



HONOLULU AUTHORITY for RAPID TRANSPORTATION

MINUTES

**Audit/Legal Matters Committee Meeting
Kapolei Hale, Conference Room A
1000 Ulohia Street, Kapolei, Hawaii
Thursday, August 30, 2012, 9:00 A.M.**

PRESENT:

Ivan Lui-Kwan
Don Horner

Carrie Okinaga
Wayne Yoshioka

**ALSO IN ATTENDANCE:
(Sign-In Sheet and Staff)**

Brandon Elefante
Al Lardizabal
Russell Honma
Paul Migliorato
Joe Magaldi
Gary Takeuchi
Lisa Hirahara

Dan Grabauskas
Paula Youngling
Wes Mott
Diane Arakaki
Joyce Oliveira
Jeanne Mariani-Belding
Andrea Tantoco
Cindy Matsushita

I. Call to Order by Chair

Committee chair Ivan Lui-Kwan called the meeting to order at 9:03 a.m.

II. Public Testimony on All Agenda Items

Mr. Lui-Kwan called for public testimony. None was offered.

III. Approval of May 3, 2012 Audit/Legal Matters Committee Meeting Minutes

Mr. Lui-Kwan called for the approval of the May 3, 2012 minutes of the Audit/Legal Matters Committee. There being no objections, the minutes were unanimously approved.

IV. HART Audit

HART Chief Procurement Officer Wes Mott and Procurement/Contracts Assistant Paula Youngling presented the auditor selection criteria. Mr. Mott explained that the auditor was scored according to the following standards, attached hereto as Attachment A:

1. Experience (30 pts);
2. Adequate staffing (25 pts);
3. Ability to complete work in timely manner (25 pts); and
4. Proposed price to complete work (20 pts).

Board member Wayne Yoshioka moved to approve the auditor selection criteria, and Board member Don Horner seconded. The motion carried unanimously.

Mr. Horner stated that audits should consider an assessment of risk. He noted the importance of prioritizing risk, and recommended a third party risk assessment. He stated that such an assessment is a generally accepted practice in identifying areas of risk for prioritization. Executive Director and CEO Dan Grabauskas agreed that such an evaluation would be helpful and appropriate at this time, particularly in light of the recent *Kaleikini vs. Yoshioka* ruling. Mr. Horner stated that he would like the assessment to be conducted from a structural standpoint, and focus on cost, human resources, finances, and efficiencies. He stressed that the public must have confidence in the rail project.

Board member Carrie Okinaga asked if Mr. Horner had a particular auditor in mind, and if this was the same as the independent auditor already selected by HART. Mr. Horner replied that he was thinking of a separate contract, that an independent auditing firm would offer objectivity, but that the selection should be left to the procurement process. At Mr. Horner's request, Mr. Grabauskas stated that he would get back to the committee on the parameters of the assessment.

Mr. Lui-Kwan agreed with Mr. Horner's recommendation, and asked the opinion of the other committee members. Ms. Okinaga and Mr. Yoshioka agreed.

V. Litigation Update

Mr. Lui-Kwan stated the litigation update would focus mainly on the federal litigation, and that the discussion on the *Kaleikini* case would be deferred to the Board of Directors meeting.

Deputy Corporation Counsel Gary Takeuchi advised that in the *Honolulutraffic.com* case in federal court, Judge Tashima heard oral argument, and took the matter under advisement. The case has been fully briefed and argued, and is currently awaiting the court's decision.

VI. Gift Policy

Mr. Takeuchi stated that the Gift Policy had come before the committee a couple of times. The draft before the committee, attached hereto as Attachment B, is the final result of consultation with Corporation Counsel and staff of the City Ethics Commission.

Mr. Horner moved to recommend the approval of the Gift Policy to the Board of Directors, and Mr. Yoshioka seconded. The motion passed unanimously.

VII. Sunshine Law Changes

Mr. Takeuchi said that this update on recent Sunshine Law changes relevant to the HART Board is a result of a question that arose in the last Board meeting. There are three main changes, attached hereto as Attachment C.

Act 176, which addresses the appeals of decisions by the Office of Information Practices (OIP), states that OIP's decisions are precedent unless "palpably erroneous."

Mr. Takeuchi stated that Act 177 would probably be of most interest to the Board. The act clarifies permitted interactions under the Sunshine Law, and creates a carve-out similar to that for neighborhood boards. It allows for more than two, but less than a quorum of board members to attend seminars and presentations and discuss board business, so long as no commitment is made to voting a certain way and a report is made to the full Board. He stated that the act is an attempt at practicality since board members sometimes attend the same events.

Lastly, Act 202 clarifies requirements for videoconference meetings. The act expands electronic media to more than just video to include voice over internet and other media.

VIII. Adopted City Council Resolution 12-149, Requesting the City Auditor to Conduct an Audit of the Honolulu Authority for Rapid Transportation's Contracts and Spending for Public Relations and Public Involvement Services

Chief Financial Officer Diane Arakaki gave an update on the audit being performed pursuant to City Council Resolution 12-149, attached hereto as Attachment D. She reported that she met with City Auditor Edwin Young and his staff on August 14, 2012. She stated that the audit is currently in the planning phase, with fieldwork to begin after the Labor Day weekend. Mr. Young estimated that the audit will take six to nine months to complete. HART staff is awaiting further communications from Mr. Young in the form of an audit plan, followed by fieldwork.

IX. Executive Session

Mr. Lui-Kwan asked if there was any reason for an executive session, and there was none.

Audit/Legal Matters Committee Minutes
August 30, 2012

X. Adjournment

There being no further business before the committee, Mr. Lui-Kwan adjourned the meeting at 9:20 a.m.

Respectfully Submitted,



Cindy Matsushita
Board Administrator

Approved:



Ivan M. Lui-Kwan, Esq.
Chair, Audit/Legal Matters Committee

OCT 18 2012

Date

ATTACHMENT A

INDEPENDENT FINANCIAL AUDITOR PROFESSIONAL SERVICES

EVALUATION CRITERIA

HART has identified the following Evaluation Criteria. All Evaluation Criteria must be addressed in the Offeror's Proposal in order for HART to deem the Proposal to be acceptable or potentially acceptable. Any Proposal that does not include complete responses to all of the Evaluation Criteria will result in the Proposal being scored down or the Proposal may be deemed to be unacceptable, at the sole discretion of HART. Offerors who submit acceptable or potentially acceptable Proposals are eligible for inclusion on the Priority List. Proposals that are deemed to be non-responsive may not be considered for the Priority List and may not be further evaluated.

- A) **Proposal Responsiveness (Responsive or Non-Responsive).** The Offeror submits all information requested in the RFP substantially in the specified format.
- B) **Organizational Eligibility (Responsive or Non-Responsive).** The Offeror has clearly identified all Principal Participants. Offeror shall certify that neither it nor any of its Subcontractors or vendors is listed in the "Lists of Parties Excluded from Federal Procurement or Non-Procurement Program."

EVALUATION CRITERIA (A-D) (100 TOTAL AVAILABLE POINTS)

Evaluation of Proposals will be scored based on a total of 100 available points as follows:

- A) Experience in performing similar financial audits of government units (30 points).
Experience information provided in Section 6.4.
- B) Adequate qualified staffing (25 points).
Adequate qualified staffing information provided in Section 6.4.
- C) Ability to complete the work in a timely manner (25 points).
Work Plan for Completing Scope of Work information provided in Section 6.5.
- D) Proposed price to complete the work (20 points).
Information regarding price provided in Section 6.6. The total price of the Proposal shall be considered the cost factor for evaluation purposes under HAR § 3-122-52(d).

Note: Information on this sheet was extracted from the Instructions to Offerors for the Request for Proposals for Independent Financial Auditor Professional Services issued to the public on 11/18/2012.

**HONOLULU AUTHORITY
FOR
RAPID TRANSPORTATION
CITY AND COUNTY OF HONOLULU
HONOLULU RAIL TRANSIT PROJECT
INDEPENDENT FINANCIAL AUDITOR
PROFESSIONAL SERVICES CONTRACT
REQUEST FOR PROPOSALS
NO. RFP-HRT-446502**

Honolulu Rail Transit Project

**NOTICE OF REQUEST FOR PROPOSALS
FOR
HONOLULU RAIL TRANSIT PROJECT
INDEPENDENT FINANCIAL AUDITOR
PROFESSIONAL SERVICES CONTRACT
REQUEST FOR PROPOSALS NO. RFP-HRT-446502
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

SEALED PROPOSALS will be accepted up to 2:00 p.m. HST on December 19, 2011, in the office of the Honolulu Authority for Rapid Transportation (HART), Ali'i Place, 1099 Alakea Street, Suite 1700, Honolulu, Hawai'i 96813.

Because portions of the work in this project may be funded with Federal assistance, the successful Offeror is expected to comply with applicable Federal Transit Administration (FTA) terms and conditions.

The Form of Proposal may be obtained from HART upon application for Request for Proposals No. RFP-HRT-446502 or from the Division of Purchasing website at www.honolulu.gov/pur.



Kenneth T. Hamayasu

Interim Executive Director

Honolulu Authority for Rapid Transportation

City and County of Honolulu

Honolulu Rail Transit Project

INSTRUCTIONS TO OFFERORS

Table of Contents

1.0 NOTICE TO OFFERORS 5

2.0 ABBREVIATIONS 5

3.0 DEFINITIONS 6

4.0 INTRODUCTION 9

 4.1 HONOLULU RAIL TRANSIT PROJECT (H RTP) 9

 4.2 SCOPE OF WORK..... 9

 4.3 DOCUMENTS IN RFP 9

 4.4 WEBSITES..... 10

 4.5 PROCUREMENT TIMETABLE 11

5.0 REQUEST FOR PROPOSALS (RFP)..... 11

 5.1 CLARIFICATIONS AND INQUIRIES 11

 5.2 AMENDMENT TO RFP 12

 5.3 OFFER ACCEPTANCE PERIOD 12

 5.4 CANCELLATION OF SOLICITATIONS AND REJECTION OF PROPOSALS 12

 5.5 APPLICABLE TAXES 13

6.0 PREPARATION OF PROPOSALS..... 13

 6.1 GENERAL..... 13

 6.2 REQUIRED EXHIBITS & DOCUMENTS 14

 6.3 EXECUTIVE SUMMARY (SECTION I) 15

 6.4 OFFEROR’S QUALIFICATIONS (SECTION II) 15

 6.5 OFFEROR’S PROPOSALS (SECTION III)..... 17

 6.6 PRICE (SECTION IV) 17

 6.7 NON DISCLOSURE OF PROPRIETARY INFORMATION..... 18

 6.8 NO REIMBURSEMENT 18

 6.9 JOINT VENTURES 18

7.0 PROPOSAL SUBMITTAL..... 18

 7.1 MODIFICATION OR WITHDRAWAL OF PROPOSALS 19

 7.2 ACCEPTANCE OF PROPOSALS 19

 7.3 OPENING OF PROPOSALS 19

8.0 EVALUATION CRITERIA 19

 8.1 EVALUATION CRITERIA (A-D) (100 TOTAL AVAILABLE POINTS)..... 20

 8.2 DISCUSSION WITH OFFERORS 20

Honolulu Rail Transit Project

8.3 BEST AND FINAL OFFERS 21

8.4 MISTAKES IN PROPOSALS 21

8.5 TECHNICAL IRREGULARITIES 21

8.6 AUTHORITY TO DEBAR OR SUSPEND..... 22

9.0 AWARD OF CONTRACT..... 22

9.1 RESPONSIBILITY OF OFFERORS 22

9.2 TAX CLEARANCE 23

9.3 CERTIFICATE OF COMPLIANCE..... 23

9.4 CERTIFICATE OF GOOD STANDING..... 24

9.5 HAWAI‘I COMPLIANCE EXPRESS 24

9.6 TIMELY SUBMISSION OF ALL CERTIFICATES 25

9.7 FINAL PAYMENT REQUIREMENTS 25

9.8 CONTRACT TYPE..... 25

9.9 CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE..... 25

9.10 FEDERAL FUNDING, INCORPORATION OF FTA TERMS, AND CHANGES TO
FEDERAL REQUIREMENTS..... 25

9.11 INSURANCE 26

9.12 SEXUAL HARASSMENT POLICY 26

10.0 EXECUTION OF CONTRACT 26

10.1 CONTRACT FILE 26

10.2 PUBLIC INSPECTION..... 27

10.3 DEBRIEFING..... 27

10.4 PROTESTS OF SOLICITATIONS AND AWARDS 27

EXHIBITS

Exhibit 1 Form of Proposal

Exhibit 2 Certification Regarding Conflict of Interest

Exhibit 3 Certificate Regarding Ineligible Contractors

Exhibit 4 [Reserved]

Exhibit 5 Certification Regarding Lobbying

Exhibit 6 Non-Collusion Affidavit

Exhibit 7 Commitment to Assign Identified Resources to Project

Exhibit 8 Key Personnel Information

Exhibit 9 Acknowledgment of Receipt of Addenda and Responses to Offeror’s Clarification
Requests

Honolulu Rail Transit Project

- Exhibit 10 Certification of Compliance for Final Payment
Exhibit 11 Price Proposal Form

ATTACHMENTS

Sample Draft Agreement

 Sample Agreement

 Sample Special Provisions

 Exhibit 1 – Scope of Work

 Exhibit 2 – Federally Required Clauses

 Exhibit 3 – General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000)

Honolulu Rail Transit Project

INSTRUCTIONS TO OFFERORS

1.0 NOTICE TO OFFERORS

The Honolulu Authority for Rapid Transportation (the “Authority” or “HART”) is a semi-autonomous agency of the City and County of Honolulu (“City”), created pursuant to an amendment to the Revised Charter of the City and County of Honolulu 1973 (“RCH”), which was approved by the voters in November 2010. The Authority was created to develop, operate, maintain and expand a fixed guideway transit system for the City and County of Honolulu. As required by RCH Section 17-111, HART shall have its financial statements audited annually.

The Authority is issuing this Request for Proposals (“RFP”) to seek proposals from Offerors that are interested in providing independent auditing services for HART to comply with the requirements of the RCH. HART’s financial transactions are reflected in the Transit Fund of the City. A preliminary job description for independent financial audit services is attached in the Sample Draft Agreement’s Exhibit 1.

The Authority invites proposals from qualified and experienced Offerors interested in entering into a Contract to provide independent financial auditing services for HART, as further described herein.

2.0 ABBREVIATIONS

BAFO	Best and Final Offer
BFS	Department of Budget and Fiscal Services, City and County of Honolulu
CFR	Code of Federal Regulations
CPO	Chief Procurement Officer
DB	Design-Build
DBE	Disadvantaged Business Enterprise
FTA	Federal Transit Administration
HAR	Hawai‘i Administrative Rules
HART	Honolulu Authority for Rapid Transportation
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
HRTTP	Honolulu Rail Transit Project
JV	Joint Venture
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LPA	Locally Preferred Alternative
NTP	Notice to Proceed

Honolulu Rail Transit Project

PLO	Priority-Listed Offeror
RFP	Request for Proposals

3.0 DEFINITIONS

The following terms have the same meaning throughout this instrument as stated below, unless specifically stated otherwise or clearly inappropriate in the context. Other terms that are defined in the Hawai'i Administrative Rules ("HAR") have the same meaning throughout this instrument as stated in the Hawai'i Public Procurement Code (HRS Chapter 103D) and HAR, unless specifically stated otherwise or clearly inappropriate in the context.

"Addendum" means a written document issued by the HART Procurement and Contracts Office during the Solicitation, involving changes to the RFP, which will be considered and made a part of the RFP and the Contract.

"Affiliate" means any Person that:

Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:

- A) The Contractor; or
- B) Any Principal Participant.

Holds 10% or more of the equity interest, directly or indirectly, beneficially or of record, of or by the following:

- C) The Contractor;
- D) Any Principal Participant; or
- E) Any Affiliate of the Contractor under part (A) of this definition.

For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

"Agreement" means Contract.

"Amendment" means a change in the RFP by written addendum, or a written Contract modification.

"Award" means the written notification of the HART's acceptance of a Proposal, or the presentation of a Contract to the selected Offeror.

"Best Value" means the most advantageous Proposal determined by evaluating and comparing all relevant criteria in addition to price so that the Proposal meeting the overall combination that best serves HART is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of vendor, quality of goods, services, or construction, delivery, and proposed technical performance.

"BFS" means the Department of Budget and Fiscal Services, City and County of Honolulu.

"BFS Director" means the Director of BFS.

"Chief Procurement Officer" means the HART Executive Director or designee.

Honolulu Rail Transit Project

“**City**” means the City and County of Honolulu, State of Hawai‘i.

“**Code of Federal Regulations**” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

“**Contract**” means all documents covering the services in connection therewith for which Award is made to the Contractor, including the furnishing of labor, materials, and equipment in connection therewith. It includes the Agreement, Special Provisions, the General Terms and Conditions and any documents or publications, addenda, amendments and change orders, whether attached to or incorporated by reference.

“**Contract Administrator**” means the HART Executive Director or designee who is the person designated to manage the various facets of the Contract to ensure the Contractor’s total performance is in accordance with the contractual commitments and that obligations to HART are fulfilled.

“**Contractor**” means the qualified individual and/or firm that is awarded the Contract.

“**Days**” means consecutive calendar days unless otherwise specified. [HAR § 3-120-2].

“**Disadvantaged Business Enterprise**” or “**DBE**” means a for-profit, small business concern which meets the definition set forth in 49 CFR Part 26.

“**Discussion**” means an exchange of information or other meeting between the Offeror and HART held to: (1) promote understanding of HART’s requirements and the Offeror’s Proposal; and (2) facilitate arriving at a contract that will provide the best value to HART, taking into consideration the evaluation factors set forth in the RFP.

“**General Terms and Conditions**” means the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000). The acronym “HART” shall be substituted for the “City and County of Honolulu”, “CITY”, “Rapid Transit Division”, and “RTD” wherever those terms appear in the General Terms and Conditions, unless the context clearly indicates otherwise.

“**HART**” means the Honolulu Authority for Rapid Transportation.

“**Instructions to Offerors**” means the information or the terms and conditions pertaining to the specific solicitation in which they are contained.

“**Notice(s) to Proceed**” or “**NTP**” means the document(s) issued to the Contractor designating the official commencement date(s) of the performance under the Contract.

“**Offer**” means Proposal.

“**Offeror**” means any Person submitting, directly or through a duly authorized representative or agent, a Proposal in response to this solicitation.

“**Officer-in-Charge**” means the HART Executive Director or designee.

“**Opening**” means the date set for receipt of Proposals in a competitive sealed Proposals Solicitation.

“**Person**” means any individual, firm, corporation, company, limited liability company, limited liability partnership, trust, or public or private organization, other legal entity, or combination thereof.

“**Principal Participant**” means any of the following entities:

- A) The Offeror;
- B) An individual firm, all general partners, or joint venture members of the

Honolulu Rail Transit Project

Offeror; and/or

- C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Offeror.

“Priority List” means the list of those Offerors who have submitted a Proposal in response to the RFP that HART determined to be acceptable or potentially acceptable. If more than four (4) acceptable or potentially acceptable Proposals have been submitted, the list will be limited through evaluation and ranking to no more than four (4) responsible Offerors who submitted the highest-ranked Proposals.

“Project” means the Work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the Work contemplated under the Contract.

“Proposal” means the executed document submitted by an Offeror in response to a RFP.

“Proposal due date” means the time and date announced for receipt of Proposals or BAFOs by the Priority-Listed Offerors.

“Request for Proposals” or “RFP” means all documents, whether attached or incorporated by reference, utilized for soliciting Proposals under the competitive sealed Proposals source of selection method.

“Responsible Offeror” means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.

“Responsive Offeror” means a person who has submitted an offer which conforms in all material respects to the RFP.

“Solicitation” means a RFP issued for the purpose of soliciting Proposals to perform a HART Contract.

“State” means the State of Hawai‘i.

“Subcontractor” means any Person who enters into an agreement with a Contractor at any tier to perform a portion of the Work for a Contractor.

“Technical and Price Proposal” means the information prepared and submitted by an Offeror in response to the RFP.

“Work” means the furnishing of all labor, material, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract.

“Working Day” means any day on the calendar, exclusive of State holidays, Saturdays and Sundays. Unless another meaning is intended, “working days” means consecutive working days. *See* HRS § 8-1 for a listing of State holidays.

Honolulu Rail Transit Project

4.0 INTRODUCTION

4.1 HONOLULU RAIL TRANSIT PROJECT (HRTP)

The HRTP is approximately 20-miles of elevated guideway with the exception of 3,700 linear feet (0.7 miles) that is at-grade at the Leeward Community College Station. There will be twenty one (21) stations, one Maintenance and Storage Facility (MSF), three (3) park-and-ride lots and one (1) park-and-ride structure. The HRTP is broken into four (4) sections.

The first section of the HRTP, the West O'ahu/Farrington Highway (WOFH Section), extends from East Kapolei to Pearl Highlands. The alignment begins at North-South Road; proceeding to Farrington Highway and just south of H-1 Freeway, the alignment descends to at-grade at the proposed MSF and from there continues to Leeward Community College. In order to cross the H-1 Freeway the alignment returns to an elevated structure. The DB contract for the WOFH Section guideway was awarded and limited Notices to Proceed for preliminary engineering have been issued. The DB contract for the MSF has also been awarded. The six (6) stations for the WOFH Section are currently being designed.

The second section of the HRTP extends from Pearl Highlands to Aloha Stadium along Kamehameha Highway. The Kamehameha Highway Guideway (KHG) DB contract was awarded. There are two (2) stations and one (1) park-and-ride and one (1) transit center planned in this section.

The third section of the HRTP extends from Aloha Stadium to just east of Middle Street Transit Center Station (Airport Section). Leaving Aloha Stadium, the elevated route reenters the median of Kamehameha Highway continuing to its intersection with Nimitz Highway. The route runs along the Nimitz Highway turning Makai into Aolele Street, then transfers onto Ualena Street west of Lagoon Drive to Waiwai Loop, reconnects to Nimitz Highway near Moanalua Stream and continues to just after the Middle Street Transit Center. There are four (4) stations planned in the Airport Section: Pearl Harbor Naval Base, Airport, Lagoon Drive and Middle Street Transit Center

The final section of the HRTP extends from just east of the Middle Street Transit Center Station to Ala Moana Center (City Center Section). Beginning from east of the Middle Street Transit Center, the elevated route follows Dillingham Boulevard, crosses Kapalama Canal, then leaves Dillingham Boulevard at Ka'a'ahi Street, and crosses Iwilei Road. The alignment follows the Nimitz Highway to Halekauwila Street and continues southeast along Halekauwila Street past Ward Avenue, where it transitions onto Queen Street. At the end of Queen Street, the alignment crosses Waimanu Street and crosses over to Kona Street. The alignment then goes through the City Center Section and ends with a rail track along Kona Street. There are nine (9) stations planned for the City Center Section.

4.2 SCOPE OF WORK

Services to be provided by the selected Contractor are detailed in Exhibit 1 – Scope of Work from the Sample Draft Agreement.

4.3 DOCUMENTS IN RFP

The documents issued as part of this RFP consist of the following:

- A) Instructions to Offerors
- B) Sample Draft Agreement, Sample Agreement
- C) Sample Draft Agreement, Sample Special Provisions

Honolulu Rail Transit Project

- D) Sample Draft Agreement, Exhibit 1 – Scope of Work
- E) Sample Draft Agreement, Exhibit 2 – Federally Required Clauses
- F) Sample Draft Agreement, Exhibit 3 - General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000)

4.4 WEBSITES

The following is a list of websites providing background and reference information.

[NOTE: This list of websites is provided solely for the convenience of Persons interested in submitting Proposals, and HART makes no representations as to the accuracy of the information accessible at these websites, or whether the websites are the only background and reference information relevant to this RFP.]

- A) HRS can be found at: <http://www.capitol.hawaii.gov/hrscurrent/>;
- B) HAR can be found at: <http://hawaii.gov/ltgov/office/adminrules/>;
- C) Information on procurement for the City and County of Honolulu may be found at: www.honolulu.gov/pur;
- D) Information on FTA circulars may be found at: http://www.fta.dot.gov/laws/leg_reg_circulars_guidance.html;
- E) FTA's Third-Party Contracting Checklist may be found in FTA Circular 4220.1F, Appendix C at: http://www.fta.dot.gov/documents/FTA_Circular_4220.1F_-_Finalpub1.pdf;
- F) FTA's Best Practice Procurement Manual may be found at: http://www.fta.dot.gov/grants/12831_6037.html;
- G) Information relevant to the Hawai'i State Department of Transportation DBE Program may be found at: <http://hawaii.gov/dot/administration/ocr/dbe/dbe>;
- H) Information relevant to debarment may be found at: <http://www.epls.gov/>;
- I) Information about HART and the H RTP in general as well as the Final Environmental Impact Statement may be found at www.honolulutransit.org;
- J) Information relevant to Assistance to Displaced Persons, HAR, Title 17, Chapter 2017, may be found at <http://hawaii.gov/dbedt/hhfdc/about/17-2017.pdf>; and
- K) Information on the Transit Fund may be found at: <http://www1.honolulu.gov/budget/cafr.htm>.

Honolulu Rail Transit Project

4.5 PROCUREMENT TIMETABLE

The following estimated timetable has been established for the Project:

ACTIVITY	MONTH	DAY	YEAR
Issue RFP	November	18	2011
Deadline for Receipt of Clarification Requests	November	30	2011
Issue Final Addendum	December	7	2011
Proposal Due Date	December	19	2011
Reserved			
Award of Contract (Tentative)	January	6	2012
Execution of Contract (Tentative)	January	12	2012
Notice to Proceed (Tentative)	January	13	2012
Completion of the Contract	December	31	2015

5.0 REQUEST FOR PROPOSALS (RFP)

The procurement of the Contract will be in accordance with laws and rules of the State of Hawai‘i, using “Best Value” as the basis of selection in accordance with the evaluation criteria as set forth in this Solicitation.

5.1 CLARIFICATIONS AND INQUIRIES

Offerors shall carefully review this Solicitation for defects and questionable matter. Comments concerning defects and questionable matter must be made in writing to the Chief Procurement Officer (CPO) not later than the date listed in Section 4.5 as the Deadline for Receipt of Clarification Requests. Inquiries received later than the Deadline for Receipt of Clarification Requests will not be responded to unless the CPO determines that it is in the best interest of HART to respond to any inquiry submitted after the deadline.

Inquiries must be in writing and transmitted via one of the following:

- A) To the following address:

Procurement and Contracts Officer
Honolulu Authority for Rapid Transportation
1099 Alakea Street, Suite 1700

Independent Financial Auditor Professional Services Contract RFP

Honolulu Rail Transit Project

Honolulu, Hawai'i 96813

- B) Sent by fax to: Facsimile No. (808) 587-6080 (Identify RFP-HRT-446502)
- C) Emailed to: transitmailbox@honolulu.gov.
- D) Any correspondence related to this solicitation should refer to the appropriate RFP number, page number, and paragraph number; however, do not place the RFP number on the outside of an envelope containing questions; such an envelope may be identified as a sealed proposal and may not be opened until after the Proposal Due Date. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment from HART will be binding.
- E) Non-Contact of Employees. Other than the submission of written inquiries to the Procurement and Contracts Officer as described above, Offerors may not contact the employees of the issuing agency concerning this RFP while the proposal evaluation process is in progress. Where required, all contact, for discussion or clarification will be initiated by HART.

5.2 AMENDMENT TO RFP

Prior to the submission of proposals the CPO may make amendments to the RFP by addenda and shall reference the portions of the RFP it amends and detail the amendments. Addenda shall be sent only to prospective Offerors known to have received an RFP from the CPO. After submission of proposals, addenda will be issued only to Priority-Listed Offerors. All addenda will be in writing from HART.

5.3 OFFER ACCEPTANCE PERIOD

In order to allow for adequate evaluation, HART requires that the Offeror's Price Proposal be valid and irrevocable for one hundred eighty (180) calendar days subject to adjustments if provided herein. The CPO may request Offerors to extend the time during which HART may accept their offers. The reasons for requesting such extension shall be documented.

5.4 CANCELLATION OF SOLICITATIONS AND REJECTION OF PROPOSALS

Solicitations or proposals may be canceled or rejected in whole or in part, if the CPO finds there is a cogent and compelling reason to do so. Reasons for rejecting proposals include, but are not limited to, the following:

The Offeror that submitted the proposal is deemed not responsible;

- A) If the Proposal is submitted in a format other than that furnished or specified under this RFP; if it is not properly signed; if Exhibit 1 is altered except as contemplated herein; or if any part thereof is deleted from the Proposal;
- B) If the Proposal is illegible or contains any omissions, erasures, alternations or items not called for in the RFP or contains unauthorized additions, conditional Proposals or other unacceptable irregularities;
- C) If the Offeror adds any provisions reserving the right to accept or reject an Award or to enter into a Contract following Award; or
- D) for any other reason HART determines the Proposal to be non-responsive.

5.5 APPLICABLE TAXES

Proposals shall include any and all applicable taxes. A prospective Offeror may call the Department of Taxation of the State of Hawai'i at (800) 222-3229 for assistance as to whether the State of Hawai'i general excise tax four percent (4%), the county surcharge of one-half percent (1/2%) and the applicable use tax of one-half percent (1/2%) will apply to the Offeror.

6.0 PREPARATION OF PROPOSALS

6.1 GENERAL

All responses are to be submitted following the format outlined below.

- A) The Offeror shall provide a letter of no more than two (2) pages indicating its desire to be considered for the Contract and stating the official names and roles of all Principal Participants. The Offeror shall identify a single point of contact for the Offeror and the address, telephone and fax numbers, and email address to which communication from HART shall be directed. In addition the Offeror shall provide the following which shall be excluded from the fifty (50) page limit:
 - 1) Notarized Power(s) of Attorney for the Offeror and for each Principal Participant indicating the authority of the Principal Participant's representative to sign on behalf of that Principal Participant;
 - 2) Notarized Power(s) of Attorney for each Principal Participant indicating the authority of the Offeror's designated point of contact to sign documents for and on behalf of the Offeror's organization; and
 - 3) In lieu of the Powers of Attorney required, the Offeror may submit original corporate resolutions from each Principal Participant and the Offeror (as appropriate) indicating the authority of the Principal Participant's and/or Offeror's designated point of contact to sign documents for and on behalf of the Principal Participant and/or Offeror's organization. Such resolutions must be signed by the Secretary of the corporation and contain a corporate seal or notarization.
- B) The proposals must address all of the requirements of this RFP and provide a complete and concise description of how the Offeror will perform the required work. Proposals shall demonstrate a thorough understanding of the assignment requirements, with emphasis on completeness and clarity of content. Proposals should concisely describe the approach the Offeror would use to perform the services described in Section 4.2 (Scope of Services) above.
- C) The response shall be typed, double-spaced, on eight and one-half inches by eleven inches (8-1/2" x 11") sheets of paper and may not exceed fifty (50) pages except when indicated otherwise.
- D) One (1) Original and eight (8) copies of Offeror's proposal (consisting of loose leaf papers separately bound unless otherwise indicated) three ring binders must be submitted with the proposals as follows:
 - 1) Executive Summary – Section I
 - 2) Offeror's Qualifications – Section II

- 3) Offeror's Proposals - Section III
- 4) Price – Section IV
- E) The Price Proposal shall be submitted in a separate sealed envelope clearly marked “Price Proposal.”
- F) The Proposal shall not require additional explanation, clarification, or interpretation. Submittals that fail to be precise, factual and complete will be rejected. Proposals shall be signed in ink by a person authorized to act for the person or business submitting the Proposal (Offeror). Errors may be crossed out and corrected, and initialed in ink by the person authorized to sign the Proposal. Erasures should also be initialed in ink by the person authorized to sign the Proposal. Evidence of the signer authority to act on behalf of the Offeror sufficient to satisfy the CPO, shall be submitted with the Proposal.

6.2 REQUIRED EXHIBITS & DOCUMENTS

- A) Exhibit 1, Form of Proposal, which shall constitute a firm offer to HART valid for **one hundred eighty (180) calendar days** after the Proposal Due Date. Exhibit 1 shall be executed by the Offeror or by its legally authorized representative.
- B) Notarized Power(s) of Attorney
Provide appropriate evidence that Exhibit 1 has been properly executed or that the representative has bound the Offeror, so that there is a valid Proposal that HART can accept and constitute a binding Contract.
- C) If the Offeror is a joint venture or partnership, submit:
 - 1) A notarized power of attorney executed by each joint venture or partnership member appointing and designating one or more individuals of the joint venture or partnership to execute the Proposal on behalf of the Offeror, and to act for and bind the Offeror in all matters relating to the Proposal; and
 - 2) Evidence that each member of the joint venture or partnership shall be jointly and severally liable for any and all of the duties and obligations of the Offeror assumed under the Proposal and under any Contract arising therefrom, should its Proposal be accepted by HART.
- D) Exhibit 2, Certification Regarding Conflict of Interest.
- E) Exhibit 3, Certificate Regarding Ineligible Contractors
- F) Exhibit 5, Certification Regarding Lobbying, for the Offeror and all Principal Participants.
- G) Exhibit 6, Non-Collusion Affidavit, certifying that the Proposal is not the result of, and has not been influenced by collusion.
- H) Submit organizational documents in the form of copies of articles of incorporation and bylaws, joint venture agreement, partnership agreement, limited liability company operating agreement or equivalent organizational documents for the Priority-Listed Offeror and each Principal Participant, which documents shall be consistent with the responsibilities to be undertaken by the Offeror and Principal Participants under the Contract.

- I) Licensing information. Provide evidence of licensing or certification information, including license or certificate number and state of such licensing or certification of principal participants.
- J) Exhibit 7, Commitment to Assign Identified Resources to Project, providing a written commitment, signed by the designated Project Principal or Project Manager, that the resources shown or indicated in the Proposal, including Key Personnel and other staff identified by name, equipment, material, supplies and facilities, will be available and assigned to the Project if the Offeror is Awarded the Contract, to the extent such assignment remains within the control of the Offeror.
- K) Exhibit 8, Key Personnel Information, with information regarding proposed key personnel.
- L) Exhibit 9, Acknowledgment of Receipt of Addenda and Responses to Offeror's Clarifications Requests, acknowledging receipt of addenda to this RFP.

6.3 EXECUTIVE SUMMARY (SECTION I)

The Executive Summary shall summarize the information contained in the Offeror's Qualifications and Proposals. The Executive Summary is to be limited to three (3) pages or less, including all tables and graphics excluding any Appendices. Offerors may prepare the Executive Summary in the format of their choice.

The Executive Summary shall not contain any confidential price, cost, or economic data. HART assumes no liability for disclosure or use of confidential data presented in the Executive Summary. The Offeror may attach as an Appendix to the Executive Summary the Offeror's brochures and other descriptive information which shall not count in the overall fifty (50) page limit.

6.4 OFFEROR'S QUALIFICATIONS (SECTION II)

A number of informative and qualifying items must be addressed in the Offeror's Qualifications in order for a submittal to be found acceptable or potentially acceptable. Informative items are intended to provide general information only. Failure to address these items may be cause for determining the Offeror to be non-acceptable. All items must be addressed in sufficient detail to be considered acceptable or potentially acceptable. Submittals that fail to be precise, factual and complete may be rejected.

Items shall be addressed in the order listed to permit a methodical evaluation. Submittals not following this order may be found deficient and may be rejected. Additional data presented in a brief and concise manner shall include:

- A) Organizational Data
 - 1) Offeror's Name
 - 2) Offeror's Address
 - 3) Offeror's Telephone, Facsimile Numbers and e-mail address
 - 4) Offeror's Representative
 - 5) Organization Type (corporation, joint venture, etc.)
 - 6) Organization's Members (if applicable)

Honolulu Rail Transit Project

- 7) Date Organization was Established
 - 8) Average Number of Professional Staff for each of the Past Five (5) Years
 - 9) Average Number of CPAs for each of the Past Five (5) Years
- B) Experience Data. The Offeror shall list and describe:
- 1) The Offeror shall provide a listing of previously completed assignments similar in requirements to this RFP that shall include the name of the agency, location of the project, and a contact person. Where an Offeror is not an individual or an individual corporation but a business entity such as a joint venture, partnership, licensee/licensor venture, etc., organized to respond to this RFP, responses to all items shall fully address the qualifications, contributions and level of participation of each member of such Offeror (hereafter "member") to demonstrate that the collective experiences enable the Offeror to qualify for participation in the project. The responses shall clearly delineate which member has which experience, qualification, etc. so that HART can thoroughly evaluate the responses.

List up to ten (10) related similar assignments (e.g. government audits) the Offeror has been or is presently involved in and the nature of this involvement. Do not list projects completed prior to 2006.

The similar assignments should include the following information:
 - a) Information/brief narrative regarding the project
 - b) Location of the project
 - c) Contract Amount
 - d) Reference contact information
 - 2) Any contract which the Offeror failed to complete in the past ten (10) years and the when, where, how, and why of such failure;
 - 3) Any officer or partner who in the past five (5) years failed to complete a contract handled in his own name or that of the organization and the reason therefore;
 - 4) Any lawsuits in which the Offeror was or is involved within the past five (5) years and the nature of such involvement;
 - 5) Any contract involving the Offeror providing services that has been terminated over the past five (5) years and the reasons for such termination; and
 - 6) A discussion of any policies of the organization that could prevent or inhibit the Offeror in any way from entering into the Contract for the services required in this RFP.
- C) Financial Data. The Offeror shall discuss its capability to meet the requirements of the contract specifically with respect to cash and working capital. A copy of the Offeror's most current balance sheet certified by the Offeror to be a "Certified True Copy" shall be enclosed in Section II. The balance sheet will not count against the fifty (50) page limit. If the Offeror wishes for such data to remain confidential, such as pages containing the financial data shall be clearly marked "CONFIDENTIAL" on every page that contains

confidential data.

- D) Qualifying Items (Required if Applicable). List any items which the Offeror believes it cannot provide to the extent required in this RFP.
- E) Organization and Key Personnel. The minimum requirement to satisfy this item is that:
 - 1) The Offeror has demonstrated experience in the successful completion of a financial audit similar to that being proposed for HART and that the key personnel committed to the Project have had prior experience with such a program;
 - 2) The Offeror shall submit resume(s) with at least 2 minimum references for each of the Offeror's Key Personnel;
 - 3) The Offeror shall submit an organizational chart describing the organizational structure to coordinate the activities required; and
 - 4) The Offeror shall submit Exhibit 8, Key Personnel Information.

6.5 OFFEROR'S PROPOSALS (SECTION III)

- A) Work Plan for Completing Scope of Work

In order to be found acceptable or potentially acceptable, the Offeror's proposal must provide a preliminary work plan addressing the Offeror's proposed approach to complete each of the items of the Scope of Work, Exhibit 1 of the Sample Draft Agreement, in a timely manner.

6.6 PRICE (SECTION IV)

Provide a Price Proposal using the instructions listed herein. Failure to provide the requested information on the Exhibits and in the format specified may result in HART declaring the Price Proposal non-responsive. Submit all information as specified herein, using the Exhibits and formats specified. Alterations to the Exhibits will only be permitted where specifically allowed.

The Price Proposal of the selected Offeror will be incorporated into the Contract.

- A) The Price Proposal is to be included in a separate sealed enveloped clearly marked "Price Proposal" and Proposal Due Date, to the addressee and address specified in Section 7.0.
- B) The Offeror shall submit Exhibit 11, Price Proposal Form. The Offeror is to provide their price for each respective year listed and the total price of the Contract. The total price of the Proposal will be considered the cost factor for evaluation purposes. Estimated direct reimbursables for each year is required but will not be part of the price evaluation
- C) The Price Proposal submitted must be valid and irrevocable for one hundred eighty (180) calendar days from the Proposal Due Date. By submitting a Technical and Price Proposal, the Offeror will submit a certification to HART that the price submitted in response to the RFP was independently arrived at and therefore represents non-collusion certification to HART (Exhibit 6).
- D) Price Proposals will become the property of HART. Copies of each Price Proposal will be retained after the Price Proposal evaluation process for the Contract file.
- E) Proposals shall include any and all applicable taxes. A prospective Offeror may call the

Department of Taxation of the State of Hawai‘i at (800) 222-3229 for assistance as to whether the State of Hawai‘i general excise tax, county surcharge and use tax will apply to the Offeror or Contractor.

6.7 NON DISCLOSURE OF PROPRIETARY INFORMATION

It is recognized that Proposals submitted in response to this RFP may contain technical, financial, or other data whose public disclosure would cause substantial injury to an Offeror's competitive position. Offerors therefore, should specifically identify those pages of the Proposal that contain such information by properly marking the applicable pages "CONFIDENTIAL." HART assumes no liability for disclosure or use of unmarked data for any purpose. An Offeror responding to this RFP shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the Proposal and shall be readily separable from the Proposal and labeled CONFIDENTIAL in order to facilitate eventual public inspection of the non-confidential portion of the Proposal. Marking the entire proposal as confidential is unacceptable.

6.8 NO REIMBURSEMENT

HART will not provide any reimbursement for the cost of developing or presenting Proposals in response to the RFP.

6.9 JOINT VENTURES

Cooperative efforts involving more than one person with different areas of expertise may be considered by HART as long as there is only one responsible party. Offerors considering submitting a Proposal or qualifications as a joint venture shall clearly indicate in their qualifications, the intent to form such a joint venture. The Proposal shall be signed by all parties in the joint venture or be accompanied by a power of attorney authorizing the person signing to sign on behalf of all parties to the joint venture. Persons intending to submit a Proposal as a joint venture or partnership who are not licensed as a joint venture or partnership must be in compliance with HAR § 16-77-13.

7.0 PROPOSAL SUBMITTAL

Proposals are to be submitted to:

Procurement and Contracts Officer
Honolulu Authority for Rapid Transportation
1099 Alakea Street, Suite 1700
Honolulu, Hawai‘i 96813

Proposals must be time-stamped up to 2:00 p.m. HST on December 19, 2011, in the office of the Honolulu Authority for Rapid Transportation (HART), Ali‘i Place, 1099 Alakea Street, Suite 1700, Honolulu, Hawai‘i, 96813.

It is the responsibility of the Offeror to ensure that its Proposal is received in the HART office on or before the Proposal Due Date. Unless otherwise specified, one (1) original and eight (8) copies of the proposal should be submitted in a sealed envelope with the RFP number, the proposal description, the time and date due, and the Offeror's name and address clearly indicated on the envelope. HART officials shall not be responsible for any proposal not submitted in a sealed envelope or container.

7.1 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Offerors may modify or withdraw their proposals prior to the Proposal Due Date as follows:

- A) Modification
 - 1) A written notice accompanying the actual modification received by the CPO, stating that a modification to the offer is submitted; or
 - 2) A written notice accompanying the actual modification by facsimile machine to the CPO; provided that the facsimile transmission is followed by receipt by the CPO of the actual written notice and modification within two (2) working days of receipt of the facsimile transmission.
- B) Withdrawal
 - 1) A written notice to withdraw the Proposal received by the CPO; or
 - 2) A notice by facsimile machine to withdraw the Proposal to the CPO.

7.2 ACCEPTANCE OF PROPOSALS

- A) Agreement to Terms and Conditions.
 - 1) Any Offeror submitting a Proposal automatically agrees to each and all of the terms, conditions, provisions, and requirements set forth and contemplated in this RFP.
- B) Use and Possession of Proposal.
 - 1) HART reserves the right to use any or all ideas presented in the Proposal. Selection or rejection of the Proposal does not affect this right. All materials submitted which have not been clearly designated as proprietary, become the property of HART and may be returned only at HART's discretion. Proposals and qualifications shall become the property of HART and may be reviewed and consulted by any persons deemed appropriate by the HART.

7.3 OPENING OF PROPOSALS

In accordance with HAR § 3-122-51, Proposals and modifications will be time-stamped upon receipt and held in a secure place by the Procurement and Contracts Officer until the Proposal Due Date.

Proposals and modifications will not be opened publicly, but will be opened in the presence of two (2) or more HART officials. Proposals and modifications will be shown only to members of the evaluation committee and HART or City personnel or their designees having legitimate interest in them.

Price Proposals will be opened after the technical aspects have been evaluated and scored.

Pursuant to HAR § 3-122-9.01 information regarding the solicitation will not be disclosed until after the Contract is awarded.

8.0 EVALUATION CRITERIA

HART has identified the following Evaluation Criteria. All Evaluation Criteria must be addressed in the Offeror's Proposal in order for HART to deem the Proposal to be acceptable or potentially acceptable.

Any Proposal that does not include complete responses to all of the Evaluation Criteria will result in the Proposal being scored down or the Proposal may be deemed to be unacceptable, at the sole discretion of HART. Offerors who submit acceptable or potentially acceptable Proposals are eligible for inclusion on the Priority List. Proposals that are deemed to be non-responsive may not be considered for the Priority List and may not be further evaluated.

- A) **Proposal Responsiveness (Responsive or Non-Responsive).** The Offeror submits all information requested in the RFP substantially in the specified format.
- B) **Organizational Eligibility (Responsive or Non-Responsive).** The Offeror has clearly identified all Principal Participants. Offeror shall certify that neither it nor any of its Subcontractors or vendors is listed in the "Lists of Parties Excluded from Federal Procurement or Non-Procurement Program."

8.1 EVALUATION CRITERIA (A-D) (100 TOTAL AVAILABLE POINTS)

Evaluation of Proposals will be scored based on a total of 100 available points as follows:

- A) Experience in performing similar financial audits of government units (30 points).

Experience information provided in Section 6.4.

- B) Adequate qualified staffing (25 points).

Adequate qualified staffing information provided in Section 6.4.

- C) Ability to complete the work in a timely manner (25 points).

Work Plan for Completing Scope of Work information provided in Section 6.5.

- D) Proposed price to complete the work (20 points).

Information regarding price provided in Section 6.6. The total price of the Proposal shall be considered the cost factor for evaluation purposes under HAR § 3-122-52(d).

8.2 DISCUSSION WITH OFFERORS

- A) A "priority list" shall be generated by the Evaluation Committee. Discussions will be limited to only Priority Listed Offerors (PLOs). PLOs shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals; however, Proposals may be selected without such discussion. HART, at its option, may also request Best and Final Offers ("BAFO") from a selected Offeror or Offerors.

- 1) Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

- 2) All responsible Offerors who submit acceptable or potentially acceptable Proposals are eligible for the priority list.

- 3) If numerous acceptable and potentially acceptable Proposals have been submitted, the evaluation committee may rank the Proposals and limit the priority list to at least four (4) responsible Offerors who submitted the highest-ranked Proposals.

- 4) Those responsible Offerors who are selected for the priority list are referred to as the "Priority-Listed Offerors."

- B) Addenda to this RFP after establishment of a priority-list shall be distributed only to PLOs.
- C) New proposals or amendments to the existing proposal that, in HART's sole judgment, significantly change the nature of the procurement will not be permitted. Should HART believe it is in its best interest to go forward with a significant change, then the RFP may be cancelled and a new RFP issued.
- D) Non-Disclosure of Proposal Contents. The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the discussion and negotiation process.

8.3 BEST AND FINAL OFFERS

If deemed in the best interest of HART a call for Best and Final Offers ("BAFOs") may be issued.

- A) BAFOs shall be submitted only once unless the CPO determines in writing that it is in HART's best interest to conduct additional discussions or change HART's requirements and require another submission of BAFOs; otherwise, no discussion of or changes in the BAFOs shall be allowed prior to award.
- B) PLOs shall also be informed that if they do not submit a notice of withdrawal or another BAFO, their immediate previous offer will be construed as their BAFO.
- C) After BAFOs are received, final evaluations will be conducted for an award pursuant to Section 9.0, Award of Contract.

8.4 MISTAKES IN PROPOSALS

Proposals may be modified or withdrawn as provided in Section 7.1. Mistakes shall not be corrected after award of the Contract. Mistakes discovered before award of the Contract may be corrected or withdrawn as follows.

- A) Once discussions have commenced or after BAFOs are requested, any Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of BAFOs.
- B) If discussions are not held, or if the BAFO upon which award will be made has been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- C) If discussions are not held, or if the BAFO upon which award will be made has been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if:
 - 1) The mistake is clearly evident on the face of the proposal but the intended correct offer is not; or
 - 2) The Offeror submits evidence that clearly and convincingly demonstrates that a mistake was made.

8.5 TECHNICAL IRREGULARITIES

These are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if BAFOs upon which award will be made have been received, the CPO may waive such irregularities or allow an Offeror to correct them if either is in the best interest of HART.

8.6 AUTHORITY TO DEBAR OR SUSPEND

This Contract is a covered transaction for purposes of 2 CFR 180.220(b) and 2 CFR 1200.220. As such, the Offeror is required to verify that none of the Offeror, its principals, as defined in 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935. The Offeror is required to comply with 2 CFR 180, Subpart C, as supplemented by 2 CFR 1200, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C, as supplemented by 2 CFR 1200, Subpart C, in any lower tier covered transaction it enters into equal to or exceeding \$25,000. By signing and submitting its Proposal, the Offeror certifies to these requirements.

The CPO, in accordance with the provisions of HRS § 103D-702 and HAR Title 3, Subtitle 11, Chapter 126, Subchapter 2, may debar or suspend a Person for cause from consideration for award of contracts.

9.0 AWARD OF CONTRACT

Award shall be made to the responsible and responsive Offeror whose Proposal is determined in writing to provide the best value to HART taking into consideration price and the evaluation criteria set out in Section 8 of this RFP. Other factors and criteria shall not be used in the determination.

Work will not commence until a Contract has been executed, availability of funds has been certified by the CPO and written Notice(s) to Proceed (NTPs) are issued. Notice of award shall not be construed to be authorization to proceed with the performance of services. Any services performed by the Contractor prior to the date indicated in the Notice to Proceed from the CPO shall be at the Contractor's own risk.

9.1 RESPONSIBILITY OF OFFERORS

The Offeror is advised that if awarded a Contract under this solicitation, the Offeror shall, upon award of the Contract, furnish proof of compliance with the requirements of HRS § 103D-310(c):

- A) HRS Chapter 237, tax clearance;
- B) HRS Chapter 383, unemployment insurance;
- C) HRS Chapter 386, workers' compensation;
- D) HRS Chapter 392, temporary disability insurance;
- E) HRS Chapter 393, prepaid health care; and
- F) One of the following:
 - 1) Be registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawai'i business"; or
 - 2) Be registered to do business in the State, hereinafter referred to as a "compliant non-Hawai'i business."

All persons providing services under the resulting Contract must obtain all required licenses and permits to conduct business in the State and perform the Work required under the Contract.

9.2 TAX CLEARANCE

HRS Chapter 237 tax clearance requirement for Award and final payment. Instructions are as follows:

- A) Pursuant to HRS § 103D-328, the selected Offeror shall be required to submit a tax clearance certificate issued by the State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by HART.

- B) The tax clearance certificate shall be obtained on the State DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State or the DOTAX website, and by mail or fax:
 - DOTAX Website (Forms & Information):
http://www6.hawaii.gov/tax/a1_1alphalist.htm
 - DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

- C) Mail, fax, or submit in person, the completed tax clearance application to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:
 - DOTAX: (808) 587-1488
 - IRS: (808) 539-1573

- D) The application for the tax clearance is the responsibility of the selected Offeror, and must be submitted directly to the DOTAX or IRS and not to HART.

- E) The selected Offeror must obtain and provide the tax clearance within twenty-one (21) calendar days of HART's request, unless otherwise specified in the Special Provisions, or otherwise authorized by HART. Failure to obtain the tax clearance within the specified time shall result in rejection of the bid and HART may award the Contract to another Offeror.

- F) DOTAX and the IRS will provide extra certified copies of the clearances upon your request. Hence, you may want to request extra certified copies if you anticipate entering into several other potential contracts.

- G) The Contractor is also required to submit a tax clearance certificate for final payment on any Contract over \$25,000. The tax clearance certificate, not over two (2) months old, with an original green certified copy stamp, must accompany the invoice for final payment on the Contract.

9.3 CERTIFICATE OF COMPLIANCE

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. Instructions are as follows:

- A) Pursuant to HRS § 103D-310(c), the selected Offeror shall be required to submit an approved certificate of compliance issued by the State Department of Labor and Industrial Relations (DLIR). The Certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by HART. A photocopy of the certificate is acceptable.
- B) The certificate of compliance shall be obtained on the State DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27 which is available at <http://hawaii.gov/labor/forms> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to HART.
- C) The application for the certificate is the responsibility of the selected Offeror, and must be submitted directly to the DLIR and not to HART.

9.4 CERTIFICATE OF GOOD STANDING

Upon Award, the selected Offeror must comply as follows:

- A) **Hawai'i Business.** A business entity referred to as a "Hawai'i business", is registered and incorporated or organized under the laws of the State. As evidence of compliance, the selected Offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the State Department of Commerce and Consumer Affairs (DCCA) Business Registration Division (BREG). A Hawai'i business that is a sole proprietorship, however, is not required to register with the BREG, and therefore is not required to submit the certificate. An Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the selected Offeror is a bonafide Hawai'i business.
- B) **Compliant non-Hawai'i business.** A business entity referred to as a "compliant non-Hawai'i business," is not incorporated or organized under the laws of the State but is registered to do business in the State. As evidence of compliance, the selected Offeror shall submit a CERTIFICATE OF GOOD STANDING.
- C) To obtain a CERTIFICATE OF GOOD STANDING, go online to www.BusinessRegistrations.com and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six (6) months from date of issue and must be valid on the date it is received by HART. Offerors are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA. A photocopy of the certificate is acceptable.

9.5 HAWAI'I COMPLIANCE EXPRESS

Vendors may choose to use Hawai'i Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a single, printable electronic "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that the vendor's status is compliant with the requirements of HRS § 103D-310(c), shall be accepted for both Contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of twelve

dollars (\$12.00) to the Hawai'i Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as specified in Sections 9.2, 9.3 and 9.4 above.

9.6 TIMELY SUBMISSION OF ALL CERTIFICATES

Potential Offerors are encouraged to apply for the above certificates and submit to HART as soon as possible. If a valid certificate is not submitted on a timely basis for Award of a Contract, a Proposal otherwise acceptable may not receive the Award.

9.7 FINAL PAYMENT REQUIREMENTS

The Contractor is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two (2) months old, with an original green certified copy stamp, must accompany the invoice for final payment on the Contract.

In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment" (SPO Form-22), attached as Exhibit 10, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services and Construction-Chapter 103D, HRS, menu.

9.8 CONTRACT TYPE

The Contract will be a firm fixed-price contract with allowances unless another arrangement is determined to be in the best interest of HART. Allowance will be for direct reimbursable expenses required to perform the work.

The Contract will be a multi-term contract for the years 2012 to 2015. The years 2013 to 2015 are subject to the availability for funds. See Section 9.9 for more detail.

9.9 CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE

In accordance with HAR §§ 3-122-102 and 3-122-149, no contract will be binding or have any force and effect without a certification by the CPO that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract [HAR § 3-122-102].

9.10 FEDERAL FUNDING, INCORPORATION OF FTA TERMS, AND CHANGES TO FEDERAL REQUIREMENTS

The Contract will include, in part, certain Standard Terms and Conditions required by the FTA, expressly set forth in Exhibit 2 – Federally Required Clauses, attached to the Sample Draft Agreement. All contractual provisions required by the FTA, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes), will be incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms and conditions will be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART to be in violation of FTA terms and conditions. This Contract will be subject to any financial assistance agreement between HART and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Contract and will be incorporated by reference as if fully set forth therein.

The Contractor shall at all times comply with all applicable Federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between HART and FTA, as they may be amended or promulgated from time to time during the term of the Contract (collectively, “Federal Requirements”). These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. The Contractor’s failure to comply with the Federal Requirements shall constitute a material breach of the Contract.

The Federal Requirements are contained in the Agreement, attached hereto and incorporated by reference.

9.11 INSURANCE

The Contractor shall provide the insurance policies and coverage which are detailed in the Special Provisions.

9.12 SEXUAL HARASSMENT POLICY

The Contractor must comply with the Revised Ordinances of Honolulu § 1-8, Sexual Harassment Policy, as set forth in the General Terms and Conditions.

10.0 EXECUTION OF CONTRACT

- A) Execution of Contract. If the Contractor is an individual, or partnership, the Contractor shall cause the Contract to be signed before a notary public duly acknowledged. If the Contractor is a corporation, or if the joint venture is made up of two or more corporations, the Contractor shall cause the Contract to be signed and sealed before a notary public who shall acknowledge the person(s) signing, their titles, and shall affix thereto their corporate resolution, or other instrument vesting such officer with authority to sign the Contract on their behalf.
- B) Commencement of Work. As previously stated, Work shall not commence until a Contract has been executed and availability of funds certified by the CPO, and the Officer-in-Charge has issued a written Notice to Proceed, or in the absence of a Notice to Proceed, upon the date specified in the Contract.

10.1 CONTRACT FILE

The Contract file shall include but not be limited to:

- A) The register of proposals prepared;
- B) A listing of all vendors to whom copies of the RFP were distributed;
- C) The name of the successful Offeror and dollar amount of offer;
- D) The basis on which the award was made;
- E) A copy of the RFP;
- F) A copy of the successful Offeror’s proposal;
- G) A copy of the unsuccessful Offerors’ proposal; and
- H) A copy of the executed Contract resulting from the RFP.

10.2 PUBLIC INSPECTION

Public inspection of the Contract file will be in accordance with HAR § 3-122-58.

The existing Contract file, except those portions the Offeror designates in writing as trade secrets or other proprietary data to be confidential, will be available for public inspection upon posting of the Award pursuant to HRS § 103D-701.

If a person requests to inspect the portions of an Offeror's Proposal designated as confidential pursuant to HAR § 3-122-46(9), the inspection will be subject to written determination by the Corporation Counsel for confidentiality in accordance with HRS Chapter 92F.

If the Corporation Counsel determines in writing that the material designated as confidential is subject to disclosure, the material will be open to public inspection unless the Offeror appeals pursuant to HRS § 92F-42(1).

10.3 DEBRIEFING

The purpose of a debriefing is to inform the nonselected offerors of the basis for the source selection decision and Contract award. A written request for a debriefing shall be made within three (3) working days after the posting of the award of the Contract. A debriefing shall be held by the CPO or designee, to the maximum extent practicable, within seven (7) working days; provided the CPO or designee may determine whether or not to conduct individual or combined debriefings.

10.4 PROTESTS OF SOLICITATIONS AND AWARDS

Protests shall be made in accordance with Hawai'i Revised Statutes Chapter 103D and the related Hawai'i Administrative Rules. A protest by the requestor submitted pursuant to HRS § 103D-701 following a debriefing shall be filed within five (5) working days, as specified in HRS § 103D-303(h).

ATTACHMENT B

Honolulu Authority for Rapid Transportation

RESOLUTION NO. 2011-8

RELATING TO A POLICY ON THE SOLICITATION, ACCEPTANCE, RECEIPT AND REPORTING OF GIFTS TO THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

WHEREAS, the Honolulu Authority for Rapid Transportation (HART) has been established pursuant to Article XVII of the Revised Charter of the City & County of Honolulu 1973, as amended (Charter); and

WHEREAS, the Charter empowers the Executive Director/CEO of HART to request, and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities; and

WHEREAS, gifts to HART from individuals or organizations or the public or private sector can be useful supplements to appropriated funds; and

WHEREAS, gifts may be used to carry out activities that further HART's mission, programs, functions or responsibilities, provided that such expenditures are not prohibited by law or regulation applicable to HART; and

WHEREAS, a Gift Policy relating to the solicitation, acceptance, receipt and reporting of gifts is therefore in the best interests of HART; and

WHEREAS, this Gift Policy is not intended to apply to gifts to individuals, i.e., HART officers or employees;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of HART as follows:

1. That the Gift Policy, as set forth in Exhibit A attached hereto and made a part hereof by reference, be and hereby is, adopted as the policy of HART; and
2. That the Executive Director/CEO is authorized to implement the policies described in Exhibit A and to ensure that HART staff and contractors, as appropriate, adhere to these policies; and
3. That this Resolution shall take effect immediately upon its adoption.

ADOPTED by the Board of Directors of the Honolulu Authority for Rapid Transportation on _____.

Exhibit A –Gift Policy of the Honolulu Authority for Rapid Transportation

Board Chair

ATTEST:

Board Administrator

The Honolulu Authority for Rapid Transportation Gift Policy

Policy

Section 17-104(l) of the Revised Charter of the City and County of Honolulu 1973, as amended, empowers the Executive Director/CEO of the Honolulu Authority for Rapid Transportation (HART) to request and accept appropriations from the city, and request and accept grants, loans and gifts from other persons and entities. HART's Financial Policies, as approved on July 1, 2011 and subsequently amended, further state that HART will pursue opportunities with private and public sector interests that will benefit from the implementation of the Honolulu High-Capacity Transit Corridor Project (now known as the Honolulu Rail Transit Project) and HART's capital projects. Therefore, it is in the best interest of HART to have a Gift Policy.

Definition of Gift:

"Gift" is defined as a voluntary contribution to HART for a public purpose, whether for a specific purpose or not, of money, securities, personal property or any interest in real property. More specifically, HART's Financial Policies state that contributions could take the form of direct cash contributions, donation of rights-of-way, structured payments over time or the actual construction of project elements as examples.

Authority to Accept Gifts

The authority to solicit, accept, refuse, return or negotiate the terms for accepting a gift under this Gift Policy ("Policy") resides with the Executive Director/CEO. This authority may be delegated by the Executive Director/CEO to another HART officer or employee in writing and this delegated authority may be limited to accepting specific types of gifts or gifts for a specific purpose or event. Approval of the acceptance of a gift after its receipt may be granted as deemed appropriate by the Executive Director/CEO or his/her designee.

Neither the Executive Director/CEO, nor any HART officer or employee with delegated authority, shall solicit gifts from any person or entity that has a matter currently pending before HART.

Officers and employees of HART, other than the Executive Director/CEO or his/her designee, shall forward all offers of gifts regardless of value to the Executive Director/CEO or his/her designee for consideration and shall provide a description of the gift offered. HART officers and employees shall also inform the Executive Director/CEO or his/her designee of all discussions related to the possibility of a gift. An officer or employee shall not provide a donor with any commitment, privilege, concession or other present or future benefit, other than an appropriate acknowledgment, in return for a gift.

Types of Gifts Accepted

Except as set forth below, and consistent with applicable ethical standards of conduct, HART may solicit or accept any type of gift that may be used to carry out activities that further its mission, programs, functions or responsibilities. Any cash gifts will only be accepted if made by check or money order to "Honolulu Authority for Rapid Transportation."

Conditions for Accepting Gifts

HART shall not solicit, receive, or accept any gift that:

- Attaches conditions inconsistent with applicable laws, regulations, or ethical standards of conduct;
- is offered by an anonymous donor;
- Is conditioned upon or will require the expenditure of appropriated funds that are not available to HART;
- Is offered to or is for the sole benefit of individual HART officers or employees;
- Rewards, influences or tends to impair the judgment of any HART officer or employee in the performance of such person's official duties;
- Provides special consideration, treatment, advantage, privilege, or exemption for, or coerces, a potential donor;
- Requires HART to adhere to particular requirements as to deposit, investment, or management of funds donated, if those requirements inure to the exclusive benefit of third parties;
- Requires HART to endorse the donor or its products, services, activities, or policies;
- Requires HART to provide the donor with some privilege, concession or other present or future benefit in return for the gift; or
- Requires HART to undertake or engage in activities that are not related to its mission, programs or legal authorities.

In making a determination as to whether any of these conditions apply, the Executive Director/CEO or his/her designee shall consider whether the gift would reflect unfavorably upon the ability of HART officers or employees or the HART Board of Directors (Board) to carry out their official responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity of HART's programs or of any officer or employee. The Executive Director/CEO or his/her designee may be guided by all relevant considerations, including, but not limited to, the following:

- The identity of the donor;
- The monetary or estimated market value or the cost to the donor;
- The purpose of the gift as described in a written or oral proposal by the donor;
- The identity of other expected recipients of the gift on the same occasion, if any;
- The timing of the gift;
- The nature and sensitivity of any matter pending at HART affecting the interests of the donor;
- The nature of the gift offered;
- The frequency of other gifts received from the same donor; and,
- The HART activity, purpose or need that the gift will aid or facilitate.

The Executive Director/CEO or his/her designee may ask the donor to provide in writing any additional information needed to assist in making the determination under this part. Such information may include a description of the donor's business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

The Executive Director/CEO or his/her designee may find that in some cases it is in the best interest of HART to limit the gift or qualify its acceptance or to decline it, even

though its acceptance would not otherwise be precluded. A donor may be advised of the reason why the gift has been qualified or declined.

In the event that a gift is clearly worth more than \$100,000.00, or is a gift that requires ongoing maintenance, security, or storage, or any costs not previously budgeted for, as in the case of a gift of real property, the Executive Director/CEO shall consult with the Board prior to accepting or rejecting said gift. Although the Executive Director/CEO maintains, by Charter, the responsibility for acceptance of gifts on behalf of HART, the Executive Director/CEO shall consult with the Board and/or the Ethics Commission if questions arise as to implementation of this policy.

Acknowledgement of Gifts

Gifts shall be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift shall be specified. In the case of non-monetary gifts, the letter shall not make reference to the value of the gift. Valuation of non-monetary gifts is the responsibility of the donor. Letters of acceptance shall not include any statement regarding the tax benefits or implications of a gift, and such determinations shall remain the responsibility of the donor. In addition, letters of acceptance shall not include any statement of endorsement of the donor.

The letter of acceptance should state what the gift will be used for and that the gift will not result in any favored treatment for the donor.

Reporting of Gifts

The Executive Director/CEO or his/her designee shall report all gifts received, with a value of \$2,500.00 or more, to the Board no later than at the next regularly scheduled Board meeting following receipt of the gift. For gifts of \$2,500.00 or less, the Executive Director/CEO or his/her designee shall submit to the Board a quarterly report listing all gifts accepted or rejected during the quarter. The report shall be submitted at the next regularly scheduled Board meeting following the close of the applicable quarter.

Accounting of Gifts

- HART shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures;
- HART shall maintain an inventory of donated personal property worth more than \$2,500.00. The inventory shall be updated each time an item is sold, surplus, destroyed or otherwise disposed of or discarded;
- HART shall maintain a log of all gifts accepted under this policy. This log shall include: the name and address of the donor; a description of the gift; the date the gift was accepted; any terms of conveyance, the reason and purpose for the gift; whether additional HART funds were needed to effectuate the gift; and the cost and time frame within which the gift will be used; and
- The officers and employees who use the gift should document what was learned through the gift process in terms of solicitation, use and process.

ATTACHMENT C



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
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www.hawaii.gov/oiip

CHERYL KAPAZU PARR
DIRECTOR

WHAT'S NEW: OIP'S BILLS ARE PASSED!
July 2, 2012

OIP's Bills Are Enacted!

July 2, 2012

The state Office of Information Practices (OIP) is pleased to announce that Governor Neil Abercrombie signed into law two important open government bills.

Act 176, signed on June 28, 2012, enacts S.B. 2858, S.D. 1, H.D. 2, C.D. 1. The new law creates a simple and uniform process for agencies to obtain judicial review of OIP decisions relating to the Uniform Information Practices Act (UIPA) and the Sunshine Law, without requiring OIP or the requester to be embroiled in the appeal. At the same time, the law gives OIP's decisions more clout and discourages agencies from frivolously appealing or simply ignoring OIP's rulings. These changes take effect on January 1, 2013.

Act 177 was also signed into law the same day by Governor Abercrombie, and it enacts S.B. 2859, S.D. 1, H.D. 2, which creates two new permitted interactions under the Sunshine Law. One new permitted interaction would allow board members to receive testimony and ask questions at public meetings that must be cancelled due to a lack of quorum, provided that they make no decisions and thereafter report to the full board. The second new permitted interaction is similar to an existing provision that applied only to neighborhood boards. Less than a quorum of any Sunshine Law board's members can now attend and discuss board business at seminars, conferences, informational meetings, legislative hearings, and other meetings, again provided that they make no decisions and thereafter report to the full board. Both of these new permitted interactions went into effect on July 1, 2012, and will help to promote greater public participation in government, better communication between the public and board members, and a fuller understanding of the issues and various perspectives by board members.

A third bill, S.B. 2737, S.D. 1, H.D. 2, C.D. 1, has not yet been signed by the Governor, but is not intended to be vetoed. This bill amends the Sunshine Law to allow teleconferences and eliminates the need for video coverage. The law also creates a new exception to make it easier for disabled members to attend a board meeting from a private location. As this bill should be signed shortly, it will retroactively take effect as of July 1, 2012.

OIP has updated its Sunshine Law guides and the law on its website to reflect the changes described above. For the latest facts and news about open government, look here on the What's New page, or ask to be placed on OIP's e-mail list for weekly What's New updates.



GOV. MSG. NO. 1279

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

SB2858 SD1 HD2 CD1

RELATING TO OPEN GOVERNMENT.
Act 176 (12)

Signed
A handwritten signature in black ink, appearing to read "Neil Abercrombie".

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 28 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 176

S.B. NO. 2858
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO OPEN GOVERNMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 92F, Hawaii Revised Statutes, is
2 amended by adding to part IV a new section to be appropriately
3 designated and to read as follows:

4 "§92F- Agency appeal of a decision by the office of
5 information practices. (a) An agency may not appeal a decision
6 by the office of information practices made under this chapter
7 or part I of chapter 92, except as provided in this section.
8 Within thirty days of the date of the decision, an agency may
9 seek judicial review of a final decision rendered by the office
10 of information practices under this chapter or part I of chapter
11 92, by filing a complaint to initiate a special proceeding in
12 the circuit court of the judicial circuit in the State where:

13 (1) The request for access to a record was made;
14 (2) The act the office determined was prohibited under
15 part I of chapter 92 occurred; or
16 (3) The agency's principal place of business is located.
17 (b) The agency shall give notice of the complaint to the

18 office of information practices and the person who requested the



1 decision for which the agency seeks judicial review by serving a
2 copy of the complaint on each; provided that the office of
3 information practices and the person who requested the decision
4 shall not be required to participate in the proceeding; and
5 provided further that the court shall proceed to review the
6 decision pursuant to the rules applicable to a special
7 proceeding, upon the expiration of time that an answer to the
8 complaint would otherwise need to be filed under the rules of
9 court by the office of information practices or the person upon
10 whom the complaint was served. The office of information
11 practices or the person who requested the decision may intervene
12 in the proceeding.

13 (c) Within thirty days of service of the complaint, the
14 office of information practices shall file a certified copy of
15 the record that it compiled to make its decision in the circuit
16 court and mail a copy of the index to that record to the
17 appealing agency. The circuit court's review shall be limited
18 to the record that was before the office of information
19 practices when it rendered the decision, unless the circuit
20 court finds that extraordinary circumstances justify discovery
21 and admission of additional evidence. The circuit court shall
22 uphold a decision of the office of information practices, unless



1 the circuit court concludes that the decision was palpably
2 erroneous."

3 SECTION 2. Section 92-1.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§92-1.5[+] Administration of this part. The director
6 of the office of information practices shall administer this
7 part. The director shall establish procedures for filing and
8 responding to complaints filed by any person concerning the
9 failure of any board to comply with this part. An agency may
10 not appeal a decision by the office of information practices
11 made under this chapter, except as provided in section 92F- .

12 The director of the office of information practices shall submit
13 an annual report of these complaints along with final resolution
14 of complaints, and other statistical data to the legislature, no
15 later than twenty days prior to the convening of each regular
16 session."

17 SECTION 3. Section 92-12, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§92-12 Enforcement. (a) The attorney general and the
20 prosecuting attorney shall enforce this part.

1 (b) The circuit courts of the State shall have
2 jurisdiction to enforce the provisions of this part by
3 injunction or other appropriate remedy.

4 (c) Any person may commence a suit in the circuit court of
5 the circuit in which a prohibited act occurs for the purpose of
6 requiring compliance with or preventing violations of this part
7 or to determine the applicability of this part to discussions or
8 decisions of the public body. The court may order payment of
9 reasonable ~~[attorney]~~ attorney's fees and costs to the
10 prevailing party in a suit brought under this section.

11 (d) Opinions and rulings of the office of information
12 practices shall be admissible in an action brought under this
13 part and shall be considered as precedent unless found to be
14 palpably erroneous.

15 [~~d~~] (e) The proceedings for review shall not stay the
16 enforcement of any agency decisions; but the reviewing court may
17 order a stay if the following criteria have been met:

18 (1) There is likelihood that the party bringing the action
19 will prevail on the merits;

20 (2) Irreparable damage will result if a stay is not
21 ordered;



1 (3) No irreparable damage to the public will result from
2 the stay order; and

3 (4) Public interest will be served by the stay order."

4 SECTION 4. Section 92F-15, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) In an action to compel disclosure, the circuit court
7 shall hear the matter de novo[-]; provided that if the action to
8 compel disclosure is brought because an agency has not made a
9 record available as required by section 92F-15.5(b) after the
10 office of information practices has made a decision to disclose
11 the record and the agency has not appealed that decision within
12 the time period provided by 92F- , the decision of the office
13 of information practices shall not be subject to challenge by
14 the agency in the action to compel disclosure. Opinions and
15 rulings of the office of information practices shall be
16 admissible[-] and shall be considered as precedent unless found
17 to be palpably erroneous, except that in an action to compel
18 disclosure brought by an aggrieved person after the office of
19 information practices upheld the agency's denial of access to
20 the person as provided in section 92F-15.5(b), the opinion or
21 ruling upholding the agency's denial of access shall be reviewed
22 de novo. The circuit court may examine the government record at



1 issue, in camera, to assist in determining whether it, or any
2 part of it, may be withheld."

3 SECTION 5. Section 92F-27, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§92F-27 Civil actions and remedies.** (a) An individual
6 may bring a civil action against an agency in a circuit court of
7 the State whenever an agency fails to comply with any provision
8 of this part, and after appropriate administrative remedies
9 under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

10 (b) Opinions and rulings of the office of information
11 practices shall be admissible and shall be considered as
12 precedent unless found to be palpably erroneous, except that the
13 opinion or ruling upholding the agency's denial of access to the
14 aggrieved person shall be reviewed de novo. The circuit court
15 may examine the record at issue, in camera, to assist in
16 determining whether it, or any part of it, may be withheld.

17 [~~(b)~~] (c) In any action brought under this section the court
18 may order the agency to correct or amend the complainant's
19 personal record, to require any other agency action, or to
20 enjoin such agency from improper actions as the court may deem
21 necessary and appropriate to render substantial relief.



1 [~~(e)~~] (d) In any action brought under this section in which
2 the court determines that the agency knowingly or intentionally
3 violated a provision of this part, the agency shall be liable to
4 the complainant in an amount equal to the sum of:

5 (1) Actual damages sustained by the complainant as a
6 result of the failure of the agency to properly
7 maintain the personal record, but in no case shall [~~a~~
8 ~~complainant (individual)~~] an individual complainant
9 entitled to recovery receive less than the sum of
10 \$1,000; and

11 (2) The costs of the action together with reasonable
12 attorney's fees as determined by the court.

13 [~~(d)~~] (e) The court may assess reasonable attorney's fees
14 and other litigation costs reasonably incurred against the
15 agency in any case in which the complainant has substantially
16 prevailed, and against the complainant where the charges brought
17 against the agency were frivolous.

18 [~~(e)~~] (f) An action may be brought in the circuit court
19 where the complainant resides, the complainant's principal place
20 of business is situated, or the complainant's relevant personal
21 record is situated. No action shall be brought later than two
22 years after notification of the agency denial, or where



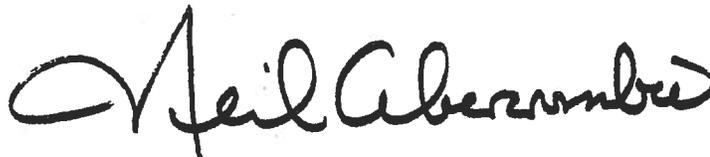
1 applicable, the date of receipt of the final determination of
2 the office of information practices."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect on January 1, 2013.

APPROVED this 28 day of JUN, 2012


GOVERNOR OF THE STATE OF HAWAII



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
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E-MAIL: olp@hawaii.gov
www.hawaii.gov/olp

CHERYL KAKAZU PARK
DIRECTOR

WHAT'S NEW: OIP'S BILLS ARE PASSED!
July 2, 2012

OIP's Bills Are Enacted!

July 2, 2012

The state Office of Information Practices (OIP) is pleased to announce that Governor Neil Abercrombie signed into law two important open government bills.

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GOV. MSG. NO. 1280

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

SB2859 SD1 HD2

RELATING TO OPEN GOVERNMENT.
Act 177 (12)

Neil Abercrombie
State of Hawaii

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 28 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 177
S.B. NO. 2859
S.D. 1
H.D. 2

A BILL FOR AN ACT

RELATING TO OPEN GOVERNMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§92-2.5 Permitted interactions of members. (a) Two
4 members of a board may discuss between themselves matters
5 relating to official board business to enable them to perform
6 their duties faithfully, as long as no commitment to vote is
7 made or sought and the two members do not constitute a quorum of
8 their board.

9 (b) Two or more members of a board, but less than the
10 number of members which would constitute a quorum for the board,
11 may be assigned to:

12 (1) Investigate a matter relating to the official business
13 of their board; provided that:

14 (A) The scope of the investigation and the scope of
15 each member's authority are defined at a meeting
16 of the board;



1 (B) All resulting findings and recommendations are
2 presented to the board at a meeting of the board;
3 and

4 (C) Deliberation and decisionmaking on the matter
5 investigated, if any, occurs only at a duly
6 noticed meeting of the board held subsequent to
7 the meeting at which the findings and
8 recommendations of the investigation were
9 presented to the board; or

10 (2) Present, discuss, or negotiate any position which the
11 board has adopted at a meeting of the board; provided
12 that the assignment is made and the scope of each
13 member's authority is defined at a meeting of the
14 board prior to the presentation, discussion, or
15 negotiation.

16 (c) Discussions between two or more members of a board,
17 but less than the number of members which would constitute a
18 quorum for the board, concerning the selection of the board's
19 officers may be conducted in private without limitation or
20 subsequent reporting.

21 (d) Board members present at a meeting that must be
22 canceled for lack of quorum or terminated pursuant to section



1 92-3.5(c) may nonetheless receive testimony and presentations on
2 items on the agenda and question the testifiers or presenters;
3 provided that:

4 (1) Deliberation or decisionmaking on any item, for which
5 testimony or presentations are received, occurs only
6 at a duly noticed meeting of the board held subsequent
7 to the meeting at which the testimony and
8 presentations were received;

9 (2) The members present shall create a record of the oral
10 testimony or presentations in the same manner as would
11 be required by section 92-9 for testimony or
12 presentations heard during a meeting of the board; and

13 (3) Before its deliberation or decisionmaking at a
14 subsequent meeting, the board shall:

15 (A) Provide copies of the testimony and presentations
16 received at the canceled meeting to all members
17 of the board; and

18 (B) Receive a report by the members who were present
19 at the canceled or terminated meeting about the
20 testimony and presentations received.

21 (e) Two or more members of a board, but less than the
22 number of members which would constitute a quorum for the board,



1 may attend an informational meeting or presentation on matters
2 relating to official board business, including a meeting of
3 another entity, legislative hearing, convention, seminar, or
4 community meeting; provided that the meeting or presentation is
5 not specifically and exclusively organized for or directed
6 toward members of the board. The board members in attendance
7 may participate in discussions, including discussions among
8 themselves; provided that the discussions occur during and as
9 part of the informational meeting or presentation; and provided
10 further that no commitment relating to a vote on the matter is
11 made or sought.

12 At the next duly noticed meeting of the board, the board
13 members shall report their attendance and the matters presented
14 and discussed that related to official board business at the
15 informational meeting or presentation.

16 [~~d~~] (f) Discussions between the governor and one or more
17 members of a board may be conducted in private without
18 limitation or subsequent reporting; provided that the discussion
19 does not relate to a matter over which a board is exercising its
20 adjudicatory function.

21 [~~e~~] (g) Discussions between two or more members of a
22 board and the head of a department to which the board is



1 administratively assigned may be conducted in private without
2 limitation; provided that the discussion is limited to matters
3 specified in section 26-35.

4 ~~[(f)]~~ (h) Communications, interactions, discussions,
5 investigations, and presentations described in this section are
6 not meetings for purposes of this part."

7 SECTION 2. Section 92-7, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The board shall give written public notice of any
10 regular, special, or rescheduled meeting, or any executive
11 meeting when anticipated in advance. The notice shall include
12 an agenda which lists all of the items to be considered at the
13 forthcoming meeting, the date, time, and place of the meeting,
14 and in the case of an executive meeting the purpose shall be
15 stated. The means specified by this section shall be the only
16 means required for giving notice under this part notwithstanding
17 any law to the contrary."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2012.

APPROVED this 28 day of JUN, 2012

Neil Abernethy



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

CHERYL KAKAZU PARK
DIRECTOR

WHAT'S NEW: OIP'S BILLS ARE PASSED!
July 2, 2012

OIP's Bills Are Enacted!

July 2, 2012

The state Office of Information Practices (OIP) is pleased to announce that Governor Neil Abercrombie signed into law two important open government bills.

Act 176, signed on June 28, 2012, enacts S.B. 2858, S.D. 1, H.D. 2, C.D. 1. The new law creates a simple and uniform process for agencies to obtain judicial review of OIP decisions relating to the Uniform Information Practices Act (UIPA) and the Sunshine Law, without requiring OIP or the requester to be embroiled in the appeal. At the same time, the law gives OIP's decisions more clout and discourages agencies from frivolously appealing or simply ignoring OIP's rulings. These changes take effect on January 1, 2013.

Act 177 was also signed into law the same day by Governor Abercrombie, and it enacts S.B. 2859, S.D. 1, H.D. 2, which creates two new permitted interactions under the Sunshine Law. One new permitted interaction would allow board members to receive testimony and ask questions at public meetings that must be cancelled due to a lack of quorum, provided that they make no decisions and thereafter report to the full board. The second new permitted interaction is similar to an existing provision that applied only to neighborhood boards. Less than a quorum of any Sunshine Law board's members can now attend and discuss board business at seminars, conferences, informational meetings, legislative hearings, and other meetings, again provided that they make no decisions and thereafter report to the full board. Both of these new permitted interactions went into effect on July 1, 2012, and will help to promote greater public participation in government, better communication between the public and board members, and a fuller understanding of the issues and various perspectives by board members.

A third bill, S.B. 2737, S.D. 1, H.D. 2, C.D. 1, has not yet been signed by the Governor, but is not intended to be vetoed. This bill amends the Sunshine Law to allow teleconferences and eliminates the need for video coverage. The law also creates a new exception to make it easier for disabled members to attend a board meeting from a private location. As this bill should be signed shortly, it will retroactively take effect as of July 1, 2012.

OIP has updated its Sunshine Law guides and the law on its website to reflect the changes described above. For the latest facts and news about open government, look here on the What's New page, or ask to be placed on OIP's e-mail list for weekly What's New updates.



GOV. MSG. NO. 1305

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 03, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

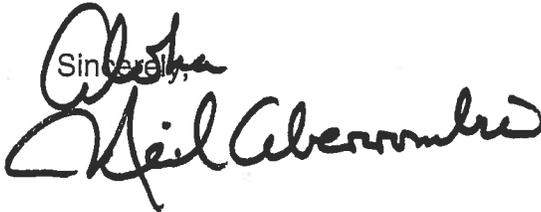
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 03, 2012, the following bill was signed into law:

SB2737 SD1 HD2 CD1

RELATING TO PUBLIC MEETINGS.
Act 202 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUL 3 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 2012

S.B. NO. 2737
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC MEETINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 92-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "§92-2 Definitions. As used in this part:
4 [~~1~~] "Board" means any agency, board, commission,
5 authority, or committee of the State or its political
6 subdivisions which is created by constitution,
7 statute, rule, or executive order, to have
8 supervision, control, jurisdiction, or advisory power
9 over specific matters and which is required to conduct
10 meetings and to take official actions.
11 [~~2~~] "Chance meeting" means a social or informal assemblage
12 of two or more members at which matters relating to
13 official business are not discussed.
14 "Interactive conference technology" means any form of audio
15 or audio and visual conference technology, including
16 teleconference, videoconference, and voice over internet
17 protocol, that facilitates interaction between the public and
18 board members.



1 ~~[-3-]~~ "Meeting" means the convening of a board for which a
2 quorum is required in order to make a decision or to
3 deliberate toward a decision upon a matter over which
4 the board has supervision, control, jurisdiction, or
5 advisory power."

6 SECTION 2. Section 92-3.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§92-3.5 Meeting by ~~[videconferenc;~~ interactive
9 conference technology; notice; quorum. (a) A board may hold a
10 meeting by ~~[videconferenc;~~ interactive conference technology;
11 provided that the ~~[videconferenc-system]~~ interactive
12 conference technology used by the board ~~[shall allow both audio~~
13 ~~and visual]~~ allows interaction ~~[between]~~ among all members of
14 the board participating in the meeting and ~~[the]~~ all members of
15 the public attending the meeting, ~~[at any videconferenc~~
16 ~~location. The]~~ and the notice required by section 92-7 shall
17 specify identifies all of the locations ~~at which~~ where
18 participating board members will be physically present ~~[during a~~
19 ~~videconferenc meeting. The notice shall also specify that the~~
20 ~~public may attend the meeting at any of the specified~~
21 ~~locations.]~~ and indicates that members of the public may join
22 board members at any of the identified locations.



1 (b) Any board member participating in a meeting by
2 ~~[videoconference]~~ interactive conference technology shall be
3 considered present at the meeting for the purpose of determining
4 compliance with the quorum and voting requirements of the board.

5 (c) A meeting held by ~~[videoconference]~~ interactive
6 conference technology shall be terminated ~~[if, after the meeting~~
7 ~~convenes, both the]~~ when audio ~~[and video]~~ communication cannot
8 be maintained with all locations where the meeting by
9 interactive conference technology is being held, even if a
10 quorum of the board is physically present in one location
11 ~~[, provided that a meeting may be continued by audio~~
12 ~~communication alone, if:~~

13 ~~(1) All visual aids required by, or brought to the meeting~~
14 ~~by board members or members of the public have already~~
15 ~~been provided to all meeting participants at all~~
16 ~~videoconference locations where the meeting is held,~~
17 ~~or~~

18 ~~(2) Participants are able to readily transmit visual aids~~
19 ~~by some other means (e.g., fax copies), to all other~~
20 ~~meeting participants at all other videoconference~~
21 ~~locations where the meeting is held. If copies of~~
22 ~~visual aids are not available to all meeting~~



1 ~~participants at all videoconference locations where~~
2 ~~the meeting is held, those agenda items related to the~~
3 ~~visual aids shall be deferred until the next meeting,~~
4 ~~and~~

5 ~~(3) No more than fifteen minutes shall elapse in~~
6 ~~implementing the requirements listed in paragraph~~
7 ~~(2)]. If copies of visual aids required by, or~~
8 ~~brought to the meeting by board members or members of the~~
9 ~~public, are not available to all meeting participants, at all~~
10 ~~locations where audio-only interactive conference technology is~~
11 ~~being used, within fifteen minutes after audio-only~~
12 ~~communication is used, those agenda items for which visual aids~~
13 ~~are not available for all participants at all meeting locations~~
14 ~~cannot be acted upon at the meeting.~~

15 (d) Notwithstanding the other provisions of this section
16 to the contrary, a board member with a disability that limits or
17 impairs the member's ability to physically attend the meeting
18 may participate in a board meeting from a location not
19 accessible to the public; provided that the member with a
20 disability is connected to other members of the board and the
21 public by both visual and audio means, and the member identifies

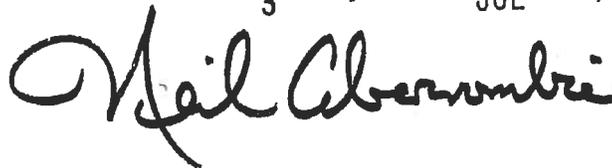


1 where the member is located and who, if anyone, is present at
2 that location with the member."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2012.

APPROVED this 3 day of JUL, 2012



GOVERNOR OF THE STATE OF HAWAII

ATTACHMENT D



RESOLUTION

REQUESTING THE CITY AUDITOR TO CONDUCT AN AUDIT OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION'S CONTRACTS AND SPENDING FOR PUBLIC RELATIONS AND PUBLIC INVOLVEMENT SERVICES.

WHEREAS, according to information provided by the Honolulu Authority for Rapid Transportation ("HART") to the Honolulu City Council, HART has contracted with at least two major contractors, who in turn have hired at least eleven subcontractors, to provide "public involvement" services at a cost of about \$4 million (Dept. Com. 405, 2012); and

WHEREAS, the public involvement services from these contracts are over and above the services already provided by the five HART employees who are dedicated to public relations and involvement and make a combined \$362,000 in salaries (Dept. Com. 405, 2012); and

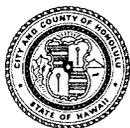
WHEREAS, additionally, large contractors hired by HART to work on the rail project often employ their own public relations teams on staff or through subcontract, such as Kiewit Infrastructure, which has its own public information employees and contracts with a separate public relations firm for even more public information help with the project; and

WHEREAS, HART has stated that its public involvement work is a requirement of any federally funded project to encourage public participation during all stages of the rail project, although no citation for this federal requirement has been provided and concerns have surfaced regarding what appears to be excessive spending on public involvement; and

WHEREAS, additional concerns have been raised that HART's public involvement work, contracts, and spending have crossed the line from public information to political programs and efforts designed to influence public sentiment, lobby elected officials, and push the project forward at an unreasonable pace; and

WHEREAS, the Council finds that the large amount of money spent by HART on public involvement, both in-house as well as through contractors and subcontractors, seems increasingly political, excessive, and unjustifiable; and

WHEREAS, the Council believes there is a public need to examine the contracts and spending for the rail project's public relations and public involvement services to ensure that taxpayer dollars are being used wisely and not misused; and



RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu that it urges the City Auditor to conduct an audit of the Honolulu Authority for Rapid Transportation's contracts and spending for public relations and public involvement services; and

BE IT FURTHER RESOLVED that the City Auditor, among other audit tasks, determine what specific public involvement service or services each employee, contractor and subcontractor provides, and provide an opinion on whether these services, and the amount paid for these services, individually and collectively, are objective, required by federal law, and therefore justified; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Office of the City Auditor, the Chair of the Honolulu Authority for Rapid Transportation, and the Mayor.

INTRODUCED BY:

Julia Hubbard
[Signature]
Tom Kobayashi

DATE OF INTRODUCTION:

JUN 19 2012

Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 12-149

Introduced: 06/19/12 By: TULSI GABBARD

Committee: BUDGET

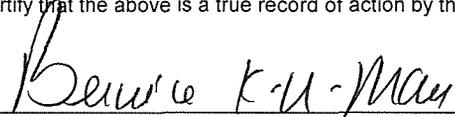
Title: RESOLUTION REQUESTING THE CITY AUDITOR TO CONDUCT AN AUDIT OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION'S CONTRACTS AND SPENDING FOR PUBLIC RELATIONS AND PUBLIC INVOLVEMENT SERVICES.

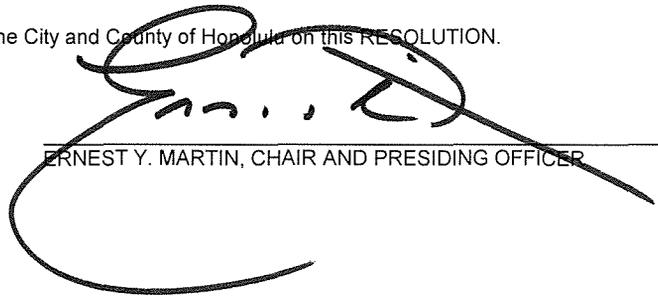
Links: [RES12-149](#)
[CR-206](#)

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N = No, A = Absent, ABN = Abstain

BUDGET	06/25/12	CR-206 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.							
COUNCIL	07/11/12	CR-206 AND RESOLUTION 12-149 WERE ADOPTED.							
ANDERSON	Y	BERG	Y	CACHOLA	Y	CHANG	A	GABBARD	Y
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER