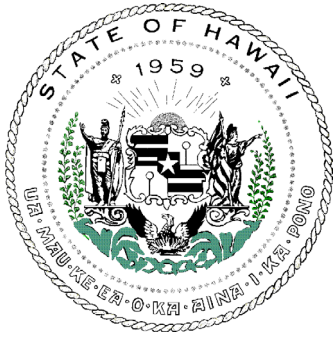




STATE OF HAWAII STADIUM AUTHORITY

POSTED DATE: October 20, 2026

REQUEST FOR PROPOSALS

No. RFP-SA-27-01 SEALED OFFERS

FOR

**Services to Manage, Coordinate, and Market the Aloha
Stadium Swap Meet and Marketplace**

Stadium Authority

**Department of Business,
Economic Development and Tourism**

Michael R. Yadao
Procurement Officer
Stadium Authority

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NOTICE TO OFFERORS

The Stadium Authority RFP-SA-27-01, Services to Manage, Coordinate, and Market the Aloha Stadium Swap Meet and Marketplace, is issued and will be awarded through the State of Hawaii's electronic procurement system (HlePRO). **All offer responses must be submitted electronically through HlePRO no later than 2:00 p.m., November 20, 2026.** Offers received after the due date and time or received in a form other than electronically through HlePRO will not be considered.

Offerors are advised that they should not wait until the last minute to submit their offer through HlePRO. Offerors are solely responsible for ensuring that their electronic submission through HlePRO is complete and all necessary files are attached to their offer prior to the RFP due date and time. The Stadium Authority shall not be responsible for any delay or failure of any Offeror to submit any materials updated through the RFP process on timely basis.

Electronic Procurement

Offerors interested in responding to this electronic solicitation must be registered on HlePRO. To register, visit the following link: https://hiepro.ehawaii.gov/videos/video/vendor_registration.html.

Reference the Vendor Quick Reference Guide for additional information at <https://hiepro.ehawaii.gov/static-resources/VendorQuickReferenceGuide.pdf>.

HlePRO will be the system of record for the issuance of the RFP, to receive the proposal requirements, issue Amendments, and make award for the RFP. Amendments and other information and materials provided through HlePRO, may include additions or changes with respect to the due date and time.

Special instructions in HlePRO related to this solicitation are incorporated herein and made a part of this RFP through reference. Offerors shall review all special instructions in HlePRO.

Pre-Proposal Conference

A pre-proposal conference will be conducted on **Friday, October 23, 2026, at 10:00 a.m.**, Hawaii Standard Time (HST) via Teams. The link to the pre-bid conference will be provided in HlePRO.

Questions and Clarifications

All questions and requests for clarifications must be submitted electronically through HlePRO. Questions must be submitted no later than **10:00 a.m. HST, on October 29, 2026.** Responses to questions submitted via HlePRO will be made no later than **10:00 a.m. HST, on November 4, 2026.**

The Stadium Authority may refuse to answer any questions received outside of HlePRO or after the Questions/Answers deadline.

SECTION ONE: INTRODUCTION AND KEY DATES

1.01 TERMS AND ACRONYMS

Authority	= The Stadium Authority, the entity for which this solicitation is issued.
BAFO	= Best and Final Offer
Contract Administrator	= The Stadium Manager or designee, as identified in Section 6.05, Special Provisions, of this RFP.
CPO	= Chief Procurement Officer
DBEDT	= Department of Business, Economic Development and Tourism
GC	= General Conditions, Form AG008
GET	= General Excise Tax
Gross Receipts	= Gross receipts mean the total amount received or realized by, or accruing to the Contractor from all sales, whether for cash or credit, whether collected or uncollected, made pursuant to rights authorized in the contract; provided that gross receipts shall exclude any Contractor payments to the Hawaii State Tax Collector for general excise tax and use tax, if applicable, included in the retail price, paid by the customers and not separately collected by the Contractor, as well as credit card transaction fees assessed to Contractor on vendor payment(s) by credit card.
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
Manager	= The Stadium Manager of the Stadium Authority
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation.
Procurement Officer	= The contracting officer for the Stadium Authority, State of Hawaii.
RFP	= Request for Proposals
SPO	= State Procurement Office of the State of Hawaii, located at 1151 Punchbowl Street, Room 416, Honolulu, HI 96813; P.O. Box 119, Honolulu, HI 96810-0119
Stadium Property	= Stadium Authority property, location of the Swap Meet.
State	= State of Hawaii, including the DBEDT and the Stadium Authority
Swap Meet	= Aloha Stadium Swap Meet and Marketplace
Swap Meet Area	= Area on the Stadium Property designated for the Swap Meet

1.02 INTRODUCTION

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified individuals or entities to independently operate the Aloha Stadium Swap Meet and Marketplace within the Swap Meet Area on the Stadium Property, including comprehensive management, marketing,

coordination, and operations. The selected Contractor shall ensure that it operates in a coordinated, efficient, and professional manner that aligns with the operational objectives and mission of the Stadium Authority.

The Stadium Authority seeks innovative and results-driven proposals that will enhance the overall success of the Swap Meet and Marketplace by expanding the vendor base, increasing customer attendance, strengthening marketing and promotional efforts, and improving the overall vendor and visitor experience. The Contractor shall work collaboratively with Stadium Authority staff, partners, tenants, vendors, and event organizers to ensure the successful execution of Swap Meet operations on the Stadium Property while supporting the Authority's strategic goals for the evolving Stadium Property.

This RFP is intended to secure the services of a single Contractor (hereinafter referred to as "Contractor" or "Offeror").

1.03 CANCELLATION

This RFP may be cancelled and any or all proposals rejected in whole or in part, without liability, when it is determined to be in the best interest of the State.

1.04 CONTRACT TERM

The term of the contract will be **three (3) years from the Contract Start Date with an option to extend, if mutually agreeable, by up to two (2) additional periods of up to one (1) year each.**

1.05 SIGNIFICANT DATES SCHEDULE

The significant dates set out below present the State's best estimate of the anticipated schedule of events. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will likely be shifted accordingly, by the same number of days or within a reasonable number of days.

RFP Advertised and Issued	Tuesday, October 20, 2026
Non-Mandatory Pre-Proposal Conference (10:00 a.m. HST via Teams, Link to be provided in HlePRO)	Friday, October 23, 2026
Closing date for Submission of Questions	Thursday, October 29, 2026 (10:00 a.m. HST)
State's Response to Offeror's Questions	Wednesday, November 4, 2026 (10:00 a.m. HST)
Closing Date for Receipt of Proposals	Friday, November 20, 2026 (2:00 p.m. HST)
Proposal Review Period	November 20 – 25, 2026

Contractor Selection and Notice of Award	Wednesday, November 25, 2026
Issuance of Notice to Proceed	Tuesday, December 1, 2026
Contract Start Date	January 1, 2027

SECTION TWO: BACKGROUND AND MONETARY GOALS

2.01 BACKGROUND

Established in 1979, the Aloha Stadium Swap Meet and Marketplace has grown into the largest open-air market in the State of Hawai'i and is recognized as one of the state's premier shopping and visitor attractions. Operating three days a week, the Swap Meet and Marketplace features hundreds of local businesses, artisans, farmers, food vendors, and small retailers offering a diverse selection of locally made products, fresh produce, collectibles, apparel, gifts, and unique Hawai'i-made merchandise. The marketplace serves both residents and visitors, providing an affordable venue that supports local entrepreneurship while contributing to the state's economy and tourism industry.

	<u>July 1, 2024, to June 30, 2025</u> <u>(12 months period)</u>	<u>July 1, 2025, to June 30, 2026</u> <u>(12 months period)</u>
No. of event dates	154	155
Sellers Revenue	\$5,102,803	5,131,194
Buyers Admission	\$1,551,537	1,461,175
Gross Revenues	\$6,654,340	6,592,369

Above numbers have been rounded off to the nearest dollar. Refer to **Exhibit A** for additional information on Gross Revenue from Vendors, Gross Revenue from Buyers and Commission Paid to the Contractor.

SECTION THREE: SCOPE OF SERVICES

3.01 CONTRACTOR RESPONSIBILITIES

The Contractor shall provide a sufficient number of qualified, trained, and supervised personnel necessary to safely, efficiently, and successfully operate all aspects of the Aloha Stadium Swap Meet and Marketplace, including the management of Authority owned assets located within the Swap Meet and Marketplace footprint (see Exhibit D). The Contractor shall:

a. VENDOR OPERATIONS

1. Recruit and retain merchandise and food & beverage vendors.
2. Register vendors and verify permits and licenses.
3. Ensure vendors display required licenses.
4. Collect vendor fees and maintain records.
5. Assign and manage vendor booth locations.
6. Assign, manage, and maintain all Authority owned retail (40' shipping containers) units.
7. Conduct daily vendor check-in and check-out.
8. Enforce vendor rules and compliance requirements.
9. Resolve vendor issues and provide customer service.
10. Ensure ADA accessibility and compliance requirements.
11. Ensure all vendor booths maintain a professional, clean, and cohesive aesthetic look that aligns with the Stadium Authority standards.
12. Work with the Authority to establish a diverse mix of food and beverage vendors to enhance the swap meet experience.
13. Provide a minimum of one (1) food and beverage booth for every 750 customers in attendance, or as agreed upon by the Authority.
14. Ensure all marketplace and food and beverage vendors remain open and operational until the advertised closing time of the swap meet. Vendors shall not cease operations, begin breakdown activities, or vacate their assigned spaces prior to the scheduled closing time without prior approval from the Contractor.
15. Shall hold quarterly open forums or meetings with vendors to discuss any problems, changes in operational procedures or issues and submit a written summary within seven (7) days of that meeting to the contract administrator or any representative as designated by the Manager.
16. Upon the request by the Manager, the Contractor shall furnish a listing and map of Swap Meet and Marketplace vendors, their locations on Stadium Property, vendor fees/rentals paid at the Swap Meet, and vendor contact information.
17. Keep all aisles and lanes (for large emergency vehicle access and pedestrians) clear during all hours of the Swap Meet operation.
18. Not change the vendor selling areas without prior written approval from the Manager.
19. Perform additional related duties as required by the Authority.

b. PARKING & TRAFFIC OPERATIONS

1. Manage customer and vendor parking.
2. Collect and report buyer admission fees.
3. Develop, manage, and implement traffic control plans.
4. Provide and maintain directional signage, barricades, and traffic control devices.
5. Ensure ADA parking accessibility and compliance.
6. Perform additional related duties as required by the Authority.

c. PUBLIC SAFETY OPERATIONS

1. Provide and pay for trained security personnel to ensure the public's safety for all Swap Meet events. At a minimum, the trained security personnel shall include not less than one (1) law enforcement officer (Honolulu Police Department (HPD) special duty officer, State Deputy Sheriff, etc.) located at the stadium's main entry gate and private security personnel at other buyer (vehicular and pedestrian) and vendor entry points to the Swap Meet.
2. Manage a security team to monitor and patrol the Swap Meet grounds.
3. Provide crowd management and incident response.
4. Prepare incident and accident reports. Submit reports to the Authority no later than seven (7) calendar days from the incident/accident date.
5. Maintain emergency preparedness and evacuation procedures.
6. Provide first aid services, supplies, and medical response.
7. Manage lost and found operations.
8. Conduct routine facility inspections before, during, and after operations.
9. Maintain emergency access lanes.
10. Perform additional related duties as required by the Authority.

d. CUSTODIAL OPERATIONS

1. Keep the Swap Meet premises free and clear of trash and other unsightly objects or conditions.
2. Monitor cleanliness throughout operating hours.
3. Monitor and clean customer picnic tables during peak hours.
4. Collect and dispose of waste.
5. Manage recycling programs.
6. Provide all custodial equipment and supplies to clean, stock, and maintain the swap meet restrooms and premises.
7. Provide at their own expense trash dumpsters to haul all Swap Meet and events trash.
8. Perform additional related duties as required by the Authority.

e. MAINTENANCE OPERATIONS

1. Be responsible for repairing any damage to the venue infrastructure caused by vendors and buyers.
2. Be responsible for conducting regular inspections (pre-, during, and post-event) of the Swap Meet Area and taking immediate and appropriate action to remedy any situation that would create a potential danger to any party/patron/vendor/general public entering the Stadium Property during the hours of the Swap Meet.
3. Perform additional related duties as required by the Authority.

f. SPECIALTY EVENTS

1. Plan, promote and coordinate a minimum of twelve (12) specialty events in each calendar year. Specialty events can be conducted during regular Swap Meet hours or on non-Swap Meet days and must be located within the Swap Meet Area.
2. Integrate vendors into specialty events.
3. Have the authority to adjust vendor fees for specialty events, subject to approval from the Manager.
4. The Contractor's commission for specialty events shall be calculated after deducting all

- staffing expenses incurred for the specialty event. The Authority shall not absorb any expenses should the specialty event revenue not cover all expenses.
5. Have the authority to adjust buyer entry fees, set a flat rate for parking, or allow free admission for specialty events, subject to approval from the Manager.
 6. Perform additional related duties as required by the Authority.

g. OPERATIONAL REQUIREMENTS

1. Operate the Swap Meet every Wednesday, Saturday, and Sunday.
2. Expand operations to additional days upon mutual agreement with the Authority.
3. Coordinate live entertainment under the Ho'okipa tent.
4. Ensure that the Contractor, Contractor's Swap Meet manager, or Contractor's designee is on the Stadium Property at all times that the Swap Meet is operational and open to the public as well as available to the Contract Administrator by telephone to address contractual obligations on an as needed basis. "Operational hours" is defined as a reasonable time prior to the designated time that the Swap Meet is open to vendors until the last vendor leaves the Stadium Property. Notice of the Contractor's designee must be provided to the Authority.
5. Ensure that the Contractor, Contractor's Swap Meet manager, or Contractor's designee is on the Stadium Property at all times when a vendor is on property on non-Swap Meet days/hours.
6. Provide a customer service representative in the Ho'okipa Information Room during Swap Meet hours to assist buyer questions.
7. Attend monthly Stadium Authority board meetings and provide operational reports, as required by the Manager.
8. Provide and maintain, at its own expense, a business telephone(s) and answering service that shall be fully operational during normal business hours (Monday through Friday, 7:45 a.m. to 4:30 p.m.) at (808) 483-6704 and during Swap Meet hours that it is open to the public.
 - Answering machines are not an acceptable alternative to an answering service; and
 - The Contractor shall not be afforded permanent office space at the Stadium Property. However, an area in the stadium parking lot will be made available to the Contractor for Swap Meet operational purposes only. The Contractor will be allowed to keep a minimal amount of records pertaining to its Swap Meet operations in this area. All areas of the stadium parking lot, including areas used by the Contractor, shall be open and available at all times to inspection, observation, etc., by the Authority, its officers, employees, etc., as stated in Section 3.03 of this RFP. Storage space may also be afforded to the Contractor; however, the Authority reserves the right to deny use of storage space within the Stadium Property and its related facilities for the Contractor's equipment.
9. Perform additional related duties as required by the Authority.

h. FINANCIAL & ACCOUNTING

1. Invoice, collect and deposit all vendor rents and fees. Vendor rents and fees shall be deposited in the Contractor's account.
 - An official receipt containing the amount paid and period covered shall be issued to every vendor. The Contractor as part of its accounting records shall retain a copy of the receipt.
 - Swap Meet receipts collected by the Contractor shall be paid to the Authority in accordance with Section 6.24 of the Special Provisions of this RFP.

2. Be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and maintaining true, accurate and complete books and records to support and verify all sales and gross receipts of the Swap Meet operations. The State may contract and pay for an independent Certified Public Accountant (CPA) to perform a complete audit of sales and gross receipts in accordance with generally accepted accounting practices. The Contractor shall assist the CPA by preparing detailed reports and schedules, providing supporting documentation and answering inquiries related to the audit. The contract may be terminated if the audit discloses that revenue payments to the Authority have been underpaid.
3. On an annual basis, submit to the Authority three (3) copies of the Contractor's annual audited financial statement within ninety (90) days of the close of the Contractor's fiscal year.
4. Perform additional related duties as required by the Authority.

i. RESERVE ACCOUNT

1. The Contractor shall, at its own cost and expense, maintain a separate Reserve Account to purchase and install improvements or operational items that will enhance the experience of the Swap Meet. All expenditures from the Reserve Account shall be mutually agreed upon by the Contractor and the Authority, through its representative, the Manager. The Contractor shall establish the Reserve Account within thirty (30) days after the date of the written Notice of Award. The Contractor shall set aside and pay into the Reserve Account an amount equal to one percent (1%) of each month's gross receipts from Swap Meet vendor fees and Swap Meet buyer admissions.
2. The Reserve Account shall not be used for any maintenance work or to pay for labor or personnel costs. Any and all expenditures from the Reserve Account shall require the prior written approval of the Manager. Failure to obtain written approval for expenditures shall result in immediate rejection of those expenditure requests.
3. At the expiration or sooner termination of the Contract, the Contractor shall promptly pay to the Authority any amounts, including interest, in the Reserve Account.
4. The Contractor shall submit a copy of the Reserve Account bank statement and bank reconciliation to the Authority within fifteen (15) days receipt of the Reserve Account bank statement.
5. Title to all initial and subsequent permanent improvements, equipment, and trade fixtures constructed or installed in or on the Stadium Property by the Contractor, at its own cost and expense, shall remain vested with the Contractor during the term thereof. To the exclusion of office and communication equipment, all permanent improvements, equipment trade fixtures and improvements of any kind financed through the Reserve Account upon expiration or sooner termination of the Contract shall become the property of the Authority, who shall then have clear title and interest thereto, and the Contractor shall have no right to remove the same or to receive compensation thereof.

j. LEGAL & REGULATORY COMPLIANCE

1. Observe, perform and comply or require compliance with all laws, ordinances, rules and regulations of the United States, the State of Hawaii, the City and County of Honolulu, or any governmental department or agency, as amended, which in any manner affect the Swap Meet operations, all in accordance with Section 35 of the GC. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.
2. Cooperate fully with law enforcement officials, anti-counterfeit/trademark protection organizations, and retail merchants to detect, report, and initiate prosecution of

- purveyors or counterfeit or stolen merchandise.
3. Secure and keep current all permits or licenses required by law and give all notices necessary and incidental to the lawful operation of the Swap Meet.
 4. Ensure that all vendors:
 - Secure and keep current all required permits or licenses;
 - Clearly display applicable permits or licenses in their respective vendor/parking stall areas; and
 - Comply with all applicable laws, ordinances, rules and regulations. The Contractor shall be responsible for assuring general excise tax licenses are current and active for vendors renting stalls. In addition, the Contractor shall promptly comply with all requests made by the State Department of Taxation.
 - Abide by the Hawaii Administrative Rules of the Authority (see attached **Exhibit C**, which is incorporated herein by reference) (Rules) governing the management, operation, and use of the Stadium Property. The contract shall be subject to the provisions of said Rules whether or not expressly mentioned in other parts of this contract.
 5. Conduct its operation in such a manner so as to prevent any of the following from taking place on the Stadium Property:
 - Any cause for public nuisance;
 - Any creation of objectionable noise;
 - Any generation of noxious smoke, gases, vapors and odors;
 - Any sale, distribution or presence of any: stolen or counterfeit items, firearms, ammunition, explosives, illegal fireworks, weapons, drug paraphernalia; flammables, unauthorized food or beverage, discount coupons, games of chance, gift certificates, grab bags;
 - Any pets, birds, reptiles or animals, unless approved by the Manager;
 - Any illegal activity; or
 - Any uses other than those permitted by this contract.
 6. Comply with all applicable Federal, State of Hawaii, or local laws prohibiting discrimination based on race, color, religion, creed, sex, age, disability, or any other protected classification under law in all activities including the provision of any services, employment practices, and admission to the Swap Meet. Any discriminatory practices by the Contractor shall be deemed a breach of this Contract and may be cause for immediate termination of the Contract by the State.
 7. Ensure that there is no use of any mechanical or hand-operated vehicles or apparatus by the Contractor, its employees, representatives, agents, or suppliers within the Stadium Property without prior approval of the Manager. Offeror is advised that the State reserves the right to deny use of storage space for the Contractor's equipment.
 8. Assume the risk of any loss or damage to its, its agents', or its employees' property left on Stadium Property. Neither the Authority nor its officers, agents or employees shall be responsible or liable for any loss of, or damage to, the aforesaid property while on the premises of the Stadium and its related facilities, regardless of how or the manner in which any such loss or damage is sustained.
 9. Perform additional related duties as required by the Authority.

k. STANDARD OPERATING PROCEDURES (SOP)

Within 90 days of contract commencement, Contractor shall submit an SOP Manual covering all categories of Swap Meet operations to include:

1. Vendor Operations Plan and Maps;
2. Parking and Traffic Plan;
3. Public Safety Plan;

4. Custodial Operations Plan;
5. Emergency Vehicle Access Routes;
6. Vendor Contract and Related Materials;
7. Emergency Evacuation Plan;
8. Customer Service Model; and
9. Other related duties as required by the Authority.

I. RETAIL OPERATIONS

1. Obtain prior written approval from the Manager before offering for sale or otherwise distributing any Stadium-related merchandise, novelties, memorabilia, promotional items or other Stadium-branded goods, including through any retail operations or vendor stalls at the Swap Meet. Failure to obtain prior written approval from the Manager shall be considered a material breach of the Contract. Have the authority to sub-contract with one or more vendors to sell Stadium Authority merchandise at a commission of net revenue.
2. Have the authority, subject to the Manager's approval, to use funds from the Reserve Account to purchase inventory. Any funds or a percentage of funds used for such purchases shall be reimbursed to the Reserve Account promptly upon the sale of the applicable inventory item.
3. Perform additional related duties as required by the Authority.

m. CONTRACT RESTRICTIONS

1. Not levy or charge any additional vendor or buyer fees, rental charges, assessments, etc., unless the prior written approval of the State is given.
2. The Contractor agrees to a non-compete requirement that prohibits the Contractor from marketing, coordinating, operating and/or managing any swap meet-type of event on the island of Oahu. Any established swap meet-type of event or events that are established and that are actively in operation at the time of award are exempt from this requirement; however, disclosure of this information must be provided to the Authority prior to the beginning of the effective date of this contract.

n. PROMOTIONAL & MARKETING REQUIREMENTS

1. The Contractor shall develop and implement a comprehensive, aggressive and results-oriented Promotional Plan designed to increase customer attendance, vendor participation, brand awareness, community engagement, and overall revenue opportunities for the Aloha Stadium Swap Meet & Marketplace. The Promotional Plan shall incorporate measurable performance objectives, innovative marketing strategies, and ongoing evaluation of promotional activities to ensure continued growth and visibility of the Swap Meet & Marketplace.
2. The Proposed Promotional Plan shall be submitted as part of the bid package and will be evaluated in accordance with the criteria outlined in Section Five (5), including:
 - Overall creativity and innovation;
 - Strategic use of traditional and non-traditional advertising platforms;
 - Marketing timetable and implementation schedule;
 - Effective use of promotional funds;
 - Measurable performance goals and milestones;

- Community engagement initiatives and special events;
 - Data analysis, reporting, and optimization strategies;
 - Overall strategy with supporting market analysis.
3. Promotional Plan Requirements
The Contractor shall submit a detailed annual Promotional Plan that includes, at a minimum:
- Marketing and Advertising Strategy - A comprehensive marketing strategy targeting both local residents and visitors.
 - Utilization of traditional advertising methods, where appropriate, including print, radio, outdoor advertising, and public relations.
 - Aggressive use of digital and emerging media platforms, including but not limited to:
 - Social media advertising and content marketing;
 - Digital display advertising;
 - Streaming audio and video advertising;
 - Influencer and creator partnerships;
 - Search engine marketing (SEM);
 - Email marketing campaigns;
 - Mobile marketing and geofencing opportunities;
 - Tourism and visitor-focused digital platforms.
4. Performance Metrics and Milestones
- Establish measurable quarterly performance goals and benchmarks.
 - Include key performance indicators (KPIs) such as:
 - Attendance growth;
 - Vendor participation growth;
 - Social media audience growth;
 - Social media engagement rates;
 - Website traffic;
 - Email subscriber growth;
 - Event participation;
 - Public awareness metrics.
 - The Contractor shall identify quarterly milestone targets and provide strategies for achieving those targets.
 - Milestones may include percentage increases in attendance, customer engagement, digital reach, vendor participation, or other mutually agreed-upon performance indicators.
5. Events and Promotional Activations
- Capitalize on seasonal, holiday, cultural, tourism, and community-based opportunities.
 - Include promotional activities that encourage repeat visitation and increased customer spending.
 - Collaborate with community organizations, tourism partners, businesses, and other stakeholders when feasible.

6. Timetable

- Provide detailed annual marketing and advertising calendar identifying:
 - Campaign launch dates;
 - Promotional periods;
 - Major events and activations;
 - Media placements;
 - Seasonal and holiday marketing initiatives;
 - Performance review periods.

7. Reporting and Analytics

- Provide monthly performance summaries and quarterly analytical reports that include:
 - Advertising activities conducted;
 - Attendance trends;
 - Vendor participation trends;
 - Social media analytics;
 - Website and digital marketing performance;
 - Campaign effectiveness;
 - Recommendations for optimization and future initiatives.

1. Reports shall include supporting data and analysis demonstrating progress toward established milestones and objectives.
2. Budget Requirements. The monthly budget and total expenditure of the Promotional Plan shall be a minimum of Twelve Thousand Five Hundred Dollars (\$12,500.00) per month. The Contractor shall submit an annual Promotional Plan and Advertising Budget in the bid package. For each subsequent contract year, the Contractor shall submit an updated Promotional Plan and Advertising Budget no later than January 1 and obtain prior written approval from the Manager before implementation.
3. Meetings and Plan Review. The Contractor shall meet weekly or as needed with the Stadium Marketing Specialist or designee to review campaign performance, promotional activities, analytics, upcoming initiatives, and compliance with the approved Promotional Plan. Any proposed modifications to the Promotional Plan shall require prior written approval from the Manager. The Contractor shall obtain written approval from the Manager prior to implementation of each annual Promotional Plan and any material revisions thereto. The Manager reserves the right to request reasonable modifications to the Promotional Plan to address changing market conditions, attendance trends, operational needs, community priorities, or strategic objectives of the Aloha Stadium Swap Meet & Marketplace.

3.02 MINIMUM EXPECTED/PERFORMANCE STANDARDS

The underlying philosophy for the Authority is to provide opportunities for the public, including visitors to the State of Hawaii, to participate in a wide variety of functions and events held at the Stadium. In this endeavor, the Authority wishes to contract with a single business entity to market, coordinate, and manage the Swap Meet.

In addition to the specific requirements in Section 3 of this RFP, the minimum expected/performance standards for the Contractor in operating the Swap Meet for the Authority in its Swap Meet operation are as follows:

1. Realize minimum annual gross Swap Meet and Marketplace revenues of \$6.5 million in year number one (1) of the contract.
2. A minimum 3% year-over-year increase in gross revenue milestones. The Authority will adjust revenue performance milestones when revenue generation is materially affected by circumstances beyond the Contractor's control. Failure to achieve growth milestones shall result in a financial penalty of 20% of the revenue shortfall for the applicable contract year.
3. With the prior written approval of the Manager for all disbursements, develop and implement a Promotional Plan that includes marketing and advertising and spending a minimum of \$12,500 monthly to market and promote the Swap Meet. The minimum of \$12,500 should be factored-in as an expense (borne by the Contractor) when calculating Contractor's percentage commission.

3.03 AUTHORITY'S RESPONSIBILITIES AND RIGHTS

Authority's Rights:

- a. The Authority, through its representative, the Manager, reserves the right to cancel swap meet date(s) or change the opening and closing times for any swap meet event date(s). When a Swap Meet date is canceled or there is a change in the opening and/or closing times, the Manager will notify the Contractor ten (10) calendar days prior to the effective date of the change(s). When there is an emergency, or when it is in the best interest of the Authority and the general public, the Manager may, without notice, cancel the Swap Meet or change its opening and/or closing times.
- b. The Authority, its officers, employees, agents, representatives and contractors, shall have the right, at all times, to:
 1. Inspect all areas of the Stadium Property and related facilities, including those areas occupied or used by the Contractor;
 2. Observe the Contractor's performance of its obligations under this contract;
 3. Serve or post notices required by any statute, rule or regulation of the Federal, State, or municipal governments, or the Authority, when it is deemed to be in the interest of the general public, the State, the Contractor, or the premises; and
 4. Carry out any act or duty which the Authority may be obligated or have the right to do under this contract or otherwise.

In the event such inspection by the Authority reveals that the premises are not in a safe or otherwise satisfactory condition due to the negligence or fault of the Contractor in its execution of its responsibilities under this contract, the Contractor, upon being so informed by written notice shall promptly proceed to correct such condition to the satisfaction of the Authority.

In the event such observance of the Contractor's performance of its obligations under this contract is not satisfactory, the Contractor, upon being informed by written notice shall promptly proceed to correct such identified deficiencies to the satisfaction of the Authority.

If, within ten (10) calendar days following the date of such written notice, or within such additional time as the Manager may allow, the Contractor has not substantially complied with the provisions of such notice, the Authority shall then have the right to:

1. Remedy such condition at the expense of the Contractor, and the Contractor shall promptly reimburse the Authority for any and all costs incurred thereof, and/or
 2. Impose a penalty of \$200.00 per calendar day for each unsatisfactory fault or deficiency until such time that the deficiency is rectified to the satisfaction of the Manager; and/or
 3. Impose a penalty of \$1000 when the same performance requirement or obligation has been violated for the third time and/or
 4. Deem the practices of the Contractor to be a breach of this contract and request the Procurement Officer to terminate the contract.
- c. During Swap Meet hours and days of operation, the Contractor expressly understands and agrees that the Authority, its officers, employees, agents, representatives, or contractors shall have the unrestricted right to install, repair, replace, sandblast, paint, alter or maintain the Stadium facilities, including but not limited to the Stadium development, parking area, utilities, and electrical systems. Nothing contained herein, however, shall be construed to impose upon the Authority any obligation or create any liability for the failure on the Authority's part to perform such installations, repairs, replacements, sandblasting, painting, alterations or maintenance.
- d. The Authority, through its representative, the Manager, reserves the right to deny any seller from selling on the Stadium Property. Upon written notification from the Manager, the Contractor shall take immediate action to stop such party from selling and shall evict such party from the Stadium Property.
- e. Contractor shall establish the fees to be charged to vendors and buyers or members of the purchasing public, subject to review and approval by the Authority, through its representative, the Manager, prior to implementation. The Contractor is prohibited from assessing any fees that have not received Manager's prior approval. To do so without such approval would be a material breach of contract. There are two categories of fees; fees or rent paid by the vendors and the admission fee paid by the buyer/purchasing public.

Stadium Authority's Responsibilities:

The Authority shall at its own expense:

- a. Provide electrical power sufficient to support the Contractor excluding; however, Swap Meet vendors.

- b. Pay the Contractor a percentage commission based on the gross Swap Meet receipts for satisfactory performance of duties and responsibilities.
- c. Conduct meetings with the Contractor to discuss Swap Meet business and operation, as needed.
- d. Conduct **monthly reviews or as necessary** determined by the Manager of the following:
 - Marketing and advertising plans, budget and expenditures;
 - Reserve account expenditures;
 - Procedures and enforcement of complaints;
 - Procedures and operation of vendor stall lotteries;
 - Display of general excise tax license (vendors);
 - Security operation;
 - Revenues; and
 - Customer service for vendors and buyers (random).

SECTION FOUR: PROPOSAL FORMAT AND CONTENT

4.01 INTRODUCTION

One of the objectives of this RFP is to make proposal preparation easy and efficient, giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully meet the obligations outlined in this RFP.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 3.02 of this RFP.

4.02 REQUIRED REVIEW

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

4.03 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.

4.04 PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

4.05 RFP AMENDMENTS

The Authority reserves the right to amend this RFP at any time prior to the closing date for receipt of proposals, as referenced in the schedule of key dates in Section 1.05 of this RFP. Interested offerors will be notified of the availability of amendments through verbal or written communication.

4.06 PROPOSAL CONTENTS

The proposal must:

- a.** Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, and terms and conditions specified in this RFP.
- b.** Include signed Offer Form OF-1 with the complete, exact legal name and address of Offeror's firm and the name, mailing address, and telephone and fax number(s) of the person the State should contact regarding Offeror's proposal.

- c. Be organized into sections following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually, and pages must be numbered.

1. Transmittal letter
See Section Seven (7) Attachments – **Offer Form OF-1**
2. Experience and Capabilities – refer to Section 4.07
3. Business History – refer to Section 4.08
4. Credit Report – refer to Section 4.09
5. Financial Statement – refer to Section 4.10
6. Coordinate, Manage, and Provide a Security Program –
refer to Section 4.11 (3.01)
7. Promotional Plan – refer to Section 4.12
8. Commission Rate – refer to Section 4.13
See Section Seven (7) Attachments **Offer Form OF-5**
9. Wage Certificate, See Section Seven (7) Attachments **Offer Form OF-6**
10. References, See Section Seven (7) Attachments **Offer Form OF-7**

4.07 EXPERIENCE AND CAPABILITIES

- a. Offeror shall provide verification that it possesses a **minimum of three (3) years** full-time experience in operating **minimum 200 vendors** swap meet or similar business as well as experience and/or knowledge in commercial retail business that involved implementation of a combination of product, pricing, marketing, and management strategies to realize maximum revenue generation. A swap meet or similar business shall be defined as a business where the owner or operator rents space to vendors (sellers) and allows vendors to sell products or services.
- b. Indicate the number of years Offeror has been doing business and number of years Offeror has been doing business in the State of Hawaii (if applicable).
- c. Include a list of key personnel who will be dedicated to this project and information on their respective backgrounds.
- d. Provide a summary list of any judgments or pending lawsuits or actions against; adverse contract actions, including termination, suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations taken against Offeror or his firm. If none, so state.

4.08 BUSINESS HISTORY

Business history and references shall include a statement from a minimum of one bank or other financial institution attesting to the creditworthiness of the Offeror and a release/waiver which shall allow the State or its agent/representative to audit/verify the Offeror's business history.

Provide a description of Offeror's business – its history, location, size, past work projects, dollar volume range of these work projects, etc.

References and Previous Projects

Offeror shall include a list of references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide names, titles, organizations, addresses, telephone numbers and email addresses in the Offer Form OF-7. Stadium Authority reserves the right to contact references for additional information.

The minimum of three (3) references shall be from the businesses not owned, operated, controlled, or affiliated with the Offeror, which attests to the Offeror's good business practices in its operation and relations with employees, suppliers, and customers in its retail property management or swap meet operations.

Provide a description of previous projects comparable to this project.

4.09 CREDIT REPORT

Provide a credit report and a release/waiver which allows the State or its agent/representative to audit the credit report to verify Offeror's credit rating and financial stability.

4.10 FINANCIAL STATEMENT

Financial statements that document the ability to post a \$1.5 million performance bond or cash equivalent upon award of contract, and a release/waiver that shall allow the State or its agent/representative to audit/verify the Offeror's financial statements. Financial statements must demonstrate that the Offeror has sufficient financial resources to execute and sustain the operating requirements of the contract.

Annual Audited Financial Statements

Offeror shall submit annual audited financial statements for 2026 (if 2026 is unavailable then Offeror shall submit 2025) and the previous three (3) years.

4.11 COORDINATE, MANAGE, AND PROVIDE A SECURITY PROGRAM

The Offeror shall propose a plan to coordinate and manage the swap meet and realize annual gross revenues of \$6.5 million [refer to Section 3.02(1)]. A listing of support personnel, including a description of duties and responsibilities and experience, shall also be included.

The Offeror shall submit a description of its security program for this type of operation.

4.12 PROMOTIONAL PLAN

The offeror, at its own expense, shall submit a description of a Promotional Plan to increase overall revenue for the Swap Meet at the Stadium. The Promotional Plan shall describe the marketing, promotion and advertising concepts that will be utilized to generate business by attracting more vendors and buyers to the swap meet. The Promotional Plan shall include a timetable for meeting the goals and objectives described.

4.13 COMMISSION RATE

The Offeror's percentage of commission for this contract shall be **inclusive** of the minimum **monthly \$12,500** allotment for the Contractor's promotional plan and the **1%** allotment for the Reserve Account. Percentage commissions **over 29% (twenty-nine)** will not be considered and shall cause Offeror's entire proposal to be rejected.

4.14 RECEIPT AND REGISTER OF PROPOSALS

Proposals will be received, and receipt verified, by two or more procurement officials on or after the date and time specified in the schedule of key dates in Section 1.05 of this RFP, as amended. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS.

4.15 NO LATE SUBMITTALS AFTER DEADLINE

No late submittals will be accepted. Proposals received after the due date and time will be marked late and shall be ineligible for this solicitation. Offerors are cautioned to make prior arrangements to ensure timely delivery prior to the due date and time.

4.16 BEST AND FINAL OFFER (BAFO)

If the Authority determines a BAFO is necessary, it shall request one from the Offeror or priority listed Offerors. The Offeror(s) shall submit the BAFO and any BAFO received after the deadline or not received shall not be considered.

4.17 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

4.17.1 The Offeror may modify or withdraw a proposal before the proposal due date and time.

4.17.2 Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

4.18 MISTAKES IN PROPOSALS

4.18.1 Mistakes shall not be corrected after the award of the contract.

4.18.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the Proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

4.18.3 Once discussions are commenced or after BAFOs are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of BAFOs.

4.18.4 If discussions are not held, or if the BAFOs upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

- 4.18.5 If discussions are not held, or if the BAFOs upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offer submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

SECTION 5: EVALUATION CRITERIA AND CONTRACTOR SELECTION

Evaluation criteria and the associated points are listed below. The award will be given to the responsible Offeror whose proposal is determined to be responsible and the most advantageous to the State and the Authority based on the evaluation criteria listed in this section.

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 115.

- 1. Experience and Capabilities (30 total points)**
 - a. References and Previous Projects (10 points)**
 - Description of past accomplishments and its relationship to this current assignment;
 - Types of clientele and references.
 - b. Business History (10 points)**
 - Years in business and description of business background;
 - Provide resumes of key personnel to this project.
 - c. Financial Strength and Integrity (10 points)**
 - Credit Report;
 - Annual gross revenues and net profit for past three (3) yrs;
 - Annual billings.
- 2. Proposal to Coordinate and Manage the Swap Meet operation (30 total points)**
 - Description of proposal to coordinate, manage, and support overall program;
 - Description of business plan for the operation;
 - Description of Promotional Plan proposal to increase the number of stalls, vendors and public attendance at the swap meet;

- Description of proposal to ensure that the Authority realizes from its swap meet operation a minimum of \$6.5 million of gross revenue in year number one (1) of the contract;
- Description of security program and emergency procedures for operations;
- Listing of support personnel, including description of duties and responsibilities and experience.

3. Promotional Plan (30 total points)

- Overall creativity;
- Timetable;
- Effective use of funds to increase vendor and customer participation;
- Overall strategy with supporting analysis.

4. Pricing (percentage commission) (25 total points)

The Offeror's percentage commission for this contract shall be inclusive of the minimum monthly \$12,500 allotment for the Contractor's promotion plan and the 1% allotment for the Reserve Account. Percentage commissions over 29% will not be considered and shall automatically disqualify Offeror and Offeror's entire proposal.

In converting price percentage to points, the lowest price proposal will automatically receive the maximum number of points allocated to cost, i.e., 25 points. The point allocations for cost on the other proposals will be determined through the formula set out as follows:

$$\frac{[\text{Lowest \%} \times 25 \text{ points (maximum)}]}{[\text{Offeror's \% Proposal}]} = \text{Points}$$

SECTION SIX: SPECIAL PROVISIONS

6.01 SCOPE

Operation and management of the Swap Meet shall be in accordance with this RFP, including these Special Provisions, the attached Specifications, the Scope of Work specified herein, and the GC from the Department of the Attorney General.

6.02 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements as set forth herein and pursuant to §103D-310 (c) HRS.

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

Hawaii Compliance Express. Vendors must use the Hawaii Compliance Express (HCE) to provide proof of compliance. HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certification of Vendor Compliance." HCE provides current compliance status as of the certificate issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310 (c), HRS shall be accepted for contracting and final payment purposes.

HCE is 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 should 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 contract and final payment.

Timely Registration on HCE: The contractors are advised to register on HCE soon as possible. If a contractor is not compliant on HCE at the time of award, a Bidder will not receive the award.

The State may check HCE for compliance at any time. Non-compliance may result in an Offeror not receiving an award, delay of payment, or cancellation of award.

The State will verify compliance with HCE throughout the term of the contract.

6.03 OFFEROR QUALIFICATIONS

The offer shall meet all of the qualifications required by this RFP. However, if Offeror fails to meet the following qualifications, the State shall not consider Offeror's proposal for award, and Offeror's proposal shall be rejected.

- a.** Offeror must demonstrate the ability to obtain a \$1.5 million performance bond upon award of contract (e.g., a letter from a bonding company assuring the State that upon award of the contract the Offeror will be guaranteed the \$1.5 million bond) or cash equivalent and maintain that \$1.5 performance bond for the entire period of the contract. Refer to the Performance Bond, Attachment 1, Offer Form OF-2 through OF-4 for the requirements of the performance bond.
- b.** Offeror shall have a **minimum of three (3) years of experience** in marketing and/or operating retail property, a swap meet or similar marketplace with a **minimum of 200 vendors**.

6.04 CONTRACT ADMINISTRATOR

For purposes of this contract, the Stadium Authority's Stadium Manager, telephone (808) 483-2750, or authorized representative, is designated Contract Administrator, and represents the Stadium Authority in this solicitation and subsequent applicable contract periods.

6.05 OVERVIEW OF THE RFP PROCESS

- a.** The RFP is issued pursuant to Subchapter 6 of Chapter 3-122, HAR, implementing Section 103D-303, HRS.
- b.** The procurement process begins with the issuance of the RFP by the Stadium Authority and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
- c.** The proposal will be opened at the date and time specified in Section One Subsection 1.05 SIGNIFICANT DATES, or as amended. The proposal opening will not be open to the public. Proposals may be available for public inspection upon notice of award and shall be available for public inspection after the contract is signed by all parties. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.
- d.** The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section 5. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

- e. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a “priority list” of responsible Offerors submitting acceptable and potentially acceptable proposals shall 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.
- f. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- g. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. Should it be deemed necessary, the Procurement Officer 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.
- h. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.05, Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror’s immediate previous offer shall be construed as their BAFO.
- i. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section 5, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer 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 5.
- j. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree on are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
- k. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interests of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- l. 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 Hawaii.

6.06 PRE-PROPOSAL CONFERENCE & SITE VISIT

Pre-proposal Conference

A non-mandatory pre-proposal conference will be held **via Microsoft Teams at 10:00 a.m. HST on Friday, October 23, 2026**. The link to the conference will be provided in HlePRO.

Attendance at the pre-proposal conference is not mandatory. This meeting will be for the purpose of reviewing item specifications and the familiarization of the Aloha Stadium.

Offerors are advised that anything discussed at the pre-proposal conference does not change any part of this solicitation. All changes and/or clarifications to this solicitation shall be made in the form of written addenda.

Site Visit

Each Offeror is expected to familiarize themselves with the Swap Meet location as well as operation, current condition, size and scope of operations. To facilitate this expectation, the offeror shall contact Stephen Lee at Stephen.g.lee@hawaii.gov to schedule a site visit. No additional allowance will be granted because of lack of knowledge of such conditions.

6.07 PERMITS, CERTIFICATES, AND LICENSES

The Contractor shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein, and post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

The Contractor shall comply with all business registration requirements prior to commencing work under this contract. Failure to comply with the requirements of this paragraph may be grounds for a proposal to be rejected or the contract to be terminated.

6.08 PROPOSAL PREPARATION

- a. **OFFER FORM, page OF-1.** See Attachment 1. Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate spaces on Offer Form page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Hawaii business. A business entity referred to as a "Hawaii business", is registered and incorporated or organized under the laws of the State of Hawaii.

Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State.

- b. **Offer Guaranty.** An offer guaranty is NOT required for this RFP.
- c. **Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii GET at the current 4.50% rate. 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 shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

6.09 AWARD OF CONTRACT

Method of Award. Award, if made, shall be to the responsible Offeror whose proposal is determined to be responsive and the most advantageous to the State taking into consideration the evaluation factors set forth in this RFP.

Upon award, the contractor shall receive a current list of vendors.

6.10 SUBMISSION OF PROPOSAL

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

6.11 PRICING

The Authority agrees to pay the Contractor a percentage commission based on the gross swap meet receipts for satisfactory performance of duties and responsibilities.

The offer shall indicate on **the Offer Form OF-5**, Section Seven (7), Attachments its all-inclusive percentage commission charge to the State to provide services specified herein.

Offeror is advised that this **all-inclusive percentage** commission should take into consideration **all costs**, including but not limited to all applicable taxes, labor and security costs, licenses, permits, advertising program, the Reserve Account, marketing and promotional programs, etc., to furnish the services required herein.

6.12 ECONOMY OF PRESENTATION

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate to the purpose. Emphasis shall be on completeness and clarity of content. If any additional information is required by the State regarding any aspect of the Offeror's proposal, it shall be provided within two (2) business days of the State's request.

6.13 ORAL PRESENTATION

Respondents to this RFP may be required to make an oral presentation of their proposal to ensure a thorough and mutual understanding. The State will schedule the time and location for these presentations (if deemed necessary by the State), normally within one week following the proposal due date.

6.14 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the

Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Pursuant to Section 3-122-58, HAR, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination 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 Section 92F-42(12), HRS.

6.15 OFFEROR'S QUESTIONS

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Should the Offeror find defects and questionable or objectionable items in this RFP, comments concerning defects and questionable or objectionable matters must be **made in HlePRO no later than 10:00 a.m. HST on October 29, 2026.** This will allow issuance of any necessary corrections to the RFP. It will also help prevent the opening of a possibly defective solicitation and unnecessary exposure of Offeror's proposal when award could not be made.

6.16 RESPONSE TO OFFEROR'S QUESTIONS

The State will respond to the questions submitted in HlePRO **no later than 10:00 a.m. HST on November 4, 2026.**

6.17 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to Section 3-122-96 through 3-122-97, HAR.

The State shall not be liable for any costs, expenses, loss of profits, or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled, or a proposal is rejected.

6.18 OFFER ACCEPTANCE PERIOD

The State's acceptance of the offer, if any, will be made within sixty (60) calendar days after the opening of proposals. Prices and commissions quoted by the Offeror shall remain firm for the sixty (60) day period.

6.19 PROPOSAL AS A PART OF THE CONTRACT

This RFP and all or part of the successful proposal shall be incorporated into the contract.

6.20 WAGE-CERTIFICATE

Offeror shall complete and submit the attached wage certificate by which Offeror certifies that service required will be performed pursuant to §103-55, HRS.

Applicable offerors are advised that §103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offeror is advised that although item 2 of the Wage Certificate is not applicable to this solicitation since there are no public sector employees performing work similar to the requirements herein, Item 1 of the certificate applies and therefore submission of the Wage Certificate is required.

6.21 CAMPAIGN CONTRIBUTIONS

CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED. If awarded a contract in response to this solicitation, Offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

6.22. INSURANCE REQUIREMENTS

Offeror shall have both a Commercial General Liability Policy and a Commercial Crime Policy.

Upon Contractor's execution of the contract or earlier, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the following insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

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

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

Furthermore, the Contractor shall maintain in full force and effect during the life of this contract a commercial crime policy to protect the Contractor from claims due to employee dishonesty, forgery or alteration, theft, disappearance, or destruction. The deductible for this policy shall not exceed \$2000.

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

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (CGL) (occurrence form)	\$5,000,000 combined single limit per occurrence for personal injury, bodily injury, and property damage
Commercial Crime Policy	
• Employee Dishonesty (blanket)	\$500,000 (2,000 deductible)
• Forgery/Alteration	\$500,000 (2,000 deductible)
• Theft/Disappearance/Destruction	\$100,000 (2,000 deductible)
Workers' Compensation:	The CONTRACTOR shall maintain workers' compensation and employer's liability insurance that comply with statutory limits
Automobile Liability	\$2,000,000 general aggregate \$1,000,000 combined single limit per occurrence for bodily injury and property damage

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

1. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days' written notice has been given to the State of Hawaii, Department of Business, Economic Development and Tourism, Stadium Authority, P.O. Box 30666, Honolulu, Hawaii, 96820-0666"

2. **Commercial General Liability only:**

"The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

3. **Commercial Crime Policy only:**

Loss Payee endorsement to the Stadium Authority.

4. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
5. "Waiver of Subrogation"

The Contractor shall also procure and maintain workers' compensation insurance to cover all employee and person working for the Swap Meet operation in any capacity.

The minimum insurance required shall be in full compliance with the Hawaii Insurance

Code throughout the entire term of the contract, including supplemental agreements.

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

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

The Authority shall retain the right at any time to review the coverage, form and amount of the insurance required hereunder. If, in the opinion of the Authority, the insurance provisions in the contract do not provide adequate protection for the Authority, the Authority may require the Contractor to obtain additional insurance sufficient in coverage, form and amount to provide adequate protection. The Authority's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

The Authority shall notify the Contractor in writing of changes in the insurance requirements, and if the Contractor does not deposit copies of acceptable insurance policies with the Authority incorporating such changes within sixty (60) calendar days of receipt of such notice, the contract shall be in default without further notice to Contractor and the Authority shall be entitled to its legal remedies.

6.23 CONTRACT EXECUTION, NOTICE TO PROCEED AND TERM OF CONTRACT

Successful Offeror receiving award shall be required to enter into a formal written contract. Upon award of contract, a \$1.5 million performance or payment bond or cash equivalent is required during the entire term of this contract. Offeror will need to complete **Performance Bond, Section Seven (7) Attachments, Offer Form OF-2 through OF-4**. Upon execution of the contract, a Notice to Proceed will be issued.

No work is to be undertaken by the Contractor prior to the official commencement date specified in the Notice to Proceed. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official commencement date specified in the Notice to Proceed. Successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The initial term of the contract shall be for a **three (3) year period** starting on the official commencement date of the Notice to Proceed with an option to extend, if mutually agreeable, by up to **two (2) additional periods** of up to one (1) year each.

The Stadium Authority reiterates its right to terminate this contract prior to its end date in accordance with the AG-008 103D General Conditions paragraph 14, Exhibit A.

If the State, solely at its option, wishes to extend the term of this contract **for two (2) additional periods up to one (1) year each** or portion thereof, and the contractor agrees, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

6.24 PAYMENT/COMMISSIONS

The Authority agrees to pay the Contractor a percentage commission based on the gross swap meet receipts for satisfactory performance of duties and responsibilities.

Commissions shall be deducted from the revenue due to the Authority on a monthly basis. Revenue due to the Authority shall be remitted in a manner as prescribed by the Authority on or before the 20th of each calendar month for the term of this contract. 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 longer period or at a commission rate not mutually agreed upon at the time of execution of this contract.

6.25 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the Procurement Officer. No subcontract shall under any circumstances relieve the Contractor of its obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

6.26 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Manager will provide the Contractor with a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the user agency (the Authority) and the Contractor's personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued.

6.27 CONTRACT STAFFING REQUIREMENTS

Key personnel identified in the Offeror's proposal shall not be removed from or replaced on the project without prior written notification to the Manager. Any proposed changes to key personnel shall be communicated to the Manager before the change is made. Failure to provide such notification may be grounds for contract termination.

The State shall have the right, and the Contractor will comply with any request, to remove any personnel from all work on this project effective immediately upon notification by the State.

6.28 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate or void the entire contract.

6.29 INSPECTION & PROCEDURAL CHANGES - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The Contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Manager. The State may employ all reasonable means to ensure that the work is being performed in compliance with the contract.

Should the Manager determine that corrections or changes are necessary in order to accomplish the contract's intent, the Manager may direct the Contractor to make such changes.

Substantial failure of the Contractor to perform any provisions of the contract may cause the State to terminate the contract. In this event, the State may require the Contractor to reimburse monies paid (based on the identified portion of unacceptable work received), may seek associated damages, and relief in accordance with law.

6.30 PROTEST

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 of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the State of Hawaii, State Procurement Office website as required by HAR.

Any protest pursuant to §103D-701, HRS, and Sections 3-126-3 and 3-126-4, HAR, shall be submitted in writing to the Procurement Officer, Stadium Authority, P.O. Box 30666, Honolulu, Hawaii 96820-0666.

6.31 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 equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

6.32 INDEMNIFICATION

In addition to Section 7 of the GC, the Contractor shall conduct its activities within the Aloha Stadium in such manner as not to endanger any person lawfully thereon; and shall indemnify, defend, and hold harmless the State of Hawaii, the Authority, its members, and all of their officers, agents and employees from any and all deaths, injuries, losses and damages to persons or property, and from any and all claims, demands, judgments and liabilities to persons or property, and any and all claims, demands, judgments and liabilities therefor, occasioned wholly or in part by the acts or omissions of the Contractor, its agents, officers, employees, patrons or any persons admitted to the premises. The Contractor shall be responsible for its own negligence and for the joint negligence of the State of Hawaii, including the Authority, and the Contractor.

6.33 NON-LIABILITY OF INDIVIDUALS

No Officer or employee of the State of Hawaii, including the Stadium Authority, shall be individually or personally liable to the Contractor under any terms or provisions of the Contract, or because of execution or attempted execution of the Contract, or because of any breach, or attempted breach or alleged breach, thereof by the Stadium Authority.

6.34 GENERAL CONDITIONS

The Contract will include the form of General Conditions, Department of Attorney General, Form AG-008.

6.35 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

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

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

Confidentiality of Material. 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.

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS. The Offeror shall designate in writing to the Procurement Officer those portions of its unpriced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to §3-122-58, HAR, in the case of an RFP, or §3-122-30, HAR, in the case of an IFB. The Offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

The price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Office of the Attorney General in accordance with chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with §92F-15.5, HRS.

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 with the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

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.

SECTION SEVEN: ATTACHMENTS & EXHIBITS

7.01 ATTACHMENTS

1. Attachment 1: Offer Form, Page OF-1* Transmittal Letter
2. Attachment 2: Offer Form, Pages OF-02 through OF-04, Performance Bond
3. Attachment 3: Offer Form, Page OF-5* Commission Percentage (%)
4. Attachment 4: Offer Form, Page OF-6* Wage Certificate
5. Attachment 5: Offer Form, Page OF-7* References

7.02 EXHIBITS

Exhibit A: Gross Revenue from Vendors and Gross Revenue from Buyers

Exhibit B: Number of Vendor Stalls and Number of Buyers

Exhibit C: Title 3 - Rules of the Stadium Authority

Exhibit D: Vendor and Parking Map

Exhibit E: General Conditions, Department of the Attorney General, Form AG-008

Exhibit F: General Provisions Updated 11/2016

***These forms must be completed, signed, and submitted with the proposal in HlePRO. Offer Form, Pages OF-2 through OF-4, Performance Bond, shall be completed as part of the award package, if any.**

SERVICES TO COORDINATE AND MANAGE
ALOHA STADIUM SWAP MEET & MARKETPLACE AND PROVIDE
STADIUM EVENT SUPPORT SERVICES
RFP-SA-27-01

Stadium Manager, Contract Administrator
Stadium Authority
P.O. Box 30666
Honolulu, Hawaii 96820-0666

Dear Sir or Madam:

The procurement conducted for the specified goods and/or services is pursuant to Hawaii Revised Statutes (HRS) Chapter 103D and its Hawaii Administrative Rules (HAR). The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions, General Provisions, dated 11/2016, or as amended, and the AG General Conditions, Form AG-008, as amended, and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) Offeror is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Offeror is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____

*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____

Federal I.D. No. _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____

Exact Legal Name of Company (Offeror)

**If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

_____, its successors and assigns, as Obligee, hereinafter called
(State/County Entity)
Obligee, in the amount of _____

(Dollar Amount of Contract)

DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to
Description _____;
_____;
- ☐ Certificate of Deposit, No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
_____;
- ☐ Cashier's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
_____;

☒ Teller's Check No. _____, dated _____, issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
_____;

☐ Treasurer's Check No. _____, dated _____, issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
_____;

☐ Official Check No. _____, dated _____, issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
_____;

☐ Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned _____;
_____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Oblige for the following Project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____, _____.

(Seal)

Name of Contractor

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

The following percentage (%) commission based on gross swap meet receipts will be accepted as compensation for providing services required herein to the Aloha Stadium Swap Meet. The percentage (%) commission bid **shall not be less than 23% and not be more than 29%** and shall be all-inclusive, taking into account all applicable taxes, labor costs, licenses, permits, advertising program, the Reserve Account, marketing programs, etc. :

Percentage (%) Commission for providing services as described and offered in response to this Request for Proposals

_____ **% of the gross swap meet receipts**

Offeror _____

Authorized Signature _____

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**
(See General Provisions)

Subject: IFB No.: RFP-SA-27-01

Title of IFB: Services to Manage, Coordinate, and Market the Aloha Stadium Swap Meet and Marketplace and Provide Stadium Event Support Services for the Stadium Authority, Department of Business, Economic Development

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, and
2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror (Company Name): _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

REFERENCES:

The Offeror is required to complete with a minimum of three (3) references of customers who received goods/services similar to those in this RFP.

To be completed by the offeror and submitted with the proposal.

Customer Name #1: _____
Address: _____
Phone Number: _____
Email address: _____

Customer Name #2: _____
Address: _____
Phone Number: _____
Email address: _____

Customer Name #3: _____
Address: _____
Phone Number: _____
Email address: _____

Customer Name #4: _____
Address: _____
Phone Number: _____
Email address: _____

The State may contact all of the references listed to inquire about Offeror's goods, services, performance, and degree of customer satisfaction.

ALOHA STADIUM SWAP MEET
GROSS REVENUE FROM VENDORS AND GROSS REVENUE FROM BUYERS

	<u>FYE 2019</u>	<u>FYE 2020</u>	<u>FYE 2021</u>	<u>FYE 2022</u>	<u>FYE 2023</u>	<u>FYE 2024</u>	<u>FYE 2025</u>	<u>FYE 2026</u>
Revenues								
Sellers	\$ 4,308,952	\$ 3,208,091	\$ 1,894,589	\$ 3,838,148	\$ 4,788,802	\$ 4,827,347	\$ 5,102,803	\$ 5,131,194
Buyers	1,010,132	671,712	701,897	1,280,164	1,598,650	1,595,211	1,551,537	1,461,175
Total gross revenues	<u>5,319,084</u>	<u>3,879,803</u>	<u>2,596,486</u>	<u>5,118,312</u>	<u>6,387,452</u>	<u>6,422,558</u>	<u>6,654,340</u>	<u>6,592,369</u>
Less: commission to contractor	<u>(1,039,349)</u>	<u>(758,113)</u>	<u>(466,443)</u>	<u>(918,239)</u>	<u>(1,101,424)</u>	<u>(1,122,484)</u>	<u>(1,199,159)</u>	<u>(1,205,831)</u>
Stadium revenue	<u>\$ 4,279,735</u>	<u>\$ 3,121,690</u>	<u>\$ 2,130,043</u>	<u>\$ 4,200,073</u>	<u>\$ 5,286,028</u>	<u>\$ 5,300,074</u>	<u>\$ 5,455,181</u>	<u>\$ 5,386,538</u>
Number of days	153	113	121	154	154	158	154	155

FYE = fiscal year end (July of one year to June of the following year)

Buyer admission fee is \$1 per person older than 12 years old.

Effective 05/01/2022, buyer fee is \$2 per person. If present valid Hawaii or military ID, buyer fee is \$1 per person.

NUMBER OF BUYERS

MONTH	FYE 2023	FYE 2022	FYE 2021	FYE 2020	FYE 2019	FYE 2018	FYE 2017	FYE 2016
July	135,132 (14)	141,636 (13)	28,812 (7)	108,759 (13)	110,790 (13)	121,370 (14)	92,679 (14)	89,132 (13)
August	102,736 (13)	117,674 (13)	33,744 (8)	88,531 (11)	78,259 (11)	99,169 (13)	70,940 (13)	90,090 (14)
September	87,820 (12)	84,679 (13)	6,805 (2)	78,188 (13)	81,253 (12)	83,605 (13)	53,341 (12)	58,168 (12)
October	98,955 (14)	93,747 (14)	41,745 (9)	73,805 (12)	73,076 (13)	82,063 (12)	62,265 (14)	59,990 (11)
November	82,228 (13)	79,754 (12)	52,702 (9)	68,105 (13)	62,690 (12)	74,785 (12)	54,589 (12)	58,675 (10)
December	81,941 (12)	85,327 (12)	51,492 (8)	85,565 (12)	88,455 (14)	97,540 (14)	66,314 (12)	84,346 (18)
January	79,777 (12)	78,539 (13)	65,994 (14)	64,861 (12)	73,747 (13)	82,108 (13)	52,559 (12)	68,378 (13)
February	83,056 (12)	85,164 (12)	57,920 (12)	80,264 (13)	69,116 (12)	78,895 (12)	53,985 (12)	64,019 (12)
March	86,934 (13)	100,172 (13)	79,357 (13)	47,862 (8)	110,032 (14)	101,477 (13)	90,553 (13)	78,318 (13)
April	96,062 (14)	101,494 (13)	90,685 (12)	- ()	79,249 (12)	91,296 (13)	94,923 (14)	74,578 (13)
May	94,031 (13)	103,532 (13)	118,491 (14)	- ()	84,590 (13)	91,098 (13)	98,046 (13)	80,762 (13)
June	100,873 (12)	111,687 (13)	126,872 (13)	20,069 (6)	117,679 (14)	112,876 (13)	104,412 (12)	88,123 (13)
	<u>1,129,545 (154)</u>	<u>1,183,405 (154)</u>	<u>754,619 (121)</u>	<u>716,009 (113)</u>	<u>1,028,936 (153)</u>	<u>1,116,282 (155)</u>	<u>894,606 (153)</u>	<u>894,579 (155)</u>
Avg/date	<u>7,335</u>	<u>7,684</u>	<u>6,237</u>	<u>6,336</u>	<u>6,725</u>	<u>7,202</u>	<u>5,847</u>	<u>5,771</u>

- Note:
- [1] Numbers in parenthesis represent number of swap meet days in the month.
 - [2] Effective November 1, 2006, buyer admission fee increased from 50 cents per person to \$1.00 per person
 - [3] Due to the COVID-19 pandemic, Stadium shuts down all operations effective close of business 3/18/2020. Stadium reopens the swap meet on 6/13/2020 and will be open only on Saturday and Sundays. Wednesdays will remain closed until further notice. Wednesday swap meet re-opens January 2021.
 - [4] Mayor's Emergency Order 2020-25 effective 8/27/2020 to 9/9/2020 states all individuals must stay at home and work from home except for essential businesses. Mayor's Emergency Order 2020-26 extends the stay at home and work from home except essential businesses to 9/23/2020. Swap meet will be closed during both Emergency Orders.
 - [5] Effective 5/1/2022, buyer fee is \$2 per person. If present valid ID, Hawaii residents and military buyer fee is \$1 per person.

NUMBER OF VENDORS (booths sold)

Exhibit B

MONTH	FYE 2023	FYE 2022	FYE 2021	FYE 2020	FYE 2019	FYE 2018	FYE 2017	FYE 2016
July	9,163 (14)	6,922 (13)	3,503 (7)	7,928 (13)	9,033 (13)	10,431 (14)	7,095 (14)	6,694 (13)
August	7,668 (13)	7,127 (13)	3,742 (8)	7,353 (11)	7,007 (11)	9,340 (13)	6,197 (13)	7,499 (14)
September	6,820 (12)	5,499 (13)	1,002 (2)	7,916 (13)	5,729 (12)	8,228 (13)	5,225 (12)	5,828 (12)
October	8,122 (14)	6,876 (14)	4,448 (9)	7,999 (12)	7,467 (13)	7,934 (12)	5,754 (14)	5,558 (11)
November	7,278 (13)	6,359 (12)	4,764 (9)	7,052 (13)	5,412 (12)	7,601 (12)	5,432 (12)	5,302 (10)
December	6,822 (12)	5,718 (12)	4,560 (8)	8,088 (12)	7,748 (14)	9,608 (14)	5,286 (12)	6,760 (18)
January	6,688 (12)	6,652 (13)	6,532 (14)	7,483 (12)	8,153 (13)	8,882 (13)	5,542 (12)	6,354 (13)
February	6,600 (12)	6,260 (12)	5,013 (12)	8,437 (13)	7,569 (12)	7,859 (12)	5,383 (12)	5,685 (12)
March	7,353 (13)	6,774 (13)	5,429 (13)	4,983 (8)	9,827 (14)	8,974 (13)	8,390 (13)	6,230 (13)
April	8,241 (14)	6,681 (13)	5,857 (12)	- ()	7,914 (12)	8,908 (13)	9,875 (14)	6,295 (13)
May	7,178 (13)	7,083 (13)	7,232 (14)	- ()	6,844 (13)	8,725 (13)	9,185 (13)	6,500 (13)
June	6,852 (12)	7,736 (13)	6,544 (13)	2,568 (6)	8,860 (14)	14,888 (13)	8,850 (12)	6,491 (13)
	<u>88,785</u> (154)	<u>79,687</u> (154)	<u>58,626</u> (121)	<u>69,807</u> (113)	<u>91,563</u> (153)	<u>111,378</u> (155)	<u>82,214</u> (153)	<u>75,196</u> (155)
Avg/date	<u>577</u>	<u>517</u>	<u>485</u>	<u>618</u>	<u>598</u>	<u>719</u>	<u>537</u>	<u>485</u>

NOTES

- [1] Due to the COVID-19 pandemic, Stadium shuts down all operations effective close of business 3/18/2020. Stadium reopens the swap meet on 6/13/2020 and will be open only on Saturday and Sundays. Wednesdays will remain closed until further notice. Wednesday swap meet re-opens January 2021.
- [2] Mayor's Emergency Order 2020-25 effective 8/27/2020 to 9/9/2020 states all individuals must stay at home and work from home except for essential businesses. Mayor's Emergency Order 2020-26 extends the stay at home and work from home except essential businesses to 9/23/2020. Swap meet will be closed during both Emergency Orders.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-70

Hawaii Administrative Rules

April 25, 2019

SUMMARY

1. §§3-70-7(a), and 3-70-7 (c) are amended.
2. §§3-70-8 is amended.
3. §§3-70-11 (a) is amended.
4. §§3-70-11 (a) (8) is added.
5. §§3-70-11 (a) (9) is added.
6. §§3-70-11 (g) is amended.
7. §§3-70-23 (6) is amended.
8. Chapter 70 is compiled.

13348 11

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 70

RULES OF THE STADIUM AUTHORITY

Subchapter 1 General Provisions

- §3-70-1 Purpose
- §3-70-2 Definitions
- §3-70-3 Aloha Stadium, office, mailing address

Subchapter 2 Rules Governing the Use of the Stadium

- §3-70-4 General policies
- §3-70-5 Scheduling and booking policies
- §3-70-6 Applications for use of the stadium
- §3-70-7 Processing of applications
- §3-70-8 Deposit
- §3-70-9 Tickets, printing, distribution, sale
- §3-70-10 Staffing and other charges
- §3 70-11 Rental charges, payment
- §3-70-12 Cancellation of event
- §3-70-13 Radio, television, press
- §3-70-14 Receipts and revenues from parking, food,
and beverages, programs, souvenirs
- §3-70-15 Insurance, indemnification
- §3-70-16 Public address system announcements
- §3-70-17 Prohibited equipment

§3-70-18	Repealed
§3-70-18.01	Sale or distribution of articles
§3-70-19	Complimentary admissions
§3-70-20	Parking rates, parking stalls
§3-70-20.01	Traffic, parking, and tailgate rules
§3-70-21	Unlawful and unauthorized entry
§3-70-22	Advertising in stadium premises
§3-70-23	Miscellaneous provisions

Subchapter 3 Rules of Practice and Procedure

§3-70-24	Public records and information
§3-70-25	Appearance before the authority
§3-70-26	Petitions for adoption, amendment, or repeal of rules
§3-70-27	Adoption, amendment, or repeal of rules
§3-70-28	Hearing procedures
§3-70-29	Declaratory ruling by the authority
§3-70-30	Cost of rules and public records

Historical Note: Chapter 70 of Title 3 is based substantially upon Stadium Authority, State of Hawaii, Rules and Regulations. [Eff 12/26/74; am 7/27/75; am 9/1/76; am 1/23/77; am 4/11/77; am 6/19/78; R 6/12/81; am 9/17/82; comp **SEP 07 2019**]

SUBCHAPTER 1

GENERAL PROVISIONS

§3-70-1 Purpose. These rules govern the use and management of the Aloha Stadium as well as the practices and procedures of the stadium authority under chapter 109, Hawaii Revised Statutes. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp **SEP 07 2019**] (Auth: HRS §§91-2, 109-2) (Imp: HRS §§91-2, 109-2)

§3-70-2 Definitions. As used in this chapter, unless the context specifically or otherwise indicates, the following definitions apply:

"Applicant" means a person applying for the privilege of using the stadium or any part thereof; a licensee.

"Authority" means the stadium authority established by section 109-1, Hawaii Revised Statutes.

"Chairperson" means the individual elected "chairperson" under section 109-1(b), Hawaii Revised Statutes.

"Event" means the purpose for which the stadium is rented or used, including an athletic event, any function, performances, programs, exhibition, convention, rally, or meeting.

"Licensee" means a person granted the privilege of using the stadium or any part thereof.

"Manager" means the individual appointed as such under section 109-2, Hawaii Revised Statutes.

"Out-of-pocket expenses" means expenditures made or incurred by the authority in connection with an event, including but not limited to the cost for events personnel, special setups, clean up, security, electricity and for other incidental costs incurred by an event.

"Person" or "persons" as used in subchapter 2 means individuals, partnerships, corporations, associations, or public or private organizations of any

§3-70-2

character.

"Person" or "persons" as used in subchapter 3 is as defined in section 91-1(2), Hawaii Revised Statutes.

"Public records" is as defined in section 92-50, Hawaii Revised Statutes.

"Regular business hours" means from 7:45 a.m. to 4:30 p.m. of each day of the week except Saturdays, Sundays, and holidays.

"Rule" is as defined in section 91-1, Hawaii Revised Statutes.

"Stadium" means the Aloha Stadium and its related facilities.

"Stadium management" means the manager or a duly authorized representative or representatives.

"Stadium proper" means that portion of aloha stadium, entrance into which an admission ticket is normally required.

"State" means the State of Hawaii.

"Ticket receipts" means the total sum of the value of tickets sold for admission into the stadium. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §§91-2, 109-2) (Imp: HRS §§80-1, 91-2, 109-2)

§3-70-3 Aloha stadium, office, mailing address.

The state stadium at 99-500 Salt Lake Boulevard, in the county of Honolulu, is named and shall be known as the "Aloha Stadium". The Aloha Stadium shall be operated and managed by the authority. The office of the authority shall be at the Aloha Stadium.

Information and requests on matters within the jurisdiction of the authority may be obtained by appearing in person at the office of the authority or by writing to the Manager, Stadium Authority, P.O. Box 30666, Honolulu, Hawaii 96820. [Eff 6/12/81; am 9/17/82; am and comp 9/18/06; comp SEP 07 2019] (Auth: HRS §§91-2, 109-2) (Imp: HRS §§91-2, 109-2)

SUBCHAPTER 2

RULES GOVERNING THE USE OF
THE STADIUM

§3-70-4 General policies. (a) The stadium is operated for the recreational and entertainment needs of the people of Hawaii and provides a place where large gatherings of people may assemble. The character and nature of events at the stadium shall be in the public interest.

(b) The facility shall be open to performances, programs, exhibitions, athletic events, and other activities that are in the interests of the members of the community.

(c) The use of the stadium shall be prohibited to any activity that, in the opinion of the authority, may cause damage or injury to the stadium facility or any part thereof.

(d) In determining whether to grant an application for the use of the stadium, the authority shall take into consideration, among other things, the following:

- (1) Character and financial condition of the applicant;
- (2) Nature and character of event proposed;
- (3) Admission charge;
- (4) Potential damage or injury to the facility;
and
- (5) Demonstrated ability of the applicant to properly manage the proposed event, including meeting all event costs. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-5 Scheduling and booking policies. (a) Priority consideration shall be given to the scheduling needs of public educational institutions in the State. If there is a conflict in the scheduling of requested dates, the authority shall determine its approval or rejection in accordance with section 3-70-7.

(b) Scheduling of championship, playoff, and all-star attractions shall be given priority whenever possible.

(c) Professional athletic teams shall be given, whenever possible, sufficient advance bookings to insure stability for planning their programs, but not so long as to preclude consideration of future applicants. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-6 Applications for use of the stadium. (a) Applications for the use of the stadium shall be made in writing on a form prescribed by the authority.

(b) The applicant shall set forth such information as may be requested by the authority, including, but not limited to:

- (1) Name, address, telephone number of applicant or sponsoring person;
- (2) The names of the officers, principals, or partners, if applicable;
- (3) Detailed description of proposed event or events;
- (4) Estimated revenue and expenses for proposed event or events;
- (5) Proposed admission charge or charges;
- (6) Areas of stadium requested for use;
- (7) Date or dates requested;
- (8) Hours of use requested;
- (9) Special services, equipment, construction needed, if any;
- (10) Financial statements, income tax returns, and other documentation of financial condition; and
- (11) References. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-7 Processing of applications. (a) The applicant shall submit the completed application to the manager at the office of the authority. Upon its receipt, the application shall be referred by the manager to the authority for its approval or rejection. If the application is rejected, the authority shall cause the manager to so inform the applicant in writing stating the essential reasons therefor. If the application is approved, the manager shall determine a reasonable deposit, of which ten percent of the collected amount shall be , which shall be required of the applicant in order to reserve the stadium and to cover the estimated costs that may be incurred by the authority in handling the event. The manager may grant preliminary approval of a date subject to approval by the authority at its next meeting.

(b) After consultation with the applicant, the level of staff, security, cleanup, and other services shall be determined by the manager. The manager may revise these requirements up to the event date, based on advance sales and other information. Any disagreement with respect to any revision of the requirements imposed by the manager may be reviewed by the authority (upon the request of either party). The applicant shall at all times be responsible for strict compliance with the authority's requirements and restrictions for the use of the stadium.

(c) The applicant shall execute the licensing agreement prepared by the authority and pay the required deposit using acceptable payment methods as established by the authority.

(d) Notwithstanding any representation or understanding to the contrary, the license agreement shall not be binding upon the authority until it is executed by both the applicant and the manager on behalf of the authority. [Eff 6/12/81; am 9/17/82; comp 9/18/06; am and comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-8

§3-70-8 Deposit. The amount of the deposit, of which ten percent of the collected amount shall be non-refundable, shall be based on an estimate of the reimbursable expenses to be incurred by the authority in the applicant's behalf in connection with an event and on the ability of the licensee to make reimbursement thereof. Any deposit made to the authority shall not bear any interest. [Eff 6/12/81; comp 9/19/06; am and comp

SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-9 Tickets, printing, distribution, sale. (a) No tickets shall be sold for any event before the license agreement covering the event is signed by the manager or before written approval is given by the authority. Notwithstanding the foregoing, the solicitation and sale of "subscriptions" or "orders" for tickets may be permitted by the authority prior to the execution of the license agreement in order to accommodate the scheduling and promotional needs of the applicants; provided that the solicitation and sale shall be under such terms and conditions as may be required by the authority.

(b) Except as otherwise provided in the contract between the authority and the ticketing concessionaire, all admission tickets for an event shall be printed at the licensee's expense by either a bonded printer or an automated ticketing system. Unless prior written approval is granted by the manager, no tickets shall be sold or utilized for admission to stadium events other than those which are printed by the bonded printer or the automated ticketing system.

(c) If the licensee prints the tickets, a proof of the ticket shall be submitted to the manager for approval prior to printing for purposes of form and accuracy.

(d) Commercial or promotional advertising shall not be printed on either side of the admission ticket without the prior written approval of the manager.

(e) Tickets printed may be consigned to the licensee at the discretion of the manager and upon such terms and conditions as the manager deems appropriate. Consignments of tickets from other sales locations shall not be permitted.

(f) Contractual arrangements with agencies for the

distribution or sale of tickets to any stadium event shall first be approved by the manager.

(g) No ticket for a stadium event shall be sold by the licensee or its agent at a price other than that which is printed thereon without prior written approval of the manager.

(h) The manager shall determine whether or not tickets shall be refunded and the terms and conditions thereof. Refunded tickets shall revert to the status of unsold tickets. [Eff 6/12/81; am 9/17/82; am and comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-10 Staffing and other charges. (a) The manager shall determine and furnish the staff necessary to operate the facility for an event. The cost of staffing, including but not limited to the cost of box office personnel, ushers, gate personnel, security personnel, electricity, clean-up, scoreboard operation, the public address announcer, and a licensed registered nurse on duty during the hours of an event, shall, subject to such limitations as determined by the manager and approved by the authority, be at the licensee's expense. In addition, the licensee shall reimburse the authority for all other expenditures made or incurred by the authority in connection with the event, plus an amount equal to ten per cent of the total of the foregoing costs and expenditures, subject to such limitations as determined by the manager and approved by the authority.

(b) Labor, equipment, and rental rates shall be at the prevailing rates as stated on the Aloha Stadium labor, equipment, and rental rates schedule. This schedule may be obtained by request at the office of the authority.

(c) Licensees shall pay for the cost of utilizing the stadium's automated ticketing services which shall include, but shall not be limited to, a printing charge for each ticket printed at the stadium or at any ticket distribution outlet. Any licensee may contract with the stadium's automated ticketing concessionaire or any other service agency for promotional, publicity, and season-ticketing services, which shall not be considered part of the stadium's automated ticketing services. This subsection shall apply only if a contract exists between

§3-70-10

the authority and an automated ticketing system concessionaire. [Eff 6/12/81; am 9/17/82; am and comp 9/18/06; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-11 Rental charges, payment. (a) The authority establishes the following schedule of charges for the use of the stadium for each event or date:

- (1) Hawaii-based high school and lower grade level events or activities - No rent shall be charged for school related events or activities;
- (2) University of Hawaii events or activities - The stadium authority shall have discretion to determine rent, provided, however, that the amount shall not exceed seven and one-half per cent of gross ticket receipts or \$10,000 per date, whichever is greater;
- (3) Post-season collegiate football games - Ten per cent of gross ticket receipts or \$10,000 per date, whichever is greater, but not to exceed \$32,000 per date;
- (4) Commercial events - \$2,500 per date or ten per cent of gross ticket receipts per date, or if no tickets are sold, \$1 for each person attending the event per date, whichever is greater;
- (5) Receptions, parties, and youth events (ages high school and below) - \$1,000 per date;
- (6) Commercial media - \$500 per hour;
Non-commercial media - \$250 per hour;
- (7) Charitable, religious, and other events or activities - \$2,500 per date or ten per cent of gross ticket receipts per date;
- (8) Business and other meetings with 100 or fewer participants occurring at non-peak usage (Monday - Thursday) - \$500; For groups larger than 100 participants, \$750; and
- (9) All other events or activities, \$1,000 per date or such greater amount as may be determined at a meeting of the authority.

(b) The authority establishes the following schedule of charges for the use of the stadium parking lots:

- (1) Carnivals, fairs, and similar events - \$3,000 per date that the event is open to the

public;

- (2) Commercial media - \$500 per hour; Non-commercial media - \$250 per hour;
- (3) Concerts - \$2,500 per date;
- (4) Hawaii-based high school and lower grade level events or activities - No rent shall be charged for school-related events or activities; and
- (5) All other events or activities, including youth (ages high school and below) - \$1,000 per date.

(c) The use of any office, or other space or facility on the stadium premises may be rented upon the terms and conditions, and at the rental rates determined by the authority.

(d) The rates stated above are the basic or minimum rental rates for the use of the stadium. In addition, licensees shall pay for staffing and other out-of-pocket expenses and for any percentage charge imposed by section 3-70-10.

(e) Unless arrangements satisfactory to the authority are made for the payment thereof, the amount of all charges due the authority by a licensee for the use of the stadium shall be deducted from the deposit and the gate receipts before any portion thereof is turned over to the licensee.

(f) Whenever there is a change in the rates or charges prescribed by this chapter, the new rates or charges shall apply to any event held or use made on or after the effective date of the new rates or charges.

(g) The authority may, upon the recommendation of the stadium manager, waive rental charges in whole or in part for any national or international sporting or entertainment event, or in connection with an event or activity that is sponsored by an agency of government and for which no admission charge is made.

(h) All moneys collected by the authority shall be deposited in the stadium special account in accordance with section 109-6, Hawaii Revised Statutes. [Eff 6/12/81; am 9/17/82; am 8/25/88; am 1/17/05; am 3/4/06; am and comp 9/18/06; 1/14/16; am and comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-12

§3-70-12 Cancellation of event. (a) Should the manager approve the cancellation of an event because of inclement weather or because of an act of God, a date mutually agreed upon between licensee and the manager shall be scheduled for the event, and no additional rental charge shall accrue to the licensee for the alternate date. Nevertheless, the licensee shall pay for all out-of-pocket expenses incurred by the authority for both dates.

(b) If a rescheduled event date is mutually agreed upon, the tickets for the originally scheduled event may be honored for the rescheduled event.

(c) If a rescheduled event date is not mutually agreed upon, the authority shall refund the deposit after deducting therefrom any out-of-pocket expenses incurred by the authority on account of the cancelled event.

(d) The licensee, subject to the prior approval of the manager, shall contact the media and make all necessary arrangements to notify the public of the details of the cancellation and applicable refunds. Tickets shall only be refunded at the original location where the tickets were purchased. The authority shall only refund tickets purchased at the stadium box office and designated stadium outlets during the period specified by the manager. Refunded tickets shall revert to the status of unsold tickets. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-13 Radio, television, press. (a) It shall be the general policy of the authority to grant all radio broadcast, newsreel footage in excess of three minutes of an individual event, motion picture, television, closed circuit television, home-paid television, and similar rights, hereinafter collectively referred to as ancillary rights, to the licensee to which these rights pertain; provided that the authority may withhold permission from any licensee to broadcast by radio and television in the State when, in the opinion of the authority, such broadcasting may substantially affect the attendance at the stadium for an event; and provided further that the authority may impose a percentage charge of all

consideration received by the licensee for ancillary rights from an event held at or from use made of the stadium.

(b) Subject to any directions by the authority, the manager shall have complete control of the press boxes and shall be in charge of issuing passes therefor. The manager shall, however, consult with the licensee regarding authorized media personnel entitled to cover the event.

(c) Television and radio stations shall not place banners in front of the press boxes or anywhere else without permission of the manager. Such banners may be used only when a telecast or broadcast is actually taking place. [Eff 6/12/81; am and comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-14 Receipts and revenues from parking, food, and beverages, programs, souvenirs. (a) Licensees shall not receive any revenue from parking or from the authority's share of food and beverage sales.

(b) The licensee, subject to the approval of the manager, may have the right to sell programs during their events and to retain the receipts therefrom. Requests to sell these programs shall be submitted in writing not less than five days prior to the event, or the entire season in which they are to be sold, and the approval shall be renewed annually.

(c) The authority's food and beverage concessionaire shall have the right to sell souvenirs, novelties, and other similar products, and at the discretion of the stadium manager the authority may impose a percentage charge on all consideration received by the food and beverage concessionaire. [Eff 6/12/81; am 9/17/82; am 9/30/85; am: 8/7/10; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-15 Insurance, indemnification. (a) Licensees shall purchase and provide, at their own cost and expense, comprehensive general liability insurance in an amount set by the authority but not less than \$1,000,000 combined single limit for personal injury and property damage for any one occurrence. The policy

§3-70-15

or policies shall contain a waiver of subrogation endorsement, shall provide that the authority be given at least thirty days written notice prior to any termination, cancellation, or material change in the insurance coverage, shall name the authority, its officers and employees as additional insured, and shall be deposited with the manager. The policy or policies must be written and executed by an insurance carrier licensed to do business in the State and acceptable to the authority.

(b) The licensee shall be required to indemnify and hold harmless the State, the authority, and their officers and employees, from any and all claims for loss, injury, damage or liability sustained or claimed to have been sustained by reason of the use or occupation of the stadium premises by the licensee or by an act or omission of the licensee, its officers, agents and employees, guests, patrons, invitees and persons admitted to the stadium by consent of the licensee. [Eff 6/12/81; am 9/17/82; am 8/17/02; am and comp 9/18/16; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-16 Public address system announcements. (a) The authority shall retain control of the public address system at all times.

(b) All announcements by the public address announcer shall be subject to the prior approval of the stadium management. [Eff 6/12/81; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-17 Prohibited equipment. (a) No athletic equipment that may cause damage or injury to the playing field may be worn or used on the field.

(b) Only that type of shoes with soles or cleats appropriate for use on synthetic turf may be worn on the playing field. Unless otherwise permitted by the manager, athletic shoes shall be of the "all-purpose" type, i.e., shoes that are appropriate for use on either synthetic or natural turf.

(c) The use of any electrical or mechanical equipment not furnished by the stadium is prohibited, except when specifically approved by the manager. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-18 REPEALED [R 9/30/85]

§3-70-18.01 Sale or distribution of articles. (a) The manager shall approve the sale or distribution of all articles in the stadium.

(b) Each person who desires to sell or distribute any articles within the stadium premises shall submit a written request for approval to the manager not later than ten calendar days prior to the date of sale or distribution. The written request shall include the following information:

- (1) The name, address, and telephone number of the person;
- (2) The names and telephone numbers of the officers, principals, partners or authorized representatives;
- (3) The date or dates of sale or distribution;
- (4) The number of persons participating in the sale or distribution; and
- (5) A sample or detailed description of the articles to be sold or distributed.

(c) Any written request which does not conform to subsection (b) may be disapproved by the manager.

[Eff 9/30/85; comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-19

§3-70-19 Complimentary admissions. The number of authorized complimentary admissions to be issued by a licensee to any event must be stated in the licensing agreement. Additional complimentary admissions to the event shall not be issued without the prior written approval of the manager.
[Eff 6/12/81; am and comp 9/18/06; am 8/7/10; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-20 Parking rates, parking stalls. (a) Except as otherwise provided below, the authority establishes the following rates for the privilege of parking at the stadium for all events:

- (1) \$7 per event per automobile for all events and shows except as provided in this subsection; rate will be \$8 beginning January 1, 2018, and \$9 beginning January 1, 2020;
- (2) \$30 per event per passenger bus, limousine, or truck, other than pickups, regardless of the number of persons carried in such bus, limousine, or truck; provided that the authority delegates to the manager the power to waive such parking charges at the manager's discretion; rate will be \$31 beginning January 1, 2018, and \$32 beginning January 1, 2020;
- (3) \$15 per event per automobile for professional sports events and concerts with admission charges, except for Hawaiian cultural and music events; rate will be \$16 beginning January 1, 2018, and \$17 beginning January 1, 2020;
- (4) The authority delegates to the manager the power to waive parking charges, at the

manager's discretion, in connection with an event or activity where the estimated out-of-pocket expenses for parking exceed the estimated parking revenues; provided that the out-of-pocket parking expenses be at the licensee's expense;

- (5) The swap meet events held at the stadium and private events held in the stadium hospitality room shall be exempted from this subsection; and
- (6) The manager shall have the authority to sell bulk parking, in whole or in part, to a licensee at a rate not less than the published rate for the contracted event or activity. [Eff 6/12/81; am 9/17/82; am 8/27/84; am 9/1/87; am 8/12/02; comp 9/18/06; am 8/1/10; am 1/14/16; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-20.01 Traffic, parking and tailgate rules. (a)

No person shall operate any vehicle on the stadium premises:

- (1) At a speed in excess of twenty-five miles per hour;
- (2) In a careless or negligent manner or in such a manner as to endanger or injure persons or property;
- (3) In a direction other than as indicated by signs erected and designated for one-way traffic movement unless otherwise directed by an authorized official; or
- (4) While under the influence of intoxicating liquor or narcotic drugs.
- (b) Parking rules on the stadium premises:
 - (1) Unless otherwise directed by stadium parking personnel, no person shall park a vehicle in any of the following places:
 - (A) Whenever the curbings are painted red to indicate no parking;
 - (B) In marked pedestrian crosswalks and

- walkways;
- (C) On roadways and locations where a parked vehicle may constitute an obstruction, or a traffic hazard;
- (D) Places where official signs prohibit parking; and
- (E) Areas designated by stadium management as restricted areas;
- (2) No person shall park a vehicle on the roadway or in any areas of the parking lot in such a manner as to block other vehicles, or to restrict the free movement of vehicular traffic unless otherwise directed by an authorized official;
- (3) Parking is on a "first come, first park" basis and reserving parking stalls, or spaces shall be prohibited unless written authorization is obtained from the manager. Each vehicle shall be parked wholly within a designated stall and shall not straddle or occupy space of an adjoining stall;
- (4) Vehicles parked in violation of this subsection may be towed off the premises at the expense of the vehicle owner or driver; and
- (5) The following are prohibited:
 - (A) The use of pegs or stakes;
 - (B) Recreational play (including, but not limited to ball playing, Frisbee tossing, football tossing, bicycle riding, skateboarding, rollerblading);
 - (C) Sponsorship or advertising banners or signs;
 - (D) Animals, except service animals or as approved by the manager;
 - (E) Concerts, public performances, contests, and live broadcasting without the prior approval of the manager;
 - (F) Excessively loud music; and
 - (G) Soliciting, hawking, selling, passing out literature handouts or giving

away free items without the prior approval of the manager.

(c) Pre-game and post-game tailgate party rules in the stadium parking lot are as follows:

- (1) Cars, tables, chairs, barbecue pits, and tents must be confined to one stall. Groups may park contiguous to one another and share a tent or equipment traversing their vehicles and their stalls. However, there should be no empty stalls between their vehicles;
- (2) To alleviate potential fire hazards a hibachi or other cooking device shall be kept a safe distance from any fuel tank;
- (3) Lit hibachi or other cooking device shall not be left unattended;
- (4) Hot coals and other burning residues shall be doused and completely extinguished before they are disposed;
- (5) No dumping of hot coals in the parking lot or in the trash receptacles;
- (6) The owner shall dispose of all tailgating material and refuse in a safe manner;
- (7) No tents and barbecues shall be allowed on the grassy (front lawn on the South end of the stadium) areas and any pedestrian walkway; provided that the grass area between parking rows may be used for tailgating;
- (8) No alcohol capacity containers shall be permitted (kegs and party balls);
- (9) No person shall stew litter on the stadium premises; and
- (10) Tailgate parties shall cease on or before the established curfew (one hour after the end of the event) as designated by the manager, and thereupon all vehicles shall promptly vacate the stadium premises. Announcements of curfew shall be made on the public address system and the stadium electronic scoreboard. [Eff 9/17/82; am 8/27/84; am and comp 9/18/06; comp SEP 07 2019] (HRS §109-2)
(Imp: HRS §109-2)

§3-70-21

§3-70-21 Unlawful and unauthorized entry. (a) Entry into the stadium proper by unauthorized means of entry including but not limited to scaling the wall, cutting the wire fence, or entering without an authorized admission ticket or pass shall be considered unlawful.

(b) No person shall be permitted in any restricted area designated by the manager, including but not limited to the playing field, locker rooms, press boxes, scoreboard rooms, electrical substations, telephone switch rooms, box offices, administrative offices, and maintenance areas, without a current authorized credential or pass issued by the manager. [Eff 6/12/81; am 9/17/82; comp 9/18/06; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3 70-22 Advertising in stadium premises.

Advertising in the stadium is prohibited, except as provided in the contracts between the State or authority and its advertisers. [Eff 6/12/81; am 9/30/85; comp 9/19/16; comp **SEP 07 2019**] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-23 Miscellaneous provisions.

Except as permitted in writing by the manager, the following restrictions shall apply to all persons in the stadium proper:

- (1) No outside food or beverage shall be brought into the stadium proper;
- (2) No cat, dog, or other animal, except for a service animal, and no bicycle, motorcycle, or other vehicle shall be permitted into the stadium proper unless used in the exhibition conducted by the licensee and upon prior approval of the manager;
- (3) Demonstrations, sit-ins, and activities inconsistent with the purposes of an event shall be prohibited in the stadium;
- (4) Hand-held signs and banners are permissible in the stadium proper when they are safely

constructed and displayed in such manner so as not to obstruct the view of spectators. Hand-held signs and banners are permissible in the red zone area directly in front of the stadium main box office, when they are safely constructed and displayed in such manner so as not to obstruct the ingress and egress of spectators, from the time the stadium parking lot is open to the public until thirty minutes after the scheduled starting time of the event. No signs or banner shall be affixed or secured in the stadium;

- (5) Throwing of any object or missile is prohibited; and
- (6) The following shall not be permitted into the stadium proper:
 - (A) Weapons;
 - (B) Noisemakers (including air horns and whistles);
 - (C) Illegal drugs and any other illegal substances;
 - (D) Cans and bottles;
 - (E) Umbrellas;
 - (F) Coolers;
 - (G) Fireworks;
 - (H) Inflatable objects of any kind;
 - (I) Confetti;
 - (J) Balloons;
 - (K) Laser pointers;
 - (L) Poles and sticks;
 - (M) Skateboards, rollerblades, and bicycles; and
 - (N) Any item which may pose a health or safety issue to our guests and employees.

Individuals found in possession of the above prohibited items will be asked to remove the item from the stadium to dispose of it.

Individuals that refuse to comply with the stadium's rules and policies may be ejected from the stadium without refund and may be banned from the premises for one year.

§3-70-23

Each person entering the stadium shall be allowed one bag that does not exceed 12" x 6" x 12" in size. In addition, each person shall be allowed to hand-carry a blanket, poncho or jacket, and a seat cushion. Strollers are allowed but must be collapsible and fit underneath the seat without obstructing the aisle-way for other guests. All bags, jackets, guests, and vehicles are subject to search upon entering the premises. [Eff 6/12/81; am 9/17/82; am 9/18/06; am 8/7/10; am and comp

SEP 07 2019] (HRS §109-2) (Imp: HRS §109-2)

SUBCHAPTER 3

RULES OF PRACTICE AND PROCEDURE

§3-70-24 Public records and information. (a) All public records shall be available for inspection at the office of the authority during regular business hours.

(b) Public records may be withheld from any person as provided by section 92F-13, Hawaii Revised Statutes.

(c) The public may obtain information on matters within the jurisdiction of the authority by inquiring in person, during regular business hours, at the office of the authority or by submitting a written request to the authority. (See section 3-70-3).

(d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled with due regard for the dispatch of other public duties. [Eff 6/12/81; am 8/12/02; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-25 Appearance before the authority.

Any person who desires to appear before the authority on any subject may submit that person's request in writing to the chairperson. The chairperson shall decide whether

the individual may appear. (See section 3-70-3) [Eff
6/12/81; am and comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-26 Petitions for adoption, amendment, or repeal of rules. (a) Any person may petition the authority for the adoption, amendment, or repeal of any rule of the authority. The petition shall be submitted induplicate and delivered to the office of the manager. (See section 3-70-3).

(b) The petition need not be in any special form but it shall include but not be limited to:

- (1) A statement of the nature of the petitioner's interest;
- (2) A draft of the substance of the proposed rule or amendment desired by petitioner or a specification of the rule that petitioner desires repealed;
- (3) A designation of any existing rules affected by the petition;
- (4) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (5) Any other information relevant to the petition;
- (6) The name, address, and telephone number of the petitioner; and
- (7) The signature of the petitioner.

(c) Any petition which does not conform to the foregoing requirements may be rejected by the authority.

(d) Upon receipt of the petition, the manager shall cause the date and time of the receipt of the petition to be noted thereon.

(e) Within thirty days after the receipt of the petition, the authority shall either deny the petition in writing, stating its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. No public hearing, oral arguments, or other form of proceedings will be held directly on any such petition. If the authority determines that the petition does not disclose sufficient reasons to

§3-70-26

justify the commencement of public rulemaking proceedings, or if the petition fails in any material respect to comply with the requirements of this chapter, the authority shall deny the petition and the petitioner shall be so notified. This section shall not prevent the authority, on its own motion, from acting on any matter disclosed in any petition. [Eff 6/12/81; am 9/17/82; am and comp 9/18/16; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-27 Adoption, amendment, or repeal of rules.

When, pursuant to a petition therefor, or upon its own motion, the authority proposes to adopt, amend, or repeal a rule, the rule shall be adopted, amended, or repealed in accordance with the procedures set forth in chapter 91 and section 92-41, Hawaii Revised Statutes. [Eff 6/12/81; am and comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-28 Hearing procedures. (a) Each public hearing on the proposed adoption, amendment, or repeal of any rule shall be conducted by the chairperson or an authorized representative who shall be designated as the presiding officer.

(b) Each such hearing shall be held at the time and place set in the notice of hearing, but may at such time and place be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. Every person shall, before proceeding to testify, state the name, address, and whom the person represents at the hearing. The presiding officer shall confine the testimony to the subject matter of the hearing.

(e) All interested persons and agencies of the State or its political subdivisions shall be afforded an opportunity to submit data, views, or arguments which are relevant to the subject matter of the hearing orally or in writing. Written testimony may be submitted to the authority at its office in advance of the hearing. Persons submitting written testimony, whenever possible, shall furnish ten copies of the testimony to the authority.

(f) Unless otherwise specifically ordered by the presiding officer, testimony given at the hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, two copies of the exhibits shall be submitted.

(g) At the close of the final public hearing, the presiding officer shall announce the decision of the authority or announce the date when it intends to make a decision. [Eff 6/12/81; am 9/17/82; am and comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

§3-70-29 Declaratory ruling by the authority. (a) Any interested person may petition the authority for a declaratory order as to the applicability of any statutory provision administered by the authority or of any rule or order of the authority.

(b) The petition shall be submitted in duplicate to the office of the manager. The petition need not be in any special form but shall contain at a minimum:

- (1) A statement of the nature of the petitioner's interest, including reasons for the submission of the petition;
- (2) A designation of the specific statutory provision, rule, or order in question;
- (3) A complete statement of the relevant facts and precise nature of the controversy;
- (4) A statement of the interpretation given the statutory provision, rule, or order by the

petitioner;

(5) A memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and

(6) The name, address, telephone number, and signature of the petitioner.

(c) Any petition which does not conform to the foregoing requirements may be rejected by the authority.

(d) Upon receipt of the petition, the manager shall cause it to be dated to establish the date of submission.

(e) The authority may for good cause refuse to issue a declaratory order. Without limiting the generality of the foregoing, the authority may refuse where:

(1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;

(2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action in a court of law;

(3) The issuance of the declaratory order may adversely affect the interest of the State, the authority, or any of the officers or employees of the State or the authority in any litigation which is pending or may be reasonably expected to arise; or

(4) The petition requests a ruling on a statutory provision not administered by the authority or the matter is not otherwise within the jurisdiction of the authority.

(f) Where any question of law is involved, the authority may refer the matter to the attorney general of the State for legal opinion.

(g) No hearing need be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling. However, the authority may, at its discretion, order a hearing on the disposition of the petition if the petitioner submits a written request therefor, stating in detail why a hearing is necessary for a fair consideration of the need for a declaratory ruling on the matter stated in the petition.

(h) The authority shall, with reasonable promptness, either deny the petition, stating the reasons therefor, or issue a declaratory ruling. Upon disposition of the petition, the authority shall promptly notify the petitioner.

(i) Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist.

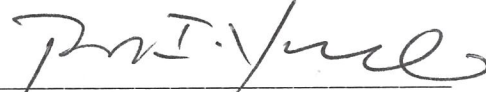
[Eff 6/12/81; am and comp 9/18/06; comp SEP 07 2019]
(Auth: HRS §10 9-2) (Imp: HRS §109 -2)

§3-70-30 Cost of rules and public records. Copies of these rules and other public records printed or reproduced by the authority shall be furnished to any person requesting the same upon payment of the cost prescribed by law or by the authority." [Eff 6/12/81; comp 9/18/06; comp SEP 07 2019] (Auth: HRS §109-2) (Imp: HRS §109-2)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to and compilation of chapter 70, title 3, Hawaii Administrative Rules, on the Summary Page dated April 25, 2019 were adopted on April 25, 2019, following a public hearing held on April 2, 2019, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, and the Garden Island on March 1, 2019.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

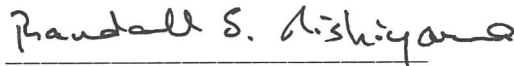


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Chairperson
Stadium Authority



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Deputy Attorney General



David Y. Ige
Governor
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Dated: 08-13-2019

Filed

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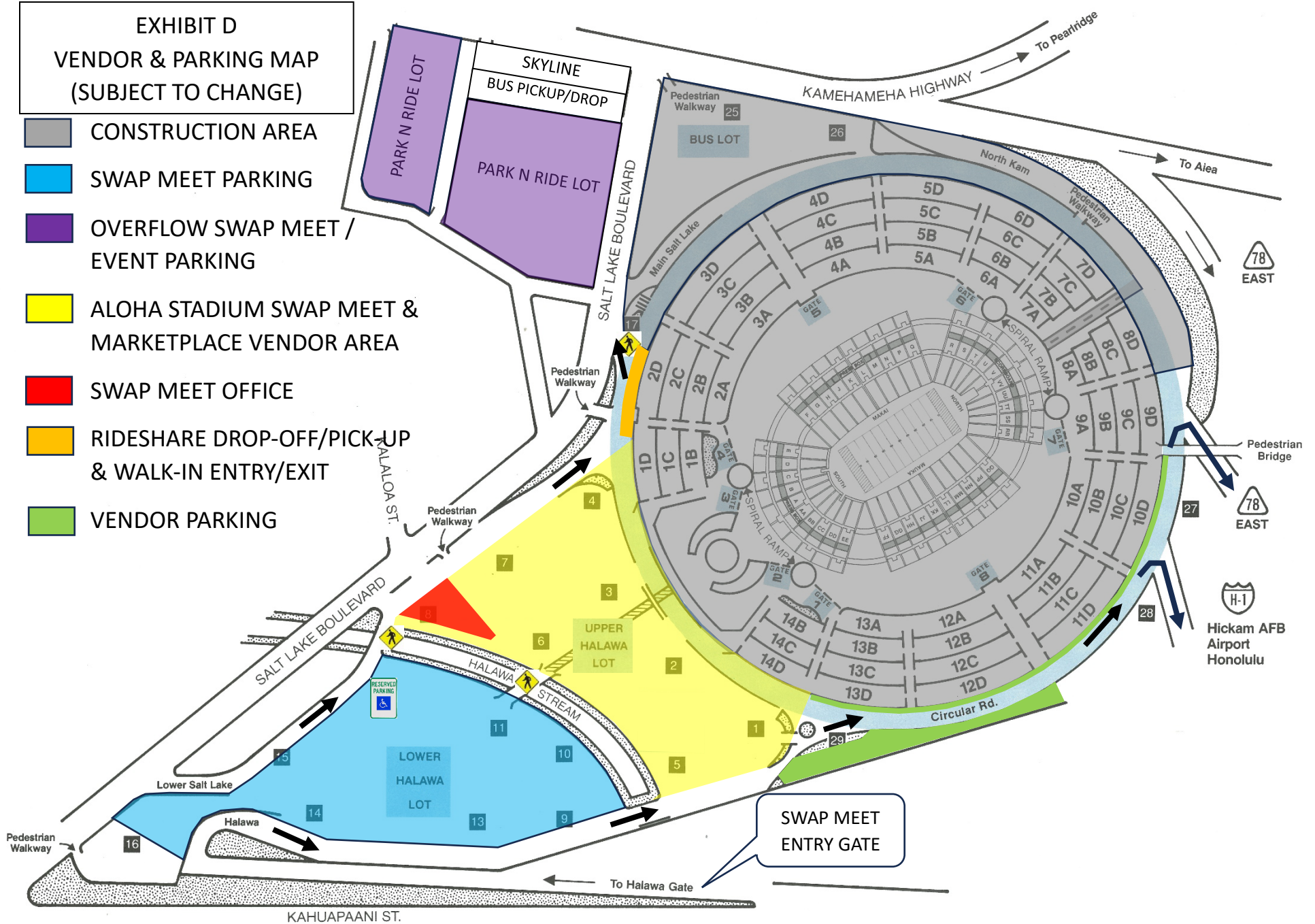
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OFFICE

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THE END

EXHIBIT D
VENDOR & PARKING MAP
 (SUBJECT TO CHANGE)

- CONSTRUCTION AREA
- SWAP MEET PARKING
- OVERFLOW SWAP MEET / EVENT PARKING
- ALOHA STADIUM SWAP MEET & MARKETPLACE VENDOR AREA
- SWAP MEET OFFICE
- RIDESHARE DROP-OFF/PICK-UP & WALK-IN ENTRY/EXIT
- VENDOR PARKING



NOT TO SCALE

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.

GENERAL PROVISIONS FOR GOODS AND SERVICES

HAWAII REVISED STATUTES (HRS) CHAPTER 103D

Attached are the General Provisions, dated November 2016 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 PROVISIONS
FOR
GOODS AND SERVICES**

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1. DEFINITIONS OF TERMS

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

a. BID

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

b. BID PROPOSAL GUARANTY OR SECURITY

The security when required, 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 sub-contractors.

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 Hawaii, referred to as Form AG-008, as revised, and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect at the date the solicitation is issued.

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

i. HAR

Hawaii Administrative Rules

j. HEAD OF THE PURCHASING AGENCY

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

k. HRS

Hawaii Revised Statutes

l. IFB

Invitation for Bids

m. OFFER

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

n. OFFEROR

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

o. PROCUREMENT OFFICER

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

r. RFQ

Request for Quotes

s. RFP

Request for Proposals

t. SOLICITATION

Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process, a request for quotes ("RFQ") used in the small purchases process, or a request for proposals ("RFP"), used in the competitive sealed

proposal process for the purpose of obtaining quotes, bids or proposals to perform a STATE contract.

u. SPECIAL PROVISIONS

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

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

v. SPECIFICATIONS

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

w. STATE

STATE means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawaii, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.

x. SURETY

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

y. WORK

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

2. COMPETENCY OF OFFEROR

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

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

3. OFFER INCORPORATES SOLICITATION

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

4. PREPARATION OF OFFER

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

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 ink 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.

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

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, except as allowed in Section 3-122-29 (1), HAR.

An offeror may be disqualified and his offer rejected for any one or more of the following

reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

7. IRREGULAR OFFERS

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

8. STANDARDS OF CONDUCT

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

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

9. 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 sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

11. EXECUTION OF CONTRACT

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

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

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

12. CONTRACT BOND

- a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent 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 Section 7. 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 30 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the STATE.

14. RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guaranties, 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 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 acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE shall be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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