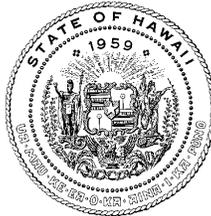




**REQUEST FOR QUALIFICATIONS
FOR ADMINISTRATIVE SUPPORT SERVICES
FOR HAWAII TOURISM AUTHORITY'S
KŪKULU OLA,
ALOHA 'ĀINA,
AND COMMUNITY ENRICHMENT
PROGRAMS**

HTA RFQ NO. 17-04



Hawai'i Tourism Authority
State of Hawai'i
1801 Kalākaua Avenue
Hawai'i Convention Center, First Level
Honolulu, Hawai'i 96815

Date of Issuance: August 29, 2016

Procurement Officer/Contract Manager:
Mr. Ronald D. Rodriguez

DEADLINE FOR RECEIPT OF PROPOSALS IS
September 30, 2016, 4:30 p.m. HST
See Proposal Outline for Submission Requirements

**REQUEST FOR QUALIFICATIONS
FOR ADMINISTRATIVE SUPPORT SERVICES
FOR HAWAIIAN TOURISM AUTHORITY’S
KŪKULU OLA,
ALOHA ‘ĀINA,
AND COMMUNITY ENRICHMENT
PROGRAMS
HTA RFQ NO. 17-04**

– TABLE OF CONTENTS –

Section	Page
I. Overview and Timeline	2
II. Background Information and Objectives.....	4
III. Proposal Outline	5
IV. RFP Process.....	8
V. Provisions, Conditions, Disclaimers, and Disclosures.....	10

LIST OF FORMS

Form A – Applicant Information Form	20
Form B – Confidentiality Agreement.....	21
Form C – Conflict of Interest Form	24

LIST OF EXHIBITS

Exhibit 1 – General Conditions	26
Exhibit 2 – Evaluator Scoring	40

I. OVERVIEW AND TIMELINE

Overview

The Hawai'i Tourism Authority's (HTA) seeks proposals from qualified applicants to provide administrative support services related to procuring and managing the following programs provided for in the HTA's Brand Management Plan 2017. Any interested applicant must submit a timely proposal as described in Section III of this RFP, entitled "Proposal Outline." The successful applicant shall be an independent contractor and shall furnish all management, supervision, labor, and any or all other goods and services required to complete the scope of services being solicited in this RFP. HTA does not seek to engage in an employer-employee relationship and the successful applicant shall not be entitled to any benefits as an employee of HTA and the State of Hawai'i.

This is an expedited procurement with a very short timeline. Applicants are encouraged to immediately register at <http://bit.ly/2bOBpKb>. Those who have registered will receive notice of changes and addendums directly. Changes will also be posted on the RFP page of HTA's website (www.hawaiitourismauthority.org). All dates and times are in the Hawai'i-Aleutian Standard Time Zone.

Procurement Timeline

ACTIVITIES	SCHEDULED DATE Subject to Change
Distribution of RFQ	August 29, 2016
Deadline to submit written questions to HTA (by 4:00 pm HST)	September 8, 2016
Responses to Written Questions (week of)	September 19, 2016
Deadline for Protest of Content to RFP	Within 5 calendar days of Responses
Deadline for written submissions (by 4:30 pm HST)	September 30, 2016
Oral Interviews if Necessary (week of)	October 10, 2016
Notice of Selection or Non-selection (week of)	October 17, 2016

Delivery of the Proposal Electronically Only (NO PAPER DOCUMENTS)

Each applicant is required to deliver a proposal in electronic format to the Chief Procurement Officer, designated below, either via email attachment, via a downloadable link, or on a flash drive by the deadline listed in the Procurement Timeline. Electronic file should be labelled to read: **"RFQ 17-04 Proposal – [Name of Applicant]"**. Front cover page of proposal should clearly state the names of the Project or Event, and the Applicant. All proposals are to be delivered as no more than two (2) electronic documents.

The official time for receipt of the email shall be the date and time stamp automatically recorded on the email. Proposals downloadable through a link shall be available for download by HTA no later than the deadline listed in the Procurement Timeline—downloads unavailable at deadline will be considered late. Any flash drive containing a proposal shall be delivered to, and actually received by the HTA at the address below no later than the deadline listed in the Procurement Timeline. Paper submissions and facsimile submissions will not be accepted.

RFP Questions

Any applicant having questions or requiring clarification or interpretation of any section of the RFP must pose these in a Word doc as an email attachment to the CPO by the dates specified in the timeline. The HTA will share answers in writing to all substantive and nontechnical questions with all applicants, who had timely submitted a completed Intent to Submit Form (Form A, attached to this RFP).

Chief Procurement Officer

All applicants shall submit proposals to, and communicate with, only the Chief Procurement Officer (“CPO” or “HTA Procurement Officer”). Communication with other HTA staff regarding this RFP could be grounds for disqualification. HTA is not responsible for misinformation or reliance from other sources. Unless otherwise specified in a written addendum to this RFP, the CPO for this RFP is:

Ronald D. Rodriguez
1801 Kalākaua Avenue
Hawai‘i Convention Center, First Level
Honolulu, Hawai‘i 96815

Email: ronald@gohta.net Phone: (808) 973-2251

II. BACKGROUND

Background

About the Hawai'i Tourism Authority (HTA)

HTA is a government agency established by the State of Hawai'i in 1998, pursuant to Chapter 201B of the Hawai'i Revised Statutes, to promote and market the State as a visitor destination. HTA is the lead agency and advocate for Hawai'i's tourism industry. Its mission is to strategically manage Hawai'i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires and visitor industry needs.

About the HTA's Programs

The Hawai'i Tourism Authority's (HTA) seeks administrative support services related to procuring and managing the following programs provided under slightly different names in its Brand Management Plan 2017: the Kūkulu Ola Program, Aloha 'Āina Program, and Community Enrichment Program ("CEP"). The primary purpose for these programs is to ensure that visitors to Hawai'i have a wonderful, memorable, one-of-kind vacation that will make them want to return to Hawai'i and to tell others they should visit Hawai'i. These programs also help to sustain the assets of the destination.

Kūkulu Ola is a community-based initiative that helps to perpetuate the Hawaiian culture for the long term by supporting community-based projects and programs that enhance, strengthen, and perpetuate the Hawaiian culture and community. Through Aloha 'Āina, HTA seeks to support community-based projects and programs that help to manage, improve, and protect Hawai'i's natural environment as well as areas frequented by residents and visitors. The CEP seeks to foster and cultivate projects or events that HTA deems necessary to provide a variety of tourism product offerings for the visitor.

For more information, please see RFP 17-05, RFP 17-06, and RFP 17-07. See also our website for program descriptions and 2016 awardees for each of the programs.

<http://www.hawaiitourismauthority.org/programs/>

Note: Program names have changed from a year ago.

Listings for CEP can be found under its previous name, County Product Enrichment Program (CPEP).

Listings for Aloha 'Āina can be found under its previous name, Natural Resources Program (NRP).

Listings for Kūkulu Ola can be found under Kūkulu Ola: Living Hawaiian Culture Program (LHCP).

III. PROPOSAL OUTLINE

Proposal Contents

The proposal submitted by an applicant shall utilize a numerical outline, with titles/subtitles, which are consistent with the following outline and as described below:

- I. Table of Contents
- II. Introductory Letter
- III. Proposal
- IV. Appendices A and B

TABLE OF CONTENTS

The Table of Contents of the proposal should be in the order specified and reflected by the use of tabs or dividers.

INTRODUCTORY LETTER

The Introductory Letter should be on the official letterhead of a legal entity, if applicable, that will describe the scope of the work to be provided by the applicant and must be signed by an individual authorized to legally bind the applicant along with the corporate seal, if any. If the signer is not the president or equivalent principal officer of a legal entity, evidence shall be submitted showing the individual's authority to bind the applicant.

The Introductory Letter shall also include complete geographic, telephonic, and electronic contact information for (a) the applicant's business headquarters, (b) authorized signer, (c) RFP contact person, and (d) the primary person who will be primarily responsible for performing the scope of the work described in applicant's proposal.

The signed and executed letter must also acknowledge that the applicant has accepted the State's General Conditions, attached as Exhibit 1 to this RFP without exceptions, and that the applicant's proposal attached to the Introductory Letter is considered firm for one hundred twenty (120) days after the proposal's due date.

PROPOSAL

The Proposal should be segregated into the following sections:

A. Organizational or Personal Capacity:

Description of Applicant: Provide a brief history of the establishment, development, and accomplishments of the applicant (entity or individual).

Qualifications and Expertise: Describe the qualifications and expertise of the individual(s) responsible for implementing the scope of work described in this solicitation.

Required: Applicant shall have at least one staff person on the island of O'ahu.

B. Scope of Work. The applicant shall acknowledge and describe its qualifications to timely perform and provide all necessary administrative and ministerial support services related to the (i) receipt, review, and evaluation of proposals submitted in response to request for proposals issued under the Kūkulu Ola, Aloha Aina, and CEP, and (ii) all work necessary for the management of the

numerous contracts executed between the awardees and HTA under each of the three programs. A qualified applicant shall provide the administrative and ministerial support services previously described, including but limited to the following scope of work as a contractor upon subsequent negotiation and execution of a contract with HTA:

(1) Proposal Intake:

Contractor shall provide all necessary administrative and ministerial support to properly record and manage the receipt, logging and review all applications or proposals received in response to request for proposals issued under the Kūkulu Ola, Aloha ‘Āina, and CEP. (It is roughly estimated that HTA may receive approximately a total of 200 or more applications or proposals for all three programs. The contractor shall also verify or validate for each application or proposal the following:

- Each applicant is eligible or qualified to submit an application or proposal;
- All required information or “fields” requested in the forms attached to request for proposals for each of the three programs have been provided or completed
- All required documentation have been submitted; and,
- Minimum qualifications are met for the program to which the applicant is submitting a proposal.

Contractor shall provide to the HTA a summary report describing each proposal for review. Contractor shall initiate, conduct, and facilitate proposal review meetings with HTA staff and the respective evaluation committee members for each program to review and score each application, including without limitation the work described below.

- Coordinate evaluation meeting location and schedule with HTA staff and evaluation committee members. Meetings may be on neighbor islands.
- Prepare packets for each member to include proposals, scoresheets, and instructions as necessary.
- Prepare meeting minutes, collect scoresheets, calculate totals and averages, take notes for reason of awarding and rejecting proposals, and prepare award and rejection letters. The rejection letters shall be presented in the form of a debriefing, presenting relative scores and rankings as well as protest procedures.

Contractor shall work closely with the HTA’s Chief Procurement Officer to ensure that the Contractor’s procedures and work are in compliance with State laws.

The RFPs for each of the three programs are scheduled for release at the same time as this RFP. They will be available for review on the HTA website at <http://www.hawaiiourismauthority.org/about-hta/rfps/> .

(2) Contract Management:

Contractor shall support the HTA in developing and distributing an awardee manual, which will include the process for submittal of deliverables, required reports; how to submit an invoice for payment; the requirements for contractor to remain in compliance applicable resource information; and, any other information or documents required by HTA.

Contractor shall coordinate and manage at least one workshop in each of the four counties to explain the awardee manual and other topics/presenters as requested by HTA. Subject to prior approval by HTA, Contractor shall be responsible for booking the venue and coordinating all

necessary meals. Expenses for the workshop, including the contractor's approved travel expenses, are to be paid by the HTA.

Contractor shall maintain an ongoing database of the work progress status of all awardees.

Contractor shall meet with a designated HTA representative bi-weekly and submit a progress report for each project or event funded through the RFP for the Kūkulu Ola, Aloha 'Āina, and CEP.

Contractor shall furnish any additional reports of information that the HTA may, from time to time, require or request, including progress reports describing the status of all work required to be completed under this contract by the contractor.

(3) Invoice Payments:

Contractor shall be responsible for receiving and managing the deliverables, such as reports and financial statement, and invoices from every project or event awardee under each of the three programs.

Contractor shall ensure that all deliverables meet the contracted requirements for each awardee.

Contractor shall maintain a log/record of all deliverables, accessible remotely via a cloud based platform, for review by HTA staff for approval.

Contractor shall submit invoices for payment processing, including imputing them into the HTA fiscal system. Invoices from an awardee shall be input into the Microix electronic accounting system maintained by HTA. (If necessary, HTA shall train contractor on the manner in which invoices may be maintained and recorded in Microix.)

Contractor shall be responsible for contacting awardees to ensure all deliverables, invoices and reports and forms are received in compliance with the contract executed between the awardee and HTA.

Contractor shall maintain the official contract electronic file for each awardee.

Contractor shall close all contracts and ensure that all electronic files, including final reports, pictures, videos, evaluations, and financial records are properly maintained by HTA.

APPENDICES

The completed proposal shall include completed and fully executed Confidentiality Agreement Form and Conflict of Interest Form, attaches as Form B and Form C to this RFP.

DISCLAIMERS

Cancellation and Cost Liability

HTA reserves the right to cancel any component of this RFP at any time. HTA assumes no responsibility and bears no liability for costs incurred by applicants in the preparation and submittal of proposals in response to this RFP.

Further Questions and Clarifications

Please contact the CPO identified in Section I, Overview and Timeline, of this RFP.

IV. RFP PROCESS

Interested applicants are encouraged to immediately register at <http://bit.ly/2bOBpKb> . Those who have registered will receive notice of changes and addendums directly.

The RFP submission and review process may consist of two phases:

Phase I

Phase I will be the applicant's written proposal in response the specifications outlined in Section V: Proposal Contents. To assist applicants in understanding the RFP and to clear up any inconsistencies, the HTA will accept pre-submittal questions, in writing via e-mail, until the time and date established in the Procurement Timeline.

Phase II

The HTA reserves the right to select an applicant based on written proposals alone. However, the HTA may instead select a short list of applicants for further consideration in Phase II. During the Phase II process, the HTA may ask for additional information, invite top applicants to oral interviews, conduct reference checks, negotiate key provisions of the statement of work, and/or ask for a best and final offer (BAFO). The tentative dates for oral presentations/interviews are listed in the timeline.

Submittal Procedures

Applicants are to rely, for information regarding this RFP, on the RFP itself and information provided by the CPO. The HTA is not responsible for any misinformation received from other sources.

If it becomes necessary to revise or amend any part of this RFP, the HTA will distribute a revision by written addendum. Applicants will be responsible for adhering to the requirements of any addenda to this RFP.

A proposal shall be electronically submitted to the CPO and will be accepted only if they are timely received by the CPO. The responsibility for submitting a response to this RFP on or before the stated due date and time will be solely and strictly that of the applicant. The HTA will not be responsible for emails that are not received because the file is too large, or deliveries that are not received due to traffic or other delivery complications.

Proposals will be considered incomplete if they do not bear the signature of an authorized individual, officer, or agent of the Applicant who is in a legal position to contractually bind the applicant. The proposals can be withdrawn at any time, if requested in writing, until notice of selection, at which time it will be considered final.

By submitting a proposal, applicant agrees to accept and abide by the terms of this RFP. The HTA reserves the right to reject any or all proposals, to waive any informality or irregularity, and to accept any proposals which it may deem to be in the best interest of the State of Hawai'i.

Evaluation Process

The HTA intends to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. The HTA will use an Evaluation Committee to review and evaluate the proposals. The HTA's contact person is the CPO and serves as the arbitrator and referee for this RFP. The CPO does not have a vote. Applicants are forbidden from contacting any member of the Evaluation Committee

regarding this RFP. Any attempt to contact voting members of the Evaluation Committee regarding this RFP could be grounds for disqualification.

At the conclusion of the evaluation process, the Evaluation Committee may recommend an award be made to the applicant whose proposal is determined to be the most advantageous to the HTA based on the proposal and responses provided, results of the oral interviews, quality of candidates, reference checks, and the outcome of any negotiation process. The HTA President and CEO will make the final selection.

After evaluating and ranking proposals, the Evaluation Committee will undertake the following process:

1. Review proposals and identify the vendors deemed by the HTA to be capable of successfully meeting the objectives as described in the RFP;
2. Request selected applicants to provide an oral presentation specific to their proposal, if necessary;
3. Enter into discussions with an applicant regarding key statement of work provisions or to request additional information; or,
4. Make an award recommendation to the HTA President and CEO.

Once the recommendation to award is approved by the HTA President and CEO, a final contract will be executed by both parties.

Evaluation Criteria

The evaluation factors and score sheet for this RFP are provided in the attached Exhibit 2, Evaluation Scoring.

Contracting

Upon award, the CONTRACTOR shall obtain a Hawai'i Certificate of Vendor Compliance. Hawai'i law requires that all State contracts over \$2,500 be accompanied by a current Certificate of Vendor Compliance, which verifies contractor's compliance with the Internal Revenue Service, Hawai'i Department of Taxation, the Hawai'i Department of Commerce and Consumer Affairs, and the Hawai'i Department of Labor & Industrial Relations. No progress or final payment can be made to the contractor without a current Certificate of Vendor Compliance.

V. PROVISIONS, CONDITIONS, DISCLAIMERS, AND DISCLOSURES

An applicant shall read each section of the RFP thoroughly. While sections of the RFP may appear similar to other RFPs issued by the HTA, additional information may be added as applicable. It is your responsibility to understand the requirements of this RFP.

1. Authority

- (a) Law. This RFP is issued under the provisions of Chapter 201B, HRS. All prospective applicants are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any prospective applicant will constitute admission of such knowledge.
- (b) State Procurement Code. HTA procurement is not subject to the Hawai'i Public Procurement Code codified under Chapter 103D, HRS, and the administrative rules promulgated thereunder ("Hawai'i Procurement Code"). However, the HTA may consider the Hawai'i Procurement Code as guidance.

2. Government Contract

This is a contract with a government agency. As such, customary rules of commercial contracting generally do not apply. Applicants are encouraged to seek advice from experts familiar with government contracts.

3. Procurement Timetable

Note that the schedule of procurement key dates provided herein represents the HTA's best estimate of a schedule that will be followed and may be changed from time to time. Any changes to this schedule will be directly transmitted to applicants who have registered for updates as described in the Overview and Timeline section of this RFP. Any changes to the timetable can also be seen in the Addendums posted to the RFP on the HTA website referencing this RFP. Contract start dates are subject to the issuance of a notice-to-proceed. Some items on the Procurement Timetable may not be necessary or may be for informational purposes only.

4. Contracting Office

HTA is the Contracting Office and is responsible for overseeing the contract resulting from this RFP, including monitoring and assessing the contractor's performance.

5. Pre-Submittal Orientation Meetings

HTA will be scheduling pre-proposal meetings only if it has been noted in the Procurement Timeline. If there will be a meeting, exact times and locations will be published on the website and sent to those who have registered for updates as described in the Overview and Timeline section of this RFP.

6. Submission of Written Questions

- (a) Written Questions. HTA welcomes written questions from applicants in order to ensure openness and transparency and improve understanding of the RFP. Applicants may submit written questions in electronic format, as a separate email attachment, to the email address of the HTA Procurement Officer identified in this RFP. To expedite responses, applicants are required submit questions on a Microsoft Word document. Each question must cite the RFP

page and paragraph that is the source of the question. HTA will respond to written questions as discussed below.

- (b) **Deadline.** Deadline for submission is listed in the Procurement Timeline.
- (c) **Responses.** The HTA Procurement Officer will combine the questions from all applicants into a single list. Similar questions may be combined and responded to as a single question. The HTA will provide the combined set of questions and responses to all applicants at the same time. The applicant who submitted the question will not be identified in the responses. The HTA will act in good faith in providing responses, but may decide, in its sole discretion, not to respond to some questions. Depending on the number and type of questions received, the HTA's responses to written questions submitted by applicants, who have submitted the Interest Form with their contact information, will be provided to all applicants by the date set forth below. The HTA's interpretation of the written question and its response will also be posted on HTA's website. However, if the volume and type of questions preclude the HTA from meeting this deadline, the HTA will notify applicants, who have submitted the Interest Form with their contact information or through a posting on HTA web site, of the revised date for such response.

7. Proposal

- (a) **Statement of Qualifications.** An applicant must submit a completed Form A – Applicant Information Form, and all the requested documents, exhibits, attachments, executed and/or responsive appendices, acknowledgments, written comprehensive narratives, and other information described in and submitted in response to this RFP.
- (b) **Proposal Submittal.** Deadline for submission is listed in the Procurement Timetable.
 - (1) See Section I Overview and Timeline for delivery instructions. All proposals must be actually received by the HTA no later than the submittal deadline. Proposals may be rejected if received after the designated date and time. The official time will be recorded via the email signature if emailed, or by the time clock maintained at the HTA Drop-Off Site if delivered as a flash drive.
 - (2) Interested parties must submit a proposal in the manner outlined in this RFP. Facsimile copies will not be accepted. Video, audio, or other similar multimedia materials will not be considered during evaluation of proposals, although they may be accepted in Phase II of the procurement process.
- (c) **RFP Submittals Become the Property of HTA.** All proposals and other materials submitted will become the property of the HTA and will not be returned. The HTA reserves the right to retain all submittals and to retain any ideas in a submittal regardless of whether an Applicant is selected. Submittal of any response to this RFP indicates acceptance by the Applicant of the conditions contained within the RFP document.
- (d) **Contract.** The RFP and the applicant's selected proposal may, by reference, become a part of the final Contract between the selected Applicant and the HTA resulting from this solicitation process.
- (e) **Expenses.** Each applicant is solely responsible for all expenses incurred for the preparation of their proposal and its participation in any pre-award presentation or discussions and other activities related to the evaluation process and the development and submission of any proposal provided by an applicant in response to this RFP, including without limitation, any travel related

or presentation expenses incurred to present or discuss the applicant's Proposal submission. An applicant may not bill the HTA for any costs or expenses associated with its response to this RFP. Any incumbent under any HTA contract may not use HTA-funded resources to prepare its Proposal.

- (f) Protests. Any protest of anything in this RFP or any referenced document, must be filed by the deadline for protests of the content of the RFP in order to be timely.

8. Multiple or Alternate Proposals Not Allowed

Multiple or alternate proposals from the same applicant are not allowed. In the event alternate or multiple proposals are submitted, all of the applicant's submissions may be rejected at the discretion of the HTA Procurement Officer.

9. Competitive, Multi-Step Sealed Proposals

Two-Step Process. Proposals submitted under this RFP may be evaluated in a two-phase elimination process. The first phase will compare each proposal to the requirements of this RFP for compliance and will include a comparative evaluation of the various applicants' proposals. The second phase may include applicant oral interviews, interviews with general manager candidates, reference checks, best and final offer (BAFO), contract negotiations and other evaluation methods deemed appropriate by the HTA. Applicants must pass the first phase to be considered for evaluation in the second phase. Final selection for award will be made from among the remaining applicants in the second phase.

10. Rejection of Proposals

- (a) Requirements Must Be Met. The HTA reserves the right to consider as acceptable, responsible and responsive only those proposals submitted in accordance with all requirements set forth in this RFP, that demonstrate an understanding of the services to be provided, and challenges associated therewith.
- (b) Changing Terms. Any proposal requiring any contract terms or conditions contradictory to those included in this RFP and the General Conditions attached as Exhibit 1 may be rejected in its entirety without further notice. Applicants may suggest alternate terms or conditions with a specific explanation of how the change would result in improvements to price, schedule, or performance. The suggestion must specifically quantify the impact. Such suggestions are not accepted or implemented unless included in the final terms and conditions in the Agreement signed by both parties.
- (c) Reasons. A Proposal may be automatically rejected for any one or more of the following reasons:
 - (1) Failure to cooperate or deal in good faith;
 - (2) Inadequate accounting system or internal controls;
 - (3) Late proposals;
 - (4) Failure to submit in accordance with the RFP or otherwise inadequate response to the RFP;
 - (5) Lack of demonstrated experience or expertise; and
 - (6) Failure to maintain standards of responsibility. Any Applicant found to have falsified any information to the HTA in relation to this or any other procurement, or which has been suspended or barred from doing business with the HTA, the State of Hawai'i including any of its subdivisions and agencies or the United States government, or which has been convicted of a felony related to procurement contracting with any unit of government, or which has

failed to maintain necessary licensure or meet its tax or other obligations to a government agency may be rejected.

- (d) The HTA, however, reserves the right to waive any or all informalities, irregularities or deficiencies when it considers a waiver to be in its and the public's best interest.
- (e) Protests. Any protest of rejection of a proposal must be received by HTA within five (5) calendar days after receiving notice from HTA of the rejection of an applicant's proposal.

11. RFP Amendments

HTA reserves the right to amend this RFP at any time prior to the deadline for the submission of final proposals.

12. Register of Proposals

After the date established for receipt of Proposals, HTA will prepare a Register of Proposals received, including, for all proposals, the name of each applicant and the date the HTA received the applicant's proposal and any modifications to the proposals. The Register of Proposals will be open to public inspection only after award of the contract(s) under this RFP. Proposals and modifications will be shown only to a requester having a legitimate interest in them as required or authorized by law.

13. Opening of Proposals

Upon receipt of a proposal by the HTA, any modifications, questions and responses will be date-stamped, and when possible, time-stamped. The HTA will hold all documents so received in a secure place and not examine them for evaluation purposes until the submittal deadline. The time clock maintained at the Drop-off Site will be used to record the official time for receipt of proposals.

14. Public Inspection

Procurement files, including proposals, will be open to public inspection to the extent allowed by law only after all contracts under this RFP has been awarded and executed by all parties.

15. Presentations and Discussions with Applicants

- (a) Applicants Defined. As used herein in this RFP, "Applicants" means only those individuals, persons, or entities submitting proposals that are acceptable or potentially acceptable and does not include those who submitted unacceptable Proposals.
- (b) Presentations and Discussions defined. As used herein in this RFP, "Presentations" means non-written communication by Applicants to the Evaluation Committee under conditions set by the HTA. "Discussions" means any communication between an individual applicant and the Evaluation Committee or HTA staff for the purpose of allowing the HTA to complete its Proposal evaluation. Oral interviews may include Presentations and Discussions.
- (c) Discretionary. In its discretion, the HTA may decide to select based on written proposals alone as submitted and without any oral presentations or discussions.
- (d) Invitation. After evaluation of the proposals, the HTA may invite applicants it considers to be in the competitive range to participate in pre-award presentations and discussions. The HTA may limit the number of proposals in the competitive range to a reasonable number that will permit an efficient competition among the most highly rated proposals.

- (e) Participation. Each applicant that accepts the invitation will be required to provide access to the applicant's team assigned to this effort. The applicant's team may include a project manager that the applicant proposes to assign as part of the core project team.
- (f) Objectives. There are several objectives of the Presentation and Discussion, including:
 - (1) To compare the HTA's requirements to the services proposed by the applicant as described in the written Proposal;
 - (2) To allow the applicant to demonstrate how the requirements can be satisfied by the proposal;
 - (3) To identify significant gaps in required and proposed services as described in the written proposal; and
 - (4) To provide the applicant with an opportunity to discuss their methodology, scope of services and project plan.
- (g) Location. The Presentation and initial Discussions will be at the HTA's facilities in the Hawai'i Convention Center on Oah'u, or by video conference at the HTA's discretion. Discussions may continue orally or in writing and may be done over the phone, by email, letter, or other method. All discussions must be originated by HTA.
- (h) Results. The HTA evaluation committee will evaluate each applicant on its participation in the Presentation and Discussions as part of its Phase Two Proposal evaluation unless HTA decides, in its sole discretion, to make an award based on written proposals alone.
- (i) Conduct of Discussions. Applicants in the competitive range will be accorded fair and equal treatment with respect to any opportunity for Presentations and Discussions and revisions of proposals. The HTA Procurement Officer for this RFP will establish schedules and procedures appropriate for this phase of the procurement. If during discussions there is a need for any substantial clarification of, or change in, the RFP, the RFP may be amended by a modification to incorporate such clarification or change. Auction techniques (revealing one applicant's price to another) and disclosure of any information derived from competing Proposals are prohibited. Any substantial oral clarification of a proposal must be reduced to writing by the applicant.
- (j) Best and Final Offer Discussions. HTA may, in its sole discretion, request that applicants submit a best and final offer (BAFO). The HTA may invite applicants it considers to be in the competitive range to participate in BAFO Discussions. The Procurement Officer may limit the number of proposals in the competitive range to a reasonable number that will permit an efficient competition among the most highly rated Proposals.

16. Modifications, Additional Materials, and Documentation

After the receipt of proposal, if HTA deems it desirable and in its best interest, the HTA may, in its sole discretion, request that the applicant provide additional information to clarify or supplement, but not basically change, any proposal as submitted. An applicant may submit revised proposals only if requested or allowed by the HTA Procurement Officer. Written responses must be provided as requested. Failure by any applicant to provide the additional requested information or to participate in a requested meeting may be a cause for disqualification as being nonresponsive to this RFP. The applicant shall have the responsibility to document all clarifications as change pages to the proposal.

17. Notice of Selection

- (a) Notice of Selection. Upon the HTA's final selection of the successful applicant a notice of selection will be issued to the selected applicant. This RFP may be used to select one or more applicant to contract with HTA.
- (b) Notice of Non-Selection. A notice will also be sent to all non-selected applicants upon completion of the evaluation process. The notice of non-selection triggers the right to request a debriefing and starts the clock for protests based on non-selection. The debriefing may be written or oral and may be included in the Notice of Non-Selection.
- (c) Execution. Upon notice of selection, appropriate sections of the selected applicant's proposal will be used by the HTA to create the Statement of Work or to be incorporated into a contract or agreement with HTA. The applicant will promptly execute the Agreement for the services awarded to the selected applicant. Upon execution by the selected applicant of the Agreement, the selected applicant will be referred to as the "Contractor."
- (d) HTA Board of Directors Funding Approval. Funding for contracts and options is subject to the approval of an annual fiscal year budget by the HTA Board of Directors. In the event the Board does not fund the budget item used to fund this contract, the contract may be terminated for the convenience of the government.
- (e) Start Work Date. No work is to be undertaken by the selected applicant prior to the contract commencement date after contract execution by both parties. HTA is not liable for any costs incurred prior to the official starting date.

18. Confidential Information

- (a) Procurement Sensitive Information. Each proposal will be considered to contain procurement sensitive information whether or not it is so marked. No part of a proposal will be released to other applicants or the public prior to contract execution. In the event that the RFP is cancelled, release of procurement files for inspection will be subject to applicable laws.
- (b) Marking Confidential and Proprietary Materials. If an applicant believes any portion of a proposal contains proprietary and/or commercial information that should be withheld from the public due to competitive injury that would result from public release during or after the solicitation, the applicant must mark designated proprietary data as confidential and provide justification to support confidentiality. Such data must accompany the proposal, be clearly marked, and must be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections. Unless designated "Confidential and Proprietary," the proposal will be available for public inspection after the award of the contract.
- (c) Acceptable Markings. Applicants that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the HTA except for evaluation purposes will be subject to the restrictions stated below.
 - (1) An applicant must mark the title page with a legend substantially similar to the following in accordance with the applicant's standard procedure or advice of counsel or other experts:
"This Proposal includes proprietary and confidential data that may not be disclosed outside the HTA and may not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this Proposal."

- (2) The applicant must mark each sheet of data the applicant wishes to restrict with a legend substantially similar to the following in accordance with the applicant's standard procedure or advice of counsel or other experts:
"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Proposal."
- (3) If, however, a contract is awarded as a result of, or in connection with, the submission of data, HTA will have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit HTA's right to use information contained in proposals if it is obtained from another source without restriction.
- (d) Post-Award Disclosures. HTA may disclose the following information in post award debriefings to other applicants:
 - (1) The overall evaluated cost or price and technical rating of the successful applicant. (Note that the total price is not considered confidential and will not be withheld.)
 - (2) The range of scores and relative ranking of the applicant, if any ranking was developed by HTA during source selection.

19. Public Disclosure

Upon execution of the written contract, all documents submitted by the applicant and maintained by the HTA will be subject to public inspection and copying under the Hawai'i Uniform Information Practices Act provided in chapter 92F, Hawai'i Revised Statutes; provided that, any confidential commercial or proprietary information may be withheld in accordance with law.

20. Vendor Clearance

Hawai'i state law requires a Vendor Compliance Certificate (Tax Clearance, DCCA, and DLIR clearances) for all purchases/contracts of \$2,500 or more. These clearances are required prior to contract execution and must be maintained up to the time of final payment. Government agencies are exempt from this requirement. Hawai'i Compliance Express (HCE) allows organizations contracting with state and county agencies to quickly and easily demonstrate they are in compliance with state procurement laws.

There is an annual registration fee for the service. To register, go to: <https://vendors.ehawaii.gov>, complete the easy step-by-step process and pay with a credit card.

21. Legal Requirements

All contracts with HTA are subject to all applicable federal, state, county, and local laws, ordinances, rules, and regulations that in any manner affect any and all of the services covered herein. Lack of knowledge by the applicant will in no way be cause for relief from responsibility.

22. Campaign Contributions by State and/or County Contractors

Applicants are hereby notified of the applicability of HRS Section 11-205.5, which states that campaign contributions to any political party, committee, or candidate or to any person for any political purpose or use are prohibited from HTA contractors during the term of the contract. For more information, FAQs are available at the Hawai'i Campaign Spending Commission at <http://www.hawaii.gov/campaign>.

23. Terms and Conditions of Contract

- (a) Fixed Price. This contract is a fixed price contract. Contractor will be responsible for completing all the work agreed to in the proposal and contract within the budget agreed to in the proposal contract unless otherwise agreed to by HTA. HTA approval is required for any expenses to be reimbursed.
- (b) Period of Performance. See Timeline for any contract term and options.
- (c) Not to Exceed. The HTA has not set a not to exceed amount for goods and services under this contract. The applicant is asked to propose a budget for their services.
- (d) Payments. Vendor shall propose a payment schedule. Please note that HTA cannot pay for any goods or services until they are delivered and accepted.
- (e) General Conditions. The Agreement (contract) to be executed by the selected applicant shall include the General Conditions, attached as Exhibit 1 to this RFP. By submitting a proposal, applicant acknowledges and agrees to the provisions stated in those General Conditions.
- (f) Termination. During the term of the contract awarded pursuant to this RFP solicitation, HTA will review the performance of contractor and may terminate the contract for reasons such as non-performance of the contractor, including the failure to conduct the project or event, failure to exceed HTA targets, change in the funding for this program, or for the convenience of HTA.
- (g) Interpretation. The order of precedence for interpreting the contract will be:
 - (1) Hawai'i State law; then
 - (2) The Executed Agreement with any modifications, amendments, or other properly documented changes; then
 - (3) The RFP as amended; then
 - (4) HTA regulations, policies, and procedures; then
 - (5) Contractor's final proposal; then
 - (6) Course of conduct; then
 - (7) Course of dealing; then
 - (8) General principles of government contracting; then
 - (9) Industry practices.

24. Execution of Contract

- (a) Exceptions. Proposals requiring any exceptions to the General Conditions included as Exhibit 1 to this RFP may be rejected in their entirety without further notice. Applicants may suggest alternate terms in the form of special conditions with a specific explanation of how the change would result in improvements to price, schedule, or performance. Such suggestions are not accepted or implemented unless included in the final terms and conditions in the Agreement signed by both parties.
- (b) Execution. Upon the receipt of all required information, documentation, attachments, and the certificate of vendor compliance the contractor and the HTA will execute the final written agreement.
- (c) Unauthorized Work. Unless otherwise agreed, a contractor may not perform any work prior to the execution of a written contract by HTA and a contractor. All unauthorized work performed by the contractor prior to the execution of the written contract will be at the contractor's sole cost and expense.

25. Protests

- (a) Raising Concerns. Interested parties who have concerns regarding a solicitation, specifications, award, or other decision of the procurement officer should first discuss the concern with the HTA Procurement Officer within the protest time periods provided for in this RFP.
- (b) Protests. If the procurement officer does not resolve the concern to the satisfaction of the interested party, the interested party may formally protest to the HTA's President and Chief Executive Officer.
- (c) Timeliness. Interested parties must file any protest regarding the terms of the RFP, the service specifications, or documents referenced in the RFP in writing prior to the deadline for protests of the content of the RFP. Applicants must file any protest relative to rejection of proposals, non-inclusion in the competitive range, the contract award or other perceived wrongs in writing within five (5) calendar days after the aggrieved person knows or should have known of the facts giving rise thereto, or within five (5) calendar days of the postmark or the electronic transmission date of a notice from HTA. Any issue or claim that the applicant does not protest in a timely manner is waived. Discussing concerns with the procurement officer or other HTA officials or engaging in other forms of dispute resolution does not stay the timeliness clock for protests.
- (d) Notice of Protest. The Notice of Protest will be postmarked by USPS or hand delivered to the persons indicated below within five (5) calendar days after the postmark or electronic transmission date, whichever is earlier, of the deadline for protests listed in the procurement timeline, the Notice of Award, or other notice sent to the protestor

HTA will consider delivery services other than USPS if received by the HTA on or before the due date.

Chief Operating Officer:	Randy Baldemor
Chief Procurement Officer:	Ronald R. Rodriguez
Mailing Address:	Hawai'i Tourism Authority Hawai'i Convention Center, Level One 1801 Kālakaua Avenue Honolulu, HI 96815

26. Availability of Funds

The award of a contract and any allowed change, renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawai'i, pursuant to HRS Chapter 37, and subject to the availability of State and/or Federal funds.

27. Cancellation of Request for Proposal

The HTA may cancel the RFP and any or all Proposals may be rejected in whole or in part, when it is determined to be in the best interests of the HTA. Each applicant is solely responsible for all expenses incurred for the preparation of the Proposal and its participation in any pre-award presentation or discussions and other activities related to the evaluation process even if the process does not result in award of a contract to any party.

28. Electronic Transmissions

HTA may transmit letters or provide responses to questions to applicants via facsimile or email (in lieu of letters by mail) for all matters regarding this RFP solicitation after receipt of Proposals. HTA will use the facsimile number and the email address provided by the applicant on the Applicant Interest Form (Form A). If the HTA sends letters via facsimile machine or email, successful transmission of the letter, as evidenced by the transmission report generated by the HTA's facsimile machine or the "Sent" date shown on the HTA's email, will constitute official notification to and receipt by the applicant. The date and time recorded on the HTA's transmission report or "Sent" email will be the official date and time of receipt by the applicant.

29. Conflicts of Interest

Applicants shall avoid all conflict of interests that will not prevent and deter fraud, waste, and abuse, or will not provide increased economy to maximize to the fullest extent practicable, the purchasing value of public funds. Any credible and reliable proof of such conflict of interest shall be cause to terminate any contract with HTA and withhold any funding or compensation.

30. Suspended or Debarred Contractors

A person or affiliate who is under investigation for procurement impropriety or is currently suspended or debarred in any jurisdiction, or placed on a convicted applicant list may not submit a proposal on a contract to provide any goods or services to the HTA and may not be awarded or perform work as a contractor, employee, agent, supplier, subcontractor, or consultant.

31. Collusion

The applicant, by submitting a proposal, certifies that its proposal is made without previous understanding, agreement or connection either with any person, firm, or corporation submitting a proposal for the same services, or with the HTA. The applicant certifies that its proposal is fair, without control, collusion, fraud, or other illegal action. The applicant further certifies that it is in compliance with the conflict of interest and code of ethics laws. The HTA will investigate all situations where collusion may have occurred and the HTA reserves the right to reject any and all proposals where collusion may have occurred.

FORM A – Applicant Information Form

ADMINISTRATIVE SUPPORT SERVICES OF HTA PROGRAMS 2017 APPLICANT INFORMATION FORM

(print, sign, scan)

INFORMATION:

Applicant (Full Legal Name) _____

Street Address _____

Mailing Address _____

City/State/Zip _____ Email _____

Phone _____ Fax _____

Website Address, if available _____

Federal Taxpayer ID No. _____ State Taxpayer ID No. _____

Applicant is a (check one): Non-profit entity Government entity
 Other (LLC, Partnership, Sole Proprietor, etc.): _____

Registered/Licensed in the State of: _____

PRIMARY CONTACT PERSON:

Name Title

Phone: _____ Fax: _____ Email: _____

REQUIRED CERTIFICATION (Must be completed to be considered):

The undersigned authorized official acknowledges and certifies that the information contained in this proposal and application is true and correct to the best of my knowledge, has been duly authorized by the governing body of the organization. I also acknowledge, on behalf of the organization, that we accept the State's General Conditions (Exhibit 1) without exceptions, and that the Proposal is considered firm for one hundred twenty (120) days after the proposal's due date.

Signature of Authorized Official Date

Print Name Title

FORM B – Confidentiality Agreement

THIS AGREEMENT is entered into and is effective as of _____, 2016 (the "**Effective Date**") between Hawai'i Tourism Authority (the "**HTA**") and _____, a _____ ("**Contractor**"). The parties acknowledge that the HTA and Contractor are in discussions about a potential business relationship between them (the "**Business Relationship**") in connection with which certain Confidential Information (as defined below) of HTA and Contractor may be disclosed to the other party. In consideration of the mutual covenants set forth below, HTA and Company each agree as follows:

Confidential Information. As used in this Agreement, the term "Confidential Information" means all information, whether or not reduced to writing, related to the potential business relationship or to the business of either party or its affiliates that (a) is disclosed by one party or its Representatives (as defined below) (the "Disclosing Party") to the other party (the "Recipient") or observed by the Recipient on the Disclosing Party's premises, and (b) is identified as confidential or other similar designation by the Disclosing Party, or would otherwise reasonably be understood to be confidential under the circumstances. Confidential Information includes but is not limited to data (technical and non-technical), formulas, patterns, compilations (including data base or compilations of visitor or customer information or surveys), intellectual property developed on behalf of the HTA, programs (including models), devices, methods (including design methods), techniques, drawings (including equipment drawings), processes, financial information (including visitor data and sales forecasts), pricing, lists of actual or potential customers or suppliers (including identifying information about those customers), operational information, planning or strategy information (including marketing programs, activities, or initiatives), research and development information (including visitor statistics and market intelligence), information about existing and future services and products, and information about personnel matters of the Disclosing Party or its affiliates. Confidential Information also includes information disclosed by a third party that otherwise meets the foregoing definition, and the fact that negotiations are taking place hereunder.

Exclusions. For purposes of this Agreement, the term "Confidential Information" does not include any data or information which: (a) the Recipient can establish was already known by the Recipient at the time of disclosure hereunder by the Disclosing Party; (b) is or becomes generally known to the public other than as a result of a disclosure by the Recipient; (c) is received by the Recipient from a third party, without restriction on disclosure, and without breaching any obligation of confidentiality about which the Recipient knew or should have known; or (d) is independently developed by the Recipient without use, directly or indirectly, of Confidential Information received from Disclosing Party, as demonstrated from the written records of the Recipient.

Permitted Disclosures. Disclosures of the Confidential Information of the Disclosing Party may be made only to affiliates, employees, agents, advisors or independent contractors of the Recipient who are directly involved in performing or evaluating the Business Relationship, and who have a specific need to know such information, and who are obligated to hold the information in confidence and otherwise to comply with the terms of this Agreement (collectively, "Representatives"). The Recipient agrees to instruct each of its Representatives to maintain the confidentiality of all of the Confidential Information, and shall be liable for any unauthorized disclosures of Confidential Information by the Recipient's Representatives. Neither party shall directly or indirectly contact, or discuss the Business Relationship contemplated under this Agreement, with any person who is not a designated Representative of the other party.

Confidentiality and Non-Use of Confidential Information. Each of the parties hereto and its Representatives (a) must use the same care and discretion as it employs with its own confidential and proprietary information (but in no event less than reasonable care and discretion) to maintain in confidence, and prevent disclosures of, the Confidential Information of the other party, and (b) must not use the Confidential Information of the other party except to further the Business Relationship or as otherwise specifically authorized in writing by the Disclosing Party. Under no circumstances, except as expressly set forth below, shall the Recipient reproduce, distribute or otherwise provide, directly or indirectly, any Confidential Information of the other party to any person or entity without the consent of the Disclosing Party. Each party understands that in addition to its obligations to the other party under this Agreement, it may not use any Confidential Information of the other party in violation of any federal or state securities laws governing insider trading. Each party understands and will inform its Representatives that such laws prohibit any person, directly or indirectly, from buying or selling securities of any company while in possession of material non-public information regarding that company.

Mandatory Disclosure. If Confidential Information is required to be produced by law, court order or governmental authority, the Recipient must promptly notify the Disclosing Party of that obligation. The Recipient shall not produce or disclose any such Confidential Information until the Disclosing Party has (a) requested protection from the court or other legal or governmental authority issuing the process (with the reasonable assistance of the Recipient at the Disclosing Party's expense) and the request has been denied, (b) consented in writing to the production or disclosure of such Confidential Information, or (c) taken no action to protect its interest in the Confidential Information within ten (10) business days (or such shorter period required by order of a court or other legal or governmental authority) after receipt of notice from the Recipient of the obligation to produce or disclose. Notwithstanding the foregoing, the Recipient shall only disclose such portion of the Disclosing Party's Confidential Information which the Recipient is advised by counsel is required for the Recipient to comply with law.

Return of Materials. Within ten (10) days following the Recipient's receipt of a written request from the Disclosing Party, the Recipient must (a) deliver to the Disclosing Party all tangible materials containing or embodying the Confidential Information; and (b) purge all electronic materials containing or embodying the Confidential Information, and certify the same to the Disclosing Party in writing. Notwithstanding the foregoing delivery requirement, the Recipient may destroy any notes, analyses or reports generated by the Recipient to the extent such notes, analyses or reports contain Confidential Information, and the Recipient shall certify such destruction within such ten (10) day period.

Rights and Ownership. Recipient acknowledges and agrees that any Confidential Information is the sole and exclusive property of the Disclosing Party (or a third party providing such information to the Disclosing Party). Except as expressly herein provided, this Agreement shall not be construed as granting or conferring to either party, either expressly or impliedly, any rights, licenses or interests in or with respect to any Confidential Information of the other party, including any intellectual property rights. This Agreement shall also not create any exclusive business relationship or other rights or obligations between the parties, nor require the parties to enter into any other definitive business agreement.

Competitive Information. Each of the parties acknowledges and understands that the other party may now market or have under development products or services which are competitive with products or services now offered or which may be offered by the other party, and, except as expressly set forth in this Agreement entered into between the parties (if any), the parties' communications hereunder will not serve to impair the right of either party to develop, make, use, procure or market products or services now or in the future which may be competitive with those offered by the other party, nor require either party to disclose any planning or other information to the other party.

Duration. This Agreement and the obligations of confidentiality set forth herein shall commence on the date first above written and shall continue (a) with respect to Confidential Information which qualifies as a trade

secret under applicable law, at all such times thereafter as it so qualifies, and (b) with respect to all other Confidential Information, for a period of two (2) years after the date of disclosure of such information.

Warranties. The Disclosing Party represents that if the Confidential Information disclosed hereunder contains any confidential or proprietary information of any third party, such third party has authorized the disclosure of such information. No other warranties of any kind are made with respect to any information disclosed under this Agreement.

Notices. All notices under this Agreement shall be in writing and shall be deemed properly delivered when (a) delivered personally, (b) sent by facsimile to the fax number of the other party set forth below, with receipt confirmed, or (c) mailed by certified mail, postage prepaid to the address of the other party set forth below. Notices shall be effective upon receipt.

Miscellaneous. The rights and obligations of the parties will inure to the benefit of, will be binding upon, and will be enforceable by the parties and their lawful successors. No modifications of this Agreement or waiver of any of its terms will be effective unless set forth in writing signed by both parties.

This Agreement will be governed by and construed in accordance with the laws of the State of Hawai'i. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover actual, reasonable attorneys' fees. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. Should any provision of this Agreement be held invalid, illegal or unenforceable for any reason, such provision shall be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes.

IN WITNESS WHEREOF, this Confidentiality Agreement has been executed and delivered as of the date first above written.

THE HAWAII TOURISM AUTHORITY	CONTRACTOR:
Signed:	Signed:
Name:	Name:
Title:	Title:
Address: Hawai'i Convention Center, First Level 1801 Kalākaua Avenue Honolulu, Hawai'i 96815	Address:
Fax:	Fax:

FORM C – Conflicts of Interest Form

HTA policies require the Procurement Officer to analyze and mitigate Organizational Conflicts of Interest (OCI). The Procurement Officer will use your answers to this questionnaire to identify and further evaluate the impacts of potential conflicts of interest and your proposed mitigation plans. The Procurement Officer may also consider your candor in the answers in evaluating contractor responsibility.

Answering "Yes" to any of the questions below will not automatically disqualify an applicant. However, you must explain any "Yes" answer by attaching additional information, including specific information on the person or entities involved, the nature of the activity, and an estimate of the percentage of this contract that could be impacted by that activity, and any mitigation measures you have in place or plan to implement.

The term "you" as used below includes individuals and organizations making a proposal under this RFP. The term "your associates" as used below includes and any members of your board of directors, association members, partners, officers, employees, volunteers, agents, consultants, subcontractors, clients, customers or other associates who may benefit from or be involved in performance of this contract.

Yes	No	Question
		1. Tourism Industry Members. Are you or your associates primarily engaged in the tourism, travel, transportation, or hospitality industry?
		2. Other Relationships. Do you or your associates have any existing or planned relationships (direct or indirect, including financial, organizational, contractual or otherwise) with any entity other than HTA that could be affected in any way by your performance under this contract?
		3. Competing Markets. Do you or your associates perform work for, or have a direct or indirect relationship with any entity responsible for or providing destination marketing services to any of HTA's competitors?
		4. Specific Hawaiian Destinations. Do you or your associates have a direct or indirect relationship with any specific destinations within Hawai'i, such as cities, counties, islands, hotels, resorts, restaurants, or entertainment or cultural facilities?
		5. Competitor Evaluation. Acting as HTA's agent under this contract, do you or your associates anticipate that you may need to evaluate or inspect goods or services of a person or entity that you may compete with for other HTA contracts, grants, funding or opportunities?
		6. Self-Dealing. Do you or your associates anticipate using any work or effort under this contract for your own benefit or to provide special access or benefits to your associates?
		7. Access to Information. Could you or your associates, in your non-HTA activities, utilize non-public information acquired in the performance of the proposed work, such as: data generated under the contract, information concerning HTA plans and programs, or the confidential and proprietary data of others?
		8. State Contracts. Do you or your associates currently have or have you had during the last six years any arrangements (for example, contracts and cooperative agreements) awarded, administered, or funded--wholly or partly--by the HTA or any other Hawai'i state or local government or agency which are in any way related this solicitation?

Yes	No	Question
		9. Specification Development. Have you or any of your associates been involved in establishing the requirement for this contract or participated or influenced development of the specifications or statement of work used in this solicitation?
		10. Funding Issues. Do you or your associates have contracts or other arrangements with any entity that receives HTA funds directly or indirectly?
		11. Restrictions. Do you or your associates have any contracts, agreements, special clauses, legal prohibitions or other arrangements that may restrict your effort or independent judgment in proposing or performing any part of the work that you may need to perform under this solicitation?
		12. Interests. Do you or your associates have any involvement with or interest (direct or indirect) in products or services which are or may be subjects of the contract, or which may be substitutable for such products or services?
		13. Other Conflicts. Are you aware of any other potential conflicts of interest not described above?
		14. Mitigation Plans. To avoid what you perceive as a possible organizational conflict of interest, do you propose to: exclude associates from portions of the proposed work; employ any special contract clauses; or take other measures?

I hereby certify that I have authority to represent my organization, if applicable, and that, to the best of my knowledge and belief, the facts and representations presented this questionnaire and on the pages of the attached explanations are accurate and complete.

Signature:	
Typed or Printed Name:	
Title:	
Date:	
Organization:	
Number of pages attached:	

EXHIBIT 1 – General Conditions

GENERAL CONDITIONS

1. Coordination of Services by the STATE.

- a. The President and Chief Executive Officer of the Hawaii Tourism Authority is the head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA). The HOPA shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract.
- b. 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.

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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. 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.
- g. The CONTRACTOR shall obtain and provide the agency with a current Certificate of Vendor Compliance from the Hawaii Compliance Express that is current within six months of the start of the contract prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the Vendor Certificate of Compliance as required for final payment under sections 103-53 and paragraph 17 of these General Conditions.
- h. 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.

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 Vendor of Certificate of Compliance. 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 HOPA 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 and the novation and change of name amendments to this Contract shall be processed only through the Hawaii Tourism Authority.

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 attorney 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 written 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 termination for convenience.
- 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. 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 HAR Chapter 3-123 (Cost Principles).

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) 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: Certificate of Vendor Compliance.**
- 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 CONTRACTOR providing a Certificate of Vendor Compliance current within 30 days of the final invoice.
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 recede 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:
 - (1) Changes in the work within the scope of the Contract; and
 - (2) 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. HOPA approval. If this is a professional services contract, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the HOPA.
 - h. Certificate of Vendor Compliance. 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 Certificate of Vendor Compliance current within 30 days of the demand for the Certificate.

- 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 HOPA. Annual renewal of a sole source contract for services should not be submitted as an amendment unless in exercise of a pre-existing option.

20. Change Order.

- a. 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.
- b. 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.
- c. Time period for claim. Within ten (10) day s 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.
- d. 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.
- e. 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, indefinite quantity is specified in this Contract, may be increased by a maximum of ten percent (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; 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;
 - (4) Method of shipment or packing of supplies; or
 - (5) 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.**
 - a. 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.
 - b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that related) 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, over-charges 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 attorney's 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, Hawai'i.
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 I28D-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.

(3) 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:

- (A) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (B) 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.

d. Records Retention.

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

EXHIBIT 2 – EVALUATOR SCORING

Evaluator Scoring Worksheet RFP 17-04

Applicant's Name: _____

Evaluator's Name: _____

EVALUATION OF PROPOSAL	Scoring Range	Evaluator Score
Organizational or Personal Capacity	1-55	
Contract Management	1-15	
Proposal Intake	1-15	
Invoice Payments	1-15	
TOTAL SCORE	4-100	

Assessment	Scoring Guidelines	Evaluator Score (Total)
Poor	<ul style="list-style-type: none"> Proposal is inadequate in many basic aspects for the scored category (team, expertise, approach or price) Evaluator has very low confidence in the applicant's ability to perform as promised or as required 	1-20
Marginal	<ul style="list-style-type: none"> Proposal minimally addresses the requirements, but one or more major considerations of the category are not addressed, or lacking in some essential aspects for the specific criteria Evaluator has low confidence in the applicant's ability to perform as promised or as required 	21-40
Adequate	<ul style="list-style-type: none"> Proposal adequately meets the minimum requirements for the category and is generally capable of meeting the state's needs for specific criteria Evaluator has confidence in the applicant's ability to perform as promised or as required 	41-60
Good	<ul style="list-style-type: none"> Proposal more than adequately meets the minimum requirements of the specific criteria, and exceeds those requirements in some aspects Evaluator has high confidence in the applicant's ability to perform as promised or as required 	61-80
Excellent	<ul style="list-style-type: none"> Proposal fully meets all requirements and exceeds most requirements Evaluator has extremely high confidence in the applicant's ability to perform as promised or as required 	81-100

SCORING NOTES

1. Preparation. Evaluators will read the RFP requirements and then review the applicant's Proposal response and assess how well it meets the needs of the HTA as defined by the RFP.
2. Worksheet Mandatory. The Evaluator Worksheet will be used by the evaluators. Evaluators will record their score on the Evaluator Worksheet. Scores will be based on the number of points for each evaluation component, which is provided in the Scoring Range column of the worksheet.
3. Independent and Individual Review. The committee will review the received Responses and independently score each Proposal. Scores will be in accordance with the Scoring Rating System and will represent each evaluator's best subjective judgment.

4. Scoring Rating System. Each scored item will receive a score based on the rating descriptions. Use whole numbers only. A zero score is not allowed.
5. Convening Committee Meetings. The committee meeting(s) will be convened by the HTA Procurement Officer on the date and time designated. Each member will bring his/her completed Response evaluation forms. The members will discuss the individual scores and, as a result of the discussion, each member may adjust the member's individual scoring up or down as appropriate. There is no requirement that members reach agreement on the score for a particular question/requirement. In the event the members do not reach agreement on a score for a particular question/requirement, the HTA Procurement Officer will average the individual scores to determine the Proposer's score for that particular question/requirement.
6. Maintaining Agency Records. All evaluation/negotiation documents/forms completed by each evaluator and by the committee will be collected by the HTA Procurement Officer and become part of the official record and subject to the Hawai'i Open Records Act.