

GENERAL INSTRUCTIONS TO OFFERORS



CITY AND COUNTY OF HONOLULU

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CHAPTER 1.0: GENERAL

1.1 Introduction.

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

Before submitting an offer, the Offeror shall be responsible for reading and examining the solicitation documents, these Instructions and all applicable requirements by law. Submission of an offer shall be deemed verification of such reading and examination. No Offeror shall in any way be relieved of any obligation with respect to its offer or the contract due to its failure or neglect to, familiarize itself with, and understand the work requirements, the Solicitation Documents, or existing conditions. No claim for additional compensation to the Offeror shall be allowed based on lack of knowledge or misunderstanding.

1.2 Application.

Any solicitation referencing these General instructions is subject to the Hawaii Revised Statutes (“HRS”) §103D and the Hawaii Administrative Rules (“HAR”) Title 3. In the case of inconsistencies, the HRS or HAR shall govern over the solicitation’s provisions. Provisions from the HRS and HAR are presented for convenience only and may not be complete. Should the solicitation’s provisions conflict with these General Instructions, the solicitation’s provisions shall govern. Unless otherwise specified, these instructions are not intended to be incorporated into awarded contracts.

1.3 Definitions.

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

CHAPTER 2.0: SOLICITATION

2.1 Order of Precedence.

Whenever separate Scope of Work, City-provided Offer pages, Special Provisions, Exhibits, requirements, specifications or plans are referred to or attached hereto, they shall be considered a part of this solicitation document as if contained herein. Should any of the scope of work, City-provided offer pages special provisions, requirements, specifications or plans conflict with these Instructions to Offerors, they shall govern. The most recent addenda shall govern over all other previously issued addenda and other solicitation documents.

2.2 Attachments.

In the Vendor Self Service (VSS) eProcurement system, all attachments are incorporated and by reference made a part of the solicitation.

2.3 City's Estimates.

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

2.4 Pre-bid or Pre-proposal Conference.

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

2.5 Examination of Site.

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

(a) Surface and subsurface conditions.

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

Any subsurface information or hydrographic survey data furnished are for the Offeror's convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in investigations made at the specific locations indicated to aid in the design of the project, and the City assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the

subsurface explorations, will be the conditions that prevail at the time of construction. The Offeror shall be solely responsible for all assumptions, deductions, or conclusions the Offeror may make or derive from the subsurface information or data furnished.

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

(b) Utilities, underground.

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

(c) Materials and equipment.

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

2.6 Price Items.

- (a) Unless otherwise specified in the solicitation, prices offered shall be based on f.o.b. place of destination and shall include all applicable taxes, freight, delivery, handling and related charges. In the Vendor Self Service (VSS) eProcurement system, when a "Contract Amount" is requested, the Offeror shall enter the line item's lump sum price for the specified goods, services, or construction.
- (b) Unless otherwise specified in the solicitation document, Offerors must provide a price for all items listed in the solicitation.
- (c) When additive/deductive alternates are provided for in the solicitation, Offerors should enter a price for each and every item listed setting forth the amount to be added to or deducted from the Offeror's total basic price should such additive/deductive alternate be incorporated into the contract. Failure to enter a price for each and every item may result in the Offeror's offer not being considered for award, provided that if award is based on

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

- (d) In case of discrepancy between prices written in words and those written in figures, the price written in words shall govern. Regarding pricing submitted in the Vendor Self Service (VSS) eProcurement system, the price submitted in the system shall govern. Notwithstanding the above, a unit price shall govern over an extended price.
- (e) Offers in which prices are unbalanced, which contain omissions, erasures, alterations, or additions not called for, or irregularities of any kind shall be cause for rejection of an offer.
- (f) Any illegible or otherwise unrecognizable price shall be cause for rejection of an offer.

2.7 Applicable Taxes.

Unless otherwise specified in the solicitation, the Offeror shall include in its unit price and be responsible for paying all taxes, which shall be applicable to the goods, services, or construction or the furnishing and sale thereof. Offerors are directed to contact the Department of Taxation of the State of Hawaii for assistance regarding the applicability of taxes.

2.8 Wages, Hours and Working Conditions.

(a) Services projects

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

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

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

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

(b) Construction projects

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

(c) Vendor Self Service (VSS) eProcurement System

By submitting a bid in VSS, you are hereby accepting and acknowledging your compliance with the requirements of Section 2.8 and are not required to submit the certification form.

2.9 Insurance and Indemnification.

Offeror shall include in its price all costs to provide insurance and comply with the indemnification provisions as specified in the solicitation. Insurance and indemnification shall be required for all construction projects.

2.10 Performance and Payment Bonds.

Offeror shall include in its price, all costs to meet the bond requirements of a project.

(a) Goods or Services projects

Contract performance and payment bonds shall only be required for Goods or Services projects when specified in the solicitation.

(b) Construction projects

Contract performance and payment bonds shall be required for all Construction projects greater than \$50,000.00 and shall be one hundred percent of the contract amount.

2.11 Bid Security.

When required, Offerors shall provide, at no cost to the City, an offer security. If an offer security is required and an Offeror fails to accompany its offer with an offer security, the offer shall be deemed non-responsive, except as provided in HAR §3-122-223 (d). For solicitations posted on the Vendor Self Services (VSS) eProcurement system, bid security, when required, shall be attached to the offerors electronic bid. The original bid bond shall be provided to the project buyer within five working days from the notification of intent to award. If the offeror fails to comply with this requirement, the offer may be rejected as non-responsive.

- (a) Goods or Services. A bid security shall only be required when specified in the solicitation.
- (b) Construction. A bid security shall NOT be required for Construction projects procured under HRS 103D-305 (RFQ solicitations). Bid security shall be required for all Construction projects procured under HRS 103D-302 and HRS 103D-303 that are \geq \$25,000.00.
- (c) Bid Security Amount. Bid security amount shall be equal to at least five percent of the Offeror's total bid amount.
- (d) An acceptable bid security shall be limited to:
 - (1) Surety bond in the form attached to the solicitation and underwritten by a company licensed to issue bonds in this State. Failure to utilize the City's surety bond forms shall not relieve the Offeror from liability or responsibility if it is discovered that the form utilized is not compliant with the HAR.
 - (2) Legal tender; or
 - (3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of The Department of Budget and Fiscal Services, City and County of Honolulu.
 - i) These instruments may be utilized only to a maximum of \$250,000.00.
 - ii) If the required security amount totals over \$250,000.00, more than one instrument not exceeding \$250,000.00 each and issued by different financial institutions shall be accepted.

2.12 Brand Names, Model, Make or Method.

Where the solicitation document specifies one or more manufacturer's brand names or makes of materials, devices, equipment or system; it is indicating a quality, style, appearance, or performance, or method of construction. The Offeror shall base its offer on one of the specified brands, makes, or method, or on an alternate brand, make, or method which has expressly been found to be equal or better by the City in the solicitation or by written addendum to the solicitation.

If any item, make and model or part number listed in the solicitation is discontinued or made obsolete by the manufacturer, it is the offerors responsibility to provide the specified make and model number or offer an equal substitution for the item. Offeror shall follow the procedures set forth in 2.18 "Request for Substitution."

2.13 Supplemental Requirements for Construction Projects.

(a) Estimated Quantities

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

- (1) Unit priced items: For unit priced items, payment to the Contractor will be made only for the actual quantities of work performed and accepted or of materials furnished and accepted in accordance with the solicitation document and subject to applicable sections of the City's General Terms and Conditions.
- (2) Lump sum items: The quantities in any item for a lump sum offer item are approximate only and payment will be made only for the item in place complete, regardless of the amount of material, equipment, and labor necessary to complete the same in a proper and professional manner and in accordance with the contract documents. The Offeror shall verify these quantities in any manner deemed necessary or expedient.

(b) Joint Contractor; Subcontractor Listing

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

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

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

A subcontractor listing is not required for procurements made in accordance with HRS 103D-305 (RFQ solicitations).

(c) Allowances

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

(d) Mobilization

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

(e) Employment of State Residents on Construction Projects.

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

(f) Safety and Health Certification

Pursuant to HRS 396-18, all bids and proposals in excess of \$100,000 for state construction jobs as defined in section 103D-104 shall include a signed certification from the offeror that a written safety and health plan for the job will be available and implemented by the notice to proceed date of the project. Pursuant to HRS 489E, Uniform Electronic Transactions Act, submittal of an electronic bid in excess of \$100,000 shall be deemed to be this signed certification.

2.14 General Terms & Conditions.

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

2.15 Source Selection for Federal Grants.

The City may solicit a Request for interest for the sourcing of federal grants pursuant to the requirements of HAR §3-122-16.31.

2.16 Multi-Step Competitive Sealed Bidding.

The City may solicit offers using the multi-step competitive sealed bidding method of source selection pursuant to HAR §3-122, Subchapter 6.5.

Solicitations using this method use two phases:

(a) Phase One

Phase One is conducted in accordance with HAR §3-122, Subchapter 6, with the exception of rules relating to the priced offer. Offerors submit unpriced technical proposals to be evaluated on criteria specified in the solicitation. The City may conduct discussions to clarify the unpriced technical proposals. If the priced offer is specified to be submitted in Phase One, they shall be submitted in a separately sealed envelope and will only be considered in Phase Two from offerors whose unpriced technical proposals are determined to be acceptable in Phase One.

(b) Phase Two

Phase Two is conducted in accordance with HAR §3-122, Subchapter 5, except as set forth in HAR §3-122, Subchapter 6.5. Offerors whose unpriced technical proposals are determined to be acceptable will have their sealed price offers opened (if required to be submitted in Phase One) or be requested to submit a sealed priced offer.

2.17 Request for Clarification.

If a prospective Offeror believes that any of the matters in, or related to, the solicitation are not sufficiently described or explained in the solicitation, or that any discrepancy exists between different parts of the solicitation, or that the full intent of the solicitation is not clear, then the Offeror shall submit a written request for clarification no later than the deadline stated in the solicitation document. The City is not obligated to respond to any request received after the deadline. In the Vendor Self Service (VSS) eProcurement system, the City will not respond to inquiries posted on the VSS Bulletin Board or Q&A list page of the solicitation.

Written request for clarifications shall be e-mailed to bfspurchasing@honolulu.gov or mailed hardcopy to:

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

2.18 Request for Substitution.

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

(a) Goods or Services projects.

The written request for substitution must state all features of the proposed substitution that differ from the brand, model, make, method, and/or packaging specified in the solicitation. The written request shall also include sufficient evidence to enable the City to evaluate each feature.

Written request for substitution shall be e-mailed to bfspurchasing@honolulu.gov, or mailed hardcopy to:

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

(b) Construction Projects

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

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

| <u>SECTION</u> | <u>ITEM</u> | <u>SPECIFIED</u> | <u>SUBSTITUTE</u> | <u>VARIANCE</u> |
|----------------|-------------|------------------|-------------------|-----------------|
|----------------|-------------|------------------|-------------------|-----------------|

(For a sample request form refer to General Terms and Conditions Exhibit P.)

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

Substitution requests not complying with the above requirements may be rejected.

Any Offeror whose offer is based on a substitute item which has been approved by the City shall include in its price offer the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the substitute item. The modifications referred to include the changes in design that may be required.

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

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

(c) Approval and Rejection of Request for Substitution

All requests for substitution submitted prior to the deadline will be responded to.

- (1) Approval of Request for substitution.
The City will publish all products approved for substitution via addendum.
- (2) Rejection of a Request for substitution.
The City will provide offerors who submit a request for substitution that is rejected a letter detailing the rejection and/or post the rejection in an addendum.

2.19 Solicitation Addenda.

(a) Written Addendum

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

(b) Notification of Addenda

- (1) In the Vendor Self Service (VSS) eProcurement system, when an addendum is issued, email notifications will be sent to all offerors registered under the solicitation's specified commodity class.
- (2) For all other RFB solicitations, notifications of addenda will be issued to all prospective Offerors that downloaded the solicitation document from the City.
- (3) For RFPs, if the addendum is issued after the receipt of proposals, notifications will be sent to those Offerors who submitted proposals or who are "priority listed."

(c) Modification to Price Items

It shall be the responsibility of the Offeror to modify or withdraw its offer based on compliance with addenda.

2.20 Cancellation of Solicitation.

A solicitation may be canceled in whole or in part and at any time per HAR §3-122-96.

CHAPTER 3.0: PREFERENCES

This chapter may not apply to Federally funded procurements.

3.1 Applicability of Preferences.

The Apprenticeship preference may apply to solicitations in accordance with HRS §103-55.6.

All other preferences shall only apply to a solicitation when:

- (a) An offer form or certificate for the preference is included in the solicitation document; and
- (b) The solicitation indicates the applicability of the preference in the solicitation's offer pages, special instructions or special provisions.

3.2 Evaluation of Preferences.

- (a) The evaluation of preferences shall be in accordance with HRS §103D Part X and HAR §3-124.
- (b) Evaluation procedure and contract award. Solicitations allowing more than one preference shall be evaluated and awarded in accordance with HAR §3-124-25.

- (c) Preferences shall be for evaluation purposes only. The award contract amount shall be the amount of the offer, exclusive of any preference.

CHAPTER 4.0: OFFER

4.1 Preparation of Offers.

- (a) All offers shall comply with the following:
 - (1) Shall not include samples or descriptive literature unless expressly requested. Any unsolicited samples, descriptive literature, or attachments will not be examined or tested, and will not be deemed to vary any of the provisions of the solicitation.
 - (2) All costs to prepare and submit an offer shall be at the Offeror's expense. The City will not reimburse any offer costs or any best and final offer costs incurred by any Offeror, any prospective Offeror, or any other person.
 - (3) An offer shall be submitted by an individual, member, officer, or agent of the Offeror legally qualified and authorized to do so.
 - (4) Time is of the essence and the time for delivery is a part of the response and must be adhered to. Time, stated in the number of days, shall mean "calendar" days, and shall include weekends and holidays.

- (b) Offers for solicitations that were posted in the Vendor Self Service (VSS) eProcurement system shall comply with HRS §489E. The Offeror's submission of an electronic offer confirms that the Offeror:
 - (1) Intends to be bound by the offer.
 - (2) Agrees to all terms, conditions, and provisions of the solicitation.
 - (3) In accepting the electronic terms, the offer is deemed equal to a signed certification.

- (c) Offers for all other solicitations shall comply with the following:
 - (1) Shall be prepared using the solicitation documents provided by the City.
 - (2) Shall be prepared in ink or typewritten. Errors may be erased or crossed out, and corrections typewritten or printed in ink but must be initialed in ink by the person or persons signing the offer.
 - (3) Shall be signed in ink by the individual if offering as a sole proprietor, by one or more members of a partnership, by one or more members or officers of each entity in a joint venture, by one or more officers of a corporation, or by an agent of the Offeror legally qualified and acceptable to the City.

- (d) Pursuant to HAR §3-122-21(4)(B), space is provided in solicitations for: brand name, model number and/or packaging. Offerors who leave these fields blank (physically and electronically) certify, by submitting their offer, that they are providing as specified. An offeror who inputs a brand name, model number, and/or packaging that is not pre-approved or approved during the solicitation may have their bid rejected as non-responsive. This paragraph shall not apply to service solicitations.

4.2 Certificate of Acceptance of Solicitation Requirements.

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

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

By submitting a bid in Vendor Self Service (VSS) eProcurement system, you are hereby accepting and acknowledging your acceptance of solicitation requirements and are not required to submit the certification form.

4.3 Certificate of Cost or Pricing Data.

When an offer in response to a Request for Competitive Sealed Proposal (RFP) solicitation is in excess of \$100,000.00, the Offeror shall certify that the offer's cost or pricing data is accurate, complete, and current. Failure to submit the required certification may be grounds for rejection of the offer.

4.4 Proprietary or Confidential.

Offeror shall clearly label any proprietary information as confidential. Any information labeled as confidential will remain confidential to the extent provided by law. Offers submitted to the City shall become the property of the City.

4.5 Offer Submission.

- (a) Offers for solicitations that were posted in the Vendor Self Service (VSS) eProcurement system: The offeror shall submit its offer electronically within the VSS system. Unless otherwise specified, the City shall only consider offers submitted in the VSS system for award. Offerors shall be responsible for registration and successful response submittal in VSS.
- (b) Offers for all other solicitations: If the solicitation specifically requires hard copy offers, the offer should be sealed in an envelope. The solicitation

number, Offeror's name and address, and closing date of the solicitation should be printed on the outside of the envelope. The offer envelope must be time stamped and deposited at the Division of Purchasing.

4.6 Modification or Withdrawal of Offers.

An offer may be modified or withdrawn prior to the solicitation's close date and time.

CHAPTER 5.0: OPENING OF BIDS AND REGISTRATION OF PROPOSALS

5.1 Public bid opening of RFB and RFQ solicitations.

- (a) Opening for RFB and RFQ solicitations that were posted in the Vendor Self Service (VSS) eProcurement system: After the solicitation's close date and time has passed, a bid tabulation will be available on the solicitation's detail page in VSS.
- (b) Opening for all other RFB solicitations: The opening of offers shall be by a representative of the City, at the date and time stated in the solicitation, in the presence of all Offerors who attend. The opened offers shall be available for public inspection at the time of offer opening except to the extent that the Offeror designates trade secrets or other proprietary data to be confidential. Offerors shall ensure that material so designated as confidential shall be readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of offer opening regardless of any designation to the contrary.

5.2 Opening of RFP Solicitations.

After the RFP submittal due date, proposals shall not be publicly opened. Proposals shall be open to public inspection after the notice of award has been posted.

If the RFP required submitting physical proposals they shall be opened in the presence of two or more procurement officials.

5.3 Late Offers and Late Modifications.

The City shall not accept offers and modifications after the solicitation close time and date.

5.4 Time for Acceptance of Offer.

Unless otherwise stated in the solicitation, an offer may be withdrawn only if the City fails to award the contract within:

- (a) For City-funded projects or projects funded in whole or in part by the federal government; within sixty (60) days of the deadline for offers;
- (b) For projects funded in whole or in part by the State, within one hundred fifty (150) days of the deadline for offers; and
- (c) For improvement district projects, within three hundred (300) days of the deadline for offers.

CHAPTER 6.0: EVALUATION OF OFFERS

6.1 Waiver of Informalities.

The City may waive or accept minor informalities, mistakes or other defects in accordance with HAR §3-122-31.

6.2 Multiple or Alternate Offers.

Unless specifically provided for in the solicitation, multiple or alternate offers by the same offeror shall not be accepted and all such offers shall be rejected.

An offeror shall be considered to have submitted more than one offer if such offeror submits more than one offer under the same Taxpayer Identification Number (FEIN or SSN), same name, or through agents, or through joint ventures, partnerships or corporations in which such person has more than a twenty five percent interest in each of them, or through any combination thereof.

6.3 Conditioned Offers.

Offers that are conditioned may be deemed nonresponsive and rejected.

6.4 Limiting Acceptance to Entire Offer.

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

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

6.5 Anti-competitive Practices.

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

6.6 Suspended or Debarred List.

No contract will be awarded to any Offeror suspended or debarred by the Federal, State or City.

6.7 Unauthorized Communications

Except as otherwise authorized in the solicitation, offerors shall not communicate with the Contracting Officer, any member of an Evaluation Team or Selection Committee appointed by the Contracting Officer, or any other City officer, employee or agent directly serving the procurement activity.

6.8 Rejection of Offers.

The City reserves the right to reject any or all offers when in the City's opinion; such rejection will be in the best interest of the City. Offers may be rejected for the following reasons:

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

- (h) Offeror fails to pay, or satisfactorily settle, all bills overdue for labor and material on former City contracts prior to the offer submittal due date;
- (i) The Offeror assisted in developing or preparing the specifications or work statements.
- (j) The offer does not conform in all material respects to the requirements of the solicitation.
- (k) The proposed price is clearly unreasonable.

6.9 Cost Analysis Data

The City reserves the right to request cost data. Pursuant to HAR §3-122-35, this cost data will be used to determine if an offer is fair and reasonable. Information provided by the Offeror shall remain confidential and proprietary in accordance with HRS §92F-13(3).

CHAPTER 7.0: DISCUSSION & BEST AND FINAL OFFER

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

7.1 Priority Listed Offers.

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

When soliciting using a Design Build RFP, the three responsible, most qualified offerors shall be short-listed as PLO and notice will be given to all offerors as to which offerors are short-listed.

If the City issues addenda after the PLO firms are determined, the City will issue the addenda only to the PLO firms.

7.2 Discussions.

Discussions will be limited to only Priority-Listed Offerors (PLO). PLOs shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of offers; however, offers may be selected without such discussion.

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

significant change, then the solicitation may be cancelled and a new solicitation may be issued.

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

7.3 Best and Final Offer (BAFO).

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

If BAFOs are requested, the City shall inform the PLO firms and allow/request revised offers, including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified by the City. Adequate time shall be provided to PLO firms to revise their offers. Upon receipt of the BAFOs, the City will repeat the evaluation process. The evaluation process will consider the revised information, re-evaluate, and revise scores as appropriate.

CHAPTER 8.0: AWARD

8.1 RFB and RFQ Solicitations.

(a) Additive or Deductive Alternates

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

(b) Low Tie Bids

In the case low tie bids from responsible and responsive Offerors are received, award may be made by the drawing of lots.

8.2 Exceeding Available Funds.

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

8.3 Verification of Responsibility of Offeror.

Prior to the award of the contract, the successful Offeror shall be registered as "Compliant" on the State of Hawaii Compliance Express System (<http://vendors.ehawaii.gov>) or submit the required tax clearances from the State Department of Taxation and Internal Revenue Service, the Certificate of Compliance with the State Department of Labor and Industrial Relations, and the Certificate of Good Standing with the Department of Commerce and Consumer Affairs Business Registration Division. The City may reject the offer if the Offeror fails to provide proof of compliance within the time permitted by the City. Offeror shall meet all licensing requirements of the solicitation.

8.4 Execution of Contract.

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

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

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

(a) Notarization

Signatures appearing on the contract forms and bond forms (if applicable) must be notarized by a notary public.

(b) Authorization

The City may require, in the case of a corporation, a corporate resolution authorizing the person(s) signing to execute the contract and bond. The City may require, in the case of a joint venture or partnership, a power of attorney authorizing the person(s) signing to execute the contract and bond. The surety, if applicable, may also be required to attach its corporate resolution or power of attorney authorizing the person(s) signing to execute the bond.

(c) Performance and Payment Bonds

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

(d) Evidence of Insurance Coverages

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

8.5 Awards of Less than \$100,000 and \$250,000.

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

8.6 Cancellation of Award.

The City reserves the right to cancel the award of any contract any time before the City signs the contract.

CHAPTER 9.0: DEBRIEFING, PROTEST, SUSPENSION AND DEBARMENT

9.1 Debriefing.

Debriefing shall apply only to Request for Competitive Sealed Proposal (RFP) solicitations. A written request for a debriefing shall be made within three (3) working days after the posting of the award.

9.2 Authority to Resolve Protested Solicitations and Awards.

The City shall resolve complaints and protest of awards in accordance with HAR §3-126-1 and HRS §103D-701.

9.3 Authority to Debar or Suspend.

The City may debar or suspend an Offeror for cause from consideration for award of contracts in accordance with the provisions of HRS §103D-702, and HAR §3-126-2.

9.4 Solicitation or Award in Violation of Law.

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