

SPECIAL PROVISIONS

TERMS AND ACRONYMS USED HEREIN

Procurement Officer	=	DAGS/CSD Administrator or his designee
State	=	State of Hawaii
DAGS/CSD	=	Department of Accounting and General Services, Central Services Division, 729 Kakoi Street, Honolulu, Hawaii 96819
CA	=	Contract Administrator
Bidder/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 good, service, or construction contemplated.
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
HlePRO	=	Hawaii Electronic Procurement System
AG	=	Attorney General
GC	=	General Conditions, Form AG-008, Rev. 01/10/2023 issued by the Attorney General (AG)
IFB	=	Invitation for Bids
GET	=	General Excise Tax

SCOPE

See Scope of Work for CSD-26-026-O Cemetery Perimeter Fencing at the Waianae Japanese Cemetery TMK 8-5-01:02.

Bidder must possess a valid State of Hawaii Contractors Specialty Contractors C-32, Fencing contractor license at the time of award. Upon selection, the contractor shall provide a written time and materials proposal to install the fencing until completion.

The contractor will not be held liable for acts of vandalism.

CONTRACT ADMINISTRATOR

For this contract, Mr. Dion Yasui, Cemetery Manager, DAGS-Central Services Division, is the Contract Administrator (CA). The phone number at which he can be reached is (808) 970-1801 and email dion.k.yasui@hawaii.gov or centralservices@hawaii.gov.

TERM OF CONTRACT

The term of contract shall be for the period noted on the solicitation and commencing from the date on the Notice to Proceed.

EXAMINATION OF PROJECT AREA

Prospective qualified offerors should visit the project site and thoroughly familiarize themselves with existing conditions and the amount and kind of work to be performed. Date and time for examination will be posted in HlePRO. No additional compensation will be made for reason of any misunderstanding or error regarding conditions at the project location or the amount and kind of work to be performed.

PRE-BID CONFERENCE

Prospective qualified offerors are invited to attend a pre-bid conference to be held as indicated on the HlePRO solicitation. The purpose of this voluntary meeting is to address any questions and concerns offerors may have regarding the procurement process, sketches, specifications and the scope of work.

Offerors are advised that anything discussed at the pre-bid conference does not change any part of this solicitation. All changes and/or clarifications to this solicitation shall be made as written addendums on the HlePRO system.

Submission of a bid in response to this solicitation shall indicate the offeror understands the scope of services to be provided and accepts the terms and conditions of the resulting contract. No additional compensation after opening the bid shall be allowed for reason of misunderstanding or error regarding site condition or work to be performed.

WRITTEN INQUIRIES (QUESTIONS and ANSWERS)

Questions regarding this solicitation are due by the date and time listed for questions in the HlePRO system. All inquiries shall be made using the HlePRO Question and Answer Section. Responses to questions will be provided on the date as indicated in the HlePRO system.

REQUIREMENTS FOR CONTRACTOR LICENSING CLASSIFICATIONS

Offerors are solely responsible for reviewing this project's requirements, determining the appropriate licenses required and ensuring they and subcontractors of their choice possess the necessary specialty licenses to perform the work for this project.

Offerors holding an "A" or "B" license are reminded of the Hawaii Supreme Court's January 28, 2002 decision in *Okada Trucking Co., Ltd. V Board of Water Supply , Et al.*, 97 Haw.450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the General Contractor to act as a specialty contractor in any area in which the General Contractor has no license.

OFFEROR QUALIFICATION

Experience. Offeror must have a minimum of two (2) years of experience (immediately prior to bid opening date). Offeror shall indicate its number of years of experience on the Offer Form A and may be required to produce documentation substantiating its years of experience.

License. The Offeror shall possess at the time of submitting a bid. Business and tax licenses must be current and valid in order to conduct business in the State of Hawaii. Offeror shall provide information on the Offer Form A.

Office/Services Facility Location. Offeror shall have a permanent office and service facility on the island of Oahu from which to conduct business. An answering service is acceptable provided a response is made within two (2) hours of the initial call.

Offeror must complete and return Qualification Form Part A electronically, as a .pdf attachment, with their bid submittal through HlePRO. Offerors are responsible for attaching all requested forms when submitting an offer. If Offeror needs assistance in submitting these forms through HlePRO, they can contact HlePRO at (808) 695-4620 or go to the HlePRO website and select Help-Chat online.

If requested by the State, the Offeror shall have three (3) business days to provide additional information/documentation. Failure to do so may result in disqualification of Offeror.

Awards will not be given to any Offeror failing to meet ALL the above qualifications. Failure to meet these qualifications requirements shall result in rejection of the bid. Further, satisfaction of these requirements must be maintained by the Contractor during the entire contract period.

CERTIFICATION OF INDEPENDENT COST DETERMINATION

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

- a) The costs in its offer have been arrived at independently, without consultation, communication, or agreement with any other offeror, as to any matter relating to such costs for the purpose of restricting competition.
- b) Unless otherwise required by law, the cost in its offer has not been knowingly disclosed by the Offeror prior to award, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
- c) No other attempt has been made or will be made by the Offeror to influence any other person or firm to submit or not to submit an offer for the purpose of restricting competition, bid rigging or other unlawful purposes.

BID PREPARATION

Enter bid prices as noted in the HlePRO instructions.

Subcontractors: Offeror shall list all subcontractors to be used to perform the specified services. DAGS CSD reserves the right to request additional information about any subcontractor. Such information shall be provided within five (5) working days of the request.

Taxpayer Preference:

For evaluation purposes, pursuant to §103D-1008, HRS, the Offeror's tax-exempt price submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the a forementioned adjustment.

Unit Bid Price:

Price shall include costs for all labor, equipment, materials (other than those procured at the State's expense, applicable taxes (including the current Hawaii General Excise Tax) and any other expenses incurred to provide services as specified herein.

Offer Guaranty

An offer security deposit is not required for this solicitation.

Insurance

Offeror shall provide insurance information as requested on Offer Form A.

Wage Certificate.

The Offeror shall complete and submit a Wage Certificate with its offer, **as an attachment on HlePRO**, by which the Offeror certifies that services are required.

Qualification Form A

The Offeror shall complete and submit Qualification Form Part A and submit with its offer, **as an attachment on HlePRO**, by which the Offeror certifies its full legal business name, location, contact information, personnel, qualifications, and past work (as indicated on the form).

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. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

HlePRO Fees

HlePRO is an unfunded initiative which means that no funds have been appropriated for the program. There is no cost for vendors to register or to submit quotes or bids.

SUBMITTING OFFER

Offers shall be received electronically through the Hawaii State eProcurement HlePRO. **Offers received outside of the HlePRO shall be rejected and not be considered for award.** To register for HlePRO, please go to <http://hiepro.hawaii.gov>. If you need assistance in registering, please call (808) 695-4620 or go to the HlePRO website and click on Help-Chat online.

Offeror's electronic response to this solicitation shall be deemed an offer to sell the specified materials and services to the State at the price(s) shown in the response and under the terms and conditions of this solicitation.

Offerors must complete and submit the following forms:

- a) Offer Form A
- b) Offer Form B
- c) Active State of Hawaii Contractor License
- d) Wage Certificate
- e) W-9 Request for Taxpayer Identification

These document(s) must be submitted electronically, as an attachment, through HlePRO. Offerors are responsible for ensuring all forms requested are attached when submitting an offer.

Offeror must bid on all items specified on the Offer Form B pages and submit all of the above forms to be considered for award. Failure to do so shall result in rejection of the entire Bid.

RESPONSIBILITY OF OFFEROR

Offeror is advised that to be awarded a contract under this solicitation, the vendor/contractor/service provider 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, tax clearance.
- 2. Chapter 383, unemployment insurance.
- 3. Chapter 386, workers' compensation.
- 4. Chapter 392, temporary disability insurance.
- 5. Chapter 393, prepaid health care; and
- 6. Section 103D-310©, Certificate of Good Standing (COGS) for entities doing business in the State.

The State will verify compliance on Hawaii Compliance Express (HCE) for awards \$ 2,500 or greater.

The HCE is an electronic system that allows vendors/contractors/ services 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 and service providers should register online with Hawaii Compliance Express (HCE) prior to submitting an offer at <http://vendors.ehawaii.gov>.

The annual registration fee is \$12.00 payable to Hawaii Information Consortium, LLC (HIC).

If you have any questions, please call:

Hawaii Information Consortium, LLC
Phone no. 695-4620 or

Email: info@ehawaii.gov

The "Certificate of Vendor Compliance" is accepted for both contracting and final payment.

Paper documents as proof of compliance are NOT ACCEPTABLE.

Offerors are advised that the following paper compliance documents will no longer be accepted:

Tax Clearance Form A-6.
Certificate Of Compliance.
DLIR Form LIR#27.
Certificate Of Good Standing, DCCA (BREG).

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

AWARD OF CONTRACT

Method of Award.

Award, if made, shall be to the Offeror whose offer is responsive with the lowest total sum bid price.

Timely Submission of Certificates.

The qualified Offeror with the lowest responsive offer is required to submit to the DAGS/CSD the following forms:

**Certificate of Insurance
Certificate of Vendor Compliance
W-9, Request for Taxpayer Identification Number and Certification**

If the certificate(s) and form(s) is not submitted in HlePRO to be awarded, an otherwise responsive offer from the responsible Offeror may not receive the award.

Cancellation of IFB and Rejection of Offers

Award shall be contingent on the availability of funds. The State reserves the right to cancel this IFB and/or reject all offers in whole or in part when it is determined to be in the best interest of the State.

EXECUTION OF CONTRACT

The State shall send a formal contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned to the State within ten (10) working days after receipt by the Offeror.

NOTICE TO PROCEED

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

No work is to be undertaken by the Contractor prior to the official commencement date specified on the Award Notification or Notice to Proceed issued by the State upon execution of the contract by both parties.

The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Contractor prior to the official commencement date.

INVOICING

Contractor shall submit an original invoice, which includes the Contract Number and IFB Number to:

Department of Accounting and General Services
Central Services Division – Cemetery Management Office
729 Kakoi Street
Honolulu, Hawaii 96819
Attn: Mr. Dion Yasui

EXTRA WORK

For extra work not covered by the Contract, the Contractor shall submit a separate written proposal to the Contract Administrator describing the work to be done and the cost to perform the work. If the proposal is found acceptable, and without further solicitation from other bidders, the Contract Administrator may issue a separate Purchase Order to authorize the work.

The invoice from the Contractor shall contain date of work, description of work performed, location of work, listed of parts and materials used or attached copies of invoices of parts and materials purchased.

PAYMENT

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

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

Final Payment Requirements. Contractors are required to submit a “**Certificate of Vendor Compliance**” for final payment on the contract.

LIQUIDATED DAMAGES

Refer to Section 9 of the General Conditions. Liquidated damages are fixed at the sum of ONE HUNDRED DOLLARS (\$100.00) for each calendar day the Contractor delays in the completion of his contract after the required date of said completion.

CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contracts if the contractors are paid with funds appropriated by a legislative body between the execution of the contract through the completion of the contract.

WAGES, HOURS, AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTOR PERFORMING

WORK SCHEDULE

Work shall be performed between 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding weekends and State holidays. If special circumstances are required, the initiating party will communicate the situation no less than 5 days ahead of the activity date in writing.

All offerors for service contracts shall comply with Section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any offeror is entitled to submit any offer for the performance of any contract to supply services more than \$25,000 to any governmental agency, offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the federal and state governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any government contracting agency, more than \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency to award the contract to perform services more than \$25,000 to enforce this section.

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

Wage Certificate. The Offeror shall complete and submit a Wage Certificate, **as a attachment on HlePRO**, by which the Offeror certifies that services required will be performed pursuant to Section 103-55, HRS.

The Wage Certificate must be submitted as an attachment on HlePRO.
LIABILITY INSURANCE

The Contractor shall obtain and maintain insurance described below which shall provide coverage against claims arising out of the Contractor's operations under the contracts, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable during the life of this contract.

- a) Worker's Compensation – The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance law in effect on the date of the execution of this contract and as modified during the duration of the contract.

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by the contractor or by a subcontractor or anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable during the life of this contract. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as an additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	\$1,000,000 combined single limit per occurrence for bodily injury and property damage \$2,000,000 aggregate per occurrence
Automobile Liability Insurance	\$1,000,0000 combined single limit per occurrence

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Prior to issuance of the Notice to Proceed, Award Notification or Purchase Order, **Contractor must provide to DAGS Central Services Division, 729 Kakoi Street, Honolulu, Hawaii 96819 within ten (10) working days or earlier from the date the request is made, a CERTIFICATE(S) OF INSURANCE** completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form.

The certificate of insurance is necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a completed certified copy of all required insurance policies, including endorsements effecting the coverage required at any time.

The Contractor will immediately provide written notice to the Department State of Hawaii, Department of Accounting and General Services, Central Services Division, Purchasing Office, 729 Kakoi Street, Honolulu, Hawaii 96819 should any of the insurance policies evidence on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

It is recommended that Offerors apply for the Certificate of Insurance as soon as possible to ensure timely submittal when requested.

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.

WORKMANSHIP

All work shall be executed in a professional manner and shall present a neat appearance when completed. All work done shall be subject to inspection and approval of the Contract Administrator; all services rendered shall be in accordance with these specifications and provisions.

REMOVAL OF CONTRACTOR'S EMPLOYEES

Contractor agrees to remove any of its employees from services rendered and to be rendered to the State, upon request in writing by the Contract Administrator.

SUBCONTRACTORS

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

PERMITS, LICENSES, AND TAXES

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

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

RE-EXECUTION OF WORK

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

RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses, or neglects to perform the services in accordance with the requirements of these Special Provisions, the Specifications, and the General Conditions herein, the addition to the recourse stated in Section 13 of the General Conditions, the State reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys dues or that may thereafter become due the Contractor, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor

shall pay the difference upon demand by the State. The State may utilize all other remedies provided by law.

APPROVALS

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

CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS

The solicitation may be cancelled, or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in §3-122-95 through §3-122-97, HAR.

NONDISCRIMINATION

No person performing work under this Agreement, including any subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

COMPLIANCE WITH LAWS

The Contractor always shall observe and comply with all federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

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, costs, and expense including attorney's 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.

TERMINATION FOR CONVENIENCE

The Agency may, when the interests of the State require, terminate this Contract in whole or in part, for the convenience of the State. The Agency shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

GUARANTEE OF WORK

Except as otherwise specified, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one (1) year from the date of final acceptance of the contract. All guarantees of work shall be transmitted in writing.

MANUFACTURERS GUARANTEE

Whenever a manufacturer or installer guarantee on any specified product exceeds one (1) year, the guarantee shall become part of this contract in addition to the Contractor's guarantee.

FINAL ACCEPTANCE

The contract will be considered accepted when all work has been fully completed and all required documents have been submitted.

PROTEST

Pursuant to HRS § 103D-701, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer (PO) James Kurata, Central Services Administrator, 729 Kakoi Street, Honolulu, Hawaii 96819.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts given rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award.

Award(s), if any, resulting from this solicitation shall be posted to the State Procurement Office (SPO) website: <http://www.hawaii.gov/spo>.