

GENERAL INSTRUCTIONS TO OFFERORS



CITY AND COUNTY OF HONOLULU

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CHAPTER 1.0: **GENERAL**

1.1 Introduction.

These General Instructions to Offerors (“Instructions”) state the City’s policies relating to Request for Competitive Sealed Bids (RFB) and Request for Competitive Sealed Proposals (RFP) solicitations.

Before submitting a bid or a proposal, the Offeror shall be responsible for reading and examining the solicitation documents, including Offer pages, Scope of Work, Special Provisions, Exhibits, City’s General Terms and Conditions, addenda (if any), and any other sections or documents attached hereto, these Instructions and all applicable requirements by law. Submission of an offer shall be deemed verification of such reading and examination. No Offeror shall in any way be relieved of any obligation with respect to its offer or the contract due to its failure or neglect to secure, receive, examine, familiarize itself with, acquaint itself with, or understand the work requirements, the Solicitation Documents, or any addenda hereto, applicable standards or requirements, or existing conditions, difficulties, restrictions or obstacles. No claim for additional compensation to the Offeror shall be allowed based on lack of knowledge or misunderstanding.

1.2 Application.

These General Instructions to Offerors (“Instructions”) shall only apply to procurements conducted under Hawaii Revised Statutes §103D-302 and §103D-303.

These Instructions, and any solicitation using these Instructions, are subject to the Hawaii Revised Statutes (“HRS”) §103D and the Hawaii Administrative Rules (“HAR”) Title 3, Department of Accounting and General Services. Should any provision herein be inconsistent with the HRS or HAR, the HRS or HAR, respectively, shall govern. Provisions from the HRS and HAR are presented for convenience only and may not be complete.

1.3 Definitions.

The terms used in this General Instructions to Offerors shall have the same meanings as defined in the City’s General Terms and Conditions.

CHAPTER 2.0: SOLICITATION

2.1 Order of precedence.

Whenever separate Offer pages, Scope of Work, Special Provisions, Exhibits, requirements, specifications or plans are referred to or attached hereto, they shall be considered a part of this solicitation document as if contained herein. Should any of the offer pages, scope of work, special provisions, requirements, specifications or plans conflict with these Instructions to Offerors, said Offer pages, Scope of Work, Special Provisions, requirements, specifications or plans shall govern.

2.2 City's estimates.

Any estimate provided by the City is for the convenience of the Offeror only and the City does not represent or warrant its accuracy. An Offeror should conduct its own review and analysis and not base its offer on the City's estimate.

2.3 Pre-bid or pre-proposal conference.

Pre-bid or pre-proposal conference, if held, shall be announced in the solicitation document, or in an addendum. Unless specified otherwise in the solicitation, pre-offer conferences shall be non-mandatory. Nothing stated at the pre-offer conference shall change the solicitation unless a change is made by written addendum.

2.4 Examination of site.

When applicable, the Offeror shall examine carefully the site of the proposed work before submitting an offer. The submission of an offer shall be considered as a warranty that the Offeror has made such examination and is satisfied with the conditions to be encountered in performing the work.

(a) Surface and subsurface conditions.

Where subsurface conditions are known to the City in respect to foundation or other design, the Offeror may inspect the records of the City as to such information and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the City as to the character of material which has been actually encountered by the City and is included only for the convenience of the Offeror. The City makes no representations as to the conditions which will actually be encountered by the Offeror.

Any subsurface information or hydrographic survey data furnished are for the Offeror's convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in

investigations made at the specific locations indicated to aid in the design of the project, and the City assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that prevail at the time of construction. The Offeror shall be solely responsible for all assumptions, deductions, or conclusions the Offeror may make or derive from the subsurface information or data furnished.

Making information concerning subsurface conditions available to Offerors is not to be construed in any way as a waiver of the Offeror's responsibility to examine the solicitation document and site. The Offeror must satisfy itself through its own investigations as to conditions to be encountered.

(b) Utilities, underground.

All underground water, gas, oil, telephone, electric, storm drain, sewer, and other pipes or conduits, shown on the plans, are only approximate in their locations. The Offeror shall make a personal investigation and inspection of the records and drawings possessed by owners of the utilities. The Offeror shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities.

(c) Materials and equipment.

The City does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the solicitation, the Offeror shall be considered as having taken into account when submitting an offer the availability of materials or equipment required under the contract, except as provided for in applicable sections of the City's general conditions.

2.5 Price Items.

- (a) Unless otherwise specified in the solicitation document, Offerors must provide a price for all items listed in the solicitation document.
- (b) When alternates are provided for in the solicitation, Offerors should enter a price for each and every item listed setting forth the amount to be added to or deducted from the Offeror's total basic price should such alternate be incorporated into the contract. Failure to enter a price for each and every item may result in the Offeror's offer not being considered for award,

provided that if award is based on the item or items on which offers have been submitted, the Offeror's offer may be considered for award.

- (c) In case of discrepancy between prices written in words and those written in figures, the price written in words shall govern.
- (d) Offers in which prices are unbalanced, which contain omissions, erasures, alterations, or additions not called for, or irregularities of any kind shall be cause for rejection of an offer.
- (e) Any illegible or otherwise unrecognizable price shall be cause for rejection of an offer.

2.6 Applicable Taxes.

Unless otherwise specified in the solicitation document, the Offeror shall include in its unit price and be responsible for paying all taxes, which shall be applicable to the goods, services, or construction or the furnishing and sale thereof.

Offerors are directed to contact the Department of Taxation of the State of Hawaii for assistance as to whether the State of Hawaii excise tax, the applicable use tax, or other taxes will apply to the Offeror or contractor.

2.7 Wages, Hours and Working Conditions.

(a) Services projects

When the offer is in excess of \$25,000 for Services projects and a certification form is made a part of the solicitation, the said form shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required certification may be grounds for disqualification of the Offeror's offer.

The certification form shall be used to certify that, if awarded the contract, the Offeror will comply with HRS §103-55, relating to Wages, hours and working conditions of employees of Contractor supplying services.

The certification form further certifies that the services to be performed will be performed under the following conditions:

- (1) Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.
- (2) Compliance with Labor Laws. Contractor shall be responsible for and comply with all applicable labor laws of the Federal and State governments, including worker's compensation, unemployment compensation, payment of wages and safety standards.

(b) Construction projects

Offerors are advised of the applicability of HRS §104, "Wages and Hours of Employees on Public Work," and the City's applicable General Terms & Conditions. Offerors shall incorporate compliance with all the provisions of HRS §104 and the City's applicable General Terms and Conditions into their offer.

2.8 Insurance and indemnification.

(a) Goods or Services projects

Insurance and indemnification shall only be required for Goods or Services projects when specified in the solicitation document. Offeror shall include in its price, any and all costs to provide insurance and comply with the indemnity provisions as specified in the Special Provisions.

(b) Construction projects

Insurance and indemnification shall be required for all Construction projects. Offeror shall include in its price, any and all costs to provide insurance and comply with the indemnity provisions specified.

2.9 Performance and payment bonds.

(a) Goods or Services projects

Contract performance and payment bonds shall only be required for Goods or Services projects when specified in the solicitation. Offeror shall include in their price, any and all costs to meet the bonds requirement of a project. Performance and payment bonds, when required, shall be as specified in the Special Provisions.

(b) Construction projects

Contract performance and payment bonds shall be required for all Construction projects. Offeror shall include in its price, any and all costs to meet the bonds requirement of a project.

The amount of the performance and payment bonds shall be:

- (1) One hundred percent of the amount of the construction contract; or
 - (2) The amount required by the terms of the federal funding contracts;
- or
- (3) In an amount specified in the solicitation documents if the contract price cannot be determined at the time of award.

2.10 Bid security.

When required, Offerors shall provide, at no cost to the City, an offer security. If an offer security is required and an Offeror fails to accompany its offer with an offer security, the offer shall be deemed non-responsive, except as provided in HAR §3-122-223 (d).

- (a) Applicability.
 - (1) Goods or Services projects: Offer security shall only be required for Goods or Services projects when specified in the solicitation.
 - (2) Construction projects: Offer security shall be required for all Construction projects.
- (b) Bid security amount.

Unless otherwise specified in the solicitation, an offer security shall be in an amount equal to at least five per cent of the amount of the base offer and additive alternates.

- (c) An acceptable bid security shall be limited to:
 - (1) Surety bond in the form attached to the solicitation and underwritten by a company licensed to issue bonds in this State. Failure to utilize the City's surety bond forms shall not relieve the Offeror from liability or responsibility if it is discovered that the form utilized is not compliant with the HAR.
 - (2) Legal tender; or
 - (3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of The Department of Budget and Fiscal Services, City and County of Honolulu.
 - i) These instruments may be utilized only to a maximum of \$100,000.00.
 - ii) If the required security amount totals over \$100,000.00, more than one instrument not exceeding \$100,000.00 each and issued by different financial institutions shall be accepted.

2.11 Brand names, model, make or method.

Where the solicitation document specifies one or more manufacturer's brand names or makes of materials, devices, equipment or system; it is indicating a quality, style, appearance, or performance, or method of construction. The Offeror shall in the case of:

- (a) Or equal

Base their offer on one of the specified brands. However, other manufacturers' brands may also qualify if found to be equal to or better than those specified. An offer based on an unspecified brand will be subject to evaluation as to its comparable quality, including quality or adequacy of manufacturer and dealer support.

(b) Or approved equal

Base their offer on one of the specified brands, makes, or method, or on an alternate brand, make, or method which has expressly been found to be equal or better by the City in the solicitation or by written addendum to the solicitation.

2.12 Acknowledgement of liquidated damages provision.

The Acknowledgment of Liquidated Damages Provision form when made a part of the solicitation shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required acknowledgement may be grounds for rejection of the offer.

2.13 Acknowledgement of examination of site.

The Acknowledgment of examination of site provision form when made a part of the solicitation shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required acknowledgement may be grounds for rejection of the offer.

2.14 Supplemental requirements for Construction projects.

(a) Estimated quantities

Unless otherwise specified, all quantities appearing in solicitation document for construction projects are approximate, and those indicated in the document are prepared for the comparison of offers only. The City does not, expressly or by implication, warrant that the actual quantities will correspond therewith. Offeror shall include in their prices offered, the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced item, the entire cost of any and all items incidental to the performance of the work covered by such lump sum or unit priced item. When an Offeror is in doubt as to the proper item to which the anticipated cost of any item is to be allocated, the Offeror shall request clarification from the City, or shall include such cost in the lump sum or unit price offer for the item deemed most appropriate. Failure of the Offeror to request clarification shall bind the Offeror to complete such work at the prices submitted.

- (1) Unit priced items: For unit priced items, payment to the Contractor will be made only for the actual quantities of work performed and accepted or of materials furnished and accepted in accordance with

the solicitation document and subject to applicable sections of the City's General Terms and Conditions.

- (2) Lump sum items: The quantities in any item for a lump sum offer item are approximate only and payment will be made only for the item in place complete, regardless of the amount of material, equipment, and labor necessary to complete the same in a proper and professional manner and in accordance with the contract documents. The Offeror shall verify these quantities in any manner deemed necessary or expedient.

(b) Joint contractor; subcontractor listing

Offeror shall comply with HRS §103D-302, relating to the listing of joint contractors or subcontractors.

Specialty work. Joint contractors and subcontractors may perform only the specialty work for which they are listed. When alternates are made a part of the offer, Offeror shall indicate, if applicable, the alternate and the basic work to be performed by each joint contractor or subcontractor.

A listing that is incomplete, ambiguous, or erroneous may be cause for rejection of an offer. Offers which are not in compliance may be accepted if the City concludes that acceptance is in the best interest of the public and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total sum offer amount.

(c) Allowances

Any allowance amount specified in the solicitation shall be considered an estimate of the amount required for the purpose specified and shall be included in the Offeror's total sum offer. Offerors shall refer to the applicable sections of the City's General Terms and Conditions regarding Allowances for more information.

(d) Mobilization

Offerors shall refer to the applicable sections of the City's General Terms and Conditions regarding mobilizations for more information.

(e) Employment of state residents on Construction projects.

Offerors are advised of the applicability of HRS §103B, Employment of State Residents on Construction Procurement Contracts. HRS §103B requires the awarded Contractor to ensure that Hawaii Residents (as defined in the HRS §103B) compose not less that eighty percent (80%) of the workforce employed to perform the contract. This requirement shall apply to subcontracts of \$50,000.00 or more in connection with any construction contract procured under HRS §103D.

(f) Safety and health certification

When the offer is in excess of \$100,000.00, a Safety and Health certificate form shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required certification may be grounds for rejection of the offer.

The Safety and Health certificate shall be used to certify that, if awarded the contract, the Offeror will comply with HRS §396-18, relating to safety and health programs for contractors offering on City construction projects.

2.15 General Terms & Conditions.

The City's General Terms and Conditions shall be either incorporated by reference or by attachment to the solicitation. Offers submitted with any alterations to the City's General Terms and Conditions so made by the Offeror without approval by the City may be sufficient cause for rejection of the offer.

2.16 Request for clarification.

(a) Examination of the solicitation document.

Prospective Offeror should examine and review the solicitation document with care. If a prospective Offeror believes that any of the matters in, or related to, the solicitation are not sufficiently described or explained in the solicitation, or that any discrepancy exists between different parts of the solicitation, or that the full intent of the solicitation is not clear, then the Offeror shall submit a written request for clarification no later than the deadline stated in the solicitation document. The City is not obligated to response to any request received after the deadline.

(b) Submission of requests for clarifications

Written request for clarifications shall be submitted by facsimile transmission to (808) 768-3299 or e-mailed to bfpurchasing@honolulu.gov or mailed hardcopy to:

City and County of Honolulu
Budget and Fiscal Services
Purchasing Administrator
530 South King Street, Room 115
Honolulu, Hawaii 96813

2.17 Request for substitution.

(a) Goods or Services projects

Alternate brands, makes, or methods may be qualified through the submittal of a written request for substitution for review and approval. An alternate brand, make, or method approved for one procurement or project is not to be considered as approved for any other procurement or project. Offeror shall submit a written request for substitution no later than the deadline stated in the solicitation document. Requests received after the deadline will be denied.

Unless otherwise specified, written requests for substitution must state all features of the proposed substitution that differ from the brand, model, make or method specified in the solicitation. The written request shall also include sufficient evidence to enable the City to evaluate each feature to determine if it is equal or better than specified brand, model, make or method.

Written request for substitution shall be submitted by facsimile transmission to (808) 768-3299 or e-mailed to bfspurchasing@honolulu.gov, or mailed hardcopy to:

City and County of Honolulu
Budget and Fiscal Services
Purchasing Administrator
530 South King Street, Room 115
Honolulu, Hawaii 96813

(b) Construction projects

Alternate brands, makes, or methods may be qualified through the submittal of a written request for substitution for review and approval. An alternate brand, make, or method approved for one procurement or project is not to be considered as approved for any other procurement or project. Offeror shall submit a written request for substitution no later than the deadline stated in the solicitation document. Requests received after the deadline will be denied.

The written request must be clearly marked SUBSTITUTION REQUEST on the envelope. Six copies of the request must be submitted together with three sets of technical brochures which shall either be marked or be accompanied by three copies of a statement of variances. The statement of variances must list all features of the proposed substitution which differ from the contract documents, and must further certify that the substitute has no other variant features. The brochures must include sufficient evidence to enable the City to evaluate each feature listed as a variance. Should an unlisted variance be discovered after installation or delivery of the item, the Contractor shall immediately replace the item with the specified item at no cost to the City and without any extension to the contract completion time.

The written substitution request shall be submitted in the following format:

SECTION ITEM SPECIFIED SUBSTITUTE

If sufficient evidence to make a determination of acceptability of the proposed substitute does not accompany a request for substitution, the request shall be denied unless the City allows further evidence to be submitted to qualify the same model and provided that such evidence is submitted prior to the specified deadline unless such period is extended by the City.

Substitution requests not complying with the above requirements will be denied.

Any Offeror whose offer is based on a substitute item which has been approved by the City shall include in its price offer the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the substitute item. The modifications referred to include the changes in design that may be required for such work as, but not limited to, architectural, structural, electrical and plumbing.

Written request for substitution shall be submitted by person, or mailed hardcopy to:

City and County of Honolulu
Budget and Fiscal Services
Purchasing Administrator
530 South King Street, Room 115
Honolulu, Hawaii 96813

2.18 Solicitation addenda.

(a) Written addendum

Oral interpretations or clarifications or changes or approved substitutions will be without legal effect. Only interpretations or clarifications or changes or approved substitutions provided by formal written addendum to the solicitation shall be binding.

(b) Notification of addenda

Notifications of addenda will be issued to all prospective Offerors known to have obtained a solicitation document from the City.

If the addendum is issued after the receipt of proposals, notifications will be sent to those Offerors who submitted proposals or who are "priority listed."

(c) Modification to price items

Should an addendum or amendment modify the description and/or quantities of a price item, it shall be the responsibility of the Offeror to modify or withdraw its submitted offer, if necessary.

2.19 Cancellation of solicitation.

A solicitation may be canceled in whole or in part and at any time during the solicitation process for reasons specified in, but not limited to, HAR §3-122-96.

CHAPTER 3.0: PREFERENCES

3.1 Applicability of preferences.

A preference shall only apply to a solicitation when:

- (a) An offer form or certificate for the preference is included in the solicitation document; and
- (b) The solicitation expressly indicates the applicability of the preference in the solicitation's offer pages, special instructions or special provisions.
- (c) Any or all of the preferences of this section shall not apply whenever such application will disqualify the City from receiving federal funds or aid.

3.2 Hawaii Products Preferences.

When specified in the solicitation, the Hawaii products preference is applicable to this project. In accordance with HRS §103D-1002 and HAR §3-12 the Hawaii products, identified in the schedule contained in the offer are acceptable to use in the work noted in this solicitation.

The current Hawaii Products List is available on the State Procurement Office (SPO) website at <http://hawaii.gov/spo/hawaii-public-procurement-code-chapter-103d-hrs/preferences>. To access the list, click on the "Hawaii Products" link.

Offerors offering a Hawaii product shall identify the Hawaii product on the offer form. Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offers specified in the solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii Products List shall complete form SPO-38, Certification for Hawaii Product Preference and submit to the Division of Purchasing, City and County of Honolulu, and provide all additional information required by the City. One form shall be completed for each product being requested (i.e. 3 products should have 3 separate forms completed). The form is available on the State Procurement Office (SPO) webpage at <http://hawaii.gov/forms/state-procurement-office>. To download the form, click on the "SPO-38" link.

All Hawaii products in any offer shall be made available for inspection, or additional information may be requested to verify that the Hawaii product meets the minimum specifications.

Where an offer contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest price or purchase price only, the price offered for

a Hawaii product item shall be decreased by subtracting ten per cent for class I Hawaii product items offered, or fifteen per cent for class II Hawaii product items offered. The price offered for the Hawaii product shall be f.o.b. jobsite, unloaded, including applicable general excise tax and use tax. The Hawaii product cost shall not include installation costs. The lowest offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Offeror submitting a offer with Hawaii Product shall identify the Hawaii Product on the designated offer form or certificate included in the solicitation.

Offerors are advised of the applicability of the City's General Terms and Conditions regarding change in availability of Hawaii product.

3.3 Recycled products preference.

The recycled product preference shall not apply unless there is provided in the solicitation the items allowed for consideration and use as recycled products, the percent of recycled content required to qualify for a preference, and provided further that the Certification of Recycled Content form is included as part of the Offer pages.

3.4 Public works construction; Apprenticeship agreement preference.

(a) Definitions for purposes of this section:

"Apprenticeable trade" – shall have the same meaning as "apprenticeable occupation" under HAR §12-30-5.

"Employ" – shall mean the employment of a person in an employer-employee relationship.

"Governmental body" – shall have the meaning as defined in HRS §103D-104.

"Party to an apprenticeship agreement" – shall mean a party to a registered apprenticeship program with the Department of Labor and Industrial Relations (DLIR).

"Preference" – shall mean the 5% by which the qualified offer amount would be decreased for evaluation purposes.

"Public Work" - shall be as defined in HRS §104-2 and HAR §12-22-1.

"Registered apprenticeship program" -- shall mean a construction trade program approved by the Department of Labor and Industrial Relations pursuant to HAR §12-30-1 and §12-30-4.

"Sponsor" – shall mean an operator of an apprenticeship program and in whose name the program is approved and registered with the Department of Labor and Industrial Relations pursuant to HAR §12-30-1.

(b) Applicability

For offers for a public works construction contract or public works construction component of a contract having an estimated value of not less than \$250,000, the City shall, for evaluation purposes, decrease the offer amount of an Offeror by five per cent (5%) if the Offeror is a party to an apprenticeship agreement registered with the State of Hawaii, Department of Labor and Industrial Relations for each apprenticeable trade the Offeror will employ to construct the public works, and in conformance with HRS §372.

(c) Procedures

- (1) Prior to solicitation opening
Offeror seeking to claim the preference shall state the trades the Offeror will employ to perform the work. For each trade to be employed to perform the work, the Offeror shall submit a completed signed original Certification of Bidder's Participation, Certification Form 1 verifying participation in an apprenticeship program registered with DLIR. The Certification Form 1 shall be authorized by an apprenticeship sponsor of DLIR list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor. The completed Certification Form 1 for each trade must be submitted by the Offeror with the offer. A facsimile or copy is acceptable to be submitted with the offer; however, the signed original must be submitted within five (5) working days of the due date of the offer. Previous certifications shall not apply unless otherwise specified in this solicitation. DLIR Certification of Bidder's Participation, Certification Form 1 can be found on the DLIR Workforce Development Division website (<http://hawaii.gov/labor/wdd>).
- (2) Offer Evaluation
If the Offeror properly certifies participation in an apprenticeship program for each trade employed by the Offeror for the project and properly submits the required documents with the offer, upon verification, the City will apply the preference and decrease the Offeror's total offer amount by five per cent (5%) for evaluation purposes. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference. Should the Offeror qualify for other statutory preferences, all applicable preferences shall be applied to the Offeror's price.
- (3) Contract administration
Offerors are advised of the applicability of the City's General Terms and Conditions regarding contract administration.
- (4) Enforcement
Offerors are advised of the applicability of the City's General Terms and Conditions regarding enforcement.

3.5 Other Preferences.

The following preferences may apply to a solicitation if an offer form or certificate for the preference is included in the solicitation document.

- (a) Printing, Binding, and Stationery Work
- (b) Reciprocal
- (c) Software Development Business

3.6 Evaluation of preferences.

- (a) The evaluation of preferences shall be conducted in accordance with HRS §103D Part X and HAR §3-124.
- (b) Evaluation procedure and contract award. Solicitations allowing more than one preference shall be evaluated and awarded in accordance with HAR §3-124-25.
- (c) Preferences shall be for evaluation purposes only. The award contract amount shall be the amount of the offer, exclusive of any preference.

CHAPTER 4.0: OFFER

4.1 Preparation of offers.

All offers shall comply with the following:

- (a) Shall be prepared using the solicitation documents provided for such purpose by the City.
 - (1) Request for Sealed Bid Solicitation (RFB). Offeror shall detach the Offer pages designated in the solicitation document to be submitted and submit said section as its offer.
 - (2) Request for Sealed Proposal Solicitation (RFP). Offeror shall refer to the "Proposal Format and Content" section of the Solicitation document for the City's guidelines for offer submittals.
- (b) Shall be prepared in ink or typewritten. Errors may be erased or crossed out, and corrections typewritten or printed in ink but must be initialed in ink by the person or persons signing the offer.
- (c) Shall be signed in ink by the individual if offering as a sole proprietor, by one or more members of a partnership, by one or more members or officers of each entity in a joint venture, by one or more officers of a corporation, or by an agent of the Offeror legally qualified and acceptable to the City.
- (d) Shall not include samples or descriptive literature unless expressly requested. Any unsolicited samples, descriptive literature, or attachments will not be examined or tested, and will not be deemed to vary any of the provisions of the solicitation.
- (e) All costs to prepare and submit an offer shall be at the Offeror's expense. The City will not reimburse any offer costs or any best and final offer costs incurred by any Offeror, any prospective Offeror, or any other person.

4.2 Certificate of Acceptance of Solicitation Requirements.

The Certificate of Acceptance of Solicitation Requirements when made a part of the solicitation shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required certification may be grounds for disqualification of the Offeror's offer.

The Offeror shall sign the Certificate of Acceptance of Solicitation Requirements to acknowledge that the Goods, Services, or Construction provided by the Offeror are in compliance with the Scope of Work specified in the solicitation. Deviations from the specified Scope of Work shall only be allowed by the approval of the City unless other wise specified in the solicitation.

4.3 Certificate of cost or pricing data.

When an offer in response to a Request for Competitive Sealed Proposal (RFP) solicitation is in excess of \$100,000.00, a Certificate of cost or pricing data form shall be completed, signed by the Offeror, and submitted with the Offeror's offer. Failure to submit the required certification may be grounds for disqualification of the Offeror's offer.

The Certificate of cost or pricing data shall be used to certify that the Offeror's submitted cost or pricing data is accurate, complete, and current as of the date of the offer.

4.4 Proprietary or Confidential.

Offeror shall clearly label any proprietary information as confidential and the information shall be readily separable from the offer to facilitate public inspection of the solicitation documents.

Offers submitted to the City shall become the property of the City.

4.5 Offer Submission.

Unless otherwise specified in the solicitation, Offers shall be sealed in envelopes. The solicitation number, Offeror's name and address, and closing date of the solicitation should be printed on the outside of the envelope. The Offeror is responsible for the accuracy of printing the solicitation number and the closing date of the solicitation on the outside of the envelope. The offer envelope must be time stamped and deposited at the designated location in the solicitation. All offer envelopes must bear the Purchasing Division's time stamp mark. Envelopes which are not time stamped or which are time stamped after the specified solicitation closing time and date shall be rejected. Offerors are responsible for the submission of their offers on a timely basis. However, a late offer shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the offices of the Division of Purchasing.

4.6 Pre-opening or pre-registration modification or withdrawal of offers.

Offers may be modified or withdrawn prior to the time and date set for receipt or solicitation opening.

(a) Method for modifications of an offer

- (1) A written notice accompanying the actual modification submitted and received in the office designated in the Notice to Offerors, stating that a modification to the offer is submitted; or
- (2) A facsimile or electronic notice accompanying the actual modification submitted either by facsimile machine or electronic mail, to the office designated in the Notice to Offerors; provided, the

Offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic transmittal.

- (b) Method for withdrawal of an offer:
- (1) A written notice submitted and received in the office designated in the Notice to Offerors; or
 - (2) A facsimile or electronic notice to the office designated in the Notice to Offerors.

CHAPTER 5.0: **OPENING OF BIDS AND REGISTRATION OF PROPOSALS**

5.1 Public bid opening of RFB solicitations.

The opening of offers shall be by a representative of the City, at the date and time stated in the solicitation, in the presence of all Offerors who attend. The opened offers shall be available for public inspection at the time of offer opening except to the extent that the Offeror designates trade secrets or other proprietary data to be confidential. Offerors shall ensure that material so designated as confidential shall be readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of offer opening regardless of any designation to the contrary.

5.2 Registration of RFP solicitations.

After the offer submittal due date, offers shall not be publicly opened, but shall be opened in the presence of two or more procurement officials. Offers and modifications shall be shown only to City personnel having legitimate interest in them.

Proposals of the Offeror(s) shall be open to public inspection after the notice of award has been posted.

5.3 Late offers, late withdrawals and late modifications.

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offers received at the place designated for receipt and solicitation opening after the time and date set for receipt and opening of offers is late and will not be considered for award. A late offer shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the offices of the Division of Purchasing.

5.4 Time for acceptance of offer.

Unless otherwise stated in the solicitation, after solicitation opening or receipt of offers, an offer may be withdrawn only if the City fails to award the contract:

- (a) For City-funded projects or projects funded in whole or in part by the federal government; within sixty (60) days of the date of solicitation opening or receipt of proposals;
- (b) For projects funded in whole or in part by the State, within one hundred fifty (150) days of the date of opening; and

- (c) For improvement district projects, within three hundred (300) days of the date of opening.
- (d) The City may request Offerors to extend the time during which the City may accept their offers.

CHAPTER 6.0: EVALUATION OF OFFERS

6.1 Mistakes in bid; corrections or withdrawals after solicitation opening or registration of offer.

An obvious mistake in an offer may be corrected or withdrawn, or waived by the City to the extent it is not contrary to the best interest of the City or to the fair treatment of other Offerors.

- (a) A mistake in an offer discovered after the deadline for receipt of offers but prior to award may be corrected or waived or the offer withdrawn under the conditions stated in HAR §3-122-31.
- (b) A mistake in an offer discovered after award of contract may be corrected or withdrawn if the City makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn. The determination shall be final and conclusive.

6.2 Waiver of informalities.

The City may waive or accept any minor informalities, irregularities, deviations or other defects, if in the City's judgment such waiver or acceptance will be in the best interest of the City.

6.3 Multiple or alternate offers.

Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted and all such offers shall be rejected. This includes offers submitted by any one person under the same or different names.

Without limiting the generality of the foregoing provision, a person shall be considered to have submitted more than one offer if such person submits more than one offer under the same name, or through agents, or through joint ventures, partnerships or corporation in which such person has more than a twenty-five per cent interest in each of them, or through any combination thereof.

6.4 Conditioned offers.

Offers that are conditioned may be rejected. This includes any offer that is conditioned upon receiving award of both the particular contract being solicited and another City contract shall be deemed nonresponsive.

6.5 Limiting acceptance to entire offer.

An Offeror may not limit acceptance to the entire offer, unless allowed by the solicitation:

- (a) If the acceptance of an offer is so limited by the Offeror but not allowed, the offer will be determined to be not acceptable and rejected.
- (b) If the acceptance of an offer is so limited by the Offeror and allowed, the purchasing agency shall not reject part of the offer and award on the remainder.

6.6 Anti-competitive practices.

If there is any evidence indicating that two or more Offerors are in collusion to restrict competition or have otherwise engaged in anti-competitive practices relating to the procurement, the offers of all such Offerors shall be rejected and such evidence may be a cause for the disqualification of the participants in any future procurement.

6.7 Suspended or debarred List.

No contract will be awarded to any Offeror suspended or debarred by the Federal, State or City, or who has not provided any required clearances.

6.8 Disqualification of an Offeror.

An Offeror shall be disqualified and its offer automatically rejected for any one or more of the following reasons:

- (a) Offeror lacks proper equipment and/or sufficient experience to perform the work contemplated;
- (b) Offeror does not possess proper license, if required to cover the type of work contemplated, at the time of the offer submittal due date, unless otherwise specified in this solicitation;
- (c) Offeror who has uncompleted work on contracts in force, or a record of unsatisfactory work performance or delays on completed contracts or on contracts in force which, in the judgment of the City, might hinder or prevent the prompt completion of additional work if awarded;
- (d) Offeror who has complaints filed against the Offeror for abusive or threatening language or behavior during previous contracts toward any City Officer-in-Charge or his/her representative;
- (e) Offeror who has defaulted under a previous contract;
- (f) Offeror who has failed to comply or is delaying compliance with the requirements for final inspection or final payment of the City's General Terms and Conditions for any contract in force;

- (g) Offeror is determined to be non-responsible; or Offeror fails to pay, or satisfactorily settle, all bills overdue for labor and material on former City contracts prior to the offer submittal due date;
- (h) The Offeror was paid for services to develop or prepare the specifications or work statements.

6.9 Non-responsive offers or non-responsible Offerors.

Offers submitted by Offerors who have been determined to be non-responsive or non-responsible shall be rejected.

An offer is considered non-responsive when it does not conform in all material respects to the solicitation by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the solicitation.

6.10 Rejection of offers.

The City reserves the right to reject any or all offers when in the City's opinion; such rejection will be in the best interest of the City.

Reasons for rejection of an offer includes but is not limited to the reasons stated in these instructions and the reasons stated in HAR §3-122-97 "Rejection of offers."

CHAPTER 7.0: DISCUSSION & BEST AND FINAL OFFER

This chapter shall apply only to Request for Competitive Sealed Proposals (RFP) solicitations.

7.1 Priority Listed Offers.

The City may establish a Priority List consisting of at least three (3) Offerors for discussions and Best and Final Offers (BAFOs). Those Offerors who are selected for the priority list are referred to as the "Priority-Listed Offerors (PLO)." The City will not publicly identify the Priority-Listed firms prior to the notice of award being posted.

7.2 Discussions.

Discussions will be limited to only Priority-Listed Offerors (PLO). Discussions are held to: (1) Promote understanding of the City's requirements and the priority-listed Offeror's proposals; and (2) Facilitate arriving at a contract that will provide the best value to the City, taking into consideration the evaluation factors set forth in the request for proposals. PLOs shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of offers; however, offers may be selected without such discussion.

Addenda to this RFP after establishment of a priority list shall be distributed only to PLOs.

New proposals or amendments to the existing solicitation that, in the City's sole judgment, significantly change the nature of the procurement will not be permitted. Should the City believe it is in its best interest to go forward with a significant change, then the solicitation may be cancelled and a new solicitation issued.

Non-Disclosure of offer contents. The contents of any offer shall not be disclosed so as to be available to competing Offerors during the discussion process.

7.3 Best and Final Offer (BAFO).

Although the City reserves the right to issue a request for Best and Final Offers (BAFOs), the City is under no obligation to do so. The City may make its selection and Award based on the initial offers submitted.

If the City requests BAFOs, Priority-Listed Offerors may be informed of and requested and/or allowed to revise their offers, including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified to the Priority-Listed Offerors by the City following initial evaluation of the offers. The request for BAFOs will allow adequate time for the Priority-Listed Offerors to

revise their offers. Upon receipt of any BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise scores as appropriate. If discussions are held, the City will attempt to limit the selection process to a single BAFO following discussions.

CHAPTER 8.0: **AWARD**

8.1 Request for Competitive Sealed Bids (RFB) solicitations.

For Request for Competitive Sealed Bids (RFB) solicitations under HRS §103D-302, the contract shall be awarded with reasonable promptness by written notice to the lowest responsive, responsible Offeror whose offer meets the requirements and criteria set forth in the solicitation.

(a) Additive or deductive alternates

In the event additive or deductive alternates are included in the solicitation, the lowest offer will be determined after adding to or deducting from the total basic price, the alternate or alternates considered for award. Alternates, if any are awarded, shall be awarded in the order listed in the offer. Award of alternates shall be dependent upon the availability of funds.

(b) Low Tie Bids

In the case low tie bids from responsible and responsive Offerors that are identical in price and which meet all the requirements and criteria set forth in the solicitation are received, award shall be made in any permissible manner that will resolve tie offers, including but not limited to:

- (1) Award the contract to a business providing goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State;
- (2) Award the contract to the Offeror who received the previous award and continue to award succeeding contracts to the same Offeror so long as all low offers are identical.
- (3) If no permissible method will be effective in resolving tie offers and a written determination is made so stating, award may be made by drawing lots.

8.2 Request for Competitive Sealed Proposals (RFP) solicitation.

For Competitive Sealed Proposal solicitations under HRS §103D-303, the contract shall be awarded to the responsible and responsive Offeror whose offer is determined in writing to provide the best value to the City taking into consideration the evaluation criteria set out in solicitation. Other factors and criteria shall not be used in the determination.

8.3 Exceeding available funds.

In the event all offers exceed available funds as certified by the appropriate fiscal officer, and where time or economic considerations preclude re-solicitation of a reduced scope of work, the City may negotiate an adjustment of the offer price, including changes in the solicitation requirements, with the low responsive and responsible Offeror, in order to bring the offer within the amount of available funds.

8.4 Verification of Responsibility of Offeror.

Prior to the award of the contract, the successful Offeror shall be registered as “compliant” on the State of Hawaii Compliance Express System (<http://vendors.ehawaii.gov>) or submit the required tax clearances from the State Department of Taxation and Internal Revenue Service, the Certificate of Compliance with the State Department of Labor and Industrial Relations, and the Certificate of Good Standing with the Department of Commerce and Consumer Affairs Business Registration Division.

8.5 Execution of contract.

Upon notification of award, the successful Offeror shall obtain the contract from the Division of Purchasing, Department of Budget and Fiscal Services, for execution. The contract document shall be returned within ten days from the date of notification of the award, or within such time as the City may allow.

Failure to enter into the contract and to furnish satisfactory security, when required, within ten days from notice of award shall be cause for cancellation of the Offeror's award and forfeiture of the Offeror's offer security, if any, as liquidated damages and not as a penalty.

The contract documents are to be completed and executed by the Offeror in the following manner:

(a) Notarization

Each and every signature appearing on the contract form must be notarized by a notary public attesting to the persons signing, their titles, and if a corporation, the corporate seal affixed to the contract form.

Each and every signature appearing on the bond forms, if applicable, must be notarized by a notary public attesting to the persons signing, their titles, and if a corporation, the corporate seal affixed to the bonds.

(b) Authorization

If a corporation, the corporate resolution must be attached; if a joint venture or partnership, a power of attorney authorizing the person(s)

signing on behalf of the joint venture or partnership. The surety, if applicable, shall also attach its power of attorney.

(c) Performance and payment bonds

Performance and payment bonds, if required, shall be delivered at the same time the contract is executed. Submitted performance and payment bonds shall be in conformance with HAR §3-122-221, §3-122-222 and §3-122-227.

(d) Evidence of insurance coverages

If insurance coverages are required by the solicitation, evidence of insurance coverages shall be delivered at the same time the contract is executed.

8.6 Awards of less than \$100,000 and \$250,000.

On any individual award totaling less than \$100,000 for Goods or Services and less than \$250,000 for construction, the City reserves the right to award the contract by Purchase Order. The purchase order shall be performed in accordance with the terms set forth in the solicitation.

8.7 Cancellation of award.

The City reserves the right to cancel the award of any contract any time before the signing of the contract by the City's Budget and Fiscal Services Director.

CHAPTER 9.0: DEBRIEFING, PROTEST, SUSPENSION AND DEBARMENT

9.1 Debriefing.

Debriefing shall apply only to Request for Competitive Sealed Proposal (RFP) solicitations. The purpose of a debriefing is to inform the non-selected 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.

9.2 Authority to resolve protested solicitations and awards.

Complaints and protest of awards shall be subjected to the requirements specified in HAR §3-126-1 and HRS §103D-701.

9.3 Authority to debar or suspend.

The City, in accordance with the provisions of HRS §103D-702, and HAR §3-126-2, may debar or suspend an Offeror for cause from consideration for award of contracts. The period of debarment shall not be more than three (3) years, and for suspension, not more than three (3) months.

9.4 Solicitation or award in violation of law.

If a solicitation or award is found to be in violation of law, it shall be resolved in accordance with HAR §3-126-4.