



**State of Hawaii
Hawaii Technology Development Corp.**

LEGAL AD DATE: December 21, 2018

REQUEST FOR PROPOSALS

No. RFP-19-004-HTDC

**SEALED PROPOSALS
FOR**

**Partners for the Entrepreneurs Sandbox
STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM**

WILL BE RECEIVED UP TO 12:00 P.M. (HST) ON

January 30, 2019

IN THE HTDC OFFICE 2800 WOODLAWN DR. SUITE 120, HONOLULU, HAWAII 96822.

DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO SANDI KANEMORI, TELEPHONE (808)

539-3616, FAX (808) 539-3795 OR E-MAIL AT RFP@HTDC.ORG SUBJECT: RFP-19-004-HTDC



Len Higashi
Procurement Officer

RFP-19-004-HTDC

Hawaii Technology Development Corporation
Name of Company

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SECTION ONE
INTRODUCTION AND KEY DATES

1.1. INTRODUCTION

The Hawaii Technology Development Corporation (HTDC), an agency of the State of Hawaii (State), is seeking partners to support the operation of the Entrepreneurs Sandbox (Sandbox) facility in Kakaako. The facility is currently under construction and scheduled to be complete in February 2019. HTDC intends to partner with established, private sector businesses to ensure the Sandbox becomes an integrated resource for the Hawaii entrepreneurial ecosystem. The objective of this RFP is to find partners to help make the Coworking Space and Maker Lab programs successful.

1.2. CANCELLATION

The RFP may be cancelled and any or all proposals rejected in whole or in part, without liability, when it is determined to be in the best interest of the State. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

1.3. TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	= Best and Final Offer
DBEDT	= Department of Business, Economic Development and Tourism
FY	= Fiscal Year (July to June)
GC	= General Conditions, issued by the Department of the Attorney General
GET	= General Excise Tax
GP	= General Provisions
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
HTDC	= Hawaii Technology Development Corporation
Procurement Officer	= The contracting officer for the State of Hawaii, Hawaii Technology Development Corporation
RFP	= Request for Proposals
State	= State of Hawaii, including each department and political subdivision

1.4. REGISTRATION

It is recommended that all interested Offerors register. If you do not register, any applicable Addenda will not be sent to you. Send registration to:

Email: rfp@htdc.org

Provide the following information:

- | | |
|---|---|
| <input type="checkbox"/> Name of Company | <input type="checkbox"/> Mailing Address |
| <input type="checkbox"/> Name of Contact Person | <input type="checkbox"/> Telephone Number |
| <input type="checkbox"/> Solicitation Number | <input type="checkbox"/> Email Address |

1.5. RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Release of Request for Proposals Company registration opens	December 21, 2018
Due date to Submit Questions Email: rfp@htdc.org Subject: Sandbox, Q&A: RFP-19-004-HTDC	January 8, 2019 12:00 P.M. (HST)
State's Response to Questions	January 11, 2019
Proposals Due Proposals to be emailed to: rfp@htdc.org Subject: Sandbox: RFP-19-004-HTDC Details on Proposal Submission: Section 3.11	January 30, 2019 - Wed 12 P.M. (HST)
Proposal Evaluations	January 30-February 7, 2019 <i>Estimate</i>
Presentations and Discussions with Priority Listed Offerors <u>Priority Listed Offerers (should there be one) to be notified as early as possible after proposal evaluations and scheduled for a presentation on this pre-scheduled day.</u> Location, appointment time, and details to be provided to Offeror in preparation for the presentation.	February 20, 2019 TIME: TBD
Best and Final Offer Due (If any, and if necessary)	February 25, 2019
Notice of Award	February 28, 2019 <i>Estimate</i>
Contract Start Date	2-3 weeks after award date - <i>Estimate</i>

1.6. QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.5, *RFP Schedule and Significant Dates*, as amended.

Email: rfp@htdc.org

Subject: Sandbox, Q&A: RFP-19-004-HTDC

The State will respond to questions through Addenda/Amendments by the date specified in Section 1.5, *RFP Schedule and Significant Dates*, as amended.

1.7. TERM OF CONTRACT

Unless otherwise specified in the proposal and agreed to by HTDC, the term of the contract will be twenty-four (24) months, and shall be from effective date of the contract to the end of contract term, unless an extension is granted in accordance with AG-008 General Conditions, Clause 19, Modifications of Contracts or other applicable provision.

Unless terminated, the Contractor and the State may extend the term of the contract for two (2) additional twelve (12) month periods or portions thereof without the necessity of re-soliciting, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The contract price paid to the Contractor for the extended period shall remain the same or lower than the initial contract price unless specified in the proposal.

The contract is subject to the availability of funds. The contract will not be extended if funds are not available to support continuation of performance in the period succeeding the initial term of the contract. The State will notify the Contractor on a timely basis that the funds are, or are not, available for the continuation of the contract.

1.8. CONTRACT ADMINISTRATOR & OFFICIAL CONTACT PERSON

The Contracts Administrator cited here, or authorized representative, is also designated as the official contact person for all communications regarding this RFP and for the purposes of this contract.

Sandi Kanemori, Contracts Administrator
Hawaii Technology Development Corporation
2800 Woodlawn Drive, Suite 120
Honolulu, HI 96822

Phone: (808) 539-3616

Fax: (808) 539-3795

Email: rfp@htdc.org

SECTION TWO

BACKGROUND AND SCOPE

2.1. ABOUT HTDC

The [Hawaii Technology Development Corporation](#) (HTDC) is leading the State of Hawaii's (State) effort to grow the technology industry sector with the objective of diversifying the economy and creating high-wage job opportunities for the people of the State. Administratively attached to the Department of Business, Economic Development and Tourism (DBEDT), HTDC is providing capital, building infrastructure and developing talent to foster innovation and diversify Hawaii's economy. HTDC's 80/80 Initiative is to create 80,000 new tech and innovation jobs that will provide high paying jobs for Hawaii residents.

2.1.1. HTDC STATUTE (HRS CHAPTER 206M)

The mission of HTDC is to facilitate the growth and development of high technology as a viable industry sector in Hawaii's economy. HTDC's duties include, but are not limited to:

- developing industrial parks and high technology innovation centers and projects within or outside of industrial parks
- providing support and services to Hawaii-based high technology companies
- collecting and analyzing information on the state of commercial high technology activity in Hawaii
- promoting and marketing Hawaii as a site for commercial high technology activity
- providing advice on policy and planning for technology-based economic development

2.1.2. HTDC PROGRAMS

HTDC programs include:

- 1) Tech Incubation Services – a program delivering business support services to tech startups (facilities at the [Maui Research and Technology Center](#) and previously at the Manoa Innovation Center). Services include startup business mentoring with experienced staff, business strategy, grant writing assistance, internship program, referrals for professional services, and hosted technical assistance workshops and entrepreneurial educational programs.
- 2) Grants: HTDC has five matching grant programs that provide funding at critical stages for advanced technology and manufacturing companies. Matching grant programs support additional funding to Hawaii based companies who have received Federal SBIR awards, Office of Naval Research renewable energy projects, or receive Federal R&D tax credits. The Manufacturing Assistance Program provides funding for manufacturers who want to expand, upgrade or become more energy efficient.
- 3) Tech Talent Development – HTDC engages with the tech business community and training organizations to develop a workforce relevant to the tech employers. HTDC supports a variety of hackathons to support the development of talent. The Holiday Tech Fair and the WetWare Wednesday monthly networking event connect talent with employers.

- 4) Events –HTDC hosts or sponsors events that are relevant to the innovation and entrepreneurial community.
- 5) [INNOVATE Hawaii](#) - a program that gives Hawaii manufacturers the resources and expertise necessary for the next stage of growth. IH works with individual manufacturers to solve critical issues in production and expansion. Training programs are held to keep manufacturers current on regulations and certifications.
- 6) [Hawaii Center for Advanced Transportation Technologies](#) (HCATT) – a program that develops and demonstrates market readiness of alternative energy transportation technologies and 100% renewable energy microgrids.
- 7) Neighbor Island Innovation Initiative (NI3) – business mentoring program on neighbor islands Kauai and Hawaii Island. Tech Based businesses can receive mentoring help on getting their company to the next level. There is no cost to the company and the mentors meet the companies at their location.

2.2. PROJECT OVERVIEW

In May 2018, HTDC, in partnership with the Hawaii Community Development Authority (HCDA), started construction on a new facility named the Entrepreneurs Sandbox at the corner of Keawe and Ilalo Street in Kakaako, tax Map Key No. (1) 2-1-015: 052. The Sandbox is designed to be a catalyst for startups. The construction is partially funded by a federal grant award from the U.S. Department of Commerce, Economic Development Administration (EDA). The Sandbox is the first phase of an Innovation Block planned at the site. Future phases will include a new tech incubator, office building with retail, learning center, and more. Funding for the future phases has not been secured at this time.

The Sandbox is envisioned to be a community center for creatives for all ages. It encourages creativity, technology, innovation and entrepreneurship. The facility is approximately 13,500 square feet and features a collaboration area, digital media studio, coworking space, makerspace, meeting rooms, and a few small offices. It will host a variety of educational programs and activities for all ages.

2.2.1. SANDBOX PROGRAMS

When accepting the EDA grant award, HTDC agreed to provide the programs described in this section. Each program provides equipment, expertise, and a dedicated space. HTDC intends to build the programs through partnerships like the one described for the digital media studio and creative lab. The layout is shown in Exhibit D.

HTDC does not receive state general funds to operate the Sandbox. The Sandbox programs must generate enough revenue to cover operations and maintenance. At the same time, the Sandbox is an economic development project with the goal of catalyzing new business growth. The program must be designed to meet both of these requirements.

The hours of operation are still to be determined. The hours of operation and after hour access limitations will be determined with input from the partners and dependent on budget and staffing resources available.

It is anticipated that the facility will be staffed until early evening on the weekdays and possibly open on Saturdays. Paid program members may be allowed to access the facility after hours.

2.2.1.1. DIGITAL MEDIA STUDIO AND CREATIVE LAB

The digital media studio and Creative Lab are offered through a partnership between HTDC and the DBEDT Creative Industries Division (CID).

The 1,400 sq. ft. studio includes digital media production equipment such as a green screen, lighting, video cameras and microphones to allow for easy creation of creative content. The studio has insulated walls for better noise isolation and high-speed broadband for livestreaming and transferring large data files. The studio is connected to the 600 sq. ft. Creative Lab. The Creative Lab is equipped with digital media control and editing equipment. It serves as the production control room for the studio.

The Creative Lab space in the Sandbox is operated by the CID Creative Lab program. The CID program has been hosting week-long training workshops annually since 2011. The Sandbox expands the program by adding facility, equipment, and year-round technical assistance to accelerate professional development of local film and creative media entrepreneurs. The Creative Lab aims to help creative entrepreneurs develop high quality, commercially viable content for export. Additional programs will be offered to the public for a variety of ages. The members will have access to two small conference rooms, a video conference room, and a break room.

2.2.1.2. COWORKING SPACE

The coworking space is approximately 1,500 sq. ft private area in the Sandbox reserved for members. The coworking space is designed for work productivity, differing from the collaboration area which is currently planned to be open to the public and better suited for group discussion and social interaction. The coworking space provides a more quiet workspace with opportunities for developing partnerships. The space will be equipped with high internet speeds (200MB), shared copier and printer, comfortable work furniture, and flexible works spaces. The members will have access to two small conference rooms, the video conference room, and the break room.

HTDC has been offered a reciprocal partnership agreement with a Japanese company who owns a network of coworking spaces (company will be named once agreement is signed), where Sandbox members on travel may use certain of their facilities on a space available basis and vice versa.

2.2.1.3. MAKER LAB

The maker lab is approximately 1,400 sq. ft. and will include light manufacturing equipment (e.g. 3-d printers, soldering stations, etc.) that allows individuals to turn their ideas into prototypes. The maker lab will host technical training classes and other events catered to the maker community. Classes are intended to be developed for both youth as well as adults. The lab is membership based. The lab also has shared access to the same rooms described in the coworking space section.

2.2.1.4 COLLABORATION SPACE

The 3,000 sq. ft. collaboration space is currently planned to be made available to the public. This includes free limited wi-fi internet access to users. This space is intended for users who need a short term work area to collaborate. The area has a large projection screen that can be used to host workshops, town hall meetings, and other events. The collaboration area can be reserved for a fee. If the demand for coworking space exceeds the capacity of the designated area, the collaboration space may become designated for coworking and the coworking space may be designated for reserved desk memberships.

2.2.2. HTDC RESOURCES

Through its programs, HTDC is connected to the tech, innovation and manufacturing business community. HTDC also has many formal and informal partnerships with fellow government agencies and private sector groups. HTDC has experience operating two tech incubators for over 25 years. Staff expertise includes entrepreneurship, business growth strategy, engineering, and manufacturing best practices. HTDC marketing resources include a website, events calendar, social media accounts, email marketing software, monthly newsletter, and PR and creative design contractors (Contractors for these services are based on the availability of funds).

2.2.3. EXISTING SANDBOX PARTNERSHIPS

HTDC has facility partnerships with the following groups for the Sandbox:

- EDA – grant sponsor. EDA has awarded \$3 million to fund the construction. The project is helping EDA create new jobs and diversify Hawaii's economy.
- HCDA - landowner and grant co-recipient. HCDA has entered into a 65-year lease agreement with HTDC to operate the Sandbox. The project is helping HCDA create new innovative jobs in the Kakaako business district.
- Stanford Carr Development (SCD) – project developer and donor. SCD is managing the development and providing funding to the project. SCD is developing a project next to the Sandbox that will have synergies.
- Investor - HTDC is in the final phases of signing an agreement with a Japanese company (company will be named once agreement is signed) that owns a worldwide network of coworking spaces. The company has offered an investment into the project that will support improvements at the Sandbox and a limited reciprocal coworking space use partnership for members on travel.
- DBEDT CID –CID has committed to bringing their Creative Lab program expertise and network into the Sandbox. CID will be managing all the programs for the Digital Media Studio and Production studio

2.2.4. EXISTING CONTRACTS

HTDC has contracted with Colliers International to provide property management services at the Sandbox. Colliers is on a one-year contract with up to four one-year options to extend. Utilizing a third party property manager allows HTDC to stay focused on economic development activities.

2.3. SCOPE OF PROPOSALS

The objective of this RFP is to find partners who can help make the Coworking Space and Maker Lab programs successful. Ideally, HTDC would like partners that can staff and manage the coworking and/or makerspace programs, especially to cover extended business hours. Programs may include classes for all ages. Alternatively, HTDC may consider proposals where HTDC staff and resources are used. The following are examples of conceivable partnership models:

- Entity would lease the space from HTDC and operate their own coworking or maker lab program under their own brand and business model (within HTDC guidelines).
- Entity would be responsible for managing the operations of the coworking or maker lab, providing staff to assist members, organizing events, hosting training workshops etc on behalf of HTDC. HTDC provides equipment and furnishings. This arrangement would likely involve a revenue share model.
- Entity would be responsible for organizing regularly scheduled workshops and events. This arrangement would likely involve a revenue share model.

Proposals are not limited to the above models. Proposals should include details on a viable partnership arrangement, including pricing/percentage of revenue split, hours of operation, etc. Proposals may leverage other components of the Sandbox, include concession partnerships, offer other services related to the Sandbox including co-branding, reciprocal facility use, etc.

It is possible for one entity to manage or operate both the coworking and makerspace, provided they have the required experience.

The offices are constructed without equipment and furniture. The entire facility is equipped with wireless internet service and ethernet wall jacks. HTDC anticipates working with the partner in selection of equipment and furniture. HTDC anticipates having a modest budget available, if needed. **The proposal should clearly specify the desired role for HTDC regarding equipment and furnishings selection, ownership, and maintenance.**

2.4. LIMITATIONS

The following will NOT be considered:

- Standard management fee for service proposals that do not include revenue sharing or other shared risk/reward cost structures
- Offers that completely eliminate any of the programmed spaces already committed to EDA and described in section 2.2.1
- Offers that do not provide HTDC a path to a sustainable business model
- Opportunities unrelated to the Sandbox

2.5. HTDC'S RESPONSIBILITIES

- (1) HTDC's role will be dependent on the proposal. At the minimum, HTDC will provide direction and guidance as to expectations for the programs (which includes quality of service, branding, operations etc.), and provide basic facility and maintenance services (maintenance, utility, air condition, janitorial).
- (2) Compile and provide relevant information to the Contractor in an organized manner.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1. OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

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

3.2. REQUIRED REVIEW

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

3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify HTDC in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, Section 1.5, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance on a defective solicitation and exposure of proposal(s) upon which award could not be made.

3.3. PROPOSAL PREPARATION COSTS

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

3.4. TAX LIABILITY

3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawaii general excise tax (GET). If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS section allowing the exemption.

3.4.2 Federal I.D. Number and Hawaii General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

3.5. PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

3.6. CONFIDENTIAL INFORMATION

3.6.1 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide the Procurement Officer with justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.

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

3.7. EXCEPTIONS

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in the Exceptions section of the Offeror's proposal. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

No exceptions to the requirements of the AG General Conditions shall be considered.

3.8. PROPOSAL OBJECTIVES

3.8.1 One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.

3.8.2 Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content.

3.8.3 When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

3.8.4 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.3 SCOPE OF PROPOSALS.

3.8.5 Offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

3.9 PROPOSAL FORMS

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

3.9.1 Applicant Form (Attachment 1)

An Applicant Form, 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 Applicant Form, (Section 7, Attachment 1). Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature on the Applicant Form, shall be an original signature, 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.

3.9.2 Certificate of Vendor Compliance: Hawaii Compliance Express (HCE) certificate.

Include if available at the time of proposal submission. See Section 5.4. **If not available, provide information/explanation on status for this requirement in place of Compliance Certificate.**

3.10 PROPOSAL CONTENTS

Provide all of the information requested in this RFP in the order specified.

3.10.1 The Proposal must be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and **pages must be numbered.** See Section 4.2 for evaluation of proposal and scoring details to further address the following Sections. It is the responsibility of the Offeror to ensure the contents provided in Proposal will address scoring criteria under Section 4.

A. TABLE OF CONTENTS

B. PROPOSAL FORMS

- 1) All forms listed in Section 3.9

C. BACKGROUND ON BUSINESS

- 1) Provide general background information on the business. Include a narrative on how the Sandbox objectives aligns with the business and how the partnership will benefit the Sandbox. Describe existing partnerships and relationships, especially with the local tech and innovation community, and how they may benefit the Sandbox.

D. ORGANIZATION AND STAFFING

- 1) A list of proposed key personnel and associated resumes for those who will be dedicated to this project.
- 2) A proposed organizational chart of all in-house personnel and/or subcontractors with listed responsibilities and roles for the project.

E. EXPERIENCE, CAPABILITIES AND PERFORMANCE (if applicable)

- 1) Describe experience, capabilities, resources, and past performance relevant to the proposal. Provide specific examples of special programs/events created to grow membership and results (time required to profitability). Provide website/photos from events and from other properties managed.
- 2) Reference and client listings. A list of at least three (3) references that may be contacted by the State. Offeror shall provide names, titles, organizations, telephone numbers, email and postal addresses. Testimonials from the references may also be included.
- 3) Provide evidence that the business has sufficient financial strength to sustain some cash flow demands of the partnership. (business line of credit from a financial institution, bank statements, or financial statements)

F. PROPOSAL

- 1) Describe the partnership offer. Include specific details so that HTDC can evaluate the cost and benefits of the offer. Provide information such as proposed scope, hours of operation, goods, services, and programs provided, additional resources available, HTDC responsibilities, equipment and furniture ownership and maintenance, budget, timeline, cost and revenue structure, etc. If a revenue share is proposed, include percentage split and pro forma income statement.

G. SUMMARY LIST OF JUDGEMENTS.

- 1) List of judgements or pending lawsuits or actions; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state.

H. EXCEPTIONS

3.11 PROPOSAL SUBMISSIONS

Proposal must be electronically submitted via email as a single file to HTDC by the date and time as cited in Section 1.5, RFP Schedule and Significant Dates, or as amended.

Proposals to be emailed to: rfp@htdc.org
Subject: Sandbox: RFP-19-004-HTDC

File Name: [Offeror Name]_RFP-19-004-HTDC

If the file is too large file sharing service is acceptable for transmission.

Timely receipt of offers shall be evidenced by the date and time of proposal delivery. Proposals received after the deadline shall not be accepted.

It is the responsibility of the Offeror to ensure that their proposal has been successfully received by HTDC.

HTDC will provide an email confirmation to Offeror upon receipt of proposal. If Offeror does not receive a confirmation, Offeror may contact the Official Contact Person and Contract Administrator referenced in S

ection 1.9 to ensure that the proposal was successfully received.

3.12 RECEIPT AND REGISTER OF PROPOSALS

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

HTDC must receive sealed proposals no later than the date and time specified in Section 1.5, or as amended. Timely receipt of proposals shall be evidenced by the date and time registered by HTDC. Proposals received after the deadline shall be returned unopened.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award.

3.13 BEST AND FINAL OFFER (BAFO)

Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussion, 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 and/or presentations is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.

If during discussions and/or presentations there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors.

Following any discussions, if the State determines a BAFO is necessary, it shall request one from the Offeror. The Offeror shall submit its BAFO prior to the deadline as stated in the RFP *Schedule and Significant Dates*, Section 1.5, as amended. If an Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous proposal shall be construed as its BAFO.

3.14 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

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

3.15 MISTAKES IN PROPOSALS

- 3.15.1 Mistakes shall not be corrected after award of contract.
- 3.15.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
- 3.15.3 Once discussions are commenced or after best and final offers are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- 3.15.4 If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- 3.15.5 If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

SECTION FOUR

EVALUATION CRITERIA

4.1 EVALUATION CRITERIA

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

The total number of points used to score this contract is 100.

- 1) BACKGROUND ON BUSINESS. (10)
- 2) ORGANIZATION AND STAFFING (15)
- 3) EXPERIENCE, CAPABILITIES, AND PERFORMANCE. Work samples (i.e., proficiency to do the job proposed) (30)
- 4) PROPOSAL. Approach, Comprehensiveness, Pricing (45)

4.2 EVALUATION OF PROPOSALS (100 TOTAL POSSIBLE POINTS)

During this phase, the evaluation committee shall evaluate the Offeror's proposal against requirements specified in this RFP. Based on a 100-point scale, proposals must score a minimum of 50 points for further award consideration. Proposals scoring less than 50 points shall not be considered for project award.

4.2.1 BACKGROUND ON BUSINESS (10 Points)

1. Has the Offeror demonstrated an understanding of the State's needs? Does the offeror have the experience to provide the services requested in the RFP? (4 points)
2. Has the Offeror provided evidence of an existing network and partnerships that can make the Sandbox partnership successful quickly? Has the Offerer demonstrated previous experience engaging the Hawaii tech and innovation community? (6 points)

4.2.2 ORGANIZATION AND STAFFING (15 points)

Offeror's proposed organization and staffing resources will be evaluated to assess the Offeror's capability and commitment to carry out the duties and responsibilities of this RFP.

The evaluation committee will evaluate the key management personnel and supporting personnel proposed for this Contractor's responsibilities, based on experiences listed under the individual resumes. References for the proposed individual(s) assigned to this proposed project may be checked. Reference checking is not limited to only those references supplied by the Offeror.

NOTE: If there are any changes in key personnel and/or staffing after the discussions and prior to submitting the BAFO, the Offeror must notify the State immediately. The State may choose to reevaluate the Offeror's proposal which may result in its removal from the Priority Listed Offerors.

Specifically, proposals will be evaluated based on the following criteria:

Organization, roles and responsibilities of in-house personnel and/or subcontractors assigned to the project (including professional background and demonstrated hands-on experience with similar types of projects or programs) (15 points)

4.2.3 EXPERIENCE, CAPABILITIES and PERFORMANCE. Include website and/or photos. (30 points)

The evaluation committee will evaluate the demonstrated ability of the Offeror and subcontractors (if any).

1. Offeror's demonstrated experience developing new spaces and programs into profitable ventures. (10 points)
2. Offeror's demonstrated experience building community engagement with the space. (10 points)
3. Quality of Offeror's work and client relationship. Financial stability of the partner. (10 points)

4.2.4 PROPOSAL. Approach and Comprehensiveness. (45 points)

The committee will evaluate the Offeror's approach and comprehensiveness of the proposal based on the following.

1. Services offered including hours of operation, programs, member benefits, etc. (15 points)
2. Cost and revenue structure, HTDC's role and responsibilities, amount of risk versus reward for HTDC, etc. relative to other proposals. (30 points)

4.3 EVALUATION OF MANDATORY REQUIREMENTS

The HTDC Procurement Officer or his/her designee shall evaluate each submission to ensure the proposal meets the general requirements as specified herein. No points shall be assigned for these requirements. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the mandatory requirements ("no pass") may be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the mandatory requirements ("pass") of Phase 1 will be considered in Phase 2.

For Mandatory Requirements for the Proposal see Sections 2.4 Limitations and 3.10 Proposal Contents.

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSALS

The Procurement Officer, or an evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer, shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section 4 of this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of Offerors whose proposals are determined to be acceptable or potentially acceptable. **However, proposals may be accepted without such discussions.**

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked, responsible Offerors.

For details on an Overview of the RFP process, see Exhibit B.

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

The State may invite priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

A presentation may be requested by HTDC from all Priority Listed Offerors prior to discussions.

5.3 AWARD OF CONTRACT

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

5.4 RESPONSIBILITY OF OFFERORS

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

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

The State will verify compliance on Hawaii Compliance Express (HCE).

Hawaii Compliance Express (HCE). The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

If not already, Offerors with intention of submitting a response to this RFP should register with HCE prior to submitting a proposal at <https://vendors.ehawaii.gov>. The annual registration fee is nominal and the 'Certificate of Vendor Compliance' is accepted to issue an award, the execution of contract and final payment.

Timely Registration on HCE. Offerors are advised to register on HCE as soon as possible (if not already) and secure their Compliance status. This process may take several weeks to complete.

**** If the Offeror is not Compliant with all State laws at the time of award, an Offeror may not receive the award. ****

Evidence of Compliance (HCE Compliance Certificate) will not be a condition for submitting a proposal response. If available please include in the proposal under Table of Contents, B. Proposal Forms. If not available, provide information/explanation on status for this requirement in place of Compliance Certificate.

5.5 PROPOSAL AS PART OF THE CONTRACT

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

5.6 PUBLIC EXAMINATION OF PROPOSALS

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award. If a request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS §92F-42(12).

5.7 DEBRIEFING

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for 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 designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

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

5.8 PROTEST PROCEDURES

Any protest shall be submitted in writing to the Procurement Officer at:

HTDC Procurement Officer
Attn: RFP-19-004-HTDC
2800 Woodlawn Drive Ste 120
Honolulu, HI 96822

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers; and further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Officer's debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the HANDS Awards and Notices system, which is available on the SPO website: <https://hands.ehawaii.gov/hands/>

5.9 APPROVALS

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

5.10 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official effective date.

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

5.11 PAYMENT

Incremental payments shall be made to the awarded Contractor on a monthly basis, upon receipt of activity reports, invoice, and the satisfactory performance of services that meet the expectations of the RFP.

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

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

5.12 CONTRACT INVALIDATION

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

5.13 SUBCONTRACTING

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

5.14 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 of the contract.

5.15 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this contract have been appropriated by a legislative body. Therefore, the Contractor agrees to comply with HRS section 11-355, which states that campaign contributions are prohibited from a state and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body between the execution of the contract through the completion of the contract.

5.16 NON-DISCRIMINATION

The Contractor shall comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

SECTION SIX

SPECIAL PROVISIONS

6.1 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.2 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES (*include as applicable*)

All Offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawaii Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Exhibit A: AG GENERAL CONDITIONS
 - Exhibit B: OVERVIEW OF THE RFP PROCESS
 - Exhibit C: LIABILITY INSURANCE REQUIREMENT
 - Exhibit D: SANDBOX FLOORPLAN
-
- Attachment 1: APPLICANT FORM
 - Attachment 2: OFFER FORM

EXHIBIT A
AG GENERAL CONDITIONS

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. CPO 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 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - 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:
- The cost or pricing data, and
 - 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.
- 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.
 - 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 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material

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

c. Security Awareness Training and Confidentiality Agreements

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

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

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

e. Records Retention.

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

EXHIBIT B

OVERVIEW OF THE RFP PROCESS

The following is a general overview of the RFP process. Further detail and explanation of each step is provided in the sections below. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.

A. The procurement process begins with the issuance of the RFP, and registration of your company.

B. Submit written questions regarding the RFP prior to the date and time provided in section 1.5 RFP Schedule and Significant Dates.

C. Written questions regarding the RFP will be accepted until the deadline provided in Section 1.5. RFP Schedule and Significant Dates.

D. Formal responses to written questions and changes to the RFP will be made only by Addendum.

E. Proposal shall be prepared in accordance with the requirements of this RFP and follow the additional guidelines in Section 3.10.

F. Proposals must be received by the date and time provided in Section 1.5 RFP Schedule and Significant Dates, as evidenced by the HTDC time clock.

G. Any Offeror is allowed to modify or withdraw their proposal prior to the established proposal due date by following the procedure described in Section 3.14.

H. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

I. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

J. The evaluation committee selected by the Procurement Officer shall evaluate the proposals in accordance with the evaluation criteria in Section 4. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

K. Proposals may be accepted on evaluation without discussion.

L. If discussions are 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-scored proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the Best and Final Offer (BAFO) is tendered.

M. A presentation may be requested by HTDC from all Priority Listed Offerors prior to discussions.

N. If during presentations or discussions with Priority Listed Offerors there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to Priority Listed Offerors.

O. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The evaluation committee reserves the right to have additional rounds of discussions with the Priority Listed Offerors prior to the submission of the BAFO.

P. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.5, 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.

Q. BAFO will be scored in accordance with the evaluation criteria in Section 4. The evaluation committee will then make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section 4.

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

S. The evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.

T. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

EXHIBIT C

LIABILITY INSURANCE REQUIREMENT

Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of the operations, activities by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law; bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal and advertising injury of \$1,000,000 per occurrence; broadcasters' liability insurance of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

The Contractor shall deposit with the State on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the State that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the State during the entire term of the Contract. Upon request by the State the Contractor shall furnish a copy of the policy or policies. The Contractor will immediately provide written notice to the State and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The certificates of Insurance shall contain the following clauses:

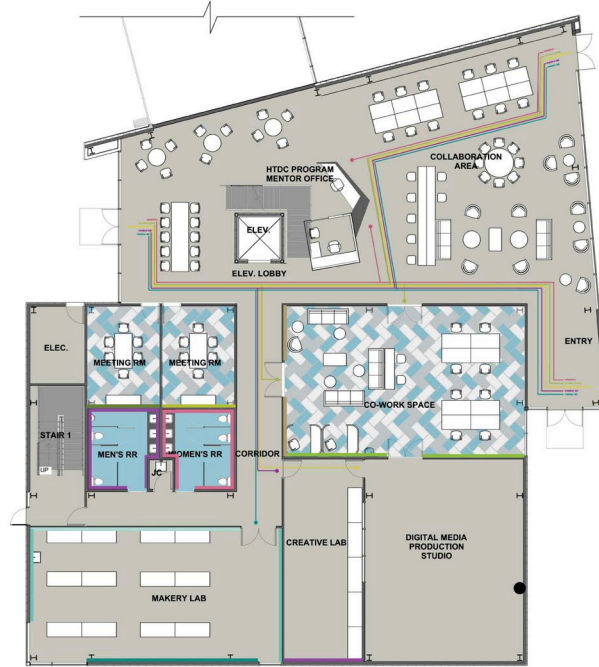
1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii"
2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies or insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

EXHIBIT D.

SANDBOX FLOORPLAN

SANDBOX FIRST FLOOR PLAN



SANDBOX SECOND FLOOR PLAN

