

## **SPECIAL PROVISIONS**

### **TERMS AND ACRONYMS USED HEREIN**

Chief Engineer	=	The Chief Engineer of Department of Agriculture (DOA), Agricultural Resource Management Division.
State	=	State of Hawaii.
Department	=	Department of Agriculture (DOA). Located at 1428 South King Street, Building B, Honolulu, Hawaii 96814;
SPO	=	State Procurement Office of the State of Hawaii, located at 1151 Punchbowl Street, Room, 416, Honolulu, Hawaii 96813; P. O. Box 119, Honolulu, Hawaii 96810-0119.
Bidder or Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.
Contractor	=	Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through his, their or its agents, or employees.
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
GC	=	Interim General Conditions, October 1994.
IFB	=	Invitation for Bids
RFP	=	Request for Proposals
GET	=	General Excise Tax

### **SCOPE**

Work included in this IFB consists of vegetation removal from the DOA's Kualapuu Reservoir located on the island of Molokai and potential "On-Call" services which may include sediment and debris removal, tree and/or vegetation removal, gate valve repair/replacement varying in size from 4" to 12", repair of leaking pipes, replacement of pipe segments, repair of chain link fencing, and other miscellaneous tasks. Work shall be in accordance with these Special Provisions, the Offer Form, and the GC, included by reference and are available at the SPO, the DAGS District Offices on Hawaii, Maui, and Kauai, and on the SPO website: [http://spo.hawaii.gov/content\\_block/small/103d-general-conditions/](http://spo.hawaii.gov/content_block/small/103d-general-conditions/).

### **CONTRACT ADMINISTRATOR**

For purposes of this contract Mr. Glenn Okamoto of DOA Agricultural Resource Management Division, is the designated Contract Administrator. He may be contacted by phone at (808) 973-9436, or by e-mail at [glenn.m.okamoto@hawaii.gov](mailto:glenn.m.okamoto@hawaii.gov).

### **TERM OF CONTRACT**

The term of the contract is 320 calendar day from the Notice To Proceed date issued by DOA. DOA intends to execute a contract following the bid opening, and confirmation of the lowest responsible bidder.

## **BID PREPARATION**

**Offer Form** Offeror is requested to submit the completed Offer Form 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 space on Offer Form, page OF-3. Failure to do so may delay proper execution of the contract.

The authorized signature on page OF-3 of the Offer Form shall be an original signature. If unsigned the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

**Hourly Billing Rates** Offeror shall provide hourly billing rates and corresponding North American Industry Classification System (NAICS) classification codes for personnel anticipated to perform work under this solicitation. The billing rates shall be attached to the Offer Form. Failure to provide the billing rates will result in automatic rejection of the offer.

**Bid Quotation**. Unit bid price shall include all costs, including all applicable taxes, as required by this IFB.

Each line item shall be priced separately and the unit prices extended and totaled. In case of error in extensions or price, unit price will govern. In case of error in Estimated Total Sum Bid, the sum of the total amount bid for each appropriate line item shall govern.

Offeror must bid on all line items to be considered for award as award shall be made to one successful offeror.

**Intention to Bid**. Notice of intention to bid is not required for this project.

**License**. Due to the nature of work contemplated, bidders must possess a valid State Contractor's license, Classification A.

**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 rate, and adjusted if the tax rate changes. 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.

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

**Tax Clearance**. Pursuant to § 103D-328, HRS, Successful Offeror shall be required to submit a Vendor Compliance Certificate as proof of current tax liabilities, see <http://vendors.ehawaii.gov> . The Contractor is also required to submit a Vendor Compliance certificate for final payment on the contract.

## **METHOD OF AWARD**

Award, if any, will be made to the responsive, responsible Offeror submitting the lowest Total Base Bid (Items 1-4).

Act 52, SLH 2003, amended §103D-310, HRS, by adding subsection (c) which, in part, follows:

"(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

- (1) Be incorporated or organized under the laws of the State; or
- (2) Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract."

At the release of this solicitation, implementation of the law is pending guidance from the Departments of Labor and Industrial Relations and Commerce and Consumer Affairs. Should guidance be received and implemented prior to award of this contract, the prospective awardee will be required to comply.

## **EXECUTION OF CONTRACT**

Successful bidder(s) shall be required to provide a Labor and Material Payment Bond.

## **QUANTITY**

The State reserves the right to purchase larger or smaller quantities at the price quoted on this bid. The State shall not have set minimum quantity to be purchased in this contract.

## **INVOICING AND PAYMENTS**

Each invoice must specify the following:

1. Name of person issuing each invoice.
2. Title of project and purchase order number.
3. Itemized break-down of materials and delivered.
4. Copy of signed delivery slips.

Original and three copies of the invoices shall be sent to:

Agricultural Resource Management Division  
1428 S. King St.  
Honolulu, Hawaii 96814

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

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

## **DELIVERY EXTENSION**

Contractor shall complete the work within the time specified in the SP. If the Contractor fails to complete the work within the time specified, liquidated damages in accordance with the LIQUIDATED DAMAGES provision below shall apply. However, Contractor shall not be held responsible for the delay provided he notifies the Department in accordance with GC Section 13 TERMINATION FOR DEFAULT, subsection (d) Excuse for nonperformance or delayed performance, and the reason for the delay is one of the allowable causes for delay as provided for in Section 13 (d).

GC Section 13 (d) is amended to include delay due to reason(s) beyond the control of the Contractor as a cause for delay for which the Contractor shall not be deemed to be in default. The Chief Engineer shall be the sole judge of whether such delay is truly beyond the control of the Contractor and whether the extension will be granted. No such extension, however, shall be deemed a waiver of the right of the State to terminate the contract or to assess liquidated damages for delays not covered by specific authorized extension.

## **ADDENDA AND INTERPRETATIONS**

Discrepancies, omissions, or doubts as to the meaning of Offer Form and SP should be communicated via HlePRO no later than seven (7) days prior to the date fixed for bid opening.

Any interpretation, if made and any supplemental instruction will be provided via HlePRO. Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from an obligation under his bid submitted. All addenda so issued shall become part of the contract documents.

## **RIGHTS AND REMEDIES**

In the event the Contractor fails, refuses or neglects to perform the service in accordance with the requirements of either the Special Provisions, the Offer Form, or GC, in addition to the recourse stated in the GC, the State reserves the right to purchase in the open market a corresponding quantity of the services specified herein and to deduct from any money due or that may thereafter become due the Contractor the difference between the prices named in the contract and the actual cost thereof to the State. In any case any money due Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

## **LIQUIDATED DAMAGES**

Refer to Section 9 of the GC, Liquidated damages is fixed at the sum of ONE HUNDRED DOLLARS (\$100.00) for each and every calendar day the Contractor delays in the completion of any item of his contract after the required date of said completion. Liquidated damages may be deducted from any payments due or to become due to the Contractor.

## **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. Further provided 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, if any, resulting from this solicitation shall be posted on SPO

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Agricultural Resource Management Division, Chief Engineer, 1428 S. King Street, Honolulu, Hawaii 96814.

## **ADDITIONS, AMENDMENTS AND CLARIFICATIONS TO THE GC**

**Approvals.** Any agreement arising out of this offer may be subject to the approval of the Department of 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 §§3122-95 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 safe guarded 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 Chief Engineer 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 Chief Engineer, 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.

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.

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

**Records Retention.** The Contractor and any subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under this Agreement.

**Correctional Industries.** Goods and services available through Correctional Industries (CI) programs may be the same or similar to those awarded by competitive sealed bids or proposals. Agencies participating in SPO requirements (price list) contracts may also procure directly from CI and shall not be considered in violation of the terms and conditions of any SPO contract.