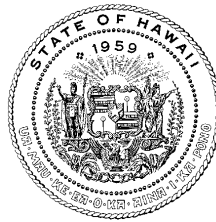




**REQUEST FOR PROPOSALS
FOR THE
HAWAII TOURISM AUTHORITY**

2022 SPORTS PROGRAM

HTA RFP 22-06



STATE OF HAWAII
HAWAII TOURISM AUTHORITY
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM

**DEADLINE FOR RECEIPT OF PROPOSALS:
4:30 PM (HST) on
May 26, 2022**

By the Hawaii'i Tourism Authority, 1801 Kalākaua Avenue, Hawaii'i Convention Center, First Level, Honolulu, Hawaii'i 96815. Electronic submissions only. No physical submissions or physical deliveries accepted. Direct any questions relating to this solicitation to Contracts & Procurement, (808) 973-2255, or email to contracting@gohta.net. Email strongly preferred.

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

Keith Regan
Procurement Officer/Chief Administrative Officer
Hawaii'i Tourism Authority

**REQUEST FOR PROPOSAL
FOR THE HAWAI'I TOURISM AUTHORITY
2022 SPORTS PROGRAM
HTA RFP 22-06**

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SECTION 1 – INTRODUCTION, TERMS & ACRONYMS, KEY DATES

1.1

Introduction

The Hawai'i Tourism Authority, an agency of the State of Hawai'i, hereinafter referred to as the "Authority" or "HTA," is issuing this request for proposals (RFP) to partner with qualified sports programs that will generate community and economic value and benefits.

At the start of 2020, HTA introduced a six-year strategic plan to guide the vision and the responsibilities in support of Hawai'i tourism through 2025. HTA has been reorganized around four interacting "Pillars" (Natural Resources, Hawaiian Culture, Community and Brand Marketing) supported by research and other administrative functions.

Interested parties are urged to submit an Intent to Apply before the deadline as stated in Section 1.7 of this RFP, RFP 22-06. At the conclusion of the RFP process, the successful applicants will be responsible for implementing their respective sports programs. The successful applicants shall be independent contractors and shall furnish all management, supervision, labor, and any or all other services, as required by the HTA. It is the goal of the HTA to have an executed contract with the successful applicants on or around June 2022.

1.2

RFP & Associated Attachments

This solicitation, and all of its associated attachments, will be posted and may be downloaded from the State Procurement Office, Hawai'i Awards & Notices Data System (HANDS), the official source for this RFP and associated documents will be found on the HANDS webpage at <https://hands.ehawaii.gov/hands/opportunities>.

1.3

Amendments & Cancellation

HTA reserves the right to amend this RFP at any time prior to the deadline for the submission of final proposals. Amendments shall be posted through HANDS.

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

1.4

Procurement Officer

The HTA's primary point-of-contact is the Procurement Officer identified at the beginning of this RFP. The Procurement Officer serves as the arbitrator and referee for this RFP. The Procurement Officer does not serve as a voting member of the evaluation committee.

Offerors should only communicate with, and rely on information from, the Contracts & Procurement Office of the HTA, identified on the cover page of this RFP. HTA is not responsible for misinformation provided by anyone outside the Procurement Office. Please use email when communicating with the Procurement Office, contracting@gohta.net.

Your point-of-contact will change once the contract is executed. The HTA’s Chief Brand Officer and assigned HTA staff will be overseeing contracts awarded under this RFP.

1.5

Terms & Acronyms

Authority	–	The Hawai’i Tourism Authority. Also referred to as “HTA”.
BAFO	–	Best and Final Offer
Board	–	Board of Directors of the Hawai’i Tourism Authority.
CPO	–	Chief Procurement Officer. Operated out of the State Procurement Office.
CVC	–	Certificate of Vendor Compliance. A single document that shows compliance with the IRS, DLIR, DCCA, and DOTAX. All four approvals are required in order to contract with the State.
DAGS	–	Hawai’i Department of Accounting and General Services
DBEDT	–	Hawai’i Department of Business, Economic Development, and Tourism
DCCA	–	Department of Commerce and Consumer Affairs. One of the four agencies requiring compliance for the CVC.
DLIR	–	Department of Labor & Industrial Relations. One of the four agencies requiring compliance for the CVC.
DOTAX	–	Hawai’i Department of Taxation. One of the four agencies requiring compliance for the CVC.
GC	–	General Conditions. Rules enacted by the Hawai’i Attorney General’s Office.
HANDS	–	Hawai’i Awards & Notices Data System
HAR	–	Hawai’i Administrative Rules. State rules outlining procedures for applying statute.
HCE	–	Hawai’i Compliance Express. An electronic system for contractors to get the documents and approvals necessary for the CVC.
HOPA	–	Head of Purchasing Agency. Operated out of the Hawai’i Department of Business, Economic Development & Tourism (DBEDT).
HRS	–	Hawai’i Revised Statutes. State law governing, among other things, the powers of and limitations on the HTA.
HST	-	Hawai’i Standard Time
HTA	–	Hawai’i Tourism Authority. Also referred to as “HTA” or “Authority”.
IRS	–	Internal Revenue Service. One of the four agencies requiring compliance for the CVC.
OIP	–	Hawai’i Office of Information Practices
PO	–	Procurement Officer. The contracting officer for the HTA.
RFP	–	Request for Proposal
ROI	–	Return on Investment
SPO	–	Hawai’i State Procurement Office
State	–	The State of Hawai’i, including each department and political subdivision.

1.6

Procurement Timeline

The Procurement Timeline represents the HTA’s best estimates. Dates and times may be subject to change as they are an approximation. All times indicated are Hawai’i Standard Time (HST). Substantive changes in the Procurement Timeline shall be issued in an addendum and posted to HANDS.

RFP 22-06 Sport Programs 2022	
ACTIVITIES	SCHEDULED DATE
Release of Request for Proposals	April 26, 2022
Pre-Proposal Conference	April 29, 2022, 8am – 9:30am HST
Deadline to Submit Intent to Apply (Optional)	May 3, 2022 4:30 p.m. HST
Deadline to Submit Written Questions	May 9, 2022, 4:30 p.m. HST
State’s Response to Written Questions	Week of May 9, 2022
Proposal Due Date/Time	May 26, 2022, 4:30 p.m. HST
Notice of Award Selection or Non-selection	Week of June 6, 2022
Start of Contract Period	On or About June 30, 2022
End of Contract Performance	December 31, 2022

1.7

Intent to Apply

Registration is **optional** but recommended to submit a proposal.

By registering your company, any applicable Addenda will be sent to you. If you are interested in responding to this solicitation, please email the information specified below to contracting@gohta.net no later than **May 3, 2022 by 4:30 p.m. HST**.

- Name of Company/Organization
- Name of Contact Person
- Email Address
- Company Address
- Telephone Number
- Solicitation (RFP) Number

1.8

Pre-Proposal Conference

Offerors are strongly encouraged to attend the pre-proposal conference. The pre-proposal conference is an opportunity for offerors to be briefed on the procurement and to ask questions. The conference is provided for clarification purposes only. No changes will be made to the contents of the RFP via the conference. Any changes to the RFP will be issued as an addendum to the RFP. If a change is not put in writing via addendum, then it is not changed.

The pre-proposal conference will be held as follows:

Date: April 29, 2022, at 8-9:30 a.m. HST

Location: Via Zoom teleconference. Please use the zoom registration link below to register:

<https://bit.ly/PPC-RFP22-06>

HTA will not be conducting one-on-one conferences, nor will we be discussing what occurred at the conference with those who missed the conference. Any changes to the RFP as a result of the conference will be issued as an addendum.

1.9

Submission of Questions

Any questions or concerns regarding the RFP should be submitted in writing prior to the deadline for written questions noted in the Procurement Timeline.

- a) Offerors are asked to submit questions to contracting@gohta.net in an editable format such as a Word document or in the email itself, not in PDF. Each question should cite the page/section/paragraph number that is the source of the question.
- b) HTA reserves the right to combine questions, reword questions for relevance, or disregard questions altogether.

1.10

Protest of RFP Content

Protests of RFP content must be received prior to the proposal due date. Offerors are encouraged to raise any concerns by the deadline for submission of written questions, or as soon as possible.

1.11

Website Reference

Item	Website
HTA RFP Webpage	http://www.hawaii tourism authority.org/RFPs
Hawai'i Tourism Authority Website	www.hawaii tourism authority.org
HTA Five-Year Strategic Plan	https://hawaii tourism authority.org/who-we-are/our-strategic-plan/
HTA Programs	https://www.hawaii tourism authority.org/what-we-do/
HTA Research	https://www.hawaii tourism authority.org/research/
Hawai'i Compliance Express (Certificate of Vendor Compliance)	https://vendors.ehawaii.gov
eHawaii.gov YouTube Channel	https://www.youtube.com/user/eHawaii gov 1/videos
Hawai'i State General Conditions	https://hiepro.ehawaii.gov/static-resources/103D-1%20General%20Conditions.pdf
Chapter 201B HRS. HTA's inception statute.	https://www.capitol.hawaii.gov/hrscurrent/vol04_ch0201-0257/HRS0201B/HRS_0201B-.htm

SECTION 2 – OVERVIEW AND TIMELINE

2.1

Project Overview and Authority

The HTA is a state agency established under 201B Hawai'i Revised Statutes to manage tourism for the State. The HTA is administratively attached to the Department of Business, Economic Development, and Tourism (DBEDT). The HTA's powers and responsibilities include coordinating with global marketing contractors, visitor industry partners, travel trade, MCI partners, and community stakeholders to ensure that destination marketing and communications are in line with Hawai'i's unique and distinctive products, including natural resources, Hawaiian culture, and Hawai'i's multi-ethnic culture.

In addition, the HTA creates, manages, and supports the development of unique tourism experiences such as community and cultural festivals, sporting events, natural resources, community, and cultural programs. The HTA also evaluates its programs on their impacts and return on investment of public funds.

This RFP will fund programs and events from June to December 2022. HTA will issue a separate RFP later this year for calendar year 2023 programs.

The Hawai'i Tourism Authority's (HTA) 2022 Sports Program Request for Proposals ("RFP") seeks projects or events consistent with Chapter 201B-7(a)(4), HRS, "Promotion, development, and coordination of sports-related activities and events" and Chapter 201B-3(a)(19), HRS, Hawai'i Revised Statutes, which mandates HTA to: "Coordinate the promotion and development of sports-related activities and events with the counties and other persons in the public sector and private sector, including the development of culture, health and wellness, education, technology, agriculture, and nature tourism." In addition, the HTA Five-Year Strategic Plan 2020 - 2025 lays out HTA's plan to "expand community-based programs to enrich visitor-resident interactions and economic benefits."

The four Pillars of the HTA five-year strategic plan are:

1. Natural Resources– Respect for Our Natural and Cultural Resources
2. Hawaiian Culture – Support Native Hawaiian Culture/Community
3. Community – Ensure Tourism and Communities Enrich Each Other
4. Brand Marketing – Strengthen Tourism's Contributions

Community-based tourism projects are an integral element in achieving these four goals.

The HTA's Five-Year Strategic Plan 2020 - 2025 is available on our website

<https://www.hawaiitourismauthority.org/media/4286/hta-strategic-plan-2020-2025.pdf>

2.2

Scope of Work

The CONTRACTOR shall perform and provide, in a satisfactory and proper manner as determined by the STATE, all goods and services listed as follows, and as may be further described in the proposed 2022 Sports Program, including but not limited to the following project management and professional services.

Under the supervision of, and in collaboration with the HTA Chief Brand Officer and the HTA staff, the successful contractor shall provide the HTA with the following services:

- Comprehensive written report, including but not limited to, marketing and branding plan, tactics, timelines, schedule, and valuation of assets.
- Promote and conduct sports program as outlined in proposal.
- Program audience should include the residents of Hawai'i and visitors from HTA identified major source markets.
- Provide a financial plan that includes a budget which makes clear the allocation of funds used to produce the sport programs as well as maximize return on investment.

1. PROJECT PERFORMANCE. Applicant acknowledges and agrees that it shall at all times exercise its sole, absolute, complete, and unconditional discretion, control, and duty of care, and shall also assume any and all risks and liability now known and unknown, over any and all matters arising from or related to the Applicant's development, organization, management, operation, marketing, promotion, performance, implementation, and conduct of any and all the various initiatives, activities, services, programs, and events arising from or related to the Sports Program.

2. HTA'S GOAL AND OBJECTIVES. Applicant acknowledges and agrees that the goal of this RFP is to expose and present Hawai'i as a desirable visitor destination to Hawai'i's key tourism and emerging markets by leveraging sports programs in Hawai'i that are designed to have a high level of exposure. Applicant shall provide the programs and services described in its proposal in a manner that will achieve this goal.

3. Applicant's GOALS AND TARGET PERFORMANCE MEASURES. Applicant shall use its best efforts to achieve its expected goals and target performance measures described in its proposal to determine the benefits and success of Applicant's sports program. Additionally, Applicants shall use various metrics described in the proposal. Applicant shall perform and provide the activities and services described in its proposal and in this RFP in a manner that will achieve these goals and target performance measures.

4. EXPENDITURE ACCORDING TO APPROVED BUDGET. Applicant shall expend STATE funds in a manner described and consistent with the budget and expenditure plan provided by Applicant as part of its proposal, and subsequently approved by STATE.

5. PROJECT PLAN. Applicants shall develop and implement the Project Plan for the sports program as part of the applicant's proposal and subsequently approved by HTA.

6. PROJECT BENEFITS AND ACCESS. Applicant shall provide HTA with the various benefits described in the Applicant's proposal, including the following: the use of HTA's name and/or logo in all advertising and promotional efforts, such as in print, radio, television, websites, posters and banners; the identification of HTA as the presenting sponsor of the program in all press releases; the ability by HTA to utilize the program in HTA's post-arrival promotional campaigns or other similar promotional and marketing campaigns initiated by HTA.

7. HTA SPONSORSHIP. Applicant shall acknowledge HTA's support of the program, by utilizing the HTA's brand logo or other intellectual property in all of the programs printed promotional and marketing material. Applicant shall also recognize HTA's support in any electronic broadcast advertisement promoting the program, including social media. "Hawai'i Tourism Authority" or "The

Hawaiian Islands” shall be credited as the presenting sponsor on all advertising and promotional materials and activities, wherever and whenever possible or when HTA has provided the most money for sponsorship, and the PROJECT shall be stated as being “Presented by the Hawai’i Tourism Authority” or “Presented by the Hawaiian Islands” or “The Hawaiian Islands present.”

8. HTA ADVERTISEMENT. Applicant shall provide to HTA at Applicant’s own expense the artistic creation, development, space, placement, and a publication with a minimum of three hundred (300) words and two (2) photo advertisements promoting HTA or its various marketing programs in any official publication of the program utilizing the template, content, and intellectual property provided by STATE. Applicant shall seek HTA’s approval of the placement and final version of the advertisement prior to the Applicant’s publication of the advertisement.

9. PROOF OF INSURANCE. Applicant shall provide STATE with proof of commercial general liability insurance of at least \$1 Million per incident, \$2 Million in aggregate. Policy must also list either the Hawai’i Tourism Authority or the State of Hawai’i as an additional insured.

10. FINANCIAL RECORDS. Contractor shall prepare and maintain financial records for the PROJECT that sufficiently and accurately reflect all income and other sources of funds, and all direct and indirect expenditures of any nature related to the Contractor’s performance of this Contract. These records shall be subject to any inspection, review, or audit by the STATE.

11. FINANCIAL REPORT. Applicant shall submit a financial report to the STATE prior to the completion of the Contract period and final payment by the STATE. The financial report shall be consistent in form and format with the “Itemized Budget Form,” attached as Exhibit 2 to the RFP, incorporated herein by reference, and stating both budgeted and actual income and expenses. The financial report shall also include, but not be limited to, a statement certified by the Applicant that all financial statements represented in the report are accurate and that STATE funds allocated under this Contract have been expended in accordance with the provisions set forth in this Contract, including the budget approved by the STATE. The financial report shall also specify the expenses for which STATE funds were utilized. All STATE funds not expended in accordance with the provisions set forth in this Contract and the approved budget shall be returned to the STATE.

12. PROGRESS REPORT. Applicant shall provide any progress report requested by the STATE describing the status of all work required to be completed under this Contract and as may be required in Attachment-S2. The Applicant shall furnish any additional reports or information that the STATE may, from time to time, require or request.

13. FINAL REPORT. Applicant shall provide a final report regarding the completion of the activities, services, programs, and events described in the proposal. The final report shall also include any recommendations for any future activity, service, program, event, or initiatives related to the program to achieve the HTA’s goal for this Contract. Applicant shall also report on any information obtained through any survey and the actual results of any target performance measurements obtained by Applicant and related to the conduct of the program, including an analysis of the actual results as measured against the metrics identified in the proposal. Applicant shall also submit with the final report a final schedule of all activities and events, and copies of advertising and promotional materials.

14. CANCELLATION. The Applicant acknowledges that if, for any reason, any of the events covered under this Contract are cancelled, the STATE will be released from any obligations or responsibilities for the cancelled event, including but not limited to payment for services. In addition, in the event of a cancellation, Applicant may be required to pay the STATE back for any funds already received.

2.3

Objective

Support sports programs that create community engagement, have marketing value, provide economic benefits, support Hawai'i's youth, and are aligned with Hawai'i's brand.

Consistent with the HTA's Strategic Plan approved in January 2020, the 2022 Sports Program is focused on the following HTA strategies:

- **Extend the brand image and marketing of Hawai'i**
 - Marketing Value
 - Audience Demographics & Engagement
- **Generate Economic Benefits**
 - Increase Visitation
 - Increase Direct, Indirect, & Induced Spending
- **Generate Community Benefits**
 - Community Activities and Involvement
 - Charitable Giving

2.4

Goals of the 2022 Sports Program

The HTA is requesting proposals from qualified applicants for the 2022 Sports Program. The primary goal of the 2022 Sports Program is to support sport programs which produce the greatest impact on our brand, align with destination marketing and management goals and portray Hawai'i as a world-class sports program host.

The goals of the 2022 Sports Program are to:

- Support sports programs that create community engagement.
- Establish Hawai'i as a premier destination for all levels of sporting events to include youth, amateur and professional athletes.
- Build upon current successful events.
- Seed new events with potential to become long standing programs/events.
- Ensure that sporting event strategy builds upon the mission of the HTA to attract mindful, target visitors to the State and therefore provide revenue.
- Conduct best practice for destination sporting events as marketing platforms for the State of Hawai'i
- Provide economic benefit to communities.
- Ensure the availability of events, activities, and experiences throughout the year and distributed throughout the State.
- Partner with existing sports properties to promote the State's brand and/or messaging to potential, target visitors.

2.5

HTA Responsibilities

The HTA shall appoint a designated officer or employee(s) to serve as the HTA Brand Manager and HTA Procurement Officer. Unless otherwise noted herein, any consent or approval required by the HTA

under a contract resulting from this RFP shall be obtained from the HOPA in coordination with the HTA President & CEO or her/his designee.

2.6

Contract Administrator / Contracting Office

The resulting contract will be administered by the Brand Management Office of the Hawai'i Tourism Authority. In accordance with HRS 103D and HAR, a contract administrator shall be identified and shall be the primary point of contact for the awarded contractor(s) as it relates to this contract.

Any questions regarding this RFP prior to award should be directed to the Procurement Office of the HTA. Please do not reach out to the Brand Management staff. The HTA is not responsible for any information or misinformation offered outside of the HTA Procurement 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.

2.7

Term of Contract

The contract period is for June 2022, to December 31, 2022.

When the best interests of the State so require, the State may issue a stop work order, termination for default, or termination for convenience. Please see the attached General Conditions for details.

SECTION 3 – APPLICANT AND PROJECT ELIGIBILITY / SPECIFICATIONS

The HTA seeks proposals for projects that meet the proposal guidelines in this solicitation for RFP 22-06 Sports Program and the following project eligibility requirements.

3.1

Eligible Applicants

Entity Type: Applicant may be either a nonprofit organization, a for-profit organization, or a government agency; but in any case, must be a legal entity registered with the State of Hawai'i with an official business license. The successful applicant shall be an independent contractor and shall furnish all management, supervision, labor, and any and all other services, as required by the HTA.

3.2

Deadline for Submissions

Deadline date and time are strictly enforced and are nonnegotiable. Any delays due to upload/download times, password protection, downed wi-fi, corrupted files, or for any other reason will not be accepted. Offerors are advised to submit their proposal at least one day before the deadline to avoid the unexpected. Please reference Procurement Timeline in Section 1.6 of this RFP.

3.3

Term, Location, Award Limit

- Project Term. This program is intended to support projects occurring during the contract term, June 2022 through December 31, 2022.
- Project Location. Program may have elements that take place outside the state of Hawai'i but must include community and economic benefits in the State of Hawai'i.
- Award Limits. There is no minimum or maximum number of awards or funds to be granted for this RFP.

3.4

Brand Experience

The HTA has developed a marketing strategy to integrate the brand experience into the overall marketing strategy to help drive demand. As a part of this strategy, proposals must align with the sports tourism niche area as defined below.

Sports Tourism: Tourism focused on attracting participants or spectators in with sporting events, such as, but not limited to, football, basketball, baseball, soccer, golf, softball, volleyball, beach volleyball, rugby, running, swimming, cycling, surfing, and outrigger canoe paddling, esports, etc.

3.5

Use of HTA Funds / Non-allowable Expenses

The following activities are **not** eligible for funding:

- a. Business or organizational start-up plans;
- b. Fundraising (an event to raise money for your organization or a specific cause);
- c. Litigation efforts;
- d. Endowments;
- e. Real Property;

- f. Capital improvements;
- g. Conferences/Conventions;
- h. Merchandising (HTA funds to purchase goods (e.g. T-shirts) which will be resold for a profit);
- i. Computer equipment;
- j. Reimbursement for pre-award expenditures or costs before contract is fully executed and a notice to proceed is issued;
- k. Administrative costs outside of salary: Only up to ten percent (10%) of award money may be used for administrative costs.

3.6

Multiple Proposals

Multiple proposals from an organization for *different and separate projects* will be accepted and considered independently of each other.

SECTION 4 – PROPOSAL FORMAT AND INSTRUCTIONS

4.1

Offeror's Authority to Submit an Offer

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

4.2

Required Review

Each offeror is solely responsible for reviewing this RFP and any attachments, addenda, and other relevant documents. Offeror must also become familiar with any and all relevant state, local, and federal laws, statutes, ordinances, rules, and regulations that may in any way affect cost, progress, or performance of the work required.

Offeror is responsible for notifying the procurement officer identified at the beginning of this RFP of any defects and questionable or objectionable items in the RFP prior to the deadline for written questions noted in the Procurement Timeline. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum.

4.3

Proposal Preparation Costs

Each offeror is solely responsible for all expenses incurred for the preparation of the proposal and any expenses related to the evaluation process. This includes, but is not limited to, development and submission of the proposal and subsequent responses to HTA requests for more information, and participation in any pre-award oral presentation, including, but not limited to, travel and lodging expenses if any. The offeror shall 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. This clause is applicable even if the RFP is cancelled and no award is given.

4.4

Tax Liability

Offeror shall provide Federal Identification Number and Hawai'i General Excise Tax License Identification number, as requested, on the proposal cover page, thereby attesting that the offeror is doing business in the State and that offeror will pay such taxes on all sales made to the State.

4.5

Property of State, Public Records and Public Disclosure

- All proposals and submitted documents become the property of the State of Hawai'i.
- A register of submitted proposals shall be open to public inspection upon posting of award pursuant to 103D-701, Hawai'i Revised Statutes.
- All documents submitted by the offeror 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.

4.6

Confidential Information

An offeror may request in writing nondisclosure of designated **trade secrets** or other **proprietary data** considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the nonconfidential portion of the proposal. Price is not considered confidential and will not be withheld. Claims of confidentiality must be specifically targeted to claims of trade secrets and proprietary data only.

Pursuant to Section 3-122-58, HAR, the head of purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(1), HRS.

4.7

Requests for Exceptions

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

No exceptions to the statutory requirements of the General Conditions, except as may have already been noted in the Special Provisions of this RFP, shall be considered. Any proposal offering any other set of terms and conditions that conflict with the General Conditions and this RFP's Special Provisions may be rejected without further consideration.

4.8

Submission of Proposals

- a) **Submissions are accepted via email at contracting@gohta.net.** The proposal may be delivered either as an attachment to the email, or as a link to a website containing the submission for download, or both. (If both, please indicate that this is a duplicate submission and not an alternate submission.) The HTA will accept electronic copies of the proposal only. No physical copies will be accepted.
- b) **Deadline date and time are strictly enforced and are nonnegotiable.** Any delays due to upload/download times, password protection, downed wi-fi, corrupted files, or for any other reason will not be accepted. Offerors are advised to submit their proposal at least one day before the deadline to avoid the unexpected.
- c) **Multiple or alternate proposals from the same offeror are not allowed.** In the event alternate or multiple proposals are submitted, all of the offeror's submissions may be rejected at the discretion of the HTA Procurement Officer. Duplicate proposals are allowed to protect against events such as noted in the previous entry, but not alternates.
- d) **An offer may be withdrawn or replaced by the offeror before the due date and time.** If you are replacing your original submission, the new submission MUST be dated and clearly marked as a replacement, and the accompanying email should explain the circumstances of the resubmission. A revision that is not clearly marked or explained may be viewed as a multiple or alternate submission and all submissions could be rejected.
- e) **Mistakes shall not be corrected after award of contract.** When the Procurement Officer knows or has reason to believe that a mistake has been made, and the mistake is clearly evident on its

face, the Procurement Officer may request that the Offeror confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn. In no event shall this be used as an opportunity to improve a proposal, but only to correct an obvious and consequential mistake.

- f) **HTA reserves the right to waive technical irregularities** (matters of form rather than substance), or insignificant mistakes that can be corrected without prejudice to other offerors and when there is no effect on price, quality, or quantity.

Failure to follow instructions in the RFP and any RFP Addenda could result in rejection of your proposal.

4.9

Receipt of Proposals

Proposals will be received, and receipt verified by the procurement office on or after the submission deadline. Offerors should receive a confirmation email from HTA the day after the submission deadline. Offerors who do not receive a confirmation should email contracting@gohta.net to confirm timely receipt of the offer.

4.10

Format

The offeror will be responsible for delivering all the work requested in this RFP within the established budget and with the following format limitations.

- Slide shows and PowerPoint Presentations will not be accepted. The proposal should be compact and substantive. Proposals may include a web address that evaluators will have the option of reviewing. However, evaluators will not be required to review your website, so please do not omit essential information in reliance on website content. Video, audio, or other similar multimedia materials will not be considered during evaluation of written proposals, although they may be accepted or even requested in Round 2 of the procurement process.
- The format must be U.S. standard 8 1/2 by 11 inches. This is a U.S. buyer and therefore must be oriented to U.S. document sizes. Orientation should be primarily portraited, though landscape is welcome for data or visual presentations as appropriate. No odd-sized pages allowed.
- Page limit. The body of the proposal must not exceed a page limit of thirty (30). Proposals that exceed the page limit may be disqualified, or the extra pages may be excised prior to review.

4.11

Submission Content List

All proposals shall include the following documents in the order listed to be considered for this RFP. Proposals that fail to submit any one of these documents may be considered non-responsive.

Description of proposal elements appear below in subsequent sections.

- No more than thirty (30) pages (submitted as one PDF document):
 - Cover Page
 - Table of Contents
 - Cover Letter
 - Organizational Capacity
 - Relevant Professional Experience
 - Workplan and Metrics
 - Demonstrated Past Performance

- Capabilities
 - Project Timeline
 - Cost Breakdown
 - Payment Schedule
- Attachments (submitted in required format as specified):
- Budget Plan Worksheet (Excel format)
 - Client References (PDF format)
 - SPO-021 Standard Qualifications Questionnaire (PDF format)
 - Conflicts of Interest Disclosure & Attestation (PDF format)
 - Certificate of Vendor Compliance or Proof of Application for CVC (PDF format)

4.12

Proposal Contents: Cover Page, Table of Contents, Cover Letter

- a) Cover Page: The cover page should include the following:
 - i. The name and number of the RFP: **RFP 22-06 Sports Program**
 - ii. Name and address of Company.
 - iii. Company Federal and State Tax ID #s.
 - iv. Name, email address, phone number of contact person.
- b) Table of Contents: Please present the materials in the order outlined in this section. Please include page numbers for your table of contents.
- c) Cover letter: The cover letter is your opportunity to make a personal statement to the HTA and to the evaluation committee. Please limit this to one to two pages maximum.

4.13

Proposal Contents: Organizational Capacity

- 1) ORGANIZATION.
 - a) Personnel Management
 - i) Project Manager (“Key Point of Contact”) to be assigned to the HTA account. List detailed qualifications including experience, time with the organization, and resume/bio demonstrating qualifications related to this RFP.
 - ii) Additional Staffing. The offeror shall identify other key members who will be assigned to the project. List detailed qualifications for each position (including experience, time with the organization, and resume/bio demonstrating qualifications related to this RFP). Describe proposed full organization capacity appropriate for the initial operations and full performance.
 - b) Major Subcontractors. If applicable, the offeror shall provide a list of each intended major subcontractor of \$100,000 or more expected to work on this project.
 - i) Name, location, and contact information.
 - ii) The number of years this subcontractor has been used by your company.
 - iii) The goods or services that will be provided.
 - iv) Qualifications.
 - v) Competitive process that will be used to select the subcontractor, if applicable.
 - vi) Contractors are asked to include a force majeure clause in all of their subcontracts where possible. Please use the same language as it appears in the Special Provisions, attached to this RFP as Exhibit C.

HTA must be informed at least fourteen (14) days prior to executing any new subcontracts. HTA reserves the right to reject any subcontractor. HTA also reserves the right to review all subcontracts entered into pursuant to the contracted scope of work.

4.14

Proposal Contents: Relevant Professional Experience

The offeror shall provide a complete description of its relevant experience described below:

- a) Describe the offeror's experience and past performance history in providing services for similar work.
- b) Past Work Examples: Provide at least two (2) examples of past event execution, or case studies of events or programs of similar scope and execution. Examples must be reduced to 8 ½ x 11 form. The offeror may, in addition, reference web addresses; however, evaluators are not obligated to view websites.

4.15

Proposal Contents: 2022 Sports Program Methodology

Offeror must present a 2022 Sports Program Plan including methodology and timeframe as described in section 2.2 – Scope of Work.

- 1) Workplan and Metrics. Outline proposed methods for marketing and promotional materials to be distributed and consumed by desired audience. Include all forms of traditional and digital media to be utilized, duration before and during program, and estimated reach. Include metrics, specifically KPI's that will be utilized, how they will be tracked, and the methodology used to define success as it relates to brand enhancement, economic benefits, and community giveback.
- 2) Demonstrated Past Performance. Elaborate: List experience with past projects with comparable scope of work and complexity to this RFP. Past projects shall provide data that the projects were completed within the scheduled time, completed within budget, and completed with client satisfaction.
- 3) Capabilities. Describe the qualifications and expertise of the individuals responsible for implementing the project. Show that the company has adequate staffing and resources to complete the work effectively and on time.
- 4) Responsiveness to the needs and requirements of HTA as outlined in the SCOPE of this RFP, found in 2.2 - Scope of Work.
- 5) Project Timeline. Provide milestones; start and end dates. Once contracts are awarded, a report cadence will be established to meet the needs of the award.
- 6) Cost Breakdown. Provide a breakdown showing what the budget is paying for. The cost breakdown should be clear enough that, if the HTA should decide to make adjustments to the number of deliverables, the HTA would be able to recalculate the costs based on the information provided.
- 7) Payment Schedule. Propose a tentative payment schedule, including a timeline showing the corresponding deliverables. The payment schedule should match the Work Proposal described in the previous subsection.

Applicants shall provide a concise, detailed description of the approaches, methodology, deliverables, and other efforts that it would take with respect to the project as described herein. As submissions are to be accepted electronically only, applicants are encouraged to ensure that their proposals are not too lengthy.

Applicants are requested to propose the full scope of work outlined above.

SECTION 5 – SCORING / EVALUATION CRITERIA

5.1

Evaluation Committee

Proposals will be evaluated by a Committee whose members are selected by the HTA and include representatives of the HTA as well as community and business representatives throughout the state. All committee members may participate in decision-making on award recommendations provided they have no direct personal interest in the proposal in question. Evaluators sign an affidavit declaring that they will drop out of any evaluation that violates this requirement. Each proposal will be evaluated by a minimum of three (3) evaluators. Each individual evaluator may not score each individual proposal but will score only those proposals assigned to the evaluator.

5.2

Procurement Officer

The HTA's primary point-of-contact serves as the Procurement Officer for this RFP. The Procurement Officer serves as the arbitrator and referee for this RFP. The Procurement Officer does not have a vote; however, in the event that an application has fewer than three scoresheets, and if no other evaluators are available to review the application, the Procurement Officer will automatically be assigned a scoresheet.

5.3

Contact Violations

Evaluation committee member identities are kept confidential during the RFP process. Applicants are forbidden from contacting any member of the Evaluation Committee regarding this RFP. Applicants will not be penalized for inadvertent communication with committee members; however, applicants will be disqualified if they seek the identities of the committee members, or knowingly seek out or contact committee members for advice or favor.

Applicants should only communicate with, and rely on information from, the point-of-contact and the designated HTA Staff listed in Section 1.4 of this RFP. Your point-of-contact will change once the Contract is executed. The HTA's Chief Brand Officer and assigned HTA staff will be overseeing this contract.

5.4

Responsive or Non-Responsive Determination

The procurement office shall review all offers to determine if the offer submitted is responsive or non-responsive as defined by Hawai'i Revised Statutes 103-D and associated Hawai'i Administrative Rules for procurement. A responsive offer must meet and adhere to all required elements as defined in the RFP.

5.5

Evaluation / Award Process / Notice of Non-Selection

There is no minimum or maximum number of awards to be granted for this RFP. At the conclusion of the evaluation process, the Evaluation Committee will rank the proposals based on which ones they determine are most advantageous to the STATE, to the Island where the project/event is scheduled to take place, to the surrounding community, and to the HTA's mission. The Evaluation Committee will then make recommendations to the HTA regarding who should be awarded and how much they should

be awarded (within the parameters of the program). The Head of the Purchasing Agency (HOPA) and HTA’s CEO will make the final determinations.

The evaluation committee reserves the right, at any time prior to award recommendation, to request selected applicants to provide an oral presentation in support of their application.

Once the recommendation to award is approved by the Head of the Purchasing Agency (HOPA) and HTA’s CEO, a final contract will be executed by both parties.

A notice of non-selection will be emailed 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.

5.6

Written Submission Only

The HTA anticipates awarding based on written submission only; however, HTA reserves the right to request additional information or materials, conduct oral interviews, conduct reference checks, negotiate key provisions of the statement of work, and/or ask for a best and final offer (BAFO), upon request from the evaluation committee or from HTA management.

5.7

Scoring Criteria

Written proposals will be reviewed, evaluated, and scored by an evaluation committee based on five scoring criteria. Scoresheets will be filled out as outlined in the following evaluation criteria and scoring guidelines tables, and as described in the following sections.

5.8

Scoring Worksheet

Evaluator Scoring Worksheet
RFP 22-06

EVALUATION CRITERIA	Scoring Weight
DEMONSTRATED SUCCESS & EXPERTISE THROUGH PAST PERFORMANCE The evaluation will include an assessment of the organization, taking into account factors listed in Section 3 of this RFP and in Form SPO-021 Standard Qualifications Questionnaire. Demonstrated capacity to perform all elements of the proposal in a timely and efficient manner. Related experience with projects of a comparable scope and complexity as described in this RFP, as demonstrated by comparable projects. Qualifications and experience of the individuals in the respondent’s team, including the demonstrated past success of the respondent’s key personnel will also be reviewed.	15%

<p>WORKPLAN, METRICS & BUDGET</p> <p>The workplan should include a timeline required for all elements listed in applicants' proposal to achieve stated goals and produce the greatest ROI. Evaluation of timeline will be based on tasks required, duration of tasks, due dates, number of staff assigned to each task, materials and equipment required, permitting, inspections etc. Metrics evaluation should be based on KPI's that will be utilized, method of tracking, and the methodology used to define success. The value of the workplan combined with metrics should be used to evaluate and determine if the budget requested is appropriate and/or sufficient.</p>	25%
<p>EXTENDING THE BRAND IMAGE OF HAWAII</p> <p>HTA's sports marketing strategy has a stated objective of elevating the State's status as a world-class sports destination while also attracting mindful visitors through partnerships with programs and organizations. Applicants should clearly define how their proposed sports program achieves this objective. Factors considered include, but are not limited to, the following: Knowledge and understanding of Hawaii's brand values, appeal to target audience, social media reach, and storytelling.</p>	20%
<p>GENERATING COMMUNITY BENEFITS</p> <p>Proposal must clearly define how it positively benefits the people and communities of the State of Hawaii. Community impact, resident sentiment and local resources required should be addressed. Factors considered include, but are not limited to, the following: Community awareness generated, strengthening of resident's bonds, capital improvements, community engagement and overall well-being.</p>	25%
<p>GENERATING ECONOMIC BENEFITS</p> <p>Proposal must clearly define the economic benefits of the proposed sports program to the State of Hawaii. Factors considered include, but are not limited to, the following: Net increase in spending by targeted visitors, marketing value, and local labor, venues and equipment utilized.</p>	15%

5.9

Scoring Guidelines

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

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 	2
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 	3
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 	4
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 	5

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 judgment. Each proposal will be evaluated by a minimum of three (3) evaluators. Each individual evaluator may not score each individual proposal but will score only those proposals assigned to the evaluator. The HTA Procurement Officer will average the individual scores to determine the Proposer's score for that particular question/requirement.
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.
6. Award Amounts. Award amounts are determined based on the applicant's request, the average evaluator score, the overall score ranking, and the collective agreement of the evaluators regarding what is in the best interests of the State.
7. 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.

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.

SECTION 6 – CONTRACTING PROCESS AND REQUIREMENTS

This is a contract with a government agency. The following section is intended to provide an overview of the contracting process should an award be made to the offeror.

6.1

Award Letter

Awardees will receive a notification informing them of the next steps in the contract process and advising them of any documents that are due (e.g. Updated or Revised Budget, Certificate of Vendor Compliance, Certificate of Insurance.) The notice will include deadlines for receipt of these materials.

6.2

Timeliness

The 2022 Sports Program contract includes sponsorship and marketing requirements that must be fulfilled months prior to the event being supported. Therefore, the contract must be executed in time to fulfill these requirements. Executing the contract in time for the event will not be soon enough. Failure to meet specified deadlines could result in the award being rescinded and the contract being cancelled.

6.3

Contract for Services

This is not a grant. Awardees will be signing a contract. Simply put: A contract is a legally binding document that requires proof of services prior to payment. The contractor will be put on a payment schedule and each payment will have associated deliverables tied to it. The contractor will be required to submit an invoice along with any related deliverables in order to receive payment. The contractor will not be reimbursed for receipts. The contractor will not be paid a lump sum.

6.4

Ownership

This is not a work for hire. The State/HTA will not have ownership of your event. Contractor will maintain ownership of their own event. HTA reserves the right to ask for proof of ownership of the event from the awardee.

6.5

Updated Budget, Proposal and KPIs

The award notification might ask for an updated budget, proposal and KPIs if the applicant is awarded less than what was requested in their RFP proposal, or if there is a change in scope that needs to be reflected in the budget. If requested, an updated budget will need to be received before a contract can be executed.

6.6

Certificate of Vendor Compliance (CVC)

HTA is requiring all offerors to produce evidence that they currently possess, or have filed for, a Hawai'i State Certificate of Vendor Compliance (CVC). Per State law, once awarded, all contractors must have a "compliant" CVC as a precondition to signing a contract. HTA cannot enter into a contract with any contractor until this requirement is met, and failure to maintain compliance could require the termination of the contract.

The CVC is an all-in-one certificate that shows approvals from four different required agencies: the Department of Labor (DLIR), the Department of Commerce and Consumer Affairs (DCCA), the Internal Revenue Service (IRS), and the Hawai'i Department of Taxation (DOTAX). All approvals can be acquired through one convenient location at Hawai'i Compliance Express:

<https://vendors.ehawaii.gov/hce/splash/welcome.html>.

Your certificate will show the compliance status of each of the four agencies. The status will show as either "Submitted," "Compliant," "Exempt," or "Not Compliant."

- "Submitted" means we are waiting for a judgement from that agency.
- "Compliant" and "Exempt" mean that no further action is needed from you.
- "Not Compliant" usually means that you will need to correct something.

Contact information for the different agencies can be found at the "Contact Information" link that appears on the left hand side of the Hawai'i Compliance Express webpage. HTA has no control over your compliance status under other agencies.

We recommend that offerors begin the process immediately to identify any possible challenges and to avoid any delays in processing. There is a \$12 annual fee for this service.

For those who are new to the system, ehawaii.gov has a YouTube channel with information on creating an eHawaii.gov account, vendor registration, and using Hawai'i Compliance Express. You can visit the YouTube channel at <https://www.youtube.com/user/eHawaiiGov1/videos>.

The name on the CVC is the name that will be used for contracting and payment purposes. There cannot be any variation in the name or tax ID.

Note: Government agencies are exempt from the CVC requirement.

6.7

Attachment: FORM SPO-021 Standard Qualifications Questionnaire

In addition to providing a description of Relevant Professional Experience in the proposal, offerors will be required to fill out the Standard Qualifications Questionnaire issued by the State of Hawai'i Procurement Policy Board. This questionnaire has four sections:

1. General Information
2. Experience Questionnaire
3. Equipment Questionnaire **(Not Required)**
4. Financial Statement including Affidavit

Section 3, Equipment Questionnaire, of the Standard Qualifications Questionnaire, will not be required to be completed for purposes of this procurement.

6.8

Attachment: Organizational Conflicts of Interest Disclosure and Attestation

Offeror will be required to fill out and sign an Organizational Conflicts of Interest Disclosures and Attestation Form. HTA policies require the analysis and mitigation of Organizational Conflicts of Interest (OCI). The individual contractor's reputation for integrity is a critical asset in performing government contract work. 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 form consists of two sections.

- 1) The first section asks yes/no questions designed to reveal any possible conflicts you may have. If you answer “yes” to any of these questions, you will need to provide an attachment with additional information, including persons or entities involved, the nature of the activity, 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. Answering “yes” to any question will not automatically disqualify you. The explanations provided by you will allow HTA to evaluate the potential impacts of these conflicts and to analyze the respective mitigation plans. The Procurement Officer may consider offeror’s candor, or lack thereof, in evaluating offeror’s responsiveness and responsibility. Omission or misrepresentation may be grounds for disqualification.
- 2) The second section is a list of affirmative statements that an authorized signer must initial agreement to and acknowledgment of.

6.9

Liability Insurance

The State requires insurance that must be maintained throughout the term of the contract. Failure to maintain the required insurance coverage is considered a serious breach of contract and could result in termination of this contract.

The State requires the following two (2) types of insurance:

- General Liability: \$1mil per occurrence, \$2mil aggregate.
 - Coverage needs to specifically identify Personal and Advertising injury coverage of \$1mil.
- Auto \$1mil per accident.
 - If the CONTRACTOR does not have a car, it must obtain, at a minimum, Hired and Non-Owned coverage. Promising to sign for rental car insurance is not sufficient.

Each policy must add the State of Hawai‘i as an additional insured and should be primary and non-contributory. The preference is “State of Hawai‘i – Hawai‘i Tourism Authority,” but State of Hawai‘i is required.

Each policy should contain a Waiver of Subrogation in favor of the State of Hawai‘i.

In addition, 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 at their own expense.

6.10

Contract Execution

- 1) 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. Funding for contracts issued under this RFP may be sourced through Federal funding. Please see Exhibit A for more information regarding the source of funds and further details.

- 2) Contractor shall submit, to the procurement officer, certified and updated cost and/or pricing data prior to contract negotiation. Data must be current as of the date negotiations are completed and contract is agreed to.
- 3) HTA staff and leadership will engage in contract negotiations, including confirmation of cost and price data, establishing of work schedules, meet and greet of key contacts. All elements of the proposal presented in response to the RFP, including the budget, are subject to negotiation and change before the final contract is drafted. The final version of the proposal will be attached to, either physically or by reference, and made a part of the contract.
- 4) Proposals requiring any exceptions to the General Conditions included as an exhibit 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.
- 5) Unless otherwise agreed, 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.
- 6) A PDF of the Contract is emailed to the Contractor along with instructions. If the Contractor agrees with the terms, the Contractor prints, signs, and fills out the Contract as instructed. HTA and the Director of the Department of Business, Economic Development and Tourism signs the Contract. The Contract is sent to the Hawai'i attorney general's office for approval.
- 7) Deputy attorney general approves the Contract for form and signs. The Contract is returned to HTA.
- 8) HTA makes copies of the Contract and distributes as follows: HTA program manager, Contractor, Hawaii Department of Accounting and General Services (DAGS).
- 9) DAGS approves the Contract. Once it is approved by DAGS, and a Notice to Proceed is issued, the Contractor can start submitting invoices and deliverables as outlined in the Contract's Payment Schedule.

6.11

Payments and Deliverables

The State has allocated a maximum amount of funds for this Contract. It is expected that the Contractor will be able to achieve all the goals set out in the proposal without the need for any additional monies and will be responsible for delivering and completing all work agreed to within the proposed budget.

The Contractor will be put on a payment schedule. For each payment the Contractor will be required to submit a list of associated deliverables along with an invoice. The Attachment "Conflicts of Interest Disclosures and Attestations" includes a statement that offeror will need to sign confirming that they have the availability of funds and agreeing to the use of these financial resources.

Official invoice date is the date that the invoice and all deliverables are received and accepted by the HTA. Invoice must include the name of the Contractor exactly as it appears on the Contract. Invoice must also include the HTA Contract number as well as a Contractor-generated invoice number. All required deliverables must be received along with, or prior to, receipt of invoice.

Invoices submitted prior to receipt of the necessary deliverables will not be accepted and will have to be resubmitted. Fiscal year ends June 30 and entails the temporary shutdown of fiscal processes. Invoices

received at the change of fiscal, between June 1 and July 31, may be subject to delays in processing. See your program manager for details.

Contractor must have a compliant Certificate of Compliance (CVC) to receive final payment.

6.12

Visual Documentation

Copies of all advertising and promotional materials and a minimum of fifty (50) high resolution digital photographs (minimum 300dpi) or other medium, submitted on a CD, DVD and/or as downloadable items from a cloud source, will be required as part of the final reporting requirements of this program. Images including, but not limited to, still photography and video, must come with appropriate release agreements to allow the use of these materials for promotional efforts by the HTA and/or approved contractors.

6.13

Summary Write-up and Photos

If funded, the Contractor must provide a 500-word article describing the project scope and benefits with accompanying high-resolution pictures suitable for publication in the HTA newsletter, HTA's marketing Contractors' newsletter or other news media. The article will be due three months before the start of the event, or for year-long programs within thirty (30) days of Contract execution.

6.14

Sponsorship Recognition

The HTA should be credited as a sponsor in all advertising and promotional materials and activities. HTA will be credited as TITLE SPONSOR or PRESENTING SPONSOR in situations where HTA is the largest monetary sponsor.

6.15

Promotional / Outreach Programs

Contractors shall implement initiatives to promote their project through direct signage, leaflets, flyers, collateral material, social media, and/or other promotional initiatives. Contractors under this program shall consult with the HTA's marketing contractors and staff to coordinate marketing efforts as appropriate. Contractors under this program may be selected to participate in HTA's "Hawai'i Knowledge Bank" program.

6.16

Evaluation of Program

Contractors under this program shall provide full access for up to four HTA staff members or their designees to review and monitor the project for evaluation purposes. The success of the project will be determined based on both qualitative and quantitative criteria, with the quantitative criterion measured against the KPI numbers submitted in response to the RFP.

6.17

Reporting Requirements.

Contractors under this program shall submit a Key Performance Indicator (KPI) report, progress report, a final report, and a final financial report. Contractor may also be asked to submit interim reports as may be necessary.

SECTION 7 – 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.

7.1 Rejection of Proposals

- (a) HTA reserves the right to consider as acceptable, responsible, and responsive only those proposals submitted in accordance with the requirements set forth in this RFP.
- (b) A proposal may be automatically rejected, without further review, for the following reasons:
 - (1) Late proposals. Late proposals are automatically disqualified unless the delay was due to the action or inaction of the procuring agency, and only if the proposal was received before award;
 - (2) Lack of Responsiveness. Failure to submit in accordance with the RFP requirements, or failure to supply an adequate response to the RFP;
 - (3) Lack of Responsibleness. Including:
 - (i) Lack of a Certificate of Vendor Compliance (CVC) at time of award;
 - (ii) Refusal to abide by the State of Hawai'i's General Conditions as amended in the RFP by HTA
 - (iii) Lack of demonstrated experience or expertise;
 - (iv) Inadequate accounting system or internal controls;
 - (v) Failure to meet the terms of agreement on any previous HTA contract;
 - (4) Failure to cooperate with HTA or deal in good faith;
 - (5) Failure to maintain standards of responsibility: falsification of information; suspension or debarment by State; felony conviction related to procurement contracting with any unit of government; failure to maintain necessary licensure or meet its tax or other obligations to a government agency.
 - (6) Any effort to lobby any member or employee of the Hawai'i State Legislature

7.2 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. Contractor is also responsible for obtaining any and all required permits and licenses. Lack of knowledge by the applicant will in no way be cause for relief from responsibility.

7.3 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>.

7.4 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.
- (b) Period of Performance. See Timeline for any contract term and options.
- (c) Not to Exceed. The HTA will set a not-to-exceed amount for goods and services under this contract based on contractor proposal and subsequent negotiations. The contractor must not exceed that limit without the express written consent of the HTA delivered via a supplemental to the contract.
- (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. These conditions can be found on the web at <https://dhrd.hawaii.gov/wp-content/uploads/2017/08/103D-General-Conditions.pdf>. By submitting a proposal, applicant acknowledges and agrees to the provisions stated in those General Conditions. HTA reserves the right to modify or waive any clauses of the General Conditions, subject to approval by the Office of the Attorney General. See Section V of this RFP, Contracting Process, for any exceptions.
- (f) Termination. During the term of the contract awarded pursuant to this RFP solicitation, HTA will review the performance of the 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 meet or 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.

7.5 Protest of Award

- (a) Informal Resolution of Protest. Prior to receipt of offers, protestor should initially seek an informal resolution with the procurement officer named in the solicitation.
- (b) Request for Debriefing. Protestor may request a debriefing. Request for debriefing shall be filed in writing within three (3) working days of posting of award.
- (c) Deadline for Submission of Protest. Protests shall be in writing and submitted to the procurement officer designated in the solicitation. Protests shall be submitted within 5 working days after the protestor knows or should have known of the facts giving rise to the protest, provided that:

- a. Protests of solicitation content shall be submitted prior to the date set for receipt of offers for competitive sealed bidding or competitive sealed proposals.
- b. Protests of awards shall be submitted
 - i. not later than five (5) working days of posting of award or
 - ii. when a debriefing is held, within five (5) working days of completion of debriefing.
- (d) Submission. Protest may be emailed to contracting@gohta.net. Please include the word "Protest" in the subject line.
- (e) Contents of Protest. At a minimum the protest shall contain:
 - a. name and address of the protestor;
 - b. appropriate identification of the procurement;
 - c. a statement of the reasons for the protest; and
 - d. supporting documents, evidence, or exhibits to substantiate claims.
 - i. If supporting documents, evidence or exhibits are not available within the required filing time, the expected time of availability shall be included.
- (f) Grounds for Protest. The protest of award must be based on a violation of state law, or a violation of the rules and procedures set forth in this RFP and any subsequent Addendums to the RFP.

7.6 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.

7.7 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 has been 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.

7.8 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.

EXHIBIT 1 – KPI Definitions

Key Performance Indicators (KPIs): Provided by Applicant. If HTA funds are used for marketing activities, please identify the respective KPIs. Visitor and resident attendance and attendee satisfaction are mandatory KPIs.

(a) Advertising Measures – metrics to assess contractor’s advertising activities

Contractor shall provide for HTA approval target performance measures and shall track and report on a quarterly and year-to-date basis the following metrics for advertisements:

- 1. Gross Rate Point:** A unit of measurement of audience size. Used to measure the exposure to one or more programs or commercials, without regard to multiple exposures of the same advertising to individuals. One GRP = 1% of TV households.
- 2. Reach:** Unduplicated number of individuals or households exposed to an advertising medium at least once during the average week for a reported time periods (also known as Cumulative Audience).
- 3. Gross impressions:** Sum of audiences, in terms of people or households viewing, where there is exposure to the same commercial or program on multiple occasions.

(b) Public Relations Measures – metrics to assess contractor’s public relations activities

Contractor shall provide for HTA approval target performance measures and shall track and report on a quarterly and year-to-date basis the following metrics:

1. Publicity value by media type is a calculation that estimates the price that professional media buyers would pay for that amount of exposure for that particular media outlet. Calculation is as follows:

Publicity Value = Article Length x Unit Reach x Cost/Impression

- Article Length: Story word count. Key word mentions.
- Reach: circulation or audience
 - Newspaper, magazine, and other print publication use audited circulation figures.
 - Online articles use Nielsen/NetRatings which is the global standard for Internet audience measurement. NetRatings provide the number of unique visitors to that website over a specific period.
 - Broadcast segments use Nielsen Audience Figures which is the industry standard for broadcast audience measurement.
- Cost/Impression: average figures based on type of media (print, internet, TV/radio). Not based on ad rates.

2. Number of impressions by print, online, broadcast (TV and Radio): The number of those who might have had the opportunity to be exposed to a story that appeared in the media. The total audited circulation of a publication or the audience reach of a broadcast. Total Impressions = Circulation X 3.5

(c) Web Analytics – metrics to assess the performance of the website

Contractor shall provide for HTA approval target performance measures and shall track and report on a monthly and year-to-date basis the following metrics:

1. Unique visitors
2. Average site duration
3. Page views

(d) Social Media Metrics – metrics used to assess the contractor’s social media efforts.

Contractor shall provide for HTA approval target performance measures and shall, in coordination with HTA’s internet services provider track and report on a quarterly and year-to-date basis the following metrics:

1. Total Impressions Gained
2. Total Fan Count
3. Increase in Fans
4. Total Posts
5. Total Engagement

EXHIBIT A – Federal Regulations

At minimum, the first year of this Contract will be funded with federal money. Contractors and subcontractors must be familiar with, and be ready to comply with federal contracting requirements, including but not limited to those outlined in the Federal Acquisition Regulations.

By law, the State must report any violations, by contractors or subcontractors, of the 14 federal laws listed below:

- Fair Labor Standards Act
- Occupational Safety and Health Act
- Family and Medical Leave Act
- National Labor Relations Act
- Davis-Bacon Act
- Title VII of the Civil Rights Act
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Executive Order 11246
- Vietnam Era Veterans' Readjustment Assistance Act
- Section 503 of the Rehabilitation Act (of 1973)
- Executive Order 13658 - federal minimum wage
- Service Contract Act
- Migrant and Seasonal Agricultural Worker Protection Act

In addition, as part of "paycheck transparency," contractors and subcontractors are required to:

- Provide detailed information from their worker's pay stubs including overtime, hours worked, and deductions.
- Provide written notice of all independent contractors and their classification as such.
- Provide written notice of employees that are exempt from receiving overtime pay.

Additionally, contractors and subcontractors with contracts over \$1 million are prohibited from entering into arbitration agreements under Title VII for sexual assault or harassment. (Note: This rule does not apply if the workers are already under a collective bargaining agreement, or if an arbitration agreement is already in place, though entering into arbitration agreements in anticipation of government contracting could be considered suspect.)

The winning contractor is solely responsible for knowing, and abiding by, all applicable federal laws.

EXHIBIT B – HTA Travel Protocol

As a State agency, HTA is required to follow an ethics code that informs its travel policy. HTA reserves the right to review Contractor’s travel policy. If elements of the Contractor’s policy fall outside of the following protocol, HTA will require Contractor to take measures to ensure that all travel related to HTA work does not violate State ethics laws.

Business Travel

- HTA and Contractor Staff Travel
 - o HTA meetings – Contractors shall make their own arrangements with hotels at the prevailing “industry rate.” In conjunction with pre/post FAMs, HTA staff will work with Island Chapters to negotiate group rates with hotels. Contractors shall never ask for or accept upgrades, including for air travel. Contractors shall use the lowest public rates for air to get to Hawai’i.
 - o Contractor Educational FAM – HTA will work with Island Chapters to negotiate group rates with hotels. Contractors shall never ask for upgrades.
 - o Escorting FAM – Contractors shall use a negotiated FAM rate for both hotel and air. If air or hotel is complimentary for customers, contractors shall ask for industry rates. Contractors shall never ask for or accept upgrades, including for air travel.
 - o Industry meetings – Contractors shall make their own arrangements and ask for the prevailing “industry rate.” Contractors shall use the lowest public rates for air. Contractors shall never ask for or accept air upgrades.
- Leisure Customer Travel
 - o HTA meetings – Contractors shall ask customers to work directly with airlines and hotels if they are coming to Hawai’i for an HTA meeting and can make introductions if appropriate.
 - o Solo FAM – Contractors shall ask customers to work directly with airlines and hotels and can make introductions if appropriate.
 - o Organized FAM – It is acceptable to negotiate air and hotel group rates with hotels and airlines for customers based upon business potential.
- Media Travel
 - o Solo Travel to cover a story – It is acceptable to introduce media partners to Island Chapters for vetting and introduction to hotels and/or airlines for industry rate based upon media potential.
 - o Organized FAM – It is acceptable to negotiate air and hotel group rates based upon media potential.
 - o Engage Island Chapters and HTA’s PR agency where appropriate.

Personal Travel

Contractors shall not get involved with anyone, even customers, asking for favors. It is acceptable to make appropriate introductions for key customers. Contractors shall not ask for or accept personal favors of any kind for their own travel.

EXHIBIT C – Special Provisions

As part of the proposal, offerors are required to accept the State’s General Conditions as amended in the RFP by the HTA. (See Attachment “Conflicts of Interest Disclosure and Attestation”.) The HTA amendments to the General Conditions, for this RFP, are as follows:

1. Hawai’i Compliance Express. Paragraph No. 2i of the attached General Conditions is further clarified as follows: The current “designated certification process” is Hawai’i Compliance Express. In lieu of presenting the separate certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, as outlined in Paragraphs 2e, 2g, and 2h, the Contractor shall obtain and provide the HTA with a current Certificate of Vendor Compliance from the Hawai’i 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 Certificate of Vendor Compliance as required for final payment under section 103-53, Hawai’i Revised Statutes (HRS), as amended, and Paragraph 17 of the General Conditions.

2. Conflicts of Interest. Paragraph No. 5 of the attached General Conditions is further clarified as follows: Contractor acknowledges and agrees that it has represented to HTA, and HTA has justifiably relied upon such representation, that Contractor is duly authorized, by law and in equity, to conduct the project described in the proposal under the trade name or other name commonly understood for the project. Contractor shall avoid all conflicts of interest 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 this Contract and withhold any payment to Contractor.

3. Change Orders: Paragraph No. 20 of the attached General Conditions is further clarified as follows: By written order, at any time and without notice to any surety, the procurement officer may, unilaterally, order of the Contractor:

- (A) Changes in the work within the scope of the Contract; and
- (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

4. Limited License to Use Intellectual Property. The State hereby grants to the Contractor, a non-exclusive limited license during the time of performance for this Contract only, to use any designated intellectual property, including any domain name, trade name, service mark, tag line, or logo (hereinafter referred to cumulatively as “Licensed Property”), which is owned, copyrighted, registered, patented, or reserved by the HTA, for the purpose of promoting and marketing Hawai’i as a visitor destination and in a manner consistent with the “Hawai’i Tourism Authority Strategic Plan 2020-2025,” incorporated herein by reference. The Contractor covenants and agrees that its use of the Licensed Property shall be of high standards and of high quality, style, and appearance and that Contractor shall, at all times, maintain, increase, or enhance the goodwill associated with the Licensed Property. The Contractor shall not authorize, assign, or grant any interest in the Licensed Property without the State’s prior written consent.

5. Conflict Resolution. Notwithstanding any provisions or representations to the contrary, any conflict among the various provisions of this Contract shall be resolved by allowing the various provisions in the following documents, in order of priority, to control:

- (1) Hawai'i State law; then
- (2) HTA regulations, policies, or procedures; then
- (3) The Executed Agreement, including the contractor's final proposal, with any modifications, amendments or other properly documented changes; then
- (4) The RFP as amended; then
- (5) The course of conduct, then
- (6) The course of dealing, then
- (7) General principles of government contracting; then
- (8) Tourism industry practices.

6. Execution in Counterparts. This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

7. Travel Protocol. As a State agency, HTA is required to follow an ethics code that informs our travel policy. See HTA's travel policy, attached as the Exhibit entitled "HTA Travel Protocol." HTA reserves the right to review Contractor's travel policy and if elements fall outside of the attached policy, Contractor must work with HTA to ensure that all travel related to HTA work does not violate State ethics laws.

8. Force Majeure. As parties to this Contract, neither HTA nor Contractor shall be responsible or liable, or deemed in breach hereof, for a delay in the performance of their respective obligations and responsibilities under this Contract due solely to a Force Majeure Event beyond its reasonable control; provided that the party experiencing the Force Majeure Event shall exercise due diligence in endeavoring to overcome any Force Majeure Event that impedes its performance, and to mitigate costs where possible. Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance or observance of the affected obligation(s) only for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the other by telephone or by the timeliest means otherwise available (to be confirmed in writing within two (2) calendar days after the inception of such delay) and describe in reasonable detail the circumstances causing such delay. *(As used in this contract, "Force Majeure Event" means any occurrence beyond the reasonable control of a party, including, without limitation, acts of God; act of terrorism; war; embargo; national emergency; insurrection or riot; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; or unusually severe weather or other natural disasters.)*

EXHIBIT D – General Conditions

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

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

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

EXHIBIT E – Form SPO-013 Certificate of Current Cost-Pricing Data

STATE OF HAWAII
CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122 and submitted pursuant to section 3-122-125; either actually or by specific identification in writing to the procurement officer in support of _____*, are accurate, complete, and current as of _____**”.
(month, date, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the (State) which are part of the proposal. Please type or print:

Vendor / Firm:	Date of Execution: ***
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Name:	Title
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(Signature)

(Print Name and Title)

(Date)

(End of Certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g. RFP Number).

** The effective date shall be a mutually determined date prior to but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror’s or contractor’s negotiator if the offeror or contractor had information reasonably available at the time of the agreement, showing that the negotiated price is not based on accurate, complete, and current data.

*** This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.