional monies and will be responsible for delivering and completing all work agreed to within the proposed budget.

The Contractor will be put on a payment schedule. For each payment, the Contractor will be required to submit a list of associated deliverables along with an invoice. *In the event of a delay between services and payment, the Contractor agrees to utilize its own financial resources to fund at least two months of the services described in its proposal.* The “Conflicts of Interest Disclosures and Attestations” includes a statement that the Offeror will need to sign confirming that it has the availability of funds and agreeing to the use of these financial resources.

The official invoice date is the date that the invoice and all deliverables are received and accepted by the HTA. The invoice must also include the HTA contract number as well as a Contractor-generated invoice number. All required deliverables must be received along with or prior to receipt

of the invoice.

Invoices submitted prior to receipt of the necessary deliverables will not be accepted and will have to be resubmitted. The fiscal year ends June 30. Invoices received at the change of fiscal year, between June 1 and July 31, may be subject to delays in processing. See your contract administrator for details.

As previously mentioned, the Contractor must have a compliant CVC to receive the final payment.

**5.11 CONTRACT INVALIDATION**

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

**5.12 SUSPENDED OR DEBARRED CONTRACTORS**

A person or affiliate who is under investigation for procurement impropriety or is currently suspended or debarred in any jurisdiction, or placed on a convicted applicant list may not submit a proposal on a contract to provide any goods or services to the HTA and may not be awarded or perform work as a contractor, employee, agent, supplier, subcontractor, or consultant.

**5.13 COLLUSION**

The applicant, by submitting a proposal, certifies that its proposal is made without previous understanding, agreement, or connection either with any person, firm, or corporation submitting a proposal for the same services, or with the HTA. The applicant certifies that its proposal is fair, without control, collusion, fraud, or other illegal action. The applicant further certifies that it complies with the conflict of interest and code of ethics laws. The HTA will investigate all situations where collusion may have occurred and the HTA reserves the right to reject any and all proposals where collusion may have occurred.

**5.14 ADA COMPLIANCE**

At the request of the State, the Contractor shall produce all deliverables and reports in an accessible format compliant with Title II of the Americans with Disabilities Act (ADA) and Sections 504 and 508 of the Rehabilitation Act of 1973, as amended. The Contractor shall produce all reports and deliverables into the communication auxiliary aid(s), as directed by the State, during the duration of the contract period.

**5.15 HAWAIIAN ORTHOGRAPHY**

The Contractor shall produce all deliverables using proper Hawaiian orthography as directed by the State during the duration of the contract period.

## **SECTION SIX: ATTACHMENTS AND EXHIBITS**

- Attachment 01: Brand Marketing Plan Budget Plan Worksheets
  - Attachment 02: Performance Measures Worksheet
  - Attachment 03: Subcontractor References
  - Attachment 04: Offeror Check List
  - Attachment 05: Proposal Transmittal Letter
  - Attachment 06: Corporate Resolution
  - Attachment 07: Standard Qualifications Questionnaire
  - Attachment 08: Contractor References
  - Attachment 09: Partnership Opportunities
  - Attachment 10: Confidential Information list
- 
- Exhibit A: Brand Marketing Plan (BMP) Outline
  - Exhibit B: Overview of the RFP Process
  - Exhibit C: Federal Regulations
  - Exhibit D: HTA Travel Protocol
  - Exhibit E: Special Provisions
  - Exhibit F: General Provisions for Goods and Services
  - Exhibit G: General Conditions for 103D



## EXHIBIT A

### **Brand Marketing Plan (BMP) Outline**

This outline is intended to guide your drafting of the Brand Marketing Plan. The plan shall describe the marketing strategies and implementation actions aimed at fulfilling HTA Objectives, Key Performance Indicators (KPIs), and Performance Measures. The BMP should be clear and concise in communicating strategies, actions, and outcomes.

The BMP shall include the following components:

- A. **Market Analysis.** A clear and concise overview of the current market conditions, competition, economic indicators, and consumer as well as travel industry trends that are occurring in your market. As a result of all these variables, a summation of how you view the market potential specific to Hawai'i.
- B. **KPI Targets.** HTA has outlined seven annual KPI targets. Please propose revised targets if you disagree with HTA's proposed targets and provide supporting information and analysis justifying your adjustment.
- C. **Target Audience.** Identify specific target regions and segments focused on high-value and mindful travelers in your market that will have the greatest return on marketing objectives. Identify the total number of potential visitors in your target market, as well as household income, age group, and likelihood to travel overseas for leisure within the next twelve months.
- D. **Strategies.** Identify and describe your marketing strategies in the following categories:
  1. **Consumer**
    - Align with the target audience through direct consumer promotions, consumer events, and paid media to build brand awareness for the destination and educate consumers about safe and responsible travel.
    - Cooperative partnership strategy to include joint promotions with other consumer brands that align with the Hawaiian Islands brand.
  2. **Travel Trade**
    - Identify key travel trade targets, trade media, and rationale.
    - Strategy to educate and train tour operators and retail agents about Hawai'i, each individual island's unique brand, the Hawaiian culture, and safe and responsible travel. Outline methods for monitoring and evaluating the effectiveness of these educational efforts.
    - Airline strategy to develop airline relationships with the goal of monitoring and optimizing load factors and to support direct routes as directed.
    - Cooperative program strategy to include joint promotions with key industry partners. (Any cooperative agreement in the amount of \$50,000 or more must be submitted to and approved by HTA prior to agreement execution. Partner contributions shall be a minimum 1:2 match with 1 as a cash match, the other 1 may be cash and/or in-kind. All cooperative agreements must include force majeure language identical to that in HTA contract.)
    - Leisure group strategy to target high-value groups aligned with responsible and regenerative tourism efforts.
    - Assist HTA's Global MCI Contractor in securing MCI group business with a special focus on the state-owned Hawai'i Convention Center (HCC) and citywide convention growth.
  3. **Public Relations**
    - Identify potential story angles against market niches and target media channels and other partners that align with the targeted segments for the MMA.
  4. **Island Distribution**

- Drive multi-island visitation by developing initiatives and activities that are unique to each island and reinforce each island’s brand position.

5. Industry Collaboration

- Define a strategy to connect with both Hawai‘i and in-market industry partners to ensure the development of a collaborative marketing plan.

6. Research

- The HTA and DBEDT will perform primary and overall strategic research activities. The Contractor will be able to draw on existing research (<https://www.hawaiitourismauthority.org/research/>) and participate in planning for future research projects. The Contractor may only be compensated for Contractor-initiated research if it is not redundant to existing research and after prior approval of HTA. Identify all forms of research used and future needs to inform the development of initiatives as well as to measure BMP strategies and programs.

7. Gohawaii Digital Platforms

- Gohawaii.com serves as the central website for Hawai‘i travel inspiration and information for the consumer audience. It comprises a main English language site and additional sites in German, Spanish, French, Japanese, Korean, and Simplified Chinese. Also, gohawaii destination mobile applications and digital kiosks are also available for pre- and post-arrival visitor education. HTA’s Contractor for gohawaii.com and the destination mobile application and digital kiosks is responsible for developing, maintaining, analyzing, and optimizing the platforms. Please describe strategies for using these mediums to influence travel decisions specific to your market’s user habits and culture and to drive traffic to the platforms.

8. Social Marketing

- Currently, HTA supports channels on Facebook, Instagram, and more. HTA uses a centralized content management system for social (scheduling, publishing, social interaction management, usage-rights management, etc.), and all marketing Contractors are required to utilize this system. Hawai‘i content, such as photography, videos, stories, etc., are made available for all markets, and usage of these assets in the development of their social media content is left up to the discretion of the individual market. In addition to the core Hawai‘i content that HTA provides, please describe strategies specific to your market, including (but not limited to) social media content development, paid social media, and influencer marketing.

(Note: Contractor shall not develop a duplicative social media profile and will work with HTA in maintaining branded communications through social media channels.)

9. Creative Content

- The HTA seeks to globally align the Hawai‘i brand positioning by centralizing its creative assets. For specific creative needs that are not available in the Knowledge Bank, please describe your strategy to work with HTA for the development of these assets.

E. Major Campaigns and Programs. Describe key campaigns and programs, including program objectives, target audience, timeline, budget, components, and expected outcomes.

F. Performance Measures Methodology. Describe the measurement methodology used to develop the targets.

G. Incremental Program. Propose additional program(s) using the incremental budget that may be available during the second quarter of Calendar Year 2025 or later. Describe the program objectives, target audience, timeline, components, and expected outcomes.

## **EXHIBIT B**

### **OVERVIEW OF THE RFP PROCESS**

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 and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.

Upon award, proposal files are public records available for review by submitting a Request to Access Government Records.

All proposals and other material submitted by Offerors become the property of the State.

3. The Procurement Manager, or an Evaluation Committee approved by the Procurement Manager, will evaluate the proposals in accordance with the evaluation criteria in Section Four.
4. A "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals may be generated. The priority list may be limited to a minimum 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.
5. If, during discussions, there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to Priority Listed Offerors who submit acceptable or potentially acceptable proposals.
6. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Manager or an Evaluation Committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
7. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4 RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer will be construed as its BAFO.
8. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Manager or an Evaluation Committee will make its recommendation. The Procurement Manager will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in Section Four.
9. The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all successful and unsuccessful proposals become available for public inspection. The Offeror and the State agree that sections that are confidential and/or proprietary should be identified by the Offerors and excluded from access.
10. The Procurement Manager or an 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 Manager or an Evaluation Committee will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to the RFP.

11. 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 Hawai'i.

## EXHIBIT C

### FEDERAL REGULATIONS

The contract may be funded with federal money. Contractors and Subcontractors must be familiar with and be ready to comply with federal contracting requirements, including but not limited to those outlined in the Federal Acquisition Regulations.

By law, the State must report any violations, by Contractors or Subcontractors, of the 14 federal laws listed below:

- Fair Labor Standards Act
- Occupational Safety and Health Act
- Family and Medical Leave Act
- National Labor Relations Act
- Davis-Bacon Act
- Title VII of the Civil Rights Act
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Executive Order 11246
- Vietnam Era Veterans' Readjustment Assistance Act
- Section 503 of the Rehabilitation Act (of 1973)
- Executive Order 13658 - federal minimum wage
- Service Contract Act
- Migrant and Seasonal Agricultural Worker Protection Act

In addition, as part of "paycheck transparency," Contractors and Subcontractors are required to:

- Provide detailed information from their worker's pay stubs, including overtime, hours worked, and deductions.
- Provide written notice of all independent Contractors and their classification as such.
- Provide written notice of employees that are exempt from receiving overtime pay.

Additionally, Contractors and Subcontractors with contracts over \$1 million are prohibited from entering into arbitration agreements under Title VII for sexual assault or harassment. (Note: This rule does not apply if the workers are already under a collective bargaining agreement or if an arbitration agreement is already in place, though entering into arbitration agreements in anticipation of government contracting could be considered suspect.)

*The winning Contractor is solely responsible for knowing and abiding by all federal laws.*

## **EXHIBIT D**

### **HTA TRAVEL PROTOCOL**

As a State agency, HTA is required to follow an ethics code that informs our travel policy. HTA reserves the right to review Contractor's travel policy. If elements of the Contractor's policy fall outside of the following protocol, HTA will require the Contractor to take measures to ensure that all travel related to HTA work does not violate State ethics laws.

#### **1. Business Travel: HTA and Contractor Staff**

- HTA meetings – Contractors shall make their own arrangements with hotels at the prevailing “industry rate.” In conjunction with pre/post FAMs, HTA staff will work with Island Destination Marketing & Management Service Providers to negotiate group rates with hotels. Contractors shall never ask for or accept upgrades, including for air travel. Contractors shall use the lowest public rates for air to get to Hawai‘i.
- Contractor Educational FAM – HTA will work with Island Destination Marketing & Management Service Providers to negotiate group rates with hotels. Contractors shall never ask for upgrades.
- Escorting FAM – Contractors shall use a negotiated FAM rate for both hotel and air. If air or hotel is complimentary for customers, Contractors shall ask for industry rates. Contractors shall never ask for or accept upgrades, including for air travel.
- Industry meetings – Contractors shall make their own arrangements and ask for the prevailing “industry rate.” Contractors shall use the lowest public rates for air. Contractors shall never ask for or accept air upgrades.

#### **2. Customer Travel**

- HTA meetings – Contractors shall ask customers to work directly with airlines and hotels if they are coming to Hawai‘i for an HTA meeting and can make introductions if appropriate.
- Solo FAM – Contractors shall ask customers to work directly with airlines and hotels and can make introductions if appropriate.
- Organized FAM – It is acceptable to negotiate air and hotel group rates with hotels and airlines for customers based upon business potential.

#### **3. Media Travel**

- Solo Travel to cover a story – It is acceptable to introduce media partners to Island Destination Marketing & Management Service Providers for vetting and introduction to hotels and/or airlines for industry rate based upon media potential.
- Organized FAM – It is acceptable to negotiate air and hotel group rates based upon media potential.
- Engage Island Destination Marketing & Management Service Providers and HTA’s PR agency where appropriate.

#### **4. Personal Travel**

- Contractors shall not get involved with anyone, even customers, asking for favors. It is acceptable to make appropriate introductions for key customers. Contractors shall not ask for or accept personal favors of any kind for their own travel.

## EXHIBIT E

### SPECIAL PROVISIONS

As part of the proposal, Offerors are required to accept the State's General Conditions as amended in the RFP by the HTA. The HTA amendments to the General Conditions for this contract are as follows:

1. Coordination of Services by the State. Paragraph No. 1 of the attached General Conditions is amended to read as follows:
  - a. The Director of the Department of Economic Development and Tourism is the head of the purchasing agency ("HOPA"). A designee assigned by the HOPA will coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract.
  - b. The CONTRACTOR will maintain communications with the assigned designee 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.
  
2. Relationship of Parties. Paragraph No. 2a of the attached General Conditions is further clarified as follows:
  - a. Nothing herein shall be deemed to constitute CONTRACTOR and the HTA as partners, joint venturers, or principal and agent. CONTRACTOR shall have no authority to represent the HTA as an agent in any matters, unless such specific authority is expressly set forth by HTA in writing. The HTA shall have no liability for the acts or omissions of CONTRACTOR, its employees, or Subcontractors.
  - b. Although the CONTRACTOR as a legal entity may represent a competing market within a major market area ("MMA") provided in the RFP, the CONTRACTOR acknowledges and agrees that its Project Manager (Key Employee), as well as the CONTRACTOR's Staff, shall abide by the exclusivity guidelines provided for in this Contract.
  - c. Granted Trade Name. While under this Major Market Area CONTRACT, CONTRACTOR shall assume the trade name granted per this CONTRACT (normally but not necessarily in the form of "Hawai'i Tourism" followed by the name of the market). This assigned trade name shall be used in CONTRACTOR's business cards, letterhead, collateral, and materials and in all matters related to the promotion of Hawai'i as a visitor destination under this CONTRACT. Once the CONTRACT is ended, CONTRACTOR shall cease to use the assigned name. Use of the assigned name outside of the CONTRACT term or outside of the contract scope shall be grounds for termination and/or legal action.
  
3. Satisfactory Performance. Paragraph No. 2c of the attached General Conditions, entitled Relationship of Parties, is further clarified as follows:
  - a. Satisfactory Performance. CONTRACTOR acknowledges and agrees it shall be responsible for the satisfactory performance and supervision of the entire scope of work provided under this CONTRACT and conducted: in an efficient, timely, professional, and competent manner; in a cost-sensitive and economical manner; at all times and in all situations in the best interests of the HTA and the State of Hawai'i, commensurate with the highest standards of its profession and industry and in a manner that promotes and supports the public image, policies, programs, and goals of the HTA and the State of Hawai'i and

their working relationships with all other persons, and with a long-term view toward fulfilling the mission and objectives of the HTA; within the fixed price budget constraints and the requirements provided in this CONTRACT; so that all work under this CONTRACT shall be given the highest priority within CONTRACTOR's organization; and to achieve or exceed the key performance measures provided in the approved ANNUAL BMP.

- b. Acceptance Criteria. Each deliverable provided as part of the CONTRACTOR's scope of work, PROJECT, or CAMPAIGN shall be subject to acceptance by the HTA to verify that the deliverable satisfies the requirements and acceptance criteria as set forth in this CONTRACT. If no requirements or acceptance criteria are set forth with respect to a particular deliverable, the acceptance criteria for any such deliverable shall be based on the HTA's reasonable satisfaction therewith consistent with CONTRACTOR's obligations under this CONTRACT.

4. Hawai'i Compliance Express. Paragraph No. 2i of the attached General Conditions, entitled Relationship of Parties, is further clarified as follows: The current "designated certification process" is Hawai'i Compliance Express. In lieu of presenting the separate certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, as outlined in Paragraphs 2e, 2g, and 2h, the CONTRACTOR shall obtain and provide the HTA with a current Certificate of Vendor Compliance from the Hawai'i Compliance Express that is current within six (6) months of the start of the contract prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the Certificate of Vendor Compliance as required for final payment under section 103-53, HRS, as amended, and Paragraph 17 of these General Conditions.

5. Conflicts of Interest. Paragraph No. 5 of the attached General Conditions is further clarified as follows: CONTRACTOR acknowledges and agrees that it has represented to HTA, and HTA has justifiably relied upon such representation, that CONTRACTOR is duly authorized, by law and in equity, to conduct the PROJECT described in the PROPOSAL under the trade name or other name commonly understood for the PROJECT. CONTRACTOR shall avoid all conflict of interests that will not prevent and deter fraud, waste, and abuse, or will not provide increased economy to maximize, to the fullest extent practicable, the purchasing value of public funds. Any credible and reliable proof of such conflict of interest shall be cause to terminate this Contract and withhold any payment to CONTRACTOR.

6. Indemnification and Defense. Paragraph No. 7 of the attached General Conditions is further clarified as follows:

- a. Indemnification Claim. CONTRACTOR shall defend, save, indemnify, and hold the HTA and its directors, officers, employees, and agents, harmless from and against any and all civil, administrative, or investigative actions or proceedings commenced or threatened, ("Claim(s)"), any and all losses, liabilities, damages, penalties, and claims, including any and all related costs, expenses, taxes from any jurisdiction, and other charges, such as attorneys' fees and reasonable costs of investigation, litigation, settlement, judgment, interest, and penalties which the HTA may suffer or incur arising out of, or in connection with:

- (1) any real, tangible or intangible property or bodily injury, including death, occasioned by negligence, unlawful act, or willful misconduct of CONTRACTOR, or of CONTRACTOR's personnel, Subcontractors, or agents in the performance of this CONTRACT, as well as any Indemnification Claim for payment of compensation or salary asserted by any employee, agent, or subcontractor of CONTRACTOR;
- (2) subject to Section 17.b below, any Claim that the HTA's use of the Work Product,



Contractor Intellectual Property or any portion thereof infringes or violates any patent, copyright, trade secret, trademark, or other third-party intellectual property right;

- (3) subject to Section 17.b below, any Claim that the Work Product infringes or unlawfully misappropriates the patents, copyrights, trade secrets, or other intellectual property rights of any other party;
- (4) any Claims for amounts including, but not limited to, any and all taxes of any jurisdiction, interest and penalties, assessed against the HTA which are the obligation of the CONTRACTOR; and
- (5) all Claims or demands of whatever nature in connection with all creditors' claims, attachment liens, or other encumbrances (referred to in this CONTRACT as "Encumbrance(s)"), against the HTA or State of Hawai'i, arising from CONTRACTOR's performance of the scope of work under this CONTRACT and related to the services, labor, and materials furnished by CONTRACTOR or any of its subcontractors or any other person or entity, at any tier in the subcontract chain.

b. Intellectual Property Infringement Remedies. In the event that the HTA is in any way enjoined from using the Work Product or any portion thereof, CONTRACTOR shall promptly, at its own expense, including, but not limited to, the payment of any royalties occasioned by either of the following: (i) provide to the HTA non-infringing means of using the Work Product that are at least equivalent to the enjoined Work Product, or (ii) negotiate and procure for the HTA the right to use the Work Product without restriction. The HTA shall be required to give prompt notice to CONTRACTOR of any claim, litigation, or inquiry of being enjoined within ninety (90) calendar days after having actual knowledge thereof, and to grant to CONTRACTOR sole control of the defense of any such claim. CONTRACTOR shall have no liability, however, for any infringement claim based upon the combination of Work Product or CONTRACTOR Intellectual Property with third-party software or hardware not approved by CONTRACTOR, or based upon any modification or alteration of Work Product or Contractor Intellectual Property by the HTA or any third party, that is not approved by CONTRACTOR. The foregoing states the entire indemnification obligation of CONTRACTOR with respect to claims of infringement of patents, copyrights, trade secrets, or other proprietary rights regarding the work product or CONTRACTOR intellectual property.

c. Limitations of Liability. The CONTRACTOR acknowledges and agrees that in no event shall the State of Hawai'i or the HTA, its officers, directors, employees, and agents, be liable to CONTRACTOR or any third party for lost profits, incidental, indirect, consequential, special, punitive, or exemplary damages whatsoever arising out of or relating to this CONTRACT, regardless of the basis of the claim, including but not limited to, breach of CONTRACT, tort (including negligence), or by reason of the termination of this CONTRACT; the exercise of its discretion to not grant an option to extend the initial CONTRACT term; or, the non-renewal or non-extension of this CONTRACT. Without limiting the generality of the foregoing, the CONTRACTOR further acknowledges and agrees that the HTA and the State of Hawai'i shall not be liable to CONTRACTOR, or any other party, for any compensation, reimbursement, or damages on account of any loss of business, or termination of any contract or lease of real property or equipment executed by CONTRACTOR with any third party, based upon CONTRACTOR's sole reliance on an extension of this CONTRACT that may be suffered by CONTRACTOR or other party, including, but not limited to, severance payments to any employee.

d. Continued Performance. The HTA and CONTRACTOR agree to continue performing their respective obligations under this CONTRACT while a dispute is being resolved unless and until such obligations are terminated or expire in accordance with the provisions of this CONTRACT. Neither HTA or CONTRACTOR will be compensated for any time or expense related to the dispute resolution process, and both will treat the existence and results of any dispute resolution process as Confidential Information of both CONTRACTOR and HTA. Neither HTA or CONTRACTOR may disclose the existence of the dispute, evidence taken, resulting opinions or settlements of the dispute hereunder without the prior written consent signed by the other. This prohibition shall not apply to disclosures to counsel, made in documents filed with a court or required by law.

7. Suspension of Contract. Paragraph No. 12 of the attached General Conditions are further clarified as follows: Right to Stop Work. CONTRACTOR acknowledges and agrees that the HTA shall have the right to stop or suspend any work being conducted consistent with paragraph 12 of the ATTACHMENT 6 General Conditions, as further clarified in ATTACHMENT 5 Special Provisions of this contract, and to withhold any payment due CONTRACTOR whenever the HTA (i) has concerns or questions related to CONTRACTOR's performance of the ANNUAL BMP; (ii) reasonably concludes that the work is not consistent with the achievement of the KPIs or other measures of success approved by HTA; (iii) has determined that CONTRACTOR's implementation of the ANNUAL BMP is inconsistent with or contrary to the HTA's strategic directions, goals, objectives, strategies, actions and evaluation, and as may be subsequently amended or revised; or (iv) has determined that the CONTRACTOR's scope of work under this CONTRACT is being conducted by HTA or its other contractors.

8. Suspension of Contract. Paragraph No. 12(a) of the attached General Conditions, entitled Order to Stop Performance, is further clarified as follows: The HTA may, by written order to CONTRACTOR at any time, and without notice to any surety (if any), require CONTRACTOR to stop or suspend all or any part of the work under this CONTRACT upon the issuance by HTA of a Stop Work Order. This Stop Work Order shall be for a specified period not exceeding ninety (90) calendar days after the Stop Work Order is delivered to CONTRACTOR, unless further extended by HTA upon prior consultation with CONTRACTOR. Upon receipt of a Stop Work Order, CONTRACTOR shall promptly comply with its terms and take all reasonable steps to minimize the occurrence of expenditures allocable to the scope of work covered by the Stop Work Order during the period of work stoppage.

9. Suspension of Contract. Paragraph No. 12(b) of the attached General Conditions, entitled Cancellation or Expiration of the Order, is further clarified as follows: If a Stop Work Order is cancelled during the period specified in the Stop Work Order, or any extension thereof expires, CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the time of performance or compensation, or both, in accordance with the change order process provided in this CONTRACT. The ANNUAL BMP shall be modified in writing accordingly, if: (i) the Stop Work Order results in any change to the ANNUAL BMP and the amount budgeted under the ANNUAL BMP BUDGET WORKSHEET; and (ii) CONTRACTOR asserts a claim for such an adjustment within thirty (30) calendar days after the end of the period of work stoppage. However, if the HTA Contracting Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to expiration or termination of this CONTRACT.

10. Suspension of Contract. Paragraph No. 12(c) of the attached General Conditions, entitled Termination of Stopped Performance, is further clarified as follows: Before the Stop Work Order expires, or before the expiration of any further period to which the HTA and CONTRACTOR shall have agreed to in writing, the HTA Contracting Officer shall either: (1) cancel the Stop Work Order or (2) terminate the scope of work covered by such Stop Work Order as provided in this CONTRACT as either a termination for default or for convenience.

11. Termination for Default. Paragraph No. 13a of the attached General Conditions, entitled Default, is further clarified as follows: "Failure to perform any of the provisions of this Contract" is defined as but is

not limited to: (i) failing to achieve the targets, strategies, initiatives, schedules, directives, and the key performance indicators as provided by the CONTRACTOR, and approved by HTA, in response to the RFP; (ii) refusing or failing to perform any of the provisions of this CONTRACT, in whole or in part, with such diligence as will ensure its completion within the time specified in this CONTRACT, or any extension thereof; (iii) failing to timely satisfy this CONTRACT; or (iv) committing any other material breach of this CONTRACT.

12. Termination for Default. Paragraph No. 13c of the attached General Conditions, entitled Compensation, is further clarified as follows: The STATE may withhold from amounts due the CONTRACTOR such sums for goods and services that are not accepted by the STATE as a result of breach or default. CONTRACTOR shall not be entitled to any claim for damages, including incidental, indirect, consequential, special, punitive or exemplary damages, arising from termination for default.

13. Change Order. Paragraph No. 20 of the attached General Conditions is further clarified as follows: A change order process has been developed for all material changes to the scope of work under this CONTRACT, the approved ANNUAL BMP, or ANNUAL BMP BUDGET WORKSHEETS. See ATTACHMENT 1 of this CONTRACT, Scope of Work, Section 2.2

14. Competitive Advantage. Paragraph No. 24a of the attached General Conditions, entitled Confidentiality of Material, is further clarified as follows: If at any time during the authorized term of this CONTRACT, CONTRACTOR provides destination marketing services and activities to any HTA Competitor that are similar to the scope of work required under this CONTRACT, CONTRACTOR shall protect HTA information by complying with the required procedures as outlined in this CONTRACT. CONTRACTOR shall at all times maintain the confidentiality of information that is necessary to protect Hawai'i's competitive advantage as a visitor destination. Expectations are further clarified in ATTACHMENT 1 of this CONTRACT, Scope of Work, Section 1.8(b).

15. Uniform Information Practices Act. Paragraph No. 24b of the attached General Conditions, entitled Confidentiality of Material, is further clarified as follows: CONTRACTOR acknowledges and agrees that the HTA, as a government agency of the State of Hawai'i, United States, must comply with the provisions of the Hawai'i Uniform Information Practices Act ("UIPA"), codified as a body of law under chapter 92F, Hawai'i Revised Statutes, and that all documents maintained by the HTA are presumed to be subject to public disclosure unless otherwise exempt from public disclosure pursuant to specific exceptions provided by law. CONTRACTOR further acknowledges and agrees that as an HTA contractor receiving Public Funds, CONTRACTOR may also be required to comply with the UIPA by making documents maintained by CONTRACTOR in its offices and related to the performance of this CONTRACT available for public inspection unless otherwise deemed proprietary and confidential.

16. Entertainment & Travel Policy. As a State agency, the HTA is required to inform offerors of Hawai'i Administrative Rules §3-123-9, regarding entertainment, and the requirement to follow the HTA's travel policy that is informed by the State ethics code. The HTA will require the offeror to take measures to ensure that all entertainment related to the HTA Contract work plan is appropriate and allowable, and not in violation of applicable law. Further, if elements of the contractor's travel policy fall outside of the HTA travel policy, HTA will require the contractor to take measures to ensure that all travel related to HTA work does not violate State ethics laws.

a. Entertainment: HAR §3-123-9, provides the following guidelines:

- i. Entertainment costs are unallowable and include costs of amusements, social activities, and incidental costs as meals, beverages, lodging and transportation, and gratuities.
- ii. Nothing herein shall make unallowable a legitimate expense for job-related employee health, welfare, food service, or lodging costs, except that, where a net profit is generated by such services, it shall be treated as a credit as provided in section §3-123-21. Costs incurred for meetings or conferences, including, but not

limited to, costs of food, rental facilities, and transportation, are not allowable except where the primary purpose is the dissemination of technical information or the establishment of specific project policies as a partnering conference.

- b. See HTA's travel policy, attached as the Exhibit entitled "HTA Travel Protocol." HTA reserves the right to review CONTRACTOR's travel arrangements.

17. Ownership Rights and Copyright. Paragraph No. 26 of the attached General Conditions is amended to read as follows:

- a. Work Product and HTA Intellectual Property.

- (1) Title to all materials, documentation, and Intellectual Property furnished by the HTA to CONTRACTOR and created by CONTRACTOR in the performance of this CONTRACT, shall remain in the HTA. CONTRACTOR shall deliver to the HTA any and all Work Product and property, including all copies thereof on whatever media rendered, upon (i) the HTA's request, (ii) completion of the ANNUAL BMP, and (iii) the termination of this CONTRACT for any reason. (As used herein in this CONTRACT, "Intellectual Property" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, including patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all marks, whether protected under any law, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) writings and other works subject to copyright protection under the U.S. Copyright Act and/or international treaties, including all copyrighted works, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all trade secrets and proprietary business information (including ideas, research and development, know-how, formulas, compositions, manufacturing, distribution, and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential client information and lists, current and potential travel industry businesses information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts), (e) all computer software (including data, disks, licenses and related documentation), (f) all websites and domain names including, but not limited to, domain names registered, assigned, or licensed to Contractor by the HTA, and the contents of all such web sites; (g) all other proprietary and intangible rights and assets, whether actually or potentially related to the Services, and (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium.)
- (2) CONTRACTOR shall not incorporate any third-party materials, information, data, or code in any Work Product without prior notice to the HTA.
- (3) CONTRACTOR will disclose to the HTA all Work Product and HTA Intellectual Property developed by or for CONTRACTOR promptly when made or developed. CONTRACTOR acknowledges and agrees that (1) all Work Product and HTA Intellectual Property are the property of the State of Hawai'i and the HTA and all ownership, right, title, and interest therein have vested and shall vest solely with the State of Hawai'i and the HTA; and (2) all Work Product is and shall be deemed to be a "WORK MADE FOR HIRE" under United States Copyright Laws (17

U.S.C. Section 101 et seq., as amended) and other applicable laws. To the extent that title to any such Work Product may not, by operation of law, vest in the State of Hawai'i and/or the HTA, or such works may not be considered to be work made for hire, CONTRACTOR hereby irrevocably assigns to the State of Hawai'i and the HTA all ownership, right, title, and interest that CONTRACTOR may have in such Work Product, without additional compensation and free of all liens and encumbrances of any type.

- (4) The State of Hawai'i shall have the right to obtain and to hold in its own name or in the name of any of its agencies, including the HTA, copyrights, trademarks, trade names, service marks, registrations or other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. CONTRACTOR agrees to give the State, the HTA, or any person designated by the HTA, all reasonable assistance required to perfect and enforce the rights in such Work Product and HTA Intellectual Property made or developed by or for CONTRACTOR. CONTRACTOR agrees to execute and assist in the preparation of any document that the HTA may consider necessary or helpful in obtaining or maintaining any patents, copyrights, registration, or other proprietary rights in the Work Product and such HTA Intellectual Property. In the event that any such right, title or interest should be obtained by CONTRACTOR in contravention hereof, CONTRACTOR shall hold the same on behalf of the HTA and shall transfer the same to the HTA upon request at the sole expense of CONTRACTOR.

b. Trade Names, Marks and Domain Names.

- (1) As used herein in this CONTRACT, "Marks" means trademarks, service marks, trade names, logos, corporate names, trade devices, or simulation thereof owned by, or licensed to the HTA. HTA shall provide to CONTRACTOR the names, logos and Marks that the CONTRACTOR is authorized to use in performing the scope of work described in this CONTRACT. The CONTRACTOR and HTA, as the case may be, agree to update these names, logos and Marks upon the earlier of the acquisition or registration of additional names, logos and Marks.
- (2) CONTRACTOR agrees that all names, logos, slogans, and Marks used in carrying out the marketing of the MMA pursuant to the terms of this CONTRACT, and all goodwill associated with or symbolized thereby, shall be the sole and exclusive property of the State of Hawai'i and the HTA, and shall constitute Work Products in accordance with this CONTRACT.
- (3) CONTRACTOR shall not use the HTA's name or any logo or Mark owned by the HTA, including, but not limited to, the State Seal of the State of Hawai'i, which only HTA is authorized to use for tourism activities, in any promotional or marketing materials or presentations without the HTA's prior knowledge and consent. CONTRACTOR shall only use the HTA's Marks in accordance with a separate written license agreement signed by both HTA and CONTRACTOR. CONTRACTOR shall do nothing inconsistent with the State of Hawai'i and the HTA's ownership of the Marks and related goodwill and agrees that all use of the Marks by CONTRACTOR shall inure to the benefit of the HTA. CONTRACTOR shall not use any of the Marks or any other logo, trademark, service marks or trade names used by the HTA in any manner as a part of its business, corporate or trade name or otherwise for itself, its members (if any) or its affiliates, except and unless expressly permitted hereunder. All HTA Marks shall be used in strict compliance with any and all license agreements and policy guidelines for use thereof adopted by the HTA from time to time during the Term

of this CONTRACT.

- (4) CONTRACTOR and HTA understand and agree that the terms "HTA Intellectual Property" and "Work Product" shall exclude any Marks, names and logos that are owned by third parties and identify such party.
- (5) CONTRACTOR hereby acknowledges and agrees on its own behalf, and on behalf of the HTA, to comply with, and adhere to the provisions of any applicable domain name registration agreement related to the MMA for which CONTRACTOR is responsible and timely pay all amounts due thereunder for renewals, or otherwise, to maintain the registration and validity of the domain names.

c. Assignment and Licenses.

- (1) In consideration of the HTA's payment to CONTRACTOR of amounts under this CONTRACT, and to the extent that title to any such Work Product may not, by operation of law, vest in the HTA, or such Work Product may not be considered to be work made for hire, CONTRACTOR hereby:
  - (a) irrevocably transfers and assigns to the HTA in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights, including, without limitation, applications for registration thereof, and all priority rights therein under applicable international conventions for the protection of such rights in, and ownership of, the Work Product that CONTRACTOR may have, as and when such rights arise; and
  - (b) grants to the HTA an unrestricted, irrevocable, non-exclusive, fully paid up, perpetual license, with the right to assign and sublicense, subject to confidentiality obligations no less stringent than those set forth in this CONTRACT, in and to CONTRACTOR's proprietary rights to such Work Product and the CONTRACTOR's Intellectual Property used in connection therewith.
- (2) Cooperation. CONTRACTOR shall cooperate fully in (i) vesting in the HTA the ownership of the proprietary rights to the Work Product, and (ii) assisting the HTA in obtaining patent, copyright, or any other intellectual property rights in the Work Product and in maintaining and protecting the HTA's proprietary rights including, without limitation, executing any documents which the HTA reasonably deems necessary for such purpose.
- (3) Attorneys-in-Fact. CONTRACTOR hereby agrees, and irrevocably appoints and designates the HTA and its duly authorized designees, officers, employees, and/or agents as CONTRACTOR's agents and attorneys-in-fact, to execute and file any necessary document and to do all other lawfully permitted acts to effectuate the provisions of this Section and to further the prosecution and issuance of patents, copyrights, or other rights thereon with the same legal force and effect as if executed by CONTRACTOR.
- (4) License by the HTA. The HTA hereby grants, assigns, or authorizes CONTRACTOR a nonexclusive, limited license during the term of this CONTRACT to use any designated HTA Intellectual Property provided to CONTRACTOR, Work Product developed by CONTRACTOR for the HTA, Marks and domain names reserved or developed by CONTRACTOR pursuant to, or in connection with this CONTRACT or otherwise belonging to the HTA, and only for the specific purpose of performing the CONTRACTOR's scope of work

described in this CONTRACT.

- (5) Data. All HTA information, including, without limitation, data and related reports regarding the HTA, is the exclusive property of the HTA and the furnishing of such information to, or access to such information by, the CONTRACTOR and its subcontractors shall not grant any express or implied license to the CONTRACTOR and its subcontractors relating to such information, except as required to perform the scope of work pursuant to this CONTRACT. Upon request by the HTA at any time and without regard to the default status of either HTA or CONTRACTOR, and in no event later than thirty (30) calendar days following the expiration or early termination of this CONTRACT, CONTRACTOR and its subcontractors shall promptly deliver to the HTA such HTA information including, without limitation, data and related reports regarding the business of the HTA or the CONTRACTOR's scope of work, in the possession or control of the CONTRACTOR and its subcontractors in electronic tape or other format designated by the HTA and in such hard copy as existing on the date of the request by the HTA.
- (6) Remedies. By virtue of the duties and responsibilities of CONTRACTOR under this CONTRACT and the special knowledge of the affairs and operations of the HTA that CONTRACTOR will have as a result of CONTRACTOR's relationship with HTA under this CONTRACT and the special knowledge that CONTRACTOR will have of the HTA Intellectual Property and Confidential Information and the Work Products or other information which, at law or in good conscience or equity, ought to remain confidential, CONTRACTOR acknowledges and agrees that great loss and irreparable damage would be suffered by the HTA if CONTRACTOR should breach or violate any of the covenants and agreements set forth in this CONTRACT that may not be wholly compensable in monetary damages. CONTRACTOR further acknowledges and agrees that each such covenant and agreement is reasonably necessary to protect and preserve the interests of the HTA. Therefore, in addition to all of the other remedies provided at law or in equity, the HTA shall be entitled to a preliminary injunction, temporary restraining order, and a permanent injunction to prevent a breach of any of such covenants or agreements. This provision shall survive the termination, expiration or cancellation of this CONTRACT.

18. Jurisdiction. Paragraph No. 34 of the attached General Conditions, entitled Governing Law, is further clarified as follows: The HTA and CONTRACTOR hereby submit and consent to the exclusive jurisdiction of any state or federal court sitting in Honolulu, Hawai'i, U.S.A., and irrevocably agree that all actions or proceedings relating to this CONTRACT shall be litigated in such courts, and HTA and CONTRACTOR waive any objection, which they may have, to the conduct of any such action or proceeding in such court based on improper *venue or forum non conveniens*.

19. Environmental Sustainability. CONTRACTOR shall use its best efforts to incorporate and implement the "green" practices into the various activities and events related to the PROJECT and as specifically described in Section III of the RFP entitled "Environmental Sustainability."

20. Authentic and Accurate Representation. CONTRACTOR shall use its best efforts to incorporate and implement authentic and accurate representations that would perpetuate and promote the uniqueness and integrity of the Native Hawaiian culture and community. CONTRACTOR shall utilize the HTA "Style & Resource Guide" to provide guidance regarding facts about the Hawaiian islands, properly depicting Hawaiian sites and culture, and sharing insights into promoting Hawai'i sensitively and safely.

21. Technical Assistance Programs. CONTRACTOR shall attend HTA mandated training workshops and seminars on the HTA contracting process or other topics deemed relevant by HTA.

22. Execution in Counterparts. This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. This Contract may be executed and delivered by any party via facsimile transmission or other electronic transmission (e.g., email).



## EXHIBIT F

### GENERAL PROVISIONS FOR GOODS AND SERVICES

#### 1. DEFINITIONS OF TERMS

Terms, as applicable and as used in these General Provisions, unless the context requires otherwise, shall have the following meaning:

a. BID

Bid means any offer submitted in competitive sealed bidding or the second phase of multi-step bidding.

b. BID PROPOSAL GUARANTY OR SECURITY

The security, when required, furnished by an Offeror with his offer to ensure that the Offeror will enter into the contract with the State and execute the required contract and payment bonds covering the work contemplated if his offer is accepted.

c. CONTRACT

Contract means the combination of the solicitation, including the instructions to Offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

d. CONTRACT BOND

The approved form of security furnished by the Contractor and his surety or sureties or by the Contractor alone to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials, and supplies furnished, used or incorporated in the work.

e. CONTRACTOR

An individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of work under the terms of the contract with the State and acting directly or through his, their or its agents, employees, or Subcontractors.

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

General Conditions issued by the Department of the Attorney General of the State of Hawai'i, referred to as Form AG-008, as revised and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect, at the date the solicitation is issued.

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

- i. HAR  
Hawaii Administrative Rules
- j. HEAD OF THE PURCHASING AGENCY  
The head of any agency with delegated procurement authority by law or from a chief procurement officer of this State to enter into and administer contracts.
- k. HRS  
Hawaii Revised Statutes
- l. IFB  
Invitation for Bids
- m. OFFER  
An offer means a bid or proposal, as defined in sections 1a and 1p, in response to any solicitation.
- n. OFFEROR  
Any individual, partnership, firm, corporation, joint venture, or other legal entity, submitting directly or through a duly authorized representative or agent an offer for the work or services contemplated in response to a solicitation as defined in 1s.
- o. PROCUREMENT OFFICER  
Procurement officer is the person with a procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.
- p. PROPOSAL  
A proposal means any offer submitted in response to any solicitation, except a bid, as defined in section 1a.
- q. PURCHASING AGENCY  
Purchasing agency means any governmental body authorized by law or rules or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- r. RFQ  
Request for Quotes
- s. RFP  
Request for Proposals

t. SOLICITATION

Solicitation means an invitation for bids (“IFB”) used in the competitive sealed bidding process, a request for quotes (“RFQ”) used in the small purchases process, or a request for proposals (“RFP”) used in the competitive sealed proposal process for the purpose of obtaining quotes, bids or proposals to perform a State contract.

u. SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained and in addition to these General Provisions, including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the Contractor.

Additions or revisions to the General Provisions, which shall be considered a part of the General Provisions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the Special Provisions. Should any Special Provisions conflict with these General Provisions, said Special Provisions shall govern.

v. SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an Offeror must offer to be considered for award.

w. STATE

State means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the Department of Education, University of Hawaii, the division of community hospitals, and the Office of Hawaiian Affairs, except where specifically included in any particular solicitation.

x. SURETY

The individual, firm, partnership, or corporation other than the Contractor which executes a bond with and for the Contractor to ensure the Contractor’s acceptable performance of the contract.

y. WORK

The furnishing by the Contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

**2. COMPETENCY OF OFFEROR**

Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status, or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the State. Any such inquiries shall be

made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

The purchasing agency reserves the right to visit an Offeror's place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate the evaluation of performance capabilities.

3. **OFFER INCORPORATES SOLICITATION**

The solicitation, including the AG's General Conditions, Specifications, General Provisions, and any Special Provisions, and other documents referenced in or attached to the solicitation shall be considered a part of the offer, whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted, and any alterations so made by the Offeror may be cause for rejection of the offer.

4. **PREPARATION OF OFFER**

An Offeror may submit only one offer in response to a solicitation. If an offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Competing subsidiary or jointly owned companies may submit bids or proposals, and these may be accepted for evaluation and award if such companies submit with their bids or proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

Unless otherwise specified in the solicitation, all prices shall include applicable Federal, state, and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the Offeror duly authorized to submit offers on the Offeror's behalf. Electronic signatures are acceptable.

5. **LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS**

Offers are only submitted through HIePRO. Late submissions will automatically not be accepted.

6. **DISQUALIFICATION OF OFFERORS**

An Offeror shall be disqualified, and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected, and any participant to such collusion will be barred from future solicitations until reinstated; or Offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended.

7. **IRREGULAR OFFERS**

Offers will be considered irregular and shall be rejected for reasons including but not limited to the following: if the offer is unsigned by the Offeror, unless otherwise specified in the solicitation; if the required offer guaranty received separately from the offer is not

identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with the solicitation; if the Offeror or surety fails to sign the surety bond submitted as offer guaranty; if Offeror fails to use the surety bond form furnished by the State or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

8. **STANDARDS OF CONDUCT**

All Offerors should be certain that their offer is not in violation of HRS §84-15. This section provides as follows:

- a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:
  - (1) The contract is awarded by competitive sealed bidding pursuant to Section 103D-302;
  - (2) The contract is awarded by competitive sealed proposal pursuant to Section 103D-303; or
  - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.
- b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

9. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

Unless otherwise specified in the solicitation, a legislative body has appropriated the funds for this contract.

Therefore, if awarded a contract in response to this solicitation, Offeror agrees to comply with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State and county government Contractor during the term of the contract if the Contractor is paid with funds appropriated by a legislative body.

10. **ACCEPTANCE OF OFFER**

- a. Acceptance of offer, if any, will be made within one hundred twenty calendar days after the opening of offers, and the prices quoted by the Offeror shall remain firm for the one hundred twenty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible Offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible Offeror, offers will be evaluated not only on the amounts thereof but

on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The Offeror must have the ability to perform as called for in the contract terms. The State shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible Offeror or may publish another call for offers; provided in the case of only one remaining responsible Offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other Offeror.

## **11. EXECUTION OF CONTRACT**

The following subsections shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded:

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the State shall forward a formal contract to the successful Offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond, if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract shall be considered binding upon the State until the contract has been fully and properly executed by all the parties thereto. The State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only State but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of State. As to the portion of the contract price, as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the Contractor only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the Federal government.

**12. CONTRACT BOND**

- a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the Contractor to the State at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty percent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.
- c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in the solicitation. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

**13. FAILURE TO EXECUTE CONTRACT**

If the Offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by Section 12 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of Offeror's proposal guaranty, as required in the solicitation, into the State Treasury as a realization of the State. The procurement officer may thereupon award the contract to the next lowest responsible Offeror or may call for new offers, whichever method he may deem is in the best interest of the State.

**14. RETURN OF OFFER GUARANTEES**

All offer guarantees submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful Offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guarantees, except surety bonds, will be returned.

**15. PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with the statute.

**16. DELIVERY EXTENSIONS**

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the State in its solicitation requirements, and all goods must be delivered with the time specified. However, the Contractor will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of

transportation, act of God, or other reason beyond his control, provided that he notifies the State of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the Contractor's purchase order, manufacturer's acknowledgment, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the Contractor. The State shall be the sole judge of whether such delay is truly beyond the control of the Contractor and whether extension will be granted. The State reserves the right to terminate the contract or to assess liquidated damages if provided for in the contract, for delays not covered by specific authorized extension.

**17. PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the procurement officer or their authorized representatives, either personally or as officials of the State, it being understood that in such matters, they act solely as agents and representatives of the State.



## **EXHIBIT G**

### **General Conditions for 103D**

HAWAI'I REVISED STATUTES (HRS) CHAPTER 103D

(Updated July 2017)

Attached are the General Conditions, dated July 2017, which are made a part of all offers in response to the solicitation for goods and services. These provisions are in addition to the special provisions provided in the individual solicitations. Offerors are cautioned to read and understand all the terms and conditions contained in the General Provisions, as these provisions will also be made part of the contract for goods and services.

# 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 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.