



**RELEASE DATE: July 29, 2024**

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

**REQUEST FOR PROPOSALS**

**RFP NO. 25-02**

**Management of the Hawai‘i Convention Center**

**OFFERS ARE DUE BY 2:00 P.M. HAWAI‘I STANDARD TIME (HST) ON  
September 5, 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 HAWAI‘I 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  
Hawai‘i 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

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### 1.1 INTRODUCTION

The Hawai‘i Tourism Authority (HTA) is the state agency responsible for representing the Hawaiian Islands worldwide 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), and is administratively attached to the Department of Business, Economic Development and Tourism (DBEDT).

The HTA is seeking a public assembly facility management company capable of providing a full range of comprehensive management, operation, and marketing services for the Hawai‘i Convention Center in Honolulu, Hawai‘i (“HCC”). The Authority invites submittals from qualified firms that have proven experience in conventions, exhibitions, major sporting venues, major entertainment venues, and/or other major public assembly facility management.

The successful offeror shall be an independent contractor and shall furnish all management, supervision, labor, and any or all other services, as required by the Authority, consistent with generally accepted operations of a first-class convention center. The successful offeror shall be responsible for the maintenance of the HCC land, building, furniture, fixtures, and equipment; management of various product and service providers; coordination of HCC utilization and scheduling; and any other responsibilities as may be required in the Management Contract, which may include marketing. All construction management for repair and maintenance and capital improvements made to the HCC shall be approved by the Hawai‘i Tourism Authority.

A major roof/terrace replacement project is tentatively scheduled for the Calendar Years 2025 and 2026. The exact date has yet to be determined.

### 1.2 FACILITY OVERVIEW

The HCC opened to the public in June 1998 and is used for a variety of events, including conventions, trade shows, public shows, meetings, and sporting events. The HCC offers approximately 350,000 square feet of rentable space, including 51 meeting rooms. In addition to the rental space, it houses food service spaces, parking, storage, and offices for building management. The facility is in operation year round.

Located at 1801 Kalākaua Avenue Honolulu, Hawai‘i, 96815, the Hawai‘i Convention Center is a state-owned facility built and operated continuously since 1998. For more information on the HCC, please visit [www.meethawaii.com/convention-center](http://www.meethawaii.com/convention-center).

### 1.3 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
DOTAX	Hawai‘i Department of Taxation
DPP	Department of Planning and Permitting, City and County of Honolulu
GC	General Conditions. Contract terms required by the Hawai‘i Attorney General’s Office.
GET	General Excise Tax
GP	General Provisions
HANDS	Hawai‘i Awards & Notices Data System
HAR	Hawai‘i Administrative Rules. State rules outlining procedures for applying statute.
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
IRS	Internal Revenue Service
MCI	Meetings, Conventions & Incentives
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
Procurement Manager	The procurement and contracting manager for the Hawai‘i Tourism Authority.
RFQ	Request for Qualifications, 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.

## 1.4 ELECTRONIC PROCUREMENT

- 1.4.1** 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).
- 1.4.2** 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 1.5 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.
- 1.4.3** 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.

- 1.4.4** 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 due date/time.
- 1.4.5** 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. The prospective Offeror is responsible for monitoring HiePRO to obtain any RFP addenda or other information relating to the RFP.
- 1.4.6** 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.

**1.5 RFP SCHEDULE AND SIGNIFICANT DATES**

The schedule of key dates provided below 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. The contract start date will be subject to the issuance of a Notice to Proceed. Some schedule items may not be necessary. No questions will be received after the Written Questions deadline.

<b>Request for Proposals (RFP) Activities</b>	<b>Scheduled Date (Subject to Change)</b>
Distribution of RFP	Monday, July 29, 2024
Pre-Proposal Conference via Zoom (Register in advance for the Zoom webinar link)	Friday, August 2, 2024 @ 9:00 – 10:00 AM HST
Deadline to Submit Written Question (must be submitted in HiePRO)	Wednesday, August 7, 2024 @ 2:00 PM HST
State’s Response to Written Questions (will be posted in HiePRO)	Friday, August 9, 2024
Deadline to Submit Notice of Intent to Offer (Mandatory)	Monday, August 12, 2024 @ 2:00 PM HST
Hawai‘i Convention Center Site Visits	Week of August 19, 2024
<b>Proposal Due Date/Time, Evaluation Period Begins</b>	<b>Thursday, September 5, 2024 @ 2:00 PM HST</b>
Priority Listed Offeror Selection & Notification	Monday, September 16, 2024
Oral Interviews	Week of September 23, 2024
Best and Final Offer Due (if requested)	Week of September 30, 2024
Notice of Award Selection (estimate)	Week of October 7, 2024

<b>Contract Activities</b>	<b>Scheduled Date (Subject to Change)</b>
New Contract Execution (estimate)	Week of October 28, 2024
Contractor Orientation	Week of October 28, 2024
Start of Transition Contract, if applicable	Week of November 4, 2024
Expiration of Incumbent Contract	Tuesday, December 31, 2024
End of Transition Contract, if applicable	Tuesday, December 31, 2024
Start of Management Contract	Wednesday, January 1, 2025
End of Management Contract	Monday, January 1, 2035

**1.6 PRE-PROPOSAL CONFERENCE**

The purpose of the pre-proposal conference is to provide Offerors an opportunity to be briefed on this procurement and to ask questions about the procurement process. The pre-proposal conference is not mandatory, but attendance is highly recommended. The pre-proposal will be held on the date noted in the RFP schedule via Zoom teleconference. You must register in advance for this webinar using this link: [https://us06web.zoom.us/webinar/register/WN\\_A0eB1HamRLS\\_UThbbrT7tg](https://us06web.zoom.us/webinar/register/WN_A0eB1HamRLS_UThbbrT7tg)

After registering, you will receive a confirmation email containing information about joining the webinar.

**1.7 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS**

All questions must be submitted through HIEPRO. Questions must be submitted by the deadline for written questions shown in the 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.

**1.8 NOTICE OF INTENT TO OFFER (MANDATORY)**

If you are interested in responding to this solicitation, for confidentiality reasons, the Offeror must email the information specified below to [procurement@gohta.net](mailto:procurement@gohta.net) with “HTA RFP 25-02 Notice of Intent to Offer” in the subject line by the deadline noted in the RFP Schedule. This email will serve as registration for the site visit and 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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**1.9 HAWAI‘I CONVENTION CENTER SITE VISITS**

HTA will hold separate site visits with each applicant who submitted a Notice of Intent to Offer by the deadline noted in the RFP Schedule. At least one applicant representative must be physically present for the meeting. Potential applicants should thoroughly review the RFP and all attachments and other information available on the HIEPRO website.

An Authority representative will be in contact with Offerors the **Week of August 12, 2024**, to schedule individual visits. Prior to the site visits, documents regarding HCC facilities and operations will be provided only to Offerors who submitted a Notice of Intent to Offer by the deadline. The general categories of the documents that will be provided, but not limited to, are floorplans, relevant legislation, event and financial information, marketing information, and other information deemed appropriate by the Authority.

During the individual site visits, each Offeror will be given one day to visit all pre-identified areas and operations of the HCC. HTA reserves the right to provide addenda to this RFP that may or may not incorporate information provided by HTA during site visits.

**1.10 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.

**1.11 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.

**1.12 WEBSITE REFERENCE**

Item	Website
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 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>
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>
Sustainable Development Goals	<a href="https://sdgs.un.org/goals">https://sdgs.un.org/goals</a>



Hawai'i Compliance Express (CVC)	<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: GOALS, OBJECTIVES, AND SCOPE OF WORK

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### 2.1 GOALS AND OBJECTIVES

The market for conventions in Hawai'i is unique. Drawing from U.S. and international markets, the State's convention business is significantly impacted by the geographic location and resort orientation of the destination. Within this environment, the Authority seeks to maximize the economic impact of personnel (meetings, conventions, and incentives) and short-term marketing through HCC, provide first-class service to each customer base, and continually plan for and improve the convention center destination experience within the center and in the surrounding area to address industry trends, customer needs and the unique conditions associated with our overall culture and destination product.

In pursuing private management, the Authority has identified several overall operational goals for the HCC. The intent, through private management, is to achieve these goals in a timely and cost-effective manner. The goals that have been identified at this point are summarized below.

- Retain and expand event activity in all current market segments.
- Help develop initiatives to generate new market segments for the HCC.
- Maximize economic impact or room night generation, and short-term sales.
- Maximize revenues and minimize expenses to minimize state subsidies while ensuring that the HCC remains a world-class facility that is competitive with other convention venues.
- Operate a highly customer-focused, secure facility.
- Operate an energy-efficient and environmentally friendly building as required by State of Hawaii Standards. (HRS 196-9)
- Highly maintain and safeguard the HTA's capital investment in the HCC.
- Achieve an annual break-even financial position for convention center operations.
- Help develop new and other technologies used by leading convention centers throughout the world.
- Maintain the HCC as a world-class facility, including repairs and maintenance.

In addition, the HTA seeks to introduce several creative elements into the management process through a partnership with the selected contractor. These elements are described below.

- Actively participate with the HTA in identifying and facilitating the inclusion of uniquely Hawaiian and other local elements to be housed within existing or potential new HCC space.
- Actively participate with the HTA in identifying and facilitating opportunities to improve the convention center destination experience within the center and to keep up with industry trends and to market a desirable HCC experience.

### 2.2 SCOPE OF WORK

At the conclusion of the process outlined in this RFP, the Authority intends to enter into a contract for services. The scope that will be incorporated into the contract may include, but is not limited to, the following items.

#### 2.2.1 MANAGEMENT

- (1) The Offeror shall manage and operate the HCC in accordance with policies approved by the Authority. The Offeror shall be responsible for all day-to-day functions and operations

of the HCC and shall operate the HCC at all times in the public interest and in accordance with the highest professional and ethical standards.

- (2) The Offeror shall be responsible for recommending for Authority approval all rental rates, fees, and charges for services provided throughout the HCC, including discounted rates for HTA functions, and other state agencies or departments.
- (3) The Offeror shall participate in an effective system of communication that encourages relationships and collaborative efforts between the HCC and other segments of the hospitality industry.
- (4) The Offeror will be responsible for all sub-contractors and concessionaires, as set forth in the Management Contract. The Offeror will also negotiate future subcontractors and concessionaire agreements, to be approved by the Authority.
- (5) The Offeror will administer payroll systems for all persons employed by the Offeror at the HCC.
- (6) The Offeror will undertake HCC information technology functions and maintain systems in state-of-the-art conditions.
- (7) At the conclusion of the term of the negotiated agreement, the Offeror shall be responsible for returning the HCC and Furniture, Fixtures, and Equipment (FF&E) to the Authority in the same condition in which they were provided or procured, except for normal wear-and-tear.
- (8) The Offeror will be required to make any improvements in cleaning or maintenance methods as required by the Management Contract, to keep the convention center in a world-class condition.
- (9) The Offeror shall abide by all applicable county, state, and federal laws pertaining to its operation and shall secure all licenses and permits necessary for the operation of the HCC. The contractor shall be responsible for, and pay all federal, city, county, and state taxes arising as a result of the Management Contract.
- (10) The Offeror shall negotiate, execute, and enforce all agreements for the use of HCC space for events.
- (11) All areas of the HCC are to be kept clean, orderly, attractive, and sanitary at all times and in strict accordance with the applicable laws, ordinances, rules, and regulations as well as the standards of the Authority.
- (12) The Authority shall have the right to reject the character of services and require that undesirable practices be discontinued or remedied. Failure of the contractor to take appropriate action after written notification from the Authority and a reasonable opportunity to cure may result in the cancellation of the Management Contract at the discretion of the Authority.
- (13) The Offeror shall constantly endeavor to improve the operation of the HCC with a view toward developing the most efficient and highest quality of service to the customers, minimizing operating costs, and identifying creative sources of new revenue. An asset management strategy maximizing the use of HCC is desirable.
- (14) The Offeror shall subject its employees to drug testing and criminal background checks and ensure no employee has been suspended or debarred from contracting with any government agency. Employees shall at all times maintain a professional appearance consistent with the requirements of the Management Contract.

- (15) The Offeror shall not employ any person who does not conduct him or herself in a business-like, ethical, and professional manner and shall promptly take appropriate disciplinary action against employees who do not meet this standard, up to and including termination. Any employee so terminated shall not be re-employed at the HCC without the written consent of the Authority, as specified in the Management Contract.
- (16) The Offeror shall thoroughly train and closely supervise all employees so that they are aware of and habitually practice high standards of cleanliness, courtesy, and service. The Ho‘okipa theme of service should be used at all times.
- (17) The Offeror shall establish plans and programs to ensure uninterrupted service to clients, including reasonable steps necessary to ensure continuity of operations.
- (18) Offeror shall review previous audits for the HCC and existing internal controls, including operating and financial systems controls, subcontract management, conflicts of interest, ethics, and whistleblower or misconduct reporting programs, and make recommendations for modifications, for the consideration and approval by the HTA.
- (19) Offeror will develop procurement policies for goods, services, and construction, adhering to applicable state laws and regulations as well as to any applicable HTA policies as directed by the HTA.
- (20) Offeror will maintain and support HTA office facilities and operations in HTA office areas.
- (21) The Offeror will prepare monthly reimbursement statements. The statement will be subject to inspection and should be in an auditable form.
- (22) The Offeror shall establish policies for reimbursable entertainment and travel, including the use of alcohol in entertainment events for approval by HTA.
- (23) The Offeror shall establish a six (6) year repair, maintenance and replacement plan with details of asset life and project end dates for the Convention Center.

### **2.2.2 REPORTING**

- (1) The Offeror shall provide regular reports as requested to the Authority's designated Program Manager or representative.
- (2) The Offeror will assist HTA in any other reporting requirements to other governmental bodies, including the State of Hawai‘i and other state departments.
- (3) The Offeror shall prepare and submit annual budgets for the HCC’s operation and sales and marketing, inclusive of financial, occupancy, and related metrics.
- (4) The Offeror shall keep full and accurate accounting records relating to its activities at the HCC, in accordance with generally accepted accounting principles (GAAP), and provide monthly financial statements to HTA by the 12<sup>th</sup> day of the following month.
- (5) The Offeror shall produce and provide quarterly marketing reporting on HCC and short-term sales performance metrics.
- (6) The Offeror will provide quarterly reports to the board showing the total future use of the convention center. The report will integrate both MCI sales and short-term sales, the purpose of which will be to maximize usage of the HCC.
- (7) The Offeror shall provide regular reports to HTA's designated Program Manager concerning the condition and maintenance of the HCC and FF&E. This would include a wall-to-wall physical inventory and other reporting requirements.

- (8) The Offeror shall provide regular reports to HTA's designated Program Manager concerning the status of capital improvement projects.
- (9) The Offeror will prepare other reports as required by HTA.
- (10) The Offeror will obtain an annual audit by an independent auditor performed in accordance with generally accepted accounting standards. The audit will be due three months after the fiscal year-end.

### **2.2.3 MAINTENANCE AND REPAIR**

- (1) The Offeror shall procure all necessary on-site equipment and replacement items of major capital equipment in accordance with the HTA-approved capital improvement plan and budget.
- (2) The Offeror shall provide active quality control of all capital and non-capital improvement to the facility, including review of plans, permits, code and regulatory compliance, construction phases, approvals to proceed, acceptance, and scheduling issues with MCI business. The Offeror shall consult with HTA regarding the coordination and scheduling of MCI business with repair, maintenance, or construction work that could potentially require the stopping and starting of the repair, maintenance or construction work. Under the direct supervision of the HTA, the Offeror shall be responsible for all preventative maintenance and repair of the HCC. The interior, exterior, and infrastructure of the physical facility and grounds will be maintained by the Offeror, including capital and non-capital repairs and maintenance. The Offeror shall consult with the HTA on all maintenance and repair to the HCC for final approval and prior to beginning any work. The Offeror shall also be responsible for informing the Authority of degraded conditions. The Offeror is further responsible for taking all actions necessary to maintain the validity of all warranties and for ensuring that repairs to any part of the HCC or FF&E that is under warranty are accomplished under the warranty.
- (3) The Offeror shall always maintain a neat and orderly operation and shall be responsible for or shall oversee vendor contracts pertaining to the necessary housekeeping services to properly maintain the HCC. No signs or advertising identifying the contractor, or its subcontractors shall be placed on the premises unless first approved, in writing, by the Authority. The Offeror shall make available all areas of the HCC under its control for examination at any time by the Authority or an authorized representative with or without notice or escort.
- (4) No alterations or additions shall be made to the HCC, or any part thereof, without first having obtained the written consent of the Authority. Authorized alterations or additions shall become the property of the Authority at the expiration date/or termination of the Agreement.
- (5) The Offeror shall not remove any FF&E furnished to the HCC without the express written permission of the Authority.
- (6) The Offeror shall replace, at its own expense, any FF&E provided under the Agreement that has been destroyed or damaged with like equipment.

### **2.2.4 HCC GENERAL MANAGER**

- (1) The HCC shall be operated by a competent, successful general manager capable of, and empowered to operate and market the HCC and to be responsive to the desires and directives of the Authority in the areas of contract enforcement, scheduling, personnel relations, and any and all other matters pertinent to the management of the HCC. It is expressly understood that the general manager of the HCC will be located on-site and available during normal business hours.

- (2) The general manager of the HCC should possess or obtain an understanding of the Hawai'i convention industry, local culture, making local communities a priority, and the unique attributes of the destination.
- (3) The general manager of the HCC shall accept the decisions of the Authority as binding in matters of contract interpretation, provided that written appeals may be made in writing to the Authority within thirty (30) days of such decision.

#### **2.2.5 HCC DESTINATION EXPERIENCE ASSISTANCE**

- (1) The Offeror will actively participate with the HTA in identifying and facilitating the inclusion of uniquely Hawai'i sense of place, and Hawaiian and other local elements to be housed within existing or potential new HCC space. For example, the introduction of Hawaiian music, dance, art, language, and other local cultural elements within the HCC is viewed by the HTA as an important priority.
- (2) The Offeror will actively participate with the HTA in identifying and facilitating opportunities to improve the convention center destination experience within the center and in the surrounding area.
- (3) The Offeror will operate HCC with Aloha and train all of its staff in the Hawaiian concept of Ho'okipa.

### **2.3 TERMS AND CONDITIONS OF CONTRACT**

- (a) CPIE. This contract is a cost-plus incentive fee contract (management fee and incentives to be determined in the contract).
- (b) Period of performance. This contract has a period of performance of ten (10) years with no options due to restrictions in state law.
- (c) Not to Exceed. The HTA has not set a not to exceed amount for proposals.
- (d) Payments. HTA will make 12 monthly payments each year based on the invoiced cost of operations and additional payments in accordance with an incentive plan.
- (e) Agreement. The General Conditions of the contract for the Management of the Hawai'i Convention Center Manager are set forth as an Exhibit.
- (f) Termination. During the term of the contract awarded pursuant to this RFP solicitation, the HTA shall review the performance of the contractor and may terminate the contract for reasons such as nonperformance of the contractor, including the failure to exceed HTA targets, change in the funding for this program, or for the convenience of the HTA.

### **2.4 OWNERSHIP RIGHTS**

Pursuant to the General Conditions attached to and made a part of this RFP, the State shall have complete ownership of all material which is 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.

### **2.5 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 cooperate

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.

## **2.6 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.

## **2.7 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, including 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.

## **2.8 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 25-02**. This number must be referred to on all proposals, correspondence, and documentation relating to this RFP.

## SECTION THREE: PROPOSAL CONTENT AND SUBMISSION

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### 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. However, they may be accepted or requested in Phase 2 of the procurement process.
- The format must be U.S. standard 8.5 by 11 inches. Therefore, this is a U.S. buyer and must be oriented to U.S. document sizes. Orientation should be primarily portraited, though landscape is welcome for data or visual presentations as appropriate. No odd-sized pages are allowed.
- Page limit. The body of the proposal must not exceed the page limit outlined below. Proposals that exceed the page limit may be disqualified, or the extra pages may be excised prior to review.
- Font size should be no smaller than 11 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 1-4** are to be individually labeled accordingly and submitted as one PDF file in the order listed below that is no more than one hundred (100) pages to be titled **Offeror Name\_Proposal Part 1:**
  - 1) Cover Page
  - 2) Table of Contents
  - 3) Cover Letter
  - 4) Proposal
- **Items 5-13** 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:**
  - 5) Offeror Checklist (Attachment 01)
  - 6) Proposal Transmittal Letter (Attachment 02)
  - 7) Corporate Resolution (Attachment 03)
  - 8) Standard Qualifications Questionnaire (Attachment 04)
  - 9) Contractor References (Attachment 05)
  - 10) Subcontractor References – if applicable (Attachment 06)
  - 11) Certificate of Vendor Compliance or Proof of Application for CVC
  - 12) Confidential Information list – if applicable (Attachment 07)
  - 13) Confidentiality Agreement (Appendix A)

#### 3.1.3 CONTENT EXPLANATION

Interested Offerors are to provide a thorough submittal using the guidelines presented herein. Submittals should be prepared simply and economically, providing a straightforward, concise



description of the Offeror's ability to meet the requirements of the RFP. Submittals should provide "layman" explanations of technical terms that are used. Submittals that appear unrealistic in terms of technical commitments, lack of technical competence, or are indicative of a failure to comprehend the complexity and risk of this contract may be rejected.

Emphasis should be on conforming to the RFP instructions, responding to the RFP requirements, and the completeness and clarity of content. The following provides an outline of the information to be included in the submittal. This outline is not all-inclusive, and Offerors can add information as deemed appropriate.

### **1. Cover Page**

The cover page should include the following:

- The name and number of the RFP: RFP 25-02 Management of the Hawai'i Convention Center.
- Name and address of Company.
- Company Federal and State Tax ID #s.
- Name, email address, phone number of contact person.

### **2. Table of Contents**

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

### **3. 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.

### **4. Proposal**

#### **A) Background and Project Summary**

The Background and Project Summary Section should describe the Offeror's understanding of the HCC, the Authority, the work to be done, and the types of initiatives that the Offeror may take to meet the goals and objectives for private or contract management set forth in Section 2 of this RFP.

#### **B) Offeror Qualifications**

Summarize the Offeror's experience and number of years in managing similarly sized public assembly facilities, including a list of current and former clients. A minimum of five years of experience managing public assembly facilities is required. A firm that has not been in operation for a minimum of five (5) years may present a submittal so long as the key personnel can demonstrate a minimum of five (5) years of upper-level management experience in public assembly facilities. Include a listing and size of other facilities/centers the Offeror has managed.

#### **C) Corporate Management Qualifications**

Offerors will be required to detail the experience and qualifications of the Offeror's corporate management team and include resumes outlining the experience, education, and performance record of individuals who will have supervisory responsibility over the HCC.

#### **D) General Manager Candidates**

Provide the General Manager's job description or duties and responsibilities and provide resumes for at least two (2) candidates for General Manager. Describe each candidate's demonstrated extensive experience and expertise with operations of similar public assembly facilities. We

understand the confidential nature that often surrounds the identification of candidates for General Manager. We will accept candidates that are not specifically named, but whose qualifications are clearly listed. During the second phase of the process, it may be necessary to interview one or more of the Offeror's General Manager candidates.

E) Management Plan for HCC

Based on the insight gained during each Offeror's site visit and other research particular to HCC operations, provide detailed descriptions of the approaches, initiatives, policies, and other efforts that your firm would take with respect to the items described below. In responding to these items, Offerors are expected to provide information particular to the HCC, avoiding significant "boilerplate" information.

- Retaining and expanding event activity in existing market segments.
- Helping to develop initiatives to penetrate new market segments for the HCC.
- Maximizing economic impact on short-term sales and room night generation.
- Maximizing revenues and minimizing expenses while ensuring that the HCC remains economically competitive with other convention venues.
- Operating a highly customer-focused, clean, secure facility.
- Properly maintaining and safeguarding the HTA's capital investment in the HCC.

Actively participating with the HTA in identifying, procuring, and potentially operating uniquely Hawaiian elements to be housed within existing or potential new HCC space. For example; the introduction of Hawaiian music, dance, art, language, and other cultural elements within the HCC is viewed by HTA as an important priority.

F) Destination Development

Detail the Offerors' planning and development background with respect to enhancing the destination experience of visitors in the facility, particularly as it relates to unique short-term characteristics and emerging industry trends. The HTA is seeking to enhance the destination experience which could include convention and visitor-oriented projects in the vicinity of the HCC, and participation of the management team will be important in this process.

G) Key Personnel Qualifications

Detail the experience and qualifications of any individual or individuals that would be included as part of the HCC management team (other than the General Manager). Include job descriptions and resumes outlining the experience, education, and performance record of individuals who would be instrumental in the management and operation of the HCC.

H) Marketing Plan / Sales Plan Overview

Provide a description of the Offeror's experience in working with other Convention and Visitors Bureaus and other entities with respect to the sales and marketing of a public assembly facility. Include details as to programs, goals, and results for selected projects that distinguish the Offeror's ability to work in conjunction with these types of organizations.

I) Preventive Maintenance and Capital Improvement Programs

The Offeror shall summarize their approach to Preventive Maintenance and Capital Improvement Programs for the proposed term of the Agreement. Please provide examples of this program that are in effect at comparable facilities managed by the Offeror. Include in the program the Offeror's methods for assuring that all maintenance and construction work is scheduled, permitted, completed,

documented, and performed in a manner that is consistent with generally accepted standards for building maintenance and construction and in compliance with all applicable codes and regulations.

**J) Approach to Environmental Sustainability**

The Offeror shall summarize its approach to ensuring environmental sustainability as part of the operations of the HCC, and with respect to capital repairs to the extent the Offeror has been involved in such projects. Reference specific examples of sustainability initiatives employed at other centers managed by the Offeror.

**K) Financial Stability**

The following financial documents should be included in each submittal, marked confidential in order to prevent public disclosure. Items one (1) through three (3) below should be audited financial statements.

- (1) Complete financial statements prepared in accordance with Generally Accepted Accounting Principles, for the past three (3) years.
- (2) Credit history letter(s) from financial institution(s).
- (3) Most recent quarterly financial statement.

**L) Compensation Plan**

Offerors are required to submit an annual Incentive Fee Plan that includes:

- (i) The annual management fee required to operate the HCC (inclusive of fixed and variable fees); and
  - (ii) A proposed incentive fee component. Together, these two (2) fees shall constitute the Offeror's total compensation for performance under the contract. The Offerors are required to submit incentive fee plans based on a single ten (10) year management contract with no extension without a future competitive bid process.
- (1) **Fixed Fee Component.** The Offerors are required to propose a compensation arrangement that includes an annual fixed management fee. The Offerors are required to indicate whether or not all or any part of the proposed general manager's salary is to be derived from either the fixed management fee or the incentive fee. Any portion of the general manager's salary that is not derived from the management or incentive fee must be included in the staffing plan and proposed operating budgets for the HCC.
  - (2) **Incentive Fee Component.** The Offerors are also required to propose an incentive fee that shall be applicable during the operating period of the agreement. The proposed incentive fee shall be designed to reward superior performance in the areas of general manager satisfaction, customer satisfaction, innovative and successful marketing, cost containment, revenue enhancement, and facility maintenance. The proposed incentive fee also should include a formula for obtaining a reduction of state subsidies. The incentive is to be based on stretch goals that exceed historical and currently contracted performance levels. The Offerors will be required to provide a framework for the basis of these incentives, which will be finalized through negotiation with the HTA.

**5. Offeror Checklist**

The offeror must complete the checklist and submit all items noted on the form. See Attachment 01 for details.

## **6. 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.

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 or potential Organizational Conflicts of Interest (OCI's), 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.

**\*Please note: 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 02 for details.

## **7. Corporate Resolution**

On the Offeror's business letterhead, include a copy of the corporate resolution or written authorization of Offeror's representative to sign this proposal and contract, if awarded. See Attachment 03 for details.

## **8. Standard Qualifications Questionnaire**

Offeror must respond to all questions on the Qualifications Questionnaire form. See Attachment 04 for detailed questions.

## **9. Contractor References**

Offeror must use this form to provide at least five (5) references for selected facilities managed by the Offeror, including the name, address, email, and telephone numbers of key individuals who may be contacted. More recent and more relevant performance usually impacts the confidence assessment more than less recent and less relevant projects. It is expressly understood that the State reserves the right to seek additional information and to contact the references listed to inquire about Offeror's past and/or current performance. Any unqualified Offerors may have their proposal rejected. See Attachment 05 for details.

## **10. Subcontractor References**

The contractor may elect to subcontract some portions of the services to be performed. Wherever the Offeror intends to subcontract certain services, the specific service, roles, and responsibilities must be identified in this section of the submittal. Any changes in subcontractor status must be reported to and approved by the HTA management.

If Subcontractors will be used for this contract, the Offeror shall submit Subcontractor Reference forms for each Subcontractor and ensure all requirements of the General Conditions outlined in this RFP are followed. See Attachment 06 (if applicable).

**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.

**11. 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, Responsibility of Offerors)

**12. 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, Confidential Information) See Attachment 07 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 the Offeror understands the requirements of the RFP. The 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 the Offeror find defects and questionable or objectionable items in the RFP, the Offeror must notify HTA in writing prior to the deadline for written questions as stated in Section 1.5, 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. The 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. A confidentiality agreement is attached. (Appendix A)

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 marked and be readily separable from the submittal 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, the Offeror shall provide a list of all confidential information referenced in the Offeror's proposal, including page numbers and sections in a separate attachment. See Attachment 07 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 under §92F-13 HRS, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide justification to the Procurement Officer the reported 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 goods.

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 an exception is taken, a description of the exception taken, and the proposed alternative, if any. If none, state so in the proposal transmittal letter. See Attachment 02 for details.

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 of the HIePRO, including mailed, 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, all proposals and its attachments will be verified by two or more procurement officials, 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 award pursuant to HRS §103D-303, and HAR §3-122-58.

### **3.2.10 MODIFICATION BEFORE THE 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 before 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 Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the 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 Officer 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 the 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

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### 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:
  - (1) 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;
  - (2) Non-Responsiveness. Failure to submit in accordance with the RFP requirements or failure to supply an adequate response to the RFP;
  - (3) 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;
  - (4) Failure to cooperate with HTA or deal in good faith;
  - (5) 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;
  - (6) Any effort to lobby any member or employee of the Hawai‘i State Legislature.

### 4.2 EVALUATION CRITERIA AND SCORING GUIDE

Written proposals will be reviewed, evaluated, and scored by an Evaluation Committee based on scoring criteria. The evaluation categories are assigned a value weight percentage, as determined by the HTA, totaling 100%. Each category will be rated between one (1) and five (5), with five (5) being the highest (the best rating) by each member of the evaluation committee.

The Offeror’s total score will be determined by a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and c) totaling the score of all evaluators.

Scoresheets will be filled out as outlined in the following evaluation criterion and scoring guidelines tables and as described in the two-phase process that follows:

EVALUATION CRITERION	Scoring Range	Value Weight
<b>Evaluation Criteria 1: Team</b> Management plan; Strength of general manager; Management team; Financial stability and corporate management support; Subcontractors/partners; Reference checks	1-5	25%
<b>Evaluation Criteria 2: Demonstrated Expertise</b> Experience operating and maintaining like facilities including R&M and capital construction management;	1-5	20%

Experience providing public assembly, hospitality, event, and guest services; Experience marketing to groups of visitors and organizations; Experience with product and experience development (vision for center)		
<b>Evaluation Criteria 3: Marketing Approach</b> Define marketing strategies for the Hawai‘i Convention Center.	1-5	20%
<b>Evaluation Criteria 4: Cost and Incentive Plan</b> 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 multi-term contract 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.	1-5	20%
<b>Evaluation Criteria 5: Revenue Generation / Breakeven</b> Process used to create value for taxpayers with the ultimate aim of generating income and increasing profitability.	1-5	15%
<b>TOTAL</b>	<b>25</b>	<b>100%</b>

<b>Assessment</b>	<b>Overall Scoring Guidelines</b>	<b>Evaluator Score</b>
<b>Poor</b>	Proposal is inadequate in many basic aspects for the scored category. Evaluator has very low confidence in the Offeror’s ability to perform as promised or as required.	<b>1</b>
<b>Marginal</b>	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. Evaluator has low confidence in the Offeror’s ability to perform as promised or as required.	<b>2</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>3</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>4</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>5</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 for this RFP. The Procurement Manager does not have a vote.

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 members' 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. The RFP evaluation process will consist of at least two phases.

**PHASE 1:**

Offeror's written response, which details the demonstrated experience and expertise of the Offeror and is its initial proposal to provide private management of the HCC.

The Procurement Officer, 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 Phase 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 Phase 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 Phase 2. These selected Offerors will be referred to as “Priority Listed Offerors.”

## **PHASE 2:**

In Phase 2, 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/interviews, proposed general manager candidates interviews, requests for clarification, best and final offers (BAFO), or any other information that the Evaluation Committee may find useful in coming to a decision. The date for oral presentations is listed in the RFP Schedule found in Section 1. The Evaluation Committee reserves the right to perform reference checks but is not required to do so.

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. At the conclusion of the evaluation process, the Evaluation Committee shall recommend the award be made to the Offeror whose proposal is determined to be the most advantageous to the HTA based on the proposal and responses provided, results of the oral interviews, quality of candidates for General Manager, and reference checks.

After evaluating and ranking proposals, the Evaluation Committee will undertake the following process:

1. Invite selected Offerors to conduct an oral presentation specific to their proposal. The Authority has tentatively reserved the **Week of September 23, 2024**, for holding oral presentations and/or interviews.
2. Identify the Offerors deemed by the HTA to be capable of successfully meeting the objectives as described in the RFP.
3. Interview General Manager candidates put forth by each Offeror.
4. Make award to the successful Offeror.

Once the award is approved, a final contract will be executed the **Week of October 28, 2024**.

## **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 Cost and Incentive Plan score will be ranked higher. If that, too, is a tie, then the final decision for award will be made by the Evaluation Committee.

**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.**

The Evaluation Committee, based on the aforementioned process, will make a recommendation of award. In the event the State is unsuccessful in negotiating the post-award contract, the HOPA reserves the right to make the award to the next highest-ranked responsible Offeror and engage that responsible Offeror in post-award negotiations leading to an executed contract. The HOPA further asserts that she/he may cancel the RFP if negotiations are unsuccessful in accordance with Hawai'i Revised Statutes and Hawai'i Administrative Rules.

## SECTION FIVE: CONTRACT AWARD

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### 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):

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

This is a contract with a government agency. As such, customary rules of commercial contracting generally do not apply. Applicants are encouraged to seek advice from experts familiar with government contracts.

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 Officer 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 Officer at:

Procurement Officer  
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 Officer'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 or 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 award of a contract and any allowed change, renewal, or extension thereof, is subject to allotments made by the Director of Finance, State of Hawai‘i, pursuant to HRS Chapter 37 and subject to the availability of State and/or Federal funds.

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.**

#### **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 is encouraged to produce all deliverables using proper Hawaiian orthography as directed by the State during the duration of the contract period.

## SECTION SIX: OBLIGATIONS OF THE AUTHORITY

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The Authority will maintain an executive framework to administer all functions of the Authority. These functions include, but are not necessarily limited to the following:

1. Continue to retain a President and CEO or designee to oversee Authority obligations, including the HCC Management Contract.
2. Prepare all necessary reports to the State Legislature.
3. Administer independent special-purpose audits of HCC transactions as directed by HTA, pursuant to HRS §103D-317.
4. Conduct customer survey research and other market research, including analysis that impacts the management firm incentive payment.
5. Evaluate capital repair/replacement efforts, in conjunction with the HCC management team.
6. Approve total annual compensation, upon evaluation and approval of the HTA, for on-site HCC General Manager and key personnel.
7. May monitor contractor, general manager, and staff performance through an annual performance audit.
8. HTA approves HCC pricing, policies, and other arrangements necessary for the HCC's operations.
9. HTA approves the usage of the HCC by HTA and the State of Hawai'i.
10. Approve all major negotiated subcontracts necessary for the operations of the HCC, as set forth in the Management Contract.
11. Approve the appointment of the HCC General Manager and other key staff.
12. Receive all revenue from the operation of the HCC by the contractor and fund all operating expenses within a budget developed by the contractor and approved by the HTA.
13. Provide all initial land, buildings, and facilities and FF&E in good working order (to be inventoried at the time of Management Contract signing).
14. Approve and fund all necessary on-site equipment and replacement items of major capital equipment in accordance with the HTA-approved capital improvement plan and budget.
15. Periodically inspect the facilities and FF&E to ensure that they are maintained neatly and orderly.
16. May provide direction and control of short-term and city-wide brand management and sales.
17. Lead efforts in identifying and facilitating the inclusion of uniquely Hawaiian and local elements to be housed within existing or potential new HCC space, and the introduction of Hawaiian music, dance, art, language, and other local elements within the HCC.
18. Lead efforts to identify and facilitate opportunities to improve the convention center destination experience within the center and in the surrounding area.

## SECTION SEVEN: ATTACHMENTS, APPENDICES, AND EXHIBITS

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- Attachment 01: Offeror Check List
- Attachment 02: Proposal Transmittal Letter
- Attachment 03: Corporate Resolution
- Attachment 04: Standard Qualifications Questionnaire
- Attachment 05: Contractor References
- Attachment 06: Subcontractor References (if applicable)
- Attachment 07: Confidential Information List
  
- Appendix A: Confidentiality Agreement
  
- Exhibit 1: Special Provisions
- Exhibit 2: General Provisions for Goods and Services
- Exhibit 3: HTA Travel Protocol
- Exhibit 4: Overview of Procurement Process
- Exhibit 5: AG General Conditions for 103D

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.

## Appendix A – Confidentiality Agreement

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THIS AGREEMENT is entered into and is effective as of \_\_\_\_\_, 2024 (the "**Effective Date**") between Hawai'i Tourism Authority (the "**HTA**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Contractor**"). The parties acknowledge that the HTA and Contractor are in discussions about a potential business relationship between them (the "**Business Relationship**") in connection with which certain Confidential Information (as defined below) of HTA and Contractor may be disclosed to the other party. In consideration of the mutual covenants set forth below, HTA and Company each agree as follows:

**Confidential Information.** As used in this Agreement, the term "Confidential Information" means all information, whether or not reduced to writing, related to the potential business relationship or to the business of either party or its affiliates that (a) is disclosed by one party or its Representatives (as defined below) (the "Disclosing Party") to the other party (the "Recipient") or observed by the Recipient on the Disclosing Party's premises, and (b) is identified as confidential or other similar designation by the Disclosing Party, or would otherwise reasonably be understood to be confidential under the circumstances. Confidential Information includes but is not limited to data (technical and non-technical), formulas, patterns, compilations (including database or compilations of the visitor or customer information or surveys), intellectual property developed on behalf of the HTA, programs (including models), devices, methods (including design methods), techniques, drawings (including equipment drawings), processes, financial information (including visitor data and sales forecasts), pricing, lists of actual or potential customers or suppliers (including identifying information about those customers), operational information, planning or strategy information (including marketing programs, activities, or initiatives), research and development information (including visitor statistics and market intelligence), information about existing and future services and products, and information about personnel matters of the Disclosing Party or its affiliates. Confidential Information also includes information disclosed by a third party that otherwise meets the foregoing definition and the fact that negotiations are taking place hereunder.

**Exclusions.** For purposes of this Agreement, the term "Confidential Information" does not include any data or information which: (a) the Recipient can establish was already known by the Recipient at the time of disclosure hereunder by the Disclosing Party; (b) is or becomes generally known to the public other than as a result of a disclosure by the Recipient; (c) is received by the Recipient from a third party, without restriction on disclosure, and without breaching any obligation of confidentiality about which the Recipient knew or should have known; or (d) is independently developed by the Recipient without use, directly or indirectly, of Confidential Information received from Disclosing Party, as demonstrated from the written records of the Recipient.

**Permitted Disclosures.** Disclosures of the Confidential Information of the Disclosing Party may be made only to affiliates, employees, agents, advisors, or independent contractors of the Recipient who are directly involved in performing or evaluating the Business Relationship, and who have a specific need to know such information, and who are obligated to hold the information in confidence and otherwise to comply with the terms of this Agreement (collectively, "Representatives"). The Recipient agrees to instruct each of its Representatives to maintain the confidentiality of all of the Confidential Information and shall be liable for any unauthorized disclosures of Confidential Information by the Recipient's Representatives. Neither party shall directly or indirectly contact, or discuss the Business Relationship contemplated under this Agreement, with any person who is not a designated Representative of the other party.

Confidentiality and Non-Use of Confidential Information. Each of the parties hereto and its Representatives (a) must use the same care and discretion as it employs with its own confidential and proprietary information (but in no event less than reasonable care and discretion) to maintain confidence, and prevent disclosures of, the Confidential Information of the other party, and (b) must not use the Confidential Information of the other party except to further the Business Relationship or as otherwise specifically authorized in writing by the Disclosing Party. Under no circumstances, except as expressly set forth below, shall the Recipient reproduce, distribute, or otherwise provide, directly or indirectly, any Confidential Information of the other party to any person or entity without the consent of the Disclosing Party. Each party understands that in addition to its obligations to the other party under this Agreement, it may not use any Confidential Information of the other party in violation of any federal or state securities laws governing insider trading. Each party understands and will inform its

Representatives that such laws prohibit any person, directly or indirectly, from buying or selling securities of any company while in possession of material non-public information regarding that company.

Mandatory Disclosure. If Confidential Information is required to be produced by law, court order, or governmental authority, the Recipient must promptly notify the Disclosing Party of that obligation. The Recipient shall not produce or disclose any such Confidential Information until the Disclosing Party has (a) requested protection from the court or other legal or governmental authority issuing the process (with the reasonable assistance of the Recipient at the Disclosing Party's expense) and the request has been denied, (b) consented in writing to the production or disclosure of such Confidential Information, or (c) taken no action to protect its interest in the Confidential Information within ten (10) business days (or such shorter period required by order of a court or other legal or governmental authority) after receipt of notice from the Recipient of the obligation to produce or disclose. Notwithstanding the foregoing, the Recipient shall only disclose such portion of the Disclosing Party's Confidential Information which the Recipient is advised by counsel is required for the Recipient to comply with law.

Return of Materials. Within ten (10) days following the Recipient's receipt of a written request from the Disclosing Party, the Recipient must (a) deliver to the Disclosing Party all tangible materials containing or embodying the Confidential Information; and (b) purge all electronic materials containing or embodying the Confidential Information and certify the same to the Disclosing Party in writing. Notwithstanding the foregoing delivery requirement, the Recipient may destroy any notes, analyses, or reports generated by the Recipient to the extent such notes, analyses or reports contain Confidential Information, and the Recipient shall certify such destruction within such ten (10) day period.

Rights and Ownership. Recipient acknowledges and agrees that any Confidential Information is the sole and exclusive property of the Disclosing Party (or a third party providing such information to the Disclosing Party). Except as expressly herein provided, this Agreement shall not be construed as granting or conferring to either party, either expressly or impliedly, any rights, licenses, or interests in or with respect to any Confidential Information of the other party, including any intellectual property rights. This Agreement shall also not create any exclusive business relationship or other rights or obligations between the parties, nor require the parties to enter into any other definitive business agreement.

Competitive Information. Each of the parties acknowledges and understands that the other party may now market or have under development products or services which are competitive with products or services now offered or which may be offered by the other party, and, except as expressly set forth in this Agreement and the External Destination Marketing Management Services Agreement entered into between the parties (if any), the parties' communications hereunder will not serve to impair the right of either party to develop, make, use, procure or market products or services now or in the future which may be competitive with

those offered by the other party, nor require either party to disclose any planning or other information to the other party.

Duration. This Agreement and the obligations of confidentiality set forth herein shall commence on the date first above written and shall continue (a) with respect to Confidential Information which qualifies as a trade secret under applicable law, at all such times thereafter as it so qualifies, and (b) with respect to all other Confidential Information, for a period of two (2) years after the date of disclosure of such information.

Warranties. The Disclosing Party represents that if the Confidential Information disclosed hereunder contains any confidential or proprietary information of any third party, such third party has authorized the disclosure of such information. No other warranties of any kind are made with respect to any information disclosed under this Agreement.

Notices. All notices under this Agreement shall be in writing and shall be deemed properly delivered when (a) delivered personally, (b) sent by facsimile to the fax number of the other party set forth below, with receipt confirmed, or (c) mailed by certified mail, postage prepaid to the address of the other party set forth below. Notices shall be effective upon receipt.

Miscellaneous. The rights and obligations of the parties will inure to the benefit of, will be binding upon, and will be enforceable by the parties and their lawful successors. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in writing signed by both parties.

This Agreement will be governed by and construed in accordance with the laws of the State of Hawai‘i. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover actual, reasonable attorneys’ fees. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Should any provision of this Agreement be held invalid, illegal, or unenforceable for any reason, such provision shall be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes.

IN WITNESS WHEREOF, this Confidentiality Agreement has been executed and delivered as of the date first above written.

THE HAWAI‘I TOURISM AUTHORITY	CONTRACTOR:
Signed:	Signed:
Name:	Name:
Title:	Title:
Address: Hawai‘i Convention Center, First Level 1801 Kalakaua Avenue Honolulu, Hawai‘i 96815	Address:
Fax:	Fax:

## EXHIBIT 1

### 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 Business, 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. 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 proposal.
  - 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.
3. Hawai'i Compliance Express. Paragraph No. 2i of the attached General Conditions is further clarified as follows: The current "designated certification process" is Hawai'i Compliance Express.

In lieu of presenting the separate certificates from the Departments of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, as outlined in Paragraphs 2e, 2g, and 2h of the General Conditions, the CONTRACTOR shall obtain and provide the HTA with a current Certificate of Vendor Compliance from the Hawai'i Compliance Express that is current 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 the final payment under section 103-53, HRS, as amended, and Paragraph 17 of these General Conditions.

4. 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.
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. Limited License to Use Intellectual Property. Paragraph No. 26 of the attached General Conditions is clarified as follows: The STATE hereby grants to the CONTRACTOR, a non-exclusive limited license during the time of performance for this Contract only, and for the purposes outlined in this contract only, as provided herein, to use any designated intellectual property, including any domain name, trade name, service mark, tag line, or logo (hereinafter referred to cumulatively as "Licensed Property"), which is owned, copyrighted, registered, patented, or reserved by the HTA, for the purpose of promoting and marketing Hawai'i as a visitor destination and in a manner consistent with the "Hawai'i Tourism Authority Strategic Plan 2020-2025," incorporated herein by reference, and with any other brand marketing and management plans. The contractor covenants and agrees that its use of the Licensed Property shall be of high standards and of high quality, style, and appearance and that contractor shall, at all times, maintain, increase, or enhance the goodwill associated with the Licensed Property. The contractor shall not authorize, assign, or grant any interest in the Licensed Property without the state's prior written consent.
7. Conflict Resolution. Notwithstanding any provisions or representations to the contrary, any conflict among the various provisions of this Contract shall be resolved by allowing the various provisions in the following documents, in order of priority, to control:
  1. Hawai'i law; then



2. This Contract and Attachments 1 to Attachment 4, as modified, amended, or changed in writing; then
  3. The General Conditions, attached hereto and incorporated herein; then
  4. The CONTRACTOR's budget approved by STATE; then
  5. The RFP, as amended; then
  6. The accepted PROPOSAL; then
  7. Course of conduct; then
  8. Course of dealing; then
  9. General principles of government contracting; then
  10. Visitor Industry marketing practices.
8. 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.
9. 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 Policy." HTA reserves the right to review CONTRACTOR's travel arrangements.
10. Force Majeure. As parties to this Contract, neither HTA nor Contractor shall be responsible or liable, or deemed in breach hereof, for a delay in the performance of their respective obligations and responsibilities under this Contract due solely to a Force Majeure Event beyond its reasonable control; provided that the party experiencing the Force Majeure Event shall exercise due diligence in endeavoring to overcome any Force Majeure Event that impedes its performance, and to mitigate

costs where possible. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligation(s) only for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the other by telephone or by the timeliest means otherwise available (to be confirmed in writing within two (2) calendar days after the inception of such delay) and describe in reasonable detail the circumstances causing such delay. *(As used in this Contract, "Force Majeure Event" means any occurrence beyond the reasonable control of a party, including, without limitation, acts of God; act of terrorism; war; embargo; national emergency; insurrection or riot; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; or unusually severe weather or other natural disasters.)*

## EXHIBIT 2

### 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 in the second phase of multi-step bidding.

b. BID PROPOSAL GUARANTY OR SECURITY

The security, when required, is 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

Hawai'i 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

Hawai'i 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 MANAGER

Procurement Manager means the person with 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 manager.

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 which is 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 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 the following 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. 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.

**10. 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 manager 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 and 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.

**11. 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.

**12. 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 manager 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 manager 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.

**13. RETURN OF OFFER GUARANTIES**

All offer guaranties 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 manager's determination is made to cancel the solicitation. At such time, all offer guaranties, except surety bonds, will be returned.

**14. 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 statute.

**15. 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 an 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.

**16. 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 manager or his 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 3**

#### **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 firm's/contractor's travel policy. If elements of the firm's/contractor's policy fall outside of the following protocol, HTA will require firm/contractor to take measures to ensure that all travel related to HTA work does not violate State ethics laws.

##### **Business Travel**

HTA meetings—Firms/Contractors shall make their own arrangements with island hotels and use the lowest public rates for air travel to Hawai'i. Firms/Contractors shall never ask for or accept upgrades, including for hotels and air travel.

##### **Personal Travel**

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

## EXHIBIT 4

### 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 will 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 and Evaluation Committee reserves the right to have additional 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.

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 5**

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

HAWAII REVISIED 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.