

INSTRUCTIONS TO BIDDERS (IB)
PERTAINING TO NON-EXCLUSIVE RENTAL CAR CONCESSIONS
FOR THE FUTURE CONSOLIDATED RENTAL CAR FACILITY
AT
HONOLULU INTERNATIONAL AIRPORT
STATE OF HAWAI'I

1. PURPOSE

Bid proposals are invited from all qualified entities interested in operating non-exclusive rental car concessions (individually and collectively, "**Concession**"; provided, however, that only one (1) Concession may be awarded to a bidder) that may be awarded at Honolulu International Airport ("**Airport**"), Honolulu, Hawai'i. The State of Hawai'i, Department of Transportation ("**State**"), seeks creative and well-qualified rental car companies to establish, operate, and maintain the Concession at the future consolidated rental car facility ("**Facility**") to be constructed at the Airport, for a period of ten (10) years. It is currently anticipated that the Facility will be operational in 2018. The successful bidders will operate the Concession at the Airport from the Facility.

2. OBTAINING BID MATERIALS

Copies of the Concession bid documents, including the Consolidated Rental Car Facility Concession Agreement and Facility Lease ("**ConRac Agreement**") describing the terms and conditions of a Concession and accompanying occupancy of the Facility, may be examined and/or obtained from the State's Airports Division, located at the Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai'i 96819-1880. The Concession bid documents may be purchased upon tender of the nonrefundable sum of FORTY AND NO/100 DOLLARS (\$40.00) in United States currency or certified check. The Concession bid documents may also be downloaded at hidot.hawaii.gov/dot/airports/doing-business/concession-notices without charge.

The Concession bid documents are subject to revision at any time prior to bid opening, and any revisions, changes, or amendments to the Concession bid documents will be posted and available for download at hidot.hawaii.gov/dot/airports/doing-business/concession-notices.

The Concession bid documents for a Concession will include: (a) the Notice to Bidders; (b) this Instructions to Bidders; (c) the Bid Intent Package, including the Notice of Intention to Bid (Appendix A); (d) the Bid Proposal Package, including the Bid Proposal (Appendix B); (e) the ConRac Agreement (Appendix C); (f) the Concession Bond (Appendix D); (g) the Performance Bond (Appendix E); and (h) all attachments thereto.

3. PRE-BID CONFERENCE

An initial pre-bid conference to familiarize prospective bidders with the nature of the Concession bid documents, including a term sheet outlining the major provisions of the ConRac Agreement will be held on Tuesday, June 25, 2013, commencing at 9:00 a.m., Hawai'i Standard Time ("HST").

Subsequent pre-bid conferences will be conducted by the State on Tuesday, July 30, 2013, Tuesday, August 27, 2013, Tuesday, September 24, 2013 and a final pre-bid conference will be held on Tuesday, October 23, 2013 commencing at 9:00 a.m., HST, to further familiarize prospective bidders with the nature of the Concession bid documents, including the ConRac Agreement.

All pre-bid conferences will be held at:

Airports Division, Conference Room C
Department of Transportation
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880

All prospective bidders are urged to attend these conferences. Reservations may be made by contacting:

Property and Business Development Office
Department of Transportation
Airports Division
Honolulu International Airport
Inter-Island Terminal Building
400 Rodgers Boulevard, Suite 700
Honolulu, Hawai'i 96819-1880
Telephone (808) 838-8075

State representatives will be available to preliminarily respond to a limited number of questions at these conferences. Any oral responses given by State representatives at the pre-bid conferences will be preliminary and subject to further revisions and clarification as part of the State's written response.

The deadline for submitting all written questions, including the resubmission of any submitted for the pre-bid conferences, for which a prospective bidder desires to obtain the State's formal written response will be 4:00 p.m., HST, on Thursday, September 26, 2013. The State will provide final written responses to all written questions properly submitted by the Thursday, September 26, 2013 deadline.

All questions should be submitted on the form provided as Attachment 3 to this Instructions to Bidders.

A summary containing all written questions properly submitted for or on the specified deadline of **Thursday, September 26, 2013**, together with the State's final written responses, will be posted and available for download at hidot.hawaii.gov/dot/airports/doing-business/concessions-notices. All prospective bidders should not rely on oral representations made at any time and should instead rely on the written State responses to the questions submitted before or on the **Thursday, September 26, 2013**, deadline which shall be entitled "The State's Response to Written Concession Questions." This shall comprise the State's final response to the questions unless the State decides to amend or supplement the State's responses. As a result of the pre-bid conferences or otherwise, changes to the Concession bid documents which are deemed appropriate by the State may be made and will be posted and available for download at hidot.hawaii.gov/dot/airports/doing-business/concessions-notices before the date scheduled for receipt of sealed bid proposals.

4. **BID INTENT PACKAGE: NOTICE OF INTENTION TO BID, QUALIFICATION QUESTIONNAIRE, AND TAX CLEARANCE CERTIFICATES**

Bidders are required by state statute to submit a fully completed Notice of Intention to Bid (Appendix A and all attachments). A prospective bidder's failure to submit its fully completed Notice of Intention to Bid, together with the remainder of the Bid Intent Package, by the deadline date and time specified in the Notice to Bidders, shall disqualify the prospective bidder from submitting a bid proposal.

The Bid Intent Package includes the following: (1) Notice of Intention to Bid (Appendix A); (2) the Qualification Questionnaire (Appendix A, Attachment 1); and (3) Tax Clearance Certificates (Appendix A, Attachment 2). The Bid Intent Package must be submitted by the specified deadline, Friday, September **20**, 2013, 4:00 p.m. HST, and properly completed in accordance with the instructions contained therein. The State will use the Bid Intent Packages submitted for purposes of evaluating the qualifications of the prospective bidders.

Based on the number and relative sizes of the entities filing a completed Notice of Intention to Bid, the State intends to offer pre-determined "packages" of space located within the Facility. Each space package is anticipated to consist of: (a) rental counters, office and queuing space in the Customer Service Area ("CSA"), approximately described on Exhibit B; (b) use of the ready/return area approximately depicted on Exhibit B; and (c) use of the quick turnaround area ("QTA") in the QTA building adjoining the Facility, which includes vehicle stacking spaces, fueling positions, vehicle light maintenance bays, and vehicle wash bays, as approximately depicted on Exhibit B.

Each prospective bidder shall indicate in its Bid Intent Package the single brand or family brand trade name(s) under which it will operate its Concession at the Airport. **The prospective bidder may submit multiple bids provided that the bidder has identified 1) the brand or brands for**

which it will be submitting a bid, 2) the combination of brands that will be included in a bid (e.g. one bid on behalf of one brand and one bid on behalf of two other brands, or combinations thereof). However, when bids are submitted no brand may be included in more than one bid. Should a bidder submit bids in which a specific brand is included in more than one bid, all such bids shall be rejected. The prospective bidder's brand/trade names must be 100% owned or controlled by the prospective bidder, or be licensed to the prospective bidder for its use. Any successful bidder shall be prohibited from operating at the Airport under any single brand or family brand name(s) or trade name(s) other than the single brand or family brand name(s) or trade name(s) that it designates in its Bid Intent Package. Approval of any requests for any changes from this arrangement after the award of a Concession to a successful bidder will be made solely at the discretion of the State.

5. QUALIFICATION OF BIDDERS

A prospective bidder must, at the time its bid proposal is submitted, be capable of performing all of the terms and conditions of the ConRac Agreement. Before any prospective bidder shall be entitled to submit a sealed bid proposal for a Concession, the State shall be satisfied with each prospective bidder's financial ability, experience, and competence to satisfactorily perform and complete all of the terms and conditions of the ConRac Agreement. At a minimum, a prospective bidder must have at least five (5) years of experience within the past ten (10) years as an owner and operator of a rental car business in the United States, having annual combined gross receipts derived or generated from such business in each qualifying year exceeding ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

If a prospective bidder is a joint venture, each joint venture partner must have the minimum years of experience as an owner and operator of a rental car business in the United States, having gross receipts derived or generated from such business in each qualifying year exceeding \$1,000,000.00.

For the purpose of evaluating a prospective bidder's qualifications, a prospective bidder must submit its fully and properly completed Bid Intent Package (Appendix A and all attachments). The Bid Intent Package may contain any additional information considered pertinent by a prospective bidder with respect to its qualifications and/or proposed method of Concession operation.

Whenever it appears to the State that a prospective bidder is not fully qualified or able to fully carry out, perform, complete, or satisfy the terms and conditions of the ConRac Agreement, the State shall, after affording the prospective bidder an opportunity to be heard, and if still of the opinion that the prospective bidder is not fully qualified or able to fully carry out, perform, complete, or satisfy the terms and conditions of the ConRac Agreement, refuse to receive or consider any bid proposal submitted by such prospective bidder.

All information contained in the questionnaire forms of the Bid Intent Package shall remain confidential as required by Section 102-3, Hawai'i Revised Statutes ("**HRS**").

Questionnaires submitted by an unsuccessful bidder shall be returned after the ConRac Agreement has been awarded.

6. SUBMISSION OF BIDS

The Bid Proposal Package, including attachments, and instructions to complete them are contained in Appendix B. Each bid is required to be (1) made using the Bid Proposal Package provided by the State, particularly the bid proposal forms contained herein (Appendix B); (2) properly completed and executed by the prospective bidder, whose signature must be witnessed, acknowledged and notarized in the presence of a notary public; and (3) addressed/submitted to the Director of Transportation (“**Director**”), c/o State of Hawai‘i, Department of Transportation, Airports Division, Property and Business Development Office, Honolulu International Airport, Inter-Island Terminal Building, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawai‘i 96819-1880, on or before the deadline date and time set for the submission of bid proposals.

Each Bid Proposal Package Appendix B) must be submitted in a sealed envelope properly marked on the outside as follows:

"BID PROPOSAL FOR A NON-EXCLUSIVE RENTAL CAR CONCESSION FOR
THE FUTURE CONSOLIDATED RENTAL CAR FACILITY
AT HONOLULU INTERNATIONAL AIRPORT."

To help ensure confidentiality of each bid proposal, the State suggests each bidder use envelopes provided by the State at the pre-bid meeting. If a bid proposal is to be mailed, the provided envelope should be enclosed within another mailer.

Each bid proposal submitted to the State shall be comprised of the following items in the Bid Proposal Package:

- a. The Total Bid Proposal (Appendix B);
- b. Affidavit of Non-Collusion (Appendix B, Attachment 1); and
- c. Bid Deposit or Bid Bond (Appendix B, Attachment 2).

All bid proposals submitted to the State will be opened and read publicly on the date and time, and at the place specified, in the Notice to Bidders, unless the deadline date and time set for the submission of bid proposals is postponed via written notice from the State.

The State may reject a bid proposal for any of the following reasons:

- a. If it shows any alterations, erasures, or irregularities of any kind or additions not called for;

- b. If it is conditional or incomplete;
- c. If it fails to comply with any of the requisite conditions and/or any of the Disadvantaged Business Enterprise (“**DBE**”) requirements;
- d. If more than one (1) bid proposal is received on behalf of a specific brand from an individual, corporation, limited liability company, partnership, joint venture, or any other legal entity under the same or different names and more than one (1) bid proposal on behalf of a specific brand remains in the State's possession at bid opening;
- e. If the bidder (whether an individual, corporation, limited liability company, partnership, joint venture, or other entity (including (1) any entity in which the bidder is an owner and (2) any stockholders, members, partners, or owners of the bidder) is in arrears in any payment, or in default of any obligation, including taxes and special assessments, owing to the U.S. Internal Revenue Service and/or the State of Hawai‘i or any of its political subdivisions (including default as a surety or failure to perform faithfully and diligently any previous lease, license, permit, or any other type of contract with the State of Hawai‘i or any of its political subdivisions). A stockholder of a closely-held corporation, a member of a limited liability company, a partner in a partnership or joint venture and an owner of an entity is defined as the holder of at least a ten percent (10%) or more ownership interest in the corporation, limited liability company, partnership, joint venture or entity; or
- f. If the bidder fails to submit to the State the required Tax Clearance Certificates from the U.S. Internal Revenue Service, the State of Hawai‘i Department of Taxation, and the counties of Hawai‘i, Maui, Kaua‘i and the City and County of Honolulu, as applicable, as required by Appendix A, Attachment 2, of the Concession bid documents.

The State reserves the right to cancel or reschedule the bid proposal opening for any reason whatsoever. The State also reserves the right to reject any or all bid proposals and waive any defects when, in the opinion of the Director, such rejection or waiver will be in the best interest of the State. The State reserves the right to reject a bid proposal if the bidder is not deemed responsible by the State. If the highest and best bid proposal or any other bid proposal is rejected, or if the bidder to whom the ConRac Agreement was awarded fails to enter into the ConRac Agreement and furnish satisfactory security, the State may award the ConRac Agreement to the responsible bidder who submitted the next highest and best bid proposal.

7. MINIMUM ALLOWABLE BIDS

For the first year of the Concession Agreement term, the annual fee payable to the State by a successful bidder shall be the greater of the following:

- a. Minimum Annual Guaranteed Fee (“MAG”). The MAG, as offered to the State and set forth in the successful bidder’s bid proposal form (Total Bid Proposal, Appendix B, Page B-3) for the first ConRac Agreement year (payment of said MAG shall be made in equal monthly installments, in advance); or

b. Percentage Fee. The sum of ten percent (10%) of a successful bidder's annual gross receipts generated from, related or attributable to, or connected with the Concession.

The successful bidders shall pay the State the greater of the MAG or ten percent (10%) of gross receipts (the "**Percentage Fee**") and any other applicable fees and charges. A prospective bidder must submit its bid proposal in the form of a MAG for the first ConRac Agreement year of the ten (10) year Concession period. The State will not consider a MAG bid proposal (except for Small Operators, as defined below) of less than TWO MILLION AND NO/100s DOLLARS (\$2,000,000.00).

DOTA shall determine whether a prospective bidder shall be designated a "Small Operator" based on the information submitted in such bidder's Notice of Intention to Bid. For Small Operators the State will not consider a MAG bid proposal of less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00).

For each subsequent ConRac Agreement year, the MAG shall be adjusted by the State to an amount equal to the greater of: (i) eighty-five percent (85%) of the MAG for the prior ConRac Agreement year, or (ii) the Percentage Fee paid to the State for the prior agreement year. However, the MAG shall never be lower than the first ConRac Agreement year's MAG. The MAG for any ConRac Agreement year will be rounded to the nearest whole dollar amount.

8. BID DEPOSITS

The required minimum value of the bid deposit is set by Section 102-6, HRS. Each bidder shall submit a bid deposit, which shall be in a sum of not less than five percent (5%) of the Total Bid Proposal, provided that when the amount of the bid proposal exceeds \$50,000.00, the bid deposit shall be a sum not less than \$2,500.00 plus two percent (2%) of the bid amount over \$50,000.00. The bid deposit shall be based on the MAG bid proposal for the first-year of the ConRac Agreement. The bid deposit must be submitted along with the bidder's bid proposal (Appendix B).

The bid deposit shall be in the form of legal tender, a surety bond conforming to the requirements of Section 102-6, HRS, or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum equal to that required, payable at sight or unconditionally assigned to the Director.

If a surety bond is submitted, it shall: (1) be issued in accordance with Section 102-6, HRS; (2) name the State of Hawai'i, by its Director of Transportation, as obligee; (3) be on the Bid Bond form provided (Appendix B, Attachment 2); (4) be executed by the bidder as principal, and by any bonding company listed in the United States Treasury List, as surety; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the United States Treasury List; (5) be in a sum equal to that required; and (6) be conditioned

upon the successful bidder entering into the ConRac Agreement and furnishing satisfactory security in the form of the Concession Bond (and other applicable requirements) within ten (10) business days after the bidder has received the ConRac Agreement for execution or within such further time as the Director may allow, in writing, if the bidder is awarded the Concession.

9. LATE SUBMISSIONS

It is the responsibility of each bidder to ensure that the following are completed and submitted to the State by the stated applicable deadlines: (1) final written Concession questions; (2) the Bid Intent Package; (3) the Bid Deposit or Bid Bond; and (4) the Bid Proposal Package. The State assumes no responsibility or liability for any bidder's lateness in the submission of the (1) final written Concession questions, (2) the Bid Intent Package, (3) the Bid Deposit or Bid Bond, or (4) the Bid Proposal Package to the State due to mail or other delivery service delays. If any or all of the foregoing required items is/are received by the State after the stated applicable deadline(s), it/they will not be considered and will be returned to the bidder without opening in accordance with Section 102-5, HRS.

10. WITHDRAWAL OR MODIFICATION OF BID INTENT PACKAGE, BID PROPOSAL PACKAGE AND BID BOND

The Bid Intent Package, or any part thereof, or the Bid Proposal Package, in its entirety, may be withdrawn by written notice, which must be received by the State prior to the applicable dates and times stated herein for submission of the Bid Intent Package and the Bid Proposal Package, respectively. A substitute submittal of all or a part of the Bid Intent Package will be accepted by the State so long as a written request to withdraw the previous Bid Intent Package, or part thereof, is received simultaneously with or prior to the substitute Bid Intent Package or part thereof and the substitute Bid Intent Package or part thereof is received prior to the applicable date and time deadline for submission of the Bid Intent Packages.

A substitute submittal of the entire Bid Proposal Package, in its entirety, will be accepted by the State so long as a written request to withdraw the previous Bid Proposal Package is received simultaneously with or prior to the substitute Bid Proposal Package and the substitute Bid Proposal Package is received prior to the applicable date and time deadline for submission of the Bid Proposal Packages.

Errata sheets for the Bid Intent Package may be submitted prior to the applicable date and time deadlines for submission of the Bid Intent Package so long as the total of all corrections to a submittal does not exceed two typed 8.5" x 11" pages. Changes requiring more than two (2) such pages require withdrawal of the Bid Intent Package and the subsequent submission of a substitute Bid Intent Package. This subsequent submission of a substitute Bid Intent Package must be: (1) received by the State prior to the applicable date and time deadline for submitting the Bid Intent Packages and (2) submitted in a sealed envelope and properly marked as required for the Bid Intent Package and each page must clearly be labeled "Substitute Submittal #1" or "Substitute Submittal #2" as applicable.

11. AWARD AND EXECUTION OF CONRAC AGREEMENT; AND CONCESSION BOND

Those bidders who submit the highest total MAG bids for their pre-designated space tiers for the first ConRac Agreement year ("Total Bid Proposal Dollars" amounts at the bottom of the Total Bid Proposal form, Page B-3 of Appendix B, Bid Proposal Package) offered in their bid proposal to the State will each be recommended, separately and individually, to the Director for an award of a ConRac Agreement.

In the event of a tie between two or more responsible, qualified bidders for a space block in a particular tier, the Director shall select the responsible, qualified bidder to be awarded a ConRac Agreement based on a drawing of lots with the tied qualified bidders conducted by the Director.

The Bid Proposal Package, including attachments, and instructions to complete them are contained in Appendix B of the Concession bid documents

The award of the ConRac Agreement should be made within thirty (30) calendar days after the bid opening; provided, however, that the award may be delayed for a reasonable additional time period to permit investigation by the State into the completeness, accuracy, and truthfulness of the representations made by a successful bidder to whom a ConRac Agreement is proposed to be awarded. The State reserves the right to reject any and all bids and to re-advertise a call for tenders if the State determines that the rejection of any and all Bid Proposals is warranted and is in the best interest of the State.

The ConRac Agreement (Appendix C) must be executed by a successful bidder, whose signature must be witnessed, acknowledged, and notarized by a notary public, and returned to the State, together with a Concession Bond and a Performance Bond each satisfactory to the State, within ten (10) business days after a bidder has received the ConRac Agreement for execution, or within such further time as the Director may allow in writing.

Failure on the part of a successful qualified bidder to execute, notarize, and return the ConRac Agreement (Appendix C) to the State, and to submit to the State an acceptable Concession Bond and an acceptable Performance Bond as required, within ten (10) business days after the successful bidder has received the ConRac Agreement for execution, or within such further time as the Director may allow, in writing, will be just cause for the annulment of the award, and the forfeiture of the successful bidder's Bid Deposit or Bid Bond to the State. If a successful bidder refuses or fails to execute the ConRac, the State may: (a) award the Concession to the next highest responsible, qualified bidder; or (b) cancel the solicitation and publish another call for tenders.

The required Concession Bond must be in an amount equal to one-fourth (1/4) of the MAG for the first ConRac Agreement year, and shall be maintained in full force and effect by a successful bidder at all times from the commencement date of the ConRac Agreement until no less than ninety (90) calendar days after the expiration or sooner termination of the ConRac Agreement. The surety or sureties on the Concession Bond must be properly licensed and authorized to do business under the laws of the State of Hawai'i. Further, the Concession Bond shall be maintained by the successful bidder, at its sole cost and expense, and shall cover a successful bidder's observance of, compliance with, and full and complete performance and satisfaction of all of the covenants, terms, and conditions of the ConRac Agreement during and throughout the term of the ConRac Agreement; provided, that law suits thereon by the State or anyone else entitled to file so may be commenced in accordance with applicable law.

The required Performance Bond must be in an amount equal to at least three (3) months of the total ground rent for the first year of the ConRac Agreement, and shall be maintained in full force and effect by the successful bidder at all times from the commencement date of the ConRac Agreement until no less than ninety (90) calendar days after the expiration or sooner termination of the ConRac Agreement. The surety or sureties on the Performance Bond must be properly licensed and authorized to do business under the laws of the State of Hawai'i. Further, the Performance Bond shall be maintained by a successful bidder, at its sole cost and expense, and shall cover a successful bidder's observance of, compliance with, and full and complete performance and satisfaction of all of the covenants, terms, and conditions of the ConRac Agreement during and throughout the term of the ConRac Agreement; provided, that law suits thereon by the State or anyone else entitled to file so may be commenced in accordance with applicable law.

If the State, in its sole discretion, permits a successful bidder to use a surety or sureties on the Concession Bond and/or the Performance Bond who is/are not properly licensed and authorized to do business under the laws of the State of Hawai'i, such surety or sureties must meet the requirements of all applicable laws, statutes, rules, and regulations of the State of Hawai'i, particularly Section 102-12, HRS.

If a Concession Bond is for a period less than the full term of the ConRac Agreement, plus an additional ninety (90) calendar days after the termination or sooner termination of the ConRac Agreement, a successful bidder, at least sixty (60) calendar days prior to the expiration date of the initial Concession Bond, shall submit another bond providing coverage beyond the expiration date of the initial Concession Bond. If the State should receive a notice that the Concession Bond has been or will be canceled, a successful bidder shall provide the State with a replacement bond providing coverage from the effective date and time of the bond cancellation so that there is no period of time wherein a Concession Bond does not cover the Concession Agreement, as provided for herein. Such a replacement bond must be forwarded to and received by the State at least twenty (20) calendar days prior to the effective date and time of the bond cancellation.

In the event that a replacement bond or another Concession Bond is not received by the State prior to the effective date and time of the bond cancellation or expiration, as stated, the ConRac Agreement shall be deemed in default, regardless of whether or not a notice of breach or

default or time to correct a breach or default has been provided to a successful bidder by the State, and the full face value of the bond shall be immediately payable to the State as liquidated damages. A successful bidder shall also be deemed in default and the full face value of the bond shall be immediately payable to the State as liquidated damages if the successful bidder fails to properly furnish the final, independent, certified public accountant's annual verification report as prescribed by the ConRac Agreement (Appendix C).

If a Performance Bond is for a period less than the full term of the ConRac Agreement, plus an additional ninety (90) calendar days after the termination or sooner termination of the ConRac Agreement, a successful bidder, at least sixty (60) calendar days prior to the expiration date of the initial Performance Bond, shall submit another bond providing coverage beyond the expiration date of the initial Performance Bond. If the State should receive a notice that the Performance Bond has been or will be canceled, the successful bidder shall provide the State with a replacement bond providing coverage from the effective date and time of the bond cancellation so that there is no period of time wherein a Performance Bond does not cover the ConRac Agreement, as provided for herein. Such a replacement bond must be forwarded to and received by the State at least twenty (20) calendar days prior to the effective date and time of the bond cancellation.

In the event that a replacement bond or another Performance Bond is not received by the State prior to the effective date and time of the bond cancellation or expiration, as stated, the ConRac Agreement shall be deemed in default, regardless of whether or not a notice of breach or default or time to correct a breach or default has been provided to the successful bidder by the State, and the full face value of the bond shall be immediately payable to the State as liquidated damages.

Each of the successful bidders shall pay the State an administrative fee in the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) in United States currency or certified check, which fee payment shall be delivered to the State, together with the executed and notarized ConRac Agreement (Appendix C), an acceptable Concession Bond, and an acceptable Performance Bond.

If a ConRac Agreement is entered into with the State by way of a properly executed and notarized ConRac Agreement, an acceptable Concession Bond, an acceptable Performance Bond, and the required administrative fee payment in the sum of \$1,000.00 and furnished to the State within the required time, the Bid Deposit will be returned to the successful bidder. The Bid Deposits made by unsuccessful bidders will be returned to them after the Concession has been awarded and entered into, or if the Concession is not awarded or entered into, after the determination of the Director to publish another call for tenders by sealed bids.

12. BASELINE ENVIRONMENTAL AUDIT

The State is procuring various environmental assessments in conjunction with the development of the Facility. Those environmental assessments are referenced in the ConRac

Agreement as the Baseline Environmental Assessment and will be included as an exhibit in the final ConRac Agreement document.

13. CONCESSIONAIRE'S PLANS AND OVERALL CONSTRUCTION PROGRAM

A successful bidder will be required to submit to the State its construction plans, as described in the ConRac Agreement, for the State's prior written approval. A successful bidder will further be required to submit to the State the bidder's overall construction program, as described in the ConRac Agreement, for the State's prior written approval.

14. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PARTICIPATION IN PROCUREMENT OF GOODS AND SERVICES

During the term of the ConRac Agreement, if a successful bidder is not a certified DBE but procures, purchases, or enters into contracts with certified DBEs for the acquisition of goods and services relating to a successful bidder's operation and/or maintenance of a Concession at the Airport, the value or consideration paid for such goods and services must be reported to the State. The State has established for each of the concession agreements issued under this offering a 15% goal for goods and services provided by certified DBEs.

15. FUTURE CONCESSIONS

While the State makes no guarantees regarding possible future actions, interested bidders should be aware that the State's Airports Division contemplates and reserves the right to establish other concessions at the Airport which may result in incidental overlap or provision of services similar to those provided by a successful bidder.

16. TAXES

Each successful bidder shall pay: (1) all applicable taxes levied by the United States Government and the State of Hawai'i based on "gross receipts" as defined in Appendix C (ConRac Agreement) of the Concession; and (2) real property taxes, if any, levied by the City and County of Honolulu for the premises at the Facility under the successful bidder's control during the applicable ConRac Agreement term.

17. GENERAL INFORMATION

Attachment 1 to the Instructions to Bidders (Attachment 1 to IB) provides information regarding past passenger activity at the Airport for the years 2000 to 2012. Attachment 2 to the Instructions to Bidders (Attachment 2 to IB) provides the reported gross receipts for the combined rental car concessions at the Airport from 2005 through June 2012.

Attachments 1 and 2 to IB are for the general information of prospective bidders only and will not form any part of the ConRac Agreement. The State does not guarantee or warrant the correctness of the information contained in said attachments or any information regarding passenger activity and gross receipts which may be found in any other document pertaining to a Concession, including any submittals which may be made to the Board of Land and Natural Resources, State of Hawai‘i.

Prospective bidders are further advised that figures pertaining to passenger activity at the Airport and gross receipts from the Concession in prior years are representations of historical activity and not necessarily indicative of future trends or activity levels. Such passenger traffic may be affected by changes in Airport activity, Airport construction or other events, which may alter conditions.

Although prospective bidders should acquaint themselves with passenger, visitor, Airport user, and customer traffic patterns and conditions existing at the Airport, such patterns or conditions are always subject to change, adjustment, or alteration, and therefore, cannot be considered permanent. A successful bidder will not be provided compensation nor allowed any adjustments to the annual or total guaranteed fee owed to the State over the ten (10)-year term of the ConRac Agreement should future passenger traffic levels affect the Concession, unless otherwise provided in the ConRac Agreement or by State of Hawai‘i law.

The State is responsible for providing convenient and efficient operation and functioning of its Airport facilities and in so doing will seek to provide convenient and practical routing of passengers and Airport users. Changes, adjustments, or alterations to the routing of passengers and Airport users will be made at the discretion of the State and will not provide the basis for any compensation, rebate, or fee adjustment to the successful bidder if potential customer access to the Facility is altered or reduced.

18. OTHER REQUIREMENTS

Each prospective bidder should carefully examine the Concession bid documents and judge for itself all the circumstances and conditions affecting its bid proposal. Failure on the part of any prospective bidder to make such examination and/or to investigate thoroughly shall not be grounds for any claim that the prospective bidder did not understand the conditions of its bid proposal. A prospective bidder shall have the burden to notify the Director, in writing, of any ambiguity, inconsistency, error, defect in content, or conflict in the Concession bid documents at least twenty four (24) hours prior to the deadline date and time scheduled for the submission of the Notice of Intention to Bid. Failure to so notify the Director, in writing, shall be deemed to be a waiver of that prospective bidder’s right to claim an ambiguity, inconsistency, error, defect in content, or conflict in the Concession bid documents.

19. ATTACHMENTS

1. Attachment 1 to IB, Schedule 1 (History of Passenger Traffic)
2. Attachment 2 to IB, Schedule 2 (History of Gross Receipts)
3. Attachment 3a to IB, Question Submittal Form, Pre-Bid Questions

20. APPENDICES

A. Bid Intent Package

Notice of Intention to Bid

Appendix A, Attachment 1 (Qualification Questionnaire)

Appendix A, Attachment 2 (Tax Clearance Certificates)

B. Bid Proposal Package

Total Bid Proposal

Appendix B, Attachment 1 (Affidavit of Non-Collusion)

Appendix B, Attachment 2 (Bid Bond)

C. ConRac Agreement and Index

Appendix C, Attachment 1 (Exhibits A through B-5)

Appendix C, Attachment 2 (Tenant Improvement Guidelines)

Appendix C, Attachment 3 (Environmental Preservation Guidelines)

Appendix C, Attachment 4 (Development Standards for Leased Airport Property)

Appendix C, Attachment 5 (Department of Transportation Assignment of Lease
Evaluation Policy)

Appendix C, Attachment 6 (Department of Transportation Sublease Evaluation Policy)

Appendix C, Attachment 7 (Construction Performance Bond; Payment Bond)

Appendix C, Attachment 8 (Concessionaire's Listing of Hazardous Substances)

Appendix C, Attachment 9 (Concessionaire's Listing of Environmental Permits)

D. Concession Bond

E. Performance Bond