

**HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

**REQUEST FOR PROPOSALS**

**NO. RFP-HRT-618211**

Questions relating to this solicitation, contact:

Honolulu Authority for Rapid Transportation  
1099 Alakea Street, Suite 1700  
Honolulu, Hawai'i 96813  
TRANSITMAILBOX@HONOLULU.GOV

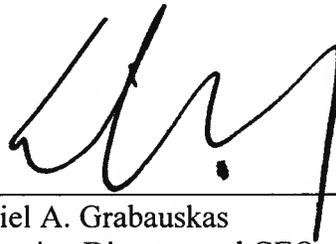
**NOTICE OF REQUEST FOR PROPOSALS  
FOR  
HONOLULU RAIL TRANSIT PROJECT  
HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT  
REQUEST FOR PROPOSALS NO. RFP-HRT-618211  
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

This procurement is being conducted in accordance with Hawaii Revised Statutes (“HRS”) Chapter 103D-303 and Hawaii Administrative Rules (“HAR”) Chapter 3-122-41 to 61.

SEALED PROPOSALS will be accepted up to 2:00 p.m. HST on November 15, 2013, 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 selected Offeror is expected to comply with applicable Federal Transit Administration (FTA) requirements.

The Form of Proposal may be obtained from HART upon application for Request for Proposals No. RFP-HRT-618211 or from the Division of Purchasing website at [www.honolulu.gov/pur](http://www.honolulu.gov/pur).



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Daniel A. Grabauskas  
Executive Director and CEO  
Honolulu Authority for Rapid Transportation

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## **INSTRUCTIONS TO OFFERORS**

### **1.0 INTRODUCTION**

The Honolulu Authority for Rapid Transportation (“HART”) is seeking proposals from qualified firms that specialize in all phases of recruiting for executive and senior-level staff in the United States transit industry. The selected firm will be required to conduct local and national searches, from start to finish, for two (2) key, senior-level staff with applicable federal transit experience on a project(s) of similar size and complexity as the Honolulu Rail Transit Project (“HRTTP”). The selected firm must have a proven track record of successful searches that resulted in the timely selection of highly qualified, senior-level staff. Strong knowledge and experience working with governmental agencies is preferred.

This Request for Proposals, RFP-HRT-618211 (“RFP”), being issued pursuant to HRS §103D-303 (Supp. 2012) and HAR Title 3, Subtitle 11, Chapter 122, Subchapter 6, provides the instructions for submitting proposals, the procedure and criteria by which firms will be evaluated, and the contractual terms by which HART proposes to govern the relationship between it and the firm selected pursuant to this RFP.

### **2.0 ABBREVIATIONS**

BAFO	Best and Final Offer
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
HRTTP	Honolulu Rail Transit Project
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
JV	Joint Venture
LLC	Limited Liability Company
NTP	Notice to Proceed
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, Hawai‘i Revised Statutes (“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; and/or

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

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

**“Award”** means the written notification of 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, 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 Executive Director and CEO of HART or designee. The term “HART Executive Director and CEO” shall be substituted for the “Director of BFS,” “Director of Department of Budget and Fiscal Services,” “Director of DTS,” “Director of the Department of Transportation Services,” or “Second Deputy Director of the Department of

Transportation Services,” wherever those terms appear in the Contract Documents, unless the context clearly indicates otherwise.

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

“**Code of Federal Regulations**” or “**CFR**” 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 RFP, final Proposal, the list of Subcontractors, general instructions to Offerors, 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 Executive Director and CEO of HART 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.

“**Federal Transit Administration**” means the current designation for the former Urban Mass Transportation Administration, United States Department of Transportation. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

“**General Terms and Conditions**” or “**GTC**” means the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (08/2000).

“**Honolulu Authority for Rapid Transportation**” or “**HART**” shall mean the Honolulu Authority for Rapid Transportation. 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 Contract Documents, unless the context clearly indicates otherwise.

“**Instructions to Offerors**” or “**ITO**” 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 and CEO or designee.

**“Opening”** means the date set for opening 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 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 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 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 by HART 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 an 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 (Supp. 2012) for a listing of State holidays.

## **4.0 INTRODUCTION**

### **4.1 HONOLULU RAIL TRANSIT PROJECT (H RTP)**

The H RTP when constructed will consist of approximately 20-miles of elevated guideway with the exception of three thousand seven hundred (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 (1) Maintenance and Storage Facility (“MSF”), three (3) park-and-ride lots and one (1) park-and-ride structure.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

HART has established a DBE program in accordance with the regulations of the U.S. Department of Transportation (USDOT), Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26). HART has received federal financial assistance from USDOT, and as a condition of receiving this assistance, HART has signed an Assurance with the USDOT that it will comply with 49 CFR Part 26.

The selected Offeror and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The selected Offeror shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted Agreements. Failure by the selected Offeror to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART deems appropriate.

HART has established an overall DBE goal of 13.00% for the duration of this Agreement and a separate Contract goal has not been established for this procurement. DBE firms and small businesses shall have an equal opportunity to participate in the Agreement.

## **5.0 SCOPE OF SERVICES**

The selected Offeror shall provide the services as set forth in Attachment 2, Special Provisions, Appendix A, Scope of Services attached hereto.

## 6.0 PROCUREMENT TIMETABLE

The following **estimated** timetable has been established for the Contract:

<b>ACTIVITY</b>	<b>MONTH</b>	<b>DAY</b>	<b>YEAR</b>
Issue RFP	October	18	2013
Deadline for Receipt of Clarification Requests	November	01	2013
Issue Final Addendum	November	06	2013
Proposal Due Date	November	15	2013
Contractor Selection	November	18	2013
Award of Contract (anticipated)	November	20	2013

## 7.0 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.

### 7.1 CLARIFICATION 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 Procurement and Contracts Officer not later than the date listed in Section 6.0 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) Written and addressed to:

Procurement and Contracts Officer  
RFP-HRT-618211  
Honolulu Authority for Rapid Transportation  
1099 Alakea Street, Suite 1700  
Honolulu, Hawai‘i 96813

- B) Sent by fax to: Facsimile No. (808) 587-6080 (Identify RFP-HRT-618211)  
C) Emailed to: transitmailbox@honolulu.gov (Identify RFP-HRT-618211)

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 have

no legal effect. Only questions answered by a formal written amendment from HART will be binding.

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, its General Engineering Consultant, or any other stakeholders in this solicitation while the Proposal evaluation process is in progress. Where required, all contact, for discussion or clarification will be initiated by HART. Any contact determined to be improper, at the sole discretion of HART, may result in disqualification.

## **7.2 AMENDMENT TO RFP**

Prior to the submission of Proposals, HART may make amendments to the RFP by addenda and shall reference the portions of the RFP it amends and detail the amendments. Prior to Proposal submission, addenda shall be posted to the purchasing website at <http://www.honolulu.gov/pur>. After submission of Proposals, addenda will be issued only to PLOs. All addenda will be in writing from HART.

## **7.3 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 from the Proposal Due Date and throughout the Contract period, if awarded. 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.

## **7.4 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 and such action will be in accordance with HRS § 103D-308 (Supp. 2012) and HAR Title 3, Subtitle 11, Chapter 122, Subchapter 11. Reasons for rejecting Proposals include, but are not limited to, the following:

The Offeror that submitted the Proposal is deemed non-responsive:

- 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, Form of Proposal, 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, alterations 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.

## **7.5 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 (toll free) 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.

## **8.0 PREPARATION OF PROPOSALS**

### **8.1 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, roles, and legal relationship of all Principal Participants.
- B) 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. Please ensure that contact information is up-to-date because should HART need to contact you regarding your Proposal, it will be through the single point of contact.
- C) The Offeror's Proposal referred to in Section 8.1 G), below, should not exceed twenty (20) pages. Information requested in sections 6.1 A) and B), above shall be excluded from the twenty (20) page limit.
- D) In addition, the Offeror shall provide the following which shall be excluded from the twenty (20) 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. In lieu of the Powers of Attorney required, the Offeror may submit an original corporate resolution 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 or other authorized officer of the corporation and contain a corporate seal or notarization.
- E) 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 Scope of Services 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 the Scope of Services.
- F) The responses to the Proposal items must be present in the Offeror's proposed method of addressing all items required to be provided in this RFP. 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 should not exceed twenty (20) pages except when indicated otherwise. Exhibits are excluded from the twenty (20)-page limit.

- G) One (1) Original and five (5) copies of the Offeror’s Proposal (consisting of loose leaf papers separately bound unless otherwise indicated) in three ring binders must be submitted and include the following:
- 1) Executive Summary – Volume I
  - 2) Offeror's Qualifications – Volume II
  - 3) Offeror's Proposal – Volume III
  - 4) Offeror’s Price Proposal (Exhibit 11) – Volume IV
- H) Offeror’s Price Proposal (Volume IV of the submitted Proposal) shall be submitted in a separate sealed envelope clearly marked “Offeror’s Price Proposal.”
- I) Proposals 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.

## 8.2 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 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 4 – Bidder Registration Form.
- G) Exhibit 5 – Certification Regarding Lobbying, for the Offeror and all Principal Participants.

- H) Exhibit 6 – Non-Collusion Affidavit, certifying that the Proposal is not the result of, and has not been influenced by collusion.
- I) Submit organizational documents in the form of copies of articles of incorporation and by laws, joint venture agreement, partnership agreement, limited liability company operating agreement or equivalent organizational documents for the 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. Organizational documents shall be excluded from the twenty (20) page limit.
- J) Licensing information. Provide evidence of licensing or certification information, including license or certificate number and the state of such licensing or certification of Principal Participants.  
  
All Persons participating in this procurement and/or the Contract must obtain all licenses and permits and take all necessary steps to conduct business in the State of Hawai‘i and perform the Work required under the Contract. Offerors must be properly licensed and capable of performing the Work as described in the RFP.
- K) 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.
- L) Exhibit 8 – Key Personnel Information, with information regarding proposed key personnel.
- M) Exhibit 9 – Acknowledgement of Receipt of Addenda and Responses to Offeror’s Clarification Requests, acknowledging receipt of addenda to this RFP.
- N) Exhibit 10 – Certification of Compliance for Final Payment
- O) Exhibit 11 – Price Proposal Form - (with information in accordance with Section 8.8)

### **8.3 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 or portions of pages of the Proposal that contain such information by properly marking the applicable pages or sections as "CONFIDENTIAL" on every copy submitted. 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 deemed 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.

### **8.4 NO REIMBURSEMENT**

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

## **8.5 EXECUTIVE SUMMARY (VOLUME I)**

The Executive Summary should present a clear and concise summary of the Offeror's qualifications, background, years of specialized experience in placement of senior-level transit personnel and make a case as to why the Offeror is the best candidate to provide the requested services. This section should be structured in a manner that allows it to serve as a stand-alone summary when separated from the other sections of the Proposal. The Executive Summary should be limited to two (2) pages.

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.

## **8.6 OFFEROR'S QUALIFICATIONS (VOLUME 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-responsive. 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) Informative Items (if deemed applicable by the Offeror)
- B) Organizational Data (Required)
  - 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)
  - 7) Date Organization was Established
  - 8) Average Number of Professional Staff for each of the Past Five (5) Years
- C) Experience Data. The Offeror shall list and describe (Required):
  - 1) Related similar assignments the Offeror has been or is presently involved in and the nature of this involvement. Do not list projects completed prior to 2006.

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, contact person, etc. 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.

- 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.
  - 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.
- D) **Financial Data (Required).** 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 Volume II. The balance sheet will not count against the twenty (20) page limit. Financial data that the Offeror deems confidential shall be clearly marked "CONFIDENTIAL." Failure to provide a "Certified True Copy" of the Offeror's current balance sheet may cause the Proposal to be rejected as non-responsive.
- E) **Organization and Key Personnel (Required).** The minimum requirement to satisfy this item is that:
- 1) The Offeror have demonstrated experience in the successful completion and implementation of executive to senior-level staff searches similar to that being proposed for HART and that the Offeror's Account Representative and key personnel who are committed to the project have had prior experience with such a program;
  - 2) The Offeror shall submit resume(s), with at least two (2) minimum references, with full contact information, for each of the Offeror's Key Personnel; and

- 3) Describe the organizational structure to coordinate the activities required and include an organizational chart.

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.

### **8.7 OFFEROR'S TECHNICAL PROPOSAL (VOLUME III)**

In order to be found acceptable or potentially acceptable, the Offeror's Proposal must provide a preliminary work plan addressing the Offeror's proposed administrative managerial and organizational programs to complete each of the items of the Scope of Services provided in Attachment 2, Special Provisions, Appendix A, Scope of Services attached hereto.

### **8.8 OFFEROR'S PRICE PROPOSAL (VOLUME IV)**

The Offeror's Price Proposal will be submitted utilizing Exhibit 11 in the format shown below. Insert the lump sum price for each item including Hawai'i General Excise and Use Tax for each Scope of Services Item. It is to be understood that payment to the selected Contractor will be at one hundred percent (100%) completion of each item in the Scope of Services. The Allowance, as shown, are the HART estimate of costs for travel as required in the Scope of Services. Allowance costs will be paid on a cost reimbursable basis with no mark up for indirect costs or profit.

- A) The Offeror's Price Proposal, Exhibit 11, is to be included in a separate sealed envelope clearly marked "Offeror's Price Proposal."
- B) The Price Proposal submitted must be valid and irrevocable for one hundred eighty (180) calendar days from the Proposal Due Date. By submitting a Price Proposal, the Offeror will certify that the price submitted in response to the RFP was independently arrived at and therefore represents non-collusion.
- C) 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.
- D) 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 (toll free) for assistance as to whether the State of Hawai'i general excise tax and use tax will apply to the Offeror or Contractor.
- E) The Offeror agrees that in the event that the successful candidate leaves employment from HART within one (1) year of placement, the selected Offeror shall be responsible to reinitiate an additional search or searches at no cost to HART.

## **9.0 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 in the Office of the Honolulu Authority for Rapid Transportation, Ali‘i Place, 1099 Alakea Street, Suite 1700, Honolulu, Hawai‘i 96813 no later than 2:00 p.m. HST on the Proposal Due Date. It is the responsibility of the Offeror to ensure that their Proposal is received in the HART office on or before the Proposal Due Date. Unless otherwise specified, one (1) original and five (5) copies of the Proposals 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.

### **9.1 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 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 addressed to the CPO.

### **9.2 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. Offerors shall not include any other additional or conflicting terms and conditions with their Proposal.
- 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.

### **9.3 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 personnel or their designees having legitimate interest in them.

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

### **9.4 DISCUSSION WITH OFFERORS**

- A) If discussions are required, before conducting discussions, 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 discussions. HART, at its option, may also request Best and Final Offers ("BAFOs") 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 four (4) responsive and responsible Offerors who submitted the highest-ranked Proposals.
  - 4) Those responsive and 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.

## **10.0 EVALUATION CRITERIA (100 TOTAL AVAILABLE POINTS)**

Proposals shall be evaluated by the evaluation committee in accordance with the criteria provided herein. All Proposals received by the Proposal Due Date will be reviewed for responsiveness. Proposals that are deemed to be unacceptable will not be evaluated. Proposals that are deemed to be acceptable or potentially acceptable will be evaluated (except for price which will be evaluated separately), scored and ranked by the evaluation committee. Up to four (4) of the Offerors may be placed on the PLO list. Evaluation Criteria A and B below are considered to be a responsiveness check and will not be scored. 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.”

## **10.1 EVALUATION CRITERIA (A – D) (100 TOTAL AVAILABLE POINTS)**

The evaluation criteria below will be scored in accordance with the points shown and are listed in descending order of importance to HART.

A) Understanding of Responsibilities and Defined Approach to Completing the senior staff search Scope of Services (55 Points)

- 1) The Offeror demonstrates knowledge and understanding of each item of the Scope of Services and specific responsibilities associated with each;
- 2) The Offeror provides a detailed task-oriented breakdown of activities required to complete each item of the Scope of Services and identifies the personnel resources assigned and the methodology to support each activity, including preliminary marketing approach;
- 3) The Offeror demonstrates an understanding of Honolulu’s social structure including cost of living, housing cost, availability and cost of educational institutions (Elementary through Graduate) and other conditions related to living and employment; and
- 4) The Offeror demonstrates an organizational structure that accounts for all of the necessary activities and demonstrates technical and management experience and expertise to perform the Work.

B) Experience of the Offeror and Principal Participants (40 Points)

- 1) The Offeror and all Principal Participants demonstrate experience relevant to the size, complexity and composition of HART and their stated roles;
- 2) The Offeror shall submit resume(s) of the Offeror’s designated Project Manager

and all key personnel identifying their specific experience with transit recruitment searches for similar positions in the public and private sector;

- 3) The Offeror has provided complete contact information for references cited; and
  - 4) The Offeror demonstrates an acceptable record of performance, including completion schedule, quality of work product, and completion within budget.
- C) Price Proposal (5 Points)
- 1) Evaluation of Price Proposals will be limited to the PLOs. Price Proposals will not be opened until all technical Proposals are scored. Pursuant to HAR §§ 3-122-52(d)(1) and (d)(2), the Proposal with the lowest cost will receive the highest available score allocated to cost. The points allocated to the higher-priced Proposals must be equal to the lowest Proposal price multiplied by the maximum points available for price, divided by the higher Proposal price.

## **10.2 BEST AND FINAL OFFERS**

If deemed in the best interest of HART, a call for Best and Final Offers (“BAFOs”) may be issued. BAFOs will be conducted in accordance with HAR § 3-122-54.

- A) BAFOs shall be submitted only once unless it is determined 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 immediately previous offer will be construed as their BAFO.
- C) After BAFOs are received, final evaluations will be conducted for an Award pursuant to Section 11.0, Award of Contract.

## **10.3 MISTAKES IN PROPOSALS**

Proposals may be modified or withdrawn as provided in Section 9.1 of this ITO. 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.

#### **10.4 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.

#### **10.5 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.

#### **11.0 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 ITO. 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 a written Notice(s) to Proceed (NTP) has been issued. 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.

#### **11.1 RESPONSIBILITY OF OFFERORS**

In accordance with HAR § 3-122-112, as amended, the successful Offeror shall produce documents, specified as follows, to HART at the time of Award of the Contract, unless otherwise specified or extended by the CPO: (1) A tax clearance certificate from the State of Hawaii Department of Taxation (“DOTAX”) and the Internal Revenue Service (“IRS”), current within six (6) months of issuance date; (2) a certificate of compliance for chapters 383, 386, 392, and 393, HRS, from the State of Hawaii Department of Labor and Industrial Relations, current within six (6) months of issuance date; and (3) a certificate of good standing from the Business Registration Division (“BREG”) of the State of Hawaii Department of Commerce and Consumer Affairs, current within six (6) months of issuance date.

- (1) Offerors may obtain each of these certifications separately at the respective governmental agencies or utilize the Hawai'i Compliance Express ("HCE"), through which Offerors can obtain a single certificate and expedite the process. More information about this approved service may be found at the following website: <http://vendors.eHawaii.gov/hce/splash/welcome.html>.
- (2) The above certificate(s) should be applied for and submitted to HART as soon as possible. If a valid certificate is not submitted on a timely basis for Award of a Contract, an offer may not receive the Award.

## **11.2 HAWAI'I COMPLIANCE EXPRESS**

Vendors must use Hawai'i Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at [HTTP://VENDOR.EHAWAII.GOV](http://VENDOR.EHAWAII.GOV).

The HCE is an electronic system that allows vendors doing business with state or county agencies to quickly and easily obtain proof that they are compliant with applicable laws. The HCE certificate, "Certificate of Vendor Compliance," is submitted in place of a tax clearance, labor certificates, and a Certificate of Good Standing required in HRS § 103D-310(c) and HAR § 3-122-112.

## **11.3 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.

## **11.4 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.

## **11.5 CONTRACT TYPE**

The Contract will be a firm fixed-price Contract with Allowances for expenses unless another arrangement is determined to be in the best interest of HART.

## **11.6 PAYMENT**

Payment will be made based on completion and acceptance of each item provided in the Scope of Services and as per the selected Offeror's proposed schedule for completion of the Work. If applicable, the selected Contractor will be required to make full payment to all subcontractors of all monies due, including retainage (if applicable), within ten (10) calendar days after receipt of payment from HART. No retention is expected to be withheld for this Contract.

## **11.7 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.

## **11.8 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, whether or not expressly set forth in the Contract provisions. 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 or the City to be in violation of FTA terms and conditions. This Contract will be subject to any financial assistance agreement between the City 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 the City 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 Attachment 2, Special Provisions, Appendix C, attached hereto and incorporated by reference.

### **11.9 INSURANCE**

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

### **11.10 SEXUAL HARASSMENT POLICY**

The Contractor must comply with the Revised Ordinances of Honolulu Chapter 1 Article 18, Sexual Harassment Policy, as set forth in the General Terms and Conditions.

### **12.0 EXECUTION OF CONTRACT**

- A) Execution of Contract. Upon Award of the Contract, the selected Offeror will cause the Contract to be executed in accordance with Section 3.2 of the General Terms and Conditions.
- B) Commencement of Work. 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.

### **12.1 PUBLIC INSPECTION**

Public inspection of the Contract file will be in accordance with HAR § 3-122-58. The Contract file shall include but not 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) Copies of the unsuccessful Offerors' Proposals; and
- H) A copy of the executed Contract resulting from the RFP.

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 of the Contract.

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).

## **12.2 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.

## **12.3 PROTESTS OF SOLICITATIONS AND AWARDS**

Protests shall be made in accordance with HRS Chapter 103D and the related HAR. 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 1  
SAMPLE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (this "Agreement"), by and between the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawai'i 96813, hereinafter referred to as "HART", and \_\_\_\_\_, whose principal place of business and mailing address is \_\_\_\_\_, hereinafter referred to as the "CONSULTANT". HART and the CONSULTANT collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, HART desires to engage the CONSULTANT for local and national recruiting for executive and senior-level staff in the United States transit industry with applicable federal transit experience on a project(s) of similar size and complexity as the Honolulu Rail Transit Project ("HRTP") for three (3) or more positions for HART (the "PROJECT");

WHEREAS, the services entered hereunder are technical and professional in nature and HART personnel are not able to provide these services;

WHEREAS, the CONSULTANT was selected pursuant to Section 103D-303 of the Hawai'i Revised Statutes ("HRS"), as amended, and related Hawai'i Administrative Rules ("HAR"), relating to competitive sealed proposals;

WHEREAS, the PROJECT anticipates federal funding and, as such, the CONSULTANT is required to comply with the applicable laws, rules and regulations of the Federal Transit Administration; and

WHEREAS, the CONSULTANT is qualified, able, and willing to render the required services on the terms, conditions, and compensation hereinafter fully set forth;

NOW, THEREFORE, HART and the CONSULTANT, in consideration of the foregoing and of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, hereby mutually agree as follows:

1. The CONSULTANT shall perform and complete in a professional manner all of the services required for the PROJECT in accordance with and as set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the CONSULTANT shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

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2. The CONSULTANT shall complete the technical and professional services and perform the Work in accordance with:

- a. Part 1 - This Agreement;
- b. Part 2 - The Special Provisions and any exhibits and attachments thereto;
- c. Part 3 - The General Terms and Conditions for Professional Service for City and County of Honolulu, dated 8/2000 (“General Terms and Conditions”);
- d. Part 4 – The Request for Proposals (“RFP”) and all corresponding RFP addenda; and
- e. Part 5 – The Proposal submitted by the CONSULTANT under RFP-HRT-618211;

all of which are collectively referred to as the “Contract Documents”, are attached hereto and incorporated herein, and are listed in order of controlling preference should there be any conflict in the terms of the Contract Documents, and any modifications, changes or amendments in connection therewith being specifically referred to and incorporated herein by reference and made a part hereof as though fully set forth herein; provided, however, those portions of Part 5, whereby the CONSULTANT has provided that the CONSULTANT will exceed the requirements of the other Contract Documents, will become the new minimum Contract requirements. 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 Contract Documents, unless the context clearly indicates otherwise.

3. Work shall not begin until HART has issued a Notice to Proceed (“NTP”). Any Work undertaken by the CONSULTANT prior to issuance of a written NTP will be the sole responsibility of and will be undertaken at the sole risk of the CONSULTANT, without any obligation on the part of HART or the Federal Government.

4. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Section 8 of the General Terms and Conditions, HART agrees to pay the CONSULTANT, for the satisfactory performance and completion of the Work, the payments in accordance with the schedule of payments, all as set forth in Appendix B of the Special Provisions. This is also a multi-term contract, and is subject to appropriation and availability of funds in each fiscal period as set forth in HAR §3-122-149. For the first fiscal year, the amount of the CONSULTANT’S lump sum payments shall not exceed X AND 00/100 DOLLARS (\$X.00). The aggregate amount of these lump sum payments shall not exceed XX AND 00/100 DOLLARS (\$XX.00). The lump sum payments for services and the Work performed under this Agreement are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including State general excise and use tax (“GET”) and county one-half percent (0.5%) GET surcharge.

The allowance for reimbursable expenses of X AND 00/100 DOLLARS (\$X.00) is not to be exceeded without a contract amendment and any funds remaining at the end of this Agreement shall revert back to HART. The allowance for reimbursable expenses is provided for travel and advertising expenses, must be directed and approved by HART, and is subject to the

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terms contained in the Special Provisions. Reimbursable expenses shall be invoiced to HART at cost, plus the State general excise tax or use tax, where applicable. Reimbursement will be made upon submission of a copy of the vendor invoice.

An allowance for extra work is not applicable to this Agreement.

In accordance with the paragraphs above, the total aggregate amount of \_\_\_\_\_ AND 00/100 DOLLARS (\$0.00), hereinafter called the "Total Aggregate Amount," is established as the maximum payable under this Agreement and is subject to the Special Provisions and the General Terms and Conditions, including the provisions thereof relating to reducing or increasing the compensation of the CONSULTANT.

6. By signing below, the CONSULTANT hereby represents that, to the best of its knowledge and belief, cost or pricing data, as defined in HAR § 3-122-122 and submitted pursuant to HAR § 3-122-125, either actually or by specific identification in writing to the Officer-in-Charge in support of this Agreement, is accurate, complete, and current as of the date of this Agreement. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and HART which are a part of the CONSULTANT's cost proposal.

7. Unless notified otherwise by the Officer-in-Charge in writing, when notice is to be given to HART, it shall be mailed or delivered to:

Honolulu Authority for Rapid Transportation  
1099 Alakea Street, Suite 1700  
Honolulu, Hawai'i 96813  
Attention: Executive Director and CEO

8. Unless mutually agreed to otherwise in writing, when notice is to be given to the CONSULTANT, it shall be mailed or delivered to:

Name of CONSULTANT's Point of Contact  
CONSULTANT  
Street Address  
City, State, Zip Code

9. This Agreement, its integrated attachments, and the Contract Documents constitute the entire agreement of the Parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed to be consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement or the Contract Documents, no modification or amendment to this Agreement or the Contract Documents shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

HART SENIOR STAFF SEARCH SERVICES

10. IN WITNESS WHEREOF, HART and the CONSULTANT have executed this Agreement by their duly authorized officers or agents on the day and year first above written.

Honolulu Authority for Rapid Transportation

[CONSULTANT]

\_\_\_\_\_  
By: Daniel A. Grabauskas  
Its: Executive Director and CEO

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY

\_\_\_\_\_  
Deputy Corporation Counsel

Attach Notary Page

**HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

**REQUEST FOR PROPOSALS**

**NO. RFP-HRT-618211**

**ATTACHMENT 2  
DRAFT SPECIAL PROVISIONS**

**HART SENIOR STAFF SEARCH SERVICES**

**DRAFT SPECIAL PROVISIONS  
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HART SENIOR STAFF SEARCH SERVICES

These Special Provisions to the Agreement between the Honolulu Authority for Rapid Transportation (“HART”) and \_\_\_\_\_, and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu dated 08/2000 (“General Terms and Conditions”) shall apply to, and are incorporated into and be a part of that certain Agreement, by and between HART and \_\_\_\_\_ (the “Agreement”). All defined terms in the Agreement shall have the same meaning as in these Special Provisions.

## **I. PROJECT**

The CONSULTANT will provide specialized expertise in federal transit personnel placements and provide local and national searches, from start to finish, for three or more key, open, senior-level staff positions in support of the Honolulu Rail Transit Project (“HRTTP”), herein referred to as the “PROJECT.”

## **II. SERVICES**

The CONSULTANT’s responsibilities under this Agreement include providing services set forth in the Scope of Services attached hereto and incorporated herein as Appendix A.

## **III. TIME**

The term of this contract is one year from issuance of the first Notice to Proceed (NTP).

## **IV. COMPENSATION AND INVOICING**

A. Compensation to the CONSULTANT under this Agreement shall not exceed the amount stated in the Agreement. Payment shall be made in accordance with Appendix B, attached hereto and incorporated herein, inclusive of all taxes.

B. Final acceptance of the Work contracted for herein and payment therefore shall not excuse the CONSULTANT from any liability for defects in performance of the Work which may subsequently appear.

## **V. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (08/2000)**

The General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (08/2000) shall apply to, and are incorporated by reference into this Agreement, except as modified herein.

### **A. DEFINITIONS**

The following definitions are added to the General Terms and Conditions:

“C.F.R.” means the Code of Federal Regulations.

HART SENIOR STAFF SEARCH SERVICES

**“CHIEF PROCUREMENT OFFICER”** shall mean and refer to the HART Executive Director and CEO or designee.

**“FEDERAL GOVERNMENT”** means the United States of America and any executive department or agency thereof.

**“FTA”** means the Federal Transit Administration, United States Department of Transportation. The Federal Transit Administration is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

**“FULL FUNDING GRANT AGREEMENT (“FFGA”)** means the designated means for the FTA to provide New Starts funds to projects with a Federal share of \$25 million or more. An FFGA establishes the terms and conditions for Federal financial participation in a New Starts project; defines the project; sets the maximum amount of Federal New Starts funding for a project; covers the period of time for completion of the project; and facilitates efficient management of the project in accordance with applicable Federal statutes, regulations, and policy.

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

**“PMSC”** means InfraConsult LLC, the HART Project Management Services Contractor or any successor entity.

**“PROJECT”** means Work performed as set forth in the Agreement, including furnishing all services, labor, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the Work contemplated under the Agreement.

**“STANDARD” or “REQUIREMENT”** means any provision of any Federal, State, or City law, code, rule, regulation, guideline, directive, order, circular, agreement, practice, policy, notice, plan, statement, or other standard or requirement, and any amendment or revision thereto made in the future, including any mandatory provision, term, condition, clause, representation, certification, assurance or other statement required thereunder.

**“SUBCONTRACTOR”** means any subcontractor who enters into an agreement with the CONSULTANT or the CONSULTANT’s subcontractors at any tier to perform a portion of the Work for the CONSULTANT.

#### HART SENIOR STAFF SEARCH SERVICES

“U.S.C.” means the United States Code.

“U.S. DOT” means the United States Department of Transportation, including its operating administrations.

The following definitions in the General Terms and Conditions are modified as follows:

“CITY AND COUNTY OF HONOLULU”, “CITY”, shall be replaced by “HART” whenever those terms appear unless the context specifically indicates otherwise.

“CONSULTANT” OR “CONTRACTOR” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity engaged by HART to perform the Work under this Agreement. For purposes of this Agreement, “Contractor” shall mean “CONSULTANT”.

“DIRECTOR” or “DIRECTOR OF BUDGET AND FISCAL SERVICES” shall be replaced by HART’s Executive Director and CEO or the Executive Director and CEO’s duly authorized representative or assignee, unless the context specifically indicates otherwise.

“OFFICER-IN-CHARGE” means the HART Executive Director and CEO or designee.

#### **B. DESIGNATION OF PROJECT MANAGERS**

The Officer-in-Charge will designate a key representative to coordinate the Work under this Agreement, to coordinate work under other HART contracts with the Work under this Agreement, and to act as the liaison between HART and the CONSULTANT in order to assist in expediting the resolution of questions or controversies, the making of HART decisions, and the review and approval by HART of documents, progress reports, requests, and other matters as required.

The CONSULTANT shall, subject to written approval from HART, designate a key representative, who shall maintain close and frequent communications with HART’s key representative and be authorized to act on behalf of the CONSULTANT. Any change in the CONSULTANT’s key representative will be made by request, in writing, to be approved by HART. The CONSULTANT’s key representative shall be experienced and qualified in the type of work involved and shall be directly responsible for the prosecution of the Work under this Agreement.

The Parties to this Agreement will make all reasonable efforts to retain the same key representative in order to maintain continuity of effort and control.

#### **C. INDEPENDENT CONSULTANT**

Section 4.1.1 is hereby deleted in its entirety and replaced with the

HART SENIOR STAFF SEARCH SERVICES

following:

“4.1.1. The CONSULTANT shall perform the work as an independent consultant and shall indemnify and hold harmless HART and the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the CONSULTANT or the CONSULTANT’s subcontractors, agents and employees and this requirement shall survive the termination of contract.

The CONSULTANT is an independent consultant and shall not be deemed to be an agent, servant, representative or employee of HART or the City. The contract shall not be construed to create a partnership or joint venture between HART or the City and the CONSULTANT.”

#### **D. INSURANCE**

Section 4.3.2, paragraph 5 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“5. Be provided by insurers authorized to provide insurance in the State of Hawai‘i, and with a current Best’s rating of not less than A-, or otherwise as approved by HART;”

Section 4.3.3, paragraph 3 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“3. Certificates shall show the Certificate Holder as the Honolulu Authority for Rapid Transportation, and be delivered to the Executive Director and CEO, 1099 Alakea Street, Suite 1700, Honolulu, Hawai‘i 96813. Certificates shall name the Honolulu Authority for Rapid Transportation and the City and County of Honolulu as additional insureds.”

#### **E. MODIFICATIONS**

Section 5.1.1 (c) of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“(c) *Within thirty (30) days* after receipt of a written change order, unless the period is extended by the Officer-in-Charge in writing, the CONSULTANT shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.”

Section 5.2 of the General Terms and Conditions is hereby deleted

HART SENIOR STAFF SEARCH SERVICES

in its entirety and replaced with the following:

**“5.2 PRICE ADJUSTMENT.**

- (a) Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:
1. By agreement on a fixed price adjustment before commencement of the pertinent performance;
  2. By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
  3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
  4. In any other manner as the parties may mutually agree before commencement of the pertinent performance; or
  5. In the absence of agreement between the parties, the provisions of section 103D-501(b)(5), HRS, shall apply.
- (b) Submission of costs or pricing data. The CONSULTANT shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) above shall be issued within ten days after agreement on the method of adjustment.

**F. DELAY**

Section 6.2 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

**“6.2 DELAY.** If any excusable delay occurs, it shall be dealt  
HART SENIOR STAFF SEARCH SERVICES

with in accordance with subsection 9.2.3, Excuse for nonperformance or delayed performance. No extension of time however, shall be granted unless the written application therefore stating in detail the cause or causes of delay is filed by the CONSULTANT with the Officer-in-Charge *within thirty (30) days* after the commencement of the delay. No such extension shall be deemed a waiver of the right of the Officer-in-Charge to require the completion of services under the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions. The number of days of each extension of time shall be determined by the Chief Procurement Officer upon the recommendation of the Project Manager.”

#### **G. LIQUIDATED DAMAGES**

Section 6.6 of the General Terms and Conditions, entitled "LIQUIDATED DAMAGES", is hereby deleted in its entirety.

#### **H. PAYMENT**

Section 8.2 of the General Terms and Conditions, entitled “PROGRESS PAYMENT”, is hereby deleted in its entirety and replaced with the following:

##### **“8.2 PAYMENT**

- (a) Payments to the CONSULTANT for Work satisfactorily performed will be made in accordance with Appendix B:
  - 1. Scope of Payment. The CONSULTANT shall receive and accept compensation provided for in the Agreement as full payment for performing all Work under the Agreement in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.
  - 2. Payment Concept. Payment will be calculated using unit prices set forth in Appendix B.
  - 3. Payment does not imply acceptance of the Work. The granting of any payment by HART, or the receipt thereof by CONSULTANT, shall in no way imply acceptance of the Work. Such Work, equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by HART and in such case must be replaced by CONSULTANT without delay.

HART SENIOR STAFF SEARCH SERVICES

- (b) HART's obligation to make timely payment and the statutory interest that accrues to any late unpaid balance shall be according to HRS § 103-10."

**K. RETAINAGE**

Section 8.5 of the General Terms and Conditions, entitled "RETAINAGE", is hereby deleted in its entirety.

**L. PROMPT PAYMENT BY CONTACTORS TO SUBCONTRACTORS**

Section 8.6 of the General Terms and Conditions, entitled "PROMPT PAYMENT TO SUBCONTRACTORS," is hereby deleted in its entirety and replaced with the following:

**"8.6 PROMPT PAYMENT BY CONSULTANTS TO SUBCONTRACTORS**

- (a) Generally. Any money paid to a CONSULTANT shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.
- (b) Final Payment. Upon final payment to the CONSULTANT, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. The final payment request shall be properly documented as required under HAR § 3-125-23 (4).
- (c) Penalties. The CONSULTANT may be subject to a penalty of one and one-half (1 ½) percent per month on the outstanding amounts due that were not timely paid to the subcontractor and if the subcontractor satisfied the conditions set forth in HAR §§ 3-125-23 (3) and (4)."

**VI. FEDERAL CLAUSES**

This Agreement includes, in part, certain standard terms and conditions required by the FTA, whether or not expressly set forth in the Agreement provisions. All provisions

HART SENIOR STAFF SEARCH SERVICES

required by the FTA, as set forth in FTA Circular 4220.1F, as amended, 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 Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART or the City to be in violation of FTA terms and conditions. This Agreement will be subject to any financial assistance agreement between the City and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Agreement and will be incorporated by reference as if fully set forth therein.

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

The Federal Requirements are contained in Appendix C, Federal Requirements, attached hereto and incorporated by reference.

## **VII. NEWS MEDIA AND CONFIDENTIALITY**

When dealing with news media, the CONSULTANT is expected to be circumspect and to treat all matters falling within the scope of this Agreement with utmost confidentiality. The CONSULTANT shall consult with and/or obtain the consent of the Officer-in-Charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

## **VIII. OWNERSHIP OF PRODUCT**

All documents or other information developed or received by the CONSULTANT while in performance of the services within the scope of the Agreement shall be the property of HART. The CONSULTANT shall provide HART with copies of these items upon demand or upon termination of this Agreement. The CONSULTANT is not authorized to use non-public information or materials generated in this case for general use or for other cases.

## **IX. ASSIGNMENT**

The CONSULTANT agrees that the CONSULTANT shall not transfer or assign this Agreement in whole or in part, except by an instrument, in writing, approved by HART.

## **XI. HEADINGS; GENDER; NUMBER**

The titles of headings of Sections, Subsections and Paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

# **APPENDIX A**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

## **SCOPE OF SERVICES**

# Honolulu Rail Transit Project

## APPENDIX A

### SENIOR STAFF SEARCH SERVICES

#### SCOPE OF SERVICES

The CONSULTANT shall provide the services as set forth below in accordance with the terms and conditions of this Agreement and all applicable State and Federal laws and regulations. The CONSULTANT shall designate an Account Representative to work with HART's Human Resources Department. Attached to this scope of services are draft position descriptions for potential staff placements. Broader descriptions shall be developed as part of this Contract as set forth below. Potential staff placements include:

1. HART Deputy Chief of Planning and Environmental  
This position reports to the Director of Planning, Utilities, Permits and Right-of-Way. This position manages and coordinates the comprehensive transit and environmental planning functions related to the Honolulu Rail Transit Project. The Deputy will oversee the preparation of documents to comply with Federal environmental Regulatory Acts, Executive Orders, Hawaii Revised Statutes, local land use regulations and agency requirements. The position is also responsible for consulting with the Federal Transit Administration and with the Project Management Oversight Consultant on matters related to the Project transit planning and environmental issues.
  
2. HART Grants Manager  
This position reports to the Chief Financial Officer, and will be responsible for coordinating the activities of HART's capital grant program that supports Authority-wide capital projects. The position will: act as a liaison with the Federal Transit Administration by preparing and submitting grant applications, amendments, financing options, management reviews, and quarterly or annual reports as required by federal and state regulations; be responsible for the preparation, coordination and submission of federal grant applications; ensure all submittals are in accordance with grant requirements; research available grant programs; coordinate federal reviews of grant certifications with the Federal Transit Administration; and coordinate FTA/HART quarterly progress review programs and the triennial program review relative to federally funded grants.

The CONSULTANT shall perform the following services:

#### A. SCOPING /POSITION UNDERSTANDING/WORK PLAN DEVELOPMENT

1. Meet with HART's Human Resources Department, the Executive Director and CEO, the Deputy Executive Director, and other HART managers, as necessary, to obtain applicable information on the Authority, the Honolulu Rail Transit Project (H RTP), the department and positions to be filled and to establish the appropriate recruitment sources, job advertisements, and position descriptions.

## **Honolulu Rail Transit Project**

2. Provide assistance to determine the level of education, skills, certifications, specialties, etc., that are typically required for the position to be filled.
3. Develop a Work Plan for the search to include: (a) sourcing capabilities, recommended national/international media advertisements, outreach contacts and other methodology to encourage qualified applicants for the position; (b) interview questions, resume submittal requirements and reference check procedures; (c) an evaluation and selection matrix; (d) expected compensation and the negotiation process to achieve a successful conclusion; and (e) a schedule for completion of the services for each position to be filled.
4. Research comparable data to ensure market competitiveness.

### **B. SOURCING AND IDENTIFYING QUALIFIED APPLICANTS**

1. Conduct an expanded search, locally and nationally.
2. Advertise positions constantly during the recruitment process in the appropriate venues, such as Transit Talent and APTA's Passenger Transport magazine among others.

### **C. BACKGROUND CHECKS AND WORKING WITH PROJECT MANAGERS/HR**

1. Conduct candidate evaluations.
2. Perform senior level background searches, including criminal, educational, financial (when applicable), and other appropriate background checks.

### **D. ASSIST HART IN CONDUCTING INTERVIEWS AND NEGOTIATING A CONTRACT**

1. Conduct candidate interviews.
2. Confirm job offer.

### **E. PERFORMING MISCELLANEOUS SERVICES RELATED TO THE SEARCH PROCESS**

1. Perform miscellaneous services related to the search process as required to reach a successful placement.

# **APPENDIX B**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

**CONTRACT COST (EXHIBIT 11)**

# **APPENDIX C**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

**FEDERAL REQUIREMENTS**

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## **FEDERAL REQUIREMENTS**

### **1.0 GENERAL**

The CONTRACTOR understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if HART issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONTRACTOR agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

#### **1.1 No Government Obligation to Third Parties**

(a) HART and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to HART, the CONTRACTOR, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **1.2 Program Fraud and False or Fraudulent Statements and Related Acts**

(a) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(c) The CONTRACTOR shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **1.3 Access to Records and Reports**

(a) The CONTRACTOR shall provide HART, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and

records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The CONTRACTOR shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONTRACTOR shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONTRACTOR shall maintain the same until HART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### **1.4 Federal Changes**

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

#### **1.5 Civil Rights Requirements**

The CONTRACTOR shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONTRACTOR shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

## **1.6 Disadvantaged Business Enterprises (DBE)**

(a) DBE Assurances. The CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART deems appropriate.

The above paragraph shall be included in each subcontract the CONTRACTOR signs with a subcontractor.

(b) Prompt Payment. The CONTRACTOR shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by HART. Full and prompt payment by the CONTRACTOR to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. HART has established an overall DBE goal of 13.00% for the duration of this agreement and a separate contract goal has not been established for this Contract. DBE firms and small businesses shall have an equal opportunity to participate in the Contract. The CONTRACTOR shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

(3) A DBE firm must be certified by the Hawai`i State Department of Transportation before its participation is reportable under paragraph (d) below.

(d) Reports to HART. The CONTRACTOR shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONTRACTOR shall submit the “DBE PARTICIPATION REPORT” reflecting payments made by the CONTRACTOR to DBE subcontractors. Payments to the CONTRACTOR will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) to this Exhibit.

(e) Records. On request, the CONTRACTOR shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The CONTRACTOR shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONTRACTOR shall also promptly notify HART of a DBE subcontractor’s inability or unwillingness to perform and provide reasonable documentation.

### **1.7 Government-Wide Debarment and Suspension (Non-procurement)**

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. § 180.220(b) and 2 C.F.R. § 1200.220. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

(b) The CONTRACTOR is required to comply with 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. 1200 Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. 1200, Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Agreement, the CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by HART. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to HART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. 1200, Subpart C, throughout the Agreement period. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

## **1.8 Lobbying**

The "CERTIFICATION REGARDING LOBBYING," as executed by the CONTRACTOR in Exhibit 5 is incorporated herein by reference. The CONTRACTOR and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to HART.

## **1.9 Clean Air Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

## **1.10 Clean Water Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

## **1.11 Fly America Requirements**

(a) The CONTRACTOR shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that HART and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The CONTRACTOR shall include the requirements of this section in all subcontracts that may involve international air transportation.

## **1.12 Energy Conservation Requirements**

(a) The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The CONTRACTOR shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **1.13 Recycled Products**

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

### **1.14 ADA Access**

The CONTRACTOR shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the CONTRACTOR agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

### **1.15 Text Messaging While Driving**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the CONTRACTOR is encouraged to comply with the terms of the following:

(a) Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The CONTRACTOR is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(i) CONTRACTOR-owned or CONTRACTOR-rented vehicles or Government-owned, leased or rented vehicles;

(ii) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(iii) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the CONTRACTOR's size, such as:

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

### **1.16 Sensitive Security Information**

The CONTRACTOR, as a third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. § 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part 15, and with 49 U.S.C. § 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information”, 49 C.F.R. Part 1520.

### **1.17 Incorporation of FTA Terms**

(a) The Special Provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. 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 the FTA terms and conditions.

(b) The CONTRACTOR shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT				
This report shall be submitted with each invoice as a condition of payment under this Contract.				
<b>Project Name:</b>				
<b>Contract No:</b>		<b>Consultant Name:</b>		
<b>Federal ID No.:</b> (OWP WE #, FTA Grant #, FHWA Project #)		<b>Contract Amount (including amendments):</b>		\$
<b>Period Covered By This Report:</b>		<b>Current</b> (Invoice # _____)		<b>Total to Date</b>
		To		
<b>Total Invoice Amount</b>		(A) \$		(B) \$
<b>Payment Requested:</b>	<b>DBE?</b> (Yes/No) <b>DBE Code</b> (if "Yes")	<b>Prior Amount*</b>	<b>Current Amount*</b>	<b>Total Amount to Date*</b>
<b>Prime Consultant</b>		\$	\$	\$
<b>Subcontractors</b> (attach additional sheets as needed):				
Name:		\$	\$	\$
Type of Work:		\$	\$	\$
Name:		\$	\$	\$
Type of Work:		\$	\$	\$
Name:		\$	\$	\$
Type of Work:		\$	\$	\$
<b>TOTALS</b>		\$	\$	(C) \$
<b>DBE Participation to Date (C/B)</b>		%		

*\*Insert dollar amounts for DBEs only*

HART SENIOR STAFF SEARCH SERVICES

## ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

### Acknowledgment of Prompt Payments by Consultants to Subcontractors:

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Consultants to subcontractors, terms and conditions.

1) Any money paid to Consultant for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

2) Upon final payment to Consultant, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

---

Printed Name and Title

---

Signature

---

Date

**ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION**

This report must be submitted by the Consultant with the final invoice or request for payment under this contract.

Project Title: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Project No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Period Covered by this Report: \_\_\_\_\_

Contract Amount (including amendments): \$ \_\_\_\_\_

Final Payment Amount: \$ \_\_\_\_\_ Invoice No.: \_\_\_\_\_

Total Payment to DBE: \$ \_\_\_\_\_

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount
Name Address Telephone No.		

Add additional sheets as necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

**ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION**

**Acknowledgment of Prompt Payments by Contractors to Subcontractors:**

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

### Instructions for completing the final report of DBE participation:

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period Covered by this Report:	Same period as invoice period
Consultant Name:	Self-Explanatory
Contractor No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
Total Payment to DBE	Total \$ amount paid to DBE
Acknowledgement of Prompt Payment	Self-Explanatory

**HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

**HONOLULU RAIL TRANSIT PROJECT**

**HART SENIOR STAFF SEARCH SERVICES  
PROFESSIONAL SERVICES CONTRACT**

**REQUEST FOR PROPOSALS**

**NO. RFP-HRT-618211**

**ATTACHMENT 3  
GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR  
PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU**

**GENERAL TERMS AND CONDITIONS  
FOR CONTRACTS FOR PROFESSIONAL SERVICES  
FOR THE  
CITY AND COUNTY OF HONOLULU**

**SECTION 1 - DEFINITIONS; GENERAL PROVISIONS**

**1.1 DEFINITIONS.** Terms as used in these General Terms and Conditions and the contract, unless the context requires otherwise, shall have the following meaning:

"Amendment" means modification.

"Change order" means a written order signed by the officer-in-charge and approved by the Director of Budget and Fiscal Services, directing the contractor to make changes which the changes clause of the contract authorizes the officer-in-charge to order without the consent of the contractor.

"City" means the City and County of Honolulu, State of Hawaii.

"Contract" means the written agreement between the City and the successful contractor.

"Contractor" or "consultant" means the person having a contract with the City.

"Day" means calendar day unless otherwise specified.

"Design and plans" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person appointed by the Director of Budget and Fiscal Services or the officer-in-charge to act on his/her behalf with delegated authority.

"Director of Budget and Fiscal Services" means the chief procurement officer of the executive branch of the City and County of Honolulu, or the director's designee.

"General terms and conditions" means these General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii.

"Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the contract accomplished by mutual action of the parties to the contract.

"Notice to proceed" means the written document indicating the official commencement date of services.

"Officer-in-charge" means the head of the department or a designee of the officer-in-charge for which services are being rendered.

"Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to section 415A-2, HRS, or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook.

"Qualified list method" means the method of source selection for professional services under HRS 103D-304.

## **1.2 GENERAL PROVISIONS**

**1.2.1** Nondisclosure of designated trade secrets or proprietary information. A person shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. *Such data shall accompany the proposal, be clearly labeled as confidential, and shall be readily separable from other data in order to facilitate eventual public inspection of the nonconfidential portion of the data.* [3-122-46, HAR]

**1.2.2** Independent price determination. By submitting an offer or price, the person certifies that the price submitted for the contract was independently arrived at without collusion. [3-122-192, HAR]

**1.2.3** No reimbursement. The City shall not provide any reimbursement for the cost of developing or presenting proposals in response to the request for proposal. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

**1.2.4** Cancellation of solicitation. Solicitations may be canceled in whole or in part when in the best interest of the agency. [3-122-95, HAR]

**1.2.5** Determination of contractual terms and conditions. The Director of Budget and Fiscal Services is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided such provisions, terms, and conditions are not contrary to statutory or Chapter 91, HRS, administrative rule requirements governing the procurement. [3-122-7, HAR]

**1.2.6** Any notice required or permitted by the provisions hereunder or under the contract to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party in the contract. No other method of notice shall be effective. If notice is given by mail, it shall be effective one business day following the date it is mailed. If notice is hand delivered, it shall be effective upon receipt. Any change of address of either of the parties shall be effective upon receipt of written notice of such change by the other party.

**1.2.7** If any term, condition, provision, covenant or agreement of the terms hereunder or under the contract or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of the terms hereunder or under the contract as shall have been rendered or held to be invalid, illegal or unenforceable shall not affect the validity of the terms hereunder or under the contract as a whole or the remainder of the terms hereunder or under the contract and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

**1.2.8** The provisions of this document and the contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time.

**1.2.9** The titles of headings of sections, subsections and paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

**1.2.10** All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**1.2.11** Managed Competition Review. All contracts executed on or after July 20, 1998 which will extend beyond June 30, 2001 (including contracts which have initial terms ending before June 30, 2001, with options to extend beyond June 30, 2001) will be subject to the Managed Competition Review, as defined below.

During its term, the contract shall be subject to a single review by the City pursuant to the managed process for public-private competition to be developed under Part III, Section 6 of Act 230, Session Laws of Hawaii 1998. It is the understanding of the parties that, as a result of the managed process review, the Agreement may be terminated by the City, renegotiated by mutual agreement of the parties, or continued in its current form. Any termination pursuant to this Section shall be deemed a termination for convenience.

**1.2.12** Cooperation. The contractor shall cooperate and coordinate with other contractors who may be employed by the City on the same or related projects of the City, and to the extent possible, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the contractor and the other contractors of the City shall be resolved by the officer-in-charge, whose decision shall be final and binding.

**1.2.13** Confidentiality. When dealing with the news media, the contractor is expected to be circumspect and to treat all matters falling within the scope of the contract with the utmost confidentiality. The contractor shall consult with and/or obtain the consent of the officer-in-charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

## **SECTION 2 - HAWAII ADMINISTRATIVE RULES (HAR)**

The Public Procurement Code (HRS Chapter 103D) and the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, State of Hawaii (HAR), govern the procurement of goods and services and are by reference incorporated herein and made a part of the request for proposals and contract documents.

Wherever "chief procurement officer" appears in the HAR, for the Board of Water Supply (BWS), it shall mean the Manager and Chief Engineer of the BWS, for all others it shall mean the Director of Budget and Fiscal Services.

Wherever "head of the purchasing agency" and "procurement officer" appear in the HAR, both shall mean the officer-in-charge, or their authorized designees. For all agencies except the Board of Water Supply, the officer-in-charge shall have authority to act as specified herein.

Sections of the HAR are provided in whole or in part in these general terms and conditions for convenience only and the applicable section numbers are indicated in brackets. These provisions are not intended to relieve the contractor from the responsibility of familiarizing themselves with the HAR relating to this contract. Should any provision of these general terms and conditions be found to be inconsistent with the HAR, the provision in the HAR shall take precedent.

### **SECTION 3 - AWARD AND EXECUTION OF CONTRACT**

**3.1 AWARD OF CONTRACT.** The contractor, upon being selected to render the services for the project, will be notified of its commission by the officer-in-charge. Said notice shall not be construed to be authorization to proceed with the performance of services under the contract.

#### **3.2 EXECUTION OF CONTRACT**

**3.2.1** 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.

**3.2.2** If performance and payment bonds are required in the solicitation or contract, such documents shall be executed in the same manner above.

**3.2.3** The signed contract, bonds, if any bonds are required, shall be returned together with evidence of insurance coverages as may be required, to the officer-in-charge for further processing, within ten days after notification of award.

**3.3 CONTRACT NOT BINDING UNLESS PROPERLY EXECUTED AND APPROPRIATION AVAILABLE.** The contract shall not be binding or of any force and effect without an endorsement by the Director of Budget and Fiscal Services 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.

**3.3.1** Exceptions to the certification of funds required above are:

- (1) If a contract is a multi-term contract pursuant to section 3-122-149, HAR, the Director of Budget and Fiscal Services shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore from sources which are identified in writing;
- (2) If the contract is one under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded; and

- (3) If there is no direct expenditure of public funds from the City to the contractor.
- (4) Certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of Budget and Fiscal Services states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

3.3.2 Contracts involving federal funds. Unless otherwise specified in the solicitation, for any contract supplemented by federal funds or receiving one hundred per cent federal funds, payment shall be made upon receipt of federal funds. The obligation of the City shall extend only to that portion of funds certified to and payable out of City funds. [3-122-102; 3-122-103, HAR]

**3.4 COMMENCEMENT OF WORK.** Work shall not commence until a contract has been executed and availability of funds certified by the Director of Budget and Fiscal Services, and the officer-in-charge has issued a written notice to proceed or the executed contract specifies the official commencement for services to begin.

## **SECTION 4 - LEGAL RELATIONS AND RESPONSIBILITY**

### **4.1 INDEPENDENT CONTRACTOR**

**4.1.1** The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the contractor or the contractor's subcontractors, agents and employees and this requirement shall survive the termination of contract..

The contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the contractor.

**4.1.2** Laws, regulations. The contractor shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, and all changes thereto, which in any manner affect the contract and the performance thereof. The contractor shall comply with all such laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, including the giving of all notices necessary and incident to the proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, rights-of-way, the contractor shall forthwith report the same in writing to the officer-in-charge.

### **4.2 COPYRIGHT OR PATENT**

**4.2.1** If the contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the contractor from the patentee or owner. The contractor shall indemnify and hold harmless the City and its departments, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify the City and its departments, and all of their officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.

**4.2.2** The City shall have an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder which may be copyrighted by the contractor prior to the completion of the contract.

### **4.3 INSURANCE**

**4.3.1** Unless otherwise specified in contract documents, the contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to the City, during the life of this contract and any extensions thereof, all insurance to cover the operations under this contract, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below. The contractor shall either include all tiers of subcontractors, if any, under the policies required under paragraphs 2 through 4, to the extent permitted by law, or shall require all subcontractors to maintain coverages described in paragraphs 1 through 4.

1. Workers Compensation and Employers Liability Insurance. Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease.
2. Commercial General and Umbrella Liability Insurance . Contractor shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of the City.
3. Business Automobile and Umbrella Liability Insurance . Contractor shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by contractor in the performance of this contract. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

4. Professional Liability Insurance . The contractor shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the contractor, the contractor's employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for a period of 1 year following substantial completion of construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed.

**4.3.2** The insurance specified above shall:

1. Provide that such insurance is primary coverage with respect to all insureds for claims arising from contractor's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by the City shall be excess and non-contributing;
2. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 4.3.1.2 and 4.3.1.3 above;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to the City, except for non-payment of premium;
4. Except for Professional Liability insurance required in 4.3.1.4 above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by the City.
5. Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City;

**4.3.3** Certificate of insurance:

1. The contractor will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this contract as required herein to the City.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holder as the City and County of Honolulu, and be delivered to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813.

## **SECTION 5 - MODIFICATIONS**

**5.1 MODIFICATIONS OF CONTRACTS.** The City may at any time make such modifications in the contract, and the services, designs and plans, or studies prepared by the contractor as the officer-in-charge deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the Director of Budget and Fiscal Services; provided that modifications by such a written order shall be limited to modifications in the scope of

services and in the designs, plans and studies; and provided further that modifications involving no reduction or increase in compensation of the contractor may be made by written order of the officer-in-charge.

**5.1.1** Change order. (a) The officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, unilaterally, order of the contractor:

- (1) Changes in the work within the scope of the contract; and
- (2) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(b) If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment, or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the officer-in-charge promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these provisions.

(c) *Within ten days* after receipt of a written change order, unless the period is extended by the officer-in-charge in writing, the contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

(d) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under the contract.

(e) Claims not barred. In the absence of a change order, nothing in this subsection shall be deemed to restrict the contractor's right to pursue a claim under the contract or for breach of contract. [3-125-2, HAR]

**5.1.2** Modifications. (a) By written order, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, subject to mutual agreement of the parties to the contract and all appropriate adjustments, make modifications within the general scope of the contract to include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment or packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i.e., hours of the day, days of the week, etc.);

- (6) Place of performance of the services; or
- (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(b) If any modification increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment or as negotiated.

(c) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under the contract.

(d) Claims not barred. In the absence of a contract modification, nothing in this subsection shall restrict the contractor's right to pursue a claim arising under the contract or for breach of contract. [3-125-3, HAR]

**5.1.3** Variations in definite quantities. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of ten percent provided the unit prices will remain the same except for any price adjustments otherwise applicable and the officer-in-charge makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract. [3-125-8, HAR]

**5.1.4** Order to stop work. (a) The officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by the contract. ***This order shall be for a specified period not exceeding sixty days*** after the order is delivered to the contractor, unless the parties agree to any further period. Any order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, shall either:

- (1) Cancel the stop work order, or
- (2) Terminate the work covered by the order as provided in subsection 9.2, Termination for default, or subsection 9.3, Termination for convenience.

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

- (1) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of the contract; and

- (2) The contractor asserts a claim for such an adjustment *within thirty days* after the end of the period of work stoppage; provided that, if the officer-in-charge decides that the facts justify such action, any claim asserted may be received and acted upon at any time prior to final payment under the contract.

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

(d) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-6, HAR]

**5.2 PRICE ADJUSTMENT.** Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) In such other manner as the parties may mutually agree; or
- (5) In the absence of agreement between the parties, by a unilateral determination by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the officer-in-charge in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- (6) The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, subchapter 15, HAR. [3-125-12, HAR]

### **5.3 NOVATION OR CHANGE OF NAME**

**5.3.1** No assignment. No contract is transferable, or otherwise assignable, without the written consent of the Director of Budget and Fiscal Services.

**5.3.2** Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and

- (3) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

**5.3.3** Change of name. When a contractor requests to change the name in which it holds a contract with the City, the Director of Budget and Fiscal Services shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed. [3-125-14, HAR]

**5.4 CLAIMS BASED ON THE OFFICER-IN-CHARGE'S ACTIONS OR OMISSIONS.**

(a) If any action or omission on the part of an officer-in-charge or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The contractor shall have given written notice to the officer-in-charge;
  - (A) *Prior to the commencement* of the work involved, if at that time the contractor knows of the occurrence of the action or omission;
  - (B) *Within thirty days after* the contractor knows of the occurrence of the action or omission, if the contractor did not have knowledge prior to the commencement of the work; or
  - (C) Within further time as may be allowed by the officer-in-charge in writing.
- (2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The officer-in-charge or designee of such officer, upon receipt of the notice may rescind the action, remedy the omission, or take other steps as may be deemed advisable in the discretion of the officer-in-charge or designee of such officer;
- (3) The notice required by paragraph (1) describes as clearly as practicable, at the time, the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and
- (4) The contractor maintains and, upon request, makes available to the officer-in-charge within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with the changes.

(b) Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any City officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(c) Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-15, HAR]

**SECTION 6 - PERFORMANCE OF CONTRACT**

**6.1 TIME.** Time is of the essence of the contract. Performance of the services under the contract shall be commenced on the date designated in the notice to proceed or in the contract and the services as required in the contract shall be completed within the number of days or on the date specified.

**6.2 DELAY.** If any excusable delay occurs, it shall be dealt with in accordance with subsection 9.2.3, Excuse for nonperformance or delayed performance. No extension of time however, shall be granted unless the written application therefor stating in detail the cause or causes of delay is filed by the contractor with the officer-in-charge *within fifteen days* after the commencement of the delay. No such extension shall be deemed a waiver of the right of the officer-in-charge to require the completion of services under the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions. The number of days of each extension of time shall be determined by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge.

**6.3 EXTENSION OF TIME ON CONTRACTS.** If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the Director of Budget and Fiscal Services, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The officer-in-charge makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but be limited to the following:
  - (A) A new contract cannot be executed by the time the contract expires; or
  - (B) The need for the good or service is short term;
- (3) All parties agree to the extension of time of performance; and
- (4) The price or conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.  
[3-122-3, HAR]

**6.4 PROSECUTION OF THE WORK.** The contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the contract. The contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the contractor. All questions arising during the performance of the contract which must be resolved by the officer-in-charge shall be brought to the officer-in-charge's immediate attention.

The contractor shall direct its work to relate appropriately to, and in accordance with, established principles, practices and standards for such work. The contractor shall direct its work to relate appropriately to, and in accordance with, established engineering, planning and/or architectural design principles and practices for good exterior appearance, and the natural and man-made environment.

The contractor shall furnish sufficient technical supervision and administrative personnel to insure the proper performance of the services under the contract.

The contractor shall be responsible for the accuracy of all computations and completeness of all studies, designs and plans.

All notes, deliverables, plans, specifications, calculations, field notes, and other data produced in the performance of the contract shall be the property of the City.

The officer-in-charge shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any or all of such notes, studies, designs, drawings, tracings or other technical data shall be delivered and surrendered to the officer-in-charge on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of the originals.

**6.5 AUTHORITY OF THE OFFICER-IN-CHARGE AND DIRECTOR OF BUDGET AND FISCAL SERVICES.** The decisions of the officer-in-charge shall be final and binding upon parties unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that decisions on questions or disputes relating to the acceptance of the services performed under the contract, suspension or termination of the contract, extension of time, reduction or increase in the compensation of the contractor and payment shall become final and binding upon all parties only upon approval of the Director of Budget and Fiscal Services, and provided further that nothing herein shall be construed as making final and binding any decision of the officer-in-charge and/or Director of Budget and Fiscal Services on a question of law. Pending final decision of any dispute or question, the contractor shall proceed diligently with the performance of services under the contract in accordance with the decision of the officer-in-charge and/or Director of Budget and Fiscal Services.

**6.6 LIQUIDATED DAMAGES.** The amount of damage to the City as a result of failure to complete performance of specified services under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible to ascertain, the contractor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every calendar day of delay until the services are completed and accepted, or a reasonable time has expired for completion and acceptance of the services remaining to be performed.

When the contractor is given notice of delay or nonperformance as specified in subsection 9.2, Termination for default, and fails to cure in the time it is agreed specified, the contractor shall pay to the City the amount specified in the contract per calendar day from the date set for cure until either the officer-in-charge reasonably obtains similar goods or services if the contractor is terminated for default, or until the contractor provides the goods or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under 9.2.3, Excuse for nonperformance or delayed performance of the termination for default clause, liquidated damages shall not be due the City. The contractor remains liable for damages caused other than by delay. [3-125-19, HAR]

**6.7 SUBCONTRACTING.** The contractor shall not subcontract all or any part of the services under the contract without the prior written consent of the officer-in-charge. Any consent by the officer-in-charge to subcontract or otherwise dispose of any portion of the contract shall not be construed to relieve the contractor of any responsibility for the performance of the contract.

## **SECTION 7 - SERVICES TO BE PERFORMED BY THE CITY**

**7.1 COOPERATION BY THE CITY.** The City shall, without cost to the contractor, through the officer-in-charge, cooperate fully with the contractor and will promptly place at the disposal of the contractor all available pertinent information which the City may have in its possession. The officer-in-charge will certify to the accuracy of certain information in writing whenever it is possible to do so. The officer-in-charge does not represent that other information not certified as accurate is so and takes no responsibility therefor, and the contractor shall rely on such information at the contractor's own risk.

**7.2 REVIEW BY THE OFFICER-IN-CHARGE.** The officer-in-charge shall review all submittals and other work and data required to be made by the contractor and reject or approve such submittals in their entirety or approve the same subject to such deletions, additions and revisions as the officer-in-charge may deem necessary and proper. In submittals specified in the special provisions, all items not required by the contractor to be deleted, added, or revised after review by the contractor and not defective by reason or error, omissions or negligence on the part of the contractor, his subcontractor, agents or employees shall be deemed to have been approved.

## **SECTION 8 - COMPENSATION**

**8.1 COMPENSATION.** The contractor shall be paid the amount stated in the contract or the amount determined in accordance with the special provisions, whichever is lower, as full compensation for the performance of the services under the contract.

**8.2 PROGRESS PAYMENT.** The contractor's compensation shall be paid as set forth in the contract.

**8.3 ACCEPTANCE AND FINAL PAYMENT.** The officer-in-charge shall approve and accept completion of the contract upon the satisfactory fulfillment of the terms of the contract and receipt of a certificate from the State Director of Taxation and the Internal Revenue Service, as provided in section 103-53, HRS, relating to prerequisite for final settlement of contracts, provided that final payment will be made upon approval of the Director of Budget and Fiscal Services. The tax clearances required at final settlement of a contract shall be on an original certificate or certified copy and valid for a period of 6 months from the later date stamped on the form, provided that the contractor does not delay in obtaining clearance from both agencies.

**8.3.1** In the event equipment is provided under the contract, which received prior approval from the Director of Budget and Fiscal Services, the contractor shall also provide a written list of equipment installed or provided, listing the description, make, model, serial number, cost, and location of the equipment or room number in which the equipment is located.

For purposes of this subsection, "equipment" means any item such as a water heater that can be removed with a hand tool, or like an air conditioner, is capable of being moved or transferred to another location and is accessible to tagging with an identification number.

**8.3.2** Acceptance by the contractor of the final payment shall constitute payment in full for all services performed under the contract.

**8.4 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE.** The officer-in-charge may withhold such amounts from the money due or to become payable under the contract to the contractor, or any assignee under subsection 5.3, Novation or change of name, as may be necessary to protect the City against liability or to satisfy the obligations of the contractor to the City, State Department of Taxation, Internal Revenue Service, and to employees, subcontractors and material suppliers who have performed labor or furnished material and equipment under the contract and may make such payments from such amounts as may be necessary to discharge such obligations and protect the City.

**8.5 RETAINAGE.** In accordance with HRS 103-32.1, the officer-in-charge may determine the need for retainage of a portion of the monthly payments to the contractor or payments made upon completion of phases of the contract to insure the proper performance of the contract; provided that the sum withheld shall not exceed five per cent of the amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the officer-in-charge may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor.

For federally funded contracts, the amount of retainage shall be the amount allowed by federal regulations.

**8.6 PROMPT PAYMENT TO SUBCONTRACTORS.**

- (1) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- (2) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. [3-125-23, HAR]

**8.7 PAYMENT FOR REIMBURSABLE EXPENSES.**

Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. The City must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs in accordance with the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Chapter 3-122, Subchapter 15, cost or pricing data, and Chapter 3-123, cost principles.

Reimbursable amounts stated in the contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Agreement shall revert to the City.

**SECTION 9 - TERMINATION OF CONTRACTS**

**9.1 RIGHT OF THE CITY TO TERMINATE.** The City shall have the right to suspend performance of the services under the contract or terminate the contract in whole or in part at any time by written notice to the contractor. If the termination is for reasons other than default of the contractor as provided in subsection 9.2, the contractor shall be compensated in accordance with subsection 9.3, Termination for convenience.

**9.2 TERMINATION FOR DEFAULT.** If the contractor refuses or fails to perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract, the officer-in-charge may notify the contractor in writing of the delay or nonperformance, and *if not cured in ten days* or any longer time specified in writing by the officer-in-charge, the officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, terminate the contractor's right to proceed with the contract or a part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the Director of Budget and Fiscal Services may procure similar goods or services in a manner and upon terms deemed appropriate by the Director of Budget and Fiscal Services. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding the above, in the event the contract is terminated, in whole or in part, by the City as the result of a default by the contractor, the City may secure, on any terms and in any manner that the City deems appropriate, supplies, materials, equipment and/or services similar to those required under the work terminated. The contractor shall be liable to the City for any excess costs for such similar supplies, materials, equipment and/or services, and the City may withhold and apply any monies due or to become due to the contractor under the contract for the completion of the work and/or for the payment of an additional contractor or contractors. This provision shall survive the termination of the contract. In case an additional contract or contracts let after such termination for default are let in an amount or amounts in excess of the amount remaining available for the contract in the hands of the City, free from all claims by laborers or material providers for work performed or materials furnished for the contract prior to the termination for default or any deductions authorized by the terms hereunder or the contract in favor of the City, then the contractor shall deposit, within ten (10) days from the receipt of each notice of any such reletting, to the credit of the City, solely for the prosecution and completion of the work, a sum of money equal to such excess; and in case the City desires to complete the work in any other manner than by contract, then the contractor shall deposit within ten (10) days from the receipt of each notice of the final completion of the work, to the credit of the City, the amount of any excess cost occasioned by such completion over the amount available under the contract in the hands of the City, free from all claims or deductions as aforesaid, all without prejudice to any other or additional rights or remedies the City may have against the contractor under the terms hereunder or the contract or under any applicable law, statute, ordinance, rule, regulation or other standard or requirement.

**9.2.1 Contractor's duties.** Notwithstanding termination of the contract and subject to any directions from the Director of Budget and Fiscal Services or the officer-in-charge, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which the City has an interest.

**9.2.2 Compensation.** Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the officer-in-charge; if the parties fail to agree, the Director of Budget and Fiscal Services, upon recommendation of the officer-in-charge, shall set an amount subject

to the contractor's rights under chapter 3-126, HAR. The City may withhold from amounts due the contractor as the Director of Budget and Fiscal Services deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

**9.2.3** Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of the contract in accordance with its terms, if the contractor has notified the officer-in-charge *within fifteen days* after the cause of the delay and the failure arises out of causes including but not limited to: acts of God; acts of the public enemy; acts of the City and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if the failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the officer-in-charge shall ascertain the facts and extent of the failure, and, if the officer-in-charge determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the completion date or delivery schedule shall be revised accordingly, subject to the rights of the City under subsection 9.3, Termination for convenience. As used in this paragraph, the term "subcontractor" means subcontractor or subconsultant at any tier.

**9.2.4** Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law. [3-125-17, HAR]

**9.3 TERMINATION FOR CONVENIENCE.** The Director of Budget and Fiscal Services may, upon recommendation of the officer-in-charge, when the interests of the City so require, terminate the contract in whole or in part, for the convenience of the City. The Director of Budget and Fiscal Services shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

**9.3.1** Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The contractor may be directed to assign the contractor's right, title, and interest under terminated orders or subcontracts to the City. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

**9.3.2** Right to goods.

- (1) The contractor may be required to transfer title and deliver to the City in the manner and to the extent directed by the officer-in-charge or the Director of Budget and Fiscal Services: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter

called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

- (2) The contractor shall, upon direction of the officer-in-charge, protect and preserve property in the possession of the contractor in which the City has an interest. If the officer-in-charge does not exercise this right, the contractor shall use the contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

### 9.3.3 Compensation

- (1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim *within one year* from the effective date of termination, payment may be made to the contractor, if at all, in accordance with paragraph (3) below.
- (2) A settlement may be agreed to by both parties provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under paragraph 9.3.2, Right to goods, and the contract price of the work not terminated.
- (3) Absent complete agreement under paragraph (2), the contractor shall be paid the following amounts, provided payments agreed to under paragraph (2) shall not duplicate payments under this paragraph for the following:
  - (A) Contract prices for goods or services accepted under the contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Subject to the prior approval of the Director of Budget and Fiscal Services the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 9.3.1, contractor's obligations. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(B).
  - (D) The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subsection 9.3.2, Right to goods, and the contract price of work not terminated.

- (4) Cost claimed, agreed to, or established under paragraphs (2) and (3) shall be in accordance with Chapter 3-123, HAR. [3-125-21, HAR]

## **SECTION 10 - DISPUTES ON CONTRACT AND BREACH OF CONTRACT CONTROVERSIES.**

**10.1 FINAL DECISION.** (a) When a controversy cannot be resolved by mutual agreement between the officer-in-charge and the contractor, the Director of Budget and Fiscal Services shall, upon recommendation by the officer-in-charge, after written request by the contractor for a final decision, promptly issue a written decision.

(b) Any such decision shall be final and conclusive, unless fraudulent, or unless the contractor brings an action seeking judicial review of the decision in a circuit court of this State *within the six months* from the date of receipt of the decision.

**10.1.1** The Director of Budget and Fiscal Services shall issue a written decision within the following time limitations:

- (1) For claims not exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim.
- (2) For claims exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Director of Budget and Fiscal Services shall notify the contractor of the time within which a decision will be made.

If the Director of Budget and Fiscal Services fails to issue a decision on a claim not exceeding fifty thousand dollars within ninety calendar days after receipt, or does not issue a decision within the time promised for a claim in excess of fifty thousand dollars, the contractor may proceed as if an adverse decision had been received.

**10.2 PAYMENT.** The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

**10.3 CLAIMS AGAINST THE CONTRACTOR.** All controversies involving claims asserted by the City against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Director of Budget and Fiscal Services, upon recommendation by the officer-in-charge. [3-126-29, HAR]

**10.4 CONTINUED PERFORMANCE OF THE CONTRACT.** The contractor shall comply with any decision of the Director of Budget and Fiscal Services and proceed diligently with performance of the contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the City; provided that in any event the contractor shall proceed diligently with the performance of the contract where the Director of Budget and Fiscal Services has made a written determination that

continuation of work under the contract is essential to the public health and safety. [3-126-28, 3-126-29, 3-126-31, HAR]

**10.5 REMEDIES.** Any dispute arising under or out of the contract is subject to chapter 3-126, HAR. The procedures and remedies provided for shall be the exclusive means available for persons aggrieved in connection with the solicitation or award of a contract, a suspension or debarment proceeding, or in connection with a contract controversy, to resolve their claims or differences. The contested case proceedings set out in chapter 91, HRS, shall not apply to protested solicitations and awards, debarments or suspensions, or the resolution of contract controversies. [HRS 103D-704]

## **SECTION 11 - COST OR PRICING DATA**

**11.1 COST OR PRICING DATA.** Pursuant to chapter 3-122, subchapter 15, HAR, cost or pricing data may be required as determined by the officer-in-charge or by chapter 3-122, subchapter 15, HAR, along with the certification of current cost or pricing data, substantially in the form attached hereto as Exhibit "A".

**11.1.1** Cost and pricing data means all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of a prospective contractor's judgment about future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as:

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit cost trends such as those associated with labor efficiency;
- (6) Make or buy decisions;
- (7) Labor union contract negotiations; and
- (8) Information on management decisions that could have a significant bearing on costs.

**11.1.2** When cost or pricing data are required, they shall be submitted to the officer-in-charge prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the officer-in-charge. Such data shall either be actually submitted or specifically identified in writing. The contractor is required to keep such submission current until the negotiations are concluded.

The contractor shall provide written certification as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price.

**11.1.3** If a prospective contractor refuses to supply the required data, the Director of Budget and Fiscal Services, upon recommendation of the officer-in-charge, shall determine in writing whether to disqualify the noncomplying contractor, to defer award pending further investigation, or to enter into the contract. If, after award, a contractor refuses to supply the required data, the officer-in-charge shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment, subject to the contractor's rights under chapter 3-126, HAR.

The certificate of cost or pricing data is not to be construed as a representation as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the contractor's judgment is based.

The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

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

In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment of any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the City's claims for overstated cost or pricing data arising out of the same pricing action.

**11.1.5** If the contractor and the officer-in-charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the officer-in-charge shall set an amount in accordance with provisions of this section and the contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

## **SECTION 12 - SEXUAL HARASSMENT POLICY**

**12.1 GENERAL.** The contractor must comply with Revised Ordinances of Honolulu (ROH) section 1-18, on sexual harassment. The contractor shall have and enforce a policy prohibiting sexual harassment. The contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. Section 1-18, ROH is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii.

**12.1.1** The ordinance is applicable to the employer's business and includes:

- (1) Prohibitions against an officer's or employee's sexual harassment of the following:
  - (a) Another officer or employee of the employer;
  - (b) An individual under consideration for employment with the employer; or
  - (c) An individual doing business with the employer;
- (2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (1) above;
- (3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- (4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
- (5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- (6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- (7) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
- (8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
- (9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

**12.2 POLICY TERM.** The policy required under this section shall be in effect for at least the duration of the contractor's contract with the City.

**12.3 PLEDGE AND ACCEPTANCE.** The action of the contractor signing the contract shall constitute the contractor's pledge and acceptance of the provisions for the sexual harassment policy as required by section 1-18, HRS.

## CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in writing to the officer-in-charge in support of \* \_\_\_\_\_

\_\_\_\_\_ are accurate, complete, and current as of \*\* \_\_\_\_\_.  
(Month, day, year)

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

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
(Print name & title of person signing)

Date of execution\*\*\*: \_\_\_\_\_

- \* Describe the project and reference (i.e. project name, +PCD No., field change, change order number, etc.).
- \*\* The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.
- \*\*\* Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

(This document shall be signed, sealed, and notarized.)