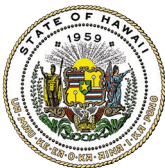


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# Follow-Up on Recommendations from Report No. 18-04, *Audit of the Hawai'i Tourism Authority*

A Report to the Governor  
and the Legislature of  
the State of Hawai'i

Report No. 22-09  
September 2022



**OFFICE OF THE AUDITOR**  
STATE OF HAWAII



## OFFICE OF THE AUDITOR STATE OF HAWAII

### Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

### Our Mission

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We report our findings and make recommendations to the governor and the Legislature to help them make informed decisions.

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## Follow-Up on Recommendations from Report No. 18-04, *Audit of the Hawai‘i Tourism Authority*

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Section 23-7.5, Hawai‘i Revised Statutes, requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited department or agency. Our follow-up process consists of both requests to agencies for their own assessment of implementation of our audit recommendations, and “active” follow-ups conducted by our office. First, annually, we ask agencies to report the status of their implementation of our audit recommendations. Second, we conduct an “active” follow-up two to three years after issuance of the audit report containing the recommendations where we independently assess the agency’s progress in implementing each recommendation and issue a separate follow-up report, like this one. We also compile agencies’ implementation status in a consolidated report issued annually, which contains both self-reported and “active” follow-up results.

In this report, we present the results of our review of 27 recommendations made to the Hawai‘i Tourism Authority in Report No. 18-04, *Audit of the Hawai‘i Tourism Authority*, which was published in February 2018.

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**We found that the Authority had implemented 5 of the recommendations and partially implemented 16 of the 27 recommendations directed to the Authority in Report No. 18-04, *Audit of the Hawai‘i Tourism Authority*. Two recommendations were not implemented; HTA does not agree with and has not implemented two recommendations; and we found two recommendations to be no longer applicable.**

## The Hawai'i Tourism Authority

Since it began operations in 1999, the Hawai'i Tourism Authority (HTA or the Authority) has been responsible for creating a vision and a long-range strategic plan for tourism in Hawai'i, and is charged with promoting, marketing, and developing the Islands' tourism industry. It is a vital mission, given that tourism is one of the industries most responsible for the State's economic growth and standard of living. Although industries such as technology and film show promise for the future, Hawai'i's economy likely will depend heavily on visitor-generated activity for years to come. However, Hawai'i's tourism industry has been greatly impacted by the COVID-19 pandemic. Visitor arrivals to the state in 2020 plunged to 2.71 million – a 74 percent decrease from 10.39 million visitors in 2019. According to the Hawai'i Department of Business, Economic Development and Tourism, Hawai'i welcomed 6.8 million visitors in 2021, an increase of 150 percent from 2020. However, that figure fell well below pre-pandemic levels.

HTA was created as a semi-autonomous state agency, intended to operate with minimal legislative oversight and exempt from the administrative supervision required of other boards and commissions. During the period of our audit, which was fiscal years 2015 and 2016, HTA had a permanent source of funding, receiving more than \$108 million annually from the Transient Accommodation Tax (TAT), and was exempt from the State Procurement Code and other requirements for competitive bidding, which conferred significant discretion in contracting for goods and services.

## Why we did the 2018 audit

We conducted the audit pursuant to Section 23-13, Hawai'i Revised Statutes (HRS), which requires the Auditor to conduct a management and financial audit of all contracts or agreements in excess of \$15 million awarded by the Authority at least every five years. We issued Report No. 18-04, *Audit of the Hawai'i Tourism Authority*, in February 2018.

## What we found in 2018

In Report No. 18-04, we assessed HTA's oversight of its two contracts valued at over \$15 million: one with AEG Management HCC, LLC (AEG) to manage, operate, and market the Hawai'i Convention Center, and the second with the Hawai'i Visitors and Convention Bureau (HVCB) to market Hawai'i in the continental United States and Canada. We also examined HTA's procurement of service contracts and its compliance with the statutory limit on its administrative expenses. In all three areas, we found that HTA's autonomy, which included a permanent source of funding and an exemption from the



State Procurement Code, facilitated lax oversight, deficient internal controls, and ultimately, less accountability.

We found HTA had reimbursed millions of dollars to contractors without receipts and other required documentation; reimbursed costs, such as first-class airfare, luxury hotel accommodations, and other extravagant expenses that were expressly prohibited by contract; and consistently failed to enforce other contract terms that are intended to protect the State. We also found HTA had disregarded its own procurement policies and procedures, awarding sole source contracts based on questionable justifications, paying contractors without executed contracts, and voluntarily waiving ownership of intellectual property the State paid to develop. In response to a statutory change that reduced the amount HTA could use for its administrative expenses from the Tourism Special Fund, we reported HTA had shifted some of those administrative expenses to non-Tourism Special Fund sources and to HTA programs, but had not significantly reduced its administrative costs.

## What we found in 2021

Our review of the Authority's implementation of the recommendations made in Report No. 18-04 was conducted during August and September 2021.<sup>1</sup> Therefore, our assessment of implementation is based on information we obtained in 2021. We waited to issue this report in part because of legislation introduced this past session (2022), that proposed significant changes to HTA's budget. We intend to request an update on the implementation status from HTA in a year.

Our follow-up efforts were limited to reviewing and reporting the implementation status of our audit recommendations. We did not explore new issues or revisit old ones that did not relate to the original recommendations. We found that the Authority had implemented 5 of the recommendations and partially implemented 16 of the 27 recommendations directed to the Authority in Report No. 18-04, *Audit of the Hawai'i Tourism Authority*. Two recommendations were not implemented; HTA does not agree with and has not implemented two recommendations; and we found two recommendations to be no longer applicable.

<sup>1</sup> Report No. 18-04 also contained three recommendations to the Legislature, which can be found in Appendix A. However, this report does not follow-up on those recommendations as this review was conducted pursuant to Section 23-7.5, HRS, which specifically directs the Auditor to report on recommendations that have not been implemented by an audited agency.

## 2021 Legislation Affected HTA Funding and Procurement Exemption

IN 2021, the Legislature repealed HTA's dedicated source of funding. Among other things, the Legislature appropriated \$60 million from the American Rescue Plan Act to replace HTA's share of Transient Accommodation Tax or TAT revenues. That act, passed by Congress to provide financial help to states and municipalities during the COVID-19 pandemic, is unlikely to be a permanent source of funding for HTA.

The Legislature also repealed HTA's exemption from the State Procurement Code in 2021. Many of the recommendations in the 2018 audit related to aspects of HTA's procurement of goods and services, which at the time were exempt from the State Procurement Code. While certain of HTA's policies and procedures may have been rendered moot by the repeal of HTA's procurement exemption, our audit's findings emphasized the need for HTA to clearly define procurement responsibilities, follow its own procedures, and limit its use of sole source procurements. Notwithstanding the repeal of its procurement exemption, our recommendations continue to be applicable to HTA's procurement activities and, arguably, more relevant because of the statutory remedies for violations of the State Procurement Code. Those recommendations continue to be important to ensure that HTA complies with procurement requirements and its work is in the State's interest.

**Exhibit 1**  
**Audit Recommendations by Status**



To evaluate HTA’s implementation of the audit recommendations, we examined documents and records identified by HTA as evidence of the Authority’s efforts and conducted interviews with HTA personnel. Certain of the policies, procedures, and other guidance that it had adopted are responsive to more than one of the recommendations. For that reason, we have summarized the relevant policies, procedures, and guidance below and note the recommendations to which they apply.

**Quality Assurance Program and Procedures**

(Recommendations 1 and 2), issued August 18, 2020, has three objectives: (1) maintaining consistency in work method and eliminating deficiencies and inaccuracies; (2) ensuring all policies, procedures, relevant regulations and codes of practice are implemented and reviewed; and (3) regularly monitoring and measuring the quality of the organization’s work method to ensure high quality and continuous improvement. The procedures include descriptions of the roles and responsibilities of the Chief Administrative Officer, HTA’s program managers who are responsible for their respective programs, including their programs’ compliance with the Authority’s quality assurance procedures, and HTA staff designated as “Subject Matter Experts” who are responsible for creating HTA’s fiscal and procurement procedures. The procedures also describe an “Annual Quality Standards Review” intended to ensure the Authority is meeting the objectives and goals of the quality assurance procedures.

**Quality Assurance Policy** (Recommendations 1 and 6), effective February 28, 2019, states the CEO will designate one HTA staff as the Quality Assurance Specialist who shall be responsible for reviewing quality standards, recommending and drafting updates to policies and procedures, training HTA staff, and auditing HTA’s operations for proper quality assurance and statutory compliance. The Quality Assurance Policy also calls for, among other things, HTA to regularly monitor and measure the quality of its work methods, outputs, and outcomes with a view to ensuring high quality standards and continuous improvement.

**Code of Conduct Policy** (Recommendation 4a), effective February 28, 2019, provides standards and expectations by which each of the Authority’s board members, management, and employees conduct themselves. The policy states that, among other things, all persons covered by the policy will fully and strictly comply with all applicable laws and regulatory requirements; it also requires all directors and employees of the Authority to complete an ethics training course on an annual basis.

### **Contracts Procurement Planning Procedure**

(Recommendations 4a, 4b, and 8), effective December 31, 2019, which is intended to provide guidance on planning for procurement of goods and services, requires HTA to conduct pre-solicitation market research as determined to be realistic and feasible by the Program Manager for procurements of \$50,000 or more. The Contracts Procurement Planning Procedure also requires preparation of a Procurement Planning Worksheet. The Procurement Planning Worksheet must include justification and price determination for any sole source contract. The procedure further states that a Contract Specialist shall review the Procurement Planning Worksheet to ensure the procurement of goods/services is fair, competitive, and transparent; or the justifications for sole source or procurement exemption are sound and clearly documented.

**Contract Management Policy** (Recommendations 4a, 4e, and 8), effective February 28, 2019, which establishes standards for the formation, management, and resolution of contracts, requires that all contracts awarded for the procurement of materials and services be processed through the Authority’s internal management policies and procedures for procurement and ethics in public contracting. In addition, the Contract Management Policy requires the establishment of a framework for evaluating contractor performance based on objective performance measures. The Contract Management Policy further requires the establishment of an efficient, effective, and productive contract management and administration process to ensure the ongoing fulfillment of the terms and conditions of the contract. Under this policy, the Chief Administrative Officer is responsible for establishing standards for the formation, management, and resolution of contracts executed by the Authority.

**Contract Monitoring Procedure** (Recommendations 4b, 4e, and 4f), effective December 31, 2019, which is intended to ensure contract terms are adhered to by monitoring that the goods or services are delivered on time, at the agreed cost, and to the required quality, makes it the responsibility of the VP of Marketing and Product Development, the Chief Administrative Officer (CAO), or President

## **Definition of Terms**

**WE DEEM** recommendations:

### **Implemented**

where the department or agency provided sufficient and appropriate evidence to support all elements of the recommendation;

### **Partially Implemented**

where some evidence was provided but not all elements of the recommendation were addressed;

### **Not Implemented**

where evidence did not support meaningful movement towards implementation, and/or where no evidence was provided;

### **Not Implemented - N/A**

where circumstances changed to make a recommendation not applicable; and

### **Not Implemented - Disagree**

where the department or agency disagreed with the recommendation, did not intend to implement, and no further action will be reported.

and CEO to assign a Program Manager to monitor the contract upon award to ensure adherence to the terms and conditions of the contract. A Market Manager, the Director of Hawaiian Culture, or other managers within the Authority may be assigned to be a Program Manager and is the individual responsible to monitor the contract. Under the Contract Monitoring Procedure, the Contracts Specialist/Administrative Assistant is responsible for contract file management. The Contract Monitoring Procedure also requires Program Managers to establish reporting procedures for contractors that provide HTA with information on the progress of the contract. The procedure also requires the Program Manager to conduct a documented assessment of a contractor's performance against contract provisions, including key performance indicators specified in the contract as required.

#### **Accounts Payable Documentation Procedure**

(Recommendation 4c), effective December 31, 2019, which provides guidance to ensure that requests for payment or reimbursement are accompanied by adequate documentation, requires the Program Manager to conduct a performance evaluation in conjunction with a final contract payment request.

#### **Contract Amendment/Supplemental Procedure**

(Recommendations 4c and 4g), effective December 31, 2019, which is intended to provide guidance on whether a contract should be accepted or amended, requires a Contract Supplemental Procurement Planning Worksheet for any proposed contract amendment, which includes the contractor's proposal and budget for the work for which the amendment is requested, and a valid Certificate of Vendor Compliance. The procedure also requires execution of a Procurement Planning Worksheet before a supplemental agreement may be entered into. The Procurement Planning Worksheet must include an evaluation of contractor performance in order to justify added scope, money, or the execution of any option.

**Contract/MOA/MOU Execution Procedure** (Recommendations 4c, 4d, and 5), effective December 31, 2019, which outlines the process for executing contracts and memoranda of understanding and agreement, includes requirements for contractor proposals, including Memoranda of Agreement (MOA) and Memoranda of Understanding (MOU). The Contract/MOA/MOU Execution Procedure states that the procurement process includes a Program Manager-drafted Contract Procurement Planning Worksheet. The Solicitation Procurement Planning Worksheet is to include a contractor's proposal and budget, as well as a Certificate of Vendor Compliance or the equivalent compliance notices from the Internal Revenue Service, Hawai'i Department of Taxation, Hawai'i Department of Labor and Industrial Relations, and Hawai'i Department of Commerce and Consumer



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Affairs. The Solicitation Procurement Planning Worksheet, which is subject to a Contract Specialist's approval, also includes deliverables that correspond with the expectations of the Request for Proposal or Qualifications preceding the contract and have a direct bearing on the performance evaluation criteria. Deliverables include multiple types of reports: Status or Progress, Monthly, Quarterly, Semi-Annual, Annual, Budget, Finance, Key Performance Indicators, Web Analytics, and Data Files. The Contract/MOA/MOU Execution Procedure also requires the Procurement Planning Worksheet include any special provisions, such as exceptions to the State's General Conditions with special attention to intellectual property exceptions. A contract, MOA, or MOU that departs significantly from usual contract terms needs to be submitted to the Deputy Attorney General for initial review and approval prior to execution.

**Contract Deliverables Procedure** (Recommendation 4d), effective December 31, 2019, which is intended to ensure the timely and proper approval of deliverables in accordance with the contract terms, states, at a minimum, progress reports should require information related to the performance measures (outputs and outcomes) in the contract and any deliverables required by the contract. The reported performance should be compared against the performance criteria established in the Request for Proposals or Qualifications, the contractor's accepted proposal, and the contract.

**Contract Close-Out Procedure** (Recommendation 4f), effective December 31, 2019, which is intended to provide guidance on closing contracts and ensure contractor performance is evaluated, makes all contracts subject to a final evaluation of performance against contract terms that includes verifying that all objectives of the contract were met, that goods/services and requirements/deliverables as well as reports were satisfactorily completed, and that invoices were paid.

**Specialized Functions Awareness Evaluations Procedure** (Recommendation 6), effective December 31, 2019, which is intended to ensure that HTA staff that perform specialized functions are regularly reviewed and evaluated in the performance of these specialized duties and responsibilities, states that subject matter experts, including the VP of Finance and Procurement Section Head, are responsible to periodically evaluate HTA employees to ensure their familiarity and understanding of specialized areas. This includes conducting semi-annual evaluations of employees. The procedure further states that it is incumbent on HTA employees to request training and assistance from their immediate supervisor when faced with an activity or process about which they are unfamiliar.

**Procurement Integrity Procedure** (Recommendation 7), effective December 31, 2019, mandates that all officers and employees of the Authority shall complete an ethics training course administered by the State of Hawai'i on an annual basis.

**Payment of Cost Reimbursable Contracts Procedure** (Recommendations 12 and 13), effective December 31, 2019, which outlines the steps to support payment requests for cost reimbursable contracts, calls for the Program Manager of a cost reimbursement contract to validate costs for up to 25 receipts. If a contractor's invoice has less than 25 receipts comprising the balance, the Program Manager is to select all (24 or less) items as the sample. Samples should represent a good mix of expenditure types and dollar amounts. Professional judgment should be used in selecting samples, such as including expenditures that may require increased scrutiny. This procedure does not specify that all invoiced costs for which the contractor seeks reimbursement shall have receipts and other supporting documentation.

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## Recommendations and their status

### ***Note on the loss of HTA's procurement exemption in 2021:***

*At the time of our audit in 2018, HTA's exemption from the State Procurement Code heightened the importance that the Authority follow the procurement policies and procedures that it had adopted to replace the State Procurement Code. HTA's subsequent loss of its procurement exemption in 2021 has reduced the Authority's need for procurement policies and procedures separate from those used by other agencies that must follow the State Procurement Code. However, given the conditions we found in 2018, and in particular, how the Authority's approach to procurement was lax and undisciplined, we continue to emphasize the need for and importance of HTA developing clear policies and procedures relating to procurement.*

## Recommendation 1

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**HTA should update internal policies and procedures related to training, compliance reviews, and other quality assurance functions to ensure they align with HTA's current organizational structure and personnel.**

**Partially Implemented**

### **Comments**

#### **What we found – 2018**

HTA had been afforded an exemption from the State Procurement Code, Chapter 103D, HRS, and the Authority had adopted its own policies and procedures intended to direct its procurement and contracting practices. However, in 2018, we found this autonomy resulted in lax oversight, deficient internal controls, and ultimately, less accountability. HTA did not consistently follow its own policies and procedures, had not provided regular training to personnel involved with procurement, and had allowed personnel to engage in improper procurement practices. We also found that HTA's policies governing quality assurance and internal controls had not been updated and did not take into account significant organizational and personnel changes affecting HTA's procurement process.

#### **What we found – 2021**

In response to this recommendation, HTA said it had reviewed and updated its policies and procedures and had provided staff training

on those updated policies and procedures. According to HTA, it completed its review, updates, and training of existing staff in January 2020. To verify implementation of this recommendation, we requested the relevant policies, procedures, and position descriptions, as well as the training materials and training attendance logs. We were provided with training materials and training attendance logs and a Quality Assurance Policy, Quality Assurance Program and Procedures manual, organizational charts, and other materials.

HTA's Quality Assurance Program and Procedures, dated August 18, 2020, identify six program manager titles with responsibility for compliance. The procedures include descriptions of the roles and responsibilities of the Chief Administrative Officer and HTA's program managers who are responsible for their respective programs, including their programs' compliance with the Authority's quality assurance procedures. However, as of August 9, 2021, only one staff member was identified as having occupied one of these program manager positions (the VP for Finance). The procedures require, among other things, Annual Quality Standards Reviews, program-level annual reviews, and risk-based assessments. The Annual Quality Standards Review is intended to ensure that the Authority is meeting the objectives and goals of the quality assurance procedures.

We requested copies of these Annual Quality Standards Reviews, program-level annual reviews, and risk-based assessments as of September 2021, which was more than one year after the Quality Assurance Program and Procedures manual was adopted, and were told reviews had not yet been completed.

### **Implementation status**

Our review of HTA procurement policies, procedures, and practices concluded that, although some relevant policies and procedures have been updated and new policies and procedures adopted, no reviews had been completed pursuant to the updated policies and the majority of program manager positions responsible for ensuring HTA programs follow the policies and procedures were vacant. Furthermore, HTA's organizational chart and list of Quality Assurance Program staff does not align with updated policies and procedures and does not reflect personnel changes. Therefore, we deem this recommendation to be partially implemented.



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## Recommendation 2

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**HTA should assign a senior manager to oversee HTA's quality assurance function and ensure it is a priority for the Authority. Such oversight should include ensuring HTA's quality assurance plan is updated and properly implemented.**

**Partially Implemented**

### Comments

#### What we found – 2018

This recommendation was meant to address our finding that none of HTA's upper management had taken responsibility for implementing procurement and quality assurance functions. Instead, oversight of the procurement and contracting of HTA's many contracts had, in effect, been delegated to a Contracts Specialist, who was not an HTA manager. We also observed a lack of coordination regarding procurement and related responsibilities among HTA Program/Brand Managers and other levels of personnel involved with HTA contracts. This confusion appeared to have contributed to a seemingly prevalent lack of accountability at HTA for compliance with statutory and internal procurement requirements.

#### What we found – 2021

In response to this recommendation, HTA said responsibility for implementing procurement and quality assurance functions was assigned in February 2019 to a newly-hired Chief Administrative Officer (CAO). According to HTA, the CAO reviewed the existing quality assurance efforts and developed the basic framework for a quality assurance plan. We requested and reviewed the CAO position description, HTA's Quality Assurance Policy, and the Quality Assurance Program and Procedures manual that HTA adopted in August 2020. We note that, although the policies and procedures make the CAO the senior manager responsible for quality assurance, drafting updates to policies and procedures, and training staff, corresponding quality assurance responsibilities are not articulated in the CAO's position description.

In addition, as noted in the preceding recommendation, HTA's Quality Assurance Program and Procedures manual requires, among other things, Annual Quality Standards Reviews; program-level annual reviews; and risk-based assessments. However, we were informed by HTA that the reviews had not been completed as of September 13, 2021.

### **Implementation status**

Based on the above, we conclude that HTA's quality assurance responsibilities are not adequately documented within the CAO's position description, who is purportedly assigned quality assurance responsibilities. Further, there is no documentation that the reviews required by the Quality Assurance Program were conducted. Therefore, we deem this recommendation to be partially implemented.

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### Recommendation 3

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**With respect to overall procurement, update internal policies and procedures to clearly identify the HTA management and staff who are responsible for procurement, administration, and oversight of all contracts, and clearly delineate the responsibilities assigned to each.**

#### Partially Implemented

#### Comments

##### What we found – 2018

This recommendation aimed to address the finding that HTA handled procurement inconsistently, with minimal consideration for procuring services in the State's best interests. Of particular note, under HTA's then-existing policies, the VP of Administrative and Fiscal Affairs was responsible for implementing and overseeing procurement; however, the VP left HTA in December 2014 and that position no longer existed at the time of our audit in 2018. The then-President and Chief Executive Officer (CEO) said the then-Chief Operating Officer (COO) was responsible for implementing the policies that were formerly the VP's responsibility. Yet, other HTA personnel told us that an administrative assistant was responsible for updating HTA (procurement) policies, developing training, training staff, auditing internal operations for compliance, and other quality assurance duties. The administrative assistant's position description did not include those responsibilities.

##### What we found – 2021

During our follow-up, HTA referenced the hiring of the new CAO in 2019 and the changes to the quality assurance systems as responsive to this recommendation. Additionally, HTA said it had clarified the duties, functions, and expectations of staff responsible for procurement, administration, and oversight of the organization's contracts. Our evaluation of the status of this recommendation included reviewing relevant procedures as well as the position descriptions for staff who HTA identified as responsible for procurement, administration, and oversight of the organization's contracts.

HTA identified the President and CEO, the VP of Finance, the CAO, the Contracts Specialist, the Director of Planning, and the Chief Brand Officer as the only staff responsible for procurement, administration, and oversight of contracts. However, the list of positions identified by HTA with such responsibilities did not include other staff that HTA procedures clearly identify as having responsibility for procurement, administration, and oversight of contracts. Excluded from the HTA-provided list of those with contract procurement, administration, and

oversight responsibilities but identified as having such responsibilities in HTA's procedures were the Director of Hawaiian Culture, HTA's Market Managers, and the VP of Marketing and Product Development, as well as the Specialist/Administrative Assistant responsible for creating, organizing, and maintaining relevant contract files. Under HTA's Contract Monitoring Procedure, the VP of Marketing and Product Development, the CAO, and the CEO are responsible for assigning a Program Manager to monitor new contracts to ensure adherence to the contract's terms and conditions. A Program Manager is usually the individual who is leading a project for which the services are being procured and can be a Market Manager, the Director of Hawaiian Culture, or other manager within the Authority. Similarly, HTA's Procurement Planning Procedure and Contract Execution Procedure vest significant procurement planning responsibilities with Program Managers, which may be a Market Manager, the Director of Hawaiian Culture, or other manager within the Authority.

HTA did not provide position descriptions for positions with procurement and contract administration responsibilities other than the President and CEO, the VP of Finance, the CAO, the Contracts Specialist, the Director of Planning, and the Chief Brand Officer. When asked, HTA stated it believed the information provided covered positions with procurement responsibility, except for positions performing ministerial functions such as the administrative assistant and accounting assistant.

### **Implementation status**

We disagree that the Program Managers' administration and monitoring of contracts constitute ministerial work. Program Managers perform substantive work relative to this recommendation, and therefore, in our opinion, those procurement and contract administration responsibilities should be clearly stated in their respective position descriptions. Based on what we found, HTA's policies do not completely and accurately identify staff nor delineate responsibilities regarding contract procurement and oversight. Therefore, we deem this recommendation to be partially implemented.



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## Recommendation 4a

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including requiring pre-solicitation market research to assess, among other things, market competition and estimated cost.**

**Partially Implemented**

### Comments

#### What we found – 2018

HTA policy as of 2018 stipulated, when the agency procured goods or services via the sole source procurement method, the assigned contracting officer must justify in writing that the goods or services were available from only one source and that the proposed price was reasonable. The policy required the contracting officer to document the justification for the sole source procurement with HTA's Procurement Planning Worksheet, which was to ensure the method of procurement being used was in the best interests of the State and based on reliable information. HTA procedures additionally required that market research be conducted to ensure competition and price were commensurate with the scope of a project and stated that the amount of market research should be consistent with HTA's knowledge of the market, the need to develop competition, and the amount of funds involved. Report No. 18-04 reviewed Procurement Planning Worksheets and related procurement documentation for 47 of HTA's contracts covering the periods of FY2015 and FY2016. We found 18 contracts lacked required assertions that the goods and services sought were available from only one source. Further, HTA had not performed market research prior to awarding 23 sole source contracts. Just three of those contracts accounted for \$9.2 million in sole source awards and contract extensions during the period reviewed.

#### What we found – 2021

In response to this recommendation HTA said it is working with procurement staff to ensure pre-solicitation market research of sole source awards is conducted to provide a proper assessment of market competition and estimated contract costs. This includes incorporating new criteria into Procurement Planning Worksheets to remind staff to conduct market research and collect cost data. To verify implementation of this recommendation, we requested the current Procurement Planning Worksheet; other relevant staff guidance and training materials; and examples of recently awarded contracts.

Our analysis included reviewing (1) HTA's revised Procurement Planning Worksheet, and (2) its Contract Management and Code of Conduct Policy. In general, we found these documents to address this recommendation. In addition, we found that HTA staff training included the pre-solicitation market research requirement. HTA provided us with a staff training log-in sheet that indicated staff involved in procurement and contracting attended such training in January 2020.

#### **Implementation status**

Our review of the sample Procurement Planning Worksheets provided by HTA relating to Recommendation 8 below found an instance in which inadequate market research was conducted, which indicated that the procedures adopted to address the recommendation were not completely effective. Therefore, we deem this recommendation to be partially implemented.

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## Recommendation 4b

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including requiring proposals for each contract, contract amendment, and extension.**

**Partially Implemented**

### Comments

#### What we found – 2018

When we inquired in 2018, HTA's Contracts Specialist stated that formal contract proposals were required and should include justification of price, scope, deliverables, a timeline, and performance criteria. However, our review found no formal proposals for 11 contracts and 16 amended or extended contracts.

#### What we found – 2021

In the course of this follow-up, HTA said contractor-created proposals now are required to be attached to the Procurement Planning Worksheet whenever HTA managers request a new contract, a substantive change to the contract price and/or scope of work, or exercise of a contract option. Electronic copies of these proposals are supposed to be kept in the respective contract files.

To verify implementation of this recommendation, we requested copies of the procedures that require proposals to be attached to each Procurement Planning Worksheet, evidence that information regarding this requirement is included in HTA staff training, and electronic copies of proposals for contracts awarded, extended, or amended during the most recently concluded fiscal year.

We determined that HTA's Contract Execution Procedure and Contract Amendment Procedure provides guidance addressing this recommendation. Among other things, the Contract Execution Procedure states that the procurement process includes a Program Manager-drafted Solicitation Procurement Planning Worksheet that is to include a contractor's proposal and budget. Additionally, HTA's Contract Procurement Planning Procedure and Contract Monitoring Procedure clarify the roles and responsibilities of HTA management and other staff to ensure compliance with contract terms and conditions.

Our follow-up also included a review of a sample of contractor proposals to extend or amend contracts. The proposals appeared

adequate; however, an evaluation of the completeness, effectiveness, timeliness, or overall adequacy of these individual proposals is beyond the scope of this follow-up. Although we did not request copies of actual Procurement Planning Worksheets in connection with this recommendation, we were provided a worksheet prepared by a Program/Brand Manager and a Program Specialist on March 1, 2021 for a sole source contract. As noted above, neither of those two positions were identified by HTA as having procurement, administration, and oversight responsibilities for HTA contracts.

### **Implementation status**

We deem this recommendation to be partially implemented. Although HTA's current Procurement Planning Worksheet requires proposals for each contract, amendment, and extension, these worksheets are prepared by staff that HTA has not explicitly identified as having procurement, administration, and oversight responsibilities for contracts. This lack of clarity concerning procurement and contract administration responsibilities weakens HTA's ability to ensure actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds. HTA's continuing to consider staff preparing Procurement Planning Worksheets to be performing merely ministerial functions increases the risk that HTA's procurement and administration of contracts will not be aligned with the State's best interests.



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## Recommendation 4c

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including enforcing requirement that contractors provide evidence of a valid Certificate of Vendor Compliance (CVC) prior to contract execution.**

### Partially Implemented

#### Comments

##### What we found – 2018

Section 103D-310, HRS, as well as HTA's standard contract terms, required contractors to provide HTA with a Certificate of Vendor Compliance (CVC) which provides evidence that an individual or organization is eligible to do business with the State, as certified by state and federal agencies. To obtain a CVC, an individual or organization must be, among other things, compliant with tax filings and other similar requirements. However, in 2018, we found that HTA contracted with – and even paid – contractors that had not demonstrated such compliance and were potentially ineligible to do business with the State. We found 32 instances where HTA could not demonstrate that it had received a valid CVC within six months of the date on which the contractor started work under a contract.

##### What we found – 2021

In response to this recommendation, HTA said it adopted a process that requires contractors to provide a valid CVC prior to contract execution. Electronic copies of these CVCs are supposed to be kept in their respective contract files. To verify implementation of this recommendation, we requested copies of relevant policies and procedures as well as training materials about the requirement that contractors must provide proof of a valid CVC to HTA prior to a contract award or extension; we also asked for electronic copies of CVCs for contracts awarded and extended during the most recently completed fiscal year.

We determined that HTA's Contract Execution Procedure and Contract Amendment Procedure addressed the recommendation by requiring a solicitation Procurement Planning Worksheet or contract supplemental Procurement Planning Worksheet include a current CVC or equivalent compliance notice from the Internal Revenue Service, Hawai'i Department of Taxation, Hawai'i Department of Labor and Industrial Relations, and Hawai'i Department of Commerce and Consumer Affairs.

Further, HTA said employees involved in procurement and contracting are required to view online training offered by the State Procurement Office, including Procurement Basics, which discusses CVC requirements under Hawai'i procurement law. HTA stated that employees involved in procurement and contracting have certified that they have viewed this and other relevant training.

HTA also provided various examples of current contractors' CVCs. A comprehensive evaluation of the completeness, effectiveness, timeliness, or overall adequacy of these CVCs is beyond the scope of this follow-up. However, we found instances in which a contractor's CVC was dated *after* the date on which the Procurement Planning Worksheet was submitted for approval. For example, a Procurement Planning Worksheet for a proposed contract for broadcasting the 2021 Merrie Monarch Festival was submitted for approval on March 1, 2021. However, the date of a corresponding CVC provided by the contractor was May 5, 2021. The contract was signed by HTA on May 11, 2021, with an effective date of April 1, 2021. HTA subsequently said it mistakenly provided the May 5, 2021 CVC, and provided another CVC dated March 2, 2021. However, we note that the earlier-dated CVC was still obtained one day after it was required to have been under HTA's Contract Execution Procedure. Similarly, a Procurement Planning Worksheet for a contract for a Kona Harbor greetings program was submitted for approval on June 17, 2021. The corresponding CVC was dated June 20, 2021.

### **Implementation status**

We deem this recommendation to be partially implemented. Although HTA seems to have developed policies and procedures that address the recommendation, HTA does not always appear to be following those policies and procedures. This may reflect on the adequacy or effectiveness of HTA staff training. Regardless, the framework of procedures and training put in place do not appear to have ensured the timely provision of CVCs during HTA's procurement process, based on the samples we reviewed.

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## Recommendation 4d

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including requiring contracts to include specific performance criteria, performance benchmarks, and deliverables that are aligned with the contract objectives.**

### Partially Implemented

#### Comments

##### What we found – 2018

In 2018, we found that HTA contracts lacked key performance criteria and failed to require contractors to provide information to determine whether project goals and objectives were actually being achieved. The omission of performance benchmarks and reporting in contracts fostered contract monitoring practices that focused on obtaining administrative deliverables, such as status reports, rather than ensuring the achievement of actual outcomes and objectives.

##### What we found – 2021

HTA said it has since put in place a process that requires its contracts to include specific performance criteria, performance benchmarks, and deliverables that are aligned with contract objectives as prescribed by HTA. HTA Program Managers also are required to document the performance criteria in their Procurement Planning Worksheets, and anticipated criteria are also now published in respective solicitations for goods and services. To verify the status of this recommendation, we requested copies of policies, procedures, or other guidance adopted relating to this recommendation; copies of Procurement Planning Worksheets that document the performance criteria; and evidence that information regarding this requirement is included in HTA staff training.

HTA's Contract Deliverables Procedure requires contractor progress reports include information on performance measures (outputs and outcomes) contained in the contract and the status of any deliverables required by the contract. According to the procedure, the contractor's reported achievement of the performance measures should be compared against the performance criteria established in the Request for Proposals or Request for Qualifications, the contractor's accepted proposal, and the contract. Further, HTA's Contract/MOA/MOU Execution Procedure and Contract Management Policy require the establishment of a framework for evaluating contractor performance based on objective performance measures.

Additionally, HTA employees involved in procurement and contracting are required to view State Procurement Office training materials, including Contract Management and Administration, which calls for contract planning to include defined performance evaluation and corresponding evaluation criteria. HTA stated that its employees involved in procurement and contracting have self-certified that they have viewed the State Procurement Office's training, as well as other relevant training.

We did not systematically audit HTA contracts to verify the adequacy of HTA's contractor performance measures as that review is beyond the scope of this follow-up. However, our cursory review revealed an instance in which a contract Procurement Planning Worksheet for a sole source \$3.5 million contract with the Hawai'i Community Foundation to administer HTA's Kūkulu Ola and Aloha 'Āina grant programs, along with the contractor's proposal, lacked meaningful performance criteria. According to the worksheet, the measures to be used to evaluate the contractor's performance constituted the "timeliness and completeness of all contract deliverables, contractor communication." Those deliverables, according to the worksheet, refer to target performance measures that should have been included in the Hawai'i Community Foundation's proposal. However, our review of that proposal showed there were no such target performance measures.

### **Implementation status**

HTA has partially, but not fully, implemented a framework of policies and procedures as well as training needed to ensure that its contracts include specific performance criteria, performance benchmarks, and deliverables that are aligned with contract objectives as prescribed by HTA. Therefore, we deem this recommendation to be partially implemented.



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## Recommendation 4e

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including requiring contractors to provide regular progress reports.**

**Implemented**

### Comments

#### What we found – 2018

HTA procedures required contractors to provide specific, regular progress reports for the Authority's use in determining whether performance measures and objectives were being met. At a minimum, such reports were required to include information on outcomes and to compare results against performance criteria in the Request for Proposals, contractor's proposal, and the contract. However, in 2018, we reported that 24 contracts had no regular contractor progress reporting requirements. In 19 instances where contracts required progress reports, there were no demands by HTA that the contractor compare its performance of the contract against performance criteria specified in the contract documents.

#### What we found – 2021

In this follow-up, we identified HTA's Contract Monitoring Procedure to require that Program Managers establish procedures that require contractors to report on the progress of the work being performed. Further, HTA's Contract Management Policy requires efficient, effective, and productive contract management and administration to ensure the ongoing fulfillment of contract terms and conditions. HTA employees involved in procurement and contracting are also required to view State Procurement Office online training, including Contract Management and Administration, which calls for contract management plans as well as vendor management to include reporting. HTA stated that its employees involved in procurement and contracting must certify that they viewed the training, as well as other, relevant training.

HTA also provided us with example contractor progress reports that appeared to include information on the status of work conducted. Among these were an interim report on HVCB's marketing contract and a final report on a virtual Okinawan Festival, both of which included qualitative and quantitative performance metrics. However, an evaluation of the completeness, effectiveness, timeliness, or overall adequacy of these progress reports in comparison with contractor proposals and Procurement Planning Worksheet is beyond the scope of this follow-up.

### **Implementation status**

As it appears that HTA has implemented additional guidance and training relating to this recommendation and provided us with example contractor reports that included performance metrics, we deem this recommendation to be implemented.

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## Recommendation 4f

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including evaluating contractor performance against performance criteria.**

**Partially Implemented**

### Comments

#### **What we found – 2018**

HTA's procurement policy stated that the Authority shall develop and incorporate into its contracts objectively derived key performance indicators for use in evaluating contractor performance. However, none of the 47 non-market area contracts we reviewed in 2018 contained such key performance indicators.

#### **What we found – 2021**

HTA cited the efforts taken to implement the preceding recommendation as responsive to this recommendation, while further stating it implemented a new procedure to require completion of evaluations before final payment is made on a contract. To verify this, we requested the new procedure and copies of evaluations that were conducted before final payment was made for five contracts administered during the most recent fiscal year. We also requested details of the final payments, including the dates and amounts of those payments.

We found HTA's Accounts Payable Documentation Procedure and Contract Monitoring Procedure requires a final performance evaluation in conjunction with a final payment request and documentation of a contractor's performance against contract provisions, including key performance indicators. A Contract Close-Out Procedure further makes all contracts subject to a Program Manager's final evaluation to confirm the contractor performed all contract terms. That report is subject to approval by the HTA President and the Chief Administrative Officer.

In conjunction with the above procedure, HTA's Procurement Planning Worksheet template requires performance evaluation criteria be included within the contract's scope of work. Under HTA's revised procurement process, a Contract Procurement Planning Worksheet approved by the Contract Specialist is required for contracts of \$50,000 and above. HTA employees involved in procurement and contracting also are required to view State Procurement Office online

training, including Contract Management and Administration, which calls for linking contract payments to satisfactory performance and discusses the need for appropriate evaluation criteria. HTA stated that its employees involved in procurement and contracting must certify that they have viewed the training as well as other relevant training.

HTA provided us with examples of contractor final evaluations. Among these were Contract Close-Out Verification Reports for a Polynesian Voyaging Society canoe education program, and a Lanai Culture & Heritage Center contract to conduct Lanai guide application enhancements. We noted, however, neither report meaningfully documented the contractor's performance against contract provisions, including key performance indicators. In particular, the Contract Close-Out Verification Report for the Polynesian Voyaging Society canoe education program stated that it met goals and objectives. However, those goals and objectives are vaguely described and the report lacks any quantitative comparison of results of the contract versus what the contract was meant to achieve. For example, the report states: "Throughout the year, several canoe tours, community events, and training sails were completed. Of which included participation in over 67 community events, dry dock navigator and crew training, canoe maintenance and repair, as well as several outreach activities. Key performance indicators conclude over 100% of on-island attendance was achieved, along with out of state participation." There is no comparison of those results against the performance that was expected of the contractor.

### **Implementation status**

Although HTA has implemented additional policies, procedures, and training relating to this recommendation, and provided us with samples of evaluations, comparisons of contractor performance against contract criteria still lack comparison with objectively derived key performance indicators. Therefore, we deem this recommendation to be partially implemented.

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## Recommendation 4g

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**With respect to overall procurement, enforce policies and procedures that ensure HTA's actual procurement and contracting practices align with the best interests of the State and foster appropriate use of public funds, including requiring written evaluation of contractor performance before amending, modifying, or extending any contract.**

**Partially Implemented**

### Comments

#### **What we found – 2018**

This recommendation was based on a finding that HTA amended or extended 18 contracts without a written evaluation of the contractor's performance as required by HTA procedures. HTA personnel involved with the contracts were unaware of the HTA requirement until we raised concerns that required evaluations had not been conducted. HTA Brand Managers told us that such evaluations are conducted when work on a project is completed, rather than when a contract is extended or amended.

#### **What we found – 2021**

In response to this recommendation, HTA said performance evaluations are now required to be attached to the Procurement Planning Worksheet when requesting a new contract, making a substantive amendment to a contract's price or scope, or exercising a contract option. A substantive amendment is considered to be a modification or expansion that alters the original agreement in a manner that materially changes the duties and responsibilities of the parties, the payment amount, the contract end date, or the legal provisions.

HTA provided a Contract Amendment/Supplemental Procedure that requires the Program Manager to prepare a Procurement Planning Worksheet prior to entering into a contract supplemental agreement or contract amendment. The worksheet must include an evaluation of contractor's performance to justify changes in scope, money, or exercising of optional contract years. HTA's Contract Close-Out Procedure, which also covers contractors subject to amendment, states that evaluations should include verification that all contract terms were met, including whether goods, services, requirements, and deliverables were satisfactorily completed. Additionally, HTA said staff are trained to follow a requirement that performance evaluations be conducted prior to extending or amending contracts. However, HTA did not provide us with training material or other documents that confirmed this guidance was included in HTA training materials.

HTA also provided us with selected copies of contractor interim evaluations. Among these were Contract Interim Evaluation Reports for OmniTrak Group (for resident sentiment surveys), and for Transparent Intelligence (for vacation rental performance tracking). Neither interim evaluation report meaningfully documented the contractor's performance against contract provisions, including key performance indicators, despite stating that option years for both contracts should be exercised. For example, the report on Transparent Intelligence states the contractor met objectives in monitoring and collecting reservation-related data for four major vacation rental platforms, but that evaluation was based on the fact that Transparent Intelligence reports contained reservation data rather than evaluating how the contractor performed against indicators such as the timeliness, completeness, or adequacy of Transparent Intelligence's reports themselves.

#### **Implementation status**

Although HTA has implemented additional guidance relating to this recommendation, we deem this recommendation to be partially implemented as it appears the Authority continued to extend some contracts without having first documented an evaluation of the contractors' performance.



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## Recommendation 5

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**Retain exclusive ownership of intellectual property created, developed, prepared, or assembled using State funds, absent extraordinary and unique circumstances. Require requests for waiver of the State's ownership of intellectual property to be thoroughly documented and approved by the Department of the Attorney General.**

### Partially Implemented

#### Comments

##### What we found – 2018

This recommendation was based on our finding that HTA was waiving ownership of intellectual property, which HTA contracted to create. HTA's waiver of its ownership interest allowed contractors to enjoy both legal ownership *and* control of the intellectual property paid for with public funds. HTA had included a Special Provision waiving intellectual property and copyright ownership in 28 of 45 contracts we examined as part of our 2018 audit. In all of those cases, HTA could not furnish evidence that the contractor required, or even requested, the waiver as a precondition to contract. The practice limited HTA's ability to use and control publicly-funded intellectual property once a contract had ended.

##### What we found – 2021

HTA said it has since implemented a process that requires thorough review and Deputy Attorney General approval of any waivers of intellectual property ownership. Our evaluation of the status of this recommendation included requesting copies of policies or procedures adopted to ensure HTA's implementation of this recommendation, evidence that information regarding the requirement that intellectual property ownership cannot be waived without prior approval is included in HTA staff training, and examples of reviews conducted prior to waiving intellectual property and copyright ownership.

HTA provided us with a Contract/MOA/MOU Execution Procedure that requires any special provisions such as waiving intellectual property ownership, as well as other exceptions to the State's General Conditions, be documented in a Procurement Planning Worksheet. If a contract template departs significantly from any of the usual templates, it should be submitted to a Deputy Attorney General for review and approval prior to execution, according to the procedure. The Procurement Planning Worksheet also states that such special provisions are subject to Deputy Attorney General approval. Preparation and approval of a Procurement Planning Worksheet is required for contracts of \$50,000 and above.

Although HTA could not provide documentation of staff training on this requirement, it represented to us that annual training conducted in 2020 by HTA required all staff to review all policies and procedures and to attest to their completed review.

HTA provided us with what it said was the only example of an intellectual property waiver that was approved by the Authority's Deputy Attorney General in 2021. The waiver related to the broadcast of the Merrie Monarch Festival. According to the Procurement Planning Worksheet for the contract, HTA did not intend to own the rights to the broadcasts. Rather, HTA said it would license limited use of the images and video for mutually agreed-upon purposes. However, we note that this intellectual property waiver was approved by the Deputy Attorney General on August 13, 2021, which was more than one month *after* the event was broadcasted.

### **Implementation status**

Although there appears to be a new policy in place addressing this recommendation, in the one instance in which a waiver was given, approval was made *after* the contract's execution. The process by which that document was reviewed by the Deputy Attorney General shows that HTA has not addressed the concern we raised in 2018; HTA's request for approval of the waiver by its Deputy Attorney General was inconsistent with its Contract/MOA/MOU Execution Procedure and, frankly, appears to be more of HTA's effort to "check the box" rather than a meaningful review by its Deputy Attorney General about the appropriateness of waiving the State's ownership interest in the intellectual property created using state funds. Therefore, we deem this recommendation to be partially implemented.

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## Recommendation 6

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**Regularly review and evaluate HTA management and staff performance of their respective procurement and contract-related duties and responsibilities.**

**Partially Implemented**

### Comments

#### What we found – 2018

This recommendation followed our 2018 finding that HTA handled procurement haphazardly, with minimal consideration for procuring services in the State’s best interests.

#### What we found – 2021

In response, HTA said it developed a process (the Specialized Functions Awareness Evaluations Procedure) to conduct regular reviews and evaluations of HTA management and staff in the performance of their respective procurement and contract-related duties and responsibilities. HTA’s Specialized Functions Awareness Evaluations Procedure requires subject matter experts, including the VP of Finance and Procurement Section Head, to periodically evaluate HTA employees with procurement and contract-related duties and responsibilities to ensure their familiarity and understanding of these specialized areas. This includes conducting semi-annual evaluations of employees and a review of completed evaluations.

Our evaluation of the status of this recommendation included a request for a list of all management and staff with procurement and contract-related duties and responsibilities, along with the dates of their most recent evaluation. We also reviewed procurement training materials and training dates for those identified with such responsibilities.

In response to our request for a list of management and staff with procurement and contract-related duties and responsibilities, HTA provided us with position descriptions for its President and CEO, VP of Finance, CAO, Contracts Specialist, Director of Planning, and Chief Brand Officer detailing the various procurement and contract administrative responsibilities of each. However, those six positions did not appear to encompass all HTA staff with procurement and contract duties. For example, under HTA’s Contract Monitoring Procedure, it is the responsibility of the VP of Marketing and Product Development, the CAO, or President and CEO to assign a Program Manager to monitor the contract upon its award to ensure adherence to the terms and conditions of the contract. A Program Manager may be a Market Manager, the Director of Hawaiian Culture, or other manager within the Authority. The Program Manager is usually the individual

who leads the project. Therefore the six positions identified by HTA as having procurement and contract duties did not include all staff with procurement, administration, and oversight of HTA contracts including the Authority's Program and Market Managers.

Under the Specialized Functions Awareness Evaluations Procedure, the VP of Finance and the Procurement Section Head are responsible for periodically evaluating HTA employees to ensure their familiarity and understanding of these specialized areas. However, the procedure does not establish criteria upon which the performance of those with specialized functions will be evaluated. Initially, HTA said the criteria established for employee performance evaluation under the Specialized Functions Awareness Evaluations Procedure was whether staff completed required procurement training courses. However, when questioned regarding this response, HTA subsequently provided us with personal evaluation dates for all six of the above-identified positions, all of which were conducted in 2021. We note that HTA staff including the President and CEO, VP of Finance, CAO, Contracts Specialist, Director of Planning, and Chief Brand Officer, as well as Program and Market Managers received HTA procurement as well as State Procurement Office training in 2020.

### **Implementation status**

Although the Specialized Functions Awareness Evaluations Procedure adopted subsequent to the 2018 audit may be intended to address the recommendation, that procedure does not establish criteria for reviewing the performance of those with procurement responsibilities. In the absence of such criteria, we consider what HTA has deemed to be the method for reviewing performance (procurement training attendance) to be insufficient to fully address the issues identified in the audit. Therefore, we deem this recommendation to be partially implemented.

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## Recommendation 7

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**Require HTA management and staff who have procurement and contract-related responsibilities to receive regular training on the State Procurement Code, Chapter 103D, HRS, and the State Ethics Code, specifically, Section 84-15, HRS.**

**Implemented**

### Comments

#### What we found – 2018

This recommendation was based on our finding in 2018 that HTA did not consistently follow its own policies and procedures, had not provided regular training to personnel involved with procurement, and had allowed personnel to engage in improper procurement practices. We also found that HTA's policies governing procurement training, quality assurance, and internal controls had not been updated, despite significant organizational and personnel changes.

#### What we found – 2021

During our follow-up, HTA said all employees are now required to participate in annual training on the State Ethics Code. We determined that HTA's Procurement Integrity Procedure mandates that all HTA officers and employees shall complete an ethics training course administered by the State Ethics Commission on an annual basis. HTA's Specialized Functions Awareness Evaluations Procedure makes it incumbent on HTA employees to request training and assistance from their immediate supervisor when faced with an activity or process that they are unfamiliar with in the course of their work. Further, HTA's Code of Conduct Policy states that all directors and employees of the Authority shall complete an ethics training course on an annual basis.

Employees with procurement- and contract-related responsibilities also take part in required training on the State Procurement Code. Our evaluation of the status of this recommendation included a request for a listing of all management and staff with procurement- and contract-related duties and responsibilities and the dates of their most recent ethics training, and a listing of all State Procurement Code training completed during calendar years 2019 and 2020.

#### Implementation status

HTA provided logs attesting that staff attended State Procurement Code as well as State Ethics Code training in 2020 and 2021. Therefore, we deem this recommendation to be implemented.

## Recommendation 8

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**With respect to sole source procurements, limit sole source procurement to where a good or service is deemed available from only one source.**

### Partially Implemented

#### Comments

##### What we found – 2018

In 2018, HTA's procurement procedures specifically stated that sole source awards are only permissible when an item or service is deemed to be available from a single supplier. As part of the audit, we reviewed Procurement Plan Worksheets and related procurement documents for 47 of HTA's contracts with 22 different contractors (covering the period of FY2015 and FY2016) and found that 18 contracts lacked evidence that the goods and services sought were available from only one source.

##### What we found – 2021

In response to this recommendation, HTA said all sole source requests now must be reviewed and approved for appropriateness. This process includes documentation in HTA Procurement Planning Worksheets that differentiates competitive solicitations, sole source procurements, and procurement exemptions that are used when more than one source may exist, but the need for competition is waived in favor of a strategic partnership or a proprietary intellectual property. As part of this process, HTA staff are required to document the justification for sole source and procurement exemptions that are exercised. HTA added that staff has been trained on this process.

Our follow-up review involved reviewing HTA staff training material; a listing of all sole source contracts awarded during the most recently concluded fiscal year; and documentation justifying any sole source and procurement exemptions that were exercised, along with justification of sole source pricing. We confirmed HTA training material discusses how sole source procurement should only be used when absolutely necessary, when only one source is available, or if the expenditure is expressly exempt from public bidding. HTA provided a log indicating that relevant staff with procurement duties attended such training and a list of sole source contracts awarded in FY2021 with accompanying documentation. Although we did not analyze whether sole source procurement was justified in each case, we noted two instances when a contract Procurement Planning Worksheet lacked sufficient justification to warrant limiting the solicitation to a single provider. HTA's Contracts Procurement Planning Procedure requires preparation of a Procurement Planning Worksheet that must include



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sole source justification and price determination. The procedure further states that a Contract Specialist shall review the worksheet to ensure that the procurement of goods and services is fair, competitive, and transparent; or that the justifications for a sole source or a procurement exemption are sound and clearly documented.

Despite these requirements, HTA awarded a \$112,174 sole source contract to Pencilhead Productions to provide meeting facilitation services for destination management action plans. Among the scope of services the company was to provide were:

- Consultative support and guidance on effective and efficient processes to gather input that reflect each island community's desires and needs;
- Design and implement facilitated meetings to help participants;
- Design and implement Community Presentation & Feedback meetings to gather guidance and input from the public on each island; and
- Develop custom visual tools and templates required for each meeting, including but not limited to the virtual collaborative workspace templates.

According to the Contract Procurement Planning Worksheet prepared to justify the sole source award, the fees quoted "were within reason" *based on the opinion of an HTA board member* who was a principal in a planning firm that also provided facilitation services. A competitive solicitation was not pursued for the contract because the selected contractor "is the only certified graphic facilitator in Hawai'i."

### **Implementation status**

Given the apparent lack of price justification and market research conducted, we question whether limiting the procurements to a sole source in each case was "absolutely necessary." We also question the appropriateness of relying on the subjective opinion of a board member regarding whether proposed fees were reasonable. Although policies have been put into place, HTA has not demonstrated that the controls put in place to address this recommendation are preventing questionable usage of the sole source procurement process. As such, we deem this recommendation to be partially implemented.

## Recommendation 9

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**With respect to sole source procurements, require completed documentation to support use of sole source procurement.**

### Partially Implemented

#### Comments

##### What we found – 2018

When HTA utilized the sole source procurement method, the assigned contracting officer was required to justify in writing that the price negotiated was reasonable. The required justification should have been documented in an HTA Procurement Planning Worksheet. As previously noted, our 2018 audit found 18 contracts lacked required assertions that the goods and services sought were available from only one source.

##### What we found – 2021

HTA said the efforts taken to implement this recommendation were identical to those taken to implement the preceding recommendation. HTA provided us a list of sole source contracts awarded in FY2021 with accompanying documentation. Although we did not analyze whether sole source procurement was justified in each case, we noted an instance when a contract solicitation was limited to a single provider for meeting facilitation for destination management action plans. In support, the HTA Procurement Planning Worksheet for the project stated: “We did not do a competitive procurement because a specific individual was identified as the only certified graphic facilitator in Hawai‘i.” However, the worksheet did not describe what, if any, market research was conducted to support that claim. Therefore, we question whether limiting the procurements to a sole source was “absolutely necessary.”

#### Implementation status

In response to our follow-up questions regarding the contract, HTA said market research was done via internet searches, but the results of that work were not documented. While HTA does require documentation in some cases, HTA has not demonstrated that its current practices conform to procedures put in place to address this recommendation. The lack of adequately documented justification for sole source contracting undermines confidence in HTA’s ability to ensure that the price it pays for such contracts is reasonable. Although a new policy has been put in place, we deem this recommendation partially implemented.

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## Recommendation 10

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**With respect to sole source procurements, require written confirmation and justification of sole source contract pricing.**

### Partially Implemented

#### Comments

##### What we found – 2018

This recommendation was based on the fact that we found there were no written justifications of price reasonableness for HTA sole source contracts. Specifically, we found in 2018 there was no evidence that market research was performed prior to 23 sole source awards.

##### What we found – 2021

HTA said it has since put a process in place that requires information to justify sole source contract pricing. According to HTA, the process is documented in Procurement Planning Worksheets.

HTA provided us a list of sole source contracts awarded in FY2021 with accompanying documentation. Although we did not analyze whether sole source procurement was justified in each case, we noted an instance that raised questions as to whether HTA is now adequately justifying the price paid under sole source awards. According to the Contract Procurement Planning Worksheet for a \$112,174 sole source contract to Pencilhead Productions to provide meeting facilitation services for destination management action plans, the contract price was “within reason” based on the opinion of an HTA board member who was a principal in a planning firm and was involved in the negotiations.

Despite that lack of price justification, the use of sole source procurement was approved by HTA’s contract officer.

#### Implementation status

Although HTA claims to have improved its sole source contracting practices and has put in place policies designed to address the issue, the Authority has not demonstrated that the additional or revised policies put in place ensure written justifications of price reasonableness for HTA sole source contracts. Therefore, we deem this recommendation to be partially implemented.

## Recommendation 11

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**With respect to sole source procurements, develop a publicly accessible list of sole source procurement contracts.**

**Implemented**

### Comments

#### **What we found – 2018**

HTA's procurement process required that a record of sole source procurements for each fiscal year be maintained and available for public inspection. However, in Report No. 18-04, we found there was no list of sole source procurements available for public inspection.

#### **What we found – 2021**

In response to this recommendation, HTA said it now posts a listing of sole source contract awards that is publicly available on its website.

#### **Implementation status**

Our review of the HTA website showed that there were sole source procurement awards listed for FY2021, and therefore, we deem this recommendation to be implemented.

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## Recommendation 12

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**With respect to cost reimbursement contracts, enforce existing contract provisions requiring AEG, and any other contractors who are reimbursed by HTA for costs they incur, to submit receipts and other supporting documentation for each cost invoiced to HTA for reimbursement or other payment.**

**Not Implemented - Disagree**

### Comments

#### What we found – 2018

During the period of our review for the 2018 audit (2013 through 2016), HTA had two contracts each valued at more than \$15 million. The first was a contract for more than \$83 million with AEG Management HCC, LLC (AEG) to manage, operate, and market the Hawai‘i Convention Center. The second was a contract for more than \$98 million with the Hawai‘i Visitors and Convention Bureau (HVCB) to market Hawai‘i in the continental United States and Canada. We found that HTA did not provide adequate oversight of either contractor.

Under its contract, AEG was entitled to reimbursement for the actual costs AEG incurred for items in HTA-approved operating and marketing budgets. The contract specifically required AEG to submit invoices to HTA “together with receipts and other supporting documentation” and made reimbursement of those incurred costs contingent upon AEG providing the “proper supporting documentation for all invoices.” In 2018, we found HTA ignored provisions in the AEG contract that were intended to provide assurance that HTA paid for only those costs that were allowed, necessary, and reasonable. A review of a sample of monthly requests for payment that AEG submitted to HTA found those documents were financial statement reconciliations with adjustments for costs paid through the Repair and Maintenance Fund, not “receipts and other supporting documentation” required by the contract.

A review of HTA’s transition contract with AEG further illustrated HTA’s misunderstanding of its responsibility to prudently spend public funds. That contract was for a period of about five months, immediately preceding the start of AEG’s contract to operate the Hawai‘i Convention Center. Although the transition contract required AEG to submit receipts and other supporting documentation, AEG submitted none. Nevertheless, HTA reimbursed AEG for all invoiced expenses, including airfare to and from Los Angeles, Dallas, and Australia (at a cost of more than \$8,000); lodging at the Royal Hawaiian Hotel, JW Marriott Ko Olina Resort, and Hyatt Regency Hotel; and meals at Morimoto’s, Alan Wong’s, and The Beachhouse at the Moana.

### **What we found – 2021**

In addressing this recommendation, HTA said cost reimbursement contracts, including the AEG contract that we reviewed in 2018, are now subject to an internal review process in which invoices submitted to HTA for reimbursement are sampled and reviewed against receipts and other supporting documents. Receipts and supporting documentation are reviewed and approved before reimbursements and payments to the contractor are processed.

HTA's Contract Management Policy states that procedures shall be designed and maintained for efficient, effective, and productive contract management and administration to ensure the ongoing fulfillment of the terms and conditions of the contract. In conjunction with this policy is HTA's Payment of Cost Reimbursable Contracts Procedure, which calls for the Program Manager of a cost reimbursement contract to validate costs against receipts for 25 receipts. If a contractor seeks reimbursement for an invoice with less than 25 receipts, the Program Manager is to select all (24 or less) items for which costs are validated against receipts. To evaluate whether this recommendation had been implemented, we requested evidence that HTA reviewed AEG's receipts and supporting documentation before reimbursing the contractor. HTA provided sample contract checklists indicating that it had conducted internal audits of AEG invoices from January 2020 through June 2021.

### **Implementation status**

Although HTA's Contract Management Policy attempts to ensure ongoing compliance with terms and conditions of its contracts, its Payment of Cost Reimbursable Contracts Procedure allows, in certain instances, for a review of a "sample" of costs against receipts and therefore does not require a contractor to submit receipts and other documentation when seeking reimbursement. We continue to recommend that HTA implement a process under which contractors are required to substantiate *all* costs for which they seek reimbursement. As HTA has not done so, we consider this recommendation to be not implemented.

HTA believes the procedures put into place, which require review of receipts for a sampling of costs, is sufficient. HTA maintains that several layers of controls are in place, including approval and monitoring of the contractor's budget, the contractor's presentation of monthly financial statements to the HTA Board, reconciliation of AEG invoices to their monthly financial statement prior to reimbursement, and the financial statement audit required of the contractor. HTA asserts that, given these procedures, inspecting receipts of every cost incurred is not reasonable.

As HTA does not intend to implement this recommendation, we deem it to be Not Implemented – Disagree.



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## Recommendation 13

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**With respect to cost reimbursement contracts, develop and implement procedures to review and evaluate receipts and supporting documentation submitted for each cost that AEG, and any other contractors who are reimbursed by HTA for costs they incur, invoices HTA for reimbursement or other payment.**

**Not Implemented - Disagree**

### Comments

#### What we found – 2018

Report No. 18-04 found that actual oversight of cost reimbursement contracts was minimal. At the time, HTA and AEG reported to us that HTA approves AEG's annual budgets and reviews financial statements. And while HTA may question or seek clarification of certain items, AEG had never been asked to provide check registers, invoices, or other documentation to support more detailed reviews. Without periodic, detailed reviews, HTA has minimal assurance that the costs for which AEG requests reimbursement are reasonable and solely for Hawai'i Convention Center operations, sales and marketing, and repair and maintenance, as set forth in the contract.

#### What we found – 2021

In addressing this recommendation, HTA said its VP of Finance developed and implemented procedures that require the auditing of reimbursement requests from AEG and other contractors prior to processing requests for reimbursement/payment. We determined that HTA's Payment of Cost Reimbursable Contracts Procedure calls for the Program Manager of a cost-reimbursement contract to validate costs for up to 25 receipts for which a contractor seeks reimbursement. If a contractor's invoice has less than 25 receipts comprising the reimbursement request, the Program Manager is to reconcile all costs with receipts. HTA said this requirement was discussed at its January 20, 2020 training where staff were trained on procurement integrity. However there were no presentation materials, or other indicia, specific to this requirement. HTA provided sample contract checklists that indicated it had conducted internal audits of AEG invoices.

#### Implementation status

We note the procedure cited by HTA as responsive to this recommendation does not require the evaluation of receipts and supporting documentation submitted for *each* cost that AEG and any other contractors who are reimbursed by HTA may submit. Although HTA's Payment of Cost Reimbursable Contracts Procedure appears

to require collection of all documentation required to substantiate expenditures prior to payment, the procedure cited by HTA as responsive to this recommendation allows in certain instances for a review of a “sample” of costs against receipts and therefore does not require a contractor submit receipts and other documentation when seeking reimbursement. As HTA has not implemented a process under which contractors are required to substantiate all costs for which they seek reimbursement, we would have considered this recommendation to be partially implemented.

HTA believes the procedures put into place, which require review of receipts for a sampling of costs, is sufficient. HTA added that it is not reasonable to inspect all receipts for every cost incurred, and maintains that several layers of controls are in place, including approval and monitoring of the contractor’s budget, the contractor’s presentation of monthly financial statements to the HTA Board, reconciliation of AEG invoices to their monthly financial statement prior to reimbursement, and the financial statement audit required of the contractor.

As HTA does not intend to implement this recommendation, we deem it to be Not Implemented – Disagree.

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## Recommendation 14

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**With respect to major contractors (AEG and HVCB), develop and implement procedures to include additional monitoring and more frequent evaluation of contractors' performance.**

**Partially Implemented**

### Comments

#### What we found – 2018

This finding was based on the fact that we found that HTA did not have an effective and defined process to adequately manage its contractors and monitor their performance. Among other things, we found in 2018 that HTA had not ensured that HVCB was complying with all contract provisions. HTA had not enforced certain provisions of either the AEG and HVCB contracts and, further, did not appear to be familiar with, or in some cases even aware of, some of those key provisions. As a result, HTA was unable to hold the contractors accountable for their performance and to gain adequate assurance that public money was being spent reasonably, effectively, and appropriately.

#### What we found – 2021

In response to this recommendation, HTA updated its procedures to ensure monitoring and evaluations of contractor performance. Its Contract Monitoring Procedure requires, among other things, contract interim evaluation reports.

During our review of the status of this recommendation, HTA said it worked with AEG to develop improved reports and is regularly meeting with AEG leadership on a monthly basis. Additionally, major market area contractors, which include HVCB, are evaluated semi-annually and any supplemental contract requires an evaluation prior to execution. Among other things, we requested copies of the three most recent semi-annual evaluations of HVCB and AEG, along with dates and minutes for the three most recent monthly meetings held with each contractor. HTA provided us with a mid-year evaluation of HVCB, but said formal minutes of meetings with AEG are not kept.

#### Implementation status

HTA provided us with HVCB's 2020 mid-year evaluation, but provided no meeting minutes documenting its "numerous" meetings with AEG each month. Therefore, we deem this recommendation to be partially implemented.

## Recommendation 15

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**With respect to major contractors (AEG and HVCB), require compliance with all material contract terms, including but not limited to HTA's prior written approval of all subcontracts.**

**Not Implemented**

### Comments

#### What we found – 2018

In 2018, we found that AEG had not submitted any of its 45 subcontracts to HTA for approval as required by HTA's contract with AEG. HTA's decision to allow AEG to subcontract certain of its contractual duties and responsibilities without prior approval highlighted HTA's inadequate administration of a major contract and, more generally, showed the need for clearer and more defined procedures. We found other instances where HTA had not ensured that HVCB was complying with all contract provisions. For example, HTA's contract with HVCB required that all HVCB subcontracts be pre-approved by HTA. Regardless, we found that 21 out of 29 HVCB subcontracts submitted to HTA for approval in 2015 and 2016 were signed/approved by HTA *after* the contracts' effective dates, in some cases more than six months later.

#### What we found – 2021

HTA said it now requires subcontractor pre-approval language in its contracts and has made this a requirement for all contracts. However, we found no policies, procedures or training included such a requirement. HTA referred us to its Accounts Payable Documentation Procedure, which we reviewed and concluded does not explicitly state that there must be HTA written approval of all subcontractors. In addition, neither HTA's Accounts Payable and Cash Disbursements Policy or the Contract Management Policy, which HTA also cited, explicitly state that there must be HTA written approval of all subcontractors. Further, HTA could not substantiate that such a requirement was discussed during staff training.

We raised these issues to HTA and were advised that the requirement for subcontractors to be approved by HTA is included in the State's General Conditions issued by the Department of the Attorney General and attached to and made part of HTA contracts, rather than in policies and procedures. We note that there was a contractual requirement that all subcontracts be pre-approved in 2018, and yet that requirement was not enforced by HTA.

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### **Implementation status**

Although HTA has adopted policies and procedures to strengthen contract administration, it appears the Authority has yet to develop a system to actively manage contracts to ensure contractors comply with contract terms. However, HTA does include this requirement as part of the State's General Conditions attached to and made part of HTA contracts. Although HTA also said it plans to add the requirement for subcontractors to be approved by HTA to its procedures, the Authority cannot assure compliance with this recommendation. Therefore, we deem this recommendation to be not implemented.

## Recommendation 16

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With respect to major contractors (AEG and HVCB), require requests for written approval to subcontract to include, at a minimum: (1) an explanation of the need for the goods or services to be subcontracted; (2) a statement regarding subcontractor's qualifications to provide the goods or services; (3) a summary of process used to procure the goods or services, including the material terms of bids or other responses to provide the goods or services; and (4) the reason(s) for the selection of the subcontractor, including information used to determine the reasonableness of the subcontract amounts.

### Partially Implemented

#### Comments

##### What we found – 2018

This recommendation was based on several audit findings in addition to the above-identified issues including that HTA had not ensured that HVCB was complying with all contract provisions including a requirement that all HVCB subcontracts be pre-approved by HTA.

##### What we found – 2021

In responding to the recommendation, HTA said it developed a subcontractor approval form that is being utilized by its contractors, which requires an explanation of the need for goods or services, a statement regarding the qualifications of the subcontractor, a summary of the procurement process utilized, and the reason for selecting the subcontractor.

Our review of the status of this recommendation included requesting copies of the cited subcontractor approval form as it relates to the three most recently approved AEG and HVCB subcontractors. HTA provided samples of completed Subcontractor Approval Forms that included (1) an explanation of the need for the goods or services to be subcontracted; (2) a statement regarding the subcontractor's qualifications to provide the goods or services; (3) a summary of the process used to procure the goods or services, including the material terms of bids or other responses to provide the goods or services; and (4) the reason(s) for the selection of the subcontractor, including information used to determine the reasonableness of the subcontract amount.

HTA provided its Accounts Payable Documentation Procedure, effective December 31, 2019, but the procedure does not explicitly state that there must be HTA written approval of all subcontractors.

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Neither did HTA's Accounts Payable and Cash Disbursements Policy or the Contract Management Policy explicitly state that there must be HTA written approval of all subcontractors. Further, HTA could not substantiate that such a requirement was discussed during staff training.

**Implementation status**

Although HTA has changed its subcontractor approval form to include the elements contained in this recommendation, it appears the Authority has yet to expressly require obtaining written approval in its policies and procedures. However, HTA also said it plans to add the requirement for subcontractors to be approved by HTA to its procedures. Therefore, we deem this recommendation to be partially implemented.



## Recommendation 17

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With respect to major contractors (AEG and HVCB), for current subcontracts without HTA's prior written approval, require justification for the subcontracts, including but not limited to the information required for approval to subcontract. For current subcontracts deemed unnecessary, unreasonable, or otherwise contrary to the State's best interest, consider requiring the goods or services to be re-procured.

**Not Implemented**

### Comments

#### What we found – 2018

We found in 2018 that AEG had not submitted any of its 45 subcontracts to HTA for approval.

#### What we found – 2021

In responding to the recommendation, HTA cited the adoption of the previously-mentioned subcontractor approval form as a requirement for existing subcontracts related to the AEG and major marketing area contracts. HTA further stated that the President and CEO determined that it was not in the best interest of the State to re-bid/re-procure the goods/services provided by the subcontractors identified in the audit.

#### Implementation status

As HTA did not provide any other justification for the continued use of these subcontractors, we deem this recommendation to be not implemented.

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## Recommendation 18

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**With respect to major contractors (AEG and HVCB), determine whether “agreements” and “arrangements” for goods or services relating AEG’s performance of the contract, including with AEG affiliates or related organizations, are subcontracts, requiring prior written consent.**

**Implemented**

### Comments

#### **What we found – 2018**

This recommendation was based on the fact that HTA management and the board chairman told us they were unaware of the statutory requirement that the Convention Center’s concession services be competitively procured. We further found that AEG entered into a non-bid concession “agreement” with Levy Premium Foodservice Limited Partnership (Levy) to provide food and beverage, restaurant, and concession services at the Convention Center. At the time, Levy was owned by the same conglomerate that owns AEG. HTA management and the board chairman were unaware of the relationship between AEG and Levy.

#### **What we found – 2021**

In response to this recommendation, HTA said it received written confirmation of AEG’s relationship with Levy on June 26, 2018. At that point, HTA said it consulted with the Department of the Attorney General regarding any requirements to competitively procure the services provided by Levy and apprised the HCC Planning Investigative Committee, one of the HTA board’s committees, on September 19, 2018.

#### **Implementation status**

According to HTA, based on the Attorney General consult, it was determined that “no further action was warranted;” based on HTA’s representation, we deem this recommendation to be implemented.

## Recommendation 19

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**With respect to major contractors (AEG and HVCB), consult with the Department of the Attorney General regarding the concession services agreement between AEG and Levy, specifically about action required to remedy AEG's failure to competitively procure the concession services as required by law.**

**Implemented**

### Comments

#### **What we found – 2018**

This recommendation was based on AEG's non-bid concession "agreement" with Levy to provide food and beverage, restaurant, and concession services at the Convention Center. At the time, Levy was owned by the same conglomerate that owns AEG.

#### **What we found – 2021**

In its response, HTA cited the consultation with the Department of the Attorney General, described above, regarding any requirement to competitively procure the services provided by Levy. HTA subsequently determined that no further action was warranted.

#### **Implementation status**

Based on HTA's representation that the Attorney General was consulted, we deem this recommendation to be implemented.

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## Recommendation 20

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**With respect to the limit on administrative expenses, seek clarification from the Legislature regarding the term “administrative expenses,” as used in section 201B-11(c)(1), HRS, to define the term, including the specific types of expenses that are included within that term.**

**Not Implemented - N/A**

### Comments

#### What we found – 2018

In 2018, the amount of the Tourism Special Fund, which was HTA’s sole source of funding for HTA’s administrative expenses, was capped by statute, varying from 3 percent in 2002 to as much as 5 percent in 2015. On June 30, 2015, the cap on administrative expenses reverted to 3.5 percent. However, we found HTA was unprepared for that decrease in the funding for its administrative expenses; instead of reducing those expenses, HTA shifted expenses that it had classified as administrative, including salaries, to program expenses and under the “governance” line in its budget. From FY2015 through FY2017, HTA moved more than 75 percent of its “Salaries & Fringe” costs that were previously characterized as administrative expenses, totaling more than \$2 million, to governance.

#### Implementation status

HTA said the Tourism Special Fund was repealed by the Legislature in 2021, and therefore this recommendation is no longer relevant. For that reason, we deem this recommendation to be Not Implemented – No Longer Applicable.

## **Recommendation 21**

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With respect to the limit on administrative expenses, until the Legislature provides clarification of the term, request a formal legal opinion from the Attorney General as to the meaning of the term “administrative expenses,” as used in section 201B-11(c)(1), HRS, that HTA can apply in developing its budget and to monitor its use of the Tourism Special Fund.

**Not Implemented - N/A**

### **Comments**

#### **Implementation status**

Similar to its response to the prior recommendation, HTA said that this recommendation was no longer relevant as the Tourism Special Fund was no longer in existence, repealed pursuant to Act 1, 2021 Legislative Special Session. Therefore, we deem this recommendation to be Not Implemented – No Longer Applicable.

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## APPENDIX A

Report No. 18-04 recommendations to the Legislature.

The Legislature should:

1. Consider additional legislative oversight of HTA to increase transparency of the Authority's spending and ensure more accountability.
2. Consider reevaluating HTA's blanket exemption from the State Procurement Code, Chapter 103D, HRS, and other requirements for competitive bidding as set forth in Section 201B-12(b), HRS, and assess whether the exemption should be narrowed or revoked.
3. Consider defining the term "administrative expenses," as used in section 201B-11(c)(1), HRS, to clarify the specific types of expenses and costs that are included within that term and, therefore, subject to the limit on the use of the Tourism Special Fund.