



**State of Hawai'i**

**REQUEST FOR PROPOSALS**

**OHA RFP NO. ARM 2015-08**

**FOR**

**INVESTMENT CONSULTANT SERVICES**

ISSUED DATE: MARCH 13, 2015

DUE DATE: APRIL 15, 2015, 12:00 NOON HST

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

***Notice to Interested Parties:*** Offerors interested in submitting a proposal are encouraged to register your company by completing the Interest Form and submitting it to OHA's RFP Coordinator via email, mail and/or hand delivery. If you do not register your company, you will not receive an addenda, if any, and your offer may be rejected and not considered for award.

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## Notice to Offerors

(Chapter 103D, Hawai‘i Revised Statutes)

REQUEST FOR PROPOSALS (RFP), NO. ARM 2015-08

FOR

### Investment Consultant Services

Notice is hereby given that pursuant to Chapter 103D, Hawai‘i Revised Statutes (HRS), as amended, the Office of Hawaiian Affairs (“OHA”), will be accepting sealed proposals for the **Investment Consultant Services**.

This Request for Proposal (“RFP”) is provided to you for information purposes. If you are interested in responding to this solicitation, you may download the RFP from the OHA website at [www.oha.org/solicitation](http://www.oha.org/solicitation), SPO website <http://spo3.hawaii.gov/notices/notices> and/or pick up a copy at the OHA’s Procurement Unit on O‘ahu, located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817, beginning **March 13, 2015**.

The OHA’s Procurement Unit will conduct a Pre-Proposal Conference from 9:00 a.m. to 10:00 a.m. Hawai‘i Standard Time (“HST”) on Tuesday, March 24, 2015. The OHA strongly recommends that all interested Offerors attend. For those interested in attending via web conferencing, please contact the RFP Coordinator listed below no later than 3:00 p.m. HST, Monday, March 23, 2015.

Sealed proposal will be received at the OHA’s Reception Desk at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i, 96817, until 12:00 noon HST on Wednesday, April 15, 2015.

Electronic mail and facsimile transmission **shall not** be accepted. The official time for hand-delivered proposals shall be that which is recorded on the time stamp clock of the OHA. Deliveries by private mail services, such as Federal Express, shall be considered hand deliveries. All mail-in proposals delivered/postmarked by the United States Postal Service must be received no later than 12 noon on Tuesday, April 15, 2015.

The OHA reserves the right to reject any and all proposals and accept the proposals in whole or part in the best interest of the OHA. Questions relating to this solicitation shall be directed to the RFP Coordinator, Phyllis Ono-Evangelista at (808) 594-1833.

OFFICE OF HAWAIIAN AFFAIRS

Kamana‘opono M. Crabbe, Ph. D.  
Ka Pouhana/Administrator

# SECTION 1

## Administrative Overview

### 1.1 Introduction

The Office of Hawaiian Affairs (“OHA”) was established by the Hawai‘i State Legislature in 1979 under Chapter 210 of the Hawai‘i Revised Statutes. 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.

### 1.2 Authority

This Request for Proposal (“RFP”) is issued under the provision of §103D, Hawai‘i Revised Statutes (“HRS”), as amended, and its companion Hawai‘i Administrative Rules (“HAR”). All Offerors are charged with presumptive knowledge of all requirements of these cited authorities. Submission of a proposal shall constitute affirmation of such knowledge on the part of the Offeror.

### 1.3 RFP Organization

This RFP is organized into seven (7) sections:

- Section 1: Administrative Overview – Provides Offeror’s with an overview of the procurement and contracting process.
- Section 2: General Requirements – Provides the Offeror’s responsibilities as applicable.
- Section 3: Scope of Work – Provides the Offeror’s with a general description of the tasks to be performed and defines the deliverables (as applicable).
- Section 4: Proposal Format and Content – Describes the required format and content for the proposal application.
- Section 5: Evaluation Criteria – Describes how proposals will be evaluated.
- Section 6: Contractor Selection and Award – Describes how the proposal shall be evaluated by OHA.
- Section 7: Attachments and Exhibits – Provides the information and form necessary to complete the application.

### 1.4 Terms and Acronyms

ARM	Asset Resource Management
BAFO	Best and Final Offer
BOT	OHA Board of Trustees
CPO	OHA Chief Procurement Officer
DHLNR	Department of Land and Natural Resources
GET	General Excise Tax



	<b>For</b>	<b>Go to</b>
1	Tax Clearance Forms (Department of Taxation Website)	<a href="http://www.hawaii.gov/tax/">http://www.hawaii.gov/tax/</a> click "Forms"
2	Wages and Labor Law Compliance, Section 103-055, HRS (Hawai'i State Legislature website)	<a href="http://www.capitol.hawaii.gov/">http://www.capitol.hawaii.gov/</a> click "Bill Status and Documents" and "Browse the HRS Sections"
3	Department of Commerce and Consumer Affairs, Business Registration	<a href="http://www.hawaii.gov/dcca">http://www.hawaii.gov/dcca</a> click "Business Registration"
4	Campaign Spending Commission	<a href="http://www.hawaii.gov/campaign">www.hawaii.gov/campaign</a>
5	Hawai'i Compliance Express	<a href="http://vendors.ehawaii.gov/hce/splash/welcom.html">http://vendors.ehawaii.gov/hce/splash/welcom.html</a>
6	SPO Forms	<a href="http://spo.hawaii.gov">http://spo.hawaii.gov</a>

### 1.7 RFP Schedule and Significant Dates

The schedule below represents the OHA's best estimate of the schedule that will be followed. All times indicated are Hawai'i Standard Time ("HST"). If a component of this schedule, such as "Proposal Due Date/Time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The OHA reserves the right to cancel any activity or modify the timetable at any time. The approximate schedule is as follows:

Release of Request for Proposals	March 13, 2015
Pre-Proposal Conference	March 24, 2015 – 9:00 a.m. HST
Due Date to Submit Questions	March 27, 2015 – 9:00 a.m. HST
OHA's Response to Questions	March 31, 2015
Proposals Due Date/Time	April 15, 2015 – 12:00 noon HST
Proposal Evaluations	April 15, 2015 – April 24, 2015
Offerors' Presentation/Discussion (if necessary)	TBD 2015
Best and Final Offer (if necessary)	TBD 2015
Notice of Award	May 2015
Contract Start Date	May 2015

### 1.8 Pre-Proposal Conference

The purpose of the Pre-Proposal Conference is to provide Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. The Pre-Proposal Conference is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

Offerors are advised that anything discussed at the Pre-Proposal Conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.



The Pre-Proposal Conference will be held on:

Date: Tuesday, March 24, 2015  
 Time: 9:00 a.m.  
 Location: Maui Ola Conference Room  
 Office of Hawaiian Affairs  
 560 North Nimitz Highway, Suite 200  
 Honolulu, Hawai'i 96817

To attend or participate in the web conference, please contact the RFP Coordinator or his/her designee by 3:00 p.m., Monday, March 23, 2015.

### **1.9 Submission of Questions**

Offerors are encouraged to submit written questions pertaining to the RFP. Questions must be submitted in writing to the RFP Coordinator no later than the "Due Date to Submit Questions", identified in paragraph 1.7 above, in order to generate an official answer.

All written questions will be responded to in addenda to the RFP. The only official position of the OHA is that which is stated in writing and issued in the RFP as addenda thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

### **1.10 RFP Amendments**

The OHA reserves the right to amend the RFP at any time prior to the proposal submission deadline. Interested Offerors will be notified of the availability of amendments through verbal or written communications. All amendments to the RFP will be posted to both the OHA website [www.oha.org/solicitations](http://www.oha.org/solicitations), and SPO website: <http://spo3.hawaii.gov/notices/notices>

### **1.11 Cancellation of RFP**

The RFP may be canceled when it is determined to be in the best interest of OHA.

### **1.12 Submission of Sealed Proposals**

Sealed proposals must be received via hand delivery or the United States Postal Service (USPS) by the date and time designated in the procurement timeline. Any procurement packet received after the designated date and time shall be rejected. All proposals must be in OHA's possession by the submittal time deadline to be considered responsive.

**Electronic mail and facsimile transmissions of the proposal shall not be accepted.**

The proposal packet must be submitted in a sealed envelope and properly identified as a sealed proposal in response to this RFP. Any RFP proposal packet **not properly sealed**

**or submitted via email or facsimile shall be automatically rejected.** Each qualified Offeror may submit only one (1) sealed proposal in response to this solicitation. More than one (1) sealed proposal will not be accepted from any Offeror. There shall be no exceptions to these requirements.

### **1.13 Rejection of Proposals**

The OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and comply with the service specifications. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice.

A proposal may be automatically rejected for any one or more of the following reasons:

- 1) Cancellation of solicitation (HAR §3-122-95, HAR §3-122-96);
- 2) Rejection of an offer (HAR §3-122-97);
- 3) Reporting of anti-competitive practices (HAR §3-122-191, HAR §3-122-193, HAR §3-122-194, HAR §3-122-195 );
- 4) Rejection for inadequate accounting system (HRS §103D-314(2));
- 5) Late proposals (HAR §3-122-16(08));
- 6) Inadequate response to request for proposals (HAR §3-122-95, HAR §3-122-96);
- 7) Proposal not responsive (HAR §3-122-97(1) and HAR §3-122-97(2)); and,
- 8) Applicant not responsible (HAR §3-122-97(2)).

### **1.14 Notice of Award**

The award of a contract and allowed renewal or extension thereof, is subject to the approval by the OHA's ADMINISTRATOR and /or Board of Trustees, and subject to the availability of funding.

### **1.15 Debriefing**

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HAR §103D-303(h).

**1.16 Protest Procedures**

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

<b>Head of Purchasing Agency</b>	<b>Procurement Manager</b>
Name: Kamana‘o pono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana, Administrator	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

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 based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the PO’s debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

**END OF SECTION**

## SECTION 2

### General Requirements

#### 2.1 General Requirements

##### A. Furnishing Proof of Compliance

The Successful Offeror(s) are advised that if awarded a contract, the Successful Offeror 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 Offeror(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 Offeror 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 Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the Successful Offeror 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 Offeror shall submit a CERTIFICATE OF GOOD STANDING.

## C. Certificate of Vendor Compliance

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

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

The HCE provides the Successful Offeror(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").

## D. Bid Security

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

## E. Funding Sources and Period of Availability

The sources of funding include Hawai'i State General Funds and matching OHA Trust Funds, as stipulated in OHA's Annual Budget for Fiscal Year ("FY") 2015 with a period of availability from July 1, 2014 to June 30, 2015. The award of this contract is subject to the availability of these funds. Any and all supplemental agreement for additional funds shall be subject to the availability of funds.

## 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

Single or Multiple Contracts to be Awarded

Initial term of contract:	Twelve (12) 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:	Four (4) extensions
Maximum length of contract:	Not to exceed sixty (60) 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.

The contract resulting from this RFP is intended to commence on May 8, 2015 and terminate on May 7, 2016, subject to the availability of funds. Unless terminated, the contract may be extended for four (4) additional twelve (12) month periods. The amount of money to be contracted under this contract may be adjusted at the beginning of each extension period and shall be subject to appropriation and availability of funds.

K. Additional Services and Fees

For services not described in the Contract, the Successful Offeror and the OHA shall negotiate for additional needed services and fees which may arise during the course of the Contract. Any agreement 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

To determine the adequacy of the borrower's accounting system as described under the administrative rules, the Offerors shall need to submit their organization's most recent financial statements.

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 effective as of the date of the RFP.

## 2.2 Monitoring and Evaluation

The Successful Offeror(s) performance under the contract will be monitored and evaluated by the Contract Administrator or his/her designated representative, the OHA's auditors, and/or other designated representatives.

Failure to comply with all material terms of the contract may be cause for suspension or termination, as provided in the General Conditions included as Exhibit "B" in this RFP. The Successful Offeror(s) 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 and shall continue for the duration of time as deemed necessary by the OHA.

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

## 2.3 Insurance

Prior to the contract start date, the Successful Offeror 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 Offeror 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;
- 3) Broadcasters' liability insurance of \$1,000,000 per occurrence; and
- 4) 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 Contractor 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 Occurance**

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

The Contractor 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 Contractor shall furnish a copy of the policy or policies.

The Contractor shall immediately provide written notice to the Procurement Unit, and contracting department or 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) "OHA is added as an additional insured with respect to operations performed for OHA."
- 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 contractor 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 Contractor's liability hereunder, or to fulfill the indemnification provisions of the contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the contract.

#### **2.4 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 Contractor 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 State 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 State funds and such activities are clearly not within the scope of the contract, nor are they allowed to be within the scope.

#### **2.5 Wages, Hours and Working Conditions**

All Offerors for service contracts shall comply with section 103-55, HRS, which provides as follows:

Wages, hours, and working conditions of employees of the Contractor supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed shall be performed under the following conditions:

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. Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform

services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, HRS.
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

**END OF SECTION**

## SECTION 3

### Scope of Work

#### 3.1 Background

The Office of Hawaiian Affairs (OHA) was established by the Hawai‘i State Legislature in 1979 under Chapter 10 of the Hawai‘i Revised Statutes. OHA’s mission is “To mālama (protect) Hawai‘i’s people and environmental resources and OHA’s assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.

The OHA Investment Transactions Program is responsible for the management, oversight, and investment of the Native Hawaiian Public Land Trust Fund (“NHTF”) under the direction of OHA’s Board of Trustees (“BOT”) and Ka Pouhana / Administrator. The NHTF serves as a perpetual trust and provides financial resources for OHA’s various programs, initiatives, and operational expenses.

OHA’s Native Hawaiian Trust Fund (NHTF), also known as the Public Land Trust Fund, was established in 1981 to account for the OHA’s portion of revenues derived from ceded lands held in public trust. In 1993, the State of Hawai‘i agreed to pay the OHA approximately \$ 135 million in back revenues on ceded lands, including interest. This amount received formed the basis of the trust fund’s corpus. As of December 31, 2014, the NHTF was worth approximately \$361 million. The fund’s strategic asset allocation is as follows:

<u>Asset Class</u>	<u>NHTF</u>	<u>Target</u>	<u>Benchmark</u>
Traditional Global Equities	40.50%	38.50%	MSCI ACWI IMI Net
Traditional Global Credit	10.10%	11.00%	15% JP Morgan GBI EM Global Diversified, 5% JP Morgan EMBI Global, 15% Barclays Capital U.S. High Yield 2% Issuer Capped, 65% Barclays U.S. Credit Bond Index
Traditional Global Real Assets	5.50%	5.50%	FRSE EPRA/NAREIT Developed Net
Low Volatility Marketable Alts	12.60%	12.80%	80% 3 Month U.S. T-Bill +4%,20% DJ/UBS TR Commodity
Non-Marketable Equity	14.80%	12.80%	MSCI ACWI IMI Net+3%
Non-Marketable Credit	2.70%	2.40%	Merrill Lynch High Yield Master II + 1.5%
Non-Marketable Opp.&Real Assets	3.40%	4.00%	20% DJ/UBS TR Commodity,25% Barclays Capital U.S. TIPS,20% DJ US Select REIT,35% S&P Global LargeMidCap Commodity and Resources +3%
Hawaii Direct Investments	5.20%	5.00%	Barclays Capital U.S. Tips +3%
ELA-Enhanced Liquidity Account	5.20%	8.00%	3 Month T-Bill +4%(MV weighted),Barclays Capital U.S. Govt Bond Index (MV Weighted)
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	

#### 3.2 Purpose, Overview and Need

The OHA is seeking proposals from qualified Investment Consultants to work with the OHA Board of Trustees and Investment Transaction Program. At a minimum, the offeror

shall provide (1) oversight and strategic guidance for the OHA's BOT, Administrator and investment staff, (2) recommendations or evaluations to the BOT, Administrator and the OHA staff. These services shall assist the BOT, Administrator and the OHA staff in the prudent management of the NHTF.

The objective of the NHTF is to maximize long-term total return while preserving principal and maintaining purchasing power. To sustain the trust, OHA's spending policy limits annual withdrawals to no more than 5% of the trust's average market value for the most recent 20-quarter period.

The OHA's current service providers include:

1. Custodian:	State Street Bank and Trust
2. Traditional Asset Managers:	Goldman Sachs and JP Morgan
3. Low Volatility Marketable Alts	Commonfund
4. Non-Marketable Equity	Pantheon, Goldman Sachs, Commonfund
5. Non-Marketable Credit	Goldman Sachs, JP Morgan
6. Non-Marketable Opp. & Real Assets	Commonfund and Pantheon
7. Hawai'i Direct Investments	SSGA/OHA
8. Enhanced Liquidity Account	SSGA/SSARIS/OHA

### 3.3 Qualification and Experience

Investment Policy, Asset Allocation and Risk

The CONTRACTOR shall provide the following responses regarding their qualifications and experience.

- A. Describe the firm's experience and approach in developing, monitoring, implementing and updating investment policies and objectives for an investment organization such as the OHA.
- B. Describe the firm's theory, methodology and process for determining optimal asset allocation for clients such as the OHA, including integration of various forms of risks, liabilities and funding.
- C. Describe the firm's capital markets model as stated below:
  1. Is the model proprietary, or does the firm rely on an outside vendor's model?
  2. If your firm relies on an outside vendor, indicate the name of the vendor, name of the model, etc.
  3. Is the model available to clients to perform their own analyses?
- D. Provide the inputs to the asset allocation model. Include at a minimum, expected returns, standard deviations and correlation coefficients for the asset classes used.

- E. Construct a sample portfolio (exclude private real estate as an asset class) for a foundation worth USD\$400 million with a required net rate of return of 7.5% per annum using the aforementioned process. Include sample reports that include risk and return analysis of the portfolio.
- F. Describe what is unique about the firm's asset allocation model compared to other firms?
- G. Did the firm recommended significant changes to client portfolios in response to the global financial crisis?
- H. Describe how the firm assesses risk in client's portfolios and what new and existing methodologies are considered? What are the appropriate metrics to review?
- I. Describe the firm's view on risk budgeting. Have you created a risk budget model that is utilized by the firm's clients?
- J. Describe any additional risk management capabilities, and their associated costs, that are offered to clients.
- K. Describe the firm's experience working with clients that have direct holdings of real estate.
- L. Is the firm a Registered Investment Advisor ("RIA") under the Investment Company Act of 1940 or exempt from registration? If so, when was the firm first so registered? Please provide a copy of the firm's most recent form ADV, Parts I and II.
- M. Provide a brief history of the firm's involvement in the investment consulting business, including the year of organization. As of December 31, 2014, indicate how many years has your firm provided consulting services to organizations like OHA with total assets between \$250-500 million on: 1) a full retainer basis; and 2) a project basis only?
- N. Provide a breakdown of firm revenues (if any) that come from categories other than consulting.
- O. Is the firm willing to provide a written statement acknowledging fiduciary status and accepting fiduciary responsibility for recommendations to OHA?
- P. Will the firm be directly responsible for the management of the account, and will all personnel responsible for the account be employees of the firm?
- Q. Does the firm subcontract or outsource any parts of the investment consulting business? If yes, please describe in detail which parts are performed externally

and the reason for doing so. Please provide the name of the providers, their office location, how long they have been in business, and the qualifications of the specific people who will be working on our account.

- R. Please provide the backgrounds of the consultants and anyone that will support the account.
- S. What is the turnover of professional staff (senior management and consulting personnel) over the last five (5) years? Please list staff positions hired, resigned and terminated within the last five (5) years, including a description of each position and the reason for the hire, resignation and/or termination.
- T. Describe the firm’s compensation and incentive program for hiring and retaining key consultant personnel. How does the firm tie client performance and satisfaction to a consultant’s compensation?
- U. How does the firm evaluate the quality of its consulting services? Describe any benchmarks the firm has developed to evaluate its performance and the performance of its primary/lead consultants.
- V. Describe any plans for managing the future growth of the firm in terms of staff, maximum assets, number of clients, etc. and how this will impact the firm’s ability and commitment to servicing existing clients.
- W. The CONTRACTOR shall detail the financial condition of the firm. The most recent annual report filed with the SEC is acceptable, but any recent material changes should be included.
- X. Provide a list of clients using the format below that have terminated your services within the last 5 years, the dollar amount of the fund size at time of termination, and the reason for termination of each. See Attachment C for Table A:  
Termination of Services

Termination of Services

Client Name	Size of Fund (\$000)	Reason(s) for Termination
1.		
2.		
3.		
4.		
5.		

**3.4 Standards of Conduct**

The CONTRACTOR shall provide the following responses regarding their standards of conduct.

- A. The CONTRACTOR shall indicate whether the firm has any current or potential conflicts of interests from sources and affiliations other than investment consulting? The CONTRACTOR shall describe the current and/or potential conflicts.
- B. The CONTRACTOR shall describe if any current or potential material conflict of interest with OHA's Board, staff, auditor, investment managers or other consultants
- C. The CONTRACTOR shall provide any written policies or procedures to address conflicts of interest, including (but not limited to) the payment of fees or other consideration from other clients, relationships, or entities that may compromise your fiduciary duty to your clients?
- D. Has the firm adopted the CFA Code of Ethics and Standards of Professional Conduct? If so, how is employee compliance monitored?
- E. For the past 10 years, has the firm, its officers or principals or any affiliate ever:
  - 1. Been the focus of a non-routine SEC inquiry or investigation or a similar inquiry or investigations from any similar federal, state or self-regulatory body or organization.,
  - 2. Settled any litigation concerning breach of fiduciary responsibility or other investment related matters, or
  - 3. Submitted a claim to your error & omission, fiduciary liability and/or fidelity bond insurance carrier(s)? If 'yes', please provide details and the current status of proceedings.

### **3.5 Other Requirements**

- A. The CONTRACTOR shall describe how the firm implements and uses the latest technology, and how such technology adds value to the firm's clients. What internet based technology do you provide to your clients?
- B. The CONTRACTOR shall describe the capabilities in providing educational opportunities for trustees and staff. Does your firm hold an annual investment conference for its clients? Is there a cost for clients to attend educational opportunities?
- C. The CONTRACTOR shall respond to the questions below
  - 1. What are the firm's consulting specialties and strengths?

2. What differentiates the firm from its competitors?
  3. What are the firm’s consulting limitations?
  4. Why should OHA hire the firm rather than your competitor(s)?
  5. Please list the firm’s top five (5) competitors.
- D. Briefly describe how a new client would transition to the firm. Do you backload transaction and/or investment performance data? What problems have you encountered in transitioning a new client to your firm from their previous consultant? Please provide at least one reference (name, fund name, address, phone, e-mail) of a recent client of yours whom we can contact regarding the transition process.
- E. Provide references using the format below for all clients with assets between \$250-500 million for whom you provide primary consulting services comparable to the services requested in the RFP. Indicate whether they are a full-retainer client (FR) or project basis (P) clients.
- F. For each client referenced in Section 3.3. D.7, include client name, full-retainer or project basis, name of contact person, title, telephone number, and email address. Please secure advanced permission to contact at least 3 of these references.

**Reference Table**

Client Name	FR or P	Contact	Title	Telephone #	Email
1.					
2.					
3.					
4.					
5.					

G. Conflicts of Interest

The applicant(s) or its firm is prohibited from recommending products or services of an Advisor/Manager for which the Applicant(s), its firm, or an affiliated entity would receive compensation in the form of commissions, bonuses, or any similar profit sharing arrangements. The Applicant(s) or its firm may not be employed by a subsidiary or related entity of an asset management firm or broker/dealer.

**3.6 Annual and Bi-Annual Duties**

- A. Prepare and present, in conjunction with OHA staff, an annual performance review and risk assessment, at calendar year-end, of the Trust Fund to the Board of Trustees



1. The Annual Performance Review shall include:
  - a. Total portfolio, asset class and Advisor historical performance against benchmarks;
  - b. Performance attribution by asset class and Advisor;
  - c. An analysis and evaluation of the fees paid by OHA;
  - d. Relevant peer universe comparisons for the total portfolio and each Advisor;
  - e. A summary and evaluation of the total portfolio's historical performance;
  - f. A summary and evaluation of each Advisor's historical performance; and
  - g. If necessary, recommend changes to OHA's portfolio structure and/or Advisor line-up.
  
2. The Annual Risk Assessment shall include:
  - a. A quantitative risk assessment of the total portfolio that includes historical volatility, currency exposure, liquidity risk, stress tests and scenario analysis.
  - b. A qualitative risk assessment of the total portfolio identifying key areas of operational, legal and compliance risk.
  - c. An evaluation of OHA's current risk management plan for the total portfolio.
  - d. Significant developments involving OHA's Advisor's that may affect the investment products and/or services provided.
  - e. Significant trends in the investment management industry that may affect the OHA's portfolio.
  - f. Significant changes to applicable regulations that may affect OHA's portfolio.
  
- B. Review the IPS, Spending Policy, and NHTF procedures and present any proposed changes to the Board of Trustees and ADMINISTRATOR at fiscal year-end (June 30<sup>th</sup>) (including asset allocation and benchmarks).

### **3.7 Ad Hoc/As Needed Duties**

- A. Assist the OHA staff in creating a commitment plan for illiquid alternative assets every 2 years. The commitment plan will take into account OHA's current portfolio of illiquid alternative assets and cash flow projections. The last commitment plan was completed in 2014.
- B. Review proposed changes to Advisor/Manager Investment Guidelines.
- C. Assist the OHA staff with RFI/RFPs for Investment Advisor services and Trust Fund service providers as necessary.

1. The CONTRACTOR shall assist the BOT and the OHA staff in reviewing and evaluating all of the proposals.
  2. In conjunction with the OHA staff, the CONTRACTOR shall review the proposals and provide a written evaluation to the BOT.
  3. The BOT shall review the CONTRACTOR's and the OHA staff's evaluation, and select at least the top three (3) proposals.
  4. The top three (3) Offerors shall be requested to make an in-person presentation to the Board, and the CONTRACTOR shall attend such presentations at no additional cost to the OHA.
  5. Once a new Advisor or service provider is selected by the BOT, the CONTRACTOR shall provide guidance to the BOT and the OHA staff in negotiating the final terms and conditions of the resulting Contract.
- D. Prepare and present a market cycle review at calendar year-end to the Board of Trustees as market conditions dictate (typically every 5-7 years). The market cycle review will include the same content as the annual performance review over a longer time period. The last market cycle review was completed in 2009.
- E. The CONTRACTOR shall meet with the Board of Trustees and Investment Transactions Program in person at the OHA's offices no less than bi-annually. The CONTRACTOR must be available by phone and email during normal working hours
- F. There shall be no limit on the telephone, fax and e-mail communications between the CONTRACTOR and the OHA; provided that the CONTRACTOR and the OHA agree to a reasonable amount of frequency.

**END OF SECTION**

## SECTION 4

### Proposal Format and Content

#### 4.1 General Instructions for Completing Applications

##### A. Submission

When an offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks identified in this RFP. The offeror's proposal must demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP.

The submission of a proposal shall constitute the offeror's indisputable representation of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work to the offeror.

An offeror shall submit one (1) original proposal, marked "ORIGINAL" three (3) copies of the original marked "COPY", and one cd and/or flash drive containing the submitted proposal in a portable document form ("pdf"). It is imperative that an offeror submit only one (1) original and the required number of copies. The outer envelope or packaging of the proposals shall be **sealed and clearly marked with the RFP number** and title, the offeror's name, address, email address and telephone number.

Any and all corrections to a proposal shall be initialed in ink by the person signing the proposal for the offeror. Any illegible or otherwise unrecognizable corrections or initials may cause the rejection of the proposal.

Before submitting a proposal, each offeror must:

1. Thoroughly examine the solicitation documents. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documentation.
2. Be familiar with local, State and federal laws, ordinance, rules and regulations that may in any manner affect cost, progress or performance of the work.

Proposals shall be submitted to the OHA in the prescribed format outlined in this RFP. A written response is required for each item, unless indicated otherwise. No supplemental literature, brochures or other unsolicited information should be included in the proposal packet.

B. Trade Secrets/Confidential Information

If an offeror believes that any portion of their proposal contains information that should be withheld as confidential, the offerors shall provide a written request for nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, shall be clearly marked, and shall be readily separable from the proposal packet to facilitate eventual public inspection of the non-confidential sections of the proposal packet. Note that price is not considered confidential and will not be withheld.

C. Intellectual Property Rights

The OHA reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for the OHA's purposes.

The Contractor understands that the information obtained from these efforts is the sole property of the OHA and any use of the information must be approved by OHA.

#### 4.2 The Proposal Application Sections

- A. The proposal forms must be completed and submitted to OHA by the required due date and time, and in the form prescribed by OHA. Electronic mail and facsimile transmissions shall not be accepted.
- B. Offerors shall submit their proposals under the offeror's exact legal name that is registered with the State of Hawai'i Department of Commerce and Consumer Affairs and shall indicate this exact legal name. Failure to do so may delay proper execution of the contract.
- C. Offeror's authorized signature shall be an original signature in ink. If the proposal is unsigned or the affixed signature is a facsimile or a photocopy, the proposal shall be automatically rejected. If the proposal is not signed by an authorized representative as submitted on the corporate resolution, the proposal shall be automatically rejected.
- D. A proposal security deposit is not required for this RFP.
- E. Proposal must be typed on plain, white, letter-size paper with one-inch margins on all sides in 12 point font. Printed on one (1) side only.
- F. The numerical outline for the application, the titles/subtitles, and the offeror name and RFP identification information on the top right hand of the corner of each

page should be included.

- G. Consecutive page numbering of the proposal application should begin with page one and end with the last numbered page of the complete proposal.
- H. Proposals must be submitted on white, 8 ½” x 11” paper and shall be bound by either a three ring binder or spiral binding. Tabbing of sections is required.
- I. Other supporting documents may be submitted in an Appendix, including visual aids to further explain specific points in the proposal; if used, they should be referenced.

#### **4.3 Economy of Presentation**

Proposals shall be prepared in a straightforward and concise manner, and describe the offering(s) and capabilities in a format that is reasonably consistent and appropriate to the purpose. Emphasis shall be on completeness and clarity of content. If any additional information is required by the OHA regarding any aspect of the Offeror’s proposal, it shall be provided within seven (7) business days after request.

#### **4.4 Oral Presentation**

Respondents to this RFP may be required to make an oral presentation of their proposal to ensure a thorough and mutual understanding. OHA shall schedule the time and location for these presentations (if required); normally within ten (10) days following the Proposals Due date.

Failure to provide an oral presentation of their proposal to the OHA will result in the Offeror’s proposal being rejected without further consideration.

#### **4.5 Offeror’s Authority to Submit an Offer**

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

#### **4.6 Required Review**

Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the OHA's Procurement Unit in writing prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which award could not be made.

#### **4.7 Proposal Preparation Costs**

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs.

#### **4.8 Tax Liability**

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawai'i GET at the current 4.5% for sales made on O'ahu, and at the 4% rate for the islands of Hawai'i, Maui, Moloka'i, and Kaua'i. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Federal I.D. Number and Hawai'i General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawai'i General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the OHA.

#### **4.9 Property of OHA**

All proposals become the property of the OHA.

#### **4.10 Proposal Objectives**

One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content.

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 3, Scope of Work.

Offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

#### **4.11 Proposal Forms**

To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions providing in the RFP or in any subsequent addendum may be rejected without further consideration.

- A. Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (Section 7, Attachment 1). Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

- B. Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (Section 7, Attachment 2). The price shall be the all-inclusive cost, including the GET, to the State. No other costs will be honored. Any unit prices shall be inclusive.

#### **4.12 Proposal Contents**

Proposals must:

- A. Include a cover letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
- B. Include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal. See Section 7, Attachment 1, for a copy of the form.
- Include a completed Offer Form OF-2. See Section 7, Attachment 2 for a copy of the form
- C. If subcontractor(s) will be used, append a statement to the cover letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

- a. The general scope of work to be performed by the subcontractor;
  - b. The subcontractor's willingness to perform for the indicated.
- D. Provide all of the information requested in this RFP in the order specified.
- E. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.

#### **4.13 Proposal Requirements**

- 1. Administrative Requirements
- 2. Proposal Application Requirements
  - a. Offer Forms OF-1
  - b. Offer Form OF-2
  - c. Section 1 - Executive Summary (Program Overview)
  - d. Section 2 – Qualifications and Experience
  - e. Section 3 – Standards of Conduct
  - f. Section 4 – Other Requirements
  - g. Section 5 – Appendices
- 3. Resumes
- 4. Confidential Information

#### **4.14 Receipt and Register of Proposals**

Proposals will be received and receipt verified by two (2) or more procurement officials on or after the date and time specified in Section 1, or as amended.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS.

#### **4.15 Best and Final Offer**

If the OHA determines a Best and Final Offer (“BAFO”) is necessary, it shall request one from the Offeror. The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

#### **4.16 Modification Prior to Submittal Deadline or Withdrawal of Offers**

The Offeror may modify or withdraw a proposal before the proposal due date and time.

Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.



#### **4.17 Mistakes in Proposals**

Mistakes shall not be corrected after award of contract.

When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

Once discussions are commenced or after best and final offers are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

**END OF SECTION**

## **SECTION 5**

### **Evaluation Criteria**

#### **5.1 Evaluation of Proposals**

An evaluation committee approved by the OHA's Ka Pouhana/Administrator or designee will evaluate all responsive and responsible proposals. The evaluation of such proposals will be based solely on the evaluation criteria set out in this RFP. The evaluation committee will be composed of individuals with experience in, knowledge of and program responsibility for the requirements identified in this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked, responsible Offerors.

#### **5.2 Minimum Requirements Check**

Upon the RFP submission due date and time, the RFP Coordinator will inspect each RFP to ensure that all the minimum requirements below, such as necessary forms, information and signatures have been met. Those proposals that do not meet minimum requirements will be immediately disqualified and the offerors of the disqualified proposals shall be informed in writing.

#### **5.3 Priority Listing**

The proposals that do meet the minimum requirements will be evaluated and scored in accordance with the criteria in Section 5.5 below by members of an Evaluation Committee. The Evaluation Committee will be comprised of three (3) OHA employees. Upon scoring all proposals that have met the minimum requirements, the Evaluation Committee will place the proposals with the highest three scores on a Priority List.

#### **5.4 Discussion Priority Listed Offerors**

The OHA invites priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The OHA in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in RFP Schedule and Significant Dates. The OHA will also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

The discussion is to ensure mutual understanding of expectation and services to be provided under the RFP. Each Offeror will be given time up to 60 minutes to present their proposals.

## 5.5 Evaluation Criteria

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

### Evaluation Categories and Thresholds

<u>Evaluation Categories</u>	<u>Possible Points</u>
<i>Administrative Requirements</i> Executive Summary (Program Overview)	<b>0 Points</b>
<i>Proposal Application</i>	<b>100 Points</b>
<b>1. Qualifications and Experience</b>	<b>50</b>
<b>2. Standards of Conduct</b>	<b>35</b>
<b>3. Other Requirements</b>	<b>15</b>
<b>TOTAL POSSIBLE POINTS</b>	<b>100 POINTS</b>

**END OF SECTION**

## SECTION 6

### Contractor Selection and Contract Award

#### 6.1 Award of Contract

**Method of Award.** Award will be made to the responsible and responsive Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP.

#### 6.2 Proposal as Part of the Contract

This RFP and all or part of the successful proposal may be incorporated into the contract.

#### 6.3 Public Examination of Proposals

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-42(12).

#### 6.4 Debriefing

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HAR §103D-303(h).

#### 6.5 Approvals

Any Contract arising out of this offer may be subject to the approval of the Department of the Attorney General, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

#### 6.6 Contract Execution

CONTRACTOR receiving award shall enter into a formal written contract in the form as in Exhibit A. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the effective date of contract. The OHA is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

**6.7 Payment**

Incremental payments shall be made to the awarded Contractor on a quarterly basis, upon receipt of reports that meet the expectations of the RFP. The receipt of quarterly reports shall be due based on the timeline submitted by the Contractor in the proposal, or as amended.

**6.8 Contract Invalidation**

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

**END OF SECTION**

## **SECTION 7**

### **Attachments and Exhibits**

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
  
- Exhibit A: SAMPLE CONTRACT FORM
- Exhibit B GENERAL CONDITIONS

**ATTACHMENT 1:  
OFFER FORM, OF-1**

FROM: \_\_\_\_\_

TO: OHA Procurement Officer:  
Kamana‘opono Crabbe, Ph. D  
Ka Pouhana, Administrator  
Office of Hawaiian Affairs, State of Hawai‘i  
560 North Nimitz Highway Suite 200  
Honolulu, Hawai‘i 96817

RE: Office of Hawaiian Affairs, State of Hawai‘i  
OHA RFP NO. ARM 2015-08  
INVESTMENT CONSULTANT SERVICES

Dear Dr. Crabbe:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawai‘i Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

Sole Proprietor     Partnership     \*Corporation     Joint Venture

\*State of incorporation: \_\_\_\_\_

Other \_\_\_\_\_

Hawai‘i General Excise Tax License I.D. No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

**ATTACHMENT 1:  
OFFER FORM, OF-1  
(CONTINUED)**

Payment address (other than street address below):

---

---

Business address (street address):

---

---

Respectfully submitted:

\_\_\_\_\_  
Exact Legal Name of Company (Offeror)\*\*

\_\_\_\_\_  
Authorized (Original) Signature

Name & Title: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

\*\*If Offeror is a “dba” or a “division” of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:



**ATTACHMENT 2:  
OFFER FORM, OF-2**

Total contract cost for accomplishing the development and delivery of the services	\$ _____
Contract period:	_____ to _____

**Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.**

The contract for the proposed services may be extended without the necessity of re-soliciting or solicitation, subject to appropriation and availability of funds to OHA, continued need for the services, and OHA's determination of satisfactory performance of the contracted organization, or unless this Contract is terminated. The option to extend the service shall be offered in writing by OHA prior to the expiration of the contract. No contract or amendment to a contract shall be binding upon OHA until the contract has been fully and properly executed by all parties thereto prior to the start date of the contract. The contracted organization shall not provide any services until the contract is fully and properly executed.

Offeror

\_\_\_\_\_  
Name of Company

# SAMPLE CONTRACT

**OFFICE OF HAWAIIAN AFFAIRS**

**CONTRACT NUMBER \_\_\_\_\_**

**REQUEST FOR PROPOSALS**

**PURCHASE OF GOODS AND SERVICES**

**CONTRACT BETWEEN**

**OFFICE OF HAWAIIAN AFFAIRS**

**AND**

**This Agreement**, executed and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between, the Office of Hawaiian Affairs (“OHA”), a body corporate under the Constitution of State of Hawai‘i, by its Ka Pouhana, ADMINISTRATOR , acting by and on behalf of the Board of Trustees, whose principal place of business and mailing address is 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817, and [**NAME OF CONTRACTOR**] (“CONTRACTOR”), a Hawai‘i corporation, by its President, whose principal place of business and mailing address is [**XXXXXX**], **Honolulu, Hawai‘i 96[XXX], Federal Tax ID No. [99 – XXXXXX]**

W I T N E S S E T H:

WHEREAS, OHA was established to better the conditions of native Hawaiians and Hawaiians as defined Hawai‘i Revised Statutes (“HRS”) sections 10-2, 10-4(4), 10-4(6) and 10-4(8), and other applicable law(s), as amended; and

WHEREAS, OHA is in need of services for “Comprehensive Manage Plan” as described in this Agreement and its attachments; and

WHEREAS, OHA has awarded this Agreement through competitive sealed proposals submitted for RFP No. ARM 2015-08 pursuant to Hawai‘i Revised Statutes as amended and its companion Hawai‘i Administrative Rules; and

WHEREAS, the CONTRACTOR has been evaluated as a responsible and responsive offeror whose proposal is advantageous for OHA, such evaluation factors as capacity, qualifications, and resources to perform the terms and conditions agreed to under this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory

manner as determined by OHA, provide all the goods and services set forth in Attachment – S 1, which is hereby made a part of this Agreement.

2. Time of Performance. The performance required of the CONTRACTOR under this Agreement shall be completed in accordance with the Time Schedule set forth in Attachment – S 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated according to the Compensation provision set forth in Attachment – S 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement.

5. CONTRACTOR's Acknowledgment Statement. The CONTRACTOR's Acknowledgment Statement is attached and is made a part of this Agreement.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto as and made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Notices. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the ADMINISTRATOR shall be sent to the ADMINISTRATOR's business and mailing address as set forth in the first paragraph of this Agreement. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's business and mailing address as set forth in the first paragraph of this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying OHA in writing of any change of address.

**IN VIEW OF THE ABOVE**, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

OFFICE OF HAWAIIAN AFFAIRS

Date: \_\_\_\_\_, 2015

By \_\_\_\_\_

KAMANA'OPONO CRABBE, Ph.D.  
Its Ka Pouhana, Administrator

"OHA"

[NAME OF CONTRACTOR]

Date: \_\_\_\_\_, 2015

By \_\_\_\_\_

[NAME]  
Its [TITLE]

"CONTRACTOR"

APPROVED AS TO FORM:

\_\_\_\_\_  
ERNEST M. KIMOTO  
Ka Paepae, Corporate Counsel

Date: \_\_\_\_\_, 2015

**CONTRACTOR'S ACKNOWLEDGEMENT**

STATE OF HAWAI'I )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )  
 )  
 )  
 )  
 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared [**SIGNER'S NAME**], to me personally known, who, being by me duly sworn, did say that such person is the President of [**NAME OF CONTRACTOR**], the CONTRACTOR, named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

\_\_\_\_\_  
(Notary signature)

\_\_\_\_\_  
(print name) Notary Public, State of Hawai'i  
(Official Stamp or Seal)  
My commission expires: \_\_\_\_\_

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description:  
\_\_\_\_\_  
\_\_\_\_\_

Doc. Date: \_\_\_\_\_ OR  Undated at time of notarization

No. of Pages: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_ Circuit  
(in which notary act is performed)

\_\_\_\_\_  
Signature of Notary Date of notarization

\_\_\_\_\_  
Printed Name of Notary  
(Official Stamp or Seal)

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State or OHA, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf CONTRACTOR’S NAME, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.\*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or OHA employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or OHA within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or OHA employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or OHA employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or OHA if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or OHA.

CONTRACTOR

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

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

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

**SCOPE OF SERVICES**

The CONTRACTOR agrees to satisfactorily provide the services hereinafter set forth which includes, but may not be necessarily limited to, the following:

**[SCOPE FROM RFP, SEC. 3 TO BE INCLUDED DURING CONTRACTING PHASE]**

For questions please contact:

(Name)	Telephone:	(808) XXX-XXXX
(Position Title)	Fax:	(808) XXX-XXXX
	E-mail:	XXXXXX@oha.org

**THIS SPACE INTENTIONALLY LEFT BLANK**



**TIME OF PERFORMANCE**

The CONTRACTOR shall render the services required under this Agreement from the effective date of \_\_\_\_\_, 2015 through and including \_\_\_\_\_, 2016, unless this Agreement is sooner terminated as provided hereafter in this Agreement, commencing upon execution of this Agreement.

The manner in which the services are to be performed and the specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited, however, to the maximum amount payable as specified in this Agreement.

Option to Extend: The Time of Performance of this Agreement may be extended at negotiated fees, upon mutual agreement in writing prior to the end of the current Agreement. It is understood that a Supplemental Agreement (Amendment) will be executed by both the CONTRACTOR and OHA to exercise any and all extensions.

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**COMPENSATION**

OHA agrees to compensate CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed [ZERO THOUSAND AND/100 DOLLARS (\$XXX,000.00)] inclusive of all actual reasonable ordinary necessary costs and expenses for services satisfactorily rendered under this Agreement.

OHA agrees to pay CONTRACTOR in the following manner:

1. [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] upon invoice submitted by CONTRACTOR;
2. [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] upon invoice submitted by CONTRACTOR;
3. Upon satisfactory completion of all work, a final payment of [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] representing FIVE PERCENT (5%) of total contract cost upon invoice submitted by CONTRACTOR;
4. OHA's Coordinator, who is identified in Section Four of this Agreement, that the services rendered have been satisfactorily performed in conformance with this Agreement.

**THIS SPACE INTENTIONALLY LEFT BLANK**

**SPECIAL CONDITIONS**

(CONTRACT BETWEEN OHA AND [CONTRACTOR'S NAME])

OHA and The CONTRACTOR mutually agree to.... (If Applicable)

All other Conditions shall remain in full force and effect.

SAMPLE

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

The work performed under this Agreement shall be coordinated with OHA's "head of purchasing agency" or Designee as listed in the Scope of Services (Attachment S 1) 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 Agreement. 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 Agreement.

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 Agreement. 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 Agreement 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 Agreement.

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 Agreement 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 S 1) of this Agreement, the amount due and owing and certifying that the services requested under the Agreement have been satisfactorily performed in conformance with this Agreement. 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<sup>8</sup> 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 Agreement 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 Agreement, 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 Agreement for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Agreement, 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 Agreement, 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 Agreement; 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 Agreement. 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 Agreement. 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 Agreement 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 Agreement, 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 Agreement.

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 Agreement. 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, Hawaii 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 Agreement, 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 Agreement 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 Agreement. 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 Agreement.

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 Agreement 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 Agreement, 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 Agreement, CONTRACTOR shall obtain and maintain in full force and effect, any and all insurance to cover CONTRACTOR's operations under this Agreement 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 Agreement, 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 Agreement. 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 Agreement 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 Agreement shall be construed as limiting the extent of CONTRACTOR's responsibility for payment of damages resulting from its operations under this Agreement 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 Agreement.

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

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Agreement 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 Agreement. A violation of this Section shall be a material violation of this Agreement.

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 Agreement, 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 Agreement shall remain in full force and effect after termination of this Agreement.

#### **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 Agreement. 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 Agreement.

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 Agreement shall remain in full force and effect for the entire duration of this Agreement and/or extensions under this Agreement.

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

Upon expiration or termination of this Agreement, 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 Agreement (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 Agreement, 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 Agreement. 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 I03D-703, HRS, and chapter 3126, 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 Agreement 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 Agreement (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 Agreement. 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 AGREEMENT**

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Agreement or breaches any promises, terms or conditions of this Agreement 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 Agreement 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 Agreement 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 Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement.

**18. AMENDMENT**

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This Agreement 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 Agreement.

**19. ENTIRE AGREEMENT**

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

**20. APPLICABLE LAW**

This Agreement 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 Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.