

**TERMS AND CONDITIONS  
FOR PURCHASE ORDERS ISSUED BY  
THE HONOLULU BOARD OF WATER SUPPLY,  
CITY & COUNTY OF HONOLULU, STATE OF HAWAII**

**1. DEFINITIONS.**

- A. "BWS" means the Honolulu Board of Water Supply, City and County of Honolulu, State of Hawaii.
- B. "Contract" means the Purchase Order, the Solicitation, these Terms and Conditions, and, to the extent applicable, any special provisions, requirements, specifications, plans, and any other documents regarding the Goods, Services, or Construction.
- C. "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term excludes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- D. "Contractor" means the Contractor selected by the BWS to provide the Goods, Services, or Construction.
- E. "Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software that are the subject of this Solicitation.
- F. "HAR" means the Hawaii Administrative Rules.
- G. "HRS" means the Hawaii Revised Statutes.
- H. "Intellectual Property" shall mean: (1) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, including patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (2) all marks, whether protected under any law, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (3) all writings and other works subject to copyright protection under the federal Copyright Act, including all copyrighted works, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; (4) all mask works and all applications, registrations, and renewals in connection therewith; (5) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing, distribution, and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information and lists, current and potential client information and lists, current and potential travel industry businesses information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts); (6) all computer software (including data, disks, licenses and related documentation); (7) all other proprietary and intangible rights and assets, whether actual or potential; and (8) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).
- I. "Manager" means the Manager and Chief Engineer of the BWS.

- J. "Potential Contractor" means each individual or entity that responds to the Solicitation.
  - K. "Pre-Existing Intellectual Property" shall mean any Intellectual Property that is not Work Product.
  - L. "Purchase Order" means that certain document wherein the BWS requests that Contractor provide Goods, Services, or Construction.
  - M. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance that are the subject of the Solicitation.
  - N. "Solicitation" means whatever documents the BWS uses to request information from or regarding individuals and entities capable or possibly capable of providing Goods, Services or Construction required by the BWS.
  - O. "Terms and Conditions" means these Terms and Conditions for Purchase Orders Issued by the Honolulu Board of Water Supply, City & County of Honolulu, State of Hawaii.
  - P. "Work Product" shall mean all materials, work product, works of authorship, studies, data, charts, diagrams, methodologies, processes, descriptions, reports, layouts, videotapes, computer programs, work papers, projections, ideas, inventions and Intellectual Property of any kind that are developed, prepared, assembled, or conceived, in whole or in part, by Contractor and/or its employees, subcontractors, representatives, consultants, or agents in the course of providing Services pursuant to the Contract or otherwise in connection with the Contract.
2. **CONTRACT FORMATION.** Following the receipt of responses by one or more Potential Contractors to the Solicitation, the BWS shall select the Contractor. The Contract shall become binding upon the BWS and the Contractor once both of the following occur: (i) the BWS issues the Purchase Order to the Contractor; and (ii) the Contractor complies with Section 4 of these Terms and Conditions.
3. **STATUTORY AND ORDINANCE REQUIREMENTS.** The applicable provisions of the Hawaii Revised Statutes, the Revised Charter of Honolulu, and the Revised Ordinances of the City and County of Honolulu shall be deemed to be a part of the Contract as though fully set forth therein.
4. **PROOF OF COMPLIANCE WITH LAWS.**
- A. BWS reserves the right to require the Contractor to furnish the following documents to the BWS prior to the award of the Contract:
    - i. A tax clearance certificate from the Department of Taxation of the State of Hawaii and the Internal Revenue Service, issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor;
    - ii. A certificate from the Department of Labor and Industrial Relations of the State of Hawaii for HRS Chapter 383 (unemployment insurance), HRS Chapter 386 (workers' compensation), HRS Chapter 392 (temporary disability insurance), and HRS Chapter 393 (prepaid health care), issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor;
    - iii. A certificate of good standing from the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA"), issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor; provided, however, that a Hawaii business that is a sole proprietorship is not required to register with DCCA and therefore is not required to submit a certificate of good standing.

- B. The above certificates should be applied for and submitted to the BWS as soon as possible. If a valid certificate is not submitted on a timely basis for award of the Contract, the BWS, in its discretion, may rescind the award and select another Contractor.
5. **QUALITY OF GOODS AND SERVICES.** The Contractor shall provide Goods and perform Services and Construction in accordance with the terms and conditions of the Contract. All Goods shall be new and of the quality specified by the BWS in the Contract. All Services and Construction shall be rendered in a professional manner.
6. **TIME, PLACE, AND MANNER OF DELIVERY OR PERFORMANCE.** The Contractor shall deliver all Goods to such place as the BWS shall designate. The delivery of Goods and the performance of Services or Construction shall occur in such manner and within such timeframe as the BWS specifies. It is mutually understood and agreed by and between the Contractor and the BWS that time of delivery of Goods and performance of Services or Construction shall be of the essence. If the Contractor is unable to deliver the Goods or perform the Services or Construction in a timely manner, and if the Manager, or an authorized representative, in his sole and absolute discretion, determines that the delay has been caused by circumstances beyond the Contractor's control, then the Manager or authorized representative may extend the time for the Contractor to deliver the Goods or perform the Services or Construction; provided, however, that the Contractor must first submit a written request to the Manager or an authorized representative for such an extension, which request shall set forth in detail the causes of such delay. Any extension granted by the Manager or an authorized representative pursuant to this section shall not be deemed a waiver of the BWS' right to terminate the Contract for any additional delay not covered by the specific terms of such extension.
7. **INTELLECTUAL PROPERTY.**
- A. **Work Product.** The Contractor acknowledges and agrees that all Work Product is the property of the BWS, and all ownership, right, title, and interest therein have vested and shall vest solely with the BWS and is and shall be deemed to be a "WORK MADE FOR HIRE" under United States Copyright Laws (17 U.S.C. Section 101 et seq.) and other applicable laws. To the extent that title to any such Work Product may not, by operation of law, vest in the BWS, or such works may not be considered to be works made for hire, the Contractor hereby irrevocably assigns to the BWS all ownership, right, title, and interest that the Contractor may have in such Work Product, without additional compensation and free of all liens and encumbrances of any type. Contractor represents and warrants to the BWS that the BWS is and shall be the exclusive owner of the Work Product and all proprietary rights relating thereto, and the Contractor shall defend, indemnify, and hold harmless the BWS and its employees, officers, agents, and assignees from and against any infringement or claim of infringement relating thereto. The Contractor will promptly disclose to the BWS all Work Products when made or developed. The Contractor agrees to give the BWS or any person designated by the BWS any reasonable assistance required to perfect and enforce the BWS' rights in such Work Product, and the Contractor agrees to execute and assist in the preparation of any document that the BWS may consider necessary or helpful in obtaining or maintaining any patents, copyrights, registrations, or other proprietary rights in the Work Product. Contractor shall deliver all Work Products to the BWS upon expiration or termination of the Contract.
- B. **Pre-Existing Intellectual Property.** If the Contractor is required or desires to use any Pre-Existing Intellectual Property in connection with performing the Services or providing the Goods, the Contractor on behalf of itself and for the BWS shall procure the right for such use from the owner or owners of the Pre-Existing Intellectual Property. Further, the Contractor shall be solely responsible for paying any royalty, license, or other fee that is due or that may become due for use of the Pre-Existing Intellectual Property. Any such royalty, license, or other fee shall be considered to be originally included within the Contractor's response to the Solicitation and the price set forth in the Purchase Order.

8. **WARRANTIES.** The Contractor warrants that all Goods provided pursuant to the Contract shall: (i) be fit for the purposes for which they were intended by the BWS; (ii) be merchantable and free from defect and faulty workmanship, material, or design; and (iii) conform to all requirements and specifications set forth in the Contract. The Contractor shall remove and replace at no cost to the BWS, including no additional charges for taxes, labor, or shipping, any Goods that are found to be damaged or defective within the longest of the following time periods: (a) the standard warranty period of the manufacturer of the Goods; (b) one hundred eighty (180) calendar days following delivery of the damaged or defective Goods by the Contractor to the BWS; and (c) one hundred eighty (180) calendar days following acceptance of the damaged or defective Goods by the BWS. If the Contractor fails, neglects, or refuses to remove and replace the damaged or defective Goods, the BWS shall have the right to purchase in the open market a quantity of the Goods sufficient to replace those that are damaged or defective, and to deduct from any moneys due or that may thereafter become due to the Contractor the cost of purchasing such Goods in the open market.
9. **CONTRACTOR LIABILITY.** The Contractor's liability shall not cease when the BWS accepts the Goods, Services, or Construction that are the subject of the Contract. The Contractor's liability shall continue as provided by any terms of the Contract and by law.
10. **INDEMNIFICATION.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and forever hold harmless the BWS and its officers, directors, employees, and agents from and against all costs, liability, loss, damage, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts, omissions, or breach of the Contract by the Contractor or the Contractor's employees, officers, agents, or subcontractors. The provisions of this section shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.
11. **FINAL INVOICE.** After fully performing its obligations under the Contract, the Contractor shall issue an invoice (the "Final Invoice") in triplicate to the BWS. The Final Invoice must include the following information, to the extent applicable: (i) contract number; (ii) confirmation purchase order number; (iii) description of the Goods provided; (iv) item numbers, quantities, vendor codes, unit prices, and extended totals for the Goods provided; and (v) to the extent that the Goods include equipment, the make, model, serial number, and the specific delivery or installation location, including delivery address and building facility room number, for each piece of equipment, if such information is made available to the Contractor. If Contractor provided the BWS with a system comprised of multiple pieces of equipment, each discrete piece of equipment shall be listed separately on the Final Invoice.
12. **PAYMENT.**
  - A. Subject to the requirements of Section 12(D) below, payment will be authorized by the Manager or the authorized representative only after all of the following events occur: (i) Contractor fully performs its obligations under the Contract; (ii) the Manager or authorized representative accepts all Goods provided and Services or Construction performed by the Contractor under the Contract; and (iii) the Contractor furnishes the BWS with the Final Invoice. Payment will be made as soon thereafter as the regular course of business will allow; provided, however, that payment shall be made no later than thirty (30) calendar days following the date when the last of the three (3) events identified above occurs.
  - B. To the extent applicable, the amount of the payment will be computed in accordance with unit prices bid by Contractor.
  - C. Unless otherwise specified, partial payment(s) for any Goods, Services, or Construction, or portion of any Goods, Services, or Construction under the Contract may be permitted. Said the Manager or an authorized representative may authorize partial payment(s), provided that delivery/performance and acceptance of the Goods, Services, or Construction is made before the delivery/performance date identified in the Contract and upon submittal of proper invoices and substantiating documents by Contractor. Said authorization by the Manager or authorized

representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

- D. Pursuant to Section 3-122-112, HAR, final payment under any contract of \$25,000 or more shall be withheld until the Contractor furnishes the BWS with the following documents:
- i. A tax clearance certificate from the Department of Taxation of the State of Hawaii and the Internal Revenue Service, issued no more than two (2) months before the date when the BWS receives the certificate from the Contractor;
  - ii. A certification from the Contractor, using a form available from the BWS, affirming that the Contractor has, as applicable, remained in compliance with HRS Chapter 383 (unemployment insurance), HRS Chapter 386 (workers' compensation), HRS Chapter 392 (temporary disability insurance), and Chapter 393 (prepaid health care), and has remained in good standing with DCCA.

**13. ASSIGNMENT OF MONEY DUE OR PAYABLE.** No assignment of money due or to become due to the Contractor shall be made without the prior written consent of the Manager or authorized representative.

**14. CONTRACTOR'S BREACH OF CONTRACT; RIGHTS AND REMEDIES OF THE BWS.**

- A. In the event of any breach of the Contract by the Contractor, the BWS shall have the right to terminate the Contract without service of notice or resort to the legal process and without any legal liability on its part.
- B. If the Contractor fails, neglects, or refuses to provide Goods or perform Services or Construction in accordance with the deadlines established by the Contract, and such failure or neglect is not the result of fire, strike, freight embargo, or Act of God or of the government, the BWS shall have the right to purchase in the open market a quantity of the Goods sufficient to replace those that were not timely provided or such Services or Construction as were not timely provided, and to deduct from any moneys due or that may thereafter become due to the Contractor the cost of purchasing such Goods, Services, or Construction in the open market.
- C. If the Contract is terminated, either in whole or in part, by reason of the breach thereof by the Contractor, including non-delivery or non-performance within the time specified, any loss or damage sustained by the BWS in procuring any Goods, Services, or Construction shall be borne and paid for by the Contractor.
- D. The rights and remedies of the BWS provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- E. If the Contractor breaches the Contract, the BWS may bar the Contractor from consideration for award of contracts for a period not to exceed three (3) years.

**15. ASSIGNMENTS AND SUBCONTRACTS.** The Contractor shall not assign or subcontract any of its obligations under the Contract without obtaining the BWS' prior written permission. An unauthorized assignment or subcontract shall not, under any circumstances, relieve the Contractor of its obligations under the Contract.

**16. INTERPRETATION.** In case of any doubt as to the meaning of any provision contained in the Contract, the Manager or authorized representative's interpretation of the provision shall control. All directions and explanations required to complete the Contract shall be given by the Manager or authorized representative.

17. **PRECEDENCE.** In the event of a conflict among these Terms and Conditions and the other documents that comprise the Contract, such other documents shall take precedence over these Terms and Conditions.
18. **GOVERNING LAW AND JURISDICTION.** The laws of the State of Hawaii shall govern the validity of the Contract and any of the Contract's individual terms or provisions, as well as the rights and duties of the parties to the Contract. Any action at law or in equity to enforce or interpret the provisions of the Contract shall be brought in a court of competent jurisdiction in Honolulu, Hawaii. The Contractor consents to the exercise of personal jurisdiction over Contractor by the courts of the State of Hawaii.
19. **SEVERABILITY.** If any term or provision of the Contract is found to be illegal, unenforceable, or in violation of law, then, notwithstanding such term or provision, all other terms or provisions of the Contract shall remain in full force and effect. When possible, however, the Contract shall be interpreted so as to reflect the intentions of the parties as indicated by the provision or term in question.
20. **NONDISCRIMINATION.** No person performing work under this Contract, including any subcontractor, employee, or agent of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law. The Contractor shall be an equal opportunity employer.
21. **CONFLICTS OF INTEREST.** The Contractor represents that neither the Contractor nor any employee or agent of the Contractor presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance under the Contract.
22. **CONFIDENTIALITY.** All information, data, or other material given to or made available to the Contractor by virtue of the Contract, which is identified as proprietary or confidential information, will be safeguarded by the Contractor and shall not be disclosed to any individual or organization without the prior written approval of the BWS. All information, data, or other material provided by the Contractor to the BWS shall be subject to the Uniform Information Practices Act, HRS Chapter 92F. All information, data, or other material that Contractor regards as proprietary or confidential shall be expressly designated as such by Contractor prior to submission to the BWS. The provisions of this section shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.
23. **ENTIRE AGREEMENT.** The Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the BWS and the Contractor. The Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the BWS and the Contractor other than as set forth or as referred to herein.
24. **WAIVER.** The failure of the BWS to insist upon the strict compliance with any term, provision, or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the BWS' right to enforce the same in accordance with the Contract.
25. **NO PARTY DEEMED DRAFTER.** No party shall be deemed to be the drafter of the Contract. The Contract is the product of arms length negotiations between the parties and therefore shall be deemed to have been drafted jointly by the parties.
26. **HEADINGS.** The headings of paragraphs in these Terms and Conditions are for convenience only. They form no part of the Contract and shall not affect its interpretation.

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