

RELEASE DATE: DECEMBER 30, 2022

**STATE OF HAWAII
DEPARTMENT OF HEALTH
CHILD AND ADOLESCENT MENTAL HEALTH DIVISION**

REQUEST FOR PROPOSALS NO. 460-23-05

SEALED OFFERS
FOR
HAWAII INTERAGENCY STATE
YOUTH NETWORK OF CARE FACILITATOR

DUE DATE IS ON JANUARY 31, 2023 4:00 PM HAWAII STANDARD TIME ("HST"). DIRECT INQUIRIES RELATING TO THIS SOLICITATION TO THE PROCUREMENT OFFICER STEVEN OSA VIA EMAIL AT STEVEN.OSA@DOH.HAWAII.GOV, TELEPHONE (808) 733-8386.

Steven Osa

STEVEN OSA
Procurement Officer

PROPOSAL MAIL-IN AND DELIVERY INFORMATION SHEET

NUMBER OF COPIES TO BE SUBMITTED: One (1) Portable Document Format (“PDF”) Copy on a Flash Drive.

All mail-ins shall be postmarked by United States Postal Service (“USPS”) no later than January 31, 2023 and received by the State Purchasing Agency no later than ten (10) days from the submittal deadline. All mail-ins must be approved in advance by the Procurement Officer **via email** at steven.osa@doh.hawaii.gov. The failure to obtain the Procurement Officer’s approval in advance to mail-in the RFP will result in the automatic rejection of said RFP.

All Mail-ins

*Child and Adolescent Mental Health Division
Contracts Management
3627 Kilauea Avenue, Room 101
Honolulu, HI 96816*

Procurement Officer

*Steven Osa
Child and Adolescent Mental Health
Division Contracts Management
3627 Kilauea Avenue, Room 101
Honolulu, HI 96816
Telephone 808.733.8386
Fax 808.733.8375
Email: steven.osa@doh.hawaii.gov*

The Offeror must contact the Procurement Officer **via email** at steven.osa@doh.hawaii.gov to confirm in advance a hand delivery date and time. All hand deliveries shall be accepted at the following site until 4:00 p.m., HST, January 31, 2023. Deliveries by private mail services such as FedEx shall be considered hand deliveries. Hand deliveries shall not be accepted if received after 4:00 p.m., HST, January 31, 2023.

Drop-off Site

*Child and Adolescent Mental Health Division
Contracts Management
Diamond Head Health Center
3627 Kilauea Avenue, Room 405
Honolulu, HI 96816*

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- Attachment 1: Letter of Intent to Submit a Proposal
- Attachment 2: Offer Form, OF-1
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- Exhibit A: Overview of the RFP Process
- Exhibit B: General Provisions for Goods and Services
- Exhibit C: General Conditions
- Exhibit D: Guidelines for Organization-Wide Audits
- Exhibit E: Certification Regarding Environmental Tobacco Smoke
- Exhibit F: OMB Certifications
- Exhibit G: Business Associate Agreement and Qualified Service Organization (“QSO”) Agreement
- Exhibit H: IRS Form W-9

SECTION ONE
INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION.

The State Hawaii (“State”) is requesting proposals to contract with an Independent Facilitator to provide support for the Hawaii Interagency State Youth Network of Care (“HISYNC”) Committee, as well as, Hawaii Interagency Local Youth Network of Care (“HILYNC”) Committees who has experience working with or on behalf of youth with complex needs within the State’s child-serving system.

Any award will result in a contract for these services for use by the State’s Department of Health (“DOH”), Department of Education (“DOE”), Department of Human Services (“DHS”), and Family Court, First Circuit (“Family Court”), among others in the State’s child-serving system.

1.2 CANCELLATION.

The Request for Proposals (“RFP”) may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State.

1.3 RFP SCHEDULE AND SIGNIFICANT DATES.

The schedule represents the State’s best estimate of the schedule that will be followed. All times indicated are HST. If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Release of Request for Proposals	12/30/2022
Pre-Proposal Conference	1/13/2023 @1:00 P.M. HST
Due date to Submit Questions	1/18/2023 @ 4:00 P.M. HST
State’s Response to Questions	1/20/2023
Deadline for Letters of Intent to Submit Proposals	1/20/2023
Proposals Due date/time	1/31/2023 @ 4:00 P.M. HST
Proposal Evaluations	1/31/2023-2/13/2023
Discussion with Priority Listed Offerors (if necessary)	1/31/2023-2/13/2023
Best and Final Offer (if necessary)	2/03/2023
Contractor Selection and Notice of Award	2/13/2023
Contract Start Date	3/01/2023

1.4 PRE-PROPOSAL CONFERENCE.

The purpose of the Pre-Proposal Conference is to provide Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. The Pre-Proposal Conference is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

Offerors are advised that anything discussed at the Pre-Proposal Conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

The Pre-Proposal Conference will be held online via Zoom as follows:
Kim Allen (she, they) is inviting you to a scheduled Zoom meeting.

Topic: HI-SYNC RFP
Time: Jan 13, 2023 01:00 PM Hawaii

Join Zoom Meeting
<https://hawaii-gov.zoom.us/j/95130051116?pwd=NXZzNDVRZnZXTHd2RHpKLy8wSIFBZz09>

Meeting: 951 3005 1116
Passcode: 905581
One tap mobile
+16699006833,,95130051116#,,,,,0#,,905581# US (San Jose)
+17193594580,,95130051116#,,,,,0#,,905581# US

Dial by your location
+1 669 900 6833 US (San Jose)
+1 719 359 4580 US
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 689 278 1000 US
+1 301 715 8592 US (Washington DC)
+1 305 224 1968 US
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 360 209 5623 US
+1 386 347 5053 US
+1 507 473 4847 US
+1 564 217 2000 US
+1 646 558 8656 US (New York)
+1 646 931 3860 US

Meeting: 951 3005 1116
Passcode: 905581
Find your local number: <https://hawaii-gov.zoom.us/u/acwoUSOCvc>

Join by SIP
95130051116@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
Meeting: 951 3005 1116
Passcode: 905581

1.5 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS.

The deadline for submission of written questions is 4:00 p.m., HST, on January 18, 2023. All written questions will receive a written response from the State on or about January 20, 2023 in an Addendum. Questions should be forwarded to Kimberly Allen via email at kimberly.allen@doh.hawaii.gov, 3627 Kilauea Avenue, Rm 101, Honolulu, Hawaii 96816, telephone: (808) 733-9382.

1.6 RFP INQUIRIES.

Inquiries regarding this RFP should be directed to the Procurement Officer, Steven Osa, Contracts Specialist, via email at steven.osa@doh.hawaii.gov, 3627 Kilauea Avenue, Rm 101, Honolulu, Hawaii 96816, telephone: (808) 733-8386.

1.7 NON-BINDING LETTER OF INTENT TO SUBMIT A PROPOSAL.

Offerors must complete and submit a non-binding Letter of Intent to Submit a Proposal (See Section Seven, Attachment 1). If Offeror plans to submit this non-binding Letter of Intent, it must be received by the Procurement Officer (See Section 1.6) by the Deadline for Letters of Intent to Submit a Proposal listed in the Procurement Timetable (See Section 1.3).

Offerors who have submitted a non-binding Letter of Intent will be registered with the State and will receive official State responses to all of the Offerors' questions through RFP Addenda and any other relevant communication.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND HISTORY.

The State is requesting proposals to contract with an Independent Facilitator to provide support for the HISYNC Committee, as well as, HILYNC committees who has experience working with or on behalf of youth with complex needs within the State's child-serving system.

2.2 SCOPE OF WORK.

All services shall be in accordance with this RFP, including its attachments and any addenda.

Duties/Responsibilities shall Include:

- A. Responds to referrals from child-serving agencies, including, but not limited to, the following:
 - 1. DOH.
 - a. Child and Adolescent Mental Health Division.
 - b. Developmental Disabilities Division.
 - c. Alcohol Drug Abuse Division.
 - d. Family Health Services Division.
 - 2. DOE.
 - a. Community Children's Council Office.
 - b. Office of Curriculum Instruction and Student Support.
 - c. School-Based Behavioral Health.
 - d. Special Education.
 - 3. DHS.
 - a. Child Welfare Services Branch.
 - b. Office of Youth Services.
 - 4. Family Court.
- B. Conduct needs assessments with HILYNC committees and communicating needs to statewide HISYNC committee.
- C. Provide support for statewide HISYNC committee as well as HILYNC committees, and serving as the liaison and communication link between local and statewide committees.
- D. Coordinate HISYNC committee meetings to problem-solve around treatment planning and/or placement options for complex, high-need, multi-agency youth.
- E. Develop the meeting agenda and take the minutes for the monthly HISYNC committee meeting.
- F. Organize and assemble records for HISYNC committee meetings.
- G. Gather and edit data for the Hawaii Youth Interagency Performance Report ("HYIPR") from agencies that serve on HISYNC committee and publish data annually.

- H. Serve as a legislative liaison and assist in the development of policies regarding multi-agency, cross-system issues.
- I. Identify local and national resources for technical assistance on issues related to cross-system collaboration, youth with complex needs, and multi-agency cooperation, as needed.
- J. The Contractor shall take one to two (1-2) trips per year to the Island of Hawaii, Kauai, and Maui to work with HILYNC committees. Island travel expenses must be included as an integral part of the Contractor's annual budget plan.

2.3 DOH RESPONSIBILITIES.

- A. The CAMHD is the administrator of this contract but support is provided by several of the HISYNC members, so the Contractor is responsible to all of the HISYNC membership.
- B. Formal evaluation/performance review shall be with the Administrator of CAMHD or their designee but they shall consult with all of the HISYNC members.

2.4 TERM OF CONTRACT.

The contract shall be for a period of twelve (12) months and is intended to begin approximately on March 1, 2023 and end on February 29, 2024.

Unless terminated, the Contractor and the State may extend the term of the contract for five (5) additional twelve (12) month periods hereof without the necessity of re-soliciting, upon mutual agreement in writing prior to the expiration of the contract. This contract may be extended provided that the contract price shall remain the same or is adjusted per the Contract Price Adjustment provision stated herein.

When interests of the State or the Contractor so require, the State or the Contractor may terminate the contract for convenience by providing six (6) weeks prior written notice to the other party.

2.5 CONTRACT PRICE ADJUSTMENT.

The contract price may be adjusted prior to the beginning of the extension period and shall be subject to allotment and the availability of State or Federal funds.

Any agency that elects or declines to submit a proposal understands that the State reserves the right to increase funding for this contract as it deems fit when additional funding becomes available without having to re-procure services.

2.6 CONTRACT ADMINISTRATOR.

For the purposes of this contract, Janet Ledoux, Administrative Officer, (808) 733-4198, email janet.ledoux@doh.hawaii.gov or authorized representative, is designated the Contract Administrator.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER.

The State will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

3.2 REQUIRED REVIEW.

- A. Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, the Overview of the RFP Process a copy of which is attached hereto and made a part hereof in Section Seven, Exhibit "A," any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.
- B. Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the State in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which award could not be made.

3.3 PROPOSAL PREPARATION COSTS.

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs.

3.4 TAX LIABILITY.

- A. Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii General Excise Tax ("GET") for sales. If, however, an Offeror is a person exempt by the Hawaii Revised Statutes ("HRS") from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.
- B. Offeror shall submit its current Federal Identification ("I.D.") Number and Hawaii GET License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

3.5 PROPERTY OF STATE.

All proposals become the property of the State.

3.6 CONFIDENTIAL INFORMATION.

- A. If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provided with justification to support the Offeror's confidentiality claim. Price is not considered confidential and shall not be withheld.
- B. An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

3.7 EXCEPTIONS.

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in this section of the Offeror's proposal. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

No exceptions to statutory requirements of the General Provisions for Goods and Services and the General Conditions shall be considered, a copy of each is attached hereto and made a part hereof in Section Seven, Exhibits "B" and "C," respectively.

3.8 PROPOSAL OBJECTIVES.

- A. One (1) of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.
- B. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis shall be on completeness and clarity and content.
- C. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.
- D. The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.2 SCOPE OF WORK.
- E. Offeror shall submit a proposal that includes an overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

3.9 PROPOSAL FORMS.

- A. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions providing in the RFP or in any subsequent addendum may be rejected without further consideration.
- B. Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (Section Seven, Attachment 2). Failure to do so may delay proper execution of the Contract. The Offeror's authorized signature on the Offer Form, OF-1 shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.
- C. Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (Section Seven, Attachment 3). The price shall be the all-inclusive cost, including the GET, to the State. No other costs shall be honored. The Budget shall not exceed ONE HUNDRED FORTY-SEVEN THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS (\$147,500.00) annually based on proposed Budget.
- D. The Offeror shall submit one (1) PDF copy of the proposal on a Flash Drive.

3.10 PROPOSAL CONTENTS.

Proposals must:

- A. Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
- B. Include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal.
- C. If subcontractor(s) will be used, append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
 - 1. The general scope of work to be performed by the subcontractor;
 - 2. The subcontractor's willingness to perform for the indicated.
- D. Provide all of the information requested in this RFP in the order specified. Failure to provide said information shall negatively impact an Applicant's score.
- E. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually, and pages must be numbered.

1. Letter of Intent to Submit a Proposal (See Section Seven, Attachment 1).
2. Transmittal Confirmation Letter (See Section 3.10.A. above).
3. Offer Form OF-1 (See Section Seven, Attachment 2).
4. Offer Form OF-2 (See Section Seven, Attachment 3).
5. Subcontractor Transmittal Letters and Statements (See Section 3.10.C. above).
6. Experience and Capabilities Requirements.
 - a. Master's degree in social service-related field or public policy/administration.
 - b. Experience working within State system, and specifically within the State's child-serving system.
 - c. Familiarity with the State's child-serving agencies, their branches and their policies, including DOE, DOH, DHS, and Family Court.
 - d. The number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
 - e. A list of key personnel and associated resumes for those who will be dedicated to this project.
 - f. A list of at least three (3) references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide names, titles, organizations, telephone numbers, email, and postal addresses.
 - g. A summary listing of judgments or pending lawsuits or actions against; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state.
 - h. A list of sample projects and/or examples of written plans.
7. Proposal including Scope of Work and an overall strategy, timeline, and plan.
8. Pricing.

The pricing structure shall be fixed budget that shall not exceed ONE HUNDRED FORTY-SEVEN THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS (\$147,500.00) annually based on proposed budget.

3.11 PROPOSAL SUBMITTAL.

All mail-ins shall be postmarked by the USPS and received by the State Purchasing Agency no later than the submittal deadline indicated on the attached Proposal Mail-in and Delivery Information Sheet, or as amended. **All mail-ins must be approved in advance by the PROCUREMENT OFFICER.** All hand deliveries shall be received by the State Purchasing Agency by the date and time designated on the Proposal Mail-In and Delivery Information Sheet, or as amended. The Offeror must contact the

Procurement Officer via email at steven.osa@doh.hawaii.gov to confirm in advance a hand delivery date and time. Proposals shall be rejected when:

- A. Postmarked after the designated date; or
- B. Postmarked by the designated date but not received within ten (10) days from the submittal deadline; or
- C. Failure to obtain advanced approval by the Procurement Officer to mail-in the RFP, or
- D. If hand delivered, received after the designated date and time.

One (1) PDF copy is to be submitted to the State Purchasing Agency on a Flash Drive. Deliveries by private mail services such as FedEx shall be considered hand deliveries and shall be rejected if received after the submittal deadline. Dated USPS shipping labels are not considered postmarks. The Offeror bears responsibility for submission. The Offerors who submit proposals or amendments on electronic media bear the whole and exclusive responsibility for assuring the complete, correctly formatted, and timely submission of their proposals and amendments to the State Purchasing Agency. By submitting documents on electronic media, Offerors assume all risk that a State Purchasing Agency's equipment system may be unable to read the Offeror's electronic media.

3.12 RECEIPT AND REGISTER OF PROPOSALS.

Proposals shall be received, and receipt verified by two (2) or more State Officials on or after the date and time specified in Section One, or as amended.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS.

3.13 BEST AND FINAL OFFER (BAFO)(Optional)

If the State determines a BAFO is necessary, it shall request one (1) from the qualified Offeror(s). The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

3.14 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS.

- A. The Offeror may modify or withdraw a proposal before the proposal due date and time.
- B. Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

3.15 MISTAKES IN PROPOSALS.

- A. Mistakes shall not be corrected after award of contract.
- B. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected

or withdrawn pursuant to this section.

- C. Once discussions are commenced or after BAFOs are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of BAFOs.
- D. If discussions are not held, or if the BAFOs upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- E. If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if BAFOs upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

SECTION FOUR

EVALUATION CRITERIA

4.1. INTRODUCTION.

The evaluation of proposals received in response to the RFP will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation. The Evaluation Committee will evaluate each proposal in accordance with the criteria and the associated points set forth below. The evaluation criteria and corresponding points are listed below. The Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in this RFP.

4.2 EVALUATION PROCESS.

The evaluation will be conducted in three (3) phases. The phases are listed below:

- A. Phase I: Pre-Screening.
- B. Phase II: Proposal Review.
- C. Phase III: Reference Checks and Selection.

4.3. EVALUATION CRITERIA.

Evaluation criteria and the associated points are listed below.

A. Phase I: Pre-Screening.

1. Pre-screening of proposals will be conducted. Offeror must submit all required items and meet all qualifications listed.
2. Any proposal that does not include all of the required items or any Offeror that does not meet all of the qualifications will be deemed “unacceptable” and eliminated from further consideration.
3. In addition, a review of the Offeror’s Exceptions will be conducted as part of the pre-screening.

B. Phase II: Proposal Review.

Offerors’ proposals that meet the Phase I criteria are deemed “acceptable” or “potentially acceptable” and will be evaluated comprehensively, fairly, and impartially.

The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in this RFP.

<u>Evaluation Categories</u>	<u>Possible Points</u>
1. Cost of services.	40 points.
2. Previous experience working with one of the HISYNC-member state agencies or an associated provider agency.	15 points.
3. Sample relevant projects and/or examples of written plans, organizational charts, contact trees, etc.	5 points.
4. Knowledge and proficiency with cross-system collaboration, partnership building, data collection and analysis and/or policy development.	20 points.
5. Project Proposal.	<u>20 points.</u>
a. Scope of Work.	
b. Timeline.	
c. Expected Results.	
d. Possible Shortfalls.	
Total Possible Points	100 points.

C. Phase III: Reference Checks and Selection.

Reference checks for Priority Listed Offerors shall be conducted. The final selection will represent the Offeror that is determined to be the most advantageous to the State based on the evaluation criteria set forth in this RFP.

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSALS.

The Procurement Officer, or an Evaluation Committee of at least three (3) qualified State employees selected by the Head of the State of Purchasing Agency or Procurement Officer, shall evaluate proposals. The evaluation shall be based solely on the evaluation criteria set forth in this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the Evaluation Committee may limit the priority list to the three (3) highest ranked, responsible Offerors.

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS.

The State may invite priority listed Offerors to discuss with their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting BAFOs, if necessary.

5.3 CANCELLATION OF RFP AND PROPOSAL REJECTION.

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR §§3-122-96 through 3-122-97.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

5.4 OFFER ACCEPTANCE PERIOD.

The State's acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of proposals. Price or commission quotes by the Offeror shall remain firm for a sixty (60) day period.

5.5 AWARD OF CONTRACT.

Method of Award. Award shall be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in this RFP.

5.6 RESPONSIBILITY OF OFFERORS.

Offeror is advised that in order to be awarded a contract under this solicitation, Offeror shall be required, to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):

- A. Chapter 237, General Excise Tax Law.
- B. Chapter 383, Hawaii Employment Security Law.
- C. Chapter 386, Worker's Compensation Law.
- D. Chapter 392, Temporary Disability Insurance.
- E. Chapter 393, Prepaid Health Care Act.
- F. HRS §103D-310(c), Certificate of Good Standing ("COGS") for entities doing business in the State.

The State shall verify compliance on Hawaii Compliance Express ("HCE").

Hawaii Compliance Express. The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is current TWELVE AND NO/100 DOLLARS (\$12.00) and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award or within two (2) weeks of the award, an Offeror may not receive the award.

5.7 PROPOSAL AS PART OF THE CONTRACT.

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.8 HISTORY OF PERFORMANCE.

It should be clear to potential Offerors that in reviewing applications in any discretionary procurement process, the State may consider the past performance of the Offeror in carrying out a previous contract including compliance with the conditions of the contract or achieving the objectives of the contracted service. By submitting a proposal, the Offeror certifies that within the past eighteen (18) months there have been no significant legal or disciplinary actions resulting in legal penalties or actions or changes in contracts taken against the proposing agency by a law enforcement or government agency.

5.9 PUBLIC EXAMINATION OF PROPOSALS.

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the State's Office of Information Practices in accordance with HRS §92F-42(12).

5.10 DEBRIEFING.

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HAR §103D-303(h).

5.11 PROTEST PROCEDURES.

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

Steven Osa
Procurement Officer
Child and Adolescent Mental Health Division
3627 Kilauea Avenue, Room 101
Honolulu, Hawaii 96816
Phone: (808) 733-8386
E-mail address: steven.osa@doh.hawaii.gov

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the Procurement Officer's debriefing was completed.

The Notice of Award, if any, resulting from this solicitation shall be posted on the Hawaii Awards & Notices Data System ("HANDS"), which is available on the State Procurement Office ("SPO") website: <https://hands.ehawaii.gov/hands/>.

5.12 APPROVALS.

Any agreement arising out of this offer may be subject to the approval of the State's Department of the Attorney General, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

5.13 CONTRACT EXECUTION.

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract.

The initial term of the contract shall be for a twelve (12) month period starting on the official commencement date of March 1, 2023. The contract may be extended for up to five (5) additional twelve (12) month periods or any portion thereof, if mutually agreed upon in writing prior to contract expiration. The Contractor or State may terminate the extended contract period at any time upon sixty (60) calendar days prior written notice.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

5.14 INSURANCE.

A. Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The insurance shall be obtained from a company authorized by the law to issue such insurance in the State (or meet §431: 8-301, HRS, if utilizing an insurance company not licensed by the State). The Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

1. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal and advertising injury of \$1,000,000 per occurrence; broadcasters' liability insurance of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

2. Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

3. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.
- B. The Contractor shall deposit with the State, on or before the effective date of the Contract, Certificate(s) of Insurance ("COI") necessary to satisfy the State that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the COIs to the State during the entire term of the Contract. Upon request by the State, the Contractor shall furnish a copy of the policy or policies.
- C. The Contractor must immediately provide written notice to the State and contracting department or agency should any of the insurance policies evidenced on its COI form be cancelled, limited in scope, or not renewed up expiration.
- D. The COI shall contain the following clauses:
1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
 2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
- E. If the scheduled expiration date of the insurance policy is earlier than the expiration date of the time of performance under the contract, the Contractor, upon renewal of the policy, shall promptly cause to be provided to the State an updated COI.
- F. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

5.15 REQUIREMENTS FOR PERFORMANCE BONDS.

Not Required.

5.16 GENERAL PROVISIONS FOR GOODS AND SERVICES.

The General Provisions for Goods and Services that shall be imposed contractually are attached hereto in Section Seven, Exhibit "B".

5.17 GENERAL CONDITIONS AND SPECIAL CONDITIONS OF THE CONTRACT.

The General Conditions that will be imposed contractually are attached hereto in Section, Seven, Exhibit "C". Special Conditions may also be imposed contractually by the State, as deemed necessary.

5.18 ADDITIONAL TERMS AND CONDITIONS.

The State reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

5.19 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS.

During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the user agency and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor shall not commence additional work until a signed contract modification has been issued.

5.20 PAYMENT.

The method of pricing shall be reimbursement of actual expenditures. The cost reimbursement pricing structure reflects a purchase arrangement in which the State pays the Contractor for budgeted costs that are actually incurred in delivering the services specified in the contract, up to a stated maximum obligation. The proposal budget shall be prepared in accordance with Chapter 103D, HARS, Cost Principles. Budget line items are subject to review, approval, and acceptance by the State Purchasing Agency.

Payments shall be made in monthly installments upon the monthly submission by the Contractor of invoices for the services provided. Invoices shall be accompanied by expenditure reports, back up documentation as outlined in the SPO Cost Principles and

utilization data for the billing month. Failure to comply with submission of data and/or required reports will result in payment delays until such data and/or reports are submitted.

Contractor shall submit an original invoice and two (2) copies of all receipts to:

Child and Adolescent Mental Health Division
Attn: Fiscal Department
3627 Kilauea Avenue, Room 101
Honolulu, Hawaii 96816

5.21 CONTRACT INVALIDATION.

If any provision of this contract is found to be invalid, such invalidation shall not be construed to invalidate the entire contract.

SECTION SIX

SPECIAL PROVISIONS

6.1 OFFER GUARANTY.

A proposal security deposit is NOT required for this RFP.

6.2 WAGES LAW COMPLIANCE.

If applicable, by submitting a proposal, the Offeror certifies that the Offeror is in compliance with HRS §103-55, wages, hours, and working conditions of employees of contractors performing services. Refer to HRS §103-55, at the Hawaii State Legislature website. Refer to Section 1.2, Website Reference for statutes and DLIR website address.

6.3 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS.

HRS §11-355 prohibits campaign contributions from certain State or county government contractors during the term of the contract if the Contractors are paid with funds appropriated by a legislative body.

6.4 AVAILABILITY OF FUNDS.

The award of a contract and any allowed renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to HRS Chapter 37, and subject to the availability of State and/or Federal funds.

6.5 AUDIT REQUIREMENTS.

- A. Nonprofit organizations that expend \$750,000.00 or more in a year of federal funds from any source shall have a single audit conducted for that year in accordance with the Single Audit Act Amendments of 1996, Public Law 104-156.
- B. If the preceding condition applies, the Contractor shall conduct a financial and compliance audit in accordance with the guidelines identified in Section Seven, Exhibit "D," attached hereto and made a part hereof. Failure to comply may result in the withholding of payments to the Contractor.
- C. Nonprofit organizations that expend less than \$750,000.00 a year in federal funds are exempt from federal audit requirements for that year, however, records shall be available for review or audit by appropriate officials of the federal awarding agency, the State, or General Accounting Office.
- D. If the Contractor is exempt from federal audit requirements in accordance with subparagraph C., above, the cost of any audit conducted on behalf of the Contractor shall not be charged to the federal portion of this Contract.

6.6 CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE.

The Contractor shall comply with the requirement of the Pro-Children Act of 1994 and by signing the "Certification Regarding Environmental Tobacco Smoke," attached hereto and made a part hereof in Section Seven, Exhibit "E" and made a part of this Contract, acknowledges that it is a subgrantee of federal funds to be received under the Federal

Grant.

6.7 FEDERAL NONDISCRIMINATION STATUTES.

The Contractor shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

6.8 TRAFFICKING VICTIMS' PROTECTION ACT OF 2000.

The Contractor shall comply with the requirements of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104), as amended, and 2 C.F.R. PART 175.

6.9 OFFICE OF MANAGEMENT AND BUDGET ("OMB") CERTIFICATIONS.

The Contractor shall comply with the requirements of the "Certifications (OMB Approval No. 0920-0428)" and by signing the "Certifications (OMB Approval No. 0920-0428)" attached hereto and made a part hereof in Section Seven, Exhibit "F" and shall hereby acknowledge that it is a subgrantee of federal funds to be received under the Federal Grant.

6.10 LANGUAGE ACCESS.

The Contractor shall comply, as a covered entity, with the provisions of chapter 321C, HRS, regarding language access and with federal laws regarding language access, including Title VI of the Civil Rights Act of 1964, 42 USC section 2000d et seq., 45 CFR part 80, and section 1557 of the Affordable Care Act (42 USC section 18116) and its implementing regulation (45 CFR part 92). These laws require the PROVIDER to, among other things, ensure that consumers are adequately informed of their rights, and ensure meaningful access to services, programs, and activities by providing clients with oral and written language services, including written translations of vital documents, if, on account of national origin, clients do not speak English as their primary language and have a limited ability to read, write, speak, or understand the English language. If it is necessary to provide oral or written language services to a client's family in order for the client to benefit from the Contractor's services, programs, or activities, the Contractor shall provide those language services to the family.

6.11 BUSINESS ASSOCIATE AGREEMENT AND QUALIFIED SERVICE ORGANIZATION (“QSO”) AGREEMENT.

The Contractor is a “Business Associate” of the State as defined in 45 CFR Section 160.103. Therefore, the parties agree to the Business Associate provisions attached hereto and made a part hereof in Section Seven, Exhibit “G.”

6.12 INTERNAL REVENUE SERVICE FORM W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION.

The Contractor shall complete, execute, and submit to the State Purchasing Agency a Form W-9 Request for Taxpayer Identification Number attached hereto and made a part hereof in Section Seven, Exhibit “H,” IRS Form W-9, Request for Taxpayer Identification Number and Certification.

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Attachment 1: Letter of Intent to Submit a Proposal
- Attachment 2: Offer Form, OF-1
- Attachment 3: Offer Form, OF-2
- Exhibit A: Overview of the RFP Process
- Exhibit B: General Provisions for Goods and Services
- Exhibit C: General Conditions
- Exhibit D: Guidelines for Organization-Wide Audits
- Exhibit E: Certification Regarding Environmental Tobacco Smoke
- Exhibit F: OMB Certifications
- Exhibit G: Business Associate Agreement and Qualified Service Organization (“QSO”) Agreement
- Exhibit H: IRS Form W-9

LETTER OF INTENT TO SUBMIT A PROPOSAL

Date: _____

To whom it may concern:

This is to acknowledge that we have examined the State's Request for Proposals No. 460-23-05 sealed offers for Hawaii Interagency State Youth Network of Care Facilitator and we intend to submit a proposal.

Sincerely,

Signature: _____

Name: _____

Title: _____

Company: _____

Mailing Address: _____

(Area code) Telephone number: _____

(Area code) Facsimile number: _____

Email address: _____

**OFFER FORM
OF-1**

HAWAII INTERAGENCY STATE
YOUTH NETWORK OF CARE FACILITATOR
STATE OF HAWAII
DEPARTMENT OF HEALTH
RFP-460-23-05

Procurement Officer
Department Of Health, Child and Adolescent Mental Health Division
State Of Hawaii
Honolulu, Hawaii 96813

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

Hawaii General Excise Tax License I.D. No. _____

Federal I.D. No. _____

Payment address (other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

**If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

**OFFER FORM
OF-2**

Total contract cost for accomplishing the development and delivery of the services.

\$ _____

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

Authorized (Original) Signature

Name and Title (Please Type or Print)

Exact Legal Name of Company (Offeror)

Exhibit A

Overview of the RFP Process

RFP-460-23-05

OVERVIEW OF THE RFP PROCESS

- 1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.**
- 2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.**
- 3. Proposals shall be received at the Department of Health Child and Adolescent Mental Health Division located at the Diamond Head Health Center, 3627 Kilauea Avenue, Room 405, Honolulu, Hawaii 96816 via hand delivery (via appointment with the Procurement Officer) or USPS delivery (with Procurement Officer approval).**

The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

- 4. The Procurement Officer, or an Evaluation Committee approved by the Head of the State Purchasing Agency or Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.**
- 5. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.**
- 6. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.**
- 7. Following any discussions, Priority Listed Offerors may be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.**
- 8. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4, RFP Schedule and Significant Dates. If Offeror does not**

submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

- 9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an Evaluation Committee shall make its recommendation. The Procurement Officer shall award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Four.**
- 10. The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.**
- 11. The Procurement Officer or an Evaluation Committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an Evaluation Committee shall conduct a comprehensive, fair, and impartial evaluation of proposals received in response to the RFP.**
- 12. The RFP, any addenda issued, and the successful Offeror's proposal may become a part of the contract. All proposals shall become the property of the State.**

Exhibit "B"

General Provisions for Goods and Services

GENERAL PROVISIONS
FOR
GOODS AND SERVICES

HAWAII REVISED STATUTES (HRS)
CHAPTER 103D

Attached are the General Provisions, dated April 2013 which are made a part of all offers in response to the solicitation for goods and services. These provisions are in addition to the special provisions provided in the individual solicitations.

Offerors are cautioned to read and understand all the terms and conditions contained in the General Provisions as these provisions will also be made part of the contract for goods and services.

**GENERAL PROVISIONS
FOR
GOODS AND SERVICES**

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1. DEFINITIONS OF TERMS

Terms as used in these General Provisions, unless the context requires otherwise, shall have the following meaning:

a. BID

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

b. BID PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the STATE and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

c. CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

d. CONTRACT BOND

The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

e. CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the STATE and acting directly or through his, their or its agents, employees or sub-contractors.

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

General Conditions issued by the Department of the Attorney General of the State of Hawaii, referred to as Form AG-008, as revised, and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect at the date the solicitation is issued.

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

i. HAR

Hawaii Administrative Rules

j. HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.

k. HRS

Hawaii Revised Statutes

l. IFB

Invitation for Bids

m. OFFER

An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.

n. OFFEROR

Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.

o. PROCUREMENT OFFICER

Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

p. PROPOSAL

A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.

q. PURCHASING AGENCY

Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.

r. RFQ

Request for Quotes

s. RFP

Request for Proposals

t. SOLICITATION

Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process, a request for quotes ("RFQ") used in the small purchases process, or a request for proposals ("RFP"), used in the competitive sealed

proposal process for the purpose of obtaining quotes, bids or proposals to perform a STATE contract.

u. SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained and in addition to these General Provisions; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the CONTRACTOR.

Additions or revisions to the General Provisions, which shall be considered a part of the General Provisions, setting forth conditions or requirements applicable to the particular project or contract under consideration shall be included in the Special Provisions. Should any Special Provisions conflict with these General Provisions, said Special Provisions shall govern.

v. SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

w. STATE

STATE means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawaii, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.

x. SURETY

The individual, firm, partnership or corporation other than the CONTRACTOR, which executes a bond with and for the CONTRACTOR to ensure the CONTRACTOR's acceptable performance of the contract.

y. WORK

The furnishing by the CONTRACTOR of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

2. COMPETENCY OF OFFEROR

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive.

The purchasing agency reserves the right to visit an offeror's place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate evaluation of performance capabilities.

3. OFFER INCORPORATES SOLICITATION

The solicitation, including the AG's General Conditions, Specifications, General Provisions and any Special Provisions, and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

4. PREPARATION OF OFFER

An offeror may submit only one offer in response to a solicitation. If an offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an offeror may submit only one offer for each line item (if any) of a solicitation. If an offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their bids or proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

Unless otherwise specified in the solicitation, all prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

6. DISQUALIFICATION OF OFFERORS

An offeror shall be disqualified and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; or offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR.

An offeror may be disqualified and his offer rejected for any one or more of the following

reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

7. IRREGULAR OFFERS

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror, unless otherwise specified in the solicitation; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with the solicitation; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the STATE or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

8. STANDARDS OF CONDUCT

All offerors should be certain that their offer is not in violation of HRS §84-15. This section provides as follows:

- a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:
 - (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
 - (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
 - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.
- b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Unless otherwise specified in the solicitation, a legislative body has appropriated the funds for this contract.

Therefore, if awarded a contract in response to this solicitation, offeror agrees to comply

with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

10. ACCEPTANCE OF OFFER

- a. Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

11. EXECUTION OF CONTRACT

The following subsections shall not apply to any contract in which the total amount payable to the CONTRACTOR cannot be accurately estimated at the time the contract is to be awarded:

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

- c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

12. CONTRACT BOND

- a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation. ‘
- c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in Section 7. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

13. FAILURE TO EXECUTE CONTRACT

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract, and to furnish satisfactory security as required by Section 30 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the STATE.

14. RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guaranties, except surety bonds, will be returned.

15. PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest

payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

16. DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the STATE in its solicitation requirements, and all goods must be delivered with the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the STATE of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE shall be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the procurement officer or his authorized representatives, either personally or as officials of the STATE, it being understood that in such matters, they act solely as agents and representatives of the STATE.

Exhibit "C"

General Conditions

RFP-460-23-05

RFP Attachments (Rev. 9/2014)

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
- a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

Attachment D

Guidelines For Organization-Wide Audits

GUIDELINES FOR ORGANIZATION-WIDE AUDITS

Pursuant to the Single Audit Act Amendments of 1996, Public Law 104-156, the STATE is requiring A-133 audits from subrecipients who expend \$750,000 or more of federal funds in a year.

The audits must be conducted in accordance with the following standards:

1. Generally accepted auditing standards issued by the American Institute of Certified Public Accountants.
2. Government Auditing Standards issued by the Comptroller General of the United States.
3. Office of Management and Budget (OMB) Circular A-133, "Audits of states, local governments, and nonprofit organizations," dated June 30, 1997.

The audits must be conducted on an annual basis and submitted to the STATE within nine (9) months after the end of the audit period.

The audit report shall include the following:

1. The organization-wide financial statements prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting.
2. A schedule of federal financial assistance in the format prescribed by the OMB Circular A-133.
3. A schedule of the STATE's federal and state contracts received by the organization for the period covered by the financial statements. This schedule shall contain the:
 - a. ASO Log Number.
 - b. Contract amount for the contract period.
 - c. Expenditures charged against the contract during the current audit period and the prior audit periods for expenditure-reimbursement contracts; or amounts of units billed against the contract during the current audit period and the prior audit periods for unit-cost contracts since inception.
4. Auditor's reports on the organization's financial statements, supplemental schedule of expenditures of federal awards, and supplemental schedule of federal and state contracts received by the organization from the STATE.
5. Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.
6. Report on Compliance with Requirements Applicable to each Major Program and Internal Control over Compliance in Accordance with OMB Circular A-133.
7. Schedule of findings and questioned costs in the format prescribed in OMB Circular A-133.
8. Comments regarding prior year's findings.

Attachment E

Certification Regarding Environmental Tobacco Smoke

Attachment F

OMB Certifications

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting this proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the applicant organization) certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;
- (d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt

- of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices:

Office of Grants and Acquisition Management
 Office of Grants Management
 Office of the Assistant Secretary for Management and Budget
 Department of Health and Human Services
 200 Independence Avenue, S.W., Room 517-D
 Washington, D.C. 20201

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the under-

signed, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the applicant organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the applicant organization will comply with the Public Health Service terms and conditions of award if a grant is awarded as a result of this application.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children’s services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children’s services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the applicant organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The applicant organization agrees that it will require that the language of this certification be included in any subawards which contain provisions for children’s services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Exhibit G

Business Associate and Qualified Service Organization (“QSO”) Agreement

RFP-460-23-05

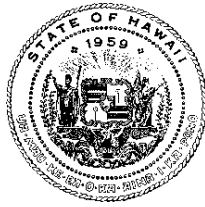


EXHIBIT _____

**BUSINESS ASSOCIATE and QUALIFIED SERVICE ORGANIZATION
("QSO") AGREEMENT**

State of Hawaii Department of Health,

(COVERED ENTITY)

and

(BUSINESS ASSOCIATE/QSO)

The State of Hawaii Department of Health, _____(COVERED ENTITY) has determined it is a Covered Entity or Health Care Component of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), as amended, and its implementing regulations at 45 CFR Parts 160 and 164 (the HIPAA Rules).

_____ (BUSINESS ASSOCIATE/QSO) will provide COVERED ENTITY certain services described in the Contract to which this Exhibit ____ is attached and may have access to Protected Health Information (PHI) in fulfilling its responsibilities under the Contract.

To the extent BUSINESS ASSOCIATE/QSO needs to create, receive, maintain, or transmit PHI to perform services under the Contract, it will be acting as a Business Associate/QSO¹ of COVERED ENTITY and will be subject to the HIPAA Rules and terms of this Business Associate/QSO Agreement (Agreement).

¹ Definition of Business Associate, 45 CFR §160.103. Definition of Qualified Service Organization, 42 CFR §2.11.

COVERED ENTITY and BUSINESS ASSOCIATE/QSO (collectively referred to as “the Parties”) agree as follows:

1. DEFINITIONS.

Except for terms otherwise defined herein, and unless the context indicates otherwise, any other capitalized terms used in this Agreement and the terms “person,” “use,” and “disclosure” are defined by the HIPAA Rules. A change to the HIPAA Rules that modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

Breach² means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule or as provided for by this Agreement, which compromises the security or privacy of the PHI.

An acquisition, access, use, or disclosure of PHI in the manner not permitted by the Privacy Rule is presumed to be a Breach unless BUSINESS ASSOCIATE/QSO demonstrates to COVERED ENTITY’s satisfaction that there is a low probability that the PHI has been compromised based on a risk assessment that identifies at least the following: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the PHI or to whom the disclosure was made; (iii) whether the PHI was actually acquired or viewed; and (iv) the extent to which the risk to the PHI has been mitigated.

Breach excludes:

- A. Any unintentional acquisition, access or use of PHI by a Workforce member or person acting under the authority of BUSINESS ASSOCIATE/QSO if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- B. Any inadvertent disclosure by a person who is authorized to access PHI at BUSINESS ASSOCIATE/QSO to another person authorized to access PHI at the same BUSINESS ASSOCIATE/QSO, or organized health care arrangement in which COVERED ENTITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule.
- C. A disclosure of PHI where BUSINESS ASSOCIATE/QSO has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Business Associate³ means a person or entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of, or provides services to,

² 45 CFR §164.402.

³ 45 CFR §160.102.

a Covered Entity. A member of COVERED ENTITY's Workforce is not a Business Associate.

Designated Record Set⁴ means records, including but not limited to PHI maintained, collected, used, or disseminated by or for COVERED ENTITY relating to: (i) medical and billing records about Individuals maintained by or for a Covered Health Care Provider; (ii) enrollment, Payment, claims adjudication, and case or medical management records systems maintained by or for a Health Plan; or (iii) that are used in whole or in part by COVERED ENTITY to make decisions about Individuals.

Electronic Protected Health Information (EPHI)⁵ means PHI that is transmitted by Electronic Media⁶ or maintained in Electronic Media.

HIPAA Rules mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

Individual⁷ means the person who is the subject of PHI and shall include a person who qualifies as a personal representative under 45 CFR §164.502(g) of the HIPAA Rules.

Privacy Rule means the HIPAA Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.

Protected Health Information (PHI)⁸ means any oral, paper, or electronic information, data, documentation, and materials, including, but not limited to, demographic, medical, genetic, and financial information that is created or received by a Health Care Provider, Health Plan, or Health Care Clearinghouse, and relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. For purposes of this Agreement, the term Protected Health Information is limited to the information created, maintained, received, or transmitted by BUSINESS ASSOCIATE/QSO on behalf of or from COVERED ENTITY. Protected Health Information includes without limitation EPHI, and excludes education records under 20 U.S.C. §1232(g), employment records held by COVERED ENTITY as an employer, and records regarding an Individual who has been deceased for more than 50 years.

Privacy Incident means any successful or unsuccessful attempt, loss of control, compromise, or unauthorized use, disclosure, acquisition, or access of PHI.

Security Incident⁹ means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System.

⁴ 45 CFR §164.501.

⁵ 45 CFR §160.103.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ 45 CFR §164.304.

Security Rule means the HIPAA Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, subpart C.

Unsecured Protected Health Information (Unsecured PHI)¹⁰ means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the Secretary under section 13402(h)(2) of Public Law 111-5.

Workforce¹¹ means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for COVERED ENTITY or BUSINESS ASSOCIATE/QSO and is under the direct control of such, whether or not they are paid by COVERED ENTITY or BUSINESS ASSOCIATE.

2. BUSINESS ASSOCIATE/QSO'S OBLIGATIONS.

BUSINESS ASSOCIATE/QSO agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law. In no event may BUSINESS ASSOCIATE/QSO use or further disclose PHI in a manner that would violate the Privacy Rule if done by COVERED ENTITY, except as expressly provided in this Agreement.¹²
- b. Implement appropriate safeguards, and comply, where applicable, with the Security Rule to ensure the confidentiality, integrity, and availability of all EPHI BUSINESS ASSOCIATE/QSO creates, receives, maintains, or transmits on behalf of COVERED ENTITY; protect against any reasonably anticipated threats or hazards to the security or integrity of EPHI; prevent use or disclosure of EPHI other than as provided for by this Agreement or as Required By Law; and ensure compliance with the HIPAA Rules by BUSINESS ASSOCIATE/QSO's Workforce.¹³ These safeguards include, but are not limited to:
 - (i) Administrative Safeguards. BUSINESS ASSOCIATE/QSO shall implement policies and procedures to prevent, detect, contain, and correct security violations, and reasonably preserve and protect the confidentiality, integrity, and availability of EPHI, as required by 45 CFR §164.308, and enforcing those policies and procedures, including sanctions for anyone not found in compliance.
 - (ii) Technical and Physical Safeguards. BUSINESS ASSOCIATE/QSO shall implement appropriate technical safeguards to protect EPHI, including access controls, authentication, and transmission security,

¹⁰ 45 CFR §164.402.

¹¹ 45 CFR §160.103.

¹² 45 CFR §§164.502(a)(3); 164.504(e)(2)(ii)(A).

¹³ 45 CFR §164.306(a).

as well as implement appropriate physical safeguards to protect EPHI, including workstation security and device and media controls;¹⁴ and

- (iii) Training. BUSINESS ASSOCIATE/QSO shall provide training to relevant Workforce members, including management, on how to prevent the improper access, use, or disclosure of EPHI; and update and repeat training on a regular basis.¹⁵
- c. In accordance with 45 CFR §164.316, document the required policies and procedures and keep them current, and cooperate in good faith in response to any reasonable requests from COVERED ENTITY to discuss, review, inspect, and/or audit BUSINESS ASSOCIATE/QSO's safeguards. BUSINESS ASSOCIATE/QSO shall retain the documentation required for six (6) years from the date of its creation or the date when it last was in effect, whichever is later.¹⁶
 - d. Comply with the provisions found in 45 CFR §164.308(a)(1)(ii)(A) and (B), requiring BUSINESS ASSOCIATE/QSO to conduct an accurate and thorough Risk Analysis, and to periodically update the Risk Analysis (no less than once every 3 years); and to implement Risk Management measures to reduce the risk and vulnerabilities to a reasonable and appropriate level to comply with 45 CFR §164.306(a).
 - e. Ensure that any subcontractor of BUSINESS ASSOCIATE/QSO that creates, receives, maintains, or transmits PHI on behalf of BUSINESS ASSOCIATE/QSO agrees in writing to the same restrictions, conditions and requirements that apply to BUSINESS ASSOCIATE/QSO through this Agreement with respect to such PHI.¹⁷
 - f. Notify COVERED ENTITY following discovery of any use or disclosure of PHI not permitted by this Agreement including any incidents of which it becomes aware, or any Breach of Unsecured PHI.¹⁸
 - (i) BUSINESS ASSOCIATE/QSO shall immediately notify COVERED ENTITY's HIPAA Privacy and/or Security Officer verbally.
 - (ii) BUSINESS ASSOCIATE/QSO shall subsequently notify COVERED ENTITY's HIPAA Privacy and/or Security Officer in writing, without unreasonable delay, and in no case later than two (2) business days following discovery of the impermissible use or disclosure of PHI, Security Incident, or Breach of Unsecured PHI.
 - (iii) BUSINESS ASSOCIATE/QSO shall make additional information available upon request from COVERED ENTITY.
 - (iv) A Breach of Unsecured PHI shall be treated as discovered by BUSINESS ASSOCIATE/QSO as of the first day on which such Breach is known to BUSINESS ASSOCIATE/QSO. BUSINESS ASSOCIATE/QSO shall be deemed to have knowledge of a Breach if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing

¹⁴ 45 CFR §§164.310; 164.312.

¹⁵ 45 CFR §164.308(a)(5).

¹⁶ 45 CFR §§164.306 – 164.316; 164.504(e)(2)(ii)(B).

¹⁷ 45 CFR §§164.308(b); 164.314(a)(2); 164.502(e); 164.504(e)(2)(ii)(D).

¹⁸ 45 CFR §§164.314(a)(2); 164.410(a); 164.504(e)(2)(ii)(C).

the Breach, who is an employee, officer, Workforce member, or other agent of BUSINESS ASSOCIATE/QSO.¹⁹

- g. Take prompt corrective action to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE/QSO of a Security Incident or a misuse or unauthorized disclosure of PHI by BUSINESS ASSOCIATE/QSO in violation of this Agreement, and any other action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. BUSINESS ASSOCIATE/QSO shall reasonably cooperate with COVERED ENTITY's efforts to seek appropriate injunctive relief or otherwise prevent or curtail potential or actual Breaches, or to recover its PHI, including complying with a reasonable corrective action plan.²⁰
- h. Investigate such Breach and provide a written report of the investigation and resultant mitigation to COVERED ENTITY's HIPAA Privacy and/or Security Officer as soon as practicable, but no longer than thirty (30) calendar days of the discovery of the Breach.
- i. Provide the following information with respect to a Breach of Unsecured PHI, to the extent possible, as the information becomes available, to COVERED ENTITY's HIPAA Privacy and/or Security Officer:
 - (i) The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE/QSO to have been accessed, acquired, used, or disclosed during the Breach; and
 - (ii) Any other available information that COVERED ENTITY is required to include in notification to the Individual under the HIPAA Rules, including, but not limited to the following:²¹
 - A. If known to BUSINESS ASSOCIATE/QSO, contact information for Individuals who were or who may have been impacted by the Breach (including but not limited to: first and last name, mailing address, street address, phone number, and email address);
 - B. A brief description of the circumstances of the Breach, including the date of the Breach and date of discovery, if known;
 - C. Description of the types of Unsecured PHI involved in the Breach (such as whether the full name, social security number, date of birth, address, account number, diagnosis, diagnostic, disability and/or billing codes, or similar information was involved);
 - D. A brief description of what BUSINESS ASSOCIATE/QSO has done or is doing to investigate the Breach, mitigate harm to the Individual(s) impacted by the Breach and protect against future Breaches; and

¹⁹ 45 CFR §164.410(a)(2).

²⁰ 45 CFR §§164.308(a)(6); 164.530(f).

²¹ 45 CFR §§164.404(c)(1); 164.408; 164.410(c)(1) and (2).

- E. Contact information for BUSINESS ASSOCIATE/QSO's liaison responsible for investigating the Breach and communicating information relating to the Breach to COVERED ENTITY.
- j. Promptly report to COVERED ENTITY's HIPAA Privacy and/or Security Officer any Security Incident of which BUSINESS ASSOCIATE/QSO becomes aware with respect to EPHI that is in the custody of BUSINESS ASSOCIATE/QSO, including Breaches of Unsecured PHI as required by 45 CFR §164.410, by contacting the HIPAA Privacy and/or Security Officer.²²
- k. Implement reasonable and appropriate measures to ensure compliance with the requirements of this Agreement by Workforce members who assist in the performance of functions or activities on behalf of COVERED ENTITY under this Agreement and use or disclose PHI, and discipline such Workforce members who intentionally violate any provisions of these special conditions, which may include termination of employment.²³
- l. Make its internal policies, procedures, books, and records relating to the use and disclosure of PHI received from, created, or received by BUSINESS ASSOCIATE/QSO on behalf of COVERED ENTITY available to the U.S. Secretary of Health and Human Services or to COVERED ENTITY if necessary or required to assess BUSINESS ASSOCIATE/QSO's or COVERED ENTITY's compliance with the HIPAA Rules. BUSINESS ASSOCIATE/QSO shall promptly notify COVERED ENTITY of communications with the U.S. Department of Health and Human Services (HHS) regarding PHI provided by or created on behalf of COVERED ENTITY and shall provide COVERED ENTITY with copies of any information BUSINESS ASSOCIATE/QSO has made available to HHS under this paragraph.²⁴
- m. Upon notice from COVERED ENTITY, accommodate any restriction to the use or disclosure of PHI and any request for confidential communications to which COVERED ENTITY has agreed in accordance with the Privacy Rule.²⁵
- n. Make available PHI held by BUSINESS ASSOCIATE/QSO, which COVERED ENTITY has determined to be part of its Designated Record Set, to COVERED ENTITY as necessary to satisfy COVERED ENTITY's obligations to provide an Individual with access to PHI under 45 CFR §164.524, in the time and manner designated by COVERED ENTITY.²⁶
- o. Make available PHI held by BUSINESS ASSOCIATE/QSO, which COVERED ENTITY has determined to be part of its Designated Record Set, for amendment and incorporate any amendments to PHI that COVERED ENTITY directs or agrees to in accordance with 45 CFR §164.526, upon request of COVERED ENTITY or the Individual.

²² 45 CFR §§164.314(a)(2); 164.410.

²³ 45 CFR §§164.308(a).

²⁴ 45 CFR §164.504(e)(2)(ii)(I).

²⁵ 45 CFR §164.522.

²⁶ 45 CFR §§164.504(e)(2)(ii)(E); 164.524.

- p. Document disclosures of PHI made by BUSINESS ASSOCIATE/QSO, which are required to be accounted for under 45 CFR §164.528(a)(1), and make this information available as necessary to satisfy COVERED ENTITY's obligation to provide an accounting of disclosures to an Individual within two (2) business days' notice by COVERED ENTITY of a request by an Individual for an accounting of disclosures of PHI. If an Individual directly requests an accounting of disclosures of PHI from BUSINESS ASSOCIATE/QSO, BUSINESS ASSOCIATE/QSO shall notify COVERED ENTITY's HIPAA Privacy and/or Security Officer of the request within two (2) business days, and COVERED ENTITY shall either direct BUSINESS ASSOCIATE/QSO to provide the information directly to the Individual, or it shall direct that the information required for the accounting be forwarded to COVERED ENTITY for compilation and distribution to the Individual.²⁷
- q. Comply with any other requirements of the HIPAA Rules not expressly specified in this Agreement, as to the extent that such requirements apply to BUSINESS ASSOCIATE/QSOs under the HIPAA Rules, as the same may be amended from time to time.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE/QSO.

BUSINESS ASSOCIATE may, except as otherwise limited in this Agreement:

- a. General Use and Disclosure. Create, receive, maintain, or transmit PHI only for the purposes listed in the Contract and this Agreement, provided that the use or disclosure would not violate the HIPAA Rules if done by COVERED ENTITY or violate the Minimum Necessary requirements applicable to COVERED ENTITY.²⁸
- b. Limited Use of PHI for BUSINESS ASSOCIATE/QSO's Benefit. Use the PHI received by BUSINESS ASSOCIATE/QSO in its capacity as COVERED ENTITY's BUSINESS ASSOCIATE/QSO, if necessary, for the proper management and administration of BUSINESS ASSOCIATE/QSO or to carry out the legal responsibilities of BUSINESS ASSOCIATE/QSO. BUSINESS ASSOCIATE/QSO's proper management and administration does not include the use or disclosure of PHI by BUSINESS ASSOCIATE/QSO for Marketing purposes or for Sale of PHI.²⁹
- c. Limited Disclosure of PHI for BUSINESS ASSOCIATE/QSO's Benefit. Disclose PHI for BUSINESS ASSOCIATE/QSO's proper management and administration or to carry out its legal responsibilities only if the disclosure is Required By Law,³⁰ or BUSINESS ASSOCIATE/QSO obtains reasonable assurances from the entity to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the entity,

²⁷ 45 CFR §§164.504(e)(2)(ii)(G) and (H), 164.528; HAR §2-71-11 through -20.

²⁸ 45 CFR §§164.502(a) and (b); 164.504(e)(2)(i).

²⁹ 45 CFR §§164.502(a)(5)(ii); 164.504(e)(2)(i)(A); 164.504(e)(4)(i); 164.508(a)(3) and (a)(4).

³⁰ E.g., 45 CFR Parts 170 and 171; 42 CFR Part 2, etc.

and the entity notifies BUSINESS ASSOCIATE/QSO of any instances of which it is aware in which the confidentiality of PHI has been Breached.³¹

- d. Minimum Necessary. BUSINESS ASSOCIATE/QSO shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.³²
- e. Data Aggregation. Use PHI to provide Data Aggregation services relating to COVERED ENTITY's Health Care Operations as permitted by 45 CFR §164.504(e)(2)(i)(B).
- f. Disclosures by Whistleblowers. Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

4. COVERED ENTITY'S OBLIGATIONS.

- a. COVERED ENTITY shall not request BUSINESS ASSOCIATE/QSO to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COVERED ENTITY.
- b. COVERED ENTITY shall not provide BUSINESS ASSOCIATE/QSO with more PHI than is minimally necessary for BUSINESS ASSOCIATE/QSO to provide the services under the Contract and this Agreement and COVERED ENTITY shall provide any PHI needed by BUSINESS ASSOCIATE/QSO to perform its obligations in accordance with the HIPAA Rules.

5. QUALIFIED SERVICE ORGANIZATION ("QSO")³³ PROVISIONS.

- a. BUSINESS ASSOCIATE/QSO is fully bound by 42 CFR Part 2 in receiving, storing, processing, or otherwise dealing with any information from the Part 2 program about Individuals; and
- b. BUSINESS ASSOCIATE/QSO shall resist in judicial proceedings, if necessary, any efforts to obtain access to Individual-identifying information related to substance use disorder diagnosis, treatment, or referral for treatment except as permitted by 42 CFR Part 2.

³¹ 45 CFR §164.504(e)(4)(ii).

³² 45 CFR §164.502(b).

³³ Qualified Service Organization is defined at 42 CFR §2.11.

6. TERM AND TERMINATION.

- a. This Agreement shall be effective as of the date it is signed by BUSINESS ASSOCIATE/QSO, and shall terminate on the date COVERED ENTITY terminates this Agreement or when all PHI is destroyed or returned to COVERED ENTITY.
- b. In addition to any other remedies provided for by this Agreement, upon COVERED ENTITY's knowledge of a material breach by BUSINESS ASSOCIATE/QSO of this Agreement, BUSINESS ASSOCIATE/QSO authorizes COVERED ENTITY to do any one or more of the following, upon written notice to BUSINESS ASSOCIATE/QSO describing the violation and the action it intends to take:
 - (i) Exercise any of its rights to reports, access, and inspection under this Agreement;
 - (ii) Require BUSINESS ASSOCIATE/QSO to submit a plan of monitoring and reporting, as COVERED ENTITY may determine necessary to maintain compliance with this Agreement;
 - (iii) Provide BUSINESS ASSOCIATE/QSO with a reasonable period of time to cure the breach, given the nature and impact of the breach; or
 - (iv) Immediately terminate this Agreement if BUSINESS ASSOCIATE/QSO has breached a material term of this Agreement and sufficient mitigation is not possible.³⁴
- c. Effect of Termination.³⁵
 - (i) Upon termination of this Agreement, until notified otherwise by COVERED ENTITY, BUSINESS ASSOCIATE/QSO shall extend all protections, limitations, requirements, and other provisions of this Agreement to all EPHI received from or on behalf of COVERED ENTITY or created or received by BUSINESS ASSOCIATE/QSO on behalf of COVERED ENTITY, and all EPHI created, received, maintained, or transmitted by BUSINESS ASSOCIATE/QSO on behalf of COVERED ENTITY.
 - (ii) Except as otherwise provided in §6(c)(iii) below, upon termination of this Agreement for any reason, BUSINESS ASSOCIATE/QSO shall, at COVERED ENTITY's option, return or destroy all PHI received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE/QSO on behalf of COVERED ENTITY, that BUSINESS ASSOCIATE/QSO still maintains in any form, and BUSINESS ASSOCIATE/QSO shall retain no copies of the PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE/QSO. BUSINESS ASSOCIATE/QSO shall notify COVERED ENTITY in writing of any and all conditions that make return or destruction of such information

³⁴ 45 CFR §164.504(e)(2)(iii).

³⁵ 45 CFR §164.504(e)(2)(ii)(J).

not feasible and shall provide COVERED ENTITY with any requested information related to COVERED ENTITY's determination as to whether the return or destruction of such information is feasible.

- (iii) If COVERED ENTITY determines that returning or destroying any or all PHI is not feasible or opts not to require the return or destruction of such PHI, the protections of this Agreement shall continue to apply to such PHI, and BUSINESS ASSOCIATE/QSO shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE/QSO maintains such PHI. COVERED ENTITY hereby acknowledges and agrees that infeasibility includes BUSINESS ASSOCIATE/QSO's need to retain PHI for purposes of complying with its work product documentation standards.

7. MISCELLANEOUS.

- a. Amendment. BUSINESS ASSOCIATE/QSO and COVERED ENTITY agree to take such action as is necessary to amend this Agreement from time to time for compliance with the requirements of the HIPAA Rules and any other applicable law.
- b. Interpretation. In the event that any terms of this Agreement are inconsistent with the terms of the Contract, then the terms of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY to comply with the HIPAA Rules. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to supersede any Federal or State law or regulation related to confidentiality of health information that is more stringent than the HIPAA Rules.
- c. Indemnification. BUSINESS ASSOCIATE/QSO shall defend, indemnify, and hold harmless COVERED ENTITY and COVERED ENTITY's officers, employees, agents, contractors, and subcontractors to the extent required under this Agreement and the Contract for incidents that are caused by or arise out of a Breach or failure to comply with any provision of this Agreement or the HIPAA Rules by BUSINESS ASSOCIATE/QSO or any of BUSINESS ASSOCIATE/QSO's officers, employees, agents, contractors, or subcontractors. This indemnification provision shall not apply to any BUSINESS ASSOCIATE/QSO that is another Hawaii government entity; however, BUSINESS ASSOCIATE/QSO shall seek indemnification for COVERED ENTITY from BUSINESS ASSOCIATE/QSO's agents, contractors, or subcontractors that are not Hawaii government entities.

- d. Costs Related to Breach. BUSINESS ASSOCIATE/QSO shall be responsible for any and all costs incurred by COVERED ENTITY as a result of any Breach of PHI by BUSINESS ASSOCIATE/QSO, its officers, directors, employees, contractors or agents, or by a third party to which BUSINESS ASSOCIATE/QSO disclosed PHI under this Agreement, including but not limited to notification of individuals or their representatives of a Breach of Unsecured PHI,³⁶ and the cost of mitigating any harmful effect of the Breach.³⁷ Providing notice to the individuals of a Breach will be the responsibility of COVERED ENTITY.
- e. Response to Subpoenas. In the event BUSINESS ASSOCIATE/QSO receives a subpoena or similar notice or request from any judicial, administrative or other party which would require the production of PHI received from, created or maintained for COVERED ENTITY, BUSINESS ASSOCIATE/QSO shall promptly forward a copy of such subpoena, notice, or request to COVERED ENTITY to afford COVERED ENTITY the opportunity to timely respond to the demand for its PHI as COVERED ENTITY determines appropriate according to its State and Federal obligations.
- f. Survival. The respective rights and obligations of COVERED ENTITY and BUSINESS ASSOCIATE/QSO under §6.c, Term and Termination, §7.c, Indemnification, and §7.d, Costs Related to Breach, shall survive the termination of this Agreement.
- g. Notices. Whenever written notice is required by one party to the other under this Agreement, it should be mailed, faxed and/or e-mailed to the appropriate address noted below. If notice is sent by e-mail, then a confirming written notice should be sent by mail and/or fax within two (2) business days after the date of the e-mail. The sender of any written notice required under this Agreement is responsible for confirming receipt by the recipient. Notice shall be sent to the telephone and fax numbers, mailing, email addresses listed below:
- h. Breach Notification to COVERED ENTITY's Officers. Pursuant to §§2(f)(i), (ii) and (iii) of this Agreement, should BUSINESS ASSOCIATE/QSO or its subcontractor(s) breach COVERED ENTITY's PHI, BUSINESS ASSOCIATE/QSO shall contact:

³⁶ 45 CFR Part 164, Subpart D.

³⁷ 45 CFR §164.530(f).

COVERED ENTITY HIPAA OFFICER:

HIPAA Privacy Officer
1250 Punchbowl Street, Room 250
Honolulu, Hawaii 96813
Phone: (808) 586-4111
Fax: (808) 586-4115
Email: gino.merez@doh.hawaii.gov

BUSINESS ASSOCIATE/QSO HIPAA CONTACT:

BUSINESS ASSOCIATE/QSO

Date: _____

Signature: _____

Print Name: _____

Title: _____

COVERED ENTITY

Date: _____

Signature: _____

Print Name: _____

Title: _____

Attachment H

IRS Form W-9

RFP-460-23-05

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.	See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p>2 Business name/disregarded entity name, if different from above</p> <hr/> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </p> <p> <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) \ominus _____ </p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p> <input type="checkbox"/> Other (see instructions) \ominus _____ </p>	<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p><small>(Applies to accounts maintained outside the U.S.)</small></p>
		<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p>6 City, state, and ZIP code</p> <hr/> <p>7 List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p> <hr/>

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
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or								
Employer identification number								
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person \ominus	Date \ominus
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*