

**HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION**

HONOLULU RAIL TRANSIT PROJECT

**City Center Utilities Relocation (CCUR) “III”
Construction Contract**

REQUEST FOR SEALED BIDS

RFB-HRT-2101046

AUGUST 27, 2021

QUESTIONS RELATING TO THIS SOLICITATION, CONTACT:

transitmailbox@honolulu.gov

Honolulu Rail Transit Project

**NOTICE TO BIDDERS
REQUEST FOR SEALED BIDS
FOR
HONOLULU RAIL TRANSIT PROJECT
CITY CENTER UTILITIES RELOCATION (CCUR) "III"
CONSTRUCTION CONTRACT**

RFB-HRT-2101046

HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

This procurement is being conducted in accordance with Hawaii Revised Statutes (HRS) Section 103D-302 and Hawaii Administrative Rules (HAR) Chapter 3-122, subchapter 5.

Sealed bids will be accepted up to **2:00 p.m., Hawai'i Standard Time (HST), on November 3, 2021**, addressed or hand-delivered to the offices of the Honolulu Authority for Rapid Transportation (HART), 1099 Alakea Street, **Suite 1700**, Honolulu, Hawai'i, 96813, Attn: Procurement Division.

Sealed bids will be publicly opened at 2:15 p.m., Hawaii Standard Time (HST), November 3, 2021, at 1099 Alakea Street, **Suite 150**, Honolulu, Hawai'i, 96813.

Pursuant to Chapter 103D-303.5 of the Hawai'i Revised Statutes, a pre-bid conference will be held via web conferencing on **September 15, 2021, at 3:00 p.m. via using Webex. All interested persons shall request an invitation by emailing transitmailbox@honolulu.gov** with the number of attendees and their names. A link to the web conference will be provided.

Because the Honolulu Rail Transit Project (HRTTP) is being funded with Federal assistance, the selected bidder shall comply with all applicable Federal Transit Administration (FTA) requirements.



LORI M. K. KAHIKINA,

Interim Executive Director and CEO

Honolulu Authority for Rapid Transportation

Honolulu Rail Transit Project

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Attachment 1	Bid/Pricing Proposal
Attachment 1a	Bid/Pricing Proposal Form
Attachment 2	Joint/Contractor/Subcontractor Listing; Specialty Licenses
Attachment 3	Certification of Compliance for Employment of State of Hawaii Residents
Attachment 4	Performance Bond
Attachment 5	Labor and Material Payment
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Attachment 7	Escrow Agreement
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ITB EXHIBITS

Exhibit 1	Bidder's Clarification Request
Exhibit 2	Reserved
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Exhibit 5	Bidder Registration Form
Exhibit 6	Reserved
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Exhibit 9	Certification of Compliance with HRS Section 396-18, Safety and Health Programs
Exhibit 10	Certificate Regarding Lobbying
Exhibit 11	Certification Regarding Conflict of Interest

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Exhibit 12	Certificate Regarding Ineligible Contractors
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Exhibit 14	Buy America Certificate
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INSTRUCTIONS TO BIDDERS (“ITB”)

1.0 PROJECT OVERVIEW

This Request for Sealed Bids (“RFB”) is issued by the Honolulu Authority for Rapid Transportation (“HART”) to solicit bids for the City Center Utilities Relocation (“CCUR”) “III” (“Project”) of the Honolulu Rail Transit Project (“HRTTP”).

1.1 HRTTP Description

The HRTTP will provide high-capacity rapid transit service in the travel corridor between East Kapolei and Ala Moana Center. This corridor includes the majority of housing and employment on O‘ahu. The north-south width of the corridor is a maximum of four (4) miles, with the corridor constrained by the Ko‘olau and Wai‘anae Mountain Ranges to the north and Pacific Ocean to the south.

The HRTTP is described in the Final Environmental Impact Statement (“FEIS”) as the design, construction and operation of a twenty (20) mile grade-separated fixed guideway transit system between East Kapolei and Ala Moana Center. All parts of the guideway will be elevated, except near Leeward Community College where it will be at-grade. The system will incorporate steel wheel on steel rail technology. The HRTTP includes twenty-one (21) stations, one (1) Maintenance and Storage Facility (“MSF”), and eighty (80) light metro vehicles and associated core systems.

The FEIS was released in June 2010 and a Final Supplemental EIS and Amended Record of Decision (“ROD”) was released in September 2013. The FEIS and additional information on the HRTTP can be found at <http://honolulustransit.org>.

1.2 Project Description; Technical Specifications

The overview of the Project is provided in the CCUR “III” General Terms and Conditions (referred to as “GTC”, “GC”, “GCCC”, or “General Conditions”), and the specifications and details of this Project are found in the attached Technical Specifications and Drawings. This Project has an estimated value of \$175 million to \$225 million dollars.

If the Technical Specifications and Drawings for this RFB are too large in file size, the posted copies of the DVDs of the Technical Specifications and Drawings will be available upon request with pickup at:

Honolulu Authority for Rapid Transportation (“HART”)
1099 Alakea Street, Suite 1700
Honolulu, Hawai‘i 96813

Requests shall be made to transitmailbox@honolulu.gov.

2.0 TERM OF THE CONTRACT

The term of this Contract is from the date of issuance of a written Notice to Proceed (“NTP”) to Final Acceptance by HART. Substantial Completion shall be 852 consecutive calendar days (“ccd”) from issuance of the NTP.

3.0 QUESTIONS AND INQUIRIES

3.1 Deadline for Inquiries

Inquiries shall be submitted no later than the date stated in the Solicitation Timetable for “Deadline for Receipt of Clarification,” unless the Chief Procurement Officer determines that it is in the best interest of HART to accept an inquiry submitted after the deadline.

3.2 Written Request for Clarification

All inquiries and requests for clarification regarding this RFB shall be submitted to the Transit Mailbox at the following email address: transitmailbox@honolulu.gov by no later than the “Deadline for Receipt of Clarification” set forth in ITB Section 4.2, Solicitation Timeline. All correspondence shall refer to the appropriate RFB number, page number, and section number. See Exhibit 1. Oral interpretation or clarifications will be without legal effect. Only answers to question issued by a formal written addendum shall be binding on HART.

3.3 Rules of Contact and Communications

All communications between bidders and HART shall be in writing. Any communications to HART should be directed to the Transit Mailbox at the following email address: transitmailbox@honolulu.gov.

Bidders may not contact other HART employees, representatives, HART Board members or stakeholders concerning this RFB while the solicitation process is in progress. The selection process begins on the date of the issuance of the RFB and will be completed with the Award of the Contract.

Any contact determined to be improper, at the sole discretion of HART, may result in disqualification.

4.0 SOLICITATION PROCESS AND REQUIREMENTS

4.1 Pre-Bid Conference

A pre-bid conference for persons interested in submitting sealed bids will be held at the time, date, and location stated in the Notice to Bidders of this solicitation. Although attendance is not mandatory, all interested bidders are encouraged to attend. Attendees may email advance questions to HART, which may be addressed during the pre-bid conference. Oral representations will not be binding. Only written responses to written questions issued via addenda shall be binding. The Pre-Bid Conference will be held via web conferencing using Webex on the day and time set forth in ITB Section 4.2, Solicitation Timeline. All interested persons shall request an

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invitation by emailing transitmailbox@honolulu.gov with the number of attendees and their names. A link to the web conference will be provided.

4.2 Solicitation Timetable

The following timetable has been established for the Project solicitation:

Activity	Month
Issuance of Request for Sealed Bids	August 27, 2021
Pre-Bid Conference	September 15, 2021; 3:00 p.m. HST
Deadline for Receipt of Clarification	September 29, 2021
Deadline for Receipt of Substitution Requests	September 29, 2021
Issue Final Addendum	October 13, 2021
BID DUE DATE	November 3, 2021; 2:00 p.m. HST
ESCROWED PROPOSAL DOCUMENTS	November 4, 2021; 4:00 p.m. HST
Anticipated Award Date	November 19, 2021

Any changes to the dates in the Solicitation Timetable shall be made by HART by written addendum.

4.3 Addenda

HART will issue responses to inquiries, additional background information, and any other corrections or amendments it deems necessary, via written addenda, on or before the Issue Final Addendum date. Addenda will be incorporated as part of the RFB. 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.

4.4 Public Bid Opening

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

Unless otherwise stated in the solicitation, after bid opening or receipt of bids, a bid may be withdrawn only if HART fails to award the Contract.

4.5 Late Submissions, Modifications, and Withdrawal of Bids

Bidders are responsible for submitting bids, and any modifications or withdrawals, by the Bid Due Date provided in the Solicitation Timetable. Any bid or modification received by HART after the exact time specified for receipt of bids (Bid Due Date) is “late” and will not be considered for award and shall be returned to the bidder unopened at the time of late submission or as soon as practicable. Any request for withdrawal of bids received by HART after the exact time specified for receipt of bids (Bid Due Date) is “late” and will not be accepted.

4.6 Award

This solicitation will be conducted in accordance with the Hawaii Public Procurement Code and applicable Federal requirements and will be awarded to the lowest responsive, responsible bidder.

The lowest bid will be determined after adding the Total Base Price with any Priced Option(s), if applicable, as stated on the bidder’s submitted Bid/Pricing Proposal Form (ITB Attachment 1a). Award of any Priced Option(s) shall be contingent upon the availability of funds.

In the event low tie bids from responsible and responsive bidders are received which are identical in price and which meet all the requirements and criteria set forth in the solicitation, award shall be made by drawing lots.

4.7 Verification of Responsibility of Bidder

The successful bidder shall, within three (3) business days of notification of Contract award, furnish proof of compliance with the requirements of Hawaii Revised Statutes (“HRS”) § 103D-310(c):

- HRS Chapter 237, tax clearance;
- HRS Chapter 383, unemployment insurance;
- HRS Chapter 386, workers’ compensation;
- HRS Chapter 392, temporary disability insurance;
- HRS Chapter 393, prepaid health care; and
- One of the following:
 - (a) Registered and incorporated or organized under the laws of the State of Hawaii, hereafter referred to as a “Hawaii business”; or
 - (b) Registered to do business in the State of Hawaii, hereinafter referred to as a “compliant non-Hawaii business.”

Bidders may choose to use the Hawaii Compliance Express (“HCE”), which allows businesses to register online at <http://vendors.ehawaii.gov> to acquire a single, printable electronic “Certificate of Vendor Compliance.” The HCE provides current compliance status as of the issuance date. The “Certificate of Vendor Compliance,” indicating that the bidder’s status is compliant with the requirements of HRS § 103D-310(c), will be accepted for both contracting purposes and final payment. Bidders that elect to use the new HCE services will be required to pay an annual fee of

Twelve and No/100 Dollars (\$12.00) to the Hawaii Information Consortium, LLC (“HIC”). Bidders choosing not to participate in the HCE program will be required to provide the paper certificates as specified above.

4.8 Execution of Contract

(a) Upon notification of award, the successful bidder will receive an Agreement Form from HART for execution. The Contract document shall be returned within ten (10) days from the date of notification of the award, or within such time as HART may allow.

Failure to enter into the Contract and to furnish satisfactory security, when required, within ten (10) days from notice of award or within such time as HART may allow, shall be cause for cancellation of the bidder’s award and forfeiture of the bidder’s bid security, if any, as liquidated damages and not as a penalty.

(b) The Contract documents are to be completed and executed by the bidder in the following manner:

(i) Notarization. Each and every signature appearing on the Contract form must be notarized by a notary public attesting to the persons signing and their titles. Each and every signature appearing on the bond forms, if applicable, must be notarized by a notary public attesting to the persons signing and their titles.

(ii) Performance and Payment Bonds. Performance and payment bonds shall be delivered at the same time the Contract is executed. Submitted performance and payment bonds shall be in conformance with HAR §§ 3-122-221, 3-122-222 and 3-122-227.

(iii) 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.

4.9 Cancellation of Solicitation

This solicitation may be cancelled at any time pursuant to the Chief Procurement Officer’s determination that cancellation is in the public interest or reasons based on, but not limited to, those set forth in HAR § 3-122-96.

4.10 Disadvantaged Business Enterprise (DBE) Contract Goal

HART has established an overall DBE goal of 13.00% for the duration of this Project and a separate contract goal has not been established for this procurement.

Reports to HART. The Contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor shall submit the “DBE PARTICIPATION REPORT” reflecting payments made by the Contractor to DBE subcontractors in accordance with Attachment A, Section 1.6(b)-(d) of CCUR “III” General Terms and Conditions (referred to as “GTC”, “GC”, “GCCC”, or “General Conditions”). Payments to the Contractor will not be processed if the DBE PARTICIPATION REPORT is not

properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in GTC Attachment 1.6(a).

4.11 Conflict of Interest

A contractor who is paid for developing or preparing specifications or work statements in the development of the specifications is precluded from submitting a bid or receiving a contract for that particular solicitation in accordance with HRS § 103D-405(d) and HAR § 3-122-13(e).

4.12 Protests

Protests shall be in accordance with HRS § 103D-701 and HAR § 3-122-60. Additionally, the protestor is notified of its rights to appeal to the FTA pursuant to FTA C 4220.1F Chapter VII, Section 1.b.

4.13 Suspension and Department

In accordance with 2 CFR § 1200 the bidder is required to verify that none of the subcontractors, as defined in 2 CFR § 180.995, or affiliates, as defined at 2 CFR § 180.905, are excluded or disqualified as defined at 2 CFR §§ 180-945 and 180.935. The bidder is required to comply with 2 CFR § 1200, Subpart C, and must include the requirements to comply with 2 CFR § 1200, Subpart C, in any lower tier covered transaction it enters into. By signing and submitting its Bid/Pricing Proposal, the bidder certifies to these requirements.

5.0 PREPARATION OF BID

5.1 False Statements in Bids

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. Section 1001. (*See* Section 1.2 of Attachment A to the General Conditions.)

5.2 English Language

Bids and required submissions in response to this solicitation shall be in the English language or translated in its entirety to English.

5.3 United States Currency

Bids and required submissions in response to this solicitation shall be in terms of U.S. dollars.

5.4 Licensing

All Persons participating in this procurement and/or the Contract must obtain all licenses and permits and take all necessary steps to conduct business in the State of Hawai‘i and perform the Work required under the Contract, including proposing in accordance with HRS § 444-9 and HAR § 16-77-4, and carrying out contracts consistent with the laws of the State of Hawai‘i. Bidders must be properly licensed and capable of performing the Work as described in the RFB,

including but not limited to having an "A" general engineering contractor license or a "B" general building contractor license from the State of Hawai'i at the time of submission of the bids. As indicated in ITB Section 6.3 below, bidders are strongly encouraged to check the State of Hawai'i Professional and Vocational Licensing ("PVL") website to confirm that the bidder and all listed joint contractors and subcontractors are properly licensed.

5.5 Brand Names, Model, Make or Method

Where the RFB 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. It is not the intent of HART to exclude other materials, equipment, or processes or to limit competition in proposing when a proprietary name is used in the specifications. Therefore, unless the proprietary name referred to in the specifications is followed by words indicating that no substitution is permitted, materials, equipment, or processes of other manufacturers, fabricators, suppliers, or distributors will be considered. The naming of such items is intended to establish the type, function, aesthetic appearance (or value) and standard of quality and performance required by this Contract, unless indicated otherwise.

5.6 Request for Substitution

(a) Variances to the specifications may be approved through the submittal of a written request for substitution for review and approval. Bidders shall submit a written request for substitution no later than the deadline stated in the Solicitation Timetable. Requests received after the deadline will be denied.

(b) The written request must be clearly marked SUBSTITUTION REQUEST on the envelope. Six (6) copies of the request must be submitted together with three (3) sets of technical brochures which shall either be marked or be accompanied by three (3) copies of a statement of variances. The statement of variances must list all features of the proposed substitution which differ from the Contract documents, and must further certify that the substitute has no other variant features. The brochures must include sufficient evidence to enable HART to evaluate each feature listed as a variance. Should an unapproved 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 HART and without any extension to the Contract completion time.

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

<u>SECTION</u>	<u>ITEM</u>	<u>SPECIFIED</u>	<u>SUBSTITUTE</u>
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(d) Written requests for substitution shall be submitted by person, or mailed hardcopy to:

Honolulu Authority for Rapid Transportation
Procurement Division
1099 Alakea Street, Suite 1700
Honolulu, Hawai'i 96813
RFB-HRT-2101046
SUBSTITUTION REQUEST

- (e) Electronic requests for substitution may be submitted to:

transitmailbox@honolulu.gov

5.7 Estimated Quantities

Unless otherwise specified, all quantities appearing in the solicitation document for construction projects are approximate, and those indicated in the document are prepared for the comparison of bids only. Bidders shall include in its prices bid, the entire cost of the materials and equipment required for the full 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.

5.8 Taxes Included in Bid Prices

Unless otherwise specified in the solicitation document, all taxes shall be included in the unit and total bid price.

5.9 Proprietary or Confidential Information

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

5.10 Bid Preparation Costs Not Allowed

All costs to prepare and submit a bid shall be at the bidder's expense. HART will not reimburse any bid costs incurred by any bidder, any prospective bidder, or any other person.

6.0 BID/PRICING PROPOSAL AND REQUIRED SUBMISSIONS

6.1 Required Submissions with the Bid

The following attachments and exhibits, some of which have been extracted from the General Conditions, shall be properly completed and submitted with the bid, except as provided otherwise. If it is later discovered that additional submissions were required to be submitted with the bid, the bid shall not be deemed nonresponsive, except if they are expressly required by the Hawaii Public Procurement Code or federal law or identified herein as responsive. Responsive items shall be submitted with the Bid. Responsibility items may be submitted after the bid opening but prior to award.

Responsive Submissions:

- Attachment 1 – Bid/Pricing Proposal
- Attachment 1a – Bid/Pricing Proposal From
- Attachment 2 – Joint Contractor/Subcontractor Listing; Specialty Licenses
- Exhibit 14 – Buy America Certificate
- Exhibit 25 – Surety Bid Bond

If applicable:

- Attachment 3 – Certification of Compliance for Employment of State of Hawaii Residents
- DLIR Form 1- “Certification of Bidder’s Participation in Approved Apprenticeship Program Under Act 17” for the Apprenticeship Program – Bidders to obtain from the Department of Labor and Industrial Relations, complete and submit, if applicable.

Responsibility Submissions:

- Performance and Payment Bonds
- Exhibit 5 – Bidder Registration Form
- Exhibit 9 – Certificate of Compliance with HRS Section 396-18, Safety and Health Programs
- Exhibit 10 – Certification Regarding Lobbying
- Exhibit 11 – Certification Regarding Conflict of Interest
- Exhibit 12 – Certificate Regarding Ineligible Contractors, GTC Attachment 1.7(a)
- Exhibit 13 – Certificate Regarding Ineligible Subcontractors, GTC Attachment 1.7(b)
- Certifications of Vendor Compliance pursuant to HRS Section 103D-310(c) (*see* ITB Section 4.7)

6.2 Bid Submission Requirements

(a) Bid shall be signed in ink by the person legally authorized to do so on behalf of the entity submitting the bid.

(b) Bids shall be sealed in envelopes. The solicitation number, the bidder’s name and address, and closing date of the solicitation should be printed on the outside of the envelope. The bid envelope must be time-stamped and deposited at the designated location in the solicitation. Envelopes which are not time-stamped or which are time-stamped after the specified solicitation closing time and date shall be rejected.

(c) Submittal by facsimiles or email is not acceptable.

6.3 Joint Contractor; Subcontractor Listing; Specialty Licenses

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

The attached Attachment 2 entitled, “Joint Contractor/Subcontractor Listing, Specialty Licenses,” shall be completed and submitted with the bid. Bidders must list all joint contractors and subcontractors as required by HRS § 103D-302 and all firms holding the required specialty licenses.

HART has examined the scope of work and determined that the specialty licenses, listed in the GTCs, are required for this Contract. Bidders shall provide the names of the entities that hold the specialty licenses and will be providing such services under the resulting Contract. If a bidder

believes that other or additional specialty licenses are required or any of the listed specialty licenses is not required, it must provide its comments to HART by the Deadline for Clarification Requests stated in the Solicitation Timetable above. The required specialty licenses are a specifications requirement and, as such, any dispute as to the required specialty licenses shall be made in a timely manner.

Errors or mistakes, including, but not limited to, the misspelling of joint contractor or subcontractor names, or providing erroneous business names, shall be deemed “minor mistakes” and the bid shall not be deemed nonresponsive on that basis alone. Minor mistakes may be waived by HART or, upon HART’s request, corrected prior to award of the Contract.

Bidders are strongly encouraged to check the State of Hawai‘i, Department of Commerce and Consumer Affairs, PVL website regarding proper licensing of all joint contractors and subcontractors listed in their bids. The website is located at the following address: <http://cca.hawaii.gov/pvl>.

6.4 Bid Security

The bid shall include a bid security in an amount equal to five percent (5%) of the amount of the total bid, including options, if any. Exhibit 25, Surety Bid Bond, is attached if the bidder intends to use a bid bond for its bid security.

6.5 Public Works Construction: Apprenticeship Agreement Preference

(a) Definitions for purposes of this section:

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

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

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

“Party to an apprenticeship agreement” – shall mean a party to a registered apprenticeship program with the State of Hawai‘i Department of Labor and Industrial Relations (“DLIR”).

“Preference” – shall mean the five percent (5%) by which the qualified bid amount would be decreased for evaluation purposes.

“Public Work” – shall be as defined in HRS § 104-1 and HAR § 12-22-1.

“Registered apprenticeship program” – shall mean a construction trade program approved by DLIR pursuant to HAR § 12-30-1 and § 12-30-4.

“Sponsor” – shall mean an operator of an apprenticeship program and in whose name the program is approved and registered with DLIR pursuant to HAR § 12-30-1.

(b) Applicability. For bids for a public works construction contract or public works construction component of a contract having an estimated value of not less than

\$250,000, HART shall, for evaluation purposes, decrease the bid amount of a bidder by five percent (5%) if the bidder is a party to an apprenticeship agreement registered with the State of Hawai‘i, Department of Labor and Industrial Relations for each apprenticeable trade the bidder will employ to construct the public works, and in conformance with HRS Chapter 372.

(c) Procedures

(1) Prior to Public Bid Opening. Bidders seeking to claim the apprenticeship preference shall submit a completed signed original Certification of Bidder’s Participation, Certification Form 1 verifying participation in an apprenticeship program registered with DLIR. Previous certifications shall not apply unless otherwise specified in this solicitation. DLIR Certification of Bidder’s Participation, Certification Form 1, may be found on the DLIR Workforce Development Division website (<http://hawaii.gov/labor/wdd>).

(2) Bidder Evaluation. If the bidder properly submits Certification Form 1 described above, upon verification, HART will apply the preference and decrease the bidder’s total bid amount by five percent (5%) for evaluation purposes. The Contract amount awarded, however, shall be the amount of the price bid, exclusive of the preference.

6.6 Local Preference Hiring

Pursuant to Federal Register Vol. 80, No. 44, 12257-12259, March 6, 2015, and Section 418 of the Consolidated and further Continuing Appropriations Act, 2015, Public Law No. 113-235, Local Preference Hiring shall apply to this solicitation. Exclusive of possible reduction based on the Apprenticeship Agreement Preference described in ITB Section 6.5, HART shall, for evaluation purposes, decrease the bid amount of a bidder by five percent (5%) if the bidder certifies in advance that eighty percent (80%) of the Work performed by the Construction Work Force will be performed by Local Residents.

Definitions. As used in this section, the following words shall have the meaning as provided:

“Construction” has the same meaning as provided in Hawaii Revised Statutes (HRS) § 103D-104.

“Contractor” has the same meaning as provided in HRS § 103D-104; provided, however, that “Contractor” shall include a subcontractor, where applicable.

“Construction Work Force” means the contractor and subcontractor employees for which the provisions of the Hawai‘i Revised Statutes (HRS) Chapter 104 apply.

“Resident” means a person who is physically present in the State of Hawai‘i at the time the person claims to have established the person’s domicile in the State of Hawai‘i and shows the person’s intent is to make Hawai‘i the person’s primary residence.

“Shortage trade” means a construction trade in which there is a shortage of Hawai‘i residents qualified to work in the trade.

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This provision shall be applicable to all construction contracts and, in the case of Design-Build contracts, the construction portion of the contract.

- a) To receive the preference a bidder must submit a fully executed Attachment 3 Certification of Compliance for eighty percent (80%) Employment of State of Hawai'i Residents for Construction work under the Contract.
- b) A bidder who submits Attachment 3 with their bid shall submit another Attachment 3 with their final pay request as described below.
- c) Procedures:
 - 1) A five percent (5%) preference will be given to bidders who represent that, if awarded the contract, it shall ensure that Hawai'i residents will comprise not less than eighty percent (80%) of the Construction Work Force employed to perform the construction work under the Contract. The bid price, exclusive of the preference described in ITB Section 6.5, above, shall be decreased by five percent (5%) for evaluation purposes.
 - 2) The eighty percent (80%) requirement shall be determined by dividing the total number of hours to be charged by the Construction Work Force on the Contract by Hawai'i residents, by the total number of hours charged all the total Construction Work Force employees of the Contractor in the performance of the Contract. The hours worked by any subcontractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the State of Hawai'i Department of Labor and Industrial Relations ("DLIR"), shall not be included in the calculation for this section.
 - 3) The Contractor and its subcontractors shall provide the following evidence of compliance:
 - A) Certification of compliance in writing under oath by an officer of the Contractor and applicable subcontractors, executed before a licensed notary public, submitted with the final payment request (Attachment 3, "Certification of Compliance for Employment of State Residents," copy attached);
 - B) In addition to the certification of compliance indicated above, the Contractor and applicable subcontractors shall maintain records required by HRS Chapter 104 for laborers and mechanics who performed work at the site and time sheets for all other employees who performed construction work on the Project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and applicable subcontractor who performed construction work on the Project to validate the Contractor's compliance. The Contractor and applicable subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four-year period, the Contractor and applicable subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four-year

period, whichever occurs later. It shall be the Contractor's responsibility to enforce compliance with this provision by the applicable subcontractors.

- 4) This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify HART from receiving Federal funds or aid.

If, upon certifying to ensure that Hawai'i residents will comprise not less than eighty percent (80%) of the Construction Work Force to perform the construction work under the Contract, the Contractor fails to meet its eighty percent (80%) certification, this shall be considered a breach of contract and bad faith representation on the part of the Contractor. HART shall notify the State of Hawai'i Procurement Office ("SPO") and the FTA of the Contractor's breach of contract and bad faith certification, which may lead to suspension or debarment of the Contractor.

6.7 Bidder Registration Form

A "Bidder Registration Form" is attached. Provide the Bidder Registration Form, properly completed for all known contractors and subcontractors, when submitting the bid. While the completion and submission of this form is not an issue of responsiveness, the Bidder Registration Form should be completed and submitted with the bid for all known contractors and subcontractors. Bidders may be required to provide additional information after bid opening pursuant to 49 CFR Section 26.11(c)(3).

6.8 Bid Samples and Descriptive Literature

Bid samples or descriptive literature should not be submitted unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested.

7.0 OTHER REQUIRED SUBMISSIONS/ATTACHMENTS

The following submissions are not due on the Bids Due Date, but are due as provided in the Instructions to Bidders:

- Performance and Payment Bonds
- Escrow Agreement
- Letters of Assent to the Rapid Transit Stabilization Agreements

7.1 Performance and Payment Bonds

See Section 4.1 of the General Conditions regarding Performance and Payment Bonds.

(a) Performance and payment bonds shall be, each, in an amount equal to one hundred percent (100%) of the amount of the Contract price. Acceptable performance and payment bonds shall be limited to:

- (1) Surety bond in the form attached to the solicitation documents underwritten by a company licensed to issue bonds in this State;
- (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 HART. These instruments may be utilized only to a maximum of \$100,000. If the required security amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.

(b) The awarded bidder shall execute the surety performance and payment bond forms and submit them with the bidder's submission of the executed Contract.

(c) The surety companies shall be those listed in the latest issue of the U. S. Treasury Circular 570. In addition, the surety or sureties must be rated "A-" or higher by A.M. Best Rating Guide.

(d) The following bond forms are attached for your use. While alternative forms may be allowed, they must be substantially similar to the forms provided below:

- Exhibit B (of the General Conditions) – Performance Bond (surety)
- Exhibit C (of the General Conditions) – Labor and Material Payment Bond (surety)
- Exhibit D (of the General Conditions) – Performance Bond (alternative form)
- Exhibit E (of the General Conditions) – Labor and Material Payment Bond (alternative form)

7.2 Escrowed Proposal Documents

See Section 7.4 of the General Conditions regarding Escrowed Proposal Documents ("EPDs"). Attachment 7, Escrow Agreement, shall be submitted to HART no later than 4:00 pm the day after bid opening. If the Escrow Agreement is not submitted in a timely manner, HART may reject or determine the EPDs are "incomplete," and General Conditions Section 7.4.2(c) shall apply.

7.3 Letters of Assent of Rapid Transit Stabilization Agreements

See Section 2.15(m) of the General Conditions regarding the Labor Stabilization Agreement. On February 27, 2020, HART entered into the Rapid Transit Stabilization Agreement (the "2020 RTSA"). The executed Letter of Assent provided below shall be submitted with the awarded bidder's submission of the executed Contract:

- Letter of Assent of the Rapid Transit Stabilization Agreement dated February 27, 2020 (see Attachment B of the General Conditions)

7.4 Sample Agreement Form

A sample Agreement Form is attached for the bidders' review. This sample Agreement Form is only a sample, and HART reserves the right to add or delete any provisions, so long as such terms are not inconsistent with the awarded bid.