**RELEASE DATE: July 21, 2026**

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

# REQUEST FOR PROPOSALS
# RFP NO. 27-01
# (NOTICE TO OFFERORS)

# HAWAI‘I TOURISM DESTINATION BRAND MARKETING SERVICES FOR THE NORTH AMERICA MAJOR MARKET AREA

## OFFERS ARE DUE AT 2:00 P.M. HAWAI‘I STANDARD TIME (HST) ON August 20, 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 HAWAI‘I ePROCUREMENT SYSTEM (HIePRO) ONLY.**

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

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

The HTA was established in 1998 under Chapter 201B, Hawaiʻi Revised Statutes (HRS). The HTA is administratively attached to the Department of Business, Economic Development and Tourism (DBEDT).

The HTA works with the community and industry to ensure that we live up to Mālama Kuʻu Home – caring for our beloved home – by guiding Hawaiʻi'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 Team (GMT). HTA currently engages GMT in the U.S., Canada, Oceania (Australia & Aotearoa-New Zealand), Europe, Japan, Korea, China, 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 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.

HTA Strategic Plan

The 2026-2030 HTA Strategic Plan frames our work with three strategic pillars: Brand Marketing, Experience Development, and Tourism Leadership. Each of the three pillars represents a core component of Destination Management as defined in HRS 201B. Together, they promote holistic Destination Stewardship and regenerative tourism, supporting HTA's goal of strengthening Hawaiʻi's tourism economy in ways that align with the priorities and well-being of residents, businesses, and visitors. The HTA Strategic Plan has four Key Performance Indicators (KPIs) that the agency is responsible for advancing:

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

The Hawaiian Islands Brand & "*Hawaiʻi Stays with You*" Campaign

The Hawaiian Islands brand is rooted in culture and connection. While the allure of the Hawaiian Islands has attracted visitors for more than a century, the true power of Hawaiʻi is in the people of Hawaiʻi. For Native Hawaiians and *Kamaʻāina* (residents), this special place isn't just a vacation destination, it's our home. As the voice of The Hawaiian Islands, we share the stories of the people and places of Hawaiʻi with genuine *aloha* and respect for our indigenous and local culture. By seeing Hawaiʻi through our eyes, welcomed guests can experience the true beauty of our islands. For the complete Hawaiian Islands Brand Guidelines, please visit: https://hta.hawaii.gov/wp-content/uploads/2026/06/2026-thi-brand-guidelines-external-final.pdf.

All HTA brand marketing efforts are aligned to reinforce The Hawaiian Islands brand including the current campaign, "*Hawaiʻi Stays With You*." This campaign invites travelers to experience Hawaiʻi to listen deeper, connect, and return home changed. It emphasizes that life in Hawaiʻi moves with intention - blending tradition and innovation - and encourages visitors to participate in that rhythm with humility and respect. For an overview of the campaign, please refer to Exhibit A – Appendix 1.

## 1.2 TERMS AND ACRONYMS

| | |
|---|---|
| Authority | The Hawaiʻi Tourism Authority. Also referred to as "HTA". |
| AG | Attorney General |
| BAFO | Best and Final Offer |
| Board | Board of Directors of the Hawaiʻi Tourism Authority |
| Contract Administrator | The individual designated to manage the various facets of the contract to ensure the Contractor's total performance is in accordance with the contractual commitments and obligations are fulfilled. |
| CPO | Chief Procurement Officer, Hawaiʻi 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 | Hawaiʻi Department of Accounting and General Services |
| DBEDT | Hawaiʻi Department of Business, Economic Development and Tourism |
| DCCA | Hawaiʻi Department of Commerce and Consumer Affairs |
| DLIR | Hawaiʻi Department of Labor & Industrial Relations |
| DMAP | Destination Management Action Plan |
| DOTAX | Hawaiʻi Department of Taxation |
| GC | General Conditions. Rules enacted by the Hawaiʻi Attorney General's Office. |
| GET | General Excise Tax |
| GMT | Global Marketing Team. The HTA term given to its various contractors for their respective markets. |
| GP | General Provisions |

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| HAR | Hawai‘i Administrative Rules. State rules outlining procedures for applying statutes. |
| HCC | Hawai‘i Convention Center |
| HCE | Hawai‘i Compliance Express |
| HIePRO | Hawai‘i State eProcurement System |
| High-Value Traveler | This term is used to describe traveler segments targeted by our marketing or sales tactics. Typically, these are travelers who are likely to spend more per trip. These may include international, MCI, luxury, wedding, sports/events travelers, and other categories. By targeting these travelers, we can generate greater economic impact (*value*) without large increases in visitor numbers (*volume*). A high value also can be placed on visitors who show desirable behaviors, such as mindfulness or a willingness to visit multiple islands. (Many Hawai‘i visitors may not fit these definitions because not all who visit are targeted by our marketing.) |
| 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 |
| Knowledge Bank | HTA’s digital asset library of licensed creative assets accessible to the public. Registration and agreement to terms and conditions apply. |
| KPI | Key Performance Indicator |
| LOS | Length of Stay. The average number of days a visitor stays in Hawai‘i. |
| MCI | Meetings, Conventions & Incentives |
| Ma‘ema‘e Toolkit | A collection of resources and instructions to represent Native Hawaiian language and culture accurately and respectfully. |
| Mindful Traveler | Travelers who are respectful, responsible, and environmentally conscious. They seek to explore and make meaningful memories, respect the culture and environment of the places they visit, and desire to support something bigger than themselves. |
| MMA | Major Market Area. The geographic area to be covered under this RFP and contract. Also referred to as simply “the market”. |
| Offeror | Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly, or through a duly authorized representative or agent, a bid for the goods and/or services contemplated in this RFP. |
| OIP | Hawai‘i Office of Information Practices |
| PPPD$ | Per Person Per Day Spending. The average dollars (USD) spent per day per person in Hawai‘i by visitors. |
| Procurement Manager | The procurement and contracting manager for the HTA |

| | |
|---|---|
| Regenerative Tourism | §201B-1: **"<u>Regenerative Tourism</u>"** means a tourism model that:<br>(1) Is designed and carefully managed to bring net benefits to local communities and destinations; and<br>(2) Implements an innovative and sustainable economic development plan to:<br>(A) Make net positive contributions;<br>(B) Create conditions that allow communities to flourish;<br>(C) Engage in collaborative efforts that provide visitors with genuine and meaningful experiences in Hawai'i; and<br>(D) Improve destinations for current and future generations for the well-being of the environment, residents, indigenous communities, and visitors. |
| Resident Sentiment Survey | The surveys gathered and reports published regarding Hawai'i resident sentiment towards tourism in the State. |
| RFP | Request for Proposals, including all parts, Sections, Exhibits, Attachments, and Addenda. |
| ROI | Return on Investment |
| SPO | Hawai'i State Procurement Office |
| State | State of Hawai'i, including its departments, agencies, and political subdivisions. |
| Total Arrivals | The total number of visitors that arrive from the market. |
| Total Expenditures | The U.S. dollar amount spent in Hawai'i attributed to a visitor. Includes direct spending by visitors while in Hawai'i as well as any prepaid package purchased before arrival. Does not include transpacific air costs to and from Hawai'i, commissions paid to travel agents, or portions of the package in another state or country. |
| Airlift Development | Monitoring seat inventory and working with carriers to expand routes and frequency to improve accessibility statewide |
| Route Maintenance | Monitoring load factors and supporting underperforming routes |
| Multi Island Utilization | Monitoring and generating more multi-island itineraries within the state |

## 1.3 ELECTRONIC PROCUREMENT

**1.3.1** The State has established the Hawai'i State eProcurement System (HIePRO) to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HIePRO. Registration information is available at the State Procurement Office (SPO) website: http://spo.Hawaii.gov/HIePRO, then select HIePRO Vendor Registration Guide. For online assistance, on the HIePRO (https://hiepro.ehawaii.gov/welcome.html) landing page, select 'Help Chat – online' at the top of the page. Tyler Technologies can be reached at (808) 695-4620 or by email at: hiepro@ehawaii.gov.

**1.3.2** The State will use HIePRO to issue the RFP, receive all Offers, and issue any addenda to the RFP. Addenda and the other information and materials shall be provided by the State through HIePRO, including additions or changes with respect to the dates in Section 1.4 RFP Schedule and Significant Dates. The State is not responsible for any delay or failure of any Offeror to receive any materials updated through the RFP process on a timely basis.

**1.3.3** As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through the HIePRO and shall therefore be subject to a mandatory .75% (.0075) transaction fee, not to exceed $5,000 for the total contract term. This transaction fee is payable to Tyler Technologies (formerly known as NIC Hawai‘i ) and shall be based on the original award amount. Refer to the “Instructions” tab in the HIePRO solicitation for more details. The mandatory transaction fee shall be at the Contractor’s sole cost and expense.

**1.3.4** Offerors shall review all special instructions located in HIePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline. Offerors are advised not to 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 if a prospective Offeror does not receive solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor HIePRO to obtain any RFP addenda or other information relating to the RFP.

**1.3.6** Tyler Hawai‘i is the vendor contracted by the State of Hawai‘i to provide the HIePRO application only and cannot respond to any questions regarding procurement or a particular solicitation. Payment must be made to Tyler Hawai‘i within thirty (30) days of receipt of invoice. The invoice is generated based on the date the award is posted.

### 1.4 RFP SCHEDULE AND SIGNIFICANT DATES

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

| | |
|---|---|
| Release of Request for Proposals | July 21, 2026 |
| Deadline to Submit Written Questions (must be submitted in HIePRO) | July 28, 2026 |
| Deadline to Submit Notice of Intent to Offer | July 28, 2026 |
| State’s Response to Written Questions (will be posted in HIePRO) | July 31, 2026 |
| **Proposal Due Date/Time, Evaluation Period Begins** | **August 20, 2026 at 2:00pm, HST** |
| Priority Listed Offeror Selection & Notification | Week of August 24, 2026 |
| Oral Presentation with Priority Listed Offerors (if needed) | Week of August 31, 2026 |
| Best and Final Offer Deadline (if necessary) | Week of August 31, 2026 |
| Notice of Award (estimate) | Week of August 31, 2026 |
| Start of Contract Performance | January 1, 2027 |

## 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 27-01 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.

| | |
|---|---|
| • Name of Company<br>• Name of Contact Person<br>• Email Address | • Company Address<br>• Telephone Number<br>• Solicitation (RFP) Number |

## 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 Section 1.4, RFP Schedule and Significant Dates. 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 Website | https://hta.hawaii.gov/ |
| The Hawaiian Islands Brand Guidelines | https://hta.hawaii.gov/wp-content/uploads/2026/06/2026-thi-brand-guidelines-external-final.pdf |
| HTA Brand Assets/Knowledge Bank (photos, videos, b-rolls) | https://hawaii.barberstock.com/ |
| Ma‘ema‘e Toolkit | https://hta.hawaii.gov/what-we-do/tools-resources/ma%CA%BBema%CA%BBe-toolkit/ |
| HTA Research | https://hta.hawaii.gov/research/ |
| Consumer Website | www.gohawaii.com |
| Travel Trade Website | https://agents.gohawaii.com/ |
| Media Website | http://media.gohawaii.com/statewide/ |

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| MCI Website | https://www.meethawaii.com/ |
| YouTube – GoHawai‘i Channel | https://www.youtube.com/gohawaii |
| Hawai‘i Compliance Express | 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 MARKET OVERVIEW AND BACKGROUND

According to preliminary 2025 data, the industry generated more than $21.75 billion in total visitor spending, up from $20.58 billion (+5.7%) in 2024. Total visitor arrivals reached 9,642,991, down slightly from 9,701,499 visitors (-0.6%) in 2024.

Market Statistics for the U.S. East, U.S. West, Canada

| U.S. - Total | 2024 Final | 2025 Preliminary | YOY Change |
|---|---|---|---|
| Visitor Spending ($mil) | 15,705.2 | 17,112.2 | 9.0% |
| Daily Spend ($PPPD) | 242.1 | 263.5 | 8.8% |
| Arrivals | 7,370,501 | 7,415,766 | 0.6% |
| Length of Stay (LOS) | 8.80 | 8.76 | -0.5% |
| Airlift (Scheduled Seats) | 10,558,192 | 10,498,347 | -0.6% |
| Average Islands Visited (Per Person) | 1.18 | 1.19 | 0.7% |

| U.S. - West | 2024 Final | 2025 Preliminary | YOY Change |
|---|---|---|---|
| Visitor Spending ($mil) | 9,641.5 | 10,505.9 | 9.0% |
| Daily Spend ($PPPD) | 229.8 | 249.0 | 8.4% |
| Arrivals | 4,997,064 | 5,010,108 | 0.3% |
| Length of Stay (LOS) | 8.40 | 8.42 | 0.2% |
| Airlift (Scheduled Seats) | 9,365,338 | 9,299,535 | -0.7% |
| Average Islands Visited (Per Person) | 1.11 | 1.12 | 0.9% |

| U.S. - East | 2024 Final | 2025 Preliminary | YOY Change |
|---|---|---|---|
| Visitor Spending ($mil) | 6,063.7 | 6,606.4 | 8.9% |
| Daily Spend ($PPPD) | 264.6 | 290.5 | 9.8% |
| Arrivals | 2,373,437.0 | 2,405,658.0 | 1.4% |
| Length of Stay (LOS) | 9.65 | 9.45 | -2.1% |
| Airlift (Scheduled Seats) | 1,192,854 | 1,198,812 | 0.5% |
| Average Islands Visited (Per Person) | 1.317 | 1.319 | 0.2% |

| Canada | 2024 Final | 2025 Preliminary | YOY Change |
|---|---|---|---|
| Visitor Spending ($mil) | 1,092.1 | 996.7 | -8.7% |
| Daily Spend ($PPPD) | 223.5 | 227.9 | 2.0% |
| Arrivals | 445,984.0 | 394,345.0 | -11.6% |
| Length of Stay (LOS) | 10.96 | 11.09 | 1.2% |
| Airlift (Scheduled Seats) | 420,172 | 378,835 | -9.8% |
| Average Islands Visited (Per Person) | 1.21 | 1.28 | 5.7% |

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

## 2.2 SCOPE OF WORK

The HTA is soliciting a qualified contractor to provide a comprehensive range of destination brand marketing services for the Hawaiian Islands within the North America major market areas, including the U.S. East, U.S. West, and Canada. The scope of services shall be limited to leisure travel marketing.

Marketing services and activities pertaining to the Meetings, Conventions & Incentives (MCI) market segment are expressly excluded from the scope of this RFP. For the purposes of this solicitation, the U.S. East and U.S. West regions are geographically delineated by the Rocky Mountains. Destination brand marketing directed toward residents of Hawaiʻi is also excluded from this RFP.

In preparing proposals, Offerors shall consider and address the destination brand marketing directives outlined below:

a. Strengthen brand awareness of the Hawaiian Islands as a premier leisure travel destination, while showcasing the distinct identities of Kauaʻi, Oʻahu, Lānaʻi, Molokaʻi, Maui, and Hawaiʻi Island, as defined in The Hawaiian Islands Brand Guidelines.
b. Drive travel demand to the Hawaiian Islands by promoting multi-island itineraries and focusing marketing efforts toward shoulder periods to smooth seasonal fluctuations in arrivals across each island.
c. Develop and manage airline partnerships to monitor and optimize load factors, maintain and expand airlift capacity, and enhance multi-island utilization.
d. Target high-value mindful travelers while cultivating the next generation of travelers through targeted engagement.
e. Increase per-person expenditure and overall visitor spending in alignment with HTA's Key Performance Indicators.
f. Achieve an annual growth rate in visitor spending that exceeds the growth rate of visitor arrivals.
g. Continue expanding the U.S. market, with a strong focus on the U.S. East, to drive visitation and increase spending from this high-value market.
h. Restore and grow the Canadian market for the Hawaiian Islands.
i. Drive visitor spending into Hawaiʻi-based businesses and organizations to support a healthy local economy.
j. Promote Hawaiʻi's cultural festivals, events, and programs supported by HTA.
k. Educate visitors pre-arrival on safe, responsible travel, and respect Hawaiʻi's culture, people, and environment, in coordination with the HTA's Destination Stewardship Branch to ensure consistency throughout the visitor journey.
l. Maintain the cultural integrity of the Hawaiian language, customs and practices, cultural and historic sites, and imagery in all brand marketing initiatives.
m. Engage local communities and stakeholders and pursue strategic partnerships to strengthen destination marketing capacity.
n. Leverage market insights and stay adaptable to changing trends and technology and continuously innovate to maximize return on investment.
o. Assist HTA and designated partners in crisis communication for the visitor industry, safeguarding the destination's brand image.
p. Ensure that initiatives are metric driven.

The scope of work for the entire contract period outlined below is not exhaustive and is intended to give Offerors a general understanding of the project expectations to help inform staffing and resource allocation. Offerors shall develop a comprehensive brand marketing plan that may include additional actions, initiatives, and innovative approaches to achieve the established KPI targets.

**Consumer Marketing**

a. Execute multi-channel marketing campaign(s) to increase awareness and intent to travel to Hawai‘i.
b. Develop consumer-facing content, including video, written, and interactive materials, to promote Hawai‘i experiences.
c. Manage direct-to-consumer promotions, contests, sweepstakes, and special offers to encourage travel bookings and support demand during shoulder seasons.
d. Develop and implement co-branding initiatives with consumer brands that align with the Hawai‘i values to expand reach among target audiences.
e. Maintain consumer email marketing programs, if applicable, including consumer database.
f. Implement event-driven promotions aligned with travel trends and major Hawai‘i events.
g. Integrate marketing campaigns with public relations and media initiatives to maximize consumer engagement.
h. Participate in consumer travel shows, as appropriate, to promote Hawai‘i.
i. Monitor and report campaign performance using analytics to optimize effectiveness.
j. Explore and test new marketing channels and technologies, including AI-powered tools, to enhance reach and engagement.

**Public Relations**

a. Target appropriate consumer and trade media aligned with Hawai‘i’s brand to secure positive publicity. Provide an annual “most wanted” media list of key targets.
b. Develop partnerships with key media influencers to extend the Hawai‘i welcoming message to target audiences.
c. Issue and distribute news releases and media newsletters regularly to highlight “What’s New in Hawai‘i.”
d. Develop and maintain an electronic media database accessible by HTA.
e. Organize press familiarization (FAM) trips.
f. Schedule media appointments at trade shows.
g. Coordinate media receptions and special events, as applicable.
h. Proactively develop and execute media pitches promoting leisure travel to Hawai‘i.
i. Provide creative ideas for unique partnerships to leverage resources.
j. Maintain and update media.gohawaii.com to ensure the site delivers accurate, up-to-date content, reflects brand standards, and complies with applicable data privacy and ADA Title II web and mobile accessibility requirements.
k. Leverage in-market contacts to explore new promotional partnerships to expand the Hawai‘i brand.
l. Provide a monthly press clippings report.
m. Assist HTA with crisis communications as needed.

**Travel Trade**

a. Develop and maintain an electronic database of top-producing tour operators accessible by HTA
b. Maintain regular contact with key travel trade partners through sales calls, meetings, and other channels.
c. Develop and distribute a regularly scheduled travel trade newsletter to key travel trade partners.
d. Organize travel trade familiarization (FAM) trips.
e. Maintain and enhance the existing Hawai‘i destination training program and conduct

educational seminars to increase travel trade knowledge and engagement.

f. Promote and support airline-sponsored or wholesale company–sponsored programs, including training and familiarization trips.
g. Represent Hawaiʻi at selected travel trade shows and events in markets jointly determined by HTA.
h. Maintain membership in key professional associations that promote travel and tourism.
i. Develop and manage Hawaiʻi travel trade missions in designated markets, as applicable.
j. Coordinate cooperative travel trade programs with select travel partners to drive conversion and maximize impact.
k. Form an advisory group, including HTA as a member, and hold meetings at least quarterly.

**Partnerships**

a. Identify and develop strategic partnerships with key distribution partners to promote Hawaiʻi and drive travel demand, with a focus on shoulder periods.
b. Identify and develop strategic partnerships with key airlines to monitor and optimize load factors and support the sustainability and growth of high-value air routes from the market.

**Owned Channel Management**

a. Develop and maintain a social media content calendar and create localized social media posts.
b. Manage and maintain existing social media platforms.
c. Work closely with HTA on the development and execution of the content strategy and content creation, involving HTA during the planning stage and obtaining HTA's approval before content is finalized.

**Account Administration**

a. Submit the following reports to HTA each month:
    i. A written monthly activity report
    ii. A monthly activity measures tracking report
    iii. A monthly and year-to-date expenditure report
b. All monthly reports must be submitted by the 10th day of the month following the month in which the activities occurred. Report templates will be provided upon contract execution.
c. Provide detailed supporting documentation and appropriate receipts for all expenses upon HTA's request. All expenses are subject to audit by HTA.
d. Maintain a dedicated business phone number and email address for consumer, trade and media inquiries related to Hawaiʻi, and ensure timely dissemination of appropriate information.

The Scope of Work identified in this RFP represents HTA's anticipated service needs at the time of solicitation issuance. Due to the evolving nature of tourism market conditions, strategic priorities, and legislative appropriations, HTA reserves the right to adjust, expand, reduce, defer, reprioritize, or phase work activities during the Contract term, provided such adjustments remain within the general scope of services contemplated by this RFP.

Additional funding, if appropriated or otherwise made available during the Contract term, may be applied toward:

a. Expansion of services already identified within the Scope of Work;
b. Additional campaigns, activations, media placements, market research, trade

initiatives, or strategic programs contemplated under this RFP; or

c. Increased service levels, deliverables, or geographic coverage within the awarded Major Market Area.

Any additional work or funding allocation shall be implemented through written authorization or contract amendment executed by HTA, subject to applicable procurement requirements and availability of funds.

## 2.3 KEY PERFORMANCE INDICATORS (KPI) & ACTIVITY MEASURES

For this RFP, HTA has identified three key performance indicators that the Contractor is responsible for: Total Visitor Arrivals, Total Visitor Expenditures, and Average Number of Islands Visited Per Person. Target values for each KPI are outlined below. Offerors may propose alternative targets supported by relevant data and analysis.

U.S. West:

- Grow total visitor arrivals by 0.5% year over year
- Grow total visitor expenditures by 2.6% year over year
- Increase the average number of islands visited per person by 0.5% year over year

U.S. East:

- Grow total visitor arrivals by 0.9% year over year
- Grow total visitor expenditures grow by 3% year over year
- Increase the average number of islands visited per person by 0.3% year over year

Canada:

- Grow total visitor arrivals by 2.4% year over year
- Grow total visitor expenditures grow by 3.6% year over year
- Increase the average number of islands visited per person by 0.3% year over year

HTA's KPI targets are preliminary and may be revised due to market conditions, external factors, and budget constraints. HTA may update these targets annually or more frequently at its discretion. Upon notice of any updates, the Contractor shall promptly submit revised marketing plans aligned with the new targets, subject to HTA's review and approval.

Offerors are also required to propose quarterly targets for activity measures, aligned with the proposed Brand Marketing Plan, subject to HTA's approval.

In addition, HTA will track and measure visitors' recall of pre-arrival messages about safe, responsible travel and respect for Hawai'i's culture, people, and environment through its Visitor Satisfaction and Activity Survey, and Percentage of People "Intent to travel to Hawai'i within the next 12 months" through its Hawai'i Brand Health Trends Study.

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

## 2.4 COMPENSATION

This shall be a Fixed-Price contract, inclusive of all taxes and expenses, for an amount not to exceed **FORTY-NINE MILLION AND NO/100 DOLLARS ($49,000,000.00 USD)**, for the entire 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 total proposed price 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 nonresponsive.

- Initial Contract Period (January 2027 to December 2027): the total amount shall not exceed **FIFTENN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($15,500,000.00 USD)**, tax inclusive.

- Second Contract Period (January 2028 to December 2028): the total amount shall not exceed **FIFTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($15,500,000.00 USD)**, tax inclusive.

- Third Contract Period (January 2029 to December 2029): the total amount shall not exceed **EIGHTEEN MILLION AND NO/100 DOLLARS ($18,000,000.00 USD)**, tax inclusive.

**Administrative Costs:** For each contract period, administrative costs, including staffing, office expenses, other administrative costs, and the contract retainer, shall not exceed **18%** of the total contract amount for that period.

The fixed price shall be inclusive of all other costs necessary to perform the scope of work. Notwithstanding anything in other sections of this RFP, the not-to-exceed amounts listed in this section shall prevail.

The budgets for the second and third contract periods are estimates and may be adjusted based on available funding. Notwithstanding any such adjustments, the scope of work shall remain unchanged. HTA reserves the right to modify the level of marketing activities accordingly. The Contractor shall promptly revise and update marketing plans, expenditures, and operations to align with any changes in funding, KPIs, and program priorities. All such revisions shall be submitted for HTA's review and approval.

Compensation under the Contract may be adjusted during the Contract term based upon:

- Availability of funds;
- Changes in HTA program priorities;
- Addition or reductions of authorized services:
- Legislative appropriation levels; or
- Other operational needs determined by the HTA.

HTA reserves the right to increase or decrease funding levels and corresponding services during the Contract term through written contract amendment, provided such changes remain within the general scope of the procurement and are permitted under applicable law.

No minimum amount of work or compensation is guaranteed beyond the amount expressly authorized by HTA, and the not-to-exceed contract amount shall not be exceeded unless formally amended in accordance with HRS Chapter 103D and applicable HAR.

### Cost Factor & Cost Reasonableness Determination

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

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

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

## 2.5 TERM OF CONTRACT

This shall be a multi-term contract pursuant to applicable Hawaiʻi procurement laws and rules. The total contract term shall be thirty-six (36) months, starting January 2027 through December 2029, unless otherwise terminated in accordance with the contract terms. The contract term breakdown is as follows:

1. Initial Contract Period: twelve (12) months, from January 2027 to December 2027.
2. Second Contract Period: twelve (12) months, from January 2028 to December 2028.
3. Third Contract Period: twelve (12) months, from January 2029 to December 2029.

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 Hawaiʻi 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.

## 2.6 HTA CONTRACT MONITORING & EVALUATION

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

The HTA staff will conduct annual written evaluations of the Contractor's performance during the contract term. Such evaluations may be considered in determining whether to exercise any contract extension, 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, or termination for convenience. Refer to the General Conditions for details.

Each Evaluation Review will cover the following topics:

- KPIs - The Contractor must meet all three (3) KPI targets. If any KPI is not met due to circumstances outside of the Contractor's control, the Contractor must provide a written explanation detailing the reason(s) the KPI was not achieved.
- Activity Measures – The Contractor must meet 85% of the total number of activity measures in the approved Brand Marketing Plan. If any Activity Measure is not met due to circumstances outside of the Contractor's control, the Contractor must provide a written explanation detailing the reason(s) the Activity Measure was not achieved.
- Brand Integrity – Review Contractor's alignment with the HTA Brand Guidelines.
- Financial Accountability – Review any significant variances between budgeted and actual expenditures.
- Reporting – Review all required reports for accuracy, completeness, and timely submission.

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

## 2.7 OWNERSHIP RIGHTS

Pursuant to the General Conditions attached 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 the proposed Contractor’s services. Federal Procurement Law defines inherent functions to be performed only by government employees. The HTA considers the following responsibilities inherently governmental:

- **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 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-27-01**. This number must be referenced in all proposals, correspondence, and documentation related 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 can review. However, evaluators will not be required to review your website, so do not omit essential information in reliance on website content. Video, audio, or other similar multimedia materials will not be considered during the evaluation of written proposals, although they may be accepted or even requested in Round 2 of the procurement process.
- The format must be U.S. standard 8.5 by 11 inches. This is a U.S. buyer and, therefore must be oriented to U.S. document sizes. Orientation should be primarily portrait, though landscape is welcome for data or visual presentations as appropriate. No odd-sized pages allowed.
- Page limit. The body of the proposal must not exceed the page limit outlined below. Proposals exceeding the page limit may be disqualified, or the extra pages may be excised prior to review.
- Font size should be 12 pts.
- Ensure all content is submitted in the proper format as described below and note that **the maximum single file size that HIePRO can accept is 100MB; multiple files may be uploaded.**
- All submittals must be provided in English.

#### 3.1.2 CONTENT LIST

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

- **Items 1-6** are to be individually labeled accordingly and submitted as **<u>one</u>** PDF file in the order listed below which is no more than sixty (60) pages to be titled
  "**Offeror Name_Proposal Part 1**":
  1) Cover Page
  2) Table of Contents
  3) Cover Letter
  4) Organizational Capacity
  5) Professional Experience
  6) Brand Marketing Plan (BMP)

- **Items 7-9** are to be submitted **<u>separately</u>** as Excel/Word files to be titled individually as Offeror Name (insert titles below):
  7) Budget Plan Worksheet (Attachment 01)
  8) Activity Measures Worksheet (Attachment 02)
  9) Subcontractor References (Attachment 03)

- **Items 10-18** are to be individually labeled accordingly and submitted as **<u>one</u>** PDF file in the order listed below to be titled "**Offeror Name_Proposal Part 2**":
  10) Offeror Check List (Attachment 04)
  11) Proposal Transmittal Letter (Attachment 05)
  12) Corporate Resolution (Attachment 06)
  13) Standard Qualifications Questionnaire (Attachment 07)

14) Conflict of Interest Disclosures and Attestations (Attachment 08)
15) Contractor References (Attachment 09)
16) Partnership Opportunities (Attachment 10)
17) Certificate of Vendor Compliance or Proof of Application for CVC
18) Confidential Information List - if applicable (Attachment 11)

**3.1.3 CONTENT EXPLANATION**

**1. <u>Cover Page</u>**

The cover page should include the following:

- The name and number of the RFP: RFP 27-01-Hawai‘i Tourism Destination Brand Marketing Services for the North America Major Market Area.
- Name and address of Company.
- Company Federal and State Tax ID #s.
- Name, email address, and phone number of contact person.

**2. <u>Table of Contents</u>**

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

**3. <u>Cover Letter</u>**

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. <u>Organizational Capacity</u>**

a) Personnel Management

i) Physical Office. The Offeror must have or must establish an office in the U.S. and/or Canada.

ii) Organizational chart of proposed staffing, including position titles, names, lines of responsibility/supervision. In addition, please indicate time allocation.

iii) Project Manager (“Key HTA Point of Contact”) to be assigned to the HTA account. The project manager shall be 100% dedicated to the HTA account. List detailed qualifications, including experience, time with the organization, and resume/bio demonstrating qualifications related to this RFP.

iv) Canada-based Account Manager. A dedicated, fulltime Canada-based account manager shall serve as the primary contact handling inquiries and coordinating market activities for the Canadian market.

v) Additional Staffing. The Offeror shall identify other key members assigned to the HTA account. List detailed qualifications for each position (including experience, time with the organization, resume/bio demonstrating qualifications related to this RFP), proposed time allocation of staff and their geographic locations. Although a Contractor, as a legal entity, may represent a competing destination within the MMA, the staff assigned to HTA account may not represent competing destinations.

**<u>Note</u>:**

The Contractor is expected to be fully staffed and operational to begin the implementation of the destination brand marketing services. Any activity, such as training and orientation, that occurs prior to the execution of an agreement with the selected Contractor shall be at the Contractor's sole cost and expense. Also, the Project Manager or designee is required to attend HTA's conferences in person in Hawaiʻi at least twice annually for approximately one (1) week each time.

vi) Supervision and Training. The Offeror shall describe its ability to supervise, train and provide administrative direction relative to the delivery of the proposed services.

b) Accounting System. Describe how the Offeror's accounting system will:
   i) Accurately estimate and timely record actual expenditures for this contract;
   ii) Accurately allocate and timely record all actual expenditures to the various budget categories defined in the attachment for the Budget Plan Worksheets;
   iii) Accurately estimate and timely record actual expenditures of change orders and modifications; and,
   iv) Make certain that only allowable and allocable expenses are charged against any change order or modification of the contract issued under this RFP.

c) Firewalls and other Protections
   i) Offeror shall describe processes and procedures to provide an information barrier, such as a "white room" or other form of firewall, within Contractor's company to prohibit the disclosure of competitively sensitive information acquired or provided through the performance of this contract on behalf of the HTA to any of the Contractor's clients or affiliates representing or associated with a competitor list agreed to by HTA.
   ii) Offeror shall describe specific directives and procedures for its employees and other personnel assigned to the HTA to prevent the respective team, group, or individuals from using HTA information for the advantage of a competitor, either by exchanging information in either formal or informal settings with employees assigned to competing markets, or by independent use of information by those who may have other assignments outside of HTA.
   iii) Management and executive decisions must not disadvantage HTA against other clients. Hawaiʻi's best interests must be judged independent of other company interests or, if not, must be placed at the highest priority within the organization.

**5. Professional Experience**

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

a) Describe the Offeror's experience and past performance history in destination brand marketing services:
   i) Within the U.S. and Canada market
   ii) Within the Hawaiʻi tourism industry
   iii) In general

b) Creative Content: Offeror shall provide no fewer than six (6) examples of creative content representing the following areas. Examples must be reduced to 8.5 x 11 form. The Offeror may, in addition, reference web addresses; however, evaluators are not obligated to view websites.
   i) Provide at least three (3) past examples of creative content prepared for clients by the Offeror.

ii) Provide at least three (3) examples of proposed creative content to be used in a future Hawaiʻi campaign(s) if awarded this contract.

c) Case Studies: Offeror shall provide no fewer than two (2) case studies representing the following areas:
   i) Demonstrating your familiarity with both this market and with Hawaiʻi's tourism industry.
   ii) Demonstrating your familiarity with the Hawaiian Islands, the Native Hawaiian culture, the multi-ethnic culture and communities.
   iii) Demonstrating experience in finding and using market research conducted within this MMA.
   iv) Demonstrating experience in creating integrated target marketing campaigns and projects deployed within the MMA.

d) Performance Measures: Describe a minimum of three (3) past work experiences within the past five years that reflect the tracking of performance measures to targeted results, including the measurement methodology used.

**6. Brand Marketing Plans (BMP)**

The Offeror shall submit a detailed plan using the outline provided by HTA in Exhibit A.

**7. Budget Plan Worksheets**

The Offeror shall submit a detailed budget plan using the Excel template provided by HTA (see Attachment 01). Administrative costs, including staffing, office expenses, other administrative expenses, and the contract retainer, shall not exceed **18%** of the contract amount for each contract period.

**8. Activity Measures Worksheets**

The Offerors shall submit quarterly targets for activity measures using the Excel template provided by HTA (see Attachment 02).

**9. Subcontractor References (if applicable)**

If Subcontractor(s) will be used for this contract, Offerors shall submit Subcontractor References forms for each Subcontractor and ensure all requirements of the General Conditions outlined in this RFP are followed. See Section 3.1.2 and Attachment 03 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 the subcontractor's qualifications to provide the goods or services;
3. A summary of the process used to procure the goods or services, including the material terms of bids or other responses to provide the goods or

services; and

4. The reason(s) for the selection of the subcontractor, including information used to determine the reasonableness of the contract amount.

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

**10. Offeror Checklist**

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

**11. Proposal Transmittal Letter**

On the Offeror's business letterhead, include a transmittal letter to confirm that the Offeror will comply with the requirements, provisions, terms, and conditions specified in this RFP. The Offeror shall use the exact legal name as registered with the Department of Commerce and Consumer Affairs. The price shall be submitted on the transmittal letter and shall be the all-inclusive cost, including the GET, and not to exceed $49,000,000.00.

The Offeror represents that neither the Offeror, nor its principals, employees, or agents of the Offeror, presently has any interest and promises that no such interest, direct or indirect, shall be acquired that would or might conflict in any manner or degree with their performance of this Contract, if awarded. Should any conflict exist, it must be disclosed. If no conflict exists, state no conflict on the transmittal letter.

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

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

**12. Corporate Resolution**

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

**13. Standard Qualifications Questionnaire**

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

**14. Conflict of Interest Disclosures and Attestations**

Any person, including any actual or prospective Offeror, shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror pursuant to HAR§3-131-1.02.

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 Hawaiʻi. See Attachment 08 for details.

**15. Contractor References**
Offeror must use this form to provide three (3) references for previous work performed as the Prime Contractor and similar to this project. More recent and more relevant performance usually has a greater impact on the confidence assessment than less recent and less relevant projects. See Attachment 09 for details.

**16. Partnership Opportunities**
Offeror shall provide a list of partnership opportunities for the first contract period, including tradeshows, trade familiarization trips (FAMs), travel trade education, public relations, consumer promotions, and consumer shows. See Attachment 10 for details.

**17. Certificate of Vendor Compliance or Proof of Application for CVC**
Offeror shall submit a copy of the Certificate of Vendor Compliance from Hawaiʻi Compliance Express or proof that one has been applied for from Hawaiʻi Compliance Express. (See Section 5.2)

**18. Confidential Information List (if applicable)**
Offeror shall provide a list of all confidential information referenced in the Offeror's proposal, including page numbers and sections in a separate attachment. Material designated as confidential shall be readily separable from the proposal in order to facilitate inspection of the non-confidential portion of the proposal pursuant to HAR 3-122-46. If not applicable, the offeror shall state so. (See Section 3.2.6 and Attachment 11 for details).

## 3.2 PROPOSAL SUBMISSION

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

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

### 3.2.2 REQUIRED REVIEW

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

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

### 3.2.3 PROPOSAL PREPARATION COSTS

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

The State shall not reimburse such costs.

### 3.2.4 TAX LIABILITY

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

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

### 3.2.5 PROPERTY OF STATE

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

### 3.2.6 CONFIDENTIAL INFORMATION

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

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

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

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

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

**3.2.7 EXCEPTIONS**

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

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

**3.2.8 SUBMITTAL REQUIREMENTS**

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

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

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

**3.2.9 RECEIPT AND REGISTER OF PROPOSALS**

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

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

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

**3.2.11 MISTAKES IN PROPOSALS**

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 Hawaiʻi 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 Hawaiʻi'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 Hawaiʻi State Legislature.

### 4.2 PROPOSAL EVALUATION CRITERIA AND SCORING GUIDE

Written proposals shall be evaluated and scored by an Evaluation Committee based on the evaluation criteria and scoring methodology established in this RFP. Evaluation score sheets shall be completed in accordance with the scoring guidelines and evaluation procedures set forth herein.

| EVALUATION CRITERION | Scoring Weight Maximum Score |
|---|---|
| **CRITERIA #1: OVERALL CAPABILITIES OF FIRM & QUALIFICATIONS OF PERSONNEL**<br>The evaluation will include an assessment of the company, considering factors listed in Section 3 of this RFP and in SPO Form 21 (Standard Qualifications Questionnaire), including but not limited to the depth of experience and demonstrated success with similar projects, capabilities, and company resources, experience working with State, county, and federal agencies, and professional work experience in Hawaiʻi and the source markets.<br><br>The evaluation will also include an assessment of the qualifications, experience, and specific knowledge of Offeror's managerial team, staff, and subcontractors as it relates to the requirements of this RFP and the full-time equivalent positions dedicated to the HTA account. | 35 |

| EVALUATION CRITERION | Scoring Weight Maximum Score |
|---|---|
| **CRITERIA #2: BRAND MARKETING PLAN (BMP)**<br>The evaluation will assess the strength of the proposal including alignment with HTA's strategic priorities, directives, and regenerative tourism model. It will also evaluate the quality and effectiveness of the proposed marketing strategies and tactics, the creativity and impact of major initiatives, the relevance and appropriateness of KPI and activity targets, and the overall value delivered in relation to the administrative fees. | 35 |
| **CRITERIA #3: FAMILIARITY WITH HAWAIʻI BRAND AND PRODUCT**<br>The evaluation will assess the Offeror's understanding of the Hawaiian Islands, its people, Native Hawaiian culture, Hawaiʻi's multi-ethnic communities, and the Hawaiʻi visitor industry and HTA, as well as how this knowledge is integrated throughout the proposal. Note: this is not a separate section, but an overall analysis of the entire proposal. | 15 |
| **CRITERIA #4: COST POINTS CONVERSION**<br>In accordance with HAR §3-122-52 and HRS Chapter 103D, the proposal with the lowest cost factor, based on the total cost for the contract period (not to exceed **$49,000,000.00 USD**), must receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower rating for cost. Additionally, the points allocated to higher-priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price. | 6 |
| **CRITERIA #5: PRICE REASONABLENESS & REALISM**<br>Prices shall be evaluated for competitiveness and reasonableness of price. The HTA will use price realism to determine price reasonableness and may use any or all price realism techniques and procedures for the purpose of measuring an offeror's understanding of the solicitation requirements, technical understanding, or of assessing the risk inherent in an offeror's proposal. A Price Realism Analysis is intended to determine if the contractor is proposing a price so low that the performance of the contract will be at risk. | 9 |
| **TOTAL** | **100** |

| Assessment | Overall Scoring Guidelines | Total Score |
|---|---|---|
| **Poor** | Proposal is inadequate in many basic aspects for the scored category.<br>Evaluator has very low confidence in the Offeror's ability to perform as promised or as required. | **0-19** |

| Assessment | Overall Scoring Guidelines | Total Score |
|---|---|---|
| **Marginal** | Proposal minimally addresses the requirements, but one or more major considerations of the category are not addressed, or lacking in some essential aspects for the specific criteria.<br>Evaluator has low confidence in the Offeror's ability to perform as promised or as required. | **20-40** |
| **Adequate** | Proposal adequately meets the minimum requirements for the category and is generally capable of meeting the State's needs for specific criteria.<br>Evaluator has confidence in the Offeror's ability to perform as promised or as required. | **41-60** |
| **Good** | Proposal more than adequately meets the minimum requirements of the specific criteria, and exceeds those requirements in some aspects.<br>Evaluator has high confidence in the Offeror's ability to perform as promised or as required. | **61-80** |
| **Excellent** | Proposal fully meets all requirements and exceeds most requirements.<br>Evaluator has extremely high confidence in the Offeror's ability to perform as promised or as required. | **81-100** |

## 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

Submittals shall not be examined for evaluation purposes until the submittal deadline. Deadlines will be enforced. The RFP evaluation process may consist of two phases. The Evaluation Committee may accept proposals on evaluation without discussion, pursuant to HAR §3-122-46(8).

### 4.4.1 <u>**Evaluation Process**</u>:

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.

### 4.4.2 <u>**Initial Classification of Proposals**</u>:

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.

### 4.4.3 <u>**Phase 1 – Evaluation of Written Proposals**</u>:

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.

### 4.4.4 <u>**Phase 2 – Discussions and Additional Information**</u>:

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.

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 Hawaiʻi.

### 4.5 IN THE EVENT OF A SCORING TIE

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

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

The Evaluation Committee, based on the aforementioned process, will make a recommendation of award. In the event the State is unsuccessful in negotiating the post-award contract, the HOPA reserves the right to make the award to the next highest-ranked responsible Offeror and engage that responsible Offeror in post-award negotiations leading to an executed contract. The HOPA further asserts that she/he may cancel the RFP if negotiations are unsuccessful in accordance with Hawaiʻi Revised Statutes and Hawaiʻi 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, Hawaiʻi 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 Hawaiʻi Compliance Express (HCE). Offerors who do not participate in HCE may submit paper compliance certificates to HTA at the time of award.

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

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

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

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

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

## 5.3 PROPOSAL AS PART OF THE CONTRACT

This RFP, any addenda issued, and all or part of the successful 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 after posting of award and execution of a contract pursuant to HRS § 103D-105 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 with the required filing time, in which case the expected availability date shall be indicated.

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

## 5.7 APPROVALS

Any contract resulting from this solicitation shall be subject to the approval of the Department of the Attorney General and all other approvals required by applicable federal and State laws, regulations, rules, policies, or other authorities, including 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 Hawaiʻi shall not 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. <u>Commercial General Liability Insurance</u>
Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities, or contractual liability by the Contractor, its employees, and Subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of $3,000,000 per occurrence; personal injury of $3,000,000 per occurrence; and with an aggregated limit of $5,000,000. The commercial general liability policy shall be written on an occurrence basis, and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

b. <u>Automobile Liability Insurance</u>
Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of $1,000,000 for bodily injury for each person, $1,000,000 for bodily injury for each accident, and $1,000,000 for property damage for each accident, or a $2,000,000 single limit.

c. <u>Errors and Omissions Insurance</u>
Errors and omissions insurance coverage of $3,000,000 per occurrence; and with an annual aggregated limit of $5,000,000.

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 Hawaiʻi is added as an additional insured with respect to operations performed for the State of Hawaiʻi."
- "It is agreed that any insurance maintained by the State of Hawaiʻi 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 Worker's Compensation insurance policies and shall be in favor of the State of Hawaiʻi.

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 policies of insurance shall not be construed to limit the Contractor's liability hereunder or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

5.9.7 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 Hawaiʻi 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 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, the 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 SUSPENDED OR DEBARRED CONTRACTORS**

Contractors and subcontractors shall comply with all applicable requirements of HRS Chapter 103D and HAR Chapter 3-126 relating to suspension and debarment.

The State may reject any proposal submitted by an Offeror determined to be suspended, debarred, or otherwise ineligible to participate in State procurement proceedings under applicable law.

The State reserves the right to determine Offeror responsibility in accordance with applicable procurement statutes, rules, and the terms of this RFP

**5.14 COLLUSION**

By submitting a proposal, the Offeror certifies that its proposal has been independently arrived at without collusion, fraud, or any agreement with any other Offeror or party relating to pricing, services, or any other aspect of this solicitation that would improperly restrict competition.

The Offeror further certifies that it shall comply with all applicable federal and State laws, rules, regulations, and ethics requirements relating to procurement integrity, conflicts of interest, and conduct of business with the State of Hawaiʻi.

The State reserves the right to reject any proposal and pursue any remedies available under applicable law if it determines that collusion, fraud, misrepresentation, or other improper conduct has occurred.

**5.15 ADA COMPLIANCE**

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

**5.16 HAWAIIAN ORTHOGRAPHY**

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

## SECTION SIX: ATTACHMENTS AND EXHIBITS

- Attachment 01: Budget Plan Worksheets
- Attachment 02: Activity Measures Worksheet
- Attachment 03: Subcontractor References
- Attachment 04: Offeror Check List
- Attachment 05: Proposal Transmittal Letter
- Attachment 06: Corporate Resolution
- Attachment 07: Standard Qualifications Questionnaire
- Attachment 08: Conflict of Interest Disclosures and Attestations
- Attachment 09: Contractor References
- Attachment 10: Partnership Opportunities
- Attachment 11: Confidential Information list

- Exhibit A: Brand Marketing Plan (BMP) Outline
- Exhibit B: Overview of the RFP Process
- Exhibit C: Federal Regulations
- Exhibit D: HTA Travel and Entertainment Policy
- Exhibit E: Special Provisions
- Exhibit F: General Provisions for Goods and Services
- Exhibit G: General Conditions for 103D
- Exhibit H: Form SPO-013 Certificate of Current Cost or Pricing Data

## EXHIBIT A

# Brand Marketing Plan (BMP) Outline

The Offeror shall adhere to the outline provided in this document and include all components specified therein. The Brand Marketing Plan must consider and address HTA's brand marketing directives as outlined in the RFP. The plan should clearly and concisely convey the strategic approach, planned actions, anticipated outcomes, and how these efforts effectively raise brand awareness and drive travel demand. It must reflect a thoughtful understanding of the target audience, market dynamics, and Hawaiʻi's product offerings and brand positioning, while incorporating metrics to measure impact and ensure accountability of each action.

The Offeror shall address all sections listed below in full and clearly differentiate among the U.S. East, U.S. West, and Canada markets within each section.

A. **Long-Term Vision and Roadmap**. Offeror must present a 2027-2029 long-term vision and roadmap for Hawaiʻi destination brand marketing services for the North America major market area that aligns with HTA's Strategic Plan.

B. **Market Analysis.** Provide a clear and concise overview of current market conditions, including competitions, economic indicators, and both consumer and travel industry trends relevant to the markets. Based on these factors, include an assessment of the market potential specifically as it relates to Hawaiʻi.

C. **KPI Targets.** The HTA has set future targets for three key performance indicators: Total Visitor Spending, Total Arrivals, and Average Islands Visited Per Person. The Offeror may propose alternative targets, provided they include clear justification backed by relevant data, analysis, and assumptions. Proposed strategies and initiatives in Sections E and F must demonstrate how they will support the achievement of these targets.

D. **Target Audience.** Identify the target audience size (# of individuals) by region, using data such as income levels, air access, and long-haul travel propensity. In addition, define the key traveler segments with detailed profiles that align with HTA's focus on mindful, high-value visitors who embody Hawaiʻi's values. Primary target segments may include Affluent, Cultural, Eco-Conscious, Romance, Active, and Wellness travelers. Offerors are encouraged to refine these segments, identify additional high-value segments, or prioritize segments, emphasizing those with the greatest potential based on local market insights.

E. **Strategies and Tactics.** Identify and describe marketing strategies and tactics in the following categories:
   1) **Consumer Education and Promotions** to raise Hawaiʻi's brand awareness and motivate responsible travel (highlighting Hawaiʻi's welcoming message, value for money, and unique offerings including local businesses, cultural festivals and events, agritourism, Hawaiʻi-made products, and the film industry).

   2) **Travel Trade Training and Engagement** to enhance their ability to drive bookings (including support for HTA's MCI contractor in attracting high-value MCI groups and optimizing use of the Hawaiʻi Convention Center).

   3) **Public Relations** to maximize positive media visibility for Hawaiʻi.

4) **Island Distribution** to drive multi-island visitation and travel demand for shoulder seasons
   - Oʻahu: shoulder months are May, September, October, November
   - Maui: shoulder months are May, September and October.
   - Kauaʻi: shoulder months are May, September and October.
   - Hawaiʻi Island: shoulder months are May, September and November.

5) **Industry Collaboration** to leverage partnerships with airlines, tour operators, OTAs, accommodations, and activity providers to drive demand and short-term bookings, with the goal of increasing visitor spending, extending length of stay, promoting neighbor island distribution, smoothing shoulder periods, and improving air route performance. (Partner contributions shall be a minimum 1:2 match with 1 as a cash match, the other 1 may be cash and/or in-kind. All cooperative agreements must include force majeure language identical to that in HTA contract.)

**Notes:** Contractor shall not create duplicative website, social media profiles, digital assets, and research.

- Digital Platform: GoHawaii.com is Hawaiʻi's primary consumer travel website and is available in multiple languages. In addition, the GoHawaii mobile app provides on-the-go access to travel information. Both platforms are managed by an HTA contractor and are designed to inspire and educate visitors before and during their stay. In the relevant section, the Contractor should outline how they intend to leverage these digital platforms to promote Hawaiʻi and guide visitor travel decisions.

- Social Media: HTA currently utilizes Sprout Social and SnapSea for social media content scheduling, publishing, and rights management. The Contractor will be responsible for administering these platforms, as well as managing the existing social media accounts for the North America markets. In the appropriate section of the proposal, the Offeror shall describe its strategic approach to promoting Hawaiʻi as a travel destination through social media and influencer marketing. The response should outline how the Offeror will leverage social media channels, content strategies, audience engagement, influencer partnerships, and performance measurements to inspire travel demand, enhance destination awareness, and influence traveler decision-making.

- Creative Content: Hawaiʻi's photos and videos are accessible to all markets through HTA's Digital Library. Contractors are required to use HTA's major campaign assets to reinforce the overall global message, and may propose new content within the RFP's budget for needs not covered, allowing language adaptations and segment-specific messaging while maintaining alignment with the Hawaiian Islands brand.

- Research: The contractor is encouraged to utilize third-party research and studies conducted by HTA and DBEDT, and to participate in HTA's planning of future research projects. For any specific research needs not currently met, the contractor may propose new research initiatives within the budget outlined in this RFP.

F. **Major Campaigns and Programs**. The Offeror shall provide a list of all major campaigns and programs proposed for each contract period, including objectives, target segments, timeline, and expected outcomes.

All brand marketing efforts shall reinforce "*Hawaiʻi Stays With You*" as the overarching message, fostering deeper connection, meaningful experiences, and purpose-driven travel. The Offeror shall localize the message for each target segment, ensuring all supporting communications align with this theme. This campaign message will continue through December 31, 2027, or as directed by the HTA.

The Offeror shall coordinate with industry partners and media to ensure message consistency, brand integrity, and broad amplification to advance HTA's vision for a tourism future that is economically sustainable, culturally respectful, and community grounded, positioning Hawai‘i as a destination for mindful, meaningful travel.

See Appendix 1 for an overview of the campaign.

G. **Activity Measures Methodology.** Describe the methodology used to develop the quarterly activity targets.

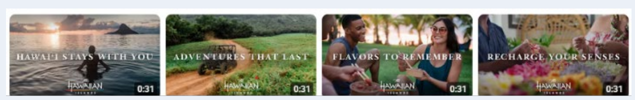
Appendix 1: Hawai‘i Stays With You Campaign Overview

## PURPOSE

Hawai‘i Stays With You (HSWY) is The Hawaiian Island’s brand platform and campaign cornerstone — a unified framework that recasts Hawai‘i as more than a destination.

Positioning a Hawai‘i vacation as a transformative, irreplaceable experience that endures long after the trip ends, HSWY unifies messaging across paid, earned, and owned channels to invite travelers to come not just to relax, but to reconnect.

## ASSETS & THEMES

| DEVELOPED TO DATE | PLANNED PRODUCTION: Q3–Q4 2026 |
|---|---|
| - Island life and culture — ambassador-led place and community narratives<br>- Outdoor and adventure — ocean activities, hiking, natural landscapes<br>- Food and culinary — regional cuisine and local agriculture as a travel motivator<br>- Wellness and renewal<br>- | - Island-focused themes<br>- Cultural and community-driven content<br>- Campaign evolution<br><br>Hawai‘i Stays With You Playlist |

## EXPECTED OUTCOMES

| | | |
|---|---|---|
| Increased aided brand awareness and travel intent in core feeder markets | Expanded earned media coverage | Positive visitor arrival trends in campaign-supported markets |

# EXHIBIT B

## OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.

2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.

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

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

3. The Procurement Manager, or an Evaluation Committee approved by the Procurement Manager, will evaluate the proposals in accordance with the evaluation criteria in Section Four.

4. A "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals may be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.

5. If, during discussions, there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to Priority Listed Offerors who submit acceptable or potentially acceptable proposals.

6. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Manager or an Evaluation Committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.

7. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4 RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer will be construed as its BAFO.

8. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Manager or an Evaluation Committee will make its recommendation. The Procurement Manager will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in Section Four.

9. The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all successful and unsuccessful proposals become available for public inspection. The Offeror and the State agree that sections that are confidential and/or proprietary should be identified by the Offerors and excluded from access.

10. The Procurement Manager or an Evaluation Committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Manager or an Evaluation Committee will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to the RFP.

11. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaiʻi.

## EXHIBIT C

### FEDERAL REGULATIONS

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

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

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

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

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

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

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

# EXHIBIT D

## HTA TRAVEL & ENTERTAINMENT POLICY

As a State agency, the HTA is required to follow an ethics code that informs our travel policy and ensures compliance with the Hawaiʻi Administrative Rules §3-123-9, which pertains to entertainment. HTA reserves the right to review the contractor's travel policy. If any elements of the contractor's travel policy differ from the HTA travel policy, the HTA will require the contractor to take measures to ensure that all travel associated with HTA work complies with State ethics laws. The contractor shall select the most economical airfare and accommodations (unless otherwise justified), based on the itinerary that fits the business requirements.

**A. Travel Policy**:

1. All airfares and accommodations require two (2) quotes for authorized/official business, from two different sources.
2. Contractor shall never ask for upgrades or complimentary airfares and/or rooms except for organized destination Familiarization Tours (FAM) and site inspections. Contractor shall use a negotiated FAM rate for hotel and air.

3. State funds shall not be used to purchase alcoholic beverages.

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

1. Entertainment costs are unallowable and include amusements, social activities, and incidental costs such as meals, beverages, lodging and transportation, and gratuities.

2. 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.

# EXHIBIT E

## SPECIAL PROVISIONS

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

1. 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 Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, as outlined in Paragraphs 2e, 2g, and 2h, the Contractor shall obtain and provide the HTA with a current Certificate of Vendor Compliance from the Hawai‘i Compliance Express that is current prior to commencing any performance under this Contract. The Contractor shall also be solely responsible for meeting all requirements necessary to obtain the Certificate of Vendor Compliance as required for final payment under Section 103-53, Hawai‘i Revised Statutes (HRS), as amended, and Paragraph 17 of these General Conditions.

2. 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. The contractor shall avoid all conflicts 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.

3. Change Orders: Paragraph No. 20 of the attached General Conditions is further clarified as follows: By written order, at any time and without notice to any surety, the 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.

4. Limited License to Use Intellectual Property. The State hereby grants to the Contractor a non-exclusive limited license during the time of performance for this Contract only to use any designated intellectual property, including any domain name, trade name, service mark, tagline, 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 Five-Year Strategic Plan 2020-2025." 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 the 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.

5. 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 State law; then
(2) HTA regulations, policies, or procedures; then
(3) The Executed Agreement, including the Contractor's final proposal, with any modifications, amendments, or other properly documented changes; then

(4) The RFP as amended; then
(5) The course of conduct, then
(6) The course of dealing, then
(7) General principles of government contracting; then
(8) Tourism industry practices.

6. 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.

7. Travel Protocol. As a State agency, HTA is required to follow an ethics code that informs our travel policy. See HTA's Travel and Entertainment Policy, attached as the Exhibit entitled "HTA's Travel & Entertainment Policy." HTA reserves the right to review Contractor's travel policy, and if elements fall outside of the attached policy, Contractor must work with HTA to ensure that all travel related to HTA work does not violate State ethics laws. (Exhibit D)

8. 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; acts 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 F

## GENERAL PROVISIONS FOR GOODS AND SERVICES

**1. DEFINITIONS OF TERMS**

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

a. BID

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

b. BID PROPOSAL GUARANTY OR SECURITY

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

c. CONTRACT

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

d. CONTRACT BOND

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

e. CONTRACTOR

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

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

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

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

i. HAR

Hawai‘i Administrative Rules

j. HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this State to enter into and administer contracts.

k. HRS

Hawai‘i Revised Statutes

l. IFB

Invitation for Bids

m. OFFER

An offer means a bid or proposal, as defined in sections 1a and 1p, in response to any solicitation.

n. OFFEROR

Any individual, partnership, firm, corporation, joint venture, or other legal entity, submitting directly or through a duly authorized representative or agent an offer for the work or services contemplated in response to a solicitation as defined in 1s.

o. PROCUREMENT OFFICER

Procurement officer is the person with a procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

p. PROPOSAL

A proposal means any offer submitted in response to any solicitation, except a bid, as defined in section 1a.

q. PURCHASING AGENCY

Purchasing agency means any governmental body authorized by law or rules or by way of delegation to enter into contracts for procurement of goods, services, or construction.

r. RFQ

Request for Quotes

s. RFP

Request for Proposals

t. SOLICITATION

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

u. SPECIAL PROVISIONS

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

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

v. SPECIFICATIONS

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

w. STATE

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

x. SURETY

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

y. WORK

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

## 2. COMPETENCY OF OFFEROR

Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status, or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the State. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

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

## 3. OFFER INCORPORATES SOLICITATION

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

## 4. PREPARATION OF OFFER

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

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

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

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

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

## 6. DISQUALIFICATION OF OFFERORS

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

## 7. IRREGULAR OFFERS

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

## 8. STANDARDS OF CONDUCT

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

a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of $10,000 unless:

   (1) The contract is awarded by competitive sealed bidding pursuant to Section 103D-302;

   (2) The contract is awarded by competitive sealed proposal pursuant to Section 103D-303; or

   (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

## 9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

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

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

## 10. ACCEPTANCE OF OFFER

a. Acceptance of offer, if any, will be made within one hundred twenty calendar days after the opening of offers, and the prices quoted by the Offeror shall remain firm for the one hundred twenty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible Offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible Offeror, offers will be evaluated not only on the amounts thereof but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The Offeror must have the ability to perform as called for in the contract terms. The State shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible Offeror or may publish another call for offers; provided in the case of only one remaining responsible Offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other Offeror.

## 11. <u>EXECUTION OF CONTRACT</u>

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. The State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

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

## 12. <u>CONTRACT BOND</u>

a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.

b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the Contractor to the State at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty percent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.

c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in the solicitation. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

## 13. FAILURE TO EXECUTE CONTRACT

If the Offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by Section 12 within ten days after such award or within such further time as the procurement 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.

## 14. RETURN OF OFFER GUARANTEES

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

## 15. PAYMENT

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

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

## 16. DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the State in its solicitation requirements, and all goods must be delivered with the time specified. However, the Contractor will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God, or other reason beyond his control, provided that he notifies the State of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the Contractor's purchase order, manufacturer's acknowledgment, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the Contractor. The State shall be the sole judge of whether such delay is truly beyond the control of the Contractor and whether extension will be granted. The State reserves the right to terminate the contract or to assess liquidated damages if provided for in the contract, for delays not covered by specific authorized extension.

## 17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

# <u>EXHIBIT G</u>

**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 section103D-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. <u>Cancellation or expiration of the order.</u> 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. <u>Termination of stopped performance.</u> 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. <u>Adjustment of price.</u> Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. <u>Termination for Default.</u>

a. <u>Default.</u> 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. <u>CONTRACTOR'S duties.</u> Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

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

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

(1) Any completed goods or work product; and

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

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

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

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

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

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data, and

b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

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

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

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

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

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

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

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

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

(2) Immediately terminate this Contract.

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

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

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

Exhibit H

## STATE OF HAWAII
# CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122 and submitted pursuant to section 3-122-125; either actually or by specific identification in writing to the procurement officer in support of ____________________*, are accurate, complete, and current as of ______________________________**".
(month, date, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the (State) which are part of the proposal. Please type or print:

| | |
|---|---|
| Vendor / Firm: | Date of Execution: *** |
| Name: | Title |

______________________________
(Signature)

______________________________
(Print Name and Title)

______________________________
(Date)

(End of Certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g. RFP Number).

** The effective date shall be a mutually determined date prior to but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of the agreement, showing that the negotiated price is not based on accurate, complete, and current data.

*** This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.