



State of Hawai'i

## **INVITATION FOR BIDS**

**IFB No: PP 2016-02**

### **REGISTERING NATIVE HAWAIIAN VOTERS TO PARTICIPATE IN THE STATE AND FEDERAL ELECTIONS**

Issued March 11, 2016

**NOTE:** If this Invitation for Bids was downloaded from the Office of Hawaiian Affairs' website, each interested bidder must complete the sign-in sheet and provide the necessary contract information to the listed IFB Coordinator to be notified of any changes. For your convenience, you may download the IFB Sign-in sheet, complete and email, fax or mail to the IFB Coordinator. Interested bidders are advised to complete the IFB Registration Form, email, fax, or mail the form to the IFB Coordinator. The OHA shall not be responsible for incorrect bid offers received as a result of missing addenda, clarifications, attachments or other pertinent IFB information not received by interested bidders.

**Notice to Bidders**  
(Chapter 103D, HRS)

INVITATION FOR BIDS (IFB No. PP 2016-02)

Notice of is hereby given that pursuant to Chapter §103D, Hawai‘i Revised Statutes, the Office of Hawaiian Affairs (“OHA”), will be accepting sealed bids to engage Native Hawaiian voters to participate in the State and Federal elections.

The Invitation for Bids, Specifications and Bid Offer Form will be available through the OHA Procurement Unit (please check in at the OHA Registration Desk) located on Oahu at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817 beginning March 11, 2016.

**Bid Deadline**

Sealed bids must be received at the OHA Registration Desk, located on Oahu at 560 North Nimitz Highway, Suite 200, no later than 10:00 a.m. Hawai‘i Standard Time (“HST”), Tuesday, March 29, 2016.

**Pre-Bid Conference**

The OHA will conduct a Pre-Bid Conference on Wednesday, March 16, 2016 from 10:00 a.m. to 11:00 a.m. HST at the OHA, 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817. All interested bidders are strongly encouraged to attend.

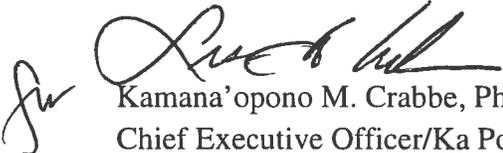
**Bid Opening**

Opening of bids will commence at 10:30 a.m. HST at the OHA on Tuesday, March 29, 2016.

The OHA reserves the right to reject any or all bids and to accept the bids in whole or part whichever is in the best interest of the OHA.

If you have any questions, please contact Charmaine Matsuura, IFB Coordinator at (808) 594-0273, or via e-mail: [charmainem@oha.org](mailto:charmainem@oha.org).

Office of Hawaiian Affairs

  
Kamana’opono M. Crabbe, Ph. D.  
Chief Executive Officer/Ka Pouhana

# Section 1

## Administrative

### 1.0 Authority

This Invitation For Bids (“IFB”) is issued under Chapter 103D, Hawai‘i Revised Statutes (“HRS”), and companion Hawai‘i Administrative Rules (“HAR”). Prospective Bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed Bid Offer Form by any prospective Bidder shall constitute admission of such knowledge on the part of such prospective Bidder.

### 1.1 Timetable

The OHA reserves the right to amend or revise the timetable without prior written notice, when it is in the best interests of the OHA. The Contract award will be based on the availability of funds. Contract start date will be subject to the issuance of a Notice To Proceed.

<u>Activity</u>	<u>Scheduled Dates</u>
Public Notice Announcing IFB	March 11, 2016
Pre-Bid Conference	March 16, 2016
Deadline to Submit Written Questions	March 18, 2016
Deadline for OHA to respond to questions	March 21, 2016
Bid Submittal Deadline	March 29, 2016
Bid Opening	March 29, 2016
Notice of Award	March 2016
Contract Execution	April 2016
Contract Start Date	Upon Notice to Proceed

### 1.2 IFB Organization

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Attachment 3: Wage Certificate	
Attachment 4: General Conditions	

### **1.3 Contracting Office**

The Contracting Office is responsible for overseeing the Contract resulting from this solicitation. The Contracting Office is:

Office of Hawaiian Affairs  
Procurement Unit  
560 North Nimitz Highway Suite 200  
Honolulu, Hawai'i 96817  
Telephone: (808) 594-0273 Fax: (808) 594-1863

For the purpose of this solicitation, the IFB Coordinator or his/her designated representative is listed below:

Charmaine Matsuura  
Procurement Unit  
560 North Nimitz Highway, Suite 200  
Honolulu, Hawai'i 96817  
Telephone: (808) 594-0273 Fax: (808) 594-1863  
Email: charmainem@oha.org

The OHA reserves the right to change the IFB Coordinator without prior written notice.

The office responsible for monitoring the services performed under this Contract is the Public Policy Program. For the purpose of this solicitation, the Contract Administrator or his/her designated representative is listed below:

Kamaile Maldonado  
Public Policy Advocate III  
560 North Nimitz Highway Suite 200  
Honolulu, Hawai'i 96817  
Telephone: (808) 594-1759 Fax: (808) 594-1825  
Email: kamailem@oha.org

Any changes to the Contract Administrator or his/her designated representative shall be provided in writing to the Successful Bidder. The OHA reserves the right to change the Contract Administrator and shall be responsible to notify the Successful Bidder of any change.

### **1.4 OHA Organizational Information**

The OHA a body corporate under the Constitution of the State of Hawai'i, was established by the Hawai'i State Legislature in 1979 under Chapter 10 of the HRS.

OHA's mission is "To mālama (protect) Hawai'i's people and environmental resources and OHA's Assets, towards ensuring the perpetuation of the culture, the enhancement of

lifestyle and the protection of entitlements of Native Hawaiian, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.

## **1.5 Pre-Bid Conference**

Interested Bidders are strongly encouraged to attend an optional Pre-Bid Conference on Wednesday, March 16, 2016 at the OHA located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawaii 96817 from 10:00 a.m. to 11:00 a.m. Hawaii Standard Time (“HST”). This pre-bid conference will be for the purpose of reviewing the scope of services and specifications required for this solicitation.

The Bidder is advised that anything discussed at the pre-bid conference does not change any part of this solicitation. All changes and/or clarifications to this solicitation shall be done in the form of written addenda.

Impromptu questions will be permitted at the Pre-Bid Conference and verbal answers will be provided. Verbal answers provided by the OHA are not binding and only intended as a general guidance purposes. Formal official written response to substantive questions will be provided to each interested Bidder as set forth in Section 1.6 below. Any changes required will be issued as an addendum to the IFB.

If interested in responding to this solicitation, the Bidder is advised to contact the IFB Coordinator, Charmaine Matsuura, to ensure that its name, address, telephone and facsimile number(s) are on record for addenda distribution. The OHA shall not be responsible for distribution of addenda to an interested Bidder who has not provided this information to the IFB Coordinator.

Submission of a bid in response to this solicitation shall indicate that the Bidder understands the scope of services to be provided and accepts the terms and conditions of the resulting contract, if awarded. No additional compensation, subsequent to bid opening, shall be allowed by reason of any misunderstanding or work to be performed.

## **1.6 Terms of Offeror and Bidder**

The terms “Offeror” and “Bidder” are synonymous when used in this solicitation.

## **1.7 Submission of Written Questions**

Interested Bidders may submit written questions to the IFB Coordinator identified in Section 1 of this IFB. The deadline for submission of written questions is noon HST on Friday, March 18, 2016. All written questions will receive a written response from the OHA. Electronic mail and facsimile transmissions shall be accepted. The OHA’s responses to interested Bidders’ written questions will be sent to all interested Bidders by mail, electronic mail, or facsimile no later than Monday, March 21, 2016.

## 1.7 Submission of Sealed Bids

- A. **Form and Format** – The Bid Offer form can be found in Section 5 of this solicitation. See Attachment 2 – Bid Offer Form. Note: Bid offers submitted using re-created forms or other forms shall be rejected and deemed non-responsive.
- B. **Bid Submittal** - Sealed bids must be hand delivered or postmarked by United State Postal Service (“USPS”) and delivered to the OHA Receptionist located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817 no later than 10:00 a.m. HST on Tuesday, March 29, 2016. Other methods of delivery services shall be considered hand deliveries and considered submitted on the actual date and time received at the OHA Reception Desk. Sealed bids post-marked prior to the specified bid due date and time but received after the specified bid due date and time shall be considered late and shall be rejected. **Electronic mail and facsimile transmission of the Bid Offer shall not be accepted.**

Bid offers **must** be submitted in a sealed envelope identified as a sealed bid in response to this IFB PP 2016-02. **Any bid document submission not sealed and identified with the IFB number on the envelope or submitted via electronic mail or facsimile shall be automatically rejected.** There shall be no exception to this requirement.

Sealed Bids should be addressed to:

Office of Hawaiian Affairs  
560 North Nimitz Highway, Suite 200  
Reception Desk/Procurement Unit  
Honolulu, Hawai‘i 96817  
Attn: Ms. Charmaine Matsuura, IFB Coordinator

- C. **Wages and Labor Law Compliance** – Prior to entering into a Contract in excess of \$25,000, the successful Bidder shall certify compliance with Section §103-55 HRS, Wage, hours and working condition of employees of Contractors performing services. Section §103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, the successful Bidder shall be obligated to provide wages not less than those increased wages.

Interested Bidders shall complete and submit the attached Wage Certificate certifying that the services required will be performed pursuant to Section §103-55, HRS. See Attachment 3 – Wage Certificate.

The successful Bidder shall be further obligated to notify their employees performing work under the Contract of the provisions under Section §103-55, HRS, and the current wage rates for public employees performing similar work. The successful Bidder may meet this obligation by posting a written notice to this effect in the successful Bidder's place of business in an area accessible to all employees.

Interested Bidders are strongly encouraged to account for salary increase(s) as posted by the State Department of Human Resources Development ("DHRD"). The OHA will consider requests for increase as a result of wage increases to public officers and employees during the Contract period or any option period that are not published. At the release of this solicitation, the effective wages from July 21, 2014 through December 31, 2016 and January 1, 2017, for the State employee performing similar work have been published by the DHRD.

- <http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/> then go to Classification Specification and Minimum Qualification Requirements
- [http://dhrd.hawaii.gov/wp-content/uploads/2013/01/08\\_BU13\\_2008-10-011.pdf](http://dhrd.hawaii.gov/wp-content/uploads/2013/01/08_BU13_2008-10-011.pdf)

- D. **Confidential Information** - If an interested Bidder believes that any portion of its bid contained information that should be withheld as confidential, the interested Bidder may request in writing for nondisclosure of designated proprietary data and provide justification to support confidentiality. Such data shall accompany the bid, clearly marked and shall be readily separable from the bid documents to facilitate eventual public inspection of the no-confidential section of the bid documents. Nondisclosure of requested information is subject to Chapter 92F, HRS, and is discoverable unless exempted by law. Note that the price is not considered confidential and shall not be withheld.

## 1.9 Discussion with Bidders Prior to Bid Submission

Discussion may be conducted with interested Bidders to promote understanding of the OHA's requirements.

## 1.10 Opening of Bids

All bid submissions shall be dated and time stamped by the OHA upon receipt of the bid submittal at the designated location. The bid submission shall include bid offers, modifications to bids, and withdrawals of bid offers. All bid submission received shall be held in a secure place by the OHA Procurement Unit and shall not be opened and examined for evaluation purposes until March 29, 2016, 10:30 a.m. HST.

Sealed bids received by the due date and time shall be opened publicly. Public bid opening will commence at 10:30 a.m. HST on Tuesday, March 29, 2016, at the OHA, 560 North Nimitz Highway, Honolulu, Hawai'i 96817.

In the unlikely event that the OHA receives a bid that was misplaced or mishandled through no fault of the interested bidder, the OHA shall publicly open the bid as soon as possible, and inform all bidders about the additional bid offer and the bid price. Said bid shall only be opened if there is clear evidence that the bid was received by the OHA by the posted due date and time, in the possession of the OHA, and the bid was not opened during the posted bid opening date and time.

#### **1.11 Additional Materials and Documentation**

The bid samples or descriptive literature should not be submitted. Any unsolicited documentation, literature, samples, or brochures will not be examined or tested, and will not be deemed to vary any of the provision of this IFB.

#### **1.12 IFB Amendments**

The OHA reserves the right to amend this IFB at any time prior to the closing date for the final revised bids or as allowed under Chapter 3-122, HAR. Interested Bidders will be notified of all amendments through written communication which may be transmitted by electronic mail, facsimile, or USPS.

#### **1.13 Cancellation of the Invitation for Bids**

The IFB may be cancelled and any or all bid offers may be rejected in whole or in part when it is determined to be in the best interest of the OHA.

#### **1.14 Cost for Bid Preparation**

Any cost incurred by the interested bidders in preparing or submitting a Bid Offer Form are the interested Bidder's sole responsibility. Any costs incurred by the Successful Bidder prior to the execution of a Contract are not eligible for reimbursement.

Interested Bidders shall ensure that the OHA is provided with the written authorization(s) necessary to verify information provided in the interested Bidder's Bid Offer Form.

#### **1.15 Modification of Bids**

Bids submitted may be modified prior to the established due date and time by the following documents in accordance with Section §3-122-16.07, HAR:

- A. A written notice accompanying the actual modification received at the OHA Reception Desk stating that a modification to the bid is submitted.

- B. The facsimile or electronic written notice must be submitted either by facsimile or electronic mail to the IFB Coordinator. The interested Bidder shall submit the original signed written notice and modification to the OHA Receptionist within two (2) working days of receipt of the facsimile or the electronic transmittal. If the written notice is submitted less than two (2) working days prior to the established due date and time for the receipt of the bid offers, the Bidder shall submit the original signed written notice and the modification to the OHA Receptionist no later than the established due date and time for receipt of bid offers.

**Modified Bid Offers shall be submitted in a sealed envelope identified as a modified sealed bid in response to this IFB PP 2016-02.**

**1.16 Late Withdrawal and Late Modification**

Any notice of withdrawal or notice of modification of a bid and the actual modification is considered late when received by the OHA after the established due date and time.

A late modification will not be considered for award.

Acceptance of a late withdrawal request shall be at the sole discretion of the OHA Head of the Purchasing Agency ("HOPA").

**1.17 Mistakes in Bids**

While interested Bidders are bound by their bids, circumstances may arise where a correction or withdrawal of bids is proper. An obvious mistake in a bid may be corrected or withdrawn, or waived by the OHA to the extent that it is not contrary to the best interested of the OHA or to the fair treatment of the other interested Bidders. Mistakes in bids shall be handled as provided for in Section §3-122-31, HAR.

**1.18 Rejection of Bids**

The OHA reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the services specification. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.

A bid offer may be automatically rejected if it is:

- A. Unreasonable in Price. A bid is unreasonable in price, if 1) the bid price when compared with price submission of the prospective bidders, prior contract prices, and/or prices available on the open market is grossly unbalanced, or 2) the bid is determined by the OHA to be unreasonable in price, including the total bid price and unit prices.

- B. Material unbalanced. A bid is materially unbalanced, if 1) there is a reasonable doubt the bid would result in the lowest overall cost, even though it is the lowest bid, or 2) the bid is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. An example of a materially unbalanced bid is one where the bid is set at a very high price for the first item and subsequent items are set at extremely low prices.

All bid offers submitted in a manner which alters the Bid Offer Form or does not conform to the format and instruction provided shall be determined non-responsive.

### **1.19 Bid Evaluation**

Each bid offer will be reviewed for responsiveness. A bid offer determined to be in exact conformity with the requirements in the IFB shall be known as a “responsive bid”. Information provided in/with the Bid Offer will be used to determine whether the interested Bidder has the technical and financial capacity to deliver the goods or services, known as a “responsible bid”.

### **1.20 Notice of Award**

An award shall be made as follows:

- A. Award to the responsible and responsive Bidder submitting the lowest total sum bid price for the seven (7) month period located on Bid Offer Form. See Attachment 2 - Bid Offer Form.
- B. In the case of a tie, the bid shall be awarded by the flip of a coin or some other random means of selection to be determined by the OHA.

Any Contract arising out of this solicitation shall be subject to the approval of the appropriate Director or designee as to content and the OHA Corporate Counsel as to form and all further approvals as required by statute, regulation, rule, order or other directive.

No work shall be undertaken by the Successful Bidder prior to the Contract start date and the receipt of the Notice to Proceed. The OHA is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the successful Bidder prior to the start of the Contract and receipt of the Notice to Proceed date.

The successful Bidder shall produce documents to the HOPA to demonstrate compliance with Section §3-122-112, HAR - Responsibility of offerors. The successful Bidder receiving an award shall be required to enter into a formal written Contract with the OHA. The General Conditions of the Contract are attached and services specifications are included. See Attachment 4 – General Conditions.

**1.21 Protests**

An actual or prospective Bidder may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

- A. The OHA’s failure to follow procedures established by Chapter 103D HRS;
- B. The OHA’s failure to follow any rule established by Chapter 103D HRS; or
- C. The OHA’s failure to follow any procedure, requirement, or evaluation criteria issued by the OHA.

Pursuant to Section §103D-701, HRS, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall be submitted in writing within five (5) working days after the posting of award of the Contract. The Notice of Protest shall be mailed by USPS or hand delivered to the Head of the Purchasing Agency conducting the procurement and the Procurement Manager who is conducting the procurement. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the OHA.

The notice to award, if any, resulting from this solicitation shall be posted on the OHA website: [www.oha.org/solicitations](http://www.oha.org/solicitations)

<b>Head of Purchasing Agency</b>	<b>Procurement Manager</b>
Name: Kamana’opono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana/Chief Executive Officer	Title: Procurement Manager
Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai’i 96817	Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai’i 96817

**1.22 Availability of Funds**

The award of a Contract and any allowed extension(s) are subject to the availability of funds. The OHA shall retain the authority to cancel an award and/or not exercise the option period(s) due to the lack of available funds.

**1.23 Monitoring and Evaluation**

The successful Bidder’s performance of the Contract will be monitored and evaluated by the Contract Coordinator. The OHA shall provide the successful Bidder with a copy of all monitoring reports for their information and necessary corrective action.

Failure to comply with all material terms of the Contract may be cause for suspension or termination as provided in the General Conditions. The successful Bidder may be required to submit additional written reports, including a corrective action plan in response to monitoring conducted by the OHA. These additional reports shall not be considered a change to the scope of work of the Contract, but shall continue for the duration of time as deemed necessary by the OHA.

When interest of the OHA or the successful Bidder so require, the OHA or the successful Bidder may terminate the Contract for convenience by providing forty-five (45) calendar days prior written notice to the other party.

#### **1.24 General Conditions and Special Conditions**

The General Conditions of the Contract are set forth in Attachment 4 – General Conditions.

Special Conditions as appropriate may be imposed under the Contract by the OHA. In the case of a conflict between the Special Conditions and the General Conditions, the Special Conditions shall apply.

#### **1.25 Cost Principles**

The OHA shall utilize standard cost principles set forth in Chapter 3-123, HAR, which is available on the State Procurement Website: <http://spo.hawaii.gov/> . Nothing shall be construed to create an exemption from any cost principal arising under State and Federal law.

**END OF SECTION**

## Section 2

### Specifications

#### 2.0 Purpose and Need

##### A. Furnishing Proof of Compliance

The successful Bidder(s) are advised that if awarded a contract, the successful Bidder must furnish proof of compliance with the requirements of Section §3-122-112, HAR:

- 1) Chapter 103-53 and 103D-328, HRS, tax clearance;
- 2) Chapter 383, HRS, unemployment insurance;
- 3) Chapter 386, HRS, workers' compensation;
- 4) Chapter 392, HRS, temporary disability insurance; and
- 5) Chapter 393, HRS, prepaid health care.

##### B. Hawai'i Business or Compliant Non-Hawai'i Business

The successful Bidder(s) shall be one of the following:

1. Be registered and incorporated or organized under the laws of the State of Hawai'i (hereinafter referred to as a "Hawai'i business").

Hawai'i business: A business entity referred to as a "Hawai'i business" is registered and incorporated or organized under the laws of the State of Hawai'i. As evidence of compliance, the Bidder shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawai'i business doing business as a sole proprietorship is not required to register with the BREG, and therefore not required to submit the certificate. A successful Bidder's status as sole proprietor or other business entity and its business street address will be used to confirm that the successful Bidder is a Hawai'i business.

2. Be registered to do business in the State of Hawai'i (hereinafter referred to as a "compliant non-Hawai'i business").

Compliant non-Hawai'i business: A business entity referred to as a "compliant non-Hawai'i business," is not incorporated or organized under the laws of the State of Hawai'i, but is registered to do business in the State. As evidence of compliance, the Bidder shall submit a CERTIFICATE OF GOOD STANDING.

C. Certificate of Vendor Compliance

The successful Bidders(s) shall demonstrate compliance with the following:

- 1) Tax Clearance, Form A-6
- 2) Department of Labor and Industrial Relations, Application for Certificate of Compliance, Form LIR#27; and
- 3) Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The successful Bidders(s) may demonstrate compliance of the above by using the Hawai'i Compliance Express ("HCE"). The HCE services allow businesses to register online through a simple wizard interface at:

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

The HCE provides the successful Bidders(s) with a "Certificate of Vendor Compliance" with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Businesses that elect to use the HCE services will be required to pay an annual fee of \$12.00 to the Hawai'i Information Consortium, LLC ("HIC").

**Timely Registration on HCE.** Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, the Bidder will not receive the award.

D. Bid Security

No bid security is required to be submitted for this IFB and no performance or payment security shall be required for the resulting Contract.

E. Funding Sources and Period of Availability

Funding allocated through the Native Hawaiian Trust Fund, also known as the Public Land Trust Funds, is subject to approval by the OHA Chief Executive Officer/Ka Pouhana and final approval by the OHA Board of Trustees. Any Contract entered into as a result of this solicitation is binding only to the extent that funds are available. Funds and period of availability may change upon notice by the OHA. Services shall be reduced or rescheduled at the same bid price.

Any additional services purchased under the terms of the Contract resulting from this solicitation shall be at the same or similar contracted rates.

F. Multiple or Alternate Proposals (Refer to HAR §3-122-4)

- Allowed       Not allowed

G. Type of Contract

Single or Multiple Contracts to be Awarded (Refer to HAR §103D-322)

Single       Multiple       Single & Multiple

H. Single or Multi-Term Contracts to be Awarded (Refer to HRS §103D-315)

Single term (2 years or less)       Multi-term (more than 2 years)

I. Contract Terms

Initial term of contract:	Seven (7) months
Length of each extension:	Up to twelve (12) months, may be less than twelve (12) months when it is in the best interest of OHA
Number of possible extensions:	One (1) extension
Maximum length of contract:	Not to exceed nineteen (19) months

J. Conditions for Contract Extensions

The Contract for the proposed services may be extended without the necessity of re-procuring, subject to appropriation and availability of the OHA funds, continued need for the services, and the OHA's determination of satisfactory performance of the contracted organization, or unless the Contract is terminated.

The option to extend the service will be offered in writing by the OHA prior to the expiration of the contract. No supplementary agreement shall be binding upon the OHA until the supplemental agreement has been fully and properly executed by all parties thereto prior to the start date of the supplemental agreement. The contracted organization shall not provide any services until the supplemental agreement is fully and properly executed.

When interest of the OHA or the Contractor so require, the OHA or the Contractor may terminate the contract for convenience by providing forty-five (45) prior written notice to the other party.

K. Additional Services and Fees

For services not described in the Contract, the successful Bidder and the OHA shall negotiate for additional needed services and fees which may arise during the course of the Contract. All agreement(s) shall be in writing, executed by all parties, and shall be attached to the Contract as an amendment to expire at the same time as the original Contract or subsequent extension period.

L. Other Financial Related Materials - Accounting System

In order to determine the adequacy of the interested Bidder's accounting system as described under the administrative rules, the Bidders shall submit a copy of the most recent financial audit as part of the proposal application.

M. Laws, Rules, Ordinances and Regulations

Reference to Federal, State, City and County laws, ordinances, rules and regulations and standard specifications shall include any amendments thereto in effect as of the date of this IFB.

## 2.1 Insurance

Prior to the contract start date, the successful Bidder shall procure at its sole expense and maintain insurance coverage acceptable to the OHA in full force and effect throughout the term of the contract. The successful Bidder shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) prior to a contract. The type of insurance coverage is listed as follows:

A. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract.

This insurance shall include the following coverage and limits specified or required by any applicable law:

- 1) Bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence;
- 2) Personal and advertising injury of \$1,000,000 per occurrence; and
- 3) With an aggregated limit of \$2,000,000.

The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The successful Bidder shall be responsible for payment of any deductible applicable to this policy.

B. Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

C. Appropriate Levels Per Occurrence

Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

The successful Bidder shall deposit with the Procurement Unit, on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the Procurement Unit, that the provisions of the contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the OHA during the entire term of the contract. Upon request by the Procurement Unit, the successful Bidder shall furnish a copy of the policy or policies.

The successful Bidder shall immediately provide written notice to the Procurement Unit, and the OHA, should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The certificates of insurance shall contain the following clauses:

- 1) "Added insured – State of Hawai'i, the OHA, its Trustees, OHA's employees, representatives and agents."
- 2) "It is agreed that any insurance maintained by OHA shall apply in excess of, and not contribute with, insurance provided by this policy."

Failure of the successful Bidder to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the OHA to exercise any or all of the remedies provided in the Contract, including without limitation, terminating the Contract. The procuring of any required policy or policies of insurance shall not be construed to limit the successful Bidder's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the successful Bidder shall be responsible for the full and total amount of any damage, injury, or loss caused by the successful Bidder's negligence or neglect in the provision of services under the Contract.

## 2.2 HRS §97: Limitations of Lobbying Activities

Per HRS §97-1(7): "Lobbying means communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence county councils, legislative or administrative action or a ballot issue".

Per HRS §97-5: "No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action".

Therefore, any time the successful Bidder whose time is spent researching data or

information specific to the testimony to be provided, drafting and providing testimony or participates in discussions with legislators or government employees or officials in support or opposition of any pending legislation, is not allocable to the OHA Contracts and cannot be charged to the OHA for the purposes of the contracted services. The time spent in such lobbying activities must be cost-allocated and cannot be paid for by the OHA trust funds and such activities are clearly not within the scope of the contract, nor are they allowed to be within the scope.

### 2.3 Wages and Labor Law Compliance

Prior to entering into a Contract in excess of \$25,000, the successful Bidder shall certify compliance with Section §103-55, HRS, Wages, hours, and working conditions of employees of contractors performing services. Section §103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, the Contractor shall be obligated to provide wages not less than those increased wages.

Interested Bidders shall complete and submit the attached Wage Certification certifying that the services required will be performed pursuant to section 103-55, HRS. See Attachment 3 – Wage Certificate.

The successful Bidder shall be further obligated to notify their employees performing work under the Contract of the provision of Section §103-55, HRS and the current wages rates for public, employees performing similar work. The successful Bidder may meet this obligation by posting a written notice to this effect in the success Bidder's place of business in and area accessible to all employees.

Interested Bidders are strongly encouraged to account for salary increase(s) as posted by the DHRD. **The OHA will consider requests for increase as a result of wage increases to public officers and employees during the Contract period or any option period that are not published.** At the release of this solicitation, the effective wages from July 21, 2014 through December 31, 2016 and January 1, 2017, for the State employee performing similar work have been published by the DHRD.

- <http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/> then go to Classification Specification and Minimum Qualification Requirements
- [http://dhrd.hawaii.gov/wp-content/uploads/2013/01/08\\_BU13\\_2008-10-011.pdf](http://dhrd.hawaii.gov/wp-content/uploads/2013/01/08_BU13_2008-10-011.pdf)

**END OF SECTION**

## Section 3

### Scope of Work

#### 3.0 Introduction

The State of Hawai‘i has historically reported low voter turnout numbers in relation to its voting age population and to citizens already registered to vote. In recent years, Hawai‘i has received even more attention as voter turnout has slumped to record lows for the state and was recognized by national media for having the worst voter turnout in the nation.

Against this backdrop of general disengagement, it is widely believed that Native Hawaiians participate in elections at even lower rates than the general populace. The OHA has consistently been committed to empowering the Native Hawaiian voice at the polls and in policy-making.

The successful Bidder shall include in their bid packet, but may not be limited to:

- A. Description of experience collaborating with and supporting Native Hawaiians in civic and voter engagement activities highlighting number of years of experience and including specific descriptions of any events, workshops, rallies, outreach, and similar activities undertaken in the past; and
- B. A detailed explanation of the proposed structure of the project showing the steps involved in meeting the requirements for the Scope of Work as stated below.
- C. Descriptions of any organizational partnerships, software and technology systems, and organizational infrastructure utilized in past civic engagement campaigns and currently accessible for use in meeting the requirements of the Scope of Work as stated on page 20.
- D. Descriptions of any voter projection models and ethnic data on Native Hawaiian voters currently available to the organization and that could be made available for use by the OHA to evaluate campaign efficacy and direct future efforts.

#### 3.1 Purpose, Overview and Need

- A. Register Native Hawaiian voters prior to registration deadline.
- B. Engage Native Hawaiian voters not registered by registration deadline to utilize same-day voter registration (beginning in 2016 pursuant to Act 166, Session Laws 2014) and vote during early voting.
- C. Engage registered voters to vote on Election Day.

### 3.2 Timeframe

The Successful Bidder will have an initial term of seven (7) months from execution to complete contract subject to the availability of funds and may be extended subject to the availability of funds.

### 3.3 Scope of Work

The successful Bidder shall provide and perform the services set forth below in a satisfactory and proper manner as determined by the OHA that shall include, but may not be limited to:

- A. Provide a strategy to:
  - 1. Register at least 6,000 Native Hawaiians to vote and explain how the new registered voters will be documented to the OHA;
  - 2. Make contact with at least 20,000 Native Hawaiians leading up to the election, encouraging them to vote and providing information about voting process and polling places;
- B. Identify the communities that reflect low voter registration and turnout;
- C. Coordinate volunteers to participate in reaching out to the Native Hawaiian community through phone solicitations, campaigns, mailers, etc.;
- D. Focus registration on new voters—age 16-17 for pre-registration and age 18-24 for registration, instilling early value for civic engagement;
- E. Emphasize online voter registration (launched August, 2015) and permanent absentee ballot registration;
- F. Describe any voter projection models and ethnic data currently available to the organization and explain how they will be used to focus on engaging likely and “spotty” Native Hawaiian voters;
- G. Offer assistance in getting potential voters (unregistered and registered) to the polls during early voting and registered voters to the polls on Election Day;
- H. Promote OHA voter education efforts on print and online outreach materials as well as in personal interactions with potential voters; and
- J. Develop a comprehensive report within thirty (30) days of the Contract expiration date describing efforts addressed toward each deliverable and highlighting numbers of Native Hawaiians served respectively, and detailing budget and spending allocation.

**END OF SECTION**

## Section 4

### Bid Forms and Instructions

#### General Instructions for Completing Forms

- A. Bids shall be submitted to the OHA in the prescribed format outlined in this IFB
- B. No supplemental literature, brochures or other unsolicited information should be included in the bid packet.
- C. A written response is required for each item unless indicated otherwise.
- D. Bid documents and all certifications should be completed with black ink.

#### 4.0 Bid Offer Form

The Bid Offer Form must be completed and submitted to the OHA by the required due date and time, and in the form prescribed by the OHA. Electronic mail and facsimile transmissions shall not be accepted.

Interested Bidders shall submit its bid under the interested Bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on Bid Offer Form (Attachment 2 – Bid Offer Form, page 2). Failure to do so may delay proper execution of the Contract.

Interested Bidder's authorized signature shall be an original signature in ink. If the Bid Offer Form (Attachment 2 – Bid Offer Form, page 2) is unsigned or the affixed signature is a facsimile or a photocopy, the bid offer shall be automatically rejected.

Interested bidders are reminded to submit the following certification and documents with their Sealed Bid Offers to the OHA to demonstrate compliance with Federal and State laws:

- a. Hawaii State Tax Clearance Certificate from A-6;
- b. Federal Tax Clearance;
- c. Department of Labor and Industrial Relations, Application for Certification of Compliance , Form LIR #27;
- d. Certification of Good Standing , issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG);
- e. Wage Certificate; and
- f. Corporate Resolution evidencing who is authorized to sign the sealed bid offer and contractual documents on behalf of the bidder.

Interested Bidders may also submit an original consolidated CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

The successful Bidder shall be responsible for and shall pay the State of Hawai'i general excise tax of 4.712% and all other applicable taxes.

A bid security deposit is not required for this IFB.

The Bid Offer Form is provided in this IFB. See Attachment 2 – Bid Offer Form.

#### **4.1 General Conditions**

The General Conditions of the Contract are attached for interested Bidder's review and information. The General Conditions shall be incorporated into the Contract with the successful Bidder. See Attachment 4 – General Conditions.

**END OF SECTION**

## **Section 5**

### **Attachments**

- Attachment 1: Contractor's/Vendor's Notice of Intent to Bid
- Attachment 2: Bid Offer Form
- Attachment 3: Wage Certificate
- Attachment 4: General Conditions

**CONTRACTOR'S/VENDOR'S NOTICE OF INTENT TO BID**

**Date:** \_\_\_\_\_

Office of Hawaiian Affairs  
560 North Nimitz Highway, Suite 200  
Honolulu, Hawai'i 96817

Attention:

In accordance with the provision of Section 103D-310, Hawai'i Revised Statutes, and Hawai'i Administrative Rules 3-122-108, it is the intent of the undersigned to bid on OHA IFB PP 2016-02.

REGISTER NATIVE HAWAIIAN VOTERS TO PARTICIPATE IN THE STATE AND FEDERAL ELECTIONS

for which bids will be opened on \_\_\_\_\_, 2016

_____		_____	
(Name of Firm)		(Contractor's License No.)	
_____		_____	
(Address)		(Hawai'i General Excise Tax No.)	
_____	_____	_____	
(City, State)	(Zip)	(Telephone/Fax No.)	

Sincerely yours,

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name and Title

END NO. 1

Date: \_\_\_\_\_

The Office of Hawaiian Affairs acknowledges your Notice of Intent to Bid on OHA Bid No. \_\_\_\_\_ on this date.

Sincerely,  
\_\_\_\_\_  
Procurement Manager

# OFFICE OF HAWAIIAN AFFAIRS

## REGISTER NATIVE HAWAIIAN VOTERS TO PARTICIPATE IN THE STATE AND FEDERAL ELECTIONS

### BID OFFER FORM

To: Office of Hawaiian Affairs  
560 North Nimitz Highway, Suite 200  
Honolulu, Hawai'i 96817

- The undersigned ("Bidder"), being familiar with the work to be performed and having read the specifications and other documents relating to the IFB PP 2016-02, Register Native Hawaiian Voters to Participate in the State and Federal Election, hereby proposes to furnish all labor, materials, equipment, and services required to perform the services which includes State of Hawai'i general excise tax of 4.712%.

**BID ITEM #1: ADVERTISING (RADIO AND SOCIAL MEDIA):**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**BID ITEM #2: EVENTS/RALLIES:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**BID ITEM #3: T-SHIRTS:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**BID ITEM #4: PRINT MATERIALS:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**BID ITEM #5: VIDEO PRODUCTION:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**BID ITEM #6: MISCELLANEOUS SUPPLIES:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**TOTAL LUMP SUM BID AMOUNT:**

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

- 2. The award shall be made to the most responsible and responsive bidder and shall be based on the criteria set forth in the IFB.
- 3. Subject to the availability of funds, the OHA reserves the right to delete one or more of the bid items.
- 4. The bidder understands that this bid may not be withdrawn within thirty (30) calendar days after the opening of bids.
- 5. Failure to complete the Bid Offer Form in its entirety may cause a bid to be considered non-responsive.
- 6. Preferences

The follow conditions shall apply:

The Reciprocal Preference shall apply to this proposal. The Chief Executive Officer will impose a Reciprocal Preference to all out-of-state bidders that is equal to the Preference Requirement that prevails in the State where the bidder is domiciled.

- 7. THE BIDDER SHALL BE RESPONSIBLE FOR CONFIRMING THE EXISTENCE OF ANY ADDENDUM TO THIS BID SOLICITATION BY TELEPHONING CHARMAINE MATSUURA AT (808) 594-0273.
- 8. Receipt of the follow addenda (if any) issued by the OHA is acknowledged by the dates(s) of receipt indicated below:

Addendum No. 1 _____	Addendum No.3 _____
(Date)	(Date)
Addendum No. 2 _____	Addendum No 4 _____
(Date)	(Date)

It is understood that failure to receive any such addendum shall not relieve the Successful Bidder from any obligation under this IFB as submitted.

FIRM NAME:

OFFICIAL ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_, 2016

# WAGE CERTIFICATE

Subject: BID NO: IFB PP 2016-02

REGISTER NATIVE HAWAIIAN VOTERS TO PARTICIPATE IN THE STATE AND  
FEDERAL ELECTIONS

Pursuant to Section 103-55, Hawai'i Revised Statutes (HRS), I hereby certify that if the awarded contract is in excess of \$25,000.00, the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by section 103-55, HRS.

BIDDER: \_\_\_\_\_

BY: \_\_\_\_\_

*Signature of Person Authorized to Sign this BID*

**Please Print**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Office of Hawaiian Affairs**  
**GENERAL CONDITIONS**  
**(NON-GRANT GOODS AND SERVICES)**  
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## **1. COORDINATION AND REPORTS**

The work performed under this Contract shall be coordinated with OHA's "head of purchasing agency" or Designee as listed in the Scope of Services (Attachment - S1) hereinafter referred to as "Coordinator", who will act as the contract monitor and principal liaison between the CONTRACTOR and OHA and who will assist in resolving policy questions, expediting decisions, and the review of the work performed.

It shall be the responsibility of the CONTRACTOR to maintain close and frequent communication with the Coordinator at all stages of the work required under this Contract. The CONTRACTOR shall inform the Coordinator of all scheduled contacts made by the CONTRACTOR with public agencies or individuals on matters relating to work performed under this Contract.

The CONTRACTOR shall submit to the Coordinator upon request written progress reports on the performance of services, expenditure reports, and/or any other information required by Coordinator. The CONTRACTOR shall submit these reports in the appropriate formats and within the deadlines specified by the Coordinator.

The CONTRACTOR may be requested to discuss any work or reports with OHA's Board of Trustees or Chief Executive Officer.

## **2. RECORDS MAINTENANCE, RETENTION, AND ACCESS**

The CONTRACTOR shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the CONTRACTOR's performance of services under this Contract. OHA, the comptroller of the State of Hawai'i, and any of its authorized representatives, the committees (and their staff) of the Legislature of the State of Hawai'i, and the Legislative Auditor of the State of Hawai'i shall have the right of access to any book, document, paper, file or other record of the CONTRACTOR (and of any of its subcontractors) that is related to the performance of services under this Contract in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's program, management and fiscal practices to assure the proper and effective expenditure of funds under this Contract.

The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services under this Contract at least THREE (3) years after the date of submission of the CONTRACTOR's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the THREE (3) year period, the CONTRACTOR shall retain the

records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

### **3. ADDITIONAL COMPENSATION AND PAYMENT TERMS**

All costs and expenses shall be actual reasonable ordinary necessary costs and/or expenses incurred in conjunction with the services provided under SCOPE OF SERVICES herein and shall be approved by the Coordinator. The Coordinator's approval shall also be required prior to the CONTRACTOR incurring any exceptional costs and/or expenses.

Should inter-island or out-of-state travel be required, the CONTRACTOR shall obtain advance written approval from the Coordinator for such travel. Travel shall be by the most economical means consistent with time available and the urgency of the trip. Travel accommodations (airfare, subsistence and lodging) shall be reasonable considering all relevant circumstances. The CONTRACTOR shall be entitled to reimbursement for air fare and stipend for meals and lodging at a rate not to exceed the current per diem rates afforded State employees for similar type travel and shall be uniform and equitable for all travelers in all cases. Subject to the approval of the Coordinator, other necessary reasonable expenses which meet certain stipulated conditions which OHA shall make known to the CONTRACTOR and are supported by receipts issued in the normal course of business may be allowed in addition to airfare and stipend. The CONTRACTOR shall submit a written reimbursement request, certified by the CONTRACTOR to be the actual travel costs and expenses incurred in conjunction with the Scope of Services herein, to the Coordinator for Coordinator's review and approval. Each reimbursement request shall be accompanied by original receipts/invoices evidencing the actual expenditures incurred for which reimbursement is being claimed. Photocopies or faxed copies of receipts or invoices may be acceptable in exceptional circumstances when properly justified in writing. Credit card receipts are unacceptable for purposes of reimbursement herein.

Fees shall be payable as described in this section with incremental payments and final payment to be made upon presentment of original invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Scope of Services (Attachment - S1) of this Contract, the amount due and owing and certifying that the services requested under the Contract have been satisfactorily performed in conformance with this Contract. Each invoice shall include a detailed breakdown of the CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Original receipts evidencing actual costs and expenditures shall accompany each monthly invoice presented for payment whenever possible. Expenditure details and related original receipts for any travel shall be for actual travel expenses incurred and shall also accompany monthly invoices presented for payment.

All payments shall be made in accordance with and subject to Chapter 40, HRS, which specifies the accounting procedures and controls applicable to payments out of the Treasury of

the State of Hawai'i. Final payment in final settlement of this Contract shall be subject to §103-53 and 103D-328, Hawai'i Revised Statutes (HRS), as amended, respectively which requires a tax clearance from the Director of Taxation, State of Hawai'i, stating that all delinquent taxes, if any levied or accrued under state statutes against the CONTRACTOR has been paid.

Upon termination of this Contract, payments under this section shall cease, provided however, that the CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which the CONTRACTOR has not yet been paid.

#### **4. OTHER CONDITIONS OF USE OF FUNDS**

The CONTRACTOR shall not use any funds involved in this Contract for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Contract, including those conditions made applicable by provisions of appropriation acts of the Legislature or by administrative rules adopted pursuant to law.

#### **5. RESPONSIBILITY FOR ACCURACY, COMPLETENESS, AND ADEQUACY**

The CONTRACTOR shall be responsible and accountable for accuracy, completeness, clarity, and adequacy of the work performed including work performed by agents and employees and any subcontractors the CONTRACTOR may retain with OHA's approval. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the OHA's interest above other considerations and to accept the professional responsibility for the services to be rendered.

#### **6. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES**

In the performance of the services required under this Contract, the CONTRACTOR shall be an "independent contractor" with the authority to control and direct the performance and details of the work and services required under this Contract; however, OHA shall have a general right to inspect the work in progress to determine whether, in OHA's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Contract. The CONTRACTOR shall insure that all person(s) hired or used by the CONTRACTOR as agents and employees are experienced and fully qualified to engage in the activity and services in which they participate. The CONTRACTOR's agents and employees shall also be bound by the provisions of this Contract. At the request of OHA, the CONTRACTOR shall provide adequate evidence that such persons are the CONTRACTOR's agents or employees.

Any work under this Contract shall not be construed as employment with OHA and shall not entitle the CONTRACTOR or the CONTRACTOR's agents and employees to vacation, sick leave, retirement, or other benefits afforded OHA employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal, City and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business activities are complied with and satisfactorily met.

The CONTRACTOR shall also be responsible for payment of all applicable federal, state, city and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to, (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

The CONTRACTOR shall also be responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, U. S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to OHA prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 3 of these General Conditions.

The CONTRACTOR shall also obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawai'i and a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawai'i, in accordance with section 103D-310, HRS, and section 3-122-112, Hawai'i Administrative Rules (HAR), respectively, that is current within six months (two months for final payment) of the date of issuance.

In lieu of the above certificates from the Department of Taxation, the Department of Labor and Industrial Relations, and the Department of Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process, Hawai'i Compliance Express.

## **7. SUBCONTRACTS AND ASSIGNMENTS**

The CONTRACTOR shall not subcontract, assign, or transfer any right, title, interest, duties or obligations or any services to be performed under this Contract, in whole or in part,

without prior written consent and approval of OHA. OHA may condition any consent and approval upon such terms and provisions that OHA may deem necessary. Furthermore, no assignment of claims for money due or to become due to the CONTRACTOR under this Contract shall be effective unless such assignment is first approved by OHA.

## **8. INDEMNIFICATION AND INJURIES**

The CONTRACTOR shall defend, indemnify and hold harmless OHA, its Trustees, officers, employees and agents, from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, demands and judgments arising, either directly or indirectly, out of or resulting from the errors, omissions or acts of CONTRACTOR or CONTRACTOR's officers, employees, agents or subcontractors occurring during or in connection with the performance of CONTRACTOR's services under this Contract. Furthermore, nothing herein contained shall excuse the CONTRACTOR from compliance with any State, Federal or County law, rule, regulation, or ordinance. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

The CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third parties for all loss, cost, damage, or injury caused, either directly or indirectly, by CONTRACTOR or CONTRACTOR's agents and employees in the course of their employment.

The CONTRACTOR waives any rights to recovery from OHA for any injuries that the CONTRACTOR or CONTRACTOR's employees or agents may sustain while performing services under this Contract and that are a result of the negligence of CONTRACTOR or CONTRACTOR's employees or agents.

Should OHA, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR, the CONTRACTOR shall, in connection with this Contract, pay all costs and expenses incurred by or imposed on OHA, including attorneys' fees.

## **9. INSURANCE**

A. **INSURANCE REQUIREMENT:** At all times during the term of this Contract, CONTRACTOR shall obtain and maintain in full force and effect, any and all insurance to cover CONTRACTOR's operations under this Contract that may be required under all applicable federal, state, and city laws and ordinances including, but not limited to, worker's compensation coverage, commercial general liability insurance, and automobile liability insurance coverage.

Prior to commencing work pursuant to this Contract, the CONTRACTOR shall provide evidence that the CONTRACTOR has in full force and effect the following policies:

1. Commercial Liability Insurance: The CONTRACTOR shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000.00 per occurrence and \$ 2,000,000.00 general aggregate. OHA shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. Policy shall be an "Occurrence" form of policy, unless otherwise specifically approved by OHA.

2. Automobile Liability Insurance: Automobile Liability Policy shall have a combined single limit of \$1,000,000.00 for each accident or equivalent and shall cover owned, hired, and non-owned vehicles.

3. Workmen's Compensation Coverage: Policy shall include coverage required by State of Hawai'i and include Part B coverage as follows: Employers Liability with limits of \$100,000.00 for each accident, \$500,000.00 disease policy limit, and \$100,000.00 disease policy limit per employee.

4. Professional Liability Insurance: CONTRACTOR shall maintain professional liability insurance (PU) with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate which shall provide coverage for losses as a result of the CONTRACTOR's negligent acts, errors or omissions.

5. Other insurance as required by OHA.

B. OTHER TERMS. All policies of insurance described above shall:

1. Name the State of Hawai'i, OHA and its Trustees, OHA's employees, representatives and agents as Additional Insureds, by endorsement.

2. Provide that the insurance is Primary with respect to all insureds for claims arising out of the CONTRACTOR's negligent acts and/or omissions or misconduct, and that any insurance (or self-insurance) carried by OHA or the State of Hawai'i shall be excess and non-contributing.

3. Be provided by insurers authorized to do business in the State of Hawai'i, and with a current Best's rating of not less than A-VII, or otherwise as approved by OHA.

C. EVIDENCE OF INSURANCE: The CONTRACTOR shall provide to OHA and maintain current certificates of insurance, prepared by a duly authorized agent, and copies of the policies, evidencing the insurance in effect at all times during the term of this Contract. OHA shall be listed as the Certificate Holder on all such certificates.

D. NOTICE OF CANCELLATION: The CONTRACTOR, through its insurance broker, will provide OHA with THIRTY (30) days written notice prior to cancellation, termination, lapse, non-renewal or material change to the insurance policy.

E. Should any of the insurance required above be cancelled before the CONTRACTOR's work under this Contract is complete as determined by OHA, the CONTRACTOR shall immediately procure replacement insurance that complies in all respects to the requirements of this section.

F. Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of CONTRACTOR's responsibility for payment of damages resulting from its operations under this Contract including the CONTRACTOR's separate and independent duty to defend, indemnify, and hold OHA, its Trustees, officers, employees and agents harmless pursuant to other provisions of this Contract.

#### **10. CONFIDENTIALITY OF MATERIAL**

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Contract shall be confidential and shall not be made available to any individual or organization by CONTRACTOR without prior written approval of OHA. This shall also include requests tendered to CONTRACTOR by individuals and organizations pursuant to Chapter 92F, Uniform Information Practices Act, Hawai'i Revised Statutes, as amended; provided however, that such documents that are otherwise by law made public, shall not be subject to this provision. In addition, no information data, report, record or material given to or prepared or assembled by CONTRACTOR shall be used by the CONTRACTOR for his or her personal gain and/or for any other purposes, except those purposes explicitly stated in this Contract. A violation of this Section shall be a material violation of this Contract.

If it appears that CONTRACTOR has disclosed (or has threatened to disclose) information and or has used such information for purposes in violation of this Contract, OHA shall be entitled to an injunction to restrain CONTRACTOR from disclosing and/or using, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. OHA shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

The confidentiality provisions of this Contract shall remain in full force and effect after termination of this Contract.

#### **11. CONFLICT OF INTEREST AND DISCLOSURE**

The CONTRACTOR represents that the CONTRACTOR or any employee or agent of the CONTRACTOR presently has no interest and/or has no interest in another company, corporation, partnership, joint venture, organization, or entity of similar type and nature, direct or indirect, that would conflict in any manner or degree with the performance of the services under

this Contract. The CONTRACTOR promises that he/she shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services under this Contract.

The CONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in any activity that conflict or may conflict with the best interest of OHA. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any activity that the CONTRACTOR may be involved with on behalf of OHA.

The conflict of interest/disclosure provisions of this Contract shall remain in full force and effect for the entire duration of this Contract and/or extensions under this Contract.

## **12. RETURN OF RECORDS/PROPERTY OF OHA**

Upon expiration or termination of this Contract, as provided hereinafter, the CONTRACTOR shall deliver and/or surrender all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, records, notes, data, memorandum, photographs, photographic negatives, videos, or other materials prepared by the CONTRACTOR and any discoveries, inventions or developments produced in whole or in part under this Contract (which shall become OHA's property) together with all information, data, reports, records, maps, and other materials provided to the CONTRACTOR by OHA, to OHA on or before the expiration date or date of sooner termination. OHA shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." OHA, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

## **13. DISPUTES**

Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, HAR, as the same may be amended from time to time. To the extent not inconsistent with the above, the CONTRACTOR and OHA also agree to the following.

NEGOTIATION. In the event of any dispute, claim, question, or disagreement arising out of or relating to this Contract or the breach, termination, or validity thereof, OHA and the CONTRACTOR agree to use their best efforts to settle such dispute, claim, question, or disagreement. To this effect, upon notice of the dispute, claim, question or disagreement, OHA and the CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

**MEDIATION.** If OHA and the CONTRACTOR do not reach a negotiated solution within TWENTY-ONE (21) days of written notice of the dispute, claim, question or disagreement, OHA and the CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by a mediator mutually agreed upon by OHA and the CONTRACTOR in accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines.

**ARBITRATION.** Thereafter, any unresolved dispute, claim, question or disagreement arising out of or relating to this Contract (including whether such dispute, claim, question or disagreement is arbitral), or breach, termination or validity thereof, shall be settled by binding arbitration before one arbitrator, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be administered and conducted in accordance with the Dispute Prevention and Resolution, Inc., Arbitration Rules and Guidelines in effect at the time a request for arbitration of the dispute is made. A decision and award of the arbitration made under the said rules shall be exclusive, final, and binding upon all parties, their agents, employees, successors, and assigns. The costs and expenses of the arbitration shall be borne equally by the parties. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of services under this Contract. The selection of the arbitrator shall be mutually agreed to by OHA and the CONTRACTOR. OHA and the CONTRACTOR understand that by choosing arbitration for its dispute, OHA and CONTRACTOR are waiving its right to trial by jury.

The negotiation, mediation, or arbitration shall be conducted in Honolulu, Hawai'i.

#### **14. TERMINATION OF CONTRACT**

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Contract or breaches any promises, terms or conditions of this Contract and having been given reasonable notice of an opportunity to cure any such default and not having taken satisfactory corrective action with the time specified by OHA, OHA shall have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination at least SEVEN (7) calendar days before the effective date of such termination. The particular acts which shall constitute cause and justify termination include but are not limited to poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of similar kind and nature. Furthermore, OHA may terminate this Contract in whole or in part, for the convenience of OHA without statement of cause at any time by giving written notice to the CONTRACTOR of such termination and the effective date of the termination.

In the final settlement of this Contract, OHA shall determine the amount of unexpended and unobligated funds to be refunded to OHA by the CONTRACTOR. If the termination is for cause, any other provision to the contrary notwithstanding, the

CONTRACTOR shall not be relieved of liability to OHA for damages sustained because of any breach of this Contract by the CONTRACTOR.

#### **15. WAIVER OF VIOLATIONS**

It is expressly understood and agreed that no waiver granted by OHA on account of any violation of any promise, term, or condition of this Contract shall constitute or be construed in any manner as a waiver of the promise, term, or condition or of the right to enforce the same as to any other or further violation.

#### **16. SEVERABILITY**

If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

#### **17. WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce, or the granting of a waiver of, any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

#### **18. AMENDMENT**

This Contract may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This Contract may be extended on condition of satisfactory performance by the CONTRACTOR as determined by the Coordinator and shall be contingent upon the availability of funds for compensation payable for services performed and for cost and expenses incurred beyond the initial term of this Contract.

#### **19. ENTIRE CONTRACT**

This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written relative to this Contract. This Contract supersedes any prior written or oral Contracts, conditions, understandings, promises, warranties or representations whether express or implied between parties.

#### **20. APPLICABLE LAW**

This Contract shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.