



RELEASE DATE: July 17, 2023

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

REQUEST FOR QUALIFICATIONS/PROPOSALS

RFQ/RFP NO 23-12

**CONSTRUCTION MANAGEMENT/PROJECT MANAGEMENT
SERVICES for THE ROOFTOP TERRACE DECK – FULL REPAIR**

AT THE HAWAII CONVENTION CENTER

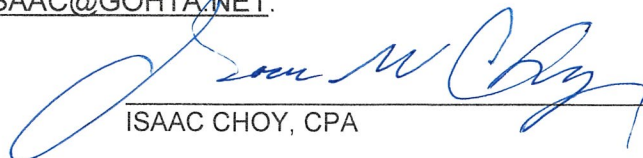
SEALED PROPOSALS ARE DUE AT 4:00 P.M. HAWAII STANDARD TIME (HST) ON

August 18, 2023

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

BY SUBMISSION TO THE HAWAII TOURISM AUTHORITY, STATE OF HAWAII, 1801
KALAKAUA AVENUE, FIRST FLOOR, HONOLULU, HAWAII 96815

QUESTIONS RELATING TO THIS RFQ/RFP, ISSUES RELATING TO THE ACCESSIBILITY OF THIS RFQ/RFP, AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFQ/RFP SHALL BE COMMUNICATED TO THE HAWAII TOURISM AUTHORITY AT ISAAC@GOHTA.NET.



ISAAC CHOY, CPA

Procurement Officer / Vice President of
Finance

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SECTION 1 – INTRODUCTION, TERMS, ACRONYMS

1. INTRODUCTION

The Hawai'i Tourism Authority (HTA), an agency of the State of Hawai'i, is seeking proposals for the engagement of a CM/PM to provide construction and project management support services for the Rooftop Terrace Deck Repair project at the Hawaii Convention Center (HCC) and to assist with the development of the project through the Preconstruction Phase (including Design Phase and permitting), Construction Phase, Project Close-out Phase, and Post-Construction Phase of the projects.

The CM/PM will be working under the direction of HTA Representatives in consultation with the General Manager of the HCC ("HCC GM"). The CM/PM will report to HTA as the lead organization. The CM/PM will work with designated HTA and HCC employees as required. The CM/PM will be expected to provide, as requested by the HTA and the HCC GM, all relevant complementary services necessary to ensure the success of each project.

The scope of services to be performed by the CM/PM will be re-evaluated as deemed necessary by HTA. Award of contract neither guarantees all or a portion of the work described herein.

This RFQ/RFP sets forth the minimum qualifications required, describes the anticipated scope of the work, and defines the selection process. Please read these requirements carefully, as the selection of the most qualified Proposer will be based on criteria contained in this document.

HTA will award the contract to the Proposer that it feels best meets the requirements and criteria set forth in this RFQ/RFP. Award of contract neither guarantees all or a portion of the work described herein. The contract dollar amount awarded does not represent a guaranteed revenue source for the successful Proposer. HTA reserves the right to commence, terminate, reduce, or extend the Proposers' scope of services at any time in response to changing needs.

The Contracting Officer is responsible for administering/facilitating all requirements of the RFQ/RFP solicitation process. The Contracting Officer will also be responsible for "contractual actions" throughout the term of the contract. The Contracting Officer is:

Contracting Officer – Isaac W. Choy
Hawaii Tourism Authority
1801 Kalakaua Avenue 1st Floor
Honolulu, Hawai'i 96815

Email: isaac@gohta.net

Proposers should carefully read the entire RFQ/RFP documents. Proposals must comply with all instructions herein provided and must be submitted with a completed and signed Proposal Form. Interested parties should contact the Contracting Officer to register for this procurement by July 21, 2023.

2. FACILITY OVERVIEW

The HCC opened to the public in June 1998 and is used for a variety of events, including conventions, trade shows, public shows, meetings, and sporting events. The HCC offers approximately 350,000 square feet of rentable space, including 51 meeting rooms.

AEG Management HCC, LLC, a part of the ASM Global collection of companies, is the manager of

the HCC pursuant to a Contract for Professional Services effective as of January 1, 2014, as may have been amended, with HTA. For more information on the HCC, please visit www.meethawaii.com/convention-center.

3. CANCELLATION

The Request for Proposals (RFQ/RFP) may be canceled and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State, pursuant to HAR §3-122-96 thru §3-122-97.

4. TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Attorney General
BAFO	=	Best and Final Offer
Board	=	Board of Directors of the Hawai'i Tourism Authority
Contract Administrator	=	The individual designated to manage the various facets of the contract to ensure the Contractor's total performance is in accordance with the contractual commitments and obligations are fulfilled.
Contractor	=	The selected Proposer under contract to provide services described in this RFQ/RFP
RFQ/RFP	=	This Request for Qualifications/Proposals, including all parts, sections, exhibits, attachments, and Addenda
CPO	=	Chief Procurement Officer, Hawai'i State Procurement Office
DBEDT	=	Hawai'i Department of Business, Economic Development & Tourism
GET	=	General Excise Tax
GP	=	General Provisions
HAR	=	Hawai'i Administrative Rules
HCC	=	Hawai'i Convention Center
HCE	=	Hawai'i Compliance Express
HOPA	=	Head of the Purchasing Agency
HRS	=	Hawai'i Revised Statutes
HST	=	Hawai'i Standard Time
HTA	=	Hawai'i Tourism Authority
KPI	=	Key Performance Indicator is how a quantifiable measure is utilized to assess the success of a Contractor in meeting strategic goals and objectives for performance
Proposer/	=	Any individual, partnership, firm, corporation, joint venture, or other entity Proposer submitting directly, or through a duly authorized representative or agent, a bid for the goods and/or services contemplated in this RFQ/RFP.
Procurement Officer	=	The contracting officer for the State of Hawai'i, Department of Business, Economic Development & Tourism, Hawai'i Tourism Authority
ROI	=	Return on Investment
SPO	=	Hawai'i State Procurement Office
State	=	State of Hawai'i, including its departments, agencies, and political subdivisions

SECTION 2 – PROCUREMENT TIMETABLE and SIGNIFICANT DEADLINES

1. RFQ/RFP SCHEDULE AND SIGNIFICANT DATES

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

The approximate schedule is as follows:

- 7/16/2023: Newspaper advertisement placed announcing RFQ/RFP.
- 7/17/2023: RFQ/RFP released and available to Proposers via email.
- 7/21/2023: All participating Proposers must register and submit an Intent to Bid and signed NDA document acknowledging participation by 4:00 P.M. HST. Please RSVP for a Site Visit via email to HTA at the email address indicated in this RFQ/RFP.
- 7/26/2023: Pre-Proposal Conference / Site Visit at HCC at 10:00 A.M. (HST).
- 8/04/2023: Deadline to submit questions via email by 4:00 P.M. (HST)
- 8/11/2023: Responses to submitted questions will be sent to all registered Proposers via email at isaac.gohta.net.
- 08/18/2023: Responses to RFQ/RFP due by 4:00 P.M. (HST). Only Proposals received, before the stated deadline will be considered unless advised otherwise.
- 07/28-09/01: Possible presentations/interviews by short-listed Proposers.
- 09/06/2023: Due date for Best and Final Offers, if necessary.
- 09/15/2023: Contractor Selection/Award of Contract (tentative)
- TBA: Contract Execution Date (tentative)
- TBA: Contract Commencement Date (tentative)

2. PRE-PROPOSAL CONFERENCE

A mandatory in-person Pre-Proposal Conference will be held at the site at the HCC. The purpose of the pre-proposal conference is to provide Proposers an opportunity to be briefed on this procurement and to ask questions about the procurement process. The pre-proposal conference is **mandatory**. All attendees must register via email to: isaac@gohta.net no later than **07/21/2023 at 4:00 PM HST**. The email subject line should read:

Pre-Proposal Conference, RFQ/RFP-23-12.

Proposers are reminded that anything discussed at the pre-proposal conference does not change any part of this RFQ/RFP. All changes and/or clarifications to this, RFQ/RFP shall be done in the form of an addendum.

The pre-proposal conference will be held as follows:

Date: 07/26/2023

Time: 10:00 AM (Hawaii Time)

Location: The Hawai'i Convention Center – Invitations will be sent directly to those participants who register by the deadline.

3. QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions must be submitted through email at isaac@gohta.net. Questions must be submitted by the question deadline date and time shown in SECTION 2 – PROCUREMENT TIMETABLE and SIGNIFICANT DEADLINES. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of the RFQ/RFP to which the question applies.

SECTION 3 – DESCRIPTION OF PROJECT

1. PROJECT DESCRIPTION

The following is a general overview of the scope of the Rooftop Terrace Deck full repair project (hereinafter the "Project"). The project scope is subject to change based on exploratory discovery during the Project.

- A. Demolition of the Sports Court, demolition of the landscaping, and demolition of the water features.
- B. Permanent repair of the roof deck including but not limited to the concrete top slab, insulation, and waterproofing, structural concrete and metal pan, replacement/repair structural steel beams as necessary, and installation of structural augmentation as needed.
- C. Permanent repair of the roof drains.
- D. Repair of meeting room ceilings below the rooftop terrace deck.
- E. Installation of pedestal pedestrian pavers as a final deck surface.
- F. Installation of electrically operated louvered shading system.
- G. Repair of lighting, equipment, and conduit in ceiling damaged by the water intrusion.
- H. Installation of modular or potted planting system not permanently attached to the rooftop.
- I. During the project, additional requirements may be identified as necessary for the successful completion of the Project.

SECTION 4 – SCOPE OF SERVICES

HTA intends to contract with a qualified CM/PM to provide construction management and project management support services for the Rooftop Terrace Deck Repair Project planned and anticipated for the HCC. The CM/PM shall retain full responsibility for all procurement, construction, and project management support services provided.

The CM/PM will work under the direction of the HTA Representatives, in consultation with the General Manager of the HCC and the HCC staff.

Depending on the expertise of the selected CM/PM, HTA reserves the right to implement a different arrangement of assignments and responsibilities between HTA and the CM/PM. Whenever HTA determines that it would be in the best interests of the Project, HTA reserves the right to:

- 1) use qualified HTA staff or other consultants to provide construction management and/or project services; or
- 2) add or subtract scope during contract negotiations and the duration of the contract.

The following tasks describe the construction and/or project management support services anticipated for the Project. During the project, additional construction and project management tasks may be identified as necessary for the successful completion of the Project.

1. ADMINISTRATION and PRE-CONSTRUCTION TASKS

- Provide and maintain a Project Construction Controls System (PCCS) acceptable to HTA. The PCCS will be implemented to facilitate and document communication among the CM/PM, general contractor, and core subcontractors, the architect/engineer (if applicable), the HCC, and other consultants, and will continue to be used throughout the construction to post-construction phases. PCCS shall include the following minimum features: change order and change order request tracking and management, contract management, project and program dashboard, project reporting, project logs tracking RFIs/submittals, document management and archival, photo management, punch list, and cost management. Copies of samples of the proposer's PCCS should be submitted with its proposal.
- Develop detailed project budget and cash flow projections for the specific project, to be approved by HTA.
- Provide functional integration with HTA data-based reporting systems and coordination with HTA staff in the implementation and maintenance of the PCCS.
- Provide access and support services to the PCCS for the general contractor, the architect/engineer (if applicable), HTA, HCC staff, and other consultants.
- Review and provide input on the HTA procurement procedures for the selection of a design consultant and general contractor for the Project, including all forms, documents, logs, and procedures requiring review and approval.
- Comply with all aspects of the State's procurement procedures, the Hawaii Procurement Code, and its relevant Hawaii Administrative Rules when procuring and administering design and construction contracts.

- Develop and provide bid documents and construction contracts in accordance with the State Procurement Code.
- Manage the Project's procurement processes from bidding to contract award.
- Collect and maintain all certificates and documents required by construction contracts.
- Maintain and provide records in electronic format of all correspondences throughout the Project.
- Manage the Project utilizing a design/bid/build approach.
- Assist the HTA in selecting and coordinating all architectural, design, engineering, or other consulting services for the Project. Please note that the final approval of the selected design consultant(s) shall be with HTA.
- Work with the design team to complete all design elements necessary for the Project.
- Facilitate and direct implementation of program requirements to project architect and finalize program document with Project and/or design team.
- Facilitate design coordination with regulating state/city agencies to ensure conformance and timely approvals.
- Provide detailed reviews and recommendations throughout the development of schematic design, design development, and construction documents.
- When applicable, assist the Project architect in the preparation of special conditions, general conditions, and project specifications with particular emphasis on material selections and construction phasing and sequencing.
- Serve as HTA's representative throughout the design phase to maximize revenue potential, when applicable, maximize cost savings, and satisfy operating requirements, including project meetings.
- Facilitate the design of the Project and assist HTA with compliance with the requirements of the Americans with Disabilities Act of 1990 (ADA), including hiring consultants to assist with compliance with such ADA requirements if necessary.
- Assist HTA in preparing all required planning, building, and zoning applications and obtain necessary entitlements and/or permits if necessary.
- Assist HTA with any environmental abatement program, coordinate demolition and site preparation, and supervise utility installations or relocations.
- Ensure that the design and construction of the Project comply with all applicable Federal, State, and County laws, Codes, Ordinances, and Rules, including but not limited to ADA and the State Disability and Communication Access Board requirements (HRS Section 103-50).
- Evaluate alternatives for Project delivery methods with HTA and make recommendations regarding the most effective and appropriate method.
- Solicit and evaluate general contractor candidates and recommend a selection to HTA as well as architectural and/or engineer/design firm(s).

- Review subcontractors selected by a general contractor.
- Review the actual completed work and provide recommendations to the HTA regarding the general contractor's payment requests. Assist HTA staff in the approval of general contractor's progress payments.
- Provide certified payroll submissions to the Department of Labor as necessary.
- If the project involves upgrades or implementation of building systems, the CM/PM shall assist with the training of operation and maintenance of the building system. Provide digital recordings of all such training for record purposes, unless otherwise determined to be performed by the general contractor, or others.
- Provide advice and recommendations on resolving technical and contractual issues and/or disputes that arise during design and construction.
- Review, coordinate and recommend action on all deliverables and submittals from consultants, architects, engineers, the general contractor, and key subcontractors on the projects.
- Assist HTA in ensuring that the general contractors and subcontractors honor their warranty responsibilities promptly.
- Where advantageous and upon request by HTA, make digital video camera records of the work. If this task is included in the specifications as part of the general contractor's requirement, then the CM/PM shall coordinate and maintain the records.
- Assist the HTA in preparation for and defending against any legal claim or court suit as needed.
- Establish processes and procedures and roles and responsibilities of the Project Team to ensure the timely resolution of all issues, including but not limited to, RFI's, Submittals, LEED-related Documentations, Proposed Change Orders (PCOs), Change Orders (CO), Change Order Requests (CORs), Correction Notices, Non-conforming Work Reports, etc.
- Assist with the coordination of LEED close-out documentation and other close-out activities as outlined in the Contract Documents.
- Develop a system for the tracking of punch list items. Coordinate with the general contractor, and subcontractors on the timely correction and completion of all punch list items.
- Coordinate and track the delivery of all spare parts, operation and maintenance manuals, warranty documents, training logs, as-built/record drawings, keys, and any other necessary documents.
- Prepare monthly reports to detail preconstruction and construction activities; make recommendations to resolve project risks; and allocate remaining CM/PM contract amount towards projected Construction Management tasks.
- Present reports to stakeholders monthly and as requested by HTA. Meet with HTA before the stakeholder's meetings to plan the presentation.

2. CONSTRUCTION, POST-CONSTRUCTION, & BUDGET/COST ESTIMATE TASKS

- Review and analyze the general contractor's baseline Critical Path Method (CPM) schedules, schedule updates (monthly or at an HTA-specified frequency), and construction "look-ahead" schedules.
- Monitor construction progress concerning schedule and procedures and implement actions necessary to maintain or improve construction progress.
- Prepare and submit reports detailing the review and approval of the CPM schedules.
- All construction project schedules will be prepared to utilize the CPM.
- Prepare periodic progress status reports.
- Prepare recommendations on how to recover from schedule slippages.
- Analyze impacts to schedule resulting from proposed change orders and pending/approved change orders on the project duration and schedule, including time extension requests and rain or other weather-related delay days.
- Assist with negotiation of change order requests and change orders as they relate to time impact on the construction schedule and impact on the original scope of work.
- Provide schedule updates during critical points of the design phases to assure the completion of the design within the baseline schedule timeline. Provide recommendations, as necessary, to ensure that the projects can meet scheduled due milestones.
- Complete project closeout including punch list generation and monitor final acceptance of equipment and facilities, compilation and review of all operations and maintenance manuals, and training of all operations staff.
- Review/oversee the "request for information" process and the user logs to be maintained.
- Review/oversee shop drawing/submittal process and cause the log to be maintained.
- Implement punch list procedure and continue to participate through correction and completion of all punch list items.
- Be responsible for securing, reviewing, accepting, and distributing all as-builts, warranties, and other turnover documents.
- Assist with compliance with the Occupational Safety and Health Act.
- Coordinate and obtain appropriate proof from general contractors that subcontractors working on the Project, as well as supplies, are paid promptly.
- Ensure that the HCC's Health and Safety Procedures are followed by the General Contractor and all workers on the projects. The HCC's Health and Safety Procedures are contained in Appendix 8.

- Review, evaluate, validate, and reconcile construction cost estimates and project cost projections and escalations prepared by the architect/engineering team and general contractor to facilitate the establishment of a value-targeted budget and scope.
- When requested by the HTA, prepare independent cost estimates at each major design milestone for all trade packages, as requested.
- Provide cost budget, cost forecasts, and cost monitoring management services. Provide cost estimates at key design phase milestones to assure the completion of the Project within the cost budgets approved by the HTA.
- Assist in negotiations of change order requests and change orders for cost and provide appropriate recommendations to the HTA.
- Prepare construction cost estimates for the major design phases of the Project.
- Develop and implement a tracking system to monitor and control the status of construction change orders, change order requests, and proposed change orders. Review and advise the HTA on change order requests.
- Prepare reports monitoring construction progress and construction budget expenditures.
- Participate in the evaluation and recommendation of Value Engineering measures.
- Provide input on potential impacts and risks of proposed construction measures and review comments by general contractors, or the design team.
- Review and advise on the general contractor and its subcontractors' shop drawings, fabrication drawings, coordination drawings, submittals, and RFIs for compliance with the Contract Documents.

SECTION 5 – CM/PM QUALIFICATIONS

Qualifications reflect the anticipated level of responsibility of the disciplines needed for this contract. RFQ/RFP responses must include Statements of Qualifications and resumes for each of the key personnel proposed for the CM/PM Team to document that they meet or exceed the minimum qualifications listed.

1. CM/PM FIRM QUALIFICATIONS

The CM/PM shall meet the following requirements:

- A minimum of fifteen (15) years in business providing construction and project management and the proposed scope of services outlined in this RFQ/RFP.
- The CM/PM shall demonstrate relevant and requisite experience, providing construction and project management services for projects similar to the Project proposed for the HCC. Provide specific examples of tools and measures utilized in providing CM/PM support services for projects similar to those proposed for the Project.
- The CM/PM shall also demonstrate relevant project experience where Leadership in Energy and Environmental Design (LEED) requirements were incorporated into the design and construction with a minimum of LEED Gold certification. The CM/PM shall have at least one (1) LEED Accredited Professional on their staff in a key leadership and management position, as an employee, not as a specialty consultant member of the team.
- The CM/PM shall have significant State of Hawaii government contracting experience.
- The CM/PM shall have experience submitting Certified Payroll pursuant to the Hawaii State labor laws.

2. KEY PERSONNEL /LEAD TEAM MEMBER QUALIFICATIONS

A. Construction/Project Manager (Lead)

To qualify as the Project Manager for this RFQ/RFP, an individual within the CM/PM must possess the following qualifications:

- Minimum of fifteen (15) years of recent experience in construction and project management relative to medium to large and complex construction projects. Demonstrate relevant and requisite experience providing construction and project management services for projects similar to those proposed for the Project.
- Relevant experience within the last ten (10) years serving in the capacity of the Construction Manager.
- The ideal candidate is a Certified Construction Manager (CCM) certified by the Construction Management Association of America - CMAA.
- Current registration as a Professional Engineer or Registered Architect in the State of Hawaii, and LEED accreditation from the U.S. Green Building Council is highly desirable.
- A minimum of two (2) years of experience with the State of Hawaii Procurement Code Projects.

B. Scheduler

To qualify as a Scheduler for this RFQ/RFP, an individual within the CM/PM must possess the following qualifications:

- Minimum of ten (10) years of recent experience in scheduling relative to medium to large construction projects. Demonstrate relevant and requisite experience providing construction and project management services for projects similar to those proposed for the Project.
- Relevant experience within the last five (5) years serving in the capacity of the Lead Scheduler on complex building projects.
- Fully knowledgeable of construction scheduling utilizing the Critical Path Method with resource and cost loading. The proposed scheduling engineer shall also demonstrate experience evaluating and analyzing time and cost impacts as they relate to any delay and/or unforeseen conditions claims by the general contractor.
- The ideal candidate will possess one or more certifications from an industry-related association such as the Association for the Advancement of Cost International (AACEI), such as a Certified Cost Engineer/Consultant (CCE/CCC); a certified Planning and Scheduling Professional (PSP), or other similar certifications (e.g., Certified Construction Manager - CCM certified by the Construction Management Association of America - CMAA)

C. Cost Estimator

To qualify as the Lead Cost Estimator for this RFQ/RFP, an individual within the CM/PM must possess the following qualifications:

- Minimum of fifteen (15) years of recent experience in cost estimating relative to medium to large building projects. Demonstrate relevant and requisite experience providing construction management services for projects similar to the Project.
- Relevant experience within the last ten (10) years serving in the capacity of the Lead Cost Estimator on complex building projects.
- Fully knowledgeable in construction cost estimating and development of project budgets, cost models, cost projections, and value engineering analysis. The cost engineer shall also demonstrate experience evaluating and analyzing time and cost impacts related to Contractor's delay claims and reviewing and negotiating change orders.
- The ideal candidate will possess one or more certifications from an industry-related association, such as a certified Planning and Scheduling Professional (PSP); a Certified Cost Engineer/Consultant (CCE/CCC) from the Association for the Advancement of Cost International (AACEI), a certified Professional Estimator (CPE) by the American Society of Professional Estimators; or similar certifications from other industry related associations (e.g. Construction Management Association of America- CMAA)

SECTION 6 – SUBMITTAL REQUIREMENTS

1. INSTRUCTIONS AND GENERAL REQUIREMENTS

Each Proposer may submit only one (1) written proposal, addressed to the Contracting Officer at 1801 Kalakaua Avenue Honolulu Hawaii, 96815 1st Floor no later than **4:00 P.M. (HST) on 8/18,2023.** **Proposals received after this time/date will be rejected.**

Each Proposal must include a completed Offer Form 1, Offer Form 2, and Rate Card similar to the one attached to this RFQ/RFP as Appendix 3. Proposers shall submit all data and information specified/required in this Section to qualify their proposal for evaluation and consideration for the award. **Non-compliance may be deemed sufficient cause for disqualification of the Proposal.**

2. CLARIFICATION AND QUESTIONS

All requests for clarification of any ambiguities, discrepancies, inconsistencies, or questions concerning the RFQ/RFP, shall be submitted electronically via email at isaac@gohta.net no later than **4:00 P.M. (HST) on 8/04/2023.** Responses to questions, clarifications, interpretations, or changes to the RFQ/RFP will be made by written addendum and shall become part of this RFQ/RFP. Any addendum will be sent by email to all registered Proposers.

3. DISQUALIFICATIONS OF PROPOSALS

HTA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RRQ/RFQ/RFP and which demonstrate an understanding of the Scope of Services. **Any proposal offering any other set of terms and conditions contradictory to those included in the RFQ/RFP may be disqualified without further notice.** HTA reserves the right to ask for clarification of any item in the proposal.

A Proposer will be disqualified, and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among Proposers, in which case all proposals involved in the collusive action will be rejected.
- The Proposer's lack of responsibility and cooperation as shown by past work or services.
- The proposal shows any non-compliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- If the proposal has any provision reserving the right to accept or reject an award or to enter into a contract pursuant to an award or provisions contrary to those required in the solicitation.

4. PUBLIC INSPECTION

Proposals shall not be opened publicly but shall be opened in the presence of two or more HTA officials. The register of proposals and Proposer's proposals shall only be provided to the public pursuant to

a valid request made pursuant to the Hawaii Uniform Information Practices Act, Chapter 92F of the Hawaii Revised Statutes ("UIPA") to the Hawaii Tourism Authority. Such requests can only be made after an awarded contract has been executed by HTA and the selected Proposer.

Proposers shall request in writing the non-disclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal. HTA cannot guarantee that designated data will be kept confidential. The proposals are subject to disclosure rules set forth in the UIPA and as indicated above. The Proposer bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in the UIPA.

All proposals and other materials submitted by Proposers become the property of the HTA and may be returned only at the HTA's option.

5. COMPONENTS OF THE PROPOSAL PACKAGE

The proposal package shall be clear and concise; responsive to all RFQ/RFP requirements and presented in the form of a written report for each of the two packages - Written Submittal and Rates Schedule Proposal. The following are the Sections of the Proposal Package:

- A. Cover Letter;
- B. Project Team Organization and Teamwork;
- C. Business and Financial Information;
- D. Firm's Experience Statement;
- E. Firm's Qualification Information;
- F. Key/Lead Personnel Qualification Information;
- G. Project Management and Work Approach;
- H. Offer Form 1, Offer Form 2, and Rate Cards; and
- I. Firm's Certificate of Vendor Compliance via Hawaii Compliance Express (<http://vendors.ehawaii.gov>).

A. Cover Letter: Submit a cover letter signed by an individual authorized to obligate the Proposer to confirm commitments contained in the proposal. The letter must include the following: (1) a statement identifying the Proposer who is responding to this RFQ/RFP; (2) one contact for all communications pertaining to the Proposer's proposal (including telephone number, fax number, e-mail address, and mailing address); (3) a statement of the Proposer's overall ability and qualifications to conduct the work and proposed approach for providing services, as it relates to key requirements of the RFQ/RFP response; (4) a statement that the Proposer agrees to comply fully with the terms and conditions of the draft Agreement, Appendix 5; (5) a statement that the Proposer agrees that the Proposer's rates and multiplier listed on the Rates Schedule may be incorporated into the Agreement; (6) a statement that the Proposer agrees to fully comply with all applicable State of Hawaii laws; and (7) acknowledgment by Proposer that it meets with all requirements for the award of a State of Hawaii Contract (i.e. tax clearance and no debarment issues).

B. Project Team Organization and Teamwork: This section shall describe the Proposer's team organization and the expertise it proposes to provide to the project. Please respond to the following points in the narrative:

1. Describe the roles and organization of your proposed team for this project. Indicate the composition and number of project staff, facilities available, and experience of your firm/team as it relates to this project. Identify one prime individual as Project Manager empowered by the consulting firms forming the team to represent the entire CM/PM Team, whose responsibility will be to direct, coordinate and control the entire CM/PM Team in its effort toward the successful completion of the Project.

2. Provide an Organizational Chart that illustrates the team structure of all Key Personnel and lead team members, who will be providing CM/PM services in their Core Areas of Expertise as indicated. Correlate the team members' positions on the Organization Chart to the Scope of Services being provided.
3. Clearly outline the organization and confirm the commitments of the proposed CM/PM Team and Key Personnel. State whether the expected manpower projections will be handled by existing permanent staff or if additional staff will be hired.
4. Describe generally how the CM/PM Consultant Team will interface with HTA and the HCC Staff, the design team, and the general contractor during each phase of the project.
5. Indicate the experience the CM/PM has with the State of Hawaii Procurement Code.

C. Business and Financial Information: A reference from a financial institution (name, title, and telephone number). HTA reserves the right to check any, all, or none of the references submitted.

D. Firm's Experience Statement: List three (3) to five (5) projects where the CM or PM (or both) services were provided. Describe the role of the firm on each project and provide contact information for a reference for each project. Describe all pre-construction phases, construction phases, and close-out services provided for each project. Identify all the key personnel provided for each project. Describe how each project would be relevant to the proposed services to be provided at the HCC. HTA reserves the right to verify any, all, or none of the references submitted.

E. Firm's Qualification Information: The Proposer shall provide sufficient information for the Evaluation Committee to evaluate its ability to successfully complete the tasks outlined in the scope of services, including, but not limited to, a description and background summary of the firm, including corporate qualifications, commitment, strength, and technical capabilities to successfully accomplish scopes of services to be provided. In addition, describe the Proposer's experience with procurements and construction in accordance with the State of Hawaii Procurement Code.

1. Describe your company's key technological and operational competitive advantages.
2. Describe national and local support offices, including physical locations in the support areas, functional responsibilities, and reporting structures.
3. Describe the State of Hawaii project experience; including evidence of satisfactory and timely completion of State projects.
4. Describe any additional services offered you believe would complement the Project.

F. Key/Lead Personnel Qualification Information: Provide names of key personnel whom you anticipate providing CM/PM services for the HTA and the Project and their areas of expertise.

G. Project Management and Work Approach: Describe the overall project approach that your team would utilize to successfully plan and manage the Project.

1. Describe how you define, track and measure performance.
2. Describe your standard performance indicators and service levels.

H. Rate Schedule: Provide Rate Schedules for all personnel expected to provide services and a rough estimate of how much time each would be spending on the project. Complete Offer Form 1 and Offer Form 2.

I. Firm's COVC: Provide a current Certificate of Vendor Compliance via Hawai'i Compliance Express (<http://vendors.ehawaii.gov>) issued by the State of Hawai'i.

J. OTHER FORMS

To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFQ/RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions providing in the RFQ/RFP or in any subsequent addendum may be rejected without further consideration.

Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (Attachment 1). Failure to do so may delay the proper execution of the Contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (Attachment 2). The price shall be the all-inclusive cost, including the GET, to the State. No other costs will be honored. Any unit prices shall be inclusive.

6. CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a proposal in response to this RFQ/RFP, the Proposer certifies as follows:

- A. The costs in this RFQ/RFP have been arrived at independently, without consultation, communication, or agreement, to restrict competition as to any matter relating to such costs with any other Proposer.
- B. Unless otherwise required by law, the costs which have been quoted in this RFQ/RFP have not been knowingly disclosed by the Proposer prior to award, directly or indirectly, to any other Proposer or competitor prior to the award of the contract.
- C. No other attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

7. MODIFICATION OR WITHDRAWAL OF PROPOSALS

A modification of a proposal already received will be accepted by HTA only if the modification is received prior to the proposal's due date. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposal.

A Proposer may withdraw a proposal already received prior to the due date by submitting to HTA a written request for withdrawal executed by the Proposer's authorized representative. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.

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

No emails or facsimiles of the proposal packet will be accepted.
All submittals must be made on hard copy at HTA's offices, 1801 Kalakaua Avenue 1st floor.

8. RECEIPT AND REGISTER OF PROPOSALS

- a. Proposals will be received at, and receipt verified by, two or more HTA officials, on or after the date and time specified in PAGE ONE or as amended.
- b. The register of proposals and proposals of the Proposer(s) shall be open to public inspection upon posting of the award pursuant to section 103D-303, HRS.

9. MODIFICATION PRIOR TO THE SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

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

11. MISTAKES IN PROPOSALS

- A. Mistakes may not be corrected after the award of the Contract.
- B. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Proposer to confirm the proposal. If the Proposer alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.
 - a) Once discussions are commenced or after best and final offers are requested, any priority-listed Proposer may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
 - b) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes may be corrected to the intended correct offer whenever the mistake and the intended correct offer are evident on the face of the proposal, in which event the proposal may not be withdrawn.
 - c) If discussions are not held, or if the best and final offers upon which award will be made have been received, a Proposer alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is evident on the face of the proposal, but the intended correct offer is not; or the, Proposer submits evidence which clearly and convincingly demonstrates that a mistake was made.
- C. 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 Proposers; that is when there is no effect on price, quality, or

quantity. If discussions are not held or if the best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow a Proposer to correct them if either is in the best interest of the State. Examples include but are not limited to, failure of the Proposer to return the correct number of signed proposals required by request for proposals; failure to sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Proposer's intent to be bound; or to acknowledge receipt of an incorrect number of amendments to the request for proposal, but only if it is clear from the proposal that the Proposer received the amendments and intended to be bound by its terms; or if the missing amendment involved had no effect on price, quality or quantity.

- D. If the State requests additional information regarding aspects of a Proposer's Offer, the Proposer shall provide the same within five (5) Business Days of the State's request, unless the State specifies another time period. Each Proposer shall submit only one (1) Offer. If a Proposer submits more than one (1) Offer, then the State reserves the right to reject and or dismiss the Proposer from the RFQ/RFP process.

E. NO LATE SUBMITTALS AFTER THE DEADLINE

Proposals received after the due date and time will be marked late and shall be ineligible for this solicitation.

F. OFFER GUARANTY

An offer guarantee or performance bond is NOT required for this RFQ/RFP.

SECTION 7 – SELECTION PROCESS

By submitting a Response to this RFQ/RFP ("Proposal"), the Proposer hereby acknowledges and accepts the general terms and conditions specified in the Contract Documents, which are included in the Appendices. The selection process is described below.

The selection process for the CM/PM will be conducted by an Evaluation Committee and may consist of two sequential stages: 1) Evaluation of Written Submittals, including consideration of reference responses, and 2) Oral Interviews of short-listed Proposers. The Proposers will be evaluated and ranked according to their cumulative performance in both components, as described in this RFQ/RFP. The HTA will ultimately award the contract to the highest-ranked Proposer whose proposal is determined to be the most advantageous to the State based on the evaluation criteria and other factors contained in this RFQ/RFP.

1. EVALUATION PROCESS

A. References

References for the Proposer and Key Personnel proposed on the CM/PM Team will be contacted by HTA Staff. A reference may be deemed non-responsive if the Proposer's information cannot be verified by a reference within seven (7) calendar days of the first contact attempt by HTA staff.

B. Written Submittal Evaluation

HTA staff will review every Proposal to determine if it is responsive and responsible. Each Proposal will be reviewed for completeness, format requirements, and responsiveness to the requirements contained herein. All submittals that are complete and meet the minimum technical qualifications will be forwarded to the Evaluation Committee. References may be contacted at this stage to verify the accuracy of information.

An Evaluation Committee will review the written submittals. The committee will shortlist up to three (3) firms for oral interviews. Notification will be sent to the firms that are short-listed, indicating the time and place of the interviews and requesting further written information if needed.

C. Discussion With Priority-Listed Proposers

The State may invite Priority-Listed Proposers to discuss their proposals to ensure thorough, mutual understanding. The State may also conduct discussions with Priority-Listed Proposers to clarify issues regarding the proposals before requesting Best and Final Offers (BAFO), if necessary; however, proposals may be accepted without such discussions at the discretion of the State. The State, in its sole discretion, will schedule the time and location for these discussions, generally within the timeframe indicated in SECTION 1.5 RFQ/RFP Schedule and Significant Dates.

1. In the initial phase of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFQ/RFP requirements) will be eliminated from further consideration.

The State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Proposers are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals.

Proposals will be classified initially as acceptable, potentially acceptable, or unacceptable. Discussion may be conducted with Priority-Listed Proposers who submit proposals determined to be acceptable or potentially acceptable of being selected for award or limited to the three (3) highest scoring Proposers who submitted acceptable proposals. The object of these discussions is to clarify issues regarding the Priority-Listed Proposer's proposals before a best and final offer, if necessary. Priority-Listed Proposers may be required to give oral presentations to ensure a thorough, mutual understanding of each proposal. A Priority-Listed Proposer that is requested to make a presentation and fails to make the presentation on the scheduled date to the Procurement Officer or Evaluation Committee will not be considered for the final award. Any costs incurred by a Priority-Listed Proposer in making the presentation will be the Priority-Listed Proposer's sole responsibility and will not be reimbursed by the State.

2. If, during discussions, there is a need for any substantial clarification or change in the RFQ/RFP, the RFQ/RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFQ/RFP will be distributed only to the Priority-Listed Proposers who submit acceptable or potentially acceptable proposals.
3. Following any discussions, the Priority-Listed Proposers will be invited to submit their BAFO, if required. The Procurement Officer or evaluation committee reserves the right to have additional rounds of discussions with the Priority-Listed Proposers before the submission of the BAFO, if necessary.
4. The date and time for the Priority-Listed Proposers to submit their BAFO, if any, will be indicated via an addendum to the Priority-Listed Proposers only. If a Priority-Listed Proposer does not submit a notice of withdrawal or a BAFO, the Priority-Listed Proposer's immediately previous offer will be construed as its BAFO. BAFOs will be submitted only once unless the Chief Procurement Officer or the HOPA or his/her designee of either officer above the level of procurement officer determines in writing that it is in the best interest of the State to conduct additional discussions or require another BAFO.

D. Best and Final Offer

After the Oral Interview Process is completed, the Evaluation Committee has the option to ask the short-listed Proposers to submit a Best and Final Offer.

E. Final Selection and Contract Negotiation

The Evaluation Committee will score and rank short-listed firms based on the evaluation criteria provided in the written submittal and oral interview. HTA will award the contract to the Proposer whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

F. Evaluation and Criteria And Value Weight

<u>Evaluation Criteria</u>	<u>Value/Weight</u>
Proposer's Background, Qualification, Experience, and References	20%
Proposer's Personnel Organization and Staffing	20%
Proposer's Implementation Plan	20%
Proposer's Cost Proposal	40%

G. Evaluation Scoring System

The evaluation categories are assigned a value weight percentage, as determined by the HTA, totaling 100%. Each category will be rated between one (1) and five (5), with five (5) being the highest (the best rating) by each member of the evaluation committee. The Proposer's total score (see note below) will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and c) totaling the score of all evaluators.

Note: In determining the total score, the Proposer's cost proposal with the lowest costs will receive the highest available rating allocated to costs. Each proposal that has a higher cost than the lowest will have a lower rating for costs.

H. AWARD OF CONTRACT

Method of Award. The award will be made to the responsible Proposer whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFQ/RFP.

I. RESPONSIBILITY OF PROPOSERS

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

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

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

Hawai'i Compliance Express. Vendors may use HCE, which 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 intending to use HCE to demonstrate compliance are encouraged to register with HCE before submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00, and the 'Certificate of Vendor Compliance' is accepted for the execution of a contract and final payment.

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

Vendors not utilizing HCE to demonstrate compliance shall provide paper certificates to the HTA's Contracts and Procurement Office. All certificates must be valid on the date it is received by the HTA. Timely application for all applicable clearances is the responsibility of the Proposer.

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

J. PROPOSAL AS PART OF THE CONTRACT

This RFQ/RFP and all or part of the successful proposal may be incorporated into the Contract.

K. PUBLIC EXAMINATION OF PROPOSALS

Except for confidential portions, the proposals shall be made available for public inspection upon posting of the award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the Office of Information Practices in accordance with HRS §92F-15.5.

L. DEBRIEFING/PROTEST

Pursuant to HAR §3-122-60, a non-selected Proposer may request a debriefing to understand the basis for the award.

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

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

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

Procurement Officer
Isaac W. Choy
Hawai'i Tourism Authority
Hawai'i Convention Center, 1st Level
1801 Kalakaua Avenue
Honolulu, Hawai'i 96815

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto, provided that a protest based upon the content of the solicitation shall be submitted in writing before 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 the award or, if requested, within five (5) working days after the Procurement Officer's debriefing was completed.

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

- Name and address of the protestor.
- Appropriate identification of the procurement.
- A statement of the reasons for the protest; and
- Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the required filing time, in which case the expected availability date shall be indicated.

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

M. APPROVALS

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

N. CONTRACT EXECUTION

The successful Proposer receiving an award shall enter a formal written Contract. No performance or payment bond is required for this Contract.

No work is to be undertaken by the Contractor before the effective date of the Contract. The State of Hawai'i is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor before the official starting date.

If an option to extend is mutually agreed upon, the Contractor will be required to execute a supplement to the Contract for the additional extension period.

SECTION 8 – CONTRACT

1. PERFORMANCE START DATE

The start of performance under the contract shall be immediately upon execution of the contract (the "Performance Start Date"). The Contractor shall NOT begin work before the Performance Start Date without written approval. Should the Contractor begin work, including the purchase of materials and supplies, before the Performance Start Date, any work performed, and any materials and supplies purchased in advance of the Performance Start Date will be considered as having been done by the Contractor at his volition and his risk?

2. TERM OF CONTRACT

The term of the contract shall be open-ended but must be renewed on a yearly basis.

3. GENERAL CONTRACT PROVISIONS

A sample of AG's Contract General Conditions is provided in Appendix 4.

4. GENERAL PROVISIONS

The Proposer shall comply with the General Provisions for Goods and Services provided herein as Appendix 1.

5. SPECIAL CONDITIONS

At all times, the Contractor shall comply with the Special Conditions, if applicable. Note that the Special Conditions amend, replace, and add to the terms within the Contract and the General Conditions.

6. PAYMENT

The awarded Contractor shall submit all invoices electronically in accordance with the State's invoicing guidelines. Pursuant to HRS 103-10, the State shall have thirty (30) calendar days after receipt of the invoice or satisfactory completion of deliverable to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period.

7. CONTRACT INVALIDATION

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

8. ADA COMPLIANCE

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

9. POINT OF CONTACT/ CONTRACT ADMINISTRATOR

The Contract Administrator is the single point of contact (POC) during the procurement process. Proposer and interested persons shall direct all questions regarding the procurement process and any other procedural questions that may arise related to this solicitation and resulting Contract to the Contract Administrator at Isaac@gohta.net. The reference number is RFQ/RFP 23-12. This number must be referred to on all proposals, correspondence, and documentation relating to the RFQ/RFP.

SECTION 9 – HTA RIGHTS AND OPTIONS

1. The issuance of this RFQ/RFP does not constitute an agreement by HTA that any contract will be entered into by HTA. HTA expressly reserves the right at any time to:
 - A. Waive or correct any defect or informality in any response, proposal, or proposal procedure.
 - B. Reject any or all proposals.
 - C. Reissue a Request for Qualifications/Request for Proposals.
 - D. Before the submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment, or services to be provided under this RFQ/RFP or the requirements for contents or format of the proposals.
 - E. Procure any materials, equipment, or services specified in this RFQ/RFP by any other means; and
 - F. Determine that no project will be pursued, or no consultants be retained.
2. HTA reserves the unqualified right to postpone the selection of the CM/PM for its convenience, to withdraw this RFQ/RFP at any time without indicating any reason for such rejection, or to negotiate with any, all, or none of the Proposers. HTA reserves the right to remedy technical errors, clarify the published scope of services, and approve or disapprove the use of sub-consultants.
3. HTA has the right to use any or all ideas or concepts presented in any proposal without restriction and without compensation to the Proposer. As a corollary, the HTA's selection of a CM/PM does not constitute the HTA's acceptance of all particulars of the Proposer's proposal.
4. HTA reserves the right to check any, all, or none of the references submitted.
5. No person or firm responding to this RFQ/RFP shall obtain any claim or right of action against the HTA by reason of any aspect of the RFQ/RFP and defects or abnormalities in the selection process, the rejection of any proposal, the acceptance of any proposal, any statements, representations, acts or omissions of the HTA, the exercise of any HTA discretion set forth in or with respect to any of the foregoing, and any and all matters arising out of all or any of the foregoing.

SECTION 10 – GENERAL HTA TERMS AND CONDITIONS

The purpose of this section is to outline some of the general terms and conditions that would be set forth in a contract between HTA and the selected CM/PM. HTA reserves the right to revise or add any terms and conditions beyond those set forth in it.

1. STATUTORY REQUIREMENTS

No contract shall be awarded to any vendor that does not comply with the following:

- A. Prior to the execution of the Contract, CONTRACTOR must furnish proof of compliance with the requirements of HRS § 103D-310(c), including the following:

Chapter 237, tax clearance.
Chapter 383, unemployment insurance.
Chapter 386, workers' compensation.
Chapter 392, temporary disability insurance.
Chapter 393, prepaid health care; and

Proof that it is:

- i. Registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
- ii. Registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business."

2. INSURANCE REQUIREMENTS

- A. Without in any way limiting the CM/PM's liability pursuant to the "Indemnification" section of the Agreement, the CM/PM, at its own cost, must maintain in full force and effect during the full term of the Agreement (unless otherwise noted or as reduced by the agreement of the parties), insurance in the following amounts and coverage, or coverages as required by laws and regulations, whichever is greater, by an insurance company with a Best's rating of A or better:
1. Workers' Compensation Insurance, in statutory amounts, including Employers' Liability coverage with limits not less than \$1,000,000 for each accident, injury, or illness; and with regards to Workers' Compensation, the CM/PM hereby agrees to waive subrogation which any insurer of CM/PM may acquire from CM/PM by the payment of any loss. CM/PM agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the HTA and HCC for all work performed by the CM/PM, its employees, agents, and sub-consultants on the Project; and
 2. Commercial General Liability Insurance with limits not less than \$2,000,000 for each occurrence of \$4,000,000 aggregate. Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and
 3. Umbrella or Excess Liability Insurance with a limit of \$10,000,000 for each occurrence in excess of \$1,000,000; and

4. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 for each occurrence; Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned, and Hired auto coverage, as applicable; and
 5. Professional liability insurance, maintained in force during the full term of the Agreement and for five years following Substantial Completion of the last project, with limits not less than \$2,000,000 for each claim occurrence with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Agreement.
- B. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:
1. Name as Additional Insureds HTA, the State of Hawaii, HCC, AEG Management HCC, LLC, Anschutz Entertainment Group, Inc., ASM Global Parent, Inc., AEG Venue Management Holdings, LLC, and their respective affiliates, related entities, and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom the claim is made, or suit is brought.
- C. All policies shall provide thirty (30) days advance written notice to HTA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:
- Hawai'i Tourism Authority
Attn: Isaac Choy
1801 Kalakaua Avenue, First Floor
Honolulu, Hawaii 96815
- D. Should any of the required insurance be provided under a claims-made form, the CM/PM shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after the expiration of the Agreement, such claims shall be covered by such claims-made policies.
- E. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- E. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the HTA receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the HTA may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- F. Before commencing any operations under this Agreement, the CM/PM shall do the following: (a) furnish to HTA certificates of insurance and additional insured policy endorsements with insurers with a current A.M. Best rating of at least AVI or better, that is authorized to do business in the State of Hawaii, and that is satisfactory to HTA, in form

evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon HTA's request. Failure to maintain insurance shall constitute a material breach of this Agreement.

- G. Approval of the insurance by HTA shall not relieve or decrease the liability of CM/PM hereunder.
- H. If a subcontractor will be used to complete any portion of this agreement, the CM/PM shall ensure that the sub-consultant shall provide all necessary insurance and shall name HTA, the State of Hawaii, the HCC, AEG Management HCC, LLC, Anschutz Entertainment Group, Inc., ASM Global Parent, Inc., AEG Venue Management Holdings, LLC, and their respective affiliates, related entities, and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers and the Contractor listed as additional insureds. Consultant shall provide such insurance documents to HTA on behalf of sub-consultant.

3. INDEMNIFICATION

- A. **General.** To the fullest extent permitted by law, the CM/PM shall indemnify, defend, and hold harmless HTA, the State of Hawaii, the HCC, AEG Management HCC, LLC, Anschutz Entertainment Group, Inc., ASM Global Parent, Inc., AEG Venue Management Holdings, LLC, and their respective affiliates, related entities and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers (collectively "indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise directly or indirectly, in whole or in part, from (a) the services under this Agreement, or any part of such services, and (b) any negligent, reckless, or willful act or omission of the CM/PM, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.
- B. **Limitations.** No insurance policy covering the CM/PM's performance under this Agreement shall operate to limit the CM/PM's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The CM/PM assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnatee or the consultants of any Indemnatee. The CM/PM's indemnification obligations for claims involving "Professional Liability" (claims involving acts, errors, or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical property damage) shall be limited to the extent of Consultant's negligence or other breaches of duty.
- C. **Copyright infringement.** The CM/PM shall also indemnify, defend and hold harmless all indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the HTA, or any of its officers, or employees of articles or services to be supplied in the performance of the CM/PM's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

4. CONFLICTS OF INTEREST

- A. The CM/PM shall have no interest and shall not acquire any interest, direct or indirect, which conflicts with the faithful performance of this agreement.
- B. HTA will not permit the CM/PM to perform oversight on any jobs where there is any conflict of interest between the CM/PM and other firms, including subsidiaries and related companies, involved in the project. In other words, the consultant who is managing the projects for the HTA may not bid on the design or construction portion of the Project.

5. CERTIFICATION of BIDDER REGARDING DEBARMENT and SUSPENSION

The Consultant shall certify that it has not been debarred from State or County projects.

6 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The CM/PM acknowledges that pursuant to the Americans with Disabilities Act (ADA), programs, services, and other activities provided by a public entity to the public, whether directly or through a Consultant, must be accessible to the disabled public. The CM/PM shall provide the services specified in this contract in a manner that complies with the ADA and all applicable federal, state, and local disability rights legislation. The CM/PM agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under any agreement with the HTA and further agrees that any violation of this prohibition on the part of the CM/PM, its employees, agents or assigns shall constitute a material breach of the agreement.

7. PROHIBITING THE USE OF HTA FUNDS FOR POLITICAL USE

No funds appropriated by the HTA for any contract, grant agreement, or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign or measure. Recipients of HTA funds will cooperate in audits conducted by the HTA or the State of Hawaii to verify that no HTA funds were used for political purposes.

8. PREVAILING WAGES

The CM/PM shall ensure that all contractors working on State construction projects at the HCC shall comply with the Prevailing Wage Laws of the State of Hawaii.

9. PUBLIC RECORDS/ACCESS TO PROPOSALS

Please be advised that Proposals may be disclosed under the State of Hawaii Uniform Information Practices Act.

10. RESERVATIONS OF RIGHTS BY HTA

The issuance of this RFQ/RFP does not constitute an agreement by HTA that any contract will be entered into by HTA. HTA expressly reserves the right at any time to:

- A. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- B. Reject any or all proposals.
- C. Reissue a Request for Qualifications/Request for Proposals.

- D. Before the submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment, or services to be provided under this RFQ/RFP, or the requirements for contents or format of the proposals.
- E. Procure any materials, equipment, or services specified in this RFQ/RFP by any other means; or
- F. Determine that the Project will be pursued.

11. NO WAIVER

No waiver by HTA of any provision of this RFQ/RFP shall be implied from any failure by HTA to recognize or take action on account of any failure by a proposer to observe any provision of this RFQ/RFP.

SECTION 11 – FINANCIAL RESPONSIBILITY

1. HTA accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ/RFP, participating in oral presentations, or negotiating an agreement with HTA. All proposals, statements, and material submittals will become the property of HTA and may be used by the HTA in any way deemed appropriate unless the CM/PM specifically asks in writing for its return at the time the CM/PM submits its RFQ/RFP proposal.
2. HTA is not obligated to award a contract (Agreement) under any circumstance and specifically reserves the right to withdraw this RFQ/RFP or modify any contract entered pursuant to this RFQ/RFP at no cost to the HTA.
3. HTA anticipates that contracting with the selected CM/PM may be incremental or phased to best align with funding availability.

SECTION 12 – INTERPRETATION AND ADDENDA

1. Any interpretation of or change in this RFQ/RFP will be made by written addendum and shall become part of the RFQ/RFP and any contract awarded. HTA shall be bound only by the written terms of this RFQ/RFP and any addenda hereto. HTA will not be responsible for any other explanation or interpretation.

SECTION 13 – ERRORS AND OMISSIONS IN RFQ/RFP

1. Proposers are responsible for reviewing all portions of this RFQ/RFP. Proposers are to promptly notify HTA, in writing, upon discovery of any ambiguity, discrepancy, omission, or other errors in the RFQ/RFP. The deadline for submitting questions and requests for clarification is by the due date shown in the Procurement Timetable and Significant Deadlines in Section 2. Modifications and clarifications will be made by addenda. The HTA is not obligated to issue addenda in response to any request submitted after the deadline. Oral statements shall not be relied upon as legitimate responses and shall not be binding.
2. Failure by HTA to object to an error, omission, or deviation in a Proposer's proposal will in no way modify the RFQ/RFP or excuse the Proposer from full compliance with the specifications of the RFQ/RFP or any contract awarded pursuant to the RFQ/RFP.

**OFFER FORM
OF-1**

REQUEST FOR QUALIFICATIONS/PROPOSAL
STATE OF HAWAII
HAWAII TOURISM AUTHORITY
RFP-23-12

Procurement Officer
Hawaii Tourism Authority
1801 Kalakaua Avenue, First Floor
State of Hawaii
Honolulu, Hawaii 96815

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; 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) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she 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:**

**OFFER FORM
OF-2**

RFP 23-12

The total ESTIMATED contract cost for accomplishing the development and delivery of the services.

\$ _____

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

GENERAL PROVISIONS FOR GOODS AND SERVICES

HAWAII REVISED STATUTES (HRS) CHAPTER 103D

Attached are the General Provisions, dated April 2013 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.

OVERVIEW OF THE RFQ/RFP PROCESS

- 5.1 The RFQ/RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.
- 5.2 The procurement process begins with the issuance of the RFQ/RFP and the formal response to any written questions or inquiries regarding the RFQ/RFP. Changes to the RFQ/RFP will be made only by Addendum.
- 5.3 The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

- 5.4 The Procurement Officer, or an evaluation committee approved by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.
- 5.5 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.
- 5.6 If during discussions there is a need for any substantial clarification or change in the RFQ/RFP, the RFQ/RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFQ/RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- 5.7 Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. 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.
- 5.8 The date and time for Offerors to submit their BAFO, if any, is indicated in RFQ/RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
- 5.9 After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, 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 the RFQ/RFP.

- 5.10 The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, and a contract is executed all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.**
- 5.11 The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFQ/RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFQ/RFP.**
- 5.12 The RFQ/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.**

[illegible]

Hawai'i Convention Center

APPENDIX 3

RFQ/RFP # 2023-17

Construction Management/Project Management Services

PROPOSAL FORM - RATE CARD

Job Description	Hourly Rate
Project Manager / Construction Manager	
Scheduler	
Cost Estimator	

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.

HAWAII CONVENTION CENTER
HEALTH & SAFETY PROCEDURES - CONTRACTOR POLICY

OVERVIEW:

Provide contractors of the Hawaii Convention Center ("HCC" or Facility) with the HCC/AEG Management HCC, LLC ("AEG") rules, regulations and requirements when working at the Facility.

POLICY:

The policy of HCC/AEG is to provide a safe and secure environment for our clients, guests, visitors, contractors and employees.

PROCEDURE:

All contractors and sub-contractors are expected to abide to all HCC/AEG policies as listed:

- I. Health, Safety and Environment
- II. Access to Facility
- III. Fire, Health, and Safety - General Rules
- IV. Equipment Safety
- V. Hazardous Works and Materials
- VI. Special Requirements
- VII. General Do's and Don'ts

I. HEALTH, SAFETY AND ENVIRONMENT

A. Compliance

The Contractor, their employees and agents will comply with all relevant statutory and HCC/AEG's regulations pertaining to health, safety and environmental protection.

The Contractor shall ensure that all materials and equipment used in the project, regardless of the owner, comply with all relevant regulations and statutory requirements of HCC/AEG, the Government, local and other authorities with jurisdiction for occupational safety and health. All equipment requiring certification by authorizing agencies will be certified before brought onto Facility premises.

The Contractor is required to present license/certification of specific individuals who will operate any of HCC's lift equipment, in accordance with applicable state and federal OSHA regulations and HCC Safety Policies.

The Contractor is required to ensure proper license/certification is current, lawful and held by any individual operating lift equipment not owned by HCC.

B. **Responsibilities**

The Contractor is wholly responsible for the safety and safe working practices of its employees and agents. The Contractor will ensure their staff is trained and certified, as applicable, on the equipment required for the job, safety precautions and safe working practices before the job commences. HCC/AEG has the right to request the Contractor to provide certification, licensing or credentialing that is required by government regulation.

The Contractor shall report to HCC/AEG (Security Department) any incident or accident occurring, which involves any employee or agent of the Contractor. In cases of injuries or non-injuries incidents judged to be serious by HCC/AEG, the Contractor will carry out a full investigation without additional cost to HCC/AEG. A detailed report is submitted to HCC/AEG within three (3) working days, stating events relating to the incident or accident: the primary and contributory causes, conclusions, and recommendations to prevent reoccurrence.

The Contractor affirms that it has a written safety policy which is comparable to the HCC/AEG Safety Policy. The written safety policy is acknowledged, supported, and endorsed by HCC/AEG management. The Contractor further affirms that its safety policy has been disseminated and Contractor Employees and agents have been trained and signed off as completed.

The Contractor's safety policy will include a description of the Contractor's safety organization, procedures, and methods of communication to and from its employees and agents.

Contractors, their subcontractors, suppliers, and delivery vendors to all have appropriate and active Insurance Certificates and personal Medical Coverage for all employees or representatives.

C. **Health and Safety Site Control**

The Contractor will permit HCC/AEG access to any equipment, personnel, materials, and records involved in any job on the work site at HCC/AEG to enable HCC/AEG to:

1. Ensure the Contractor complies with all provisions presented herewith.
2. Ensure the Contractor is carrying out its responsibility under its Safety Policy.
3. Ensure the Safety Policy of the Contractor complies with all provisions presented.
4. Conduct, if required, independent investigations into an incident arising out of/or in connection with the job performance.

D. **Violation of Health and Safety Regulation**

If the Contractor is performing the job in an unsafe manner, or if its equipment requires modification to meet statutory or HCC/AEG safety standards, **HCC/AEG reserves the right to immediately suspend all or part of the job.**

The suspension notice shall include reasons for HCC/AEG issuing such notice and will outline the steps required to be taken by the Contractor to rectify the hazard.

The Contractor shall be considered inoperable of its obligations under this situation until the unsafe working condition hazard is remedied to the satisfaction of HCC/AEG.

The refusal or inability of the Contractor to remedy any hazardous working practice or to perform the required modification to its equipment within seven (7) days shall constitute a breach of Contract. HCC/AEG may, in addition to and without prejudice to any other rights the Contractor may have, terminate the Contract in accordance with the Contract.

E. **Personal Protective Clothing and Equipment**

The Contractor, at its own expense, supplies all its employees or agents, adequate personal protective clothing and equipment that will satisfy accepted industry standards as advised by HCC/AEG. Such protective equipment is supplied and always maintained in good condition at the Contractor's expense. The equipment must be worn on all relevant occasions as required by law, notice, instruction and in good sense.

F. **Security Checks**

HCC/AEG reserves the right to require the Contractor and their employees or agents to produce acceptable evidence of identification, such as a driver's license or identification card or badge, to HCC/AEG for the purpose of entering any premises of HCC/AEG. The Contractor and their employees and agents shall consent to the searching of any package, toolbox, or suitcase in their possession.

Contractors and their staff unwilling to comply with such requirement will not be permitted entry into any premises of HCC/AEG and, consequently, HCC/AEG will not be liable for any cost arising directly or un-directly out of such circumstances. The Contractor and their employees or agents shall also comply with such request prior to leaving the premises of HCC/AEG.

II. **ACCESS TO THE FACILITY**

A. **Access Control**

The Contractor must issue a list of all workers who will enter the Facility's premises by a company official. The list is provided to the Security Department prior to an employee or agent being authorized access to the premises.

Workers must identify themselves at the Security checkpoint entrance to the Facility. Verification will be by the submitted name list. Contractors should provide their workers with a nametag with the following information:

Name of company
Name and surname of worker
Position
Photograph of worker
Number of tag

Workers will be issued a colored wristband to verify they have checked in with HCC Security and are authorized to be on property.

The Facility, at its discretion, can object and require the Contractor to remove any person(s) employed by the Contractor or agent from the site who, in the opinion of the Facility is incompetent or negligent in the proper performance of their duties or whose employment or behavior is otherwise considered by the Facility as undesirable. Such persons are not employable or can continue work at the Facility.

B. **Means of Access**

Workers must only enter and exit the Facility through the Security Check-In on the Intermediate Level. It is accessible by walking along the Ala Wai Terrace Promenade past the Grand Staircase. When entering through the parking level, take service elevators 4 and 5 located in Section F, to the Intermediate Level "2" to Security Check-in. Contractors are not allowed to use guest elevators.

On the first day of work, all workers are to meet at the designated entrance for the identified management personnel to direct them to the work site.

C. **Daily Responsibility**

A responsible person designated by the Contractor will report their daily scope of work to the designated management in charge before commencing work. The Chief Engineer is the main point of contact should it be necessary to isolate or shut down any of the Facility plant equipment or systems.

D. **Event Contractor Use of Wristbands**

Should a contractor doing business on HCC decide to use a wristband system to ensure security within their area of operation, The Event Manager will be responsible for informing HCC Security of the use of wristbands and the color the contractor will be using. This will enable Security to select a different color than the contractor so there is no confusion.

E. **Before/After Shift**

Contractors are only allowed to be on site ½ hour prior and ½ hour after a scheduled shift. Contractors are not allowed on site when not scheduled.

III. **FIRE, HEALTH AND SAFETY - GENERAL RULES**

SMOKING IS STRICTLY PROHIBITED IN ALL AREAS OF THE FACILITY EXCEPT IN THE DESIGNATED SMOKING AREA.

Contractors and contractor's employees must abide by the Facility current COVID-19 protocols and procedures.

The contractor MUST appoint a responsible person to coordinate and ensure all safety measures and MUST be present at the project site at all times.

HCC/AEG designated management personnel will brief the contractor on the facility's firefighting system, fire detection system and evacuation routes and the Facility work safety guidelines.

All working areas must be cleaned, and debris removed from the Facility premises on a daily basis at the end of each day.

All work areas are to be properly secured prior to departure at the end of a day.

A fully supplied first aid kit must be provided by the Contractor and kept at the work site.

All workers are to be properly dressed based on the safety guidelines with proper shoes or boots.

All electrical equipment is to be properly wired, grounded with correct fitting plugs. Items inoperable or hazardous must be handled under the lockout tag out guidelines.

IV. **EQUIPMENT SAFETY**

Any moving vehicle (electric carts, scooters, bicycles, tricycles, etc.) must be pre-approved in writing for use by the Facility Director of Operations prior to use in the Facility. Use of approved vehicles is restricted to work areas only.

Approved personnel using a scissor or boom lift must wear a hardhat and eye protection. A safety harness is required when using lifts at all times.

Workers operating equipment, such as forklifts and aerial lifts must be certified in the use of such equipment and carry proof of such current certification while operating equipment. Operators must present current certification at Security Check-in and obtain a wristband authorizing use of lifts owned by HCC.

Transporting lifts to another level, through the Facility freight elevators require pre-approval and scheduling of an elevator operator through the Facility.

No vehicles or pallet jacks are allowed to be operated on the green, slate tile floor areas without pre-approval. Necessary preparations are required.

V. **HAZARDOUS WORK AND MATERIALS**

A special Work Permit must be filed with the Chief Engineer or designated department prior to commencement of hazardous work for:

- Welding
- Cutting
- Scaffolding work
- Spray painting or varnishing
- High suspension cleaning

Note: A separate fire extinguisher must be provided at location of all welding or cutting work.

All hazardous materials e.g. solvents, pressurized canisters, gasoline, oils, fuels, paints, varnishes etc. shall be stored in approved designated areas and in OSHA approved storage containers. All containers will be metallic and properly sealed. All containers will be properly labeled. Proper respiratory masks must be used. NO SMOKING must be enforced. All materials are identified in the MSDS sheets available in each department and Security Base. Contractors are responsible for disposing of any hazard chemical brought onto HCC property.

VI. **SPECIAL REQUIREMENTS**

A. **Noise Control**

The Contractor shall note that no noisy Work will be allowed to be carried out before 8 a.m. and after 5 p.m.

Due to "business as usual" factor for the Facility, it is further required that noise levels be maintained at a low level to minimize the disturbance/noise nuisance to the Facility occupants. This will include cutting of holes, drilling/fixing to structures, alterations and demolition, grinding of steel, removal of existing elements, finishes, fittings, fixtures, hacking/hammering etc. This type of work should be effectively reduced to an absolute

minimum by adoption of alternative methods/fixings and containment on the carrying out of all such noisy operations within limited periods daily.

Should noise levels in the opinion of the Facility become excessive and unacceptable under the above conditions, the Contractor will be requested to take immediate action to cease all operations giving rise to the unacceptable noise levels and to amend his methodology to allow him to continue within the acceptable noise limits.

B. Construction Barricades

The Contractor may be required to provide a section of boarding or construction barricades to match the surrounding area to separate the work areas from the Facility public areas and to prevent all unauthorized public access to all work areas. This boarding will require adaptation and relocation to suit the phasing/staging of the project work.

Before erection/ alteration of boarding, the Contractor will submit a detailed plan showing the proposed form/ location of boarding for approval by the Facility.

C. Quarterly Meeting

The Contractor is required to attend HCC Quarterly Contractor's meeting, held at the Facility. A minimum of one company representative must sign-in for attendance. Notification of the meeting schedule will be sent via email to the designated contact. It is the Contractor's responsibility to ensure that the most current email address and contact information is provided to the Facility.

VII. GENERAL DO'S AND DON'T'S

1. Only authorized subcontractors and their employees are permitted to operate and conduct business within the Facility. The Director of Operations will determine authorized contractors.
2. Children under eighteen (18) years of age are not permitted in work areas.
3. This is a State-owned building and therefore it is a NO SMOKING facility. Smoking is prohibited in all areas of the Facility except in the designated smoking areas. The designated smoking area is located in the ma uka/Waikīkī corner of the parking garage. Contract employees are prohibited from using the Porte Cochere or Kahakai Drive as a smoking or break area.
4. Contractor must stay in designated job site areas only and must not stray to any other areas of the Facility under any circumstances. At the end of the shift, contractors are not allowed to remain on property or at their vehicles.
5. No Contractor is allowed, at any time, in the client, guest/public areas of the Facility nor be allowed to use any guest elevator or restroom in the Facility.
6. ALL contractor workers are required to sign in and out of the building at Security Check-In located on the intermediate level. Workers are required to sign in and obtain an identification wristband while on Facility property. Workers are required to return to Security Control and sign out at the end of their work shift.
7. All signs and traffic markings must be obeyed in the parking garage.

8. There is no overnight parking allowed unless prior arrangements have been made with the Director of Security. If authorization is given, an overnight permit will be issued and must be displayed on the dashboard of the vehicle it is issued to. Parking cost will be charged for each day the vehicle is parked. Vehicles left overnight without authorization will be towed at owner's expense.
9. Contract workers who are dropped off and picked up at the start and end of their shift need to arrange these pick-ups and drop offs on Kalakaua Avenue ONLY. Kahakai Drive is not to be used as a waiting area for pick up.
10. Contractor will maintain complete separation of construction areas for existing functions for airborne contaminants, dust control, noise, waste and all OSHA safety standards.
11. Contractor is responsible for the protection of his work and adjoining areas.
12. Contractor will maintain clear egress in corridors at all times during construction until completed or approved alternative route is established.
13. Under no circumstances may any exterior door be blocked open
14. Contractor shall use designated loading dock area only for the receiving of goods. Loading docks will be used for active unloading and loading only. Dock reservations are required and can be made through docres@hccasm.com. No vehicles will be parked in the loading dock. No deliveries through the front entrance are allowed.
15. Contractor must park in the area designated by the Facility.
16. There will be no alcohol, beer, wine or drugs consumed on the job site or during the workday whatsoever.
17. Meals are to be consumed only in the Lunch Room located on the Parking Level to the rear of Elevators 4 & 5.
18. All bags or boxes are subject to security check upon entering or leaving the building. Any refusals will cause the person to be barred from the Facility premises.
19. Contractor is to furnish their own tools. Under no conditions will a non-Facility employee be allowed to use a Facility tool. By the same token, Facility employees are not to use Contractor's tools.
20. The Facility is not responsible for the Contractor's property.
21. All work areas must be kept clean at all times. Contractor is responsible for the removal of all debris and excess material during and at the completion of the project. Contractor is not to use Facility telephones at any time for any reason.
22. Contractor must wear clothing, which is in good taste. Any attire which causes unwarranted distractions is unauthorized. Lack of a shirt or wearing muscle, fishnet, sleeveless shirts, cut-offs, shorts or sandals are not permitted. Clothing with offensive wording is prohibited.
23. Proper protective safety equipment shall be worn at all times. (No open toe shoes, slippers, etc.)
24. Contractors must conduct themselves in a professional manner and are subject to the same rules as Facility Employees. No shouting, profanity, "cat calling" or confrontation with Facility guests or with Facility employees will be tolerated.

25. Contractors are not permitted to fraternize with Facility employees, clients, guests or patrons.
26. The use of portable radios, stereos is strictly prohibited.
27. Violation of these policies will be documented and reported to Facility management for appropriate action

Revised: 2/2023

AGREEMENT FOR CONSTRUCTION MANAGEMENT/PROJECT MANAGEMENT SERVICES

FOR THE ROOFTOP TERRACE DECK – FULL REPAIR

BETWEEN

**STATE OF HAWAII
Department of Business, Economic Development, and Tourism
Hawaii Tourism Authority
AND**

NAME

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AGREEMENT FOR CONSTRUCTION MANAGEMENT/ PROJECT MANAGEMENT SERVICES

This Agreement for Construction Management/Project Management Services ("Agreement") entered into by and between State of Hawaii, Department of Business, Economic Development, and Tourism, Hawaii Tourism Authority and NAME, the Construction Management/Project Management Consultant ("CM/PM") is made effective as of DATE (the "Effective Date"). The Company and CM/PM agree as set forth below.

ARTICLE 1 **GENERAL**

1.1 As more particularly described below, the CM/PM shall act as the Company's representative to provide management of the scope, quality, design, construction, budget, program requirements, and schedule of the selected capital improvement projects (each a "Project" or collectively the "Projects"). Article 2 describes the range of services that the Company may request on any given Project. The specific "Services" that the Company expects the CM/PM to perform on a particular Project are set forth in Section 4 of the Request for Qualifications/Request for Proposals for Construction Management/Project Management Services for Construction Projects at the Hawai'i Convention Center dated DATE, including any and all addenda (hereinafter the "RFQ/RFP"), which is incorporated herein by reference in its entirety and made a part of this Agreement. When a specific Service is requested, the CM/PM is obligated to perform such services in a manner consistent with the applicable provision or provisions set forth in Article 2 of this Agreement. Except for those provisions in Article 2 of this Agreement that are not applicable to a particular Project, all other terms and conditions of this Agreement shall apply to the Services requested.

1.2 The CM/PM recognizes its fiduciary duty to the Company to perform its obligations in a first-class manner that will advance the Company's interests. The CM/PM represents that it is highly qualified and possesses demonstrated experience, including, without limitation having managed projects of comparable size and complexity, with a record of performing such projects with a high degree of customer satisfaction.

1.3 The CM/PM shall furnish efficient business administration and supervision in performing its obligations. The CM/PM agrees that it will only employ staff and personnel who are properly trained and skilled to perform the required management Services with the requisite professional skill and care to provide the expeditious, orderly and timely progress of any particular Project. Without limiting the other standards, the CM/PM shall use at least the same degree of skill and care as if it was developing a similar project for its own ownership. The CM/PM Team is described in the CM/PM's Proposal Package submitted in response to the RFQ/RFP. The Proposal Package submitted in response to the RFQ/RFP is incorporated herein by reference in its entirety and made a part of this Agreement.

Any proposed changes to the CM/PM Team shall be communicated to the Company before the change is scheduled to take place.

1.4 In performing the Services, the CM/PM is deemed to be an independent contractor and not an agent for the Company.

1.5 The CM/PM shall commence performing the Services on the commencement of this Agreement. The Term of this Agreement is defined in Paragraph 8.1 of this Agreement.

1.6 DEFINITIONS

1.6.1 Intentionally Omitted.

1.6.2 Services: The Services required of the CM/PM as set forth in Section 4 of the RFQ/RFP and defined in Article 2 of this Agreement.

1.6.3 Intentionally Omitted.

1.6.4 Intentionally Omitted.

1.6.5 Company Indemnitees: State of Hawaii, Hawai'i Convention Center, the Hawai'i Tourism Authority and the State of Hawai'i, and each of its and their respective affiliates, related entities and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers.

1.6.6 Construction Budget: The sum of money dedicated to the construction of each specific Project, as set forth in Paragraph 2.2.3 of this Agreement.

1.6.7 Contractor: The qualified, licensed general contractor entity retained by the Company to construct a particular Project.

1.6.8 Contract Documents: The written agreement between the Company and the Contractor, including, without limitation, any supplementary conditions, schedules, drawings, Specifications, Addenda, modifications, and other documents listed in the written agreement between the Company and the Contractor.

1.6.9 Design Standards: The design standards, as may be modified, to reflect exceptions ordered by the Company, all of which must be consistent and in full compliance and conformance with all applicable laws, ordinances, building codes, rules and regulations.

1.6.10 HCC: Hawai'i Convention Center

1.6.11 HTA: Hawai'i Tourism Authority

1.6.12 Project: Comprised of various projects planned and anticipated for the HCC. A list of the Company's anticipated projects for the HCC are set forth in Section 3 of the RFQ/RFP and incorporated herein by reference. Said list is subject to change and this Agreement neither guarantees all or a portion of the work described therein.

1.6.13 Project Cost: The estimated cost to the Company of all elements of the Project, including all hard and soft costs such as testing, permits, utility fees, bonds and insurance, taxes, consulting fees, operator fees, project management fees and purchasing fees.

1.6.14 RFP: Request for Qualifications/Request for Proposals for Construction Management/Project Management Services for Construction Projects at the Hawai'i Convention Center.

Project can be completed in accordance with the latest approved budget approved by the Company. The CM/PM shall cooperate with the Company and verify that the CM/PM, the Contractor, any subcontractors and other consultants to the Company comply with, and give notices required by, all applicable laws, ordinances, building codes, rules, regulations and lawful orders of public authorities bearing on performance of the work.

2.1.2 The CM/PM shall publish and maintain a Project directory containing the names of all entities involved in the Project. The CM/PM shall maintain complete files of all correspondence, accounting records (as more fully described in Paragraph 4.5.1), contracts, contract change orders, submittals, meeting minutes, and other communications related to all phases of the Project. The CM/PM shall make all such records available to the Company, and upon completion of the Project, shall deliver them to the Company.

2.1.3 Throughout the Term of this Agreement, the CM/PM shall assign and dedicate personnel to the Project sufficient to perform the Services called for in this Agreement. Subject to the Company's written approval, the CM/PM shall designate a Project Manager, who will be the representative authorized to act on the CM/PM's behalf with respect to all decisions that are required to be made in connection with the Project. No substitutions may be made of the specific key personnel and lead team members identified in the CM/PM's response to the RFP without the express written approval of the Company. The CM/PM shall direct its personnel in such a way to foster a cooperative team spirit and minimize conflict among the various parties involved in the Project. The CM/PM shall promptly remove any personnel not performing to the Company's satisfaction as determined by the Company in its sole discretion.

2.1.4 The CM/PM shall be responsible for providing quality assurance for the Project by requiring all contractors to provide quality control programs that will ensure first class design and construction services. The CM/PM shall monitor performance of those under contract with the Company for compliance with contract requirements, promptly notifying the Company of any non-compliance and ensuring that all necessary corrective action is taken.

2.1.5 Depending on the expertise of the CM/PM, the Company reserves the right to implement a different arrangement of assignments and responsibilities between the Company and the

ARTICLE 2 **SERVICES**

2.1 GENERAL SERVICES

2.1.1 The CM/PM shall provide administrative, management, and related services for the purposes of coordinating the activities of the Contractor, any subcontractors, the architect/engineer (if applicable) and other consultants to the Company so that the

CM/PM. Whenever the Company determines that it would be in the best interests of the Project, the Company reserves the right to use qualified staff of the Company or other consultants to provide construction management services, direct the CM/PM to integrate qualified staff of the Company into the CM/PM Team or modify the scope of Services during contract negotiations.

2.2 PRELIMINARY PLANNING/ FEASIBILITY SERVICES

2.2.1 The following tasks describe the anticipated preliminary planning and feasibility Services required by the CM/PM for the Project. During the course of each Project, additional preliminary planning and feasibility tasks may be identified as necessary for the successful completion of the Project.

2.2.2 The CM/PM shall provide and maintain a Project Construction Controls Systems ("PCCS") acceptable to the Company. The PCCS will be implemented to facilitate and document communication among the Company, the CM/PM, the general contractor and core subcontractors, the architect/engineer (if applicable), the HCC, and other consultants, and will continue to be used throughout the construction to post-construction phases. PCCS shall, at minimum and without limitation, include the following: change order and change order request tracking and management, contract management, project and program dashboard, project reporting, project logs tracking RFIs/submittals, document management and archival, photo management, punch list, and cost management.

2.2.3 For each specific Project, the CM/PM shall develop detailed project construction budget and cash flow projections (the "Construction Budget"), to be approved by the Company.

2.2.4 The CM/PM shall provide functional integration with HCC/Company data-based reporting systems and coordination with HCC staff in the implementation and maintenance of the PCCS.

2.2.5 The CM/PM shall provide access and support services to the PCCS for the Contractor, any architect/engineer (if applicable), Company and the Company's staff, and other consultants.

2.2.6 The CM/PM shall review and provide input on the HCC's Procurement Procedures for Construction Projects Manual that will be utilized during construction, including all forms, documents, logs, and procedures requiring review and approval.

2.2.7 The CM/PM shall comply with all aspects of HCC's Procurement Procedures for Construction Projects Manual, in its approved form, and Chapter III of the Hawaii Procurement Code and any applicable Hawaii Administrative Rules when procuring and administering construction contracts.

2.2.8 The CM/PM shall provide bid documents and construction contracts in accordance with Part III of Chapter 103D of the Hawaii Revised Statutes and the HCC's Procurement Procedures for Construction for all construction contracts on each Project.

2.2.9 The CM/PM shall maintain and provide records in electronic format of all correspondences throughout the Project.

2.2.10 For each Project, the CM/PM shall select and coordinate all architectural, design, engineering, or other consulting services. Final approval of all selected designs shall be with the Company.

2.2.11 The CM/PM shall provide a preliminary evaluation of the feasibility of the Company's program, schedule, and budget requirements, each in terms of the other.

2.2.12 As the CM/PM progresses with its review of the Project, it shall review with the Company in writing more specific estimates of the Project Cost. Such estimates shall be provided for the Company's review and approval in its sole determination, and the CM/PM agrees to advise the Company if it appears that a prior estimate of Project Cost, at any phase, may exceed the latest approved project construction budget and, if so, make recommendations for corrective action.

2.2.13 If requested by the Company, the CM/PM shall develop a critical path method schedule ("Schedule") for the design and construction of the Project. In the Schedule, the CM/PM shall coordinate and integrate the Services of the CM/PM, the services of the architects, contractors, and others under contract with the Company, as well as the Company's responsibilities, highlighting critical and long-lead items. Throughout all phases of the Project, including the design and construction phases, the CM/PM shall use the schedule as a benchmark to measure the progress of work in all phases. The CM/PM shall update the Schedule as needed, but in no event less than once every two (2) months, to integrate the schedules of the architects, contractors, and others under contract with the Company to reflect required changes to the Project. The CM/PM shall monitor the critical path and advise the Company of any deviations

which may in the CM/PM's opinion, delay the Project's completion. In such event, the CM/PM shall recommend to the Company any actions the Company could take to mitigate Project delays.

2.2.14 The CM/PM shall advise on the proposed site use and improvements, selection of materials, building systems, and equipment, and methods of Project delivery. The CM/PM shall provide recommendations on relative feasibility of design, construction sequences, availability of materials and labor, and the time requirements for procurement, installation, and construction.

2.2.15 The CM/PM shall identify the permits and approvals required in connection with the Project. The CM/PM shall assist the Company in obtaining applicable building permits and special permits for permanent improvements, as well as requisite approvals from jurisdictions having authority over the Project, and monitor permits and approvals required to be obtained directly by others under contract with the Company, including any architects and contractors.

2.3 DESIGN AND PRECONSTRUCTION PHASE SERVICES

2.3.1 The following tasks describe the anticipated design and pre-construction Services required by the CM/PM in connection with the Project. During the Term, additional preliminary planning and feasibility tasks may be identified as necessary for the successful completion of the Project.

2.3.2 The CM/PM shall work with the design team to complete all design elements necessary for each project.

2.3.3 The CM/PM shall facilitate and direct implementation of program requirements to project architect and finalize program document with project and/or design team.

2.3.4 The CM/PM shall facilitate design coordination with regulating state/city agencies to ensure conformance and timely approvals.

2.3.5 The CM/PM shall provide detailed review and recommendations throughout the development of schematic design, design development and constructions documents.

2.3.6 When applicable, the CM/PM shall assist project architect in preparation of special conditions, general conditions and project specifications with

particular emphasis on material selections and construction phasing and sequencing.

2.3.7 The CM/PM shall serve as the Company's representative throughout design phase to maximize revenue potential and satisfy operating requirements, including Project meetings.

2.3.8 The CM/PM shall facilitate the design of all tenant improvements including the timely and accurate development of all vendor occupied areas and assist the Company with compliance with the requirements of the Americans with Disabilities Act of 1990 (ADA), including hiring consultants to assist with compliance with such ADA requirements.

2.3.9 The CM/PM shall assist the Company in preparing all required planning, building, and zoning applications and obtain necessary entitlements and/or permits, if necessary.

2.3.10 The CM/PM shall assist the Company with any environmental abatement program, coordinate demolition and site preparation, and supervise utility installations or relocations.

2.3.11 The CM/PM shall ensure that the design and construction of all projects comply with all applicable Federal, State, and County laws, codes, ordinances, and rules, including but not limited to ADA and the State Disability and Communication Access Board requirements (HRS Section 103-50).

2.3.12 The CM/PM shall evaluate alternatives for Project delivery methods with the Company and make recommendation regarding most effective and appropriate method.

2.3.13 The CM/PM shall solicit and evaluate general contractor candidates and recommend selection to the Company.

2.3.14 The CM/PM shall review the actual completed work and provide recommendations to the Company as they relate to Contractor's payment requests. Assist the Company in the approval of Contractor's progress payments.

2.3.15 The CM/PM shall provide certified payroll submissions to the State of Hawaii Department of Labor, as necessary.

2.3.16 If the Project involves upgrades or implementation of building systems, the CM/PM shall assist with the training of operation and maintenance of the building system. Provide digital recordings of

all such training for record purposes, unless otherwise determined to be performed by the Contractor, or others.

2.3.17 The CM/PM shall provide advice and recommendations on resolving technical and contractual issues and/or disputes that arise during construction.

2.3.18 The CM/PM shall review, coordinate and recommend action on all deliverables and submittals from consultants, the Contractor, and any key subcontractors on the Projects.

2.3.19 The CM/PM shall assist the Company in ensuring that the Contractor and any subcontractors honor their warranty responsibilities in a timely manner.

2.3.20 Where advantageous and upon request by the Company, the CM/PM shall make digital video camera records of the work. If this task is included in the specifications as a Contractor's requirement, then the CM/PM shall coordinate and maintain the records.

2.3.21 The CM/PM shall assist the Company in preparation for and defending against any legal claim or court suit as needed.

2.3.22 The CM/PM shall establish processes and procedures and roles and responsibilities of the Project Team to ensure the timely resolution of all issues, including, but not limited to, RFIs, Submittals, LEED-related Documentations, Proposed Change Orders (PCOs), Change Orders (CO), Change Order Requests (CORs), Correction Notices, Non-Conforming Work Reports, etc.

2.3.23 The CM/PM shall assist with the coordination LEED close-out documentation and other close-out activities as outlined in the Contract Document.

2.3.24 The CM/PM shall develop a system for the tracking of punch list items. Coordinate with the Contractor, and any subcontractors on the timely correction and completion of all punch list items.

2.3.25 The CM/PM shall coordinate and track the delivery of all spare parts, operation and maintenance manuals, warranty documents, training logs, as-built/record drawings, keys, and any other items necessary to the HCC.

2.3.26 The CM/PM shall prepare monthly reports to detail preconstruction and construction activities;

make recommendations to resolve Project risks; and allocate remaining CM/PM contract amounts towards projected Construction Management tasks.

2.3.27 The CM/PM shall oversee, manage, review, and coordinate the efforts of all architects involved in the Project.

2.3.28 The CM/PM shall attend design progress meetings and be well informed on the content and status of all designs, and make certain that the architect is aware of and incorporates the Design Standards of the Company. The CM/PM shall conduct design reviews at the schematic, design development, and construction document phases to verify that design submissions are timely, constructible, complete, and consistent with the Company's Design Standards and program requirements, including the Project Cost.

2.3.29 The CM/PM will ensure that all concerns and comments raised during the design review by CM/PM or Company are addressed and incorporated into the design, if appropriate.

2.3.30 During each phase of the design process, the CM/PM shall review the latest estimate of a particular Project cost and provide to the Company for its review and approval. The CM/PM shall offer recommendations, including value engineering proposals, on how to conform the Project Cost to the Company's budget.

2.4 PRE-CONSTRUCTION PHASE

2.4.1 The CM/PM shall assist the Company in selecting, retaining and coordinating the services of architects, surveyors, special consultants, testing laboratories and contractors required for the Project. After preparing a responsibility matrix, the CM/PM shall advise the Company on the division of the Project into separate contracts for various categories of services, and shall assist in determining the criteria to be used for awarding contracts.

2.4.2 The CM/PM shall identify and submit a list of prospective contractors and other consultants and shall prequalify bidders. The CM/PM shall only prequalify and recommend entities that the CM/PM has determined have the requisite technical experience and financial resources to perform their obligations in a first-class manner. As part of its prequalification Services, the CM/PM shall prepare and distribute questionnaires, analyze completed questionnaires, and check at least three references before submitting recommendations to the Company.

2.4.3 The CM/PM shall solicit interest in the Project and shall assist the Company in preparing requests for proposal/requests for qualification, supplemental conditions for bid packages; issuing bid documents to bidders; and conducting pre-bid conferences with prospective bidders.

2.4.4 The CM/PM shall receive bids, prepare bid spreadsheets and analyses reflecting quantitative and qualitative evaluations, interview bidders, and make recommendations to the Company for the award of construction contracts.

2.4.5 The CM/PM shall prepare, using any forms made available by the Company, the agreement between the Company and selected Contractors. The agreements will include provisions that will protect the Company's interests and the Company Indemnitees, including, without limitation, any provisions specifically requested by Company. The CM/PM shall require that all reimbursement type contracts are subject to a guaranteed maximum price, subject to the written approval of Company, and will be performed under an "open book" policy and be subject to audit for a period of up to three years after final completion of the Contractor's work.

2.5 CONSTRUCTION, POST-CONSTRUCTION, AND BUDGET/COST ESTIMATE SERVICES

2.5.1 The following tasks describe the anticipated construction, post-construction, budget/cost estimate services required by the CM/PM for the Project. During the course of each Project, additional preliminary planning and feasibility tasks may be identified as necessary for the successful completion of the Project.

2.5.2 The CM/PM shall review and analyze the Contractor's baseline Critical Path Method ("CPM") schedules, schedule updates (monthly, or at a Company-specified frequency), and construction "look-ahead" schedules.

2.5.3 The CM/PM shall monitor construction progress with respect to schedule and procedures and implement actions necessary to maintain or improve construction progress.

2.5.4 The CM/PM shall prepare and submit reports detailing the review and approval of the CPM schedules. All construction project schedules will be prepared utilizing the CPM.

2.5.5 The CM/PM shall prepare periodic progress status reports.

2.5.6 The CM/PM shall prepare recommendations on how to recover from schedule slippages.

2.5.7 The CM/PM shall analyze impacts to schedule resulting from proposed change orders and pending/approved change orders on the project duration and schedule, including time extension requests and rain or other weather-related delay days.

2.5.8 The CM/PM shall assist with negotiation of change order requests and change orders as they relate to time impact to the construction schedule.

2.5.9 The CM/PM shall provide schedule updates during critical points of the design phases to assure completion of the design within the baseline schedule timeline. Provide recommendations, as necessary, to ensure that each Project can meet the schedule milestones.

2.5.10 The CM/PM shall complete Project closeout, including, without limitation, punch list generation and monitor final acceptance of equipment and facilities, compilation and review of all operations and maintenance manuals, and training of all operations staff.

2.5.11 The CM/PM shall review/oversee any "request for information" process and cause a log to be maintained.

2.5.12 The CM/PM shall review/oversee shop drawing/submittal process and cause log to be maintained.

2.5.13 The CM/PM shall implement punch list procedure and continue to participate through correction and completion of all punch list items.

2.5.14 The CM/PM shall be responsible for securing, reviewing, accepting and distributing all as-builts, warranties and other turnover documents.

2.5.15 The CM/PM shall assist with compliance with the Occupational Safety and Health Act.

2.5.16 The CM/PM shall coordinate and obtain appropriate lien waivers and related releases from all contractors and subcontractors working on the Project, including recording (or causing the Contractor or applicable subcontractor to record) such lien releases in accordance with applicable laws.

2.5.17 The CM/PM shall insure that the HCC's Health and Safety Procedures are followed by the General Contractor and all workers on any Project. The HCC's Health and Safety Procedures are contained in Appendix 4 to the RFP and are incorporated herein by reference.

2.5.18 The CM/PM shall review, evaluate, validate, and reconcile construction cost estimates and project cost projections and escalations prepared by architect/engineering team and Contractor to facilitate the establishment of a value targeted budget and scope.

2.5.19 When requested by the Company, the CM/PM shall prepare independent cost estimates at each major design milestone for all trade packages, as requested.

2.5.20 The CM/PM shall provide cost budget, cost forecasts, and cost monitoring management services. The CM/PM shall provide cost estimates at key design phase milestones to assure completion of the Project within the cost budgets approved by the Company.

2.5.21 The CM/PM shall assist in negotiations of change order requests and change orders for cost and provide appropriate recommendations to the Company.

2.5.22 The CM/PM shall prepare construction cost estimates for the major design phases: 100% Design Development (DD), and 50% and 90% Construction Drawings (CD).

2.5.23 The CM/PM shall develop and implement a tracking system to monitor and control the status of construction change orders, change order requests, and proposed change orders, and shall review and advise the Company on change order requests.

2.5.24 The CM/PM shall prepare reports monitoring construction progress and construction budget expenditures.

2.5.25 The CM/PM shall participate in the evaluation and recommendation of Value Engineering measures.

2.5.26 The CM/PM shall provide input on potential impacts and risks of proposed construction measures and review comments by General Contractors, or the design team.

2.5.27 The CM/PM shall review and advise on contractor's and its subcontractors' shop drawings, fabrication drawings, coordination drawings,

submittals, and RFIs for compliance with the Contract Documents.

ARTICLE 3 **COMPANY'S RESPONSIBILITIES**

3.1 The Company shall provide requirements for the Project, including a program that sets forth the Company's objectives, general schedule, constraints and criteria, including, without limitation, space requirements and relationships, flexibility, expandability, specialty equipment, systems, and site requirements and Design Standards.

3.2 The Company shall review and approve an overall budget that includes the Company's costs and reasonable contingencies related to all such costs for the Project based on consultation with the CM/PM.

3.3 The Company shall designate a representative(s) authorized to act on the Company's behalf with respect to the Project. The Company, or its authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the CM/PM, in order to avoid unreasonable delay in the orderly and sequential progress of the CM/PM's Services.

3.4 Intentionally omitted.

3.5 If deemed necessary by the CM/PM, the Company will furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Document. The CM/PM shall consult with the Company and the Company's design team as to whether such tests are necessary.

3.6 The services, information and reports required by Paragraphs 3.1 through 3.5 shall be furnished at the Company's expense, and the CM/PM shall be entitled to rely upon the accuracy and completeness thereof.

ARTICLE 4 **PAYMENTS TO THE CM/PM**

4.1 BASIC COMPENSATION

4.1.1 Compensation for Services shall be as set forth in the attached Exhibit A, which is the BAFO Rate Card, dated ("Compensation Schedule)."

4.2 Payments are due and payable thirty (30) days from the date of a properly submitted invoice from CM/PM fully describing the work performed on any specific Project (invoices for different Projects should be submitted separately), including, where applicable, the number of hours worked by CM/PM personnel, the rates, taxes, and if any, the compensation due to a Contractor.

4.3 REIMBURSABLE EXPENSES

4.3.1 Reimbursable Expenses ("Reimbursable Expenses"), which must be approved in advance in writing by Company, are in addition to compensation for Services and include out-of-pocket expenses incurred (without mark-up) by the CM/PM and CM/PM's employees and consultants in the interest of the Project, such as:

.1 Expense of transportation in connection with the Project; expense in connection with authorized out-of-town travel, including airline tickets for coach/economy class; and fees paid for securing approval of authorities having jurisdiction over the Project.

.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of drawings, specifications and other documents.

.3 If specifically authorized in advance by the Company for changed work, any overtime expenses requiring higher than regular rates.

4.4 PAYMENTS ON ACCOUNT AND REIMBURSABLE EXPENSES

4.4.1 Reimbursable Expenses shall be made monthly upon presentation of the CM/PM's properly submitted statement of services rendered or expenses incurred.

4.5 CM/PM'S ACCOUNTING RECORDS

4.5.1 Records of time expended by the CM/PM's personnel that are the basis for the CM/PM's fees, records of Reimbursable Expenses shall be made available to the Company, or the Company's authorized representative at the Company's request.

ARTICLE 5 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

5.1 The CM/PM may retain one record set of the Contract Document. The CM/PM shall not own or claim a copyright in any drawings, specifications and other documents prepared by the Company's architects or other consultants. All copies of such documents, except the CM/PM's record set, shall be returned or suitably accounted for to the Company, on request, upon completion of the Project. The drawings, specifications, and other documents prepared and copies thereof furnished to the CM/PM, are not to be used by the CM/PM for any other projects, or for additions to this Project outside the scope of the work, without the specific written consent of the Company.

ARTICLE 6 **INSURANCE AND INDEMNITY**

6.1 CM/PM'S LIABILITY INSURANCE

6.1.1 Types and Amounts of Insurance. The CM/PM shall purchase and maintain the following types and minimum amounts of insurance during the Term of the Agreement:

.1 Workers

Compensation/Employers Liability Insurance -- Workers compensation insurance shall comply with the applicable statutory requirements. Employers' liability insurance shall have limits of not less than \$1,000,000 for each accident, injury or illness and shall include a Waiver of Subrogation in favor of the Company Indemnitees as defined in Paragraph 1.6.5 unless not permitted by applicable law.

.2 Commercial General Liability Insurance on a per occurrence basis, including:

(i) Broad form property damage.

(ii) Contractual liability insurance, as part of the commercial general liability policy, insuring the CM/PM's liabilities assumed under this Agreement, including the indemnification obligations under Paragraphs 6.3.1 through 6.3.3.

(iii) Personal injury and advertising injury.

.2.1 Minimum Amounts Per Project:

\$2,000,000 EACH OCCURRENCE (combined single limit for bodily injury and property damage)

\$4,000,000 GENERAL AGGREGATE

.3 Automobile Liability Insurance – with limits of liability not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage coverage. Such coverage shall include all automobiles owned, leased, hired or non-owned. In addition, the CM/PM's automobile liability insurance policy shall include coverage for automobile contractual liability. Liability insurance requirement shall not be required for Owned Auto Liability if CM/PM does not own company vehicles.

.4 Professional Liability/Errors & Omissions Insurance – for protection from claims arising out of negligent acts, professional services/errors, and omissions by or for the CM/PM. Such insurance shall be in an amount of not less than \$2,000,000 each claim occurrence.

.5 Personal Property insurance covering CM/PM's personal property, tools, equipment and other property. Such insurance shall include a Waiver of Subrogation in favor of Company Indemnitees.

6.1.2 Terms, Conditions and Endorsements. All of the insurance in Paragraphs 6.1.1.1 through 6.1.1.4 shall be subject to the following terms, conditions and endorsements.

.1 Insurer. The insurance shall be purchased from a company with an "A-IX" or better rating from A.M. Best Company, where said insurance company is both lawfully able to provide insurance in the State of Hawaii and that is satisfactory to the Company.

.2 Additional Insureds
Endorsements. All insurance, except the workers compensation and professional liability insurance, shall include the Company Indemnitees as additional insureds under ISO Form CG 2010 and Form CG 2037 or their equivalents. These endorsements shall apply without regard to other provisions of this Agreement.

.3 Primary Insurance. The commercial general liability insurance under Paragraph 6.1.1.2, the automobile liability insurance under Paragraph 6.1.1.3 shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by the Company regarding the Work under this Agreement. Any

general liability or automobile liability insurance purchased by the Indemnitees is, or has been, specifically purchased as excess over any general liability or automobile liability purchased by the CM/PM.

.4 Severability of Interest. The insurance shall include a severability of interest clause for all named insureds and additional insureds.

.5 Duration. Coverage shall be maintained, without interruption, from the date of commencement of the CM/PM's Services under this Agreement and shall continue for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. The insurance obligations shall survive the expiration or termination of this Agreement.

.6 Notice of Cancellation, Etc. The CM/PM's insurer shall give the Company immediate written notice of any cancellation in accordance with the policy terms but shall provide at least 10 days' written notice for non-payment of premium. The CM/PM shall be required to immediately notify Company of any termination, of coverage or if its coverage no longer meets the requirements of this Agreement by registered or certified mail, return receipt requested.

.7 Defense. The insurance obtained by the CM/PM, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

.8 Delivery of Certificates and Policies. Original certificates of insurance and all requested endorsements, in a form acceptable to the Company, must be filed with the Company prior to commencement of the CM/PM's Services. The CM/PM's certificate of insurance shall be endorsed as follows: "*The Company Indemnitees (as defined in the subject contract) are named as additional insureds for all insurance except the workers compensation and the professional liability insurance. This insurance is primary to and non-contributing with any and all insurance of the Company Indemnitees.*" The Certificate Holder box shall identify the name and

address of the Company entity listed on the first page of this Agreement. With respect to insurance coverage required to remain in force after final payment, the CM/PM shall annually submit certificates of insurance evidencing continuation of such coverage. The CM/PM shall submit copies of the policies within seven days following a request from the Company.

.9 Lapse in Insurance. Failure to maintain insurance shall constitute a material breach of this Agreement. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Company receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Company may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

.10 Subcontractors. If the CM/PM subcontracts a third party sub-consultant to complete any portion of this Agreement, the CM/PM shall ensure that the sub-consultant shall provide all necessary insurance and shall name the Company Indemnities and the CM/PM listed as additional insureds. The CM/PM shall provide such insurance documents to the Company on behalf of sub-consultant.

.11 Non-Waiver. PERMITTING THE CM/PM TO START WORK OR RELEASING ANY PAYMENT PRIOR TO COMPLIANCE WITH THESE REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER THEREOF.

6.2 WAIVERS OF SUBROGATION

6.2.1 The CM/PM and the Company waive all rights of recovery against each other and the Company Indemnites for any losses covered by insurance with the exception of the Professional Liability policy. The CM/PM agrees to defend and indemnify the Indemnites from all such subrogation claims.

6.3 INDEMNIFICATION

6.3.1 To the fullest extent permitted by law, CM/PM shall indemnify, defend, and hold harmless the Company Indemnites, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the CM/PM or its sub-consultants or contractors), expense and liability of every kind, nature, and

description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise directly or indirectly, in whole or in part, from (a) the Services under this Agreement, or any part of such Services, and (b) any negligent, reckless, or willful act or omission of the CM/PM, any sub-consultant or contractor, anyone directly or indirectly employed by them, or anyone that they control, unless due to the negligence or willful misconduct of the Company Indemnites. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this paragraph.

6.3.2 The CM/PM shall defend the Company Indemnites using counsel selected by the CM/PM and approved by the Company. The CM/PM's obligations shall include the obligation to pay reasonable attorneys' fees and costs in connection with such defense.

6.3.3 CM/PM shall also indemnify, defend and hold harmless all Company Indemnites from all suits or claims by a third party for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Company Indemnites of articles or services to be supplied in the performance of CM/PM's Services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of the Agreement.

6.4 INDEPENDENT OBLIGATIONS

6.4.1 Any of the insurance required to be provided by the CM/PM under this Article is in addition to, and is separate and distinct from, any other obligation of the CM/PM under any other article of this Agreement.

ARTICLE 7 **DISPUTE RESOLUTION**

7.1 The Company and the CM/PM agree to use the following procedure in resolving any dispute that arises between the parties relating to this Agreement:

7.1.1 Joint Resolution. A joint resolution meeting shall be held promptly between the parties and shall be attended by individuals with decision-making authority regarding the dispute. At the meeting, the

parties will attempt in good faith to negotiate a resolution of the dispute.

7.1.2 Optional Mediation. If, within thirty (30) calendar days after the initial joint resolution meeting, the parties have not succeeded in resolving the dispute, the parties can choose to mediate the dispute or go directly to arbitration as provided by Section 7.2 herein. In order for mediation to occur, however, all parties involved in the dispute must agree to engage in mediation.

7.2 Arbitration. If the parties are not successful in resolving the dispute, then the parties agree to submit the dispute to arbitration to be held in Honolulu, Hawai'i, or such other venue as may be mutually agreed upon between the parties. Notice of the demand for arbitration shall be filed in writing with the other party. Judgment on the award rendered by the arbitrator(s) may be entered in accordance with applicable law in any court having jurisdiction.

7.3 The Company shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of the CM/PM's failure to comply with any term of this Agreement. In the event of a final, binding dispute proceeding, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

ARTICLE 8 TERM, TERMINATION, SUSPENSION OR ABANDONMENT

8.1 Term. The term ("Term") of this Agreement shall begin upon the Effective Date of this Agreement and shall expire or terminate as provided herein.

8.2 Termination for Default. If either party refuses or fails to perform any of its obligations contained in the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy its obligations contained in the Agreement provisions, or commits any material breach of this Agreement, the other party may notify the defaulting party in writing of the delay or non-performance, and if not cured within ten (10) calendar days or any longer time specified in writing by the requesting party, the requesting party may terminate the defaulting party's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform.

8.3 Termination for Convenience. The Company may, within thirty (30) calendar days' written notice to the CM/PM, terminate this Agreement in whole or in part, for the Company's convenience. The Company shall give written notice of the termination to the CM/PM, such notice shall specify the part of the Agreement terminated and when the termination becomes effective.

8.4 Termination/Expiration of Company Contract. The management contract ("Management Contract") between the Company and the Hawaii Tourism Authority ("HTA") with regard to HCC is scheduled to expire on June 30, 2023. Therefore, the Term of this Agreement shall likewise expire on June 30, 2023, unless (a) this Agreement is assigned to HTA, (b) Company's contract is extended, or (c) Company enters into a further management contract with HTA. In the event that the HTA terminates the Management Contract between Company and HTA prior to June 30, 2023, in whole or in part, for convenience or otherwise, Company may accordingly terminate this Agreement with the CM/PM immediately, by providing written notice.

8.5 Following any termination of this Agreement, the Company shall only be required to pay the CM/PM any compensation earned by it for any Services satisfactorily performed by CM/PM prior to the date of such termination.

ARTICLE 9 NOTICES

9.1 The name and address of the representative of the CM/PM who, among others the CM/PM shall designate, has the authority to bind the CM/PM and to whom all official notices must be sent is as follows:

9.2 The name and address of the representative of the Company who, among others the Company shall designate, has the authority to bind the Company and to whom all official notices must be sent is as follows:

Hawaii Tourism Authority
Attn: Finance Department
1801 Kalakaua Avenue
Honolulu, Hawaii 96815

9.2.1 All required notices, requests, demands, and other communications shall be made in writing as

necessary and shall be either personally delivered, mailed certified or registered mail (postage prepaid, return receipt requested), or sent via nationally recognized overnight delivery service, to the party's representative at the address stated in this Article 9, and shall be deemed to have been given on the date of actual delivery.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 STATUTORY REQUIREMENTS

10.1.1 The CM/PM certifies that it has not been debarred from any State [of Hawaii] or County [of Honolulu] projects.

10.1.2 The CM/PM certifies that it shall ensure that all contractors working on construction projects at the HCC shall comply with the Prevailing Wage Laws of the State of Hawaii.

10.1.3 Prior to the execution of this Agreement, the CM/PM must furnish proof of compliance with the requirements of HRS § 103D-310(c) including the following to the Company:

- Chapter 237, tax clearance;
- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and
- Proof that it is:
- Registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
- Registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business".

10.2 INDEPENDENT CONTRACTOR

10.2.1 The CM/PM is engaged as an independent contractor and as such shall be solely responsible for full compliance with all requirements under all laws and regulation now or in the future applicable to the CM/PM, its business affairs and its performance of its duties under or pursuant to this Agreement, including, without limitation, state and federal taxes applicable to this Agreement (including payroll taxes), unemployment insurance and other insurance applicable and necessary with respect to its employees and all of its duties and obligations as an employer. The relationship created by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be deemed or construed as creating

any partnership, joint venture, employment relationship, agency or other relationship between the parties or to make the Company liable for the debts or obligations or the CM/PM. No officer, employee, agent, or servant of the CM/PM shall be deemed at any time to be an employee, servant or agent of the Company for any purpose whatsoever. The CM/PM shall require all of its personnel from making any representation by word or conduct whereby any other person might understand or believe that such persons are employees, agents, or servants of the CM/PM.

10.3 GOVERNING LAW

10.3.1 The Agreement shall be governed by the law of the State of Hawaii, without regard to that State's rules with respect to choice of law.

10.4 SUCCESSORS AND ASSIGNS

10.4.1 The Company and the CM/PM respectively bind themselves, their partners, successors, assigns and legal representatives to the other party and to partners, successors, assigns, and legal representatives of such other party in respect to the obligations contained in this Agreement. The CM/PM shall not assign this Agreement without the prior written consent of the Company. Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either the Company or the CM/PM.

10.5 Intentionally Omitted.

10.6 CONFLICT OF INTEREST

10.6.1 The CM/PM shall have no interest and shall not acquire any interest, direct or indirect, which conflicts with the faithful performance of this Agreement.

10.7 EQUAL OPPORTUNITY

10.7.1 The CM/PM and its sub-consultants and/or contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or any other characteristics covered by anti-discrimination provisions of applicable federal, state or local law. Failure to comply with such laws shall be a material breach of this Agreement.

10.8 CONFIDENTIAL INFORMATION

10.8.1 During the Term of this Agreement, the CM/PM and its officers, directors, shareholders, employees, agents, contractors and representatives may gain access or be exposed to certain confidential and proprietary information relating to the business of the Company, HCC, or the HTA. The CM/PM agrees, for itself and its officers, directors, shareholders, employees, agents and representatives, that all such confidential or proprietary information shall remain and be kept in the strictest confidence. Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the CM/PM agrees to refrain from disclosing any Project information, confidential, or proprietary information, obtained from the Company and not readily available in the public domain, to any person without the Company's prior written authorization, which authorization may be withheld by Company in its sole discretion. In the event of a legal compulsion or other order seeking disclosure of any non-public Project information, confidential, or proprietary information, the CM/PM shall promptly notify the Company to permit the Company's timely legal objection, if necessary.

10.9 ANTI-BRIBERY PROVISION

10.9.1 CM/PM represents and warrants that CM/PM (including CM/PM's officers, directors, employees, agents, affiliates and other representatives), in connection with this Agreement or any other transactions involving the business interests of the Company, has not and will not pay, offer or promise to pay, or authorize the payment of, any money, or give or promise to give, or authorize the giving of, any services or anything else of value, either directly or through a third party, to any official or employee of any governmental instrumentality, public international organization, or political party (or any agency or subdivision of any such entities) or to any candidate for political office, for the purpose of (i) influencing any act or decision of that person in his or her official capacity, including a decision to fail to perform his or her official functions; (ii) inducing such person to use his or her influence with such governmental instrumentality, public international organization, or political party to affect or influence any act or decision thereof; or (iii) securing any improper advantage. This subparagraph, along with other provisions of the Agreement, shall survive termination or expiration of the Agreement.

10.9.2 If CM/PM breaches any of the covenants set forth in the preceding subparagraph, (i) Company may terminate this Agreement immediately without prior notice to CM/PM; (ii) CM/PM shall indemnify Company for all damages of any kind incurred by

Company or its affiliates directly or indirectly related to CM/PM's breach (including governmental penalties, fines and reasonable attorneys' fees and costs); and (iii) Company immediately may withhold any further payments to CM/PM until the amount of all damages incurred by Company or its affiliates relating to CM/PM's breach have been established and then deducted or paid to Company. This subparagraph, along with other provisions of the Agreement, shall survive termination or expiration of the Agreement.

10.10 PROHIBITION OF USING FUNDS FOR POLITICAL ACTIVITY

10.10.1 No funds appropriated by the Company for any contract may be expended for participating in, supporting, or attempting to influence a political campaign or measure. The CM/PM will cooperate in audits conducted by the HCC or the State of Hawaii to verify that no HCC funds were used in political purposes.

10.11 FINAL AGREEMENT/INTERPRETATION

10.11.1 This Agreement represents the entire and integrated agreement between the Company and the CM/PM and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Company and the CM/PM. If there is any inconsistency between this Agreement and any attachment, the CM/PM shall (i) provide the better quality or greater quantity of Service(s) or (ii) comply with the more stringent requirement, in the Company's sole discretion.

10.11.2 This Agreement consists of this Agreement, the RFQ/RFP (including addenda), the CM/PM's Proposal Package, and the CM/PM's BAFO's, which are incorporated herein by reference.

10.11.3 In the event of a conflict or inconsistency between any of the terms of this Agreement (including all documents incorporated by reference and exhibits), the conflict shall be resolved in the following order of precedence (with (i) having the highest priority): (i) this Agreement; (ii) the RFQ/RFP; and (iii) the CM/PM's BAFOs, and (iv) the CM/PM's Proposal Package.

IN WITNESS, WHEREOF, the parties have executed this Agreement and have made it effective as of the day and year first written above.

By

Dated: _____

By:
Its:

Dated: _____

SAMPLE