



RELEASE DATE: June 4, 2024

**The State of Hawaii  
OFFICE OF THE AUDITOR**

**Request for Proposals  
Solicitation #RFP-2024-010**

**FINANCIAL AND SINGLE AUDITS OF THE  
HAWAII TOURISM AUTHORITY AND HAWAII  
CONVENTION CENTER**

OFFERS ARE DUE AT 12:00 NOON, HAWAII STANDARD TIME (HST) ON

June 20, 2024

(or such later date as may be established by the State of Hawaii by an Addendum to this RFP)

BY SUBMISSION TO THE OFFICE OF THE AUDITOR

**DIRECT ALL QUESTIONS REGARDING THIS RFP, QUESTIONS OR ISSUES RELATING TO  
THE ACCESSIBILITY OF THIS RFP (INCLUDING THE ATTACHMENTS AND EXHIBITS AND  
ANY OTHER DOCUMENT RELATED TO THIS RFP) AND REQUESTS FOR ACCOMMODATIONS  
FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFP, TO:**

LAUREN KAWAJIRI, ADMINISTRATIVE DEPUTY AUDITOR,  
TELEPHONE (808) 587-0800 OR EMAIL [LAO.Auditors@hawaii.gov](mailto:LAO.Auditors@hawaii.gov).

Lauren Kawajiri  
Procurement Officer

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## RFP Administrative Information

RFP Title:	Financial and Single Audits of the Hawai'i Tourism Authority and Hawai'i Convention Center
RFP Project Description: (See Section 1.1 Purpose)	The Office of the Auditor, State of Hawaii, is seeking Contractor(s) to perform financial and single audits of the Hawaii Tourism Authority and financial audit of the Hawai'i Convention Center for the fiscal year ending June 30, 2024
RFP Point of Contact: (See Section 7.1 Contract Administrator)	Lauren Kawajiri Administrative Deputy Auditor Office of the Auditor, State of Hawaii Address: 465 S. King Street, Room 500, Honolulu, HI 96813 Email: lauren.kawajiri@hawaii.gov Phone: (808) 587-0800
Submit Proposals by mail or email: (See Section 4.4 Submission of Proposals)	Address, if submitting by mail: Lauren Kawajiri Administrative Deputy Auditor Office of the Auditor, State of Hawaii 465 South King Street, Room 500 Honolulu, Hawaii 96813-2971  Address, if submitting by email: LAO.AUDITORS@HAWAII.GOV
Pre-Proposal Conference:  Pre-Proposal Conference Location: (See Section 2.3 Pre-Proposal Conference)	June 10, 2024; 10:00 A.M. Hawaii Standard Time (HST)  Zoom Meeting <a href="https://zoom.us/j/94891637497?pwd=DbLm3WwNa7LvF4aSaH2FDuWQOizDJP.1">https://zoom.us/j/94891637497?pwd=DbLm3WwNa7LvF4aSaH2FDuWQOizDJP.1</a>  Meeting ID: 948 9163 7497 Passcode: 1WTqAP
Deadline to Receive Written Questions: (See Sections 1.3 Schedule and Significant Dates and 2.5 Electronic Submission of Questions)	June 12, 2024; 4:00 P.M. Hawaii Standard Time (HST)
Question & Answers: (See Sections 1.3 Schedule and Significant Dates and 2.5 Electronic Submission of Questions)	All questions, including those about Terms and Conditions, must be submitted in writing via email to LAO.Auditors@hawaii.gov. Questions must be submitted by the question deadline date and time.
RFP Closing Date: (See Section 1.3 Schedule and Significant Dates)	June 20, 2024
RFP Closing Time: (See Section 1.3 Schedule and Significant Dates)	12:00 NOON Hawaii Standard Time (HST)
Initial Term of Contract and Renewals: (See Section 1.5 Period of Performance)	July 1, 2024 – June 30, 2025 Upon mutual agreement, the contract may be extended or amended.

## Offer Checklist

Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below.

No.	Description	Reference in RFP	Completed
1	Offer Checklist – submittal of checklist with all items checked “completed.”	Offer Checklist	<input type="checkbox"/>
2	Offer Forms	Attachment A Offer Form OF-1; Attachment B Offer Form OF-2; Section 8.5 Proposal Preparation	<input type="checkbox"/>
3	Table of Contents	Section 4.5 Required Format and Content	<input type="checkbox"/>
4	Executive Summary, not to exceed one (1) page	Section 4.5 Required Format and Content	<input type="checkbox"/>
5	Licensing Requirements	Attachment E; Section 6.1 Experience and Capability	<input type="checkbox"/>
6	Experience & Qualifications of Firm	Attachment F; Section 6.1 Experience and Capability	<input type="checkbox"/>
7	Past Performance on Projects	Attachment G; Section 6.2 Past Performance	<input type="checkbox"/>
8	Human Resources (Capacity)	Attachment H; Section 6.1 Experience and Capability	<input type="checkbox"/>
9	Price	Attachment C Offer Form OF-3; Section 6.3 Price	<input type="checkbox"/>
10	Confidential, Protected or Proprietary Information Section	Section 4.5 Required Format and Content	<input type="checkbox"/>

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Authorized Offeror Signature

# **REQUEST FOR PROPOSALS**

## **Financial and Single Audits of the Hawaii Tourism Authority and Hawai'i Convention Center**

**Solicitation #RFP-2024-010**

### **Section 1: General Information**

#### **1.1 Purpose**

Article VII, Section 10 of the Hawaii State Constitution and Section 23-4, Hawaii Revised Statutes (HRS), require the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State of Hawaii (State) and its political subdivisions. These provisions further require the Auditor to certify to the accuracy of all financial statements issued by the respective accounting officers of the State.

The Auditor is issuing this Request for Proposals (RFP) to solicit Proposals from prospective Offerors demonstrating successful experience in providing auditing, accounting, and related professional services and intends to employ the services of certified public accounting firms to conduct such engagements.

Pursuant to Section 3-122-149, Hawaii Administrative Rules (HAR), relating to multi-term contracts, all prospective Offerors should be aware that funds for services as agreed shall be available for only the initial fiscal year of a multi-term contract. Further, the contractual obligations of both parties in each subsequent fiscal year are subject to the appropriation and availability of funds. A contract will be cancelled when funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the initial term of the contract; however, this does not affect either the State's rights or the Contractor's rights under any termination clause of the Contract. The Contractor will be notified on a timely basis by the Auditor, as Head of the Purchasing Agency (HOPA), on the availability of funds for the continuation of the Contract for each succeeding fiscal year as required under Section 3-122-149(f)(6), HAR. In the event of cancellation, as noted above, the Contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs pursuant to Section 3-122-149(f)(7), HAR.

The Auditor seeks certified public accountants to conduct audits of the financial statements of the Hawaii Tourism Authority (HTA) and the Hawai'i Convention Center (HCC), and to perform federal compliance audits in accordance with the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Title 2, U.S. Code of Federal Regulations, Part 200 (*Uniform Guidance*), over HTA for the fiscal year ending June 30, 2024, including consideration of the systems and procedures of accounting, reporting, and internal controls of the HTA and HCC.

## 1.2 Background

All services for the Auditor shall be in accordance with this RFP, including its attachments, exhibits, and any addenda.

The Auditor seeks certified public accountants with government accounting and fiscal expertise interested in providing the following services:

1. Conduct an audit of the financial statements of HTA for the fiscal year ending June 30, 2024, in accordance with the U.S. Government Accountability Office's *Government Auditing Standards (Government Auditing Standards)*, in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants (AICPA), and shall include sufficient testing of the financial data to provide the Contractor with a basis to report on the fairness of the financial statements, on the propriety of the expenditures, and on the accuracy of the accounting of all revenues and other receipts to which HTA is entitled have been collected and accounted for in accordance with the laws, rules, regulations, policies, and procedures of the State of Hawaii, and if applicable, the federal government. The audit shall include all fund types.
2. Conduct an audit of the special-purpose financial statements of HCC for the fiscal year ending June 30, 2024, in accordance with generally accepted auditing standards as prescribed by the AICPA, and shall include sufficient testing of the financial data to provide the Contractor with a basis to report on the fairness of the financial statements, on the propriety of the expenditures and on the accuracy of the accounting of all revenues and other receipts, to which HCC is entitled have been collected and accounted for in accordance with the laws, rules, regulations, policies, and procedures of the State of Hawaii, and if applicable, the federal government. The audit shall include all fund types.
3. In connection with the financial audits, the Contractor will consider the internal controls over financial reporting as a basis for designing the Contractor's audit procedures over accounting of revenues, expenditures, assets, and liabilities. The Contractor shall report and make appropriate recommendations for improvements for any significant deficiencies and material weaknesses identified in HTA's and HCC's financial accounting systems and procedures.
4. Ascertain and report on the adequacy of internal controls over compliance in providing assurance that federal programs are being managed in compliance with the applicable federal laws and regulations.
5. Assist HTA in the preparation of its financial statements and notes in accordance with the accounting and financial reporting requirements

promulgated by the Governmental Accounting Standards Board and assist HTA in the preparation of HCC's special-purpose financial statements and notes in accordance with the financial provisions of the management contract agreement. In accordance with *Government Auditing Standards*, HTA and HCC accept responsibility for the financial statements and notes and are in a position to make informed judgments about them. HTA and HCC shall:

- a. Designate a qualified management-level individual to be responsible and accountable for overseeing the drafting of the financial statements and notes;
- b. Establish and monitor the performance of the drafting of the financial statements and notes;
- c. Make all decisions that involve management functions and accept full responsibility for such decisions;
- d. Evaluate the adequacy of the financial statements and notes; and
- e. Prepare management's discussion and analysis.

The audit of HTA shall be performed in accordance with *Government Auditing Standards*, generally accepted auditing standards as prescribed by the AICPA, and with those standards and procedures set forth in the AICPA Audit and Accounting Guide entitled *State and Local Governments*.

The single audit of HTA shall also be conducted in accordance with the standards for financial audits set forth in the *Government Auditing Standards*, and the provisions of the OMB's *Uniform Guidance and Compliance Supplement*.

The audit of HCC shall be performed in accordance with generally accepted auditing standards as prescribed by the AICPA.

### 1.3 Schedule and Significant Dates

The table below contains the Auditor's current estimate of the schedule and significant dates. All times are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposals Due Date and Time" is delayed, the rest of the schedule may likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates prior to the Proposal due date shall be issued by addendum.

Event	Date
Solicitation Release:	June 4, 2024
Pre-Proposal Conference:	June 10, 2024; 10:00 A.M.
Question Submittal Deadline:	June 12, 2024; 4:00 P.M.
Answers to Questions:	June 14, 2024; 4:00 P.M.
Proposal Due Date and Time:	June 20, 2024; 12:00 NOON
Evaluations	June 20, 2024 through June 25, 2024; 4:00 P.M.
Estimated Date for Discussions with	TBD

Priority Listed Offerors, if necessary	
Estimated Due Date for BAFO, if necessary	TBD
Anticipated Award Date:	July 1, 2024
Approximate Start Date:	July 2024

## 1.4 Contract Type

This is a Firm Fixed-Price Contract, subject to price adjustment as outlined in Section 6.3.2.

## 1.5 Period of Performance

The Contract shall be for a period of one (1) year beginning on the date specified on the Notice to Proceed. Unless terminated, the Contract may be extended without re-solicitation, upon mutual agreement in writing between the Auditor and the Contractor, prior to the expiration date, for not more than one (1) additional 12-month period, or part thereof. The Contract may be extended if the price remains the same or lower OR the price is adjusted pursuant to Section 6.3.2 (price adjustment). A contract extension does not entail a change in scope (i.e., the period under audit), it may be merely to extend the period of performance to complete the engagement in the event of delay.

Pursuant to Section 3-122-149, HAR, relating to multi-term contracts, all prospective Offerors should be aware that funds for services as agreed shall be available for only the initial fiscal year of a multi-term contract. Further, the contractual obligations of both parties in each subsequent fiscal year are subject to the appropriation and availability of funds. A contract will be cancelled when funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the initial term of the contract; however, this does not affect either the Auditor's rights or the Contractor's rights under any termination clause of the Contract. The Contractor will be notified on a timely basis by the Auditor, as HOPA, on the availability of funds for the continuation of the Contract for each succeeding fiscal year as required under Section 3-122-149(f)(6), HAR. In the event of cancellation, as noted above, the Contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs pursuant to Section 3-122-149(f)(7), HAR.

## 1.6 Point of Contact

The Office of the Auditor is the issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation #RFP-2024-010. This number must be referred to on all Proposals, correspondence, and documentation relating to this RFP.

The person identified below is the single point of contact (POC) during this procurement process. Potential Offerors and interested persons shall direct to the POC all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, changes, clarifications, and protests, the award process, and any other



questions that may arise related to this solicitation and the resulting Contract. The POC designated by the HOPA is:

Lauren Kawajiri  
Administrative Deputy Auditor  
Office of the Auditor  
465 South King Street, Room 500  
Honolulu, HI 96813  
Email: [lauren.kawajiri@hawaii.gov](mailto:lauren.kawajiri@hawaii.gov)  
Phone: (808) 587-0800; Fax: (808) 587-0830

## 1.7 Definitions

The following definitions, terms and acronyms apply to this solicitation:

**Auditor** means the Office of the Auditor, State of Hawaii.

**BAFO** means Best and Final Offer.

**CPA** means Certified Public Accountant.

**Contract** means the formal written contract between the Office of the Auditor, State of Hawaii, and the successful Offeror receiving the contract award pursuant to this RFP.

**Contract Administrator** means the person designated to manage the various facets of the contract(s) to ensure the Contractor's total performance is in accordance with the contractual commitments and obligations are fulfilled. This is Lauren Kawajiri.

**Contractor** means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of work under the terms of the Contract with the Office of the Auditor, State of Hawaii, and acting directly or through its agents or employees.

**DAGS** means Department of Accounting and General Services, State of Hawaii.

**Fixed-price basis** means an established price agreed upon by the Contractor and the Office of the Auditor, State of Hawaii, by agreement or by authority, as the price to be charged for a specified amount of services.

**General Conditions** means the General Conditions issued by the Department of the Attorney General, State of Hawaii attached hereto as Exhibit 1.

**GET** means Hawaii General Excise Tax.

**Governmental body** means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, Government Corporation, or other establishment or office of the executive, legislative, or judicial branch, city or county of any U.S. State (including the Office of Hawaiian Affairs for the State of Hawaii).

**Hawaii Administrative Rules or HAR** means each agency statement of general or particular applicability and future effect adopted pursuant to Chapter 91, Hawaii Revised Statutes, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency.

**Hawaii Awards & Notices Data System or HANDS** is the Hawaii State Procurement Office system for displaying online solicitation and award notices.

**Hawaii Revised Statutes or HRS** means the State of Hawaii's compilation of general and permanent laws.

**HCC** means Hawai'i Convention Center.

**Head of the Purchasing Agency or HOPA** means the head of any agency with delegated procurement authority. This is the State Auditor.

**HTA** means Hawaii Tourism Authority, State of Hawaii.

**Key Performance Indicator or KPI** means how a quantifiable measure is utilized to assess the success of the Contractor in meeting strategic goals and objectives for performance.

**Offer** has the same meaning as Proposal.

**Offeror** means the individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a proposal in response to this Request for Proposals.

**Point of Contact or POC** means the single point of contact during this procurement process.

**Procurement Officer** means the contracting officer for the Office of the Auditor, State of Hawaii. This is Lauren Kawajiri.

**Proposal** means the official written response submitted by an Offeror in response to this Request for Proposals.

**Request for Proposals or RFP** means the entire solicitation document, including all parts, sections, exhibits, attachments, and addenda.

**Scope of Work** defines the services to be delivered by the Contractor.

**Services** means the furnishing of labor, time, or effort by the Contractor.

**SPO** means State Procurement Office, State of Hawaii.

**State** means State of Hawaii, including its departments, agencies, and political subdivisions.

**Statement of Work or SOW** defines the services to be delivered by the Contractor.

**Uniform Guidance** means Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Title 2, U.S. Code of Federal Regulations, Part 200, which defines government requirements for receiving and using federal awards.

## **Section 2: Solicitation Information**

### **2.1 Governing Laws and Regulations**

This procurement is conducted by the Auditor in accordance with the State Procurement Code. Information about the Auditor is available at <https://auditor.hawaii.gov/>.

This procurement shall be governed by the regulations and laws of the State of Hawaii. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Hawaii.

### **2.2 RFP Addenda**

Changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via formal written addenda issued by the Auditor.

The State and the Auditor accept no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of a prospective Offeror to monitor HANDS to obtain RFP addenda or other information relating to the RFP.

### **2.3 Pre-Proposal Conference**

A pre-proposal conference will be held on June 10, 2024; 10:00 A.M. HST via Zoom Meeting. The link to attend is:

<https://zoom.us/j/94891637497?pwd=DbLm3WwNa7LvF4asaH2FDuWQOizDJP.1>

Meeting ID: 948 9163 7497

Passcode: 1WTqAP

Attendance at the pre-proposal conference is optional. A summary of the pre-proposal conference will be provided via an addendum posted on HANDS.

### **2.4 Questions Regarding RFP Contents**

If a prospective Offeror believes that any provision of this RFP is unclear, potentially defective, or would prevent an offeror from providing a meaningful Offer, the prospective Offeror shall submit questions to the POC, in writing, requesting clarification on or before the deadline for doing so in Section 1.3 Schedule and Significant Dates. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of this RFP to which the question applies. The POC will respond by the date for the same in Section 1.3 Schedule and Significant Dates. The Auditor may issue Addenda in response to written questions received regarding this RFP.

## **2.5 Electronic Submission of Questions**

All questions must be submitted in writing via email to [LAO.auditors@hawaii.gov](mailto:LAO.auditors@hawaii.gov). Questions must be submitted by the question deadline date and time shown in Section 1.3 Schedule and Significant Dates. Answers will be posted as an addendum in HANDS as noted in Section 1.3 Schedule and Significant Dates.

Prospective Offerors are cautioned about including context in questions that may reveal the source of questions. The identity of prospective Offerors will not be published with the answers, but the text of questions will be restated, to the extent possible, to exclude information identifying prospective Offerors.

## **2.6 Proposal Due Date**

Proposals must be received by the posted closing date and time as described in Section 1.3 Schedule and Significant Dates.

## **2.7 Cancellation of Procurement and Proposal Rejection**

The Auditor reserves the right to cancel this RFP and to reject any and all Proposals in whole or in part, and waive any defects, without liability to the State, when it is determined to be in the best interest of the State, pursuant to Section 103D-308, HRS, and Sections 3-122-95 through 3-122-98, HAR.

## **2.8 Firm Offers**

Responses to this RFP, including proposed costs and/or fees will be considered firm for 180 days after the proposal due date.

## **2.9 Right to Accept All or Portion of Proposal**

Unless otherwise specified in the solicitation, the Auditor may accept any item or combination of items as specified in the solicitation or of any Proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a Proposal. If the Offeror so restricts its Proposal, the Auditor may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the State. The Auditor may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

## **2.10 Ownership or Disposition of Proposals and other Materials Submitted**

All costs incurred by the Offeror in preparing or submitting a Proposal shall be the Offeror's sole responsibility whether any award results from this RFP. The State shall not reimburse such costs. All Proposals become the property of the State.

## **2.11 Additional Information**

The Offeror shall provide additional information regarding aspects of an Offeror's Proposal within five (5) business days of the Auditor's request unless the Auditor specifies another period. As noted, each Offeror shall submit only one Proposal. If an Offeror submits more than one Proposal, then the Auditor reserves the right to reject and or dismiss the Offeror from the RFP process.

## **Section 3: Requirements**

### **3.1 Mandatory Minimum Administrative Proposal Requirements**

This section contains the minimum requirements that must be met to be considered for the evaluation phase. All items described in this section are non-negotiable. Offerors must state willingness and demonstrate the ability to satisfy all of these requirements in the Proposal. If an Offer does not cover the minimum requirements, the Offer will be considered non-responsive and the Offer will not be considered for award.

### **3.2 Minimum Requirements and Qualifications**

Offerors shall provide all services as described in Attachment D, Statement of Work.

### **3.3 Additional Contractor Requirements**

Each Contractor shall:

1. Provide all labor, materials, and equipment necessary to meet the RFP requirements;
2. Communicate the Contract requirements to its personnel and direct and coordinate project activities to ensure that the services progress efficiently and are completed on schedule;
3. Ensure that all its employees can communicate effectively with State employees;
4. Ensure that it is current with all payments and registration fees and similar financial obligations owed to the Auditor during the term of its Contract with the Auditor; and
5. Fully cooperate and maintain effective communication with the Auditor and cooperate in the resolution of problems, suspected problems, or potential problems.

### **3.4 Payment**

The method of payment for services provided by the Contractor shall be in increments. Unless otherwise specified and agreed upon by the Contractor and the Auditor, the timing and amount of each progress payment shall be according to the Compensation and Payment Schedule to be attached and made part of the Contract with the Auditor. Each event deadline shall be based upon satisfactory completion of the described task or product. The timetable may be modified by the Auditor upon the finding that such modifications would not jeopardize the successful completion of the audits.

The cost of services shall be itemized on billing invoices as follows:

1. Staff and other technical services, including the fee rates and amounts by staff classification;
2. Report printing; and
3. Other costs not otherwise allocable to the above.

In preparing billing invoices, the Contractor shall separately state the cost and expenses of each major deliverable according to the following categories:

1. Independent Auditors' Report on HTA's financial statements and management letter;
2. Single audit and federal compliance report; and
3. Independent Auditors' Report on HCC's special-purpose financial statements and management letter.

The final payment shall not be made except upon the delivery to and, subject to applicable professional standards, the final acceptance by the Auditor of the final Independent Auditors' Reports, single audit report, and management letters and upon compliance by the Contractor with the requirements of Sections 103-53(c) and 103D-328(c), HRS, relating to tax clearances.

The Auditor reserves the right to prescribe such other conditions as the Auditor deems appropriate under which progress payments shall be allowed.

Pursuant to Section 103-10, HRS, the Auditor shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of projects to make payment. For this reason, the Auditor will reject any offer submitted with a condition requiring payment within a shorter period. Further, the Auditor will reject any offer submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

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



## Section 4: Instructions to Offerors – Proposal Submission

### 4.1 Proposal Objectives

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.

Proposals shall be prepared straightforwardly and concisely, in a format that is reasonably considered and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.

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.

The Proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP.

### 4.2 Proposal Structure and Labeling

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point-by-point response, structured in form and reference to the RFP, addressing all requirements and the SOW elements.

### 4.3 Proposal Submission Instructions

Proposals must be received by June 20, 2024; 12:00 P.M. (Noon), HST. Proposals received after the deadline will be rejected and returned unopened.

### 4.4 Submission of Proposals

Offerors may submit Proposals in paper or electronic format by hand-delivery, U.S. post, or email. Electronic submissions via email are strongly preferred. **Note: the maximum allowable file size for email attachments is 25 MB; an Offeror may need to send the complete Proposal in multiple parts.** If submitting by hand-delivery or U.S. post, please include the original and an electronic copy (i.e., flash drive, CD, etc.) of the Proposal. It is the Offeror's responsibility to confirm that the Auditor has received its Proposal prior to the Proposal Due Date/Time listed in Section 1.3 Schedule and Significant Dates.

If submitting by hand-delivery or U.S. post:

Lauren Kawajiri  
Administrative Deputy Auditor  
Officer of the Auditor, State of Hawaii  
465 South King Street, Room 500  
Honolulu, Hawaii 96813-2971

If submitting by email:  
LAO.AUDITORS@HAWAII.GOV

Proposals will be received and receipt verified by two or more Auditor personnel on or after the date and time specified in Section 1.3 Schedule and Significant Dates herein, or as amended.

The register of proposals and all Proposals received by the Auditor shall be open to public inspection upon posting of award pursuant to Section 103D-105, HRS.

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

#### **4.5 Required Format and Content**

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is contained in later sections of this RFP. Proposals shall be submitted in size 12 Arial font or equivalent.

1. **Table of Contents.** A Table of Contents must be included with each Proposal. All major parts of the Proposal shall be identified by referencing page numbers.
2. **Offer Checklist.** Complete and submit all items noted on the Offer Checklist.
3. **Offer Forms.**
  - a. **OF Form, OF-1** (See Special Provisions, 8.5 Proposal Preparation.)
  - b. **OF Form, OF-2 Client References**
  - c. **OF Form, OF-3 Fee Proposal**
4. **Executive Summary.** The executive summary [not to exceed one (1) page] is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. The Proposal should demonstrate the Offeror's understanding of and ability to meet the Administrative and Technical

Requirements of the RFP. The Auditor should be able to determine the essence of the Proposal by reading the executive summary. The executive summary will not be evaluated as part of the Auditor's evaluation criteria, but rather is intended to be a high-level explanation of the entire Proposal.

**5. Evaluation Criteria Submittals (Refer to Section 5, Evaluation and Award).**

This section shall be sub-divided by the evaluation criteria and include the narrative and any other requirements.

- a. **Experience/Capability** – See Section 6.1.
- b. **Past Performance** – See Section 6.2.
- c. **Price Proposal** – See Section 6.3. Offeror shall complete the attached Offer Form, OF-3 Fee Proposal in which Offeror shall submit all price line items.

**6. Confidential, Protected, or Proprietary Information.** All confidential, protected, or proprietary information must be included in this section of the Proposal. Do not incorporate protected information throughout the Proposal. Rather, provide a reference in the Proposal directing the Auditor to the specific area of this protected information section. If Offeror believes that any portion of its Proposal, Offer, specification, protest, or correspondence contains information that should be withheld from public access as confidential, the Offeror must inform the Procurement Officer in writing and shall furnish the justification for the Offeror's position that the information is confidential. Price is not considered confidential and cannot be withheld from public access.

Information included in the Confidential, Protected or Proprietary Information section of an Offeror's Proposal is not automatically accepted as protected. All information identified in the section will be subject to review by the Auditor in accordance with the procedures prescribed by the State's open records statute (Chapter 92F, HRS), freedom of information act, or similar law.

**4.6 Each Offeror to Bear its Own Costs**

Each Offeror shall be responsible for all costs it incurs prior to the Notice of Award, including, without limitation, its costs of preparing and submitting its Offer, responding to notices or requests, making Priority-Listed Offeror presentations, demonstrations, and discussions, and otherwise participating in the RFP process.

## **Section 5: Evaluation and Award**

### **5.1 Evaluation of Proposals**

The Procurement Officer shall evaluate the Proposals. The evaluation will be based solely on Section 5.8 Evaluation Criteria and the process described in this section.

### **5.2 Right to Waive Minor Irregularities**

The Auditor, in its sole discretion, reserves the right to waive minor irregularities in the Proposal, which include but are not limited to deficiencies or ambiguities that in the judgment of the Auditor do not require a comprehensive Proposal rewrite. The Auditor also reserves the right in its sole discretion to waive certain minimum requirements, provided that all of the otherwise responsive Proposals fail to meet the same minimum requirements and the failure to do so does not materially affect the procurement.

### **5.3 Initial Review and Award without Discussions**

In the initial phase of the evaluation process, the Auditor will review all Proposals timely received. Proposals that do not conform to requirements of the RFP will be eliminated from further consideration.

The Auditor reserves the right to award the Contract based on the initial Proposals without an opportunity for discussion or Proposal revision. Offerors are encouraged to submit their most favorable Proposal at the time established for receipt of Proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of Proposals.

### **5.4 Discussion with Priority Listed Offerors**

Prior to holding any discussions, a priority list shall be generated consisting of Proposals determined to be acceptable or potentially acceptable.

If numerous acceptable and potentially acceptable Proposals are submitted, the Procurement Officer may limit the priority list to three (3) highest ranked, responsible Offerors.

The Auditor may invite priority listed Offerors to discuss their Proposals to ensure thorough, mutual understanding. The Auditor in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in Section 1.3 Schedule and Significant Dates. The Auditor may also conduct discussions with priority listed Offerors to clarify issues regarding the Proposals before requesting Best and Final Offers, if necessary.

In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing Offerors.

## **5.5 Best and Final Offers**

If deemed appropriate by the Auditor, in its sole discretion, the Auditor may request each Offeror to submit its Best and Final Offer (BAFO). The request shall be issued via an Addendum, which will provide guidance and additional instructions. Offerors' BAFOs shall be submitted to the Auditor via hand-delivery, U.S. post, or email on or before the specified deadline. If an Offeror fails to do so, its last submitted Offer shall be deemed its BAFO.

The BAFOs will be evaluated by the Procurement Officer, taking into consideration the Evaluation Criteria set forth in Section 5.8 Evaluation Criteria.

## **5.6 Award of Contract**

Award of the Contract shall be made to the responsible Offeror whose Proposal is determined the most advantageous to the Auditor, taking into consideration price and the other evaluation factors set forth in this RFP.

## **5.7 Responsibility of Offeror**

Pursuant to Section 103D-310(c), HRS, the selected Offeror shall at the time of award be compliant with all laws governing entities doing business in the State of Hawaii. See Special Provisions, Section 8.4 Responsibility of Offerors.

## 5.8 Evaluation Criteria

The following criteria shall be used in evaluating the Offerors:

**Table 1 - Evaluation Criteria**

Evaluation Category	Evaluation Subcategory	Point Breakdown	Points Possible
Evaluation Criteria 1: Experience/Capability			
	Firm	20	
	Key Personnel	30	
	Subtotal		<b>50</b>
Evaluation Criteria 2: Past Performance			<b>30</b>
Evaluation Criteria 3: Price			
	Total Price Calculation	10	
	Price Reasonableness and Realism	10	
	Subtotal		<b>20</b>
Total Possible Points			<b>100</b>

## 5.9 Scoring Process

The Procurement Officer shall score Proposals by reviewing the narrative for each of the evaluation criteria above.

The Procurement Officer shall use a rating of 0 to 5 for each evaluation criteria. Rating is defined as follows:

- 0- The Proposal fails to address the criterion or cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how the requirement(s) is met.
- 1- **Poor.** The criterion is inadequately addressed, Offeror demonstrates only a slight ability to comply, or there are serious inherent weaknesses.

- 2- **Fair.** The Proposal broadly addresses the criterion, but there are significant weaknesses. May have one or more deficiencies, or Offeror has not adequately explained how its Services fit the requirement.
- 3- **Good.** The Proposal addresses the criterion well; meets the requirement. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted regarding technical approach.
- 4- **Very Good.** The Proposal addresses the criterion very well, highly comprehensive. No deficiencies noted.
- 5- **Excellent.** The Proposal successfully addresses all relevant aspects of the criterion. Excellent reply that goes beyond the requirements listed in the RFP to provide added value. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the Auditor. The response includes a full, clear, detailed explanation of how the requirement(s) are met. No errors in technical writing.

The average rating for each evaluation criteria shown in Table 1, shall be converted based on the following formula:

<b>Rate Achieved</b>	X	Points Possible For that Criteria	= Points
Total Rating Achievable			

Example:

<b>4 Very Good</b>	X	25	= 20
5			

<b>1 Poor</b>	X	25	= 5
5			

## 5.10 Notice of Award

After a final selection is made, the Auditor will post a notice of Contract award on HANDS. Upon award of the Contract, Offerors' Proposals are available to the public, including other Offerors, for review by submitting an Office of Information Practices "Request to Access a Government Record" form to the Auditor. Information on the Office of Information Practices and its forms may be found at <https://oip.hawaii.gov>.

## **5.11 Debriefing**

Pursuant to Section 3-122-60, HAR, non-selected Offerors may request a debriefing to understand the source selection decision and Contract 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 meeting within seven (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor following a debriefing shall be filed within five (5) working days after the debriefing meeting, as specified in Section 103D-303(h), HAR. See Special Provisions, Section 8.8 Protest Procedures for submitting a protest.



## **Section 6: Evaluation Criteria**

### **Evaluation Criteria 1: Experience/Capability**

#### **6.1 Experience and Capability**

Sub-factor 1: Firm

The Auditor will assess the degree to which an Offeror meets the requirements identified in the SOW.

This includes, but is not limited to, the following:

- a) Offeror is authorized to do business in the State of Hawaii (valid Hawaii GET license);
- b) Offeror possesses a current and valid firm permit to practice public accountancy in the State of Hawaii;
- c) Any lawsuits, complaints, administrative actions or professional disciplinary actions filed or otherwise initiated against the Offeror in any jurisdiction in the past 5 years;
- d) Any lawsuits, complaints, or administrative proceedings against the Offeror in connection with any professional services contract with a federal, state, or local government entity in the past 5 years;
- e) Any contracts for professional services, including but not limited to contracts for audit services, non-audit services, and consulting services, terminated by a federal, state, or local government entity within the past 5 years;
- f) Offeror is in good standing with the AICPA;
- g) Offeror has current quality control review report required by AICPA;
- h) Offeror is Hawaii Compliance Express (HCE) Compliant (current State of Hawaii Department of Taxation Tax Clearance Certificate, current State of Hawaii Department of Labor and Industrial Relations Certificate of Compliance, and current State of Hawaii Department of Commerce and Consumer Affairs Certificate of Good Standing);
- i) Offeror has professional liability insurance; and
- j) Offeror is independent from HTA and HCC.

## Sub-factor 2: Key Personnel

The Auditor will assess the degree to which Offeror's proposed Key Personnel meet defined labor category requirements with required or equivalent certifications aligned to its Proposal and the degree to which the approach for retaining Key Personnel will support successful and efficient execution of SOW requirements.

This includes, but is not limited to, the following:

- a) Engagement partner/partner-in-charge and engagement manager(s) are legally authorized to practice public accountancy in the State of Hawai'i, which includes possessing a current and valid license to practice public accountancy in the State of Hawaii and a current and valid individual permit to practice public accountancy in the State of Hawaii;
- b) Any CPA license issued to the engagement partner/partner-in-charge in any jurisdiction has been suspended, revoked, or otherwise subject to any professional disciplinary action in the past 5 years;
- c) Any lawsuits, administrative actions, or professional disciplinary actions filed against the engagement partner/partner-in-charge in any jurisdiction or against the organization with which the engagement partner/partner-in-charge was associated relating to or arising from work performed by the engagement partner/partner-in-charge in any jurisdiction;
- d) Audit staff who may be assigned to the engagement meets the continuing professional education requirements as prescribed by the 2018 revision of *Government Auditing Standards* promulgated by the Comptroller General of the U.S. Government Accountability Office;
- e) Audit staff who may be assigned to the engagement are licensed to practice public accountancy in the State of Hawaii or will be supervised by a Hawaii-licensed CPA with a current and valid individual permit to practice public accountancy in the State of Hawaii; and
- f) Audit staff are independent from HTA and HCC.

## Evaluation Criteria 2: Past Performance

### 6.2 Past Performance and Recency Ratings

The Auditor will evaluate Offeror's demonstrated record of contract performance in supplying services that meet users' needs, including price and schedule. The recency of the information, the source of the information, the context of the data, and general trends in Offeror's performance will be considered. More recent performance usually has a greater impact on the confidence assessment than less recent performance.

For purposes of this evaluation, recency is defined as active or completed efforts performed within the past three (3) years from the closing date of this solicitation. The more recent the effort the higher recency score it will receive, as follows:

<b>PAST PERFORMANCE RECENCY RATING</b>	
<b>Rating</b>	<b>Definition</b>
Very Recent	Completion of a service project within the last one (1) to three (3) years
Recent	Completion of a service project within the last three (3) to five (5) years
Not Recent	Completion of a service project within the last five (5) to ten (10) years

#### 6.2.1 Final Performance Rating

Once the evaluation has considered recency, it is time to take those considerations and determine an overall rating for past performance in respect of whether the information reviewed will allow for successful performance of the current solicited requirements.

Pursuant to Act 188, Session Laws of Hawai'i 2021, for all contracts conducted under Section 103D-303, HRS (Competitive Sealed Proposals), completed on or after January 1, 2024, the Procurement Officer will be required to complete and submit a contractor performance form in the Contractor Past Performance Database in HANDS. When a contract for goods, services, and/or construction has been completed, the Contract Administrator shall complete the form provided in HANDS. Upon the completion of the form, the Contractor shall receive an electronic notification that the form is ready for review and/or comment.

The Contractor shall have twenty (20) working days from the date of notification to review and submit comments, rebutting statements, or additional information into the database in HANDS. If the Contractor does not respond, the form shall be considered complete.

The Procurement Officer is responsible for submitting a copy of the final form electronically in the database in HANDS within twenty (20) working days of

receipt from the Contractor. A copy of the final form shall also be kept in the Auditor's contract file.

The Contractor Past Performance Database will include any differences between the contract and actual start and completion dates of a contract/project, including approved change orders. It will also include any positive or negative difference to the project's authorized budget and the project's final cost, and any change(s) in cost.

The Contractor Past Performance Database will be used to determine the overall rating of past performance.

Rating	Description
5- High Confidence	Based on Offeror's performance record, the Auditor has high confidence the Offeror will successfully perform the required effort.
4- Significant Confidence	Based on Offeror's performance record, the Auditor has significant confidence the offeror will successfully perform the required effort.
3- Satisfactory Confidence	Based on Offeror's performance record, the Auditor has confidence Offeror will successfully perform the required effort. Normal Contractor emphasis should preclude any problems.
*2- Unknown Confidence	No performance record is identifiable.
1- Little Confidence	Based on Offeror's performance record, substantial doubt exists that Offeror will successfully perform the required effort.
0- No Confidence	

\* Given the number of mergers and acquisitions in today's American business environment, Offerors may not have existed under their current name for very long. If the key management personnel or other resources have experience on contracts similar to the pending requirement for another organization, the Procurement Officer can perform the appropriate evaluation and risk assessment. This reduces the chance of needing to "neither reward nor penalize" an Offeror with no other relevant past performance information.

If the Offeror is a new entity and none of the company principals ever performed relevant work for other organizations, the company is considered to have no past performance. In the case of an Offeror with respect to which there is no information on past contract performance or with respect to which information on past contract performance is not available, the Offeror may not be evaluated favorably or unfavorably on the factor of past contract performance. Thus, the Procurement Officer would, at the minimum, rate this Offeror as unknown confidence, allowing for a pass rate of 2 of 5.

## Evaluation Criteria 3: Price

There are two subfactors to Price evaluation:

### 6.3 Subfactor 1 – Total Price Evaluation

Offeror's price is worth 20% of the total evaluation score. Offerors shall enter the total sum price for the one (1) year of services as the Unit Price in U.S. Dollars and Cents when submitting their Proposals.

#### 6.3.1 Cost Points Conversion

In converting cost to points, the Lowest Total Cost will automatically receive the maximum number of points allocated to cost shown in Table 1 in Section 5.8, i.e., 10 points. The point allocations for cost on other Offerors' Proposals will be determined through the method set out in the following formula:  $[\text{Lowest Total Cost} \times \text{maximum points}] / [\text{Offeror's Proposed Cost}] = \text{Cost Points Awarded}$ .

For example, if the maximum points for the price are 10 of the total points and Offeror A submitted a price for \$200,000; Offeror B submitted a price of \$250,000; Offeror C submitted a price of \$300,000.

Offeror A would receive the maximum points (i.e., 10 points) based on the lowest offer of \$200,000.

Offeror B would not receive the maximum points based on the lowest offer of  $(\$200,000 / \$250,000) \times 10 \text{ points} = 8 \text{ points}$ .

Offeror C would not receive the maximum points based on the lowest offer of  $(\$200,000 / \$300,000) \times 10 \text{ points} = 6.7 \text{ points}$ .

#### 6.3.2 Price and Rate Guarantee Period

All prices shall be guaranteed for the entire Contract period. During the Contract period, Contractor may request an increase in Contract price when there is a substantial increase in audit effort that could not have been reasonably contemplated or anticipated at the time the Contract was executed. Such requests must be made in writing to the Procurement Officer.

The HOPA shall make the final determination for allowance of price increase requests.

## **6.4 Subfactor 2 – Price Reasonableness and Realism**

### **6.4.1 Price Reasonableness**

Prices shall be evaluated for competitiveness and reasonableness of price. Offeror may provide a narrative description of price justification for consideration. The Auditor may use any or all price analysis techniques and procedures to determine price reasonableness.

### **6.4.2 Price Realism**

The Auditor may use any or all price realism techniques and procedures for the purpose of measuring Offeror's understanding of the solicitation requirements or of assessing the risk inherent in Offeror's Proposal.

## Section 7: Contract Management

Contract management refers to post-award type activities, such as contract implementation, contract administration, measurement of work completion, and payment computation based on deliverables. Moreover, it involves the monitoring of a contract, making important changes and modifications to the contract, and dealing with related problems. Focused attention to contract management considerations facilitates a positive working relationship between the government customer, procurement staff, and Contractor for the successful implementation of the contract award.

### 7.1 Post-Award Communications: Contract Administrator

The Contract Administrator identified below is the single point of contact (POC) **post-award**. Contractor shall direct to the Contract Administrator all questions concerning the post-award process and any other questions that may arise related to the resulting Contract. The Contract Administrator designated by the HOPA is:

Lauren Kawajiri  
Administrative Deputy Auditor  
Office of the Auditor  
465 South King Street, Room 500, Honolulu, HI 96813  
Email: lauren.kawajiri@hawaii.gov  
Phone: (808) 587-0800; Fax: (808) 587-0830

### 7.2 Contractor/State Meetings

Contractor shall participate in initial meetings with the Auditor to discuss the Contract, including but not limited to an estimated timeline for implementation, status reports of the implementation, the expectation of deliverables, and follow-up meetings.

### 7.3 Issues or Concerns

Contractor shall work with the Contract Administrator to address any issues or concerns that may occur at any time prior to or after an award.

Refer to Sections 103D-701 to -713, HRS, and Chapter 126, Subtitle 11 of Title 3, HAR, for laws and rules governing legal and contractual remedies, including remedies prior to and after an award.

### 7.4 Quality Control

Contractor shall provide quality services and management oversight of all processes. Contractor shall use key performance indicators that are acceptable within the specific market industry to manage and monitor quality performance. Contractor shall provide accurate data/reports and meet deliverables, with emphasis on the overall success and positive impact on the audits. Contractor shall provide

management, support, and qualified personnel to accomplish the objectives of the Contract.

#### 7.4.1 Key Performance Indicators (KPIs)

This section identifies KPIs for determining Contractor progress.

This table delineates major milestones identified in the Contract.

RFP Reference	Items	Standard Performance Expectation	Due Date
SOW Section 1.5	Provide biweekly status update memos timely	Within 5 days of due date	15 <sup>th</sup> and last day of month

#### 7.5 Post Award Deliverables

Contractor shall provide the following, including but not limited to, deliverable items:

Preliminary Draft – HTA	FY2024
1. Independent Auditors' Report on Financial Statements	October 31, 2024
2. Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	February 28, 2025
3. Independent Auditors' Report on Compliance and on Internal Control Over Compliance in Accordance with the <i>Uniform Guidance</i>	February 28, 2025
4. Management Letter, if applicable	February 28, 2025

Preliminary Draft – HCC	FY2024
1. Independent Auditors' Report on Special-Purpose Financial Statements	February 28, 2025
2. Management Letter, if applicable.	February 28, 2025



<b>Final Reports – HTA</b>	<b>FY2024</b>
1. Independent Auditors' Report on Financial Statements	November 29, 2024
2. Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	March 31, 2025
3. Independent Auditors' Report on Compliance and on Internal Control Over Compliance in Accordance with the <i>Uniform Guidance</i>	March 31, 2025
4. Management Letter, if applicable.	March 31, 2025

<b>Final Reports – HCC</b>	<b>FY2024</b>
1. Independent Auditors' Report on Special-Purpose Financial Statements	March 31, 2025
2. Management Letter, if applicable.	March 31, 2025

## **Section 8: Special Provisions**

### **8.1 Scope**

To conduct audits of the financial statements of the Hawaii Tourism Authority and to perform federal compliance audits in accordance with the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Title 2, U.S. Code of Federal Regulations, Part 200 (*Uniform Guidance*), for the fiscal year ending June 30, 2024, including consideration of the systems and procedures of accounting, reporting, and internal controls of the Hawaii Tourism Authority. To conduct audits of the special-purpose financial statements of Hawai'i Convention Center for the fiscal year ending June 30, 2024, in accordance with generally accepted auditing standards as prescribed by the AICPA.

### **8.2 Intellectual Property Rights**

The Auditor reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for the Auditor's purposes without any additional cost or fee.

### **8.3 Termination for Convenience or Unavailability of Funds**

When interests of the Auditor or the Contractor so require, the Auditor or the Contractor may terminate the Contract for convenience pursuant to the General Conditions attached hereto as Exhibit 1.

### **8.4 Responsibility of Offerors**

Offeror is advised that, 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 but not limited to the following chapters and pursuant to Section 103D-310(c), HRS:

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

#### **8.4.1 Vendor Compliance - Hawaii Compliance Express**

Offerors are encouraged to use Hawaii Compliance Express, which is an electronic system that allows vendors/Contractors/service providers doing business with the State to quickly and easily demonstrate compliance with

applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

#### **8.4.2 Timely Registration on HCE**

**Offerors intending to use HCE to demonstrate compliance with applicable laws are advised to register on HCE as soon as possible at <https://vendors.ehawaii.gov>.** HCE “Certificate of Vendor Compliance” is accepted for the execution of a contract and final payment. **If an Offeror is not compliant on HCE at the time of award, Offeror will not receive the award.**

#### **8.4.3 Verification of Compliance on HCE**

Prior to awarding the Contract, the Auditor shall verify Offeror’s compliance on HCE.

#### **8.4.4 Vendor Compliance - Paper Documents**

Offerors **not utilizing HCE** to demonstrate compliance shall provide the paper certificates to the Auditor as instructed below. All certificates must be valid on the date it is received by the Auditor. Timely applications for all applicable clearances are the responsibility of Offeror.

##### **8.4.4.1 Chapter 237, HRS, Tax Clearance Requirement for Award**

Pursuant to Section 103D-328, HRS, Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green-certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The *Tax Clearance Application*, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <https://tax.hawaii.gov/forms/>.

##### **8.4.4.2 Chapters 383 (Unemployment Insurance), 386 (Workers’ Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award**

Pursuant to Section 103D-310(c), HRS, Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the Auditor.

The *DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR*, and its filing instructions are available on the DLIR

website: <https://labor.hawaii.gov/forms/>.

#### **8.4.5 Compliance with Section 103D-310(c), HRS, for an entity doing business in the State.**

Offerors **not** utilizing HCE shall be required to submit a *Certificate of Good Standing (COGS)* issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) - Business Registration Division (BREG). The Certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the Auditor.

To obtain the certificate, Offeror must be registered with BREG. A sole proprietorship is not required to register with BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <https://cca.hawaii.gov/breg/>.

#### **8.4.6 Timely Registration**

**The above certificates should be applied for and submitted to the Auditor as soon as possible.** If a valid certificate is not submitted on a timely basis, an Offeror otherwise responsive may not receive the award.

#### **8.4.7 Verification of Compliance**

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

#### **8.4.8 Debarment / Suspension**

To be eligible for an award, an Offeror shall not be debarred or suspended by the State of Hawaii.

#### **8.4.9 Required Review**

Before submitting a Proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and any 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.

Should Offeror find defects and/or questionable or objectionable items in the RFP, Offeror shall notify the Auditor in writing prior to the deadline for written questions as stated in Section 1.3 Schedule and Significant Dates. 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.

## **8.5 Proposal Preparation**

### **8.5.1 Offer Form OF-1**

Offer Form OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on OFFER FORM OF-1.

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

Completion of OFFER FORM OF-1 is Offeror's acknowledgment and agreement to provide services in all categories identified in the RFP and the understanding of evaluation criteria and process.

### **8.5.2 Offer Form OF-2**

Offer Form OF-2 is required to be completed and submitted with the Offer. Offeror is required to complete Offer Form OF-2 with a minimum of two (2) references of customers who received similar services to those described in this RFP.

### **8.5.3 Offer Form OF-3**

Offer Form OF-3 is required to be completed and submitted with the Offer. Offeror is required to provide an all-inclusive flat fee proposal for the entire contract period and indicate the budgeted hours and hourly rates by category of personnel for each major deliverable for each audit period.

### **8.5.4 Offer Guaranty**

An offer guaranty is NOT required for this RFP.

### **8.5.5 Tax Liability and County Surcharge**

Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and if applicable, taxable under Chapter 238, HRS. Offerors are advised that they are liable for Hawaii GET for transactions made on Oahu, Hawaii, Maui, Kauai, Molokai, and Lanai or the applicable Use Tax. If, however, an Offeror is a person exempt by the Hawaii law from paying Hawaii GET/Use Tax and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

County surcharges on Hawaii GET or Use Tax may be visibly passed on but are not required. For more information on county surcharges and the max pass-on tax rate, please visit DOTAX's website at <https://tax.hawaii.gov/geninfo/countysurcharge>.

#### **8.5.6 Federal I.D. No. and Hawaii General Excise Tax License I.D.**

Offeror shall submit its current Federal I.D. No. and Hawaii GET License I.D. number in the space provided on OFFER FORM OF-1, thereby attesting that Offeror is doing business in the State and that Offeror will pay such taxes on all revenues received under the Contract.

### **8.6 Confidentiality**

- 8.6.1** If Offeror in good faith considers a portion of an Offer, or correspondence with the Auditor, to contain confidential information, it shall follow the procedures set forth in Section 4.5 Required Format and Content. Costs included or required to be included in an Offer cannot be confidential and will not be withheld from public access.
- 8.6.2** Any Offeror may request the nondisclosure of designated trade secrets or other proprietary data it considers confidential. Such request shall be in writing specifically identifying the information or material asserted to be confidential and the justification for confidential treatment. The request shall be submitted with the Offer. The information or material asserted by Offeror to be confidential shall be clearly marked and be submitted in or with the Offer in such manner as to be readily separable from the Offer (or remaining portion of the Offer) to facilitate public access to and inspection of the non-confidential portion of the Offer. Total Cost Proposals cannot be marked confidential.
- 8.6.3** Offeror has the burden of and responsibility to establish that the information or material it considers to be confidential can be withheld from public disclosure under Chapter 92F, HRS. Should the Auditor receive a request to access information identified by an Offeror to be confidential, pursuant to Section 3-122-58, HAR, the Auditor will consult with the Department of the Attorney General and the Office of Information Practices, as the Auditor deems necessary, to determine whether the information or materials identified by an Offeror as being confidential can be withheld under Chapter 92F, HRS. The Auditor shall communicate its determination to Offeror in writing. If the information or material, in whole or in part, is deemed to be non-confidential, it shall be made available to the person requesting access unless Offeror appeals the determination pursuant to Section 92F-42(1), HRS.

## **8.7 Redaction by the Auditor**

If the Auditor determines, pursuant to Section 92F-13, HRS, that any information or material in an Offer, any written question or submission by a Prospective Offeror, an Offeror or a Contractor, any response to any question or submission from a Prospective Offeror, Offeror or Contractor, and/or any Contract document is not required to be disclosed, the Auditor may segregate or redact the information, or otherwise deny public access to such information or material.

## **8.8 Protest Procedures**

Pursuant to Section 103D-701, HRS, and Section 3-126-3, HAR, a Prospective Offeror or Offeror that is aggrieved in connection with the solicitation or award of a Contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

Lauren Kawajiri  
Administrative Deputy Auditor  
Office of the Auditor  
465 S. King Street, Room 500  
Honolulu, HI 96813

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

## **8.9 Notice to Proceed**

Work will commence on the official commencement date specified on the Notice to Proceed.

## **8.10 Contract Execution**

The successful Offeror receiving the award shall enter into a Contract with the Auditor. Offeror's compliance documents or HCE Certificate of Vendor Compliance is required for award of a Contract. Upon execution of the Contract, the Auditor shall issue a Notice to Proceed specifying the Contract commencement date.

No performance or payment bond is required for the Contract.

No work is to be undertaken by Contractor prior to the commencement date specified on the Notice to Proceed. The Auditor is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by Contractor prior to

the official start date.

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

### 8.11 Liability Insurance

Contractor shall maintain in full force and effect during the term of the Contract, liability and property damage insurance to protect Contractor from claims for damages for personal injury, accidental death, and property damage which may arise from operations under the Contract.

The following minimum insurance coverage(s) and limit(s) shall be provided by Contractor:

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
Commercial General Liability (Occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 bodily injury per accident \$1,000,000 bodily injury per person \$1,000,000 property damage per accident
Professional Liability (Errors and Omissions)	\$1,000,000 per claim \$2,000,000 annual aggregate

Each insurance policy required by this Contract (with the exception of the Professional Liability policy) shall contain the following clauses:

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

A Waiver of Subrogation shall apply to the General Liability and Automobile Liability policies and shall be in favor of the State of Hawaii.

Prior to award, Contractor agrees to deposit with the Auditor valid certificate(s) of insurance necessary to satisfy the Auditor that the insurance provisions of this RFP have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the Auditor during the entire term of the Contract. Upon request by the Auditor, Contractor shall be responsible for furnishing a copy of the policy or policies.



Failure of Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the Auditor to exercise any or all of the remedies provided in the Contract and this RFP for default by the Contractor.

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

## **8.12 Contract Invalidation**

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

## **8.13 Mistakes in Proposals**

- 8.13.1** Mistakes shall not be corrected after awarding of the Contract.
- 8.13.2** When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer may request Offeror to confirm the Proposal. If Offeror alleges a mistake, the Proposal may be corrected or withdrawn pursuant to this section.
- 8.13.3** 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.
- 8.13.4** 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 before award if the mistake is clearly evident on the face of the Proposal but the intended correct Offer is not, or 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 the price, quality, or quantity. If discussions are not held or if the Best and Final Offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the Auditor. 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 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 Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on the price, quality or quantity.

#### **8.14 Modification Prior to Submittal Deadline or Withdrawal of Offers**

- 8.14.1** Offeror may modify or withdraw a Proposal before the Proposal due date and time.
- 8.14.2** Any change, addition, deletion of attachment(s), or data entry of an Offer may be made prior to the deadline for submittal of offers.

#### **8.15 Contract Changes – Unanticipated Amendments**

During the course of the Contract, Contractor may be required to perform additional work which shall be within the general scope of the Contract. When additional work is required, the Contract Administrator will provide Contractor a written description of the additional work and request Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Contractor will not commence additional work until the Contract Administrator has secured the required State approvals necessary for the amendment and an executed written Contract amendment has been issued.

#### **8.16 Re-execution of Work**

Contractor shall re-execute any work that fails to conform to the requirements of the Contract which appear during the course of the work and shall immediately remedy any defects due to faulty work by Contractor.

#### **8.17 Campaign Contributions by State and County Contractors**

Offerors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions to candidates running for State and county offices are prohibited from specified State or County government contractors during the term of the Contract if the contractors are paid with funds appropriated by a legislative body.

Financial and Single Audits of the Hawaii Tourism Authority and the  
Hawaii Convention Center  
RFP-2024-010

Lauren Kawajiri  
Administrative Deputy Auditor  
Office of the Auditor  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Ms. Kawajiri:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and the AG General Conditions, Form AG-008 or as amended; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this bid, 1) Offeror is declaring this offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Offeror is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture  
☐ Other \_\_\_\_\_

\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_  
Federal Employer I.D. No. (FEIN) \_\_\_\_\_

Payment address  
(other than street address below): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

_____ Date	<b>(x)</b>	_____ Authorized (Original) Signature
_____ Telephone No.		_____ Name and Title (Please Type or Print)
_____ Fax No.	<b>**</b>	_____ <b>Exact Legal Name of Company (Bidder)</b>
_____ E-mail Address		

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

**CLIENT REFERENCES  
OFFER FORM OF-2**

Client References: Offeror is required to fill out Section 1 for a minimum of two (2) references to customers who received services similar to those called out in this RFP. Offeror shall then complete Section 2 for each reference and email to referenced customer to complete Section 3.

**Section 1. To be completed by the Offeror and submitted with offer.**

Customer Name #1: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #2: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #3: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #4: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

Customer Name #5: \_\_\_\_\_  
Address: \_\_\_\_\_  
Reference Name: \_\_\_\_\_  
Current Phone: \_\_\_\_\_

The Auditor may contact all of the references listed to inquire about Offeror's services, performance, and degree of customer satisfaction. Full points for references will not be awarded unless Section 2 and 3 are emailed from referenced customers in accordance with Section 6.2.

**Section 2. To be completed by Contractor – Offeror**

Contractor Name:	Contractor Contact/Name:
Project Dates:	Contractor Contact Phone:
Customer Organization:	Customer Contact Name:
	Customer Phone:
Customer Address:	Customer Fax:
Scope of Project:	
Number of employees staffed for this project:	
Total One-Time Cost of Project (Estimated/Actual):	

Reason for Change in Total One-Time Cost of Project, if applicable:			
Scope of Contractor/Offeror's Involvement in this project:			
Number of employees Contractor/Offeror staffed for this project:			
Original Value of Contractor/Offeror's Contract:		Actual Total Contract Value:	
Reason(s) for Change in Value:			
Estimated Start & Completion Dates:		From:	To:
Actual Start & Completion Dates:		From:	To:
Reason(s) for Difference Between Estimated and Actual Dates:			

### Section 3. To be completed by the Customer Organization

Contractor Name:

Customer Organization:

Contractor Name:

Customer Organization:

#### A. Validation of Referenced Project Data Provided by Offeror in Section 2

Comments from the Customer Organization

#### B. Past Performance Reference

##### RATING GUIDELINES

Selection	Rating
5	Significantly exceeded your expectations.
4	Somewhat exceeded your expectations.
3	Met your expectations.
2	Somewhat below your expectations.
1	Significantly below your expectations.

Please explain ratings of 1, 2, or N/A in the Comments section below.

Criteria	Rating	Not Applicable
1. The Contractor provided sufficient project resources with appropriate skill sets to meet all project goals and objectives.		<input type="checkbox"/>
2. The Contractor effectively managed its project staff to achieve project goals and objectives.		<input type="checkbox"/>
3. The Contractor met all required tasks and deliverables timely and satisfactorily.		<input type="checkbox"/>
4. The Contractor provided effective training and knowledge transfer to meet project goals.		<input type="checkbox"/>
5. The Contractor satisfactorily managed project scope and risk to adhere to project schedule, control costs, and meet project goals.		<input type="checkbox"/>

Comments:
For Criteria with Ratings of 1, 2, or N/A:
General Comments:

As a representative of the Customer Organization listed above, I approved the responses to the previous statements about the performance of the Contractor listed above on the project identified in Section 2 of this Offeror Experience Reference Form.	
Printed Name:	Printed Title:
Signature:	Date:



**FEE PROPOSAL  
OFFER FORM OF-3**

As the term of the contract is one (1) year to end on June 30, 2025, the Fee Proposal should be for the entire contract period. The services detailed in the Scope of Work should form the basis for the proposed fees and should be referred to for a detailed description of the services required of the successful Offeror. Proposed fees must include all applicable taxes.

Offerors should submit for all time periods an all-inclusive annual flat fee for the audit services proposed, and indicate the budgeted hours and hourly rates by category of personnel for each major deliverable according to the following categories:

1. Independent Auditors' Reports on financial statements and management letter;
2. Single audit and federal compliance reports; and
3. Independent Auditors' Reports on HCC's special-purpose financial statements and management letter.

The method of payment is described in Section 3.4 of the RFP.

The final contract fee should represent the only compensation received by the Contractor for services provided to the Auditor. There should not be any other benefit, monetary or otherwise, that results from this relationship between the Contractor and the Auditor.

**STATEMENT OF WORK  
FOR  
RFP-2024-010**

It is anticipated that the proposed Statement of Work (SOW) will be incorporated as an attachment to the resultant award instrument. The SOW, without restrictive markings, is your company's affirmation that the SOW is non-proprietary.

**FINANCIAL AND SINGLE AUDITS OF THE HAWAII TOURISM AUTHORITY AND THE  
HAWAII CONVENTION CENTER**

**1.1 BACKGROUND**

The Hawaii Tourism Authority (HTA) was established in 1998 by Act 156, Session Laws of Hawaii 1998, to develop a strategic tourism marketing plan and develop measures of effectiveness to assess the overall benefits and effectiveness of the marketing plan and progress toward achieving HTA's strategic plan goals. HTA is attached to the Department of Business, Economic Development and Tourism (DBEDT) for administrative purposes. As HTA is a discretely presented component unit of the State and not consolidated in the DBEDT's financial statements, a financial audit is necessary to provide financial information to assist in the preparation of the State's Annual Comprehensive Financial Report. In addition, as HTA is expected to receive and expend over \$750,000 of federal funds in FY2024, HTA is required to have a financial and compliance audit conducted by an independent auditor in accordance with the *Uniform Guidance* (2 CFR Section 200.501 and 200.514).

The Hawaii Convention Center (HCC) is used for a variety of events, including conventions and trade shows, public shows, and spectator events. HTA is responsible for the operation, management and maintenance of HCC. HCC is reported as a special revenue fund of HTA. The audits of HCC's special-purpose financial statements are a provision of the contract agreement between HTA and AEG Management HCC, LLC (AEG) and are intended to present the assets, liabilities, and net assets; changes in net assets; and cash flows of only that portion of HTA that is attributable to the transactions of HCC based upon the accounting records maintained by AEG.

Refer to the Auditor's website for the most recently issued Independent Auditors' Report and financial statements at <https://auditor.hawaii.gov/recent-financial-audits/>. All prior reports are available at <https://auditor.hawaii.gov/financial-audits/>.

**1.2 OBJECTIVE**

The objectives of the audits are:

1. To provide a basis for an opinion by the Contractor as to whether the financial statements of HTA are fairly presented, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
2. To provide a basis for an opinion by the Contractor as to whether the special-

purpose financial statements of the HCC are fairly presented, in all material respects, in accordance with the financial reporting provisions of the contract agreement between HTA and the management company for HCC.

3. To report on HTA's internal control over financial reporting and compliance with certain provisions of laws, regulations, contracts, and grant agreements, including applicable provisions of the Hawaii Public Procurement Code (Chapter 103D, Hawaii Revised Statutes) and procurement rules, directives and circulars, noncompliance with which could have a direct and material effect on the determination of financial statement amounts.
4. To ascertain whether expenditures and other disbursements have been made and all revenues and other receipts to which HTA and HCC is entitled have been collected and accounted for in accordance with the laws, rules, regulations, policies, and procedures of the State of Hawaii.
5. To provide a basis for an opinion by the Contractor as to whether HTA has complied with compliance requirements described in OMB's *Compliance Supplement* that could have a direct and material effect on each of its major federal programs in accordance with the Single Audit Act Amendments of 1996, including whether the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the basic financial statements as a whole.
6. To report on the internal control over compliance of HTA for the purpose of expressing an opinion on compliance with requirements of laws, regulations, contracts and grants that could have a direct and material effect on each major federal program in accordance with the *Uniform Guidance*.
7. To ascertain the adequacy of the financial and other management information reports in providing officials at the different levels of HTA and HCC with the proper information to plan, evaluate, control, and correct program activities.

### 1.3 SCOPE OF WORK

The scope shall include audits of HTA's financial statements and HCC's special-purpose financial statements, as well as consideration of internal control and compliance with laws, regulations, contracts, and grants. The Contractor shall:

1. Conduct an audit of the financial statements of HTA for the fiscal year ending June 30, 2024, in accordance with the U.S. Government Accountability Office's *Government Auditing Standards* ("Government Auditing Standards"), in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, and shall include sufficient testing of the financial data to provide the Contractor with a basis to report on the fairness of the financial statements, on the propriety of the expenditures and on the accuracy of the accounting of all revenues and other receipts, to which HTA

is entitled have been collected and accounted for in accordance with the laws, rules, regulations, policies, and procedures of the State of Hawaii, and if applicable, the federal government. The audit shall include all fund types.

2. Conduct an audit of the special-purpose financial statements of HCC for the fiscal year ending June 30, 2024, in accordance with generally accepted auditing standards as prescribed by the AICPA, and shall include sufficient testing of the financial data to provide the Contractor with a basis to report on the fairness of the financial statements, on the propriety of the expenditures and on the accuracy of the accounting of all revenues and other receipts, to which HCC is entitled have been collected and accounted for in accordance with the laws, rules, regulations, policies, and procedures of the State of Hawaii, and if applicable, the federal government. The audit shall include all fund types.
3. In connection with the financial audits, the Contractor will consider the internal controls over financial reporting as a basis for designing the Contractor's audit procedures over accounting of revenues, expenditures, assets and liabilities. The Contractor shall report and make appropriate recommendations for improvements for any significant deficiencies and material weaknesses identified in HTA's and HCC's financial accounting systems and procedures.
4. Ascertain and report on the adequacy of internal controls over compliance in providing assurance that federal programs are being managed in compliance with the applicable federal laws and regulations.
5. Assist HTA in the preparation of its financial statements and notes in accordance with the accounting and financial reporting requirements promulgated by the Governmental Accounting Standards Board and assist HTA in the preparation of HCC's special-purpose financial statements and notes in accordance with the financial provisions of the management contract agreement. In accordance with *Government Auditing Standards*, HTA and HCC accept responsibility for the financial statements and notes and are in a position to make informed judgments about them. HTA and HCC shall:
  - a. Designate a qualified management-level individual to be responsible and accountable for overseeing the drafting of the financial statements and notes.
  - b. Establish and monitor the performance of the drafting of the financial statements and notes.
  - c. Make all decisions that involve management functions and accept full responsibility for such decisions.
  - d. Evaluate the adequacy of the financial statements and notes.
  - e. Prepare management's discussion and analysis.

## 1.4 AUDIT ACTIVITIES

1. Legal Authority. In ascertaining whether HTA's and HCC's financial statements are free of material misstatement and financial transactions are in compliance with applicable laws, rules, regulations, administrative directives, policies and procedures, the Contractor shall, at a minimum, become sufficiently knowledgeable with the applicable sections of the following reference documents:
  - a. Constitution of the State of Hawaii
  - b. Hawaii Revised Statutes
    - 1) Laws having general application:
      - Title 4 – State Organization and Administration, Generally
      - Title 7 – Public Officers and Employees
      - Title 8 – Public Proceedings and Records
    - 2) Laws relating to fiscal matters:
      - Title 5 – State Financial Administration
      - Title 9 – Public Property, Purchasing and Contracting
    - 3) Laws relating to the Hawaii Tourism Authority, including but not limited to:
      - i. Chapter 201B, Hawaii Revised Statutes – Hawai'i Tourism Authority
      - ii. Chapter 237D, Hawaii Revised Statutes – Transient Accommodations Tax
  - c. Session Laws of Hawaii affecting the financial transactions of the Hawaii Tourism Authority and the Hawaii Convention Center
  - d. Applicable rules, regulations, and administrative directives and procedures issued by the following agencies relating to financial transactions, accounting systems and controls, and operating procedures:
    - 1) Hawaii Tourism Authority and Hawaii Convention Center
    - 2) Office of the Governor
    - 3) Department of Accounting and General Services
    - 4) Department of the Attorney General
    - 5) Department of Budget and Finance
    - 6) Department of Human Resources and Development
  - e. Collective bargaining agreements affecting employees of the Hawaii Tourism Authority and Hawaii Convention Center

- f. For single and federal compliance reports:
  - 1) Federal laws relating to each major federal program of the Hawaii Tourism Authority.
  - 2) Applicable titles of the U.S. Code of Federal Regulations promulgated to implement the provisions of the above federal laws.
  - 3) Applicable provisions of the *Uniform Guidance*.
- 2. Audit Workpapers. The Contractor shall, at any time during and subsequent to the completion of the audits, submit to the Auditor the following workpapers developed during the audits, including but not limited to the following:
  - a. Engagement letter;
  - b. Entrance conference agenda;
  - c. Pre-planning communication letter;
  - d. Audit planning memo;
  - e. Materiality schedule;
  - f. Risk assessment;
  - g. Fraud inquiry;
  - h. Federal major program determination work paper, if applicable;
  - i. Post-engagement communication letter;
  - j. Management representation letter; and
  - k. Exit conference agenda, if held.

The workpapers shall not be disclosed to others except by mutual consent of the Auditor and the Contractor, or as otherwise provided in the Engagement Letter, or as required by law or legal process. The workpapers shall be retained for a minimum of six years from the date of the audit report, unless the Contractor is notified in writing by the Auditor to extend the retention period.

Additionally, upon receipt of the Auditor's authorization, the Contractor shall respond promptly and fully, on the basis of known facts, to a successor auditor's reasonable inquiries in accordance with professional standards. In such circumstances, the Contractor shall fully and completely cooperate with a successor auditor and allow review by a successor auditor of workpapers developed for the purposes of the audit, in accordance with professional standards including but limited to documentation of planning, internal control, audit results, and other matters of continuing accounting and auditing significance, such as the workpapers containing an analysis of balance sheet accounts, those relating to contingencies, related parties, and significant unusual transactions. The Contractor shall cooperate with and provide access to requested workpapers to a successor auditor at no additional cost or fee to a successor auditor or to the Auditor.

3. Discovery of Unusual Condition. If, at any time during the audits, the Contractor discovers a material weakness or significant deficiency in internal control, or a financial transaction that, in the professional judgment of the Contractor, is highly unusual or of such a nature as to require immediate correction or of such a character that to complete the audits a significant amount of time or resources beyond that initially contemplated by the parties to the Contract would be required, the Contractor shall immediately notify the Auditor of its finding in writing. If the deficiency or transaction is of such a character requiring the expenditure of a significant amount of time or resources, the Contractor shall include in the notification an estimate of the additional time and cost that would be required and shall proceed to complete the audits provided the additional scope of work to be performed and the additional compensation to be paid amending this Contract is reduced in writing and signed by both parties.
4. Coordination with Statewide Audit. The Contractor shall provide the Auditor with information and schedules relevant to the work required under this Contract, as requested, to support the audit of the State's Annual Comprehensive Financial Report (ACFR). The Contractor shall be prepared to submit to the ACFR auditor a preliminary trial balance, adjusting journal entries, uncorrected misstatements and other information approximately mid-November following the end of the fiscal year.

#### **1.5 DELIVERABLES & QUALITY CONTROL REQUIRED KEY PERFORMANCE INDICATORS**

1. Progress Reports. The Contractor shall submit in writing semi-monthly progress reports to the Auditor commencing with audit fieldwork and continuing through issuance of the final reports. Progress reports shall include detailed descriptions in the following areas: (1) Project Phase; (2) Tasks Accomplished; (3) Problems/Issues; (4) Remaining Tasks; (5) Preliminary Findings; and (6) Adherence to Schedule.
2. Substitution of Contractor Personnel. If the Contractor intends to substitute an engagement partner/partner-in-charge and/or engagement manager identified in the Contractor's proposal submitted in response to RFP No. 2024-010 as assigned to this engagement, Contractor shall obtain prior written approval from Auditor, which shall not be unreasonably withheld, prior to the substitution. Failure to do so will be considered a material breach of the contract.
3. Audit Reports.
  - a. Preliminary Draft of Independent Auditors' Reports and Management Letters. The Contractor shall prepare and submit to the Auditor and HTA a preliminary draft of the Independent Auditors' Reports on the financial statements of HTA and HCC, the single audit report, and the management

letters as provided in the Contract. Preliminary drafts acceptable to the Auditor shall be submitted to the Auditor and HTA for review, comment and discussion. The Contractor shall make the changes which are necessary to clarify or correct the findings and statements made in the preliminary drafts. Upon request, the Contractor shall meet with the Auditor and/or HTA to discuss the preliminary drafts.

- b. Final Independent Auditors' Reports and Management Letters. The Contractor shall deliver copies of the final Independent Auditors' Reports on the financial statements of HTA and HCC, the single audit reports, and the management letters to the Auditor and HTA, as provided in the Contract. The distribution of the final Independent Auditors' Reports and management letters to other State of Hawaii officials shall be made by the Auditor. The Auditor may post the final Independent Auditors' Reports to its public website. The Contractor shall be considered to have completed all of the work required under this Contract only upon delivery to and, subject to applicable professional standards, final acceptance by the Auditor of the final reports and management letters.
4. Form and Content of Independent Auditors' Reports. The Independent Auditors' Reports shall be addressed to the Office of the Auditor, State of Hawaii, and shall contain the following parts:

**Hawaii Tourism Authority**

The title of the report shall be as follows:

State of Hawaii  
Hawaii Tourism Authority  
Report Name  
June 30, 20xx

- a. Table of contents.
- b. Introduction section.
- c. Management's discussion and analysis.
- d. A report on the financial statements consisting of:
  - 1) Independent Auditors' Report, including an opinion on whether the financial statements of HTA are fairly presented, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
  - 2) Financial statements.
  - 3) Notes to the financial statements.
  - 4) Required supplementary information.
- e. A report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards*.



**Hawaii Convention Center**

The title of the report shall be as follows:

State of Hawaii  
Hawaii Convention Center  
Report Name  
June 30, 20xx

- a. Table of contents.
  - b. Introduction section.
  - c. A report on the special-purpose financial statements consisting of:
    - 1) Independent Auditors' Report, including an opinion on whether the special-purpose financial statements are fairly presented, in all material respects, the assets, liabilities, and net assets of HCC as of June 30, 20xx, and the changes in its net assets and its cash flows for the year then ended in accordance with financial reporting provisions of the contract agreement between HTA and AEG.
    - 2) Special-purpose financial statements.
    - 3) Notes to the special-purpose financial statements.
5. Form and Content of Single Audit and Federal Compliance Reports. The Federal Compliance reports shall be addressed to the Office of the Auditor, State of Hawaii, and shall contain the following parts:
- a. Table of contents.
  - b. A report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with the *Uniform Guidance*. This report shall also include:
    - 1) An opinion (or disclaimer of opinion) as to whether the major programs selected for testing complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs.
    - 2) An opinion (or disclaimer of opinion) as to whether the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the financial statements as a whole.
  - c. A schedule of expenditures of federal awards, showing the total expenditures for each federal program by department as identified in the Catalog of Federal Domestic Assistance/Assistance Listing.
  - d. Notes to schedule of expenditures of federal awards.
  - e. Schedule of findings and questioned costs.
  - f. Status of prior year findings and questioned costs prepared by HTA.
  - g. Corrective action plan, prepared by HTA in response to findings identified in the schedule of findings and questioned costs.
  - h. Other supplementary statements and schedules as required by the

*Uniform Guidance.*

6. Form and Content of Management Letters. The management letters, if applicable, shall be addressed to the Office of the Auditor, State of Hawaii, and shall disclose findings and recommendations and disposition of prior comments.
7. Data Collection Form. The Contractor and HTA shall prepare, certify, and file a data collection form SF-SAC as required by the *Uniform Guidance*. The Contractor shall also verify that the data collection form is transmitted and accepted by the Federal Audit Clearinghouse.
8. Delivery of Final Reports. The final reports shall be submitted by the Contractor to the Auditor and HTA in the following form and number:

Reports	HTA	Office of the Auditor
1. Independent Auditors' Report on Financial Statements, and Independent Auditors' Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	25 bound 1 unbound 1 PDF version	3 bound 1 PDF version
2. Independent Auditors' Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control Over Compliance in Accordance with the <i>Uniform Guidance</i>	Combined with Independent Auditors' Report on Financial Statements, see #1 above	Combined with Independent Auditors' Report on Financial Statements, see #1 above
3. Independent Auditors' Report on the HCC's Special-Purpose Financial Statements in Accordance with the Provisions of the Contract Agreement Between HTA and AEG	25 bound 1 unbound 1 PDF version	3 bound 1 PDF version
4. Management Letter, if applicable	25 bound 1 unbound 1 PDF version	3 bound 1 PDF version

## Licensing Requirements

A.	CERTIFIED PUBLIC ACCOUNTING FIRMS	YES	NO
1.	Is the firm incorporated, organized, or registered under the laws of the State of Hawaii? <b>If yes, attach copy of the most current annual exhibit filed with the State of Hawaii Department of Commerce and Consumer Affairs.</b>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Is the firm authorized to do business in the State of Hawaii? <b>If yes, attach copy of firm general excise tax license.</b>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Does the firm have a current and valid permit to practice public accountancy in the State of Hawaii? <b>If yes, provide firm license identification number:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>
4.	In the past 5 years, has any permit for the firm to practice public accountancy in any jurisdiction been suspended, revoked or otherwise subject to any professional disciplinary action? <b>If yes, attach detailed description.</b>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Are there any lawsuits, complaints, administrative actions or professional disciplinary actions pending against the firm in any jurisdiction? <b>If yes, attach detailed description.</b>	<input type="checkbox"/>	<input type="checkbox"/>
6.	In the past 5 years, has the firm filed a lawsuit or commenced any administrative proceeding in connection with any professional services contract with a federal, state or local government entity? <b>If yes, attach detailed description.</b>	<input type="checkbox"/>	<input type="checkbox"/>
7.	In the past 5 years, has the firm failed to complete a professional services contract with a federal, state or local government entity? <b>If yes, attach statement of the following for <u>each</u> such contract:</b> a. Contracting parties' names; b. Effective date of contract; c. Description of scope of services; and d. Specify if contract was terminated for default, terminated for convenience, or describe other circumstances of the firm's failure or inability to complete the contract.	<input type="checkbox"/>	<input type="checkbox"/>
8.	Does the engagement partner/partner-in-charge possess a current and valid license to practice public accountancy in the State of Hawai'i and a current and valid individual permit to practice public accountancy in the State of Hawai'i? <b>If yes, provide partner name and license number:</b> <b>Name:</b> _____ <b>Hawaii License No.:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>

A.	CERTIFIED PUBLIC ACCOUNTING FIRMS	YES	NO
9.	Does the engagement manager possess a current and valid license to practice public accountancy in the State of Hawaii and a current and valid individual permit to practice public accountancy in the State of Hawaii? <b>If yes, provide manager name and license number:</b> <b>Name:</b> _____ <b>Hawaii License No.:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>
10.	In the past 5 years, has any CPA license issued to the engagement partner/partner-in-charge in any jurisdiction been suspended, revoked or otherwise subject to any professional disciplinary action? <b>If yes, attach detailed description.</b>	<input type="checkbox"/>	<input type="checkbox"/>
11.	Are there any lawsuits, administrative actions or professional disciplinary actions pending against the engagement partner/partner-in-charge in any jurisdiction or against the organization with which the engagement partner/partner-in-charge was associated relating to or arising from work performed by the engagement partner/partner-in-charge in any jurisdiction? <b>If yes, attach detailed description.</b>	<input type="checkbox"/>	<input type="checkbox"/>
12.	Is the firm in good standing with the American Institute of Certified Public Accountants (AICPA)?	<input type="checkbox"/>	<input type="checkbox"/>
13.	Does the firm have a current quality control review report required by AICPA? <b>If yes, attach copy.</b> <b>If no, when is the review scheduled?</b> _____ <i>(Qualification is subject to completion of this review.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
14.	Does the firm have:		
	a. A current State of Hawaii Department of Taxation "Tax Clearance Certificate" (Form A-6)?	<input type="checkbox"/>	<input type="checkbox"/>
	b. A current State of Hawaii Department of Labor and Industrial Relations "Certificate of Compliance" (Form #LIR27)?	<input type="checkbox"/>	<input type="checkbox"/>
	c. A current State of Hawaii Department of Commerce and Consumer Affairs "Certificate of Good Standing"?	<input type="checkbox"/>	<input type="checkbox"/>
15.	Does the firm have professional liability insurance? <b>If yes, attach copy of valid certificate of insurance.</b>	<input type="checkbox"/>	<input type="checkbox"/>
16.	Does the firm's audit staff who may be assigned to the engagement meet the continuing professional education (CPE) requirements as prescribed by the 2018 revision of <i>Government Auditing Standards</i> issued by the Comptroller General of the U.S. Government Accountability Office?	<input type="checkbox"/>	<input type="checkbox"/>
17.	Will the firm's staff who may be assigned to the engagement include Hawaii-licensed CPAs or will they be directly supervised by a Hawaii-licensed CPA with a current and valid individual permit to practice public accountancy in the State of Hawaii? <b>If yes, attach list of name(s) of</b>	<input type="checkbox"/>	<input type="checkbox"/>

A.	CERTIFIED PUBLIC ACCOUNTING FIRMS	<u>YES</u>	<u>NO</u>
	Hawaii-licensed CPAs, and Hawaii license numbers.		
18.	Is the firm independent from HTA and HCC?	<input type="checkbox"/>	<input type="checkbox"/>

## Experience and Qualifications of Firm

Provide information related to the experience and qualifications of the firm and partners, principals, managers, and seniors available for the engagement with the Office of the Auditor.

### PROFESSIONAL EXPERIENCE OF PARTNERS/PRINCIPALS TO BE ASSIGNED TO THE ENGAGEMENT

Name:

Position with Firm:

	Total	As Partner/Principal in This Firm	As Partner/Principal in Other Firms
Years of Experience:	_____	_____	_____

Current CPE Requirements met: ☐ Yes ☐ No  
(In accordance with *2018 revision of Government Auditing Standards*)

Education (College; Degree; Specialization):

Membership in Professional Organizations:

License(s) (State; Type; Original License Date; License Expiration Date):

Permit(s) to practice public accountancy in the State of Hawaii:

Responsibilities on Previous Government or Similar Type of Engagements:

**Experience and Qualifications of Firm (continued)****PROFESSIONAL EXPERIENCE OF MANAGERS/SENIORS TO BE ASSIGNED TO THE ENGAGEMENT**

Name:

Position with Firm:

	Total	As Manager/Senior in This Firm	As Manager/Senior in Other Firms
Years of Experience:	_____	_____	_____

Current CPE Requirements met: ☐ Yes ☐ No  
 (In accordance with *2018 revision of Government Auditing Standards*)

Education (College; Degree; Specialization):

Membership in Professional Organizations:

License(s) (State; Type; Year; Original License Date; License Expiration Date):

Permit(s) to practice public accountancy in the State of Hawaii:

Responsibilities on Previous Government or Similar Type of Engagements:

### Past Performance on Projects

Provide a list of professional services completed within the last five (5) years for Hawaii state and local government entities. Indicate the name(s) of the report(s) issued.

Additionally, for each project identified, in the past 5 years, has the firm received a notice to cure for non-performance or default? **If yes, attach statement of the following for each such notice:**

- a. Contracting parties' names;
- b. Effective date of contract;
- c. Description of scope of services;
- d. Description of event(s) of purported non-performance or default; and
- e. Description of the firm's response to the notice to cure.

### Financial Statement Audits:

<i>Agency/Name of Audit</i>	<i>Fiscal Year</i>	<i>Total Hours</i>

### Single Audits:

<i>Agency/Name of Audit</i>	<i>Fiscal Year</i>	<i>Total Hours</i>

### Accounting Services:

<i>Agency/Description</i>	<i>Fiscal Year</i>	<i>Total Hours</i>



**Consulting Services:**

<i><b>Agency/Name of Project</b></i>	<i><b>Fiscal Year</b></i>	<i><b>Total Hours</b></i>

**Human Resources (Capacity)**

Provide detailed information regarding the number of personnel currently employed in the organization as a whole.

**Current number of personnel in the organization\*:**

<u>Employee Classification</u>	<u>Audit</u>	<u>Tax</u>	<u>Consulting</u>	<u>Total</u>
Partners/Principals	_____	_____	_____	_____
Senior Managers/Managers	_____	_____	_____	_____
Supervisors/Seniors	_____	_____	_____	_____
Staff	_____	_____	_____	_____
Clerks, typists, and other supporting staff	_____	_____	_____	_____
<b>TOTAL Organization Employees</b>	_____	_____	_____	_____

*\*Do not double count your employees between audit and other categories. List each employee under only one category.*

**Number of personnel intended to be committed for assignment to Hawaii Tourism Authority Financial and Single Audits and Hawaii Convention Center Financial Audits:**

<u>Employee Classification</u>	
Partners/Principals	_____
Senior Managers/Managers	_____
Supervisors/Seniors	_____
Staff	_____
Clerks, typists, and other supporting staff	_____
<b>TOTAL Employees Assigned</b>	_____

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

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

### 13. Termination for Default.

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

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

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

#### 14. Termination for Convenience.

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



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

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

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

- d. Compensation.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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



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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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