



RELEASE DATE: August 29, 2023

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

**INVITATION FOR BIDS
IFB NO. 24-04**

SEALED BIDS FOR

Governance Study

BIDS ARE DUE AT 2:00 P.M. HAWAII STANDARD TIME (HST) ON

September 13, 2023

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

BY SUBMISSION TO THE STATE OF HAWAII ePROCUREMENT SYSTEM (HIePRO).

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

A handwritten signature in black ink, appearing to read "Tracey Fermahin".

TRACEY FERMAHIN
Procurement Manager
HAWAII TOURISM AUTHORITY

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SECTION ONE

INTRODUCTION

1.01 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Attorney General
A/V	=	Audio and Visual
Board	=	Board of Directors of the Hawai'i Tourism Authority
Contractor	=	The Bidder awarded a contract under this Invitation for Bid
CPO	=	Chief Procurement Officer, Hawai'i State Procurement Office
DBEDT	=	Hawai'i Department of Business, Economic Development & Tourism
F&B	=	Food and Beverage
IFB	=	Invitation for Bid
GET	=	General Excise Tax
GP	=	General Provisions
HANDS	=	Hawai'i Awards & Notices Data Systems
HAR	=	Hawai'i Administrative Rules
HCE	=	Hawai'i Compliance Express
HlePro	=	Hawai'i State eProcurement System
HOPA	=	Head of the Purchasing Agency
HRS	=	Hawai'i Revised Statutes
HST	=	Hawai'i Standard Time
HTA	=	Hawai'i Tourism Authority
Procurement Manager	=	The contracting manager for the State of Hawai'i, Department of Business, Economic Development & Tourism, Hawai'i Tourism Authority
SPO	=	Hawai'i State Procurement Office
State	=	State of Hawai'i, including its departments, agencies, and political subdivisions

1.02. INTRODUCTION

The Hawai‘i Tourism Authority (HTA) is a state agency established under Chapter 201B, Hawai‘i Revised Statutes, to manage tourism for the State. The HTA is administratively attached to the Department of Business, Economic Development & Tourism (DBEDT). The HTA’s powers and responsibilities include coordinating with global marketing contractors, visitor industry partners, travel trade, MCI partners, and community stakeholders to ensure that destination marketing and communications align with our unique Hawaiian and multi-ethnic cultures, authentic activities, and natural resources.

Due to the wildfires that started on August 8, 2023, in Maui and Hawai‘i Counties, Josh Green, M.D., Governor of the State of Hawai‘i, determine that an emergency or disaster is occurring in the State of Hawai‘i, and authorized and invoked emergency provisions upon his declaration of an emergency. In the Governor’s Sixth Proclamation, the Governor declared that a tourism emergency exists in the State. He further authorizes the Hawai‘i Tourism Authority, in coordination with the Department of Budget and Finance, to use monies in the Tourism Emergency Special Fund to respond to the emergency and provide relief under section 201B-10, HRS.

The plan of action to recover from this tourism emergency will require coordination with other agencies, entities, and organizations. However, limitations on resources and personnel and the lack of a formal system of coordination and enforcement capacities make achieving results difficult. Furthermore, the HTA had already made an intentional evolution to operate fully as a Destination Management Organization as directed in the HTA Strategic Plan. The HTA acknowledges that while the goal is to drive economic impact by promoting travel to the state, HTA also strives to improve communities and the visitor-experience in safe, respectful, and sustainable ways. The HTA strategic plan and destination management action plans recommend actions have not been easy, and the HTA is faced with limitations on authority.

SECTION TWO

SPECIFICATIONS

2.01 SCOPE

The Contractor shall perform and provide all, satisfactorily and properly, as determined by the STATE, goods and services listed as follows, and as may be further described in the proposed Governance Study IFB, including but not limited to the following project management and professional services. Under the supervision of, and in collaboration with the HTA Chief Administrative Officer and the HTA staff, the successful contractor shall provide the HTA with the following services:

The HTA must evaluate the overall governance structure, the highest and best use of its resources, and the structure of its organization. To support these efforts, the HTA seeks a qualified, independent firm with proven experience in the assessment, comprehensive strategic planning, and process review, that can identify and evaluate HTA's overall governance structure, the highest and best use of its resources and the design of the organization.

2.02 SPECIFICATIONS

Proposed Deliverables

- Determine if an alternative tourism governance system is necessary.
- Identify areas that need reform and propose policy ideas to ensure better governance.
- Research an appropriate organizational structure to support strategic direction (including board structure and establishing new branches, sections, and positions as necessary).
- Determine key performance indicators and a process for efficient monitoring.
- Develop a framework for a smooth transition and change management.

Proposed Methods

- Analyze policy issues, political institutions and processes, and governance challenges.
- Review current structure and roles and relationships with governing bodies.
- Evaluate existing performance and outcomes from the perspective of all stakeholders.
- Work with the HTA to conduct interviews, advisory meetings, and focus groups with key stakeholders.
- Perform internal staff engagements.

Proposed Timeframe

- RFP for contracted services August 29, 2023
- Start data collection and assessments September 18, 2023
- Develop draft recommendations by October 13, 2023
- Stakeholders review and/or public comment October 2023
- Final recommendations no later than October 31, 2023
- HTA to provide recommendations to State Legislature, County government, industry, and community stakeholders in November 2023

2.03 POINT OF CONTACT/ CONTRACT ADMINISTRATOR

The Procurement Manager is the single point of contact (POC) during the procurement process. Offerors shall direct all questions regarding the procurement process and any other procedural questions that may arise related

to this solicitation to procurement@gohta.net. The reference number is IFB 24-04. This number must be referred to on all proposals, correspondence, and documentation relating to the IFB.

2.04 TERM OF CONTRACT

This Contract shall end on June 30, 2024. Funds provided will be General funds. The contractor shall be responsible for ensuring that all funds are recorded, expended, and audited.

The contractor acknowledges and agrees that, for subsequent years of the contract, the availability of funds for any fiscal year (July 1 to June 30) shall initially be subject to the passage of a budget appropriation of public funds by the Legislature and subsequently to the approval of an allotment of the budgeted funds by the Governor, through the Director of the Department of Budget & Finance, State of Hawai‘i, and final allocation and approval by the HTA Board of Directors.

Each calendar year of the contract is funded by a separate and respective fiscal year in the manner described above. It is understood that the Head of Purchasing Agency (HOPA) must notify the contractor on a timely basis if funds are not available for the continuation of the contract for each succeeding fiscal period and that, in the event of a cancellation, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

Absent any substantial changes to scope, the price for subsequent years should correspond to the contracted amount in the initial contract year, subject to the availability of funds.

SECTION THREE

SPECIAL PROVISIONS

3.01 BID PREPARATION

1. BID FORM OF-1 (Attachment 1). Bidders are requested to submit their Bids using their exact legal name, as registered with the State of Hawaii, Department of Commerce and Consumer Affairs, if applicable, and to indicate their exact legal name in the appropriate space on Bid Form OF-1. Failure to do so may delay proper execution of the Contract.

The submitted Bid Form page OF-1 shall indicate Bidder's intent to be bound.

2. Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and Chapter 238, HRS, where applicable. Bidders are advised that the gross receipts derived from this solicitation are subject to the general excise tax (GET) imposed by Chapter 237, HRS, and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 238, HRS.
3. Hawaii General Excise Tax License. In accordance with Section 3.10(a), Bidders shall submit their current Hawaii GET I.D. number in the space provided on the Bid Form OF-1.
4. Bid Price. The Bid price shall include all specifications in the Scope; Section 2.01 and Specifications; Section 2.02 of this IFB; all applicable taxes; and any and all other costs to be incurred to provide services as specified herein.
5. Qualifications. The Bidder shall have a minimum of five (5) years of experience providing tourism strategic planning particularly for a government agency. Working knowledge with the Hawai'i State Legislature, State of Hawai'i Executive Branch, Hawai'i's varied communities and community organization, and the visitor industry in Hawai'i is preferred. Bidder shall submit Bid Form OF-2 (Attachment 2). This form shall provide information on Bidder's qualifications, experience, ability to perform the work, and list a minimum of three (3) references for whom services were rendered as a Contractor for work similar to the services described in the Scope. It is expressly understood that the State reserves the right to seek additional information and to contact the references listed to inquire about Bidder's past and/or current performance. Any unqualified Bidders may have their bid rejected.
6. Bid Guaranty. A bid security deposit is not required for this bid.
7. Notice of Intent to Bid. **Prospective bidders are not required to submit any notice of intent to bid.**

3.02 Submission of BID on HlePRO

**BIDS SHALL BE RECEIVED ELECTRONICALLY ONLY THROUGH HlePRO.
Bids received outside of HlePRO shall not be considered for award.**

The State has established the Hawaii State eProcurement (HlePRO) System to promote an open and transparent system for vendors to compete for State contracts electronically. Bidders interested in responding to this solicitation must be registered on HlePRO. Registration information is available at the State Procurement Office (SPO) website: [State of Hawaii eProcurement - HlePRO \(ehawaii.gov\)](http://StateofHawaii.eProcurement-HlePRO.ehawaii.gov); select HlePRO Vendor Registration, then Vendor Registration Guide.

The State will use HlePRO to issue the solicitation, receive bids, and issue Addenda to the solicitation. Addenda and any other information and materials shall be provided by the State through HlePRO, including additions or changes. The State shall not be responsible for any person's or entity's failure to do so for any reason. The State is not responsible for any delay or failure of any Bidder to receive any materials updated through the solicitation process on a timely basis.

Bidders shall carefully review this solicitation, any attachment, addendum, special instructions, and other relevant documents located in HlePRO to ensure Bidder understands the requirements of the solicitation. Should Bidder find defects and questionable or objectionable items in the solicitation, Bidder shall notify the HTA in writing prior to the deadline or as amended. This will allow the issuance of any necessary corrections and/or amendments to the solicitation by an addendum and mitigate reliance of a defective solicitation upon which award could not be made. Bidder must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Bidders are responsible for ensuring that all necessary files are attached to their bid prior to the due date and time. Bidders are advised to not wait until the last minute to submit their bid on HlePRO. Bidders should allow ample time to review their submitted bid on HlePRO, including attachments, prior to the due date and time. If the submission of the bid is not completed and submitted by the due date and time, HlePRO will not accept the bid.

The submission of a bid shall constitute an incontrovertible representation by the Bidder of compliance with every requirement listed in this solicitation and the solicitation documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

Any and all costs incurred by the Bidder in preparing or submitting a bid shall be the Bidder's sole responsibility whether or not any award results from this solicitation. The State shall not reimburse such costs.

3.03 FORMAT INSTRUCTIONS FOR SUBMITTING BID ON HlePRO

1. Bids shall be submitted as attachments on HlePRO.
2. Proprietary information shall be contained in a separate file that is clearly identified as proprietary/confidential information.

3.04 BIDDER QUALIFICATION AND AUTHORITY TO SUBMIT A BID

In addition to meeting the legal and other requirements of this solicitation, Bidders must meet these Bidder qualification requirements at the time of bidding.

1. Bidders must show that they have all applicable licenses and certifications, understand the scope of work, and have the expertise and capability to complete the work by submitting the Statement of Qualifications provided in Bid Form OF-2 (Attachment 2). Bidder shall complete this form and submit it along with the bid on HlePRO.
2. This solicitation is issued under the provisions of Chapter 103D, HRS, and Subchapter 3-122, HAR. All Bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid, executed bid by any Bidder shall constitute admission of such knowledge on the part of such Bidder.
3. The State will not participate in determinations regarding a Bidder's authority to sell a product or service. If there is a question or doubt regarding a Bidder's right or ability to obtain and sell a product or service, the Bidder shall resolve that question prior to submitting a bid. If a Bidder offers a product that meets the specifications, is acceptable and the price submitted is the lowest price offered, the contract will be awarded to that Bidder.

3.05 CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a Bid in response to this solicitation, the Bidder certifies as follows:

1. The costs in this solicitation have been arrived at independently, without consultation, communication, or agreement with any other Bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which has been quoted in this solicitation has not been knowingly disclosed by the Bidder prior to award, directly or indirectly, to any other Bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the Bidder to indicate any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

3.06 DISQUALIFICATION OF BIDS

The State reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this solicitation and which demonstrate an understanding of the scope of services. Any bid offering any other set of terms and conditions contradictory to those included in this solicitation may be disqualified without further notice.

Each bid shall be submitted in the format prescribed in this solicitation and all portions shall be addressed.

3.07 AWARD OF CONTRACT

Award, if made, shall be made to the responsive, responsible Bidder submitting the lowest total bid price.

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

3.08 CONTRACT EXECUTION / NOTICE TO PROCEED

If an award is made, the State shall forward to the successful Bidder a formal contract to be signed by the Bidder and returned within ten (10) days or as may otherwise be allowed by the State. No work is to be undertaken by the Bidder prior to the official commencement date specified on a formal Notice to Proceed letter issued by the State upon execution of the Contract by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Bidder prior to the official commencement date of the Contract.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplemental contract for the additional extension period.

3.09 BID AS PART OF THE CONTRACT

This solicitation and the successful bid will be part of the Contract.

3.10 RESPONSIBILITY OF BIDDERS:

Bidders are advised that if awarded a contract under this solicitation, Bidders shall, upon award of the contract, furnish proof of compliance with the requirements of Sections 103D-310(c), HRS, as follows:

- a. Chapter 237, tax clearance;
- b. Chapter 383, unemployment insurance;
- c. Chapter 386, workers' compensation;
- d. Chapter 392, temporary disability insurance;
- e. Chapter 393, prepaid health care; and
- f. Chapter 103C-310 (c), Certificate of Good Standing (COGS) for entities doing business in the State of Hawaii.

Hawaii Compliance Express.

A Bidder may collectively apply for these certificates through the Hawaii Compliance Express (HCE). The HCE allows businesses to register online through a simple wizard interface at [Hawai'i Compliance Express \(ehawaii.gov\)](http://ehawaii.gov). The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that the vendor's status is compliant with the requirements of HRS Section 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC dba NIC

Hawaii.

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 the HTA receives it. Timely application for all applicable clearances is the responsibility of the Bidder.

3.11 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for a contract awarded under this solicitation have been appropriated by a legislative body.

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

3.12 PAYMENT

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

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the Contract, which requires payment within a shorter period, or interest payments not in conformance with Section 103-10, HRS.

1. Payments shall be made only after satisfactory completion of each task or service as specified herein.
2. If any work is not in full compliance with these specifications, the Contractor shall make all necessary corrections to the full satisfaction of the State and at no additional cost to the State. The Contractor shall perform corrective work within the period allowed by the Contract Administrator.

3.13 RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of this solicitation and Attachment 4, "General Conditions," as specified herein, the State reserves the right to purchase, in the open market, a corresponding quantity of the goods specified herein and to deduct from any monies due or that may thereafter become due the Contractor, the difference between the price named in the Contract and the actual cost thereof to the State. In the event that any monies due to the Contractor are insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

3.14 SPECIAL CONDITIONS

1. All work and products developed shall comply with all applicable State, County, and Federal regulations, codes, and guidelines.
2. Funds provided under the initial contract year for Calendar Year 2023 will be federal American Rescue Plan Act funds. Contractor shall be responsible for ensuring that all funds are recorded, expended, and audited to federal standards.
3. The Bidder must assure and be responsible for the continuity of service activities in the event of staff illness, medical emergencies, vacancies, or other situations that result in program resources that are less than proposed and contracted for. The Bidder must not require nor depend on the state agency's staff to provide services activities in the event that program resources are not available due to the above situations.
4. Contractor shall identify and submit the names of all employees and subcontractors that will be performing the work of this solicitation for prior STATE approval.
5. Bid shall be valid for a minimum of one hundred twenty (120) calendar days.

3.15 LIABILITY INSURANCE

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

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

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

Coverage	Limits
Commercial General Liability (Occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per accident

Appropriate levels of per occurrence insurance coverage for Workers' Compensation and any other insurance coverage required by Federal or State law.

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

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

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability, and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

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

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

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

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

SECTION FOUR

ATTACHMENTS

ATTACHMENT 1:	BID FORM, OF-1
ATTACHMENT 2:	BID FORM, OF-2
ATTACHMENT 3:	GENERAL PROVISION FOR GOODS AND SERVICES
ATTACHMENT 4:	GENERAL CONDITIONS FOR 103D

STATE OF HAWAII
IFB 24-04 Governance Study

Procurement Manager
Hawai'i Tourism Authority
Hawai'i Convention Center, 1st floor
1801 Kalākaua Avenue
Honolulu, Hawai'i 96815

Dear Procurement Manager:

The procurement conducted for the specified goods and/or services are pursuant to Hawaii Revised Statutes (HRS) Chapter 103D and its Hawaii Administrative Rules (HAR). The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Provisions, General Provisions, dated 7/2017, or as amended, and the AG General Conditions, Form AG-008 103D, effective 10/17/2013, or as amended and hereby submits the following Bid 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 Bid, 1) Bidder is declaring that Bid is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Bidder is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Bidder 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:

(x)

Date:

Authorized (Original) Signature

Telephone No.:

Name and Title (Please Type or Print)

Fax No.:

Exact Legal Name of Company (Bidder)

E-mail Address:

**If Bidder is a "dba" or a "division" of a corporation, furnish the "dba" or "division" name of the corporation:

BIDDER STATEMENT OF QUALIFICATIONS

- 1) Please state that your company has a minimum of five (5) years of experience/expertise relating to tourism strategic planning particularly for a government agency. Provide detailed descriptions of previous experience/expertise that demonstrates your company's ability to plan and execute the services described in the Scope. Describe the qualifications of primary team members and any subcontractors that will provide these services, the report and the recommendations..

GENERAL PROVISIONS FOR GOODS AND SERVICES

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.

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 the solicitation. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

13. FAILURE TO EXECUTE CONTRACT

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract, and to furnish satisfactory security as required by Section 12 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required in the solicitation, into the State Treasury as a realization of the State. The procurement 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 Section 103-10, HRS.

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.

General Conditions for 103D

*Sent as a separate attachment.