



RELEASE DATE: May 15, 2026

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

**REQUEST FOR PROPOSALS
RFP NO. 26-12
(NOTICE TO OFFERORS)**

MARKETING CAMPAIGN EFFECTIVENESS STUDY 2026-2028

OFFERS ARE DUE AT 2:00 P.M. HAWAII STANDARD TIME (HST) ON

June 15, 2026

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

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

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

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

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

1.1 INTRODUCTION

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

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

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

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

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

1.2 TERMS AND ACRONYMS

Authority	The Hawai‘i Tourism Authority. Also referred to as “HTA.”
AG	Attorney General
BAFO	Best and Final Offer
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
GC	General Conditions. Rules enacted by the Hawai'i Attorney General's Office.
GET	General Excise Tax
GP	General Provisions
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
KPI	Key Performance Indicator
Ma'ema'e Toolkit	A collection of resources and instructions to represent Native Hawaiian language and culture accurately and respectfully.
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.
RFP	Request for Proposals, including all parts, Sections, Exhibits, Attachments, and Addenda.
ROI	Return on Investment
SPO	Hawai'i State Procurement Office
State	State of Hawai'i, including its departments, agencies, and political subdivisions.
Total Arrivals	The total number of visitors that arrive in the Hawaiian Islands.
Total Expenditures	The U.S. dollar amount spent in Hawai'i attributed to a visitor. Includes direct spending by visitors while in Hawai'i as well as any prepaid package purchased before arrival. Does not include transpacific air costs to and from Hawai'i, commissions paid to travel agents, or portions of the package in another state or country.

1.3 ELECTRONIC PROCUREMENT

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

1.4 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the State's best estimate of the schedule that will be followed. All times indicated are Hawai'i Standard Time (HST). If a component of this schedule, such as "Proposal Due Date/Time," is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. No questions will be received after the Written Questions deadline.

Release of Request for Proposals	May 15, 2026
Deadline to Submit Written Questions (must be submitted in HiePRO)	May 20, 2026 @ 2:00 PM HST
State's Response to Written Questions (will be posted in HiePRO)	May 22, 2026
Deadline to Submit Notice of Intent to Offer	June 8, 2026 @ 4:30 PM HST
Proposal Due Date/Time, Evaluation Period Begins	June 15, 2026 @ 2:00 PM HST
Priority Listed Offeror Selection & Notification (estimate)	Week of June 15, 2026
Best and Final Offer Deadline (if necessary) (estimate)	Week of June 15, 2026
Notice of Award (estimate)	Week of June 22, 2026
Start of Contract Performance (estimate)	June 30, 2026

1.5 NOTICE OF INTENT TO OFFER

Notice of intent to offer is not required but is highly encouraged. By registering your company, any applicable addenda will be sent to you. If you are interested in responding to this solicitation, for confidentiality reasons, please email the information specified below to procurement@gohta.net with "HTA RFP 26-12 Notice of Intent to Offer" in the subject line by the deadline noted in the RFP Schedule. This email will serve as your intent to submit an offer. Submission of your intent to offer does not mean you must submit an offer.

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

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

1.7 PROTEST OF RFP CONTENT

Any protest concerning the solicitation or solicitation content shall be submitted in writing before the proposal due date in accordance with HRS §103D-701 and HAR Chapter 3-126. Offerors are encouraged to submit questions, requests for clarification, or concerns as early as possible and no later than the deadline for written questions identified in the RFP.

1.8 CANCELLATION

The RFP may be canceled, and any or all proposals rejected in whole or in part, when determined to be in the best interest of the State, pursuant to HRS 103D-308 and HAR §3-122-96 through §3-122-97. The State shall not be liable for any costs incurred by Offerors in the preparation or submission of proposals.

1.9 WEBSITE REFERENCE

Item	Website
Hawai'i Electronic Procurement System	https://hiepro.ehawaii.gov/welcome.html
HTA RFP Website	https://www.hawaiitourismauthority.org/rfps/
HTA Website	https://www.hawaiitourismauthority.org/
HTA Strategic Plan	https://www.hawaiitourismauthority.org/who-we-are/our-strategic-plan/
HTA Brand Marketing	https://www.hawaiitourismauthority.org/what-we-do/brand-marketing
Ma'ema'e Toolkit	https://www.hawaiitourismauthority.org/what-we-do/tools-resources/ma%ca%bbema%ca%bbe-toolkit/
Tourism Research	https://www.hawaiitourismauthority.org/research/
YouTube – GoHawai'i Channel	https://www.youtube.com/gohawaii
Hawai'i Compliance Express (CVC)	https://vendors.ehawaii.gov/
eHawaii.gov YouTube Channel	https://www.youtube.com/user/eHawaiiGov1/videos
Hawai'i State General Conditions	https://hiepro.ehawaii.gov/static-resources/103D-1%20General%20Conditions.pdf
HRS Chapter 201B HRS. HTA's inception statute.	https://www.capitol.hawaii.gov/hrscurrent/vol04_ch0201-0257/HRS0201B/HRS_0201B-.htm

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

SECTION TWO: BACKGROUND AND SCOPE OF WORK

2.1 OVERVIEW AND BACKGROUND

The Hawai'i Tourism Authority (HTA) evaluates its programs based on their impacts and the return on investment of public funds. The purpose of this solicitation is to seek proposals from qualified firms or individuals to design, conduct, analyze, and report on the effectiveness of its paid U.S. and Japan advertising campaigns, including detailed measurements of advertising awareness, travel influence, visitor spending, and economic/tax return on investment (ROI). The study will evaluate the impact of HTA's calendar year advertising investments within the U.S. domestic and Japan markets.

2.2 SCOPE OF WORK

The successful Offeror shall be responsible for developing, executing, analyzing, and reporting comprehensive campaign effectiveness research in the USA and Japan markets for Calendar Year 2026. All services shall be completed in a satisfactory and proper manner as determined by the HTA, and shall include, but not be limited to, the following project management, research, and professional services.

- A. The selected Offeror shall perform project management and coordination, to include but not limited to:
 1. Work collaboratively with HTA and HTA's brand marketing contractors in the USA and Japan markets throughout the contract period.
 2. Participate in recurring status meetings (frequency to be agreed upon) and ad-hoc meetings as requested by HTA.
 3. Be available to present, explain, and interpret research methodologies and findings to HTA leadership, HTA's contractors, and any other designated stakeholders.
 4. Provide a primary point of contact and a dedicated project team responsible for all research activities.
 5. Develop and maintain a project schedule outlining key milestones, survey field periods, reporting deadlines, and approval checkpoints.

- B. The selected Offeror shall design surveys and analytical frameworks that assess campaign impacts, to include but not be limited to:
 1. Advertising Impacts (herein referred to as "ADVERTISING IMPACTS TRACKING SURVEY")
 - a. Introduction and screener;
 - b. Travel attitudes and trending information;
 - c. Level of past travel to Hawai'i and key competitors;
 - d. Rating of Hawai'i and key competitors;
 - e. Intent to visit Hawai'i;
 - f. Viewing campaign materials for Hawai'i;
 - g. Measure exposure to the campaign;
 - h. Measure of frequency of exposure, by medium (TV, radio, print, etc.);
 - i. Evaluation of the campaign; and
 - j. Demographic and classification information
 2. Annual Final Travel Conversion/ROI (herein referred to as "ANNUAL ROI/CONVERSION SURVEY")
 - a. Introduction and screener;
 - b. Travel attitude and trending information;

- c. Level of past travel to Hawai‘i and key competitors;
 - d. Influenced trip/visitation
 - e. Influenced visitor spending
 - f. Influenced tax revenue generation
 - g. Return on Investment based on Influenced Spending
 - h. Advertising Spend on advertising spend and visitor spend
 - i. Specifics of travel including timing of trip, duration of trip, and travel party size;
 - j. Likelihood to return;
 - k. Willingness to recommend;
 - l. Trips planned to occur after the study period;
 - m. Exposure to ads to determine awareness;
 - n. Specifics of social media usage for travel planning; and
 - o. Demographic and classification information.
- C. The selected Offeror shall prepare and conduct two semi-annual waves of ADVERTISING IMPACTS TRACKING SURVEY for each market for a total of four (4) waves. Each survey shall have a minimum sample size of 1,500 qualified respondents reflective of HTA’s target audience profiles.
- D. The selected Offeror shall prepare and conduct a final wave of an ANNUAL ROI/CONVERSION SURVEY based upon the completion of the second waves of the ADVERTISING IMPACTS TRACKING SURVEY. The purpose of the survey is to measure the campaign-influenced travel conversion and resulting ROI.
- E. The selected Offeror shall prepare and submit comprehensive written reports and presentations for US and Japan markets.
- 1. Two (2) initial waves reports and presentations, delivered within 30 days of each semi-annual ADVERTISING IMPACTS TRACKING SURVEY’s completion for each market.
 - a. Wave 2 report and presentation should contain a comparison to the initial wave in addition to an annual roll-up report and presentation, which synthesizes findings across the two semi-annual ADVERTISING IMPACTS TRACKING SURVEY, delivered within 30 days of the final second wave survey.
 - 2. One (1) annual advertising ROI report and presentation, delivered within 30 days of the completion of the ANNUAL ROI/CONVERSION SURVEY. The report shall include, but not be limited to:
 - a. Executive summary
 - b. Detailed findings and insights
 - c. Year-over-year comparisons (when applicable)
 - d. Competitive analysis
 - e. Implications and recommended strategic actions
 - f. Aware and unaware of advertisement and influenced trips
 - g. Appendices with methodology, question wording, and data tables
- F. The Offeror shall provide data deliverables to include but not be limited to:
- 1. Raw and cleaned data files in HTA-approved formats (e.g., CSV, XLSX).
 - 2. All weighting schemes, codebooks, and variable definitions.
 - 3. Cross-tabulations and data dashboards (if applicable).
 - 4. Documentation suitable for long-term public-sector recordkeeping.

2.3 KEY PERFORMANCE INDICATORS & PERFORMANCE MEASURES

By setting clear KPIs and performance measures, HTA can ensure that the selected vendor's efforts are directly contributing to the organization's goals and objectives, while also providing measurable metrics for success. The Successful Offeror shall meet or exceed these standards for all services performed under the Contract, including survey fielding, modeling, data processing, reporting, presentations, and stakeholder engagement.

KPIs may include:

- Adherence to agreed upon project schedule outlining key milestones, survey field periods, reporting deadlines, and approval checkpoints.
- Achievement of minimum sample size for each survey wave. Demonstrable representativeness of sample size for each survey wave according to HTA's target audience profile in the USA and Japan.
- Timeliness of comprehensive written reports and presentations at the cadence listed above.
- Timeliness and quality of other data deliverables.
- Quality and feasibility of recommended strategic actions in annual report and presentation.

2.4 COMPENSATION

This is a Fixed-Price contract, inclusive of all taxes and expenses, in an amount not to exceed **THREE HUNDRED FIFTY-SIX THOUSAND AND NO/100 DOLLARS (\$356,000.00 USD)**, tax inclusive, for the contract term and shall be funded with Hawai'i State General Funds, subject to the availability of funds.

Offerors shall submit a total proposed price that does not exceed the maximum compensation stated herein. The proposal amount submitted in the Offeror's cost proposal shall exactly match the amount entered in HiePRO. Failure to comply may result in the proposal being deemed non-responsive.

Each contract period is subject to the availability and appropriation of funds for the applicable fiscal period.

- Initial Period (June 2026 to June 2027): the total amount shall not exceed **ONE HUNDRED SEVENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$178,000.00 USD)**, tax inclusive.
- Second Period (June 2027 to June 2028): the total amount shall not exceed **ONE HUNDRED SEVENTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$178,000.00 USD)**, tax inclusive, subject to appropriation and availability of funds.

The fixed price shall be inclusive of all aspects of the contract, including labor, materials, equipment, travel, program expenses, administrative costs, overhead, taxes, and all other costs necessary to perform the scope of services required under the resulting contract.

Compensation adjustments, if any, shall be made only as expressly provided in Sections 2.2 and 2.3 of this RFP. Any adjustment may result in an increase, decrease, or reallocation of compensation; provided that the total compensation under the contract shall not exceed the maximum amount stated herein.

Any funds remaining unexpended at the conclusion of the contract shall revert to the State.

2.5 TERM OF CONTRACT

Contract Term: This shall be a multi-term contract pursuant to applicable Hawai'i procurement laws and rules. The contract term shall be twenty-four (24) months, or portions thereof, without the necessity for procurement, subject to the appropriation and availability of funds.

The Contractor acknowledges and agrees that the availability of funds for this contract shall be subject to legislative appropriation and allotment of funds by the Governor, through the Director of the Department of Budget & Finance, State of Hawai‘i, for each fiscal year. If sufficient funds are not appropriated, allotted, or otherwise made available, the State may reduce the scope of services or terminate the Contract without liability for consequential damages. All State funds not expended in accordance with the provisions set forth in the Contract shall be returned to the State.

Any extension or modification of the contract shall be made only through a written contract amendment or change order executed by the State and Contractor. The Contractor shall not be entitled to any additional compensation to complete the services specified in this RFP.

2.6 HTA CONTRACT MONITORING & EVALUATION

Contract monitoring and contractor performance evaluations shall be conducted in accordance with HAR Chapter 3-125, the General Conditions, and the terms of the resulting contract.

HTA may conduct written evaluations of the Contractor’s performance during the contract term. Such evaluations may be considered in determining the Contractor’s responsibility for future procurements and whether to exercise any contract extension or option, if applicable.

The State reserves all rights and remedies available under the contract and applicable law, including but not limited to issuance of a stop work order, termination for default, and termination for convenience. Refer to the General Conditions for additional details. HTA shall monitor the Contractor’s performance throughout the contract term and may conduct monthly performance evaluations to assess compliance with the requirements, deliverables, timelines, and performance standards of the resulting contract. HTA may provide contract administration guidance and conduct evaluation or status meetings, either in person or virtually, as deemed necessary for contract oversight purposes.

2.7 OWNERSHIP RIGHTS

Pursuant to the General Conditions attached hereto and made a part of the RFP, and any resulting contract, all reports, studies, data, photographs, videos, recordings, documents, materials, deliverables, and other work product developed, prepared, assembled, created, or conceived by the Contractor in the performance of the contract shall become the property of the State of Hawai‘i.

The Contractor shall not use, reproduce, distribute, publish, or otherwise exploit such work product for purposes unrelated to the contract without the prior written consent of the State.

The State shall retain all ownership rights in materials produced under the contract, subject to any approved third-party intellectual property rights or pre-existing proprietary materials identified by the Contractor and expressly approved by the State in writing.

2.8 SUCCESSION OF ADDITIONAL CONTRACTORS

In the event the State procures a successor contractor(s) or additional contractor(s) for the same or related services upon expiration, termination, cancellation, or completion of the Contract, in accordance with applicable procurement laws and procedures, the Contractor shall provide reasonable transition assistance to the State and cooperation with any successor contractor(s) as requested by the State.

Transition assistance may include, but not be limited to, transfer of work products, records, reports, data, documentation, and other materials necessary to ensure continuity of services.

The Contractor acknowledges that any extension or renewal of this Contract is at the sole discretion

of the State. The Contractor shall have no claim for compensation for costs, investments, or other expenditures incurred in anticipation of any extension or renewal unless expressly authorized through a written contract amendment executed by the State.

Transition assistance shall be considered part of the Contractor's obligations under the Contract and shall be included in the contract price unless otherwise approved in writing.

2.9 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS

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

2.10 INHERENT GOVERNMENT FUNCTIONS

However, it is important to recognize that the State has fundamental inherent government functions that should not be delegated to a Contractor. Governmental personnel should be the only people making final decisions on 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:

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

2.11 HAWAI'I TOURISM AUTHORITY RESPONSIBILITIES

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

2.12 POINT OF CONTACT

The Procurement Manager or their 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-26-12**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

SECTION THREE: PROPOSAL CONTENT AND SUBMISSION

3.1 PROPOSAL CONTENT

3.1.1 CONTENT FORMAT

- Slide shows and PowerPoint Presentations will not be accepted. The proposal should be compact and substantive. Proposals may include a web address that evaluators will have the option of reviewing. However, evaluators will not be required to review your website, so do not omit essential information in reliance on website content. Video, audio, or other similar multimedia materials will not be considered during the evaluation of written proposals. However, they may be accepted or requested in Round 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 in Section 3.1.2 (Items 1-8). 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 1-7** are to be individually labeled accordingly and submitted as **one** PDF file in the order listed below that is no more than fifty (50) pages to be titled **Offeror Name_Proposal Part 1:**
 - 1) Cover Page
 - 2) Table of Contents
 - 3) Cover Letter
 - 4) Company Overview and Organizational Capacity
 - 5) Professional Experience
 - 6) Proposed Approach
 - 7) Budget and Cost Proposal
- **Items 8-16** 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:**
 - 8) Offeror Check List (Attachment 01)
 - 9) Proposal Transmittal Letter (Attachment 02)
 - 10) Corporate Resolution (Attachment 03)
 - 11) Standard Qualifications Questionnaire (Attachment 04)
 - 12) Contractor References (Attachment 05)
 - 13) Subcontractor References – if applicable (Attachment 06)
 - 14) Confidential Information List - if applicable (Attachment 07)
 - 15) Conflicts of Interest Disclosures & Attestations (Attachment 08)

16) Certificate of Vendor Compliance or Proof of Application for CVC

3.1.3 CONTENT EXPLANATION

1. Cover Page

The cover page should include the following:

- The name and number of the RFP: RFP 26-12 for Marketing Campaign Effectiveness Study 2026-2028.
- 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

A brief letter expressing the Offeror's interest in the project and summarizing the company's qualifications and relevant experience. The cover letter may also identify key strengths, capabilities, or unique qualifications relevant to the scope of work. The cover letter shall be limited to a maximum of two (2) pages.

4. Company Overview and Organizational Capacity

Description of the vendor, including years in business, team members, and relevant experience in tourism, public affairs, or public relations.

- i) Organizational chart of proposed staffing, including position titles, names, lines of responsibility/supervision, and time allocation to the HTA account.
- ii) Project Manager ("Key HTA Point of Contact") to be assigned to the HTA account. List detailed qualifications, including experience, time with the organization, and resume/bio demonstrating qualifications related to this RFP.
 - Additional Staffing. The Offeror shall identify other key members assigned to the HTA account. List detailed qualifications for each position (including experience, time with the organization, resume/bio demonstrating qualifications related to this RFP), proposed time allocation of staff, and their planned geographic locations.

5. Professional Experience

The Offeror shall provide a complete description of its relevant experience in tourism and marketing research, or related fields described below:

- a) Past Work Examples. Provide at least three (3) examples of past work with comparable scope of work and complexity to this RFP. Examples must be reduced to 8.5 x 11 form. The offeror may, in addition, reference web addresses; however, evaluators are not obligated to view websites.
- b) References. Contact information for at least three (3) references from clients who can speak to the vendor's past work and results on similar projects.

6. Proposed Approach

The Offeror may recommend additional metrics or methodologies that strengthen measurement accuracy, attribution, and strategic relevance.

The offeror shall present a Work Plan as described in section 2.02 – Scope of Work and below:

- 1) Project Approaches.
- 2) Research Methodology. Provide a detailed explanation of the research methodology, including but not limited to:
 - a. A complete description of sampling plans, including sample sources, targeting parameters, and sample size justification.
 - b. Data collection methodology, including fieldwork procedures, respondent recruitment, and verification protocols.
 - c. Weighting procedures, margin of error calculations, and techniques used to ensure statistically valid and demographically representative results.
 - d. Confirmation that sample composition aligns with HTA's US and Japan target market audience profiles.
 - e. Assurance of methodological consistency across semi-annual and annual reporting periods unless modifications are pre-approved by HTA.
 - f. Quality control procedures to verify respondent authenticity, prevent fraudulent responses, and protect data integrity.
- 3) Project Timeline. Provide a proposed timeline that includes project start and end dates, major milestones, interim deliverables, and review periods. The project timeline should be aligned with HTA's annual media campaign cycle. A multi-wave schedule over a 12-month period is anticipated.
- 4) Payment Schedule. Propose a tentative payment schedule that aligns payments with project milestones and corresponding deliverables. The schedule should clearly indicate anticipated completion dates for each deliverable or project phase.

7. Budget and Cost Proposal

Offer must include a detailed cost breakdown for services, specifying hourly rates and any additional expenses for both the initial contract year and the first option period, along with the total proposed amount for these periods.

8. Offeror Checklist

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

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

This form must have an electronic signature, which is required before an award, if any, can be made. If unsigned, the offer will be automatically rejected. See Attachment 02 for details.

10. 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.

11. Standard Qualifications Questionnaire

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

12. Contractor References

Offeror must use this form to provide three (3) references for previous work performed as the Prime Contractor and similar to this project. More recent and relevant performance usually impacts the confidence assessment more than less current and less relevant projects. See Attachment 05 for details.

13. Subcontractor References (if applicable)

If Subcontractors will be used for this contract, Offerors shall submit a Subcontractor Reference form (see Section 3.1.2) for each Subcontractor and ensure all requirements of the General Conditions outlined in this RFP are followed. See Attachment 06 for details.

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

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

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

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

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

14. 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, offeror shall state so. (See Section 3.2.6) See Attachment 07 for details.

15. Conflict of Interest Disclosure & Attestation

Offeror shall complete and sign the Conflicts of Interest questionnaire and disclose any current or anticipated business or personal relationships that may create an actual or apparent conflict of interest, including but not limited to other contracts with the HTA; contracts with competitors of the HTA; and, contracts with members of the travel and tourism industry within the State of Hawaii. See Attachment 08 for details.

16. 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)

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, addenda, 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 1.4 RFP Schedule and Significant Dates, as may be amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance on a defective solicitation and distribution of proposal(s) upon which award could not be made.

3.2.3 PROPOSAL PREPARATION COSTS

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

3.2.4 TAX LIABILITY

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and, if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawai'i GET. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror must state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

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

3.2.5 PROPERTY OF STATE

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

3.2.6 CONFIDENTIAL INFORMATION

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

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

that record.

All Offerors are advised that confidential information in a proposal, offer, specification, protest, or correspondence may be subject to disclosure. The State may only restrict or deny access to items deemed confidential pursuant to Chapter 92F, HRS. Any data submitted to the State that the Offeror wishes to remain confidential shall be clearly marked and 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, 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 7 for details.

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

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

3.2.7 EXCEPTIONS

If an Offeror takes exception to any term, condition, specification, or other requirement listed in the RFP, the Offeror shall provide a written statement identifying:

- The specific RFP section to which the exception applies;
- The nature of the exception; and
- Any proposed alternative language or approach.

If no exceptions are taken, the Offeror shall so state in the proposal transmittal or cover letter.

Exceptions shall be considered in the evaluation of proposals. The State reserves the right, in its sole discretion, to determine whether any exception is material and whether the exception: (a) increases risk to the State, (b) inhibits the achievement of the objectives of the RFP, (c) materially alters the requirements of the solicitation; or (d) creates ambiguity or other evaluation concerns that impair the State's ability to conduct a fair and reasonable evaluation process. The State may deem proposal nonresponsive based on the nature or extent of the exceptions taken. See Attachment 02 for details.

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 RFP Schedule. This electronically submitted offer shall be considered the original. Any offers received outside the HIePRO, including faxed or e-mailed bids, shall not be accepted or considered for award. Any offer received after the due date and time shall be rejected. **The maximum single file size that HIePRO can accept is 100MB; multiple files may be uploaded.**

Submission of a proposal shall constitute an incontrovertible representation by the Offeror

that the Offeror agrees to comply with every requirement of this RFP and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

Offerors are advised to carefully read Section 3.1.2 Content List and Section 3.1.3 Content Explanation and submit all 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 attachments will be verified by two or more state officials on or after the date and time specified in the procurement timeline or as amended. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award and execution of a contract pursuant to HRS §§ 103D-105 and 303 and HAR § 3-122-58.

3.2.10 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

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

3.2.11 MISTAKES IN PROPOSALS

Offerors are responsible for reviewing their proposals for accuracy and completeness prior to submission. Any request to correct, modify, or withdraw a proposal based on an alleged mistake shall be submitted in writing to the Procurement Officer and shall be governed by applicable provisions of the Hawaii Administrative Rules, including HAR Chapter 3-122. The Procurement Officer reserves the right to determine whether correction, withdrawal, or other action is permitted pursuant to applicable law and the best interests of the State.

3.2.12 NO LATE SUBMITTALS AFTER DEADLINE

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

3.2.13 OFFER GUARANTY

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

SECTION FOUR: EVALUATION CRITERIA

4.1 REJECTION OF PROPOSALS

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

4.2 PROPOSAL EVALUATION CRITERIA AND SCORING GUIDE

Written proposals will be reviewed, evaluated, and scored by an Evaluation Committee based on scoring criteria. Scoresheets will be filled out as outlined in the following evaluation criterion and scoring guidelines tables and as described in the two-round process that follows:

Evaluation Criterion	Evaluation Subcategory	Point Breakdown	Maximum Score
Evaluation Criterion 1: Experience And Qualifications	Relevance of the vendor's experience in survey administration, program evaluation, data collection and data analysis	10	
	Depth of experience and demonstrated success with similar projects, capabilities, and company resources.	5	
	Evidence of specialized knowledge of the Offeror's managerial team, staff, and subcontractors as it relates to the requirements of this RFP	5	
	<i>Subtotal</i>		

Evaluation Criterion	Evaluation Subcategory	Point Breakdown	Maximum Score
Evaluation Criterion 2: Proposed Approach	Quality of proposed data collection procedures, data analysis methodology, and reporting for this project.	20	
	Quality of proposed quality control measures to ensure the accuracy and efficiency of data collection, processing, and reporting.	10	
	Reasonableness of the proposed time schedule and workplan.	10	
	<i>Subtotal</i>		
Evaluation Criterion 3: Proposed Approach	Evidence of the Offeror's direct, measurable results in similar projects, including the scale, efficiency (e.g., timeliness, scope completion), and volume of deliverables (e.g., data sets, reports, analyses) provided.	10	
	Evidence of successful outcomes and sustained changes resulting from the Offeror's evaluations or recommendations, as measured by the assessed quality and practical applications in similar projects.	5	
	<i>Subtotal</i>		
Evaluation Criterion 4: References	Evidence of strong and relevant references of the Offeror's previous work.	5	
	<i>Subtotal</i>		5
Evaluation Criterion 5: Price*	Subfactor 1 – Total Price Calculation	10	
	Subfactor 2 – Price Reasonableness and Realism	10	
	<i>Subtotal</i>		
TOTAL POSSIBLE POINTS			100

Assessment		
EVALUATION CRITERION 1: EXPERIENCE AND QUALIFICATIONS		
Subcategory	Scoring Guidelines	Score Range
1A. Experience and Qualifications	<p>9–10: Extensive, highly relevant experience.</p> <p>6–8: Moderately relevant experience; generally comparable projects.</p> <p>3–5: Limited relevance or partial alignment.</p> <p>0–2: Minimal or no relevant experience.</p>	0–10
1B. Depth of Experience & Demonstrated Success	<p>5: Strong success and capabilities demonstrated on similar projects.</p> <p>4: Good experience; some successful outcomes.</p> <p>0–2: Insufficient experience.</p>	0–5
1C. Specialized Knowledge of Team/Subcontractors	<p>5: Excellent alignment of team/subcontractors with RFP needs.</p> <p>4: Good alignment; minor gaps.</p> <p>3: Partial information.</p> <p>0–2: Little or no relevant detail.</p>	0–5
EVALUATION CRITERION 2: PROPOSED APPROACH		
Subcategory	Scoring Guidelines	Score Range
2A. Quality of Program Implementation, Analysis, and Reporting Approach	<p>18–20: Highly rigorous, detailed, and feasible approach that is clearly tailored to the requirements of the Visitor Assistance Program.</p> <p>15–17: Solid approach with adequate detail and general alignment to program requirements.</p> <p>11–14: Basic approach that addresses core requirements but lacks detail, specificity, or clear alignment to the case-based service model.</p> <p>0–10: Unclear, incomplete, or insufficient approach.</p>	0–20
2B. Quality of Proposed Quality Control Measures	<p>9–10: Comprehensive and well-defined quality control measures that ensure accurate, consistent, and timely reporting, as well as reliable and coordinated service delivery.</p> <p>7–8: Good quality control measures that address key areas such as reporting accuracy and service consistency. Minor gaps in detail or consistency.</p> <p>5–6: Limited or partially defined quality control measures.</p> <p>0–4: Weak or absent quality control procedures.</p>	0–10

2C. Timeline and Workplan	<p>9–10: Realistic, detailed, and fully actionable timeline and workplan.</p> <p>7–8: Generally feasible; minor issues.</p> <p>5–6: Basic or partially developed schedule.</p> <p>0–4: Unclear, unrealistic, or missing timeline.</p>	0–10
EVALUATION CRITERION 3: PAST PERFORMANCE & CASE STUDIES		
Subcategory	Scoring Guidelines	Score Range
3A. Measurable Results & Efficiency	<p>9–10: Clear, direct, measurable results with strong efficiency and delivery records.</p> <p>6–8: Good results; some measurable outcomes.</p> <p>3–5: Limited results or unclear supporting data.</p> <p>0–2: No relevant measurable performance.</p>	0–10
3B. Successful Outcomes & Sustained Impacts	<p>5: Strong evidence of sustained improvements or meaningful outcomes attributable to vendor work.</p> <p>3-4: Positive outcomes with moderate detail.</p> <p>1-2: Limited or mixed results.</p> <p>0: No demonstrated outcomes.</p>	0–5
EVALUATION CRITERION 4: REFERENCES		
Subcategory	Scoring Guidelines	Score Range
4A. Quality & Relevance of References	<p>5: Strong and relevant references; highly positive.</p> <p>3–4: Good, mostly relevant references.</p> <p>1–2: Weak or limited references.</p> <p>0: No references or poor references.</p>	0–5
EVALUATION CRITERION 5: PRICE		
Subcategory	Scoring Guidelines	Score Range
5A. Total Price Calculation	See Price Evaluation Criteria - * below	0–10
5B. Price Reasonableness & Realism	<p>8–10: Highly reasonable and realistic.</p> <p>6–7: Mostly reasonable.</p> <p>3–5: Questionable or inconsistent.</p> <p>0–2: Unrealistic or unjustified.</p>	0–10

The evaluation committee shall evaluate and score proposals based on the evaluation criteria set forth in this RFP. Narrative responses shall be reviewed and scored in accordance with the scoring guidelines established herein.

Price Evaluation Criteria - *

Cost proposals shall be evaluated in accordance with HRS Chapter 103D and applicable provisions of HAR Chapter 3-122. The proposal with the lowest cost factor shall receive the maximum available points allocated to cost. Higher-cost proposals shall receive proportionately lower cost scores using

the following formula: $\text{Lowest Proposed Cost} \times \text{Maximum Available Cost Points} \div \text{Offeror's Proposed Cost} = \text{Cost Points Awarded}$

Price Reasonableness and Realism: The State may also evaluate proposed pricing for reasonableness and realism. Price reasonableness may be evaluated to determine whether proposed prices are fair reasonable in relation to the services proposed and current market conditions. Price realism analysis may be conducted to assess whether a proposed price is low as to reflect a lack of understanding of the contract requirements or to create performance risk. Such analysis may be considered in evaluating proposal risk, technical understanding, or the Offeror's responsibility.

4.3 EVALUATION COMMITTEE

The HTA intends to conduct a fair and impartial evaluation of proposals received in response to this RFP. Proposals shall be reviewed and evaluated by an Evaluation Committee in accordance with HRS Chapter 103D, HAR Chapter 3-122, and the requirements of this RFP.

The Procurement Manager designated for this RFP shall serve as the procurement officer responsible for administration of the solicitation process and shall not serve as a voting member of the Evaluation Committee.

In accordance with HAR §3-122-53, proposals may be classified as acceptable, potentially acceptable, or unacceptable based on an initial evaluation of the proposals submitted. Proposals determined to be acceptable or potentially acceptable may be considered for further evaluation, discussions, or inclusion within the competitive range, as determined by the State.

The Evaluation Committee shall consist of at least three (3) qualified State employees or other individuals authorized in accordance with applicable procurement requirements. Proposals shall be evaluated solely in accordance with the evaluation criteria and evaluation process set forth in this RFP.

The identities of Evaluation Committee members shall remain confidential throughout the procurement process to the extent permitted by law. Offerors shall direct all communications regarding this RFP exclusively to the Procurement Manager. Any attempt by an Offeror to improperly contact or influence Evaluation Committee members may result in disqualification of the proposal and any other remedies available to the State under applicable law.

4.4 EVALUATION AND AWARD PROCESS

Proposals shall not be opened or evaluated until after the proposal submission deadline. Late proposals shall be handled in accordance with the requirements of this RFP and applicable procurement laws and rules.

The State reserves the right to award a contract based solely upon initial proposals received, without discussions, pursuant to HAR §3-122-46.

4.4.1 Initial Classification of Proposals:

In accordance with HAR §3-122-53, proposals may be classified as acceptable, potentially acceptable, or unacceptable based upon an initial evaluation of the proposals submitted. Proposals determined to be unacceptable, nonresponsive, or otherwise nonconforming to the requirements of this RFP may be eliminated from further consideration.

Only responsible Offerors submitting acceptable or potentially acceptable proposals may be considered for inclusion within the competitive range or priority list.

4.4.2 Phase 1 – Evaluation of Written Proposals:

During Phase 1, the Evaluation Committee shall evaluate and score all acceptable and potentially acceptable proposals using the evaluation criteria and scoring methodology set forth in Section 4.2 of this RFP.

Proposals shall be ranked based on combined weighted scores. Following completion of the initial evaluation, the State may establish a competitive range or priority list consisting of the highest-ranked Offerors.

4.4.3 Phase 2 – Discussions and Additional Information:

If determined necessary by the State, Phase 2 may include discussions with priority-listed Offerors and requests for additional information or clarification. Such discussions may include question-and-answer sessions, oral presentations, reference checks, requests for clarification, or submission of best and final offers (BAFOs), as determined appropriate by the State.

The same evaluation criteria and scoring methodology set forth in Section 4.2 may be used during Phase 2. Evaluators may complete revised evaluation score sheets reflecting their overall evaluation of the Offeror, including written proposals, discussions, oral presentations, clarifications, and any additional information submitted.

In the second phase, the Evaluation Committee may conduct discussions with Priority Listed Offerors and request “Additional Information,” which may consist of any combination of question-and-answer sessions, oral presentations, requests for clarification, best and final offers (BAFO), or anything else that the Evaluation Committee may find useful in making a decision. The Evaluation Committee reserves the right to perform reference checks.

The RFP, any addenda issued, and the successful Offeror’s proposal, as accepted by the State, shall become part of the resulting contract. All proposals shall become the property of the State of Hawai‘i.

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 GSSMP score will be ranked higher. If that too is a tie, then the one with the higher average Overall Capabilities of Firm and Personnel Qualifications – will be ranked higher.

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

The Evaluation Committee, based on the aforementioned process, will make a recommendation of award to the Procurement Manager for their approval. In the event the State is unsuccessful in negotiating the post-award contract, the HOPA reserves the right to award the contract 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 they may cancel the RFP if negotiations are unsuccessful in accordance with Hawai‘i Revised Statutes and Hawai‘i Administrative Rules.

SECTION FIVE: CONTRACT AWARD

5.1 AWARD OF CONTRACT

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

5.2 RESPONSIBILITY OF OFFERORS

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

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

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

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

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

Timely Registration on HCE. Vendors/Contractors/Service Providers are advised to register on HCE as soon as possible. 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, any addenda issued, and all or part of the successful Offeror's proposal may be incorporated into the contract. The General Conditions issued by the Department of the Attorney General shall be made a part of 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 and execution of a contract pursuant to HRS §§ 103D-105 and 303, and HAR § 3-122-58. If a person is denied access to a State procurement record, the person may appeal the denial to the Office of Information Practices in accordance with HRS §92F-15.5.

5.5 DEBRIEFING/PROTEST

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

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

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

5.6 PROTEST PROCEDURES

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

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

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto, provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers; provided further, that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Manager’s debriefing was completed.

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

- Name and address of the protestor;
- Appropriate identification of the procurement;
- A statement of the reasons for the protest; and
- Supporting exhibits, evidence, or documents to substantiate any claims unless not available within 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.

5.7 APPROVALS

Any contract resulting from this solicitation shall be subject to the approval of the Department of the Attorney General and all further approvals required by applicable federal and State laws, regulations, rules, policies, or other authorities, including the approval by the Governor, if applicable.

5.8 CONTRACT EXECUTION / NOTICE TO PROCEED

The successful Offeror receiving an award shall enter into a formal written Contract. Work shall commence on the official commencement date specified on the Notice to Proceed issued by the State. No work is to be undertaken by the Contractor prior to the commencement date specified in the Notice to Proceed. Any preparation and planning, or other work performed by the Contractor prior to the issuance of the Notice to Proceed shall be performed at the Contractor's sole risk and expense. The State of Hawai'i shall not be liable for any work performed, costs incurred, loss of profits, or damages of any kind arising from work performed prior to the official commencement date.

Any extension of the Contract shall be subject to mutual agreement of the parties, availability of funds, satisfactory Contractor performance, and execution of a written Contract supplement or amendment by the State.

5.9 INSURANCE

5.9.1 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 \$1,000,000 per occurrence; personal injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. 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 covers 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.

5.9.2 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.

5.9.3 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.

5.9.4 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.”

5.9.5 A Waiver of Subrogation shall apply to the General Liability, Automobile Liability, and Workers’ Compensation insurance policies and shall be in favor of the State of Hawai‘i.

5.9.6 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 insurance policies shall not be construed to limit the Contractor’s liability hereunder or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or insurance policies, 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.

5.9.7 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.

5.10 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.

5.11 PAYMENT

The awarded Contractor shall submit all invoices via email in accordance with the State of Hawaii invoicing requirements, the General Conditions, and the terms of the resulting contract. Pursuant to HRS 103-10, the State shall have thirty (30) calendar days after receipt of a proper invoice and satisfactory acceptance of all required goods, services, and/or deliverables.

Invoices shall reference the applicable contract number and include a Contractor-generated invoice number. Invoices must be supported by documentation of deliverables completed during the invoicing period, as applicable under the contract’s payment terms and scope of work.

An invoice shall not be considered received or properly submitted unless all required supporting documentation and deliverables have been provided and accepted by the State. Incomplete invoices or invoices submitted without required deliverables may be returned to the Contractor for correction and resubmission, which may delay payment.

Payment shall be made in accordance with the payment structure set forth in the contract, which may include milestone-based, deliverable-based, or periodic payments, as applicable.

The total contract amount represents the maximum compensation payable under the contract unless modified by a duly executed written amendment.

The State’s fiscal year ends June 30. Invoices submitted during fiscal year closeout periods (typically June 1 through July 31, may be subject to processing delays due to year-end accounting procedures. Contractors are advised to coordinate with the Contract Administrator as necessary. Final payment may be conditioned upon satisfactory completion of all contract requirements and

compliance with applicable contractual obligations, including any required certifications or closeout documentation.

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

5.12 CONTRACT INVALIDATION

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

5.13 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 contract period.

5.14 HAWAIIAN ORTHOGRAPHY

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

SECTION SIX: ATTACHMENTS AND EXHIBITS

- 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 (if applicable)
- Attachment 08: Conflicts of Interest Disclosures & Attestations

- Exhibit A: Overview of the RFP Process
- Exhibit B: Special Provisions
- Exhibit C: General Provisions for Goods and Services
- Exhibit D: General Conditions for 103D

EXHIBIT A

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 and contract execution, proposal files are public records available for review by submitting a Request to Access Government Records.

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

3. The Procurement Manager or an Evaluation Committee approved by the Procurement Manager will evaluate the proposals in accordance with the evaluation criteria in Section Four.
4. A "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals may be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal if a 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 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 and contract is executed, 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 B

SPECIAL PROVISIONS

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-S1 to Attachment-S4, 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 C

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
Hawaii Administrative Rules
- j. HEAD OF THE PURCHASING AGENCY
The head of any agency with delegated procurement authority by law or from a chief procurement officer of this State to enter into and, administer contracts.
- k. HRS
Hawaii Revised Statutes
- l. IFB
Invitation for Bids
- m. OFFER
An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.
- n. OFFEROR
Any individual, partnership, firm, corporation, joint venture, or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.
- o. PROCUREMENT 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

The awarded Contractor shall submit all invoices via email and in accordance with the State's invoicing guidelines pursuant to the Hawai'i State General Conditions attached to and made a part of this RFP. 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 offer 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 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 D

General Conditions for 103D

HAWAI'I REVISED STATUTES (HRS) CHAPTER 103D

(Updated July 2017)

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

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

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

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

14. Termination for Convenience.

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

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

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

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

d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

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

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

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

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

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

e. Records Retention.

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