



RELEASE DATE: [April 21, 2023](#)

**The State of Hawaii
Department of Transportation**

**Request for Proposals
Solicitation #RFP- RTS-SS0-2023**

**State Safety Oversight Professional Services
State of Hawaii**

OFFERS ARE DUE AT 2:00 P.M., HAWAII STANDARD TIME (HST) ON

[May 23, 2023](#)

(or such later date as may be established by the State of Hawaii by an Addendum to this RFP)

BY SUBMISSION TO THE HAWAII EPROCUREMENT SYSTEM (HiePRO)

DIRECT ALL QUESTIONS REGARDING THIS RFP, QUESTIONS OR ISSUES RELATING TO THE ACCESSIBILITY OF THIS RFP (INCLUDING THE ATTACHMENTS AND EXHIBITS AND ANY OTHER DOCUMENT RELATED TO THIS RFP) AND REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES IN CONNECTION WITH THIS RFP, TO:

BRANDON ESHENOUR, TELEPHONE
(808) 587-2136 OR E-MAIL ADDRESS Brandon.J.Eshenour@hawaii.gov.

Brandon Eshenour
Procurement Officer

RTS-SSO-2023

REQUEST FOR PROPOSALS
FOR
State Safety Oversight Professional Services
State of Hawaii
PROJECT NO. RTS-SS0-2023
(CHAPTER 103D, HRS)

The receiving of SEALED PROPOSALS for State Safety Oversight Professional Services, State of Hawaii, ("Project"), PROJECT NO.: RTS-SS0-2023, will begin as advertised on April 21, 2023 on HlePRO. Offerors are to register and submit proposals through HlePRO only. See the following HlePRO link for important information on registering: <https://hiepro.ehawaii.gov/welcome.html>.

Deadline to submit proposals is **May 23, 2023** at 2:00 PM Hawaii Standard Time (HST). Proposals received after said due date and time shall not be considered.

The State of Hawaii is requesting proposals to implement the State Safety Oversight Program Standards and Procedures in compliance with Federal Transit Administration Requirements for State Safety Oversight of Fixed Guideway Public Transportation Systems.

- Provide appropriate updates to and implementation of the HDOT SSO Program Standard and Procedures, in compliance with Federal Transit Administration (FTA) regulation 49 Code of Federal Regulation Part 674 and guidance with regard to safety and security of fixed guideway public transportation.
- Assist the HDOT SSO Program Manager with oversight activities of the Honolulu Authority for Rapid Transportation (HART) including the review of safety plans and supporting documents and activities during design, construction testing and start-up phases of the project.
- Assist the HDOT SSO Program with; achieving FTA SSO Certification; annual reporting to FTA; and, FTA SSO Audits of the HDOT SSO Program.

- Assist the HDOT SSO Program with accident / incident investigations when appropriate and necessary for HDOT SSO Program to mobilize for an investigation.

All questions shall be submitted in writing through HlePRO no later than **2:00 PM**

HST on May 9, 2023.

Campaign contributions by State and County Contractors. Offerors are hereby notified of the applicability of HRS Section 11-355, which states that campaign contributions are prohibited from specified State of Hawaii (“State”) or county government contractors during the term of the contract if the contractors are paid with funds appropriated by the legislative body. For more information, contact the Campaign Spending Commission at (808) 586-0285.

Any protest of this solicitation shall be submitted in writing to the Director of Transportation, in accordance with §103D-701, HRS and §3-126, HAR.

The U.S. Department of Transportation Regulation entitled “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” Title 49, Code of Federal Regulations (CFR), Part 21 is applicable to this project. Offerors are hereby notified that the Department of Transportation will affirmatively ensure that the contract entered into pursuant to this advertisement will be awarded or without discrimination on the grounds of race, color, national origin or sex (as directed by 23 CFR Part 200).

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended, shall be complied with on this project.

For additional information, contact Brandon Eshenour, Project Manager, by phone, at (808) 587-2136 or email at Brandon.J.Eshenour@hawaii.gov.

The State reserves the right to cancel this request for proposals, to postpone or continue same from time to time, as it deems necessary, or reject any or all proposals and to waive any defects in said proposals for the best interest of the State.



Apr 19, 2023

TAMMY L. LEE
Deputy Director

Table of Contents

RFP Administrative Information

Offer Checklist

Section 1 General Information

Section 2 Solicitation Information

Section 3 Requirements

Section 4 Instructions to Offerors – Proposal Submission

Section 5 Evaluation and Award

Section 6 Evaluation Criteria

6.1 Program Administration Plan

6.2 Qualifications/Past Performance & Experience and References Submittal

6.3 Price

Section 7 Contract Management

7.1 Contract Administrator

7.2 Contractor/State Meetings

7.3 Dispute Process and Escalation

7.4 Quality Control

7.5 Post Award Deliverables

Section 8 Special Provisions

8.1 Scope

8.2 Acceptance and Testing

8.3 Intellectual Property Rights

8.4 Warranties and Disclaimer of Implied Warranties

8.5 Termination for Convenience or Unavailability of Funds

8.6 Preferences

8.7 Certification of Offeror Concerning Wages, Hours and Working Condition of Employees Supplying Services

8.8 Responsibility of Offerors

8.9 Proposal Preparation

8.10 Confidentiality

8.11 Redaction by the State

- 8.12 Protest Procedures
- 8.13 Notice to Proceed
- 8.14 Contract Execution
- 8.15 Liability Insurance
- 8.16 Contract Invalidation
- 8.17 Mistakes in Proposals
- 8.18 Modification Prior to Submittal Deadline or Withdrawal of Offers
- 8.19 Contract Changes – Unanticipated Amendments
- 8.20 Re-execution of Work

Attachment A - Offer Form OF-1

Attachment B - Client Reference, Offer Form OF-2

Exhibit 1 - AG-008 103D General Conditions

Exhibit 2 -AG-004 Contract for Goods or Services Based Upon Competitive Sealed Proposals

RFP Administrative Information

RTS-SSO-2023:	State Safety Oversight Professional Services
RFP Project Description: (See Section 1.1 Purpose)	The State of Hawaii is seeking Contractor(s) to provide Professional Services for the administration of the State Safety Oversight Program for the Hawaii Department of Transportation.
RFP Point of Contact: (See Section 1.6 Point of Contact)	Buyer Name – Brandon Eshenour Agency Name – Department of Transportation, Administration Agency Address – 869 Punchbowl Street, 4 th Floor Honolulu, Hawaii 96813 Buyer email – Brandon.J.Eshenour@hawaii.gov Buyer Phone – (808) (808) 587-2136
Submit proposals electronically via Hawaii Electronic Procurement System (HiePRO): (See Section 2.6 Electronic Submission of Proposals) (See Section 4.4 Electronic Submission of Proposals)	Electronic Submission hiepro.ehawaii.gov
Deadline to Receive Questions: (See Sections 1.3 Schedule and Significant Dates and 4.4 Electronic Submission of Questions)	May 9, 2023, 2:00 P.M. Hawaii Standard Time (HST)
Question & Answers: (Sections 1.3 Schedule and Significant Dates and 2.6 Electronic Submission of Questions)	All questions, including those about Terms and Conditions, must be submitted through HiePRO. Questions must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.3 Schedule and Significant Dates)	May 23, 2023
RFP Closing Time: (See Section 1.3 Schedule and Significant Dates)	2:00 p.m. HST Hawaii Standard Time (HST)
Initial Term of Contract and Renewals: (See Section 1.5 Period of Performance)	The term of the Contract will be one year from the date indicated in the Notice to Proceed from the Department with four (4) additional one (1) year period option to extend based on the availability of funds. Contract may be extended or amended.

TAKE NOTE THE MANDATORY .75% (.0075) TRANSACTION FEE TO HAWAII INFORMATION CONSORTIUM, LLC DBA NIC HAWAII IS BASED ON SALES FOR AWARDS MADE IN HIEPRO. (DETAILED IN SECTION 2.3 ELECTRONIC PROCUREMENT AND SECTION 3.10 PAYMENT TO HAWAII INFORMATION CONSORTIUM, LLC DBA NIC HAWAII.)

Offer Checklist

Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below.

No.	Description	Reference in RFP	Completed
1	Offer Checklist – submittal of checklist with all items checked “completed.”	Offer Checklist	<input type="checkbox"/>
2	Completed and signed Offer Form OF-1; NOTE: Ensure that company name submitted in HlePRO matches company name on OF-1.	Attachment A Offer Form OF-1; Section 8.9 Proposal Preparation	<input type="checkbox"/>
3	Table of Contents	Section 4.5 Required Format and Content, Item #3	<input type="checkbox"/>
4	Executive Summary, not to exceed two (2) page(s)	Section 4.5 Required Format and Content	<input type="checkbox"/>
5	Program Administration Plan, not to exceed eight (8) page(s)	Section 6.1 Evaluation Criteria 1	<input type="checkbox"/>
6	Program Administration Plan Approach, not to exceed three (3) page(s)	Section 6.1.1 Evaluation Criteria 1	<input type="checkbox"/>
7	Qualifications/Past Performance & Experience and References Submittal	Section 6.2 Evaluation Criteria 2; Offer Form OF-1	<input type="checkbox"/>
8	Price	Section 6.3 Evaluation Criteria 3; Price Proposal Offer Form OF-2	<input type="checkbox"/>

Authorized Offeror Signature

REQUEST FOR PROPOSALS [RTS-SSO-2023]

Solicitation # RFP - RTS-SSO-2023

Section 1: General Information

1.1 Purpose

The Hawaii State Department of Transportation (HDOT) is issuing this performance-based Request for Proposal (RFP) for receiving proposals to meet the project objectives found in the 4.1 Proposal Objectives.

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data.

Offerors will be evaluated on experience, history, past performance, quality, and price to ensure an award is made that provides the best value to the State.

1.2 Background

In accordance with §103D-304, HRS, the State of Hawaii, Department of Transportation (HDOT), is seeking the services of qualified firms to provide technical services for assistance in the implementation of Title 49 Code of Federal Regulations ("49 C.F.R.") Part 674 State Safety Oversight.

1.3 Schedule and Significant Dates

The table below contains the State's current estimate of the schedule and significant dates. All times are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposals Due Date and Time" is delayed, the rest of the schedule may likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates prior to the proposal due date shall be issued by addendum.

Table 1.3

Event	Date
Solicitation Release:	April 21, 2023
Pre-Proposal Conference:	N/A
Question Submittal Deadline:	May 9, 2023; 2:00 P.M. HST
Answers to Questions:	May 12, 2023; 4:00 P.M. HST
Proposal Due Date and Time:	May 23, 2023; 2:00 P.M. HST
Evaluations	June 6, 2023; 1:00 P.M. HST
Estimated Date for Discussions, if necessary	June 8, 2023
Estimated Due Date for BAFO, if necessary	June 13, 2023 at 1:00 P.M. HST
Anticipated Award Date:	July 1, 2023

1.4 Contract Type

This is a fixed-price contract in accordance with 3-122-136 Hawaii Administrative Rules (HAR).

1.5 Period of Performance

This contract shall be for a period of one (1) year(s) beginning on the date specified on the Notice to Proceed. Unless terminated, the contract may be extended without re-solicitation, upon mutual agreement in writing between the State and the Contractor, prior to the expiration date, for not more than four (4) additional one (1) year periods, or parts thereof.

1.6 Point of Contact

The HDOT is the issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # RFP- RTS-SSO-2023. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The person identified below is the single point of contact (POC) **during** this procurement process. Offerors and interested persons shall direct to the POC all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting contract. The POC designated by the State of Hawaii, Department of Transportation is:

Brandon Eshenour
Acting Rail Transit Safety Administrator
State of Hawaii, Department of Transportation
869 Punchbowl Street, 4th Floor
Honolulu, Hawaii 96813
Brandon.J.Eshneour @hawaii.gov
Phone: (808) 587-2136

1.7 Definitions

The following definitions apply to this solicitation.

BAFO means Best and Final Offer

Best Value means the most advantageous proposal determined by evaluating and comparing all relevant criteria in addition to price so that the proposal meeting the overall combination that best serves the State is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the vendor, quality of goods, or services, or construction, delivery and proposed technical performance.

Contract Administrator means the person designated to manage the various facets of the contract(s) to ensure Contractor's total performance is in accordance with the contractual commitments and obligations are fulfilled.

Contractor means the person having a contract with a governmental body.

Fixed-price Basis means an established price agreed upon by the Contractor and Purchasing Entity, by agreement or by authority, as the price to be charged for a specified amount of services.

Goods means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software, excluding land or a permanent interest in land, leases of real property, and office rentals.

Governmental Body means any department, commission, council, board, bureau, authority, committee, institution, legislative body, agency, government corporation, or other establishment or office of the executive, legislative, or judicial branch of the State, including the office of Hawaiian affairs, and the several counties of the State.

HAR means the Hawaii Administrative Rules, as amended, which are the adopted operating procedures for state agencies authorized by the laws of the State of Hawaii.

HlePRO means the State of Hawaii eProcurement system, a system for issuing solicitations, receiving responses, and issuing notices of award.

HRS means the Hawaii Revised Statutes, as amended, which are the laws that govern the State of Hawaii.

Inherently Governmental Duties means those duties which shall only be performed by a government employee.

Market Research means the gathering and studying of data relating to consumer preferences and purchasing power. In relation to the procurement life cycle, Market Research means the examination of available sources of information to find available sources of supply to meet the needs of any given procurement.

Offeror means the company or firm who submits a proposal in response to this Request for Proposal.

Performance Work Statement (PWS) means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

Procurement Officer is a Contracting Officer for the State.

Proposal means the official written response submitted by an Offeror in response to this Request for Proposals.

Proposer has the same meaning as Offeror.

Purchasing Entity means the State of Hawaii Department of Transportation.

Request for Proposals or "RFP" means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

Statement of Objectives (SOO) is an alternative to a government prepared Statement of Work. A SOO provides the Government's overall objectives and the offeror's required support to achieve the contractual objectives.

Subcontractor means a Contractor contracted for work by the Prime Contractor.

Section 2: Solicitation Information

2.1 Governing Laws and Regulations

This procurement is conducted by the Department of Transportation, in accordance with the procedures set forth in §103D-303 of the Hawaii Revised Statutes (HRS) and Title 3, Subtitle 11, Chapter 122, Subchapter 6 of the HAR. The relevant provisions of Chapter 103D, HRS, and their associated HAR, are incorporated by reference and made a part of this RFP.

This procurement shall be governed by the regulations and laws of the State of Hawaii. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Hawaii

2.2 Electronic Procurement

2.2.1 The State has established the Hawaii State eProcurement (HlePRO) System to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HlePRO. Registration information is available at the State Procurement Office (SPO) website: <https://hiepro.ehawaii.gov/welcome.html>, select HlePRO Vendor Registration and then Vendor Registration Guide.

2.2.2 The State will use HlePRO to issue the RFP, receive Offers, and issue Addenda to the RFP. Addenda and the other information and materials shall be provided by the State through HlePRO, including additions or changes with respect to the dates in Section 1.3 Schedule and Significant Dates. The State shall not be responsible for any person's or entity's failure to do so for any reason. The State is not responsible for any delay or failure of any Offeror to receive any materials updated through the RFP Process on a timely basis.

2.2.3 As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through the HlePRO and shall, therefore, be subject to a mandatory .75% (.0075) transaction fee, not to exceed \$5,000 for the total contract term.

2.2.4 HlePRO Special Instructions. Offeror shall review all special instructions located in HlePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline.

Offerors are advised that they should not wait until the last minute to submit their proposal on HlePRO. Offerors should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline.

2.3 RFP Addenda

Changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via formal written addenda issued by the Hawaii Department of Transportation.

The State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the Hawaii State eProcurement System (HlePRO) to obtain RFP addenda or other information relating to the RFP.

2.4 Pre-Proposal Conference

A pre-proposal conference is not planned for this RFP. Questions may be submitted via requirements within Section 2.6 Electronic Submission of Questions.

2.5 Questions Regarding RFP Contents

If a Prospective Offeror believes that any provision of the RFP is unclear, potentially defective, or would prevent from providing a meaningful Offer, the Offeror shall submit questions to the State POC requesting clarification on or before the deadline for doing so in Section 1.3 Schedule and Significant Dates. Each question shall identify the page, section number, paragraph, and line or sentence of such provision(s) of the RFP to which the question applies. The State POC will respond by the date for the same in Section 1.3 Schedule and Significant Dates. The State may issue Addenda in response to written questions received regarding the RFP.

2.6 Electronic Submission of Questions

All questions must be submitted through the Hawaii State eProcurement System (HlePRO). Questions must be submitted by the question deadline date and time shown in Section 1.3 Schedule and Significant Dates. Answers will be given via the Hawaii State eProcurement System (HlePRO) site as noted in Section 1.3 Schedule and Significant Dates.

Offerors are cautioned about including context in questions that may reveal the source of questions. The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, to the extent possible, to exclude information identifying potential Offerors.

2.7 Proposal Due Date

Proposals must be received by the posted closing date and time as described in Section 1.3 Schedule and Significant Dates of this RFP.

2.8 Cancellation of Procurement and Proposal Rejection

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

2.9 Firm Offers

Responses to this RFP, including proposed costs and/or fees will be considered firm for 90 days after the proposal due date.

2.10 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. If the Offeror so restricts its Proposal, the State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the State. The State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

2.11 Ownership or Disposition of Proposals and other Materials Submitted

All costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether any award results from this RFP. The State shall not reimburse such costs. All proposals become the property of the State of Hawaii.

2.12 Additional Information

The Offeror shall provide additional information regarding aspects of an Offeror's Proposal within five (5) business days of the State's request unless the State specifies another period. As noted, each Offeror shall submit only one Proposal. If an Offeror submits more than one Proposal, then the State reserves the right to reject and or dismiss the Offeror from the RFP Process.

Section 3: Requirements

3.1 Mandatory Minimum Administrative Proposal Requirements

This section contains the minimum requirements that must be met to be considered for the evaluation phase. All items described in this section are non-negotiable. All Offerors must state willingness and demonstrate the ability to satisfy these requirements in the proposal submitted for consideration. Contractors shall be considered non-responsive if unable to cover the minimum requirements which they may not be considered for award.

3.2 Minimum Requirements and Qualifications

The State of Hawaii is requesting proposals to implement the State Safety Oversight Program Standards and Procedures in compliance with Federal Transit Administration Requirements for State Safety Oversight of Fixed Guideway Public Transportation Systems.

A successful offeror will have

- Verifiable experience in the field of State Safety Oversight for Rail Fixed Guideway Transportation.
- US DOT Transportation Safety Institute Transportation System Safety Professional Credential
- Established history (Minimum three (3) years) assisting other states with implementation of State Safety Oversight Program(s) in compliance with Federal Transit Administration (FTA) regulation 49 Code of Federal Regulation Part 674 and guidance with regard to safety and security of fixed guideway public transportation.
- Established history assisting other states with State Safety Oversight program implementation, including the review of safety plans and supporting documents and activities during design, construction testing and start-up phases of the project.
- Established history assisting other states; achieving FTA SSO Certification; annual reporting to FTA; and, FTA SSO Audits.
- Established history assisting other states in accident / incident investigations

3.3 Contractor Responsibility for Subcontractors

The Subcontractors providing services shall meet the same service requirements and provide the same quality of service required of the Contractor and in a timely manner. No subcontract shall relieve the Contractor of its responsibilities for the Services it provides. The Contractor shall manage the quality and performance, project management and schedules, and timely start and completion of services performed by each of its Subcontractors. The Contractor shall be solely responsible and accountable for the completion of all Services it has subcontracted.

3.4 Removal of Subcontractors

In addition to any rights the State has under Law, the State shall have the right to require the removal of a Subcontractor or any of its personnel providing or supporting services for a good cause. In such a case, the State shall specify the deadline for such removal after consultation with the applicable Contractor. A Subcontractor proposed by the Contractor to replace the removed Subcontractor shall be subject to the approval of the State.

3.5 Right to Retain Subcontractors

The State shall have the right to directly retain any Subcontractor after the expiration, termination, or suspension of the Contract under which it is retained, including any Subcontractor providing services subject to any part of a Contract that is terminated or suspended.

3.6 Additional Contractor Requirements

Each Contractor shall:

Adhere to its Contract with the State;

Provide all labor, materials, and equipment necessary to meet the RFP Requirements;

Communicate contract requirements to its Subcontractors' personnel and direct and coordinate project activities to ensure that the services progress efficiently and are completed on schedule;

Ensure that all its and its Subcontractors' employees can communicate effectively with State employees;

Ensure that it is current with all payments and registration fees and similar financial obligations owed to the State during the term of its Contract with the State;

Fully cooperate and maintain effective communication with the State and cooperate in the resolution of problems, suspected problems, or potential problems;

3.7 Payment

Pursuant to HRS §103-10, the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of projects to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, as amended.

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

3.8 Payment to Hawaii Information Consortium, LLC dba NIC Hawaii

HlePRO is administered by Hawaii Information Consortium, LLC dba NIC Hawaii. NIC Hawaii shall invoice the Contractor(s) directly for payment of transaction fees. Payment must be made to NIC Hawaii within thirty (30) days from receipt of invoice. HIC is an intended third-party beneficiary of transaction fees, which are used to fund the operation, maintenance, and future enhancements of the HlePRO system.

Section 4: Instructions to Offerors – Proposal Submission

4.1 Proposal Objectives

One 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.

Proposals shall be prepared straightforwardly and concisely, in a format that is reasonably considered and appropriate for the purpose. Emphasis will be on completeness and clarity and content.

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.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP.

4.2 Proposal Structure and Labeling

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point-by-point response, structured in form and reference to the RFP, addressing all requirements and the Statement of work elements.

4.3 Proposal Submission Instructions

Proposals must be received by [May 23, 2023 2:00 P.M.](#) HST through the Hawaii Electronic Procurement System (HlePRO). Proposals received after the deadline and/or through any sources other than HlePRO will be rejected.

4.4 Electronic Submission of Proposals

Proposals shall be submitted and received electronically through HlePRO by the date and time listed in Section 1.3 Schedule and Significant Dates. This electronically submitted offer shall be considered the original. Any offers received outside of the HlePRO, including faxed or e-mailed offers, shall not be accepted, or considered for award. Any offer received after the due date and time shall be rejected. (See Section 2.2 Electronic Procurement for further information.) **The maximum file size that HlePRO can accept is 100MB. Files larger than 100MB must be reduced into two or more files.**

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

4.5 Required Format and Content

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is contained in later sections of this RFP. Proposal shall be submitted in size 12 Arial font or equivalent.

1. **Table of Contents.** A Table of Contents must be included with each proposal. All major parts of the proposal shall be identified by referencing page numbers.
2. **Offer Checklist.** Complete and submit all items noted on the Offer Checklist.
3. **Offer Form, OF-1.** Offeror shall complete and sign OF-1 Offer Form. See Special Provisions, 8.9 Proposal Preparation.
 - a. **OF Form, OF-1**
 - b. **OF Form, OF-2**
4. **Executive Summary.** The executive summary not to exceed one (1) page is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. The response should demonstrate the Offeror's understanding of and ability to meet the Administrative and Technical Requirements of the RFP. The State should be able to determine the essence of the Proposal by reading the executive summary. This summary will not be evaluated for points, but rather is a high-level explanation of the entire proposal.
5. **Evaluation Criteria Submittals (Refer to Section 5 Evaluation and Award).**

This section shall be sub-divided by the evaluation criteria and include the narrative and any other requirements.

- a. Program Administration Plan – See Section 6.1. Submittal limited to three (3) pages.
 - b. Qualifications/Past Performance & Experience and References Submittal – See Section 6.2. Submittal limited to eight (8) Pages.
 - c. Price Proposal. See Section 6.3. Offeror shall provide a price proposal for the administration of the State Safety Oversight Program for the Hawaii Department of Transportation.
6. **Confidential, Protected, or Proprietary Information.** All confidential, protected, or proprietary information must be included in this section of the proposal response. Do not incorporate protected information throughout the

Proposal. Rather, provide a reference in the proposal response directing the State to the specific area of this protected Information section. If Offeror believes that any portion of its proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer should be so advised in writing and shall be furnished with justification for confidential status. Price is not considered confidential and shall not be withheld.

Information included in the Confidential, Protected or Proprietary Information section of an Offeror's proposal is not automatically accepted as protected. All information identified in the section will be subject to review by the State in accordance with the procedures prescribed by the State's open records statute, freedom of information act, or similar law.

4.6 Each Offeror to Bear its Own Costs

Each Offeror shall be responsible for all costs incurred by it prior to the Notice of Award, including, without limitation, its costs of preparing and submitting its Offer, responding to notices or requests, making Priority-Listed Offeror presentations, demonstrations, and discussions, and otherwise participating in the RFP Process.

Section 5: Evaluation and Award

5.1 Evaluation of Proposals

An evaluation committee of at least three (3) qualified State employees shall evaluate proposals for the Contract. The evaluation will be based solely on Section 5.8 Evaluation Criteria and the process described in this section.

5.2 Right to Waive Minor Irregularities

The State in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to corrections of deficiencies or clarification of ambiguities that in the judgment of the State do not require a comprehensive proposal rewrite. The State also reserves the right in its sole discretion to waive certain Minimum requirements provided that all of the otherwise responsive proposals fail to meet the same minimum requirements and the failure to do so does not materially affect the procurement

5.3 Initial Review and Award without Discussions

In the initial phase of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals.

5.4 Discussion with Priority Listed Offerors

Prior to holding any discussions, a priority list shall be generated consisting of proposals determined to be acceptable or potentially acceptable.

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

The State may invite priority listed Offerors to discuss 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 Section 1.3 Schedule and Significant Dates. The State may also conduct discussions with

priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

5.5 Best and Final Offers

If deemed appropriate by the State in its sole discretion, the State may request each Offeror to submit its BAFO. The request shall be issued via an Addendum, which will provide guidance and additional instructions. Offeror's BAFOs shall be submitted to the State through HlePRO on or before the deadline called for. If an Offeror fails to do so, its last submitted Offer shall be deemed its BAFO.

The BAFOs will be evaluated by the Evaluation Committee taking into consideration the Evaluation Criteria set forth in Section 5.8 Evaluation Criteria.

5.6 Award of Contract

Award shall be made to the responsible Offeror whose proposal is determined the most advantageous to the State of Hawaii, taking into consideration price and the other evaluation factors set forth in this request for proposals.

5.7 Responsibility of Offeror

Pursuant to HRS §103D-310(c), the selected offeror shall at the time of award be compliant with all laws governing entities doing business in the State of Hawaii. See Special Provisions 8.8 Responsibility of Offerors.

5.8 Evaluation Criteria

The following criteria shall be used in evaluating the Offerors:

Table 1 - Evaluation Criteria

Evaluation Category	Evaluation Subcategory	Points Possible
Evaluation Criteria 1: Program	Program Administration Plan	45
Evaluation Criteria 2: Offeror Qualifications	<ul style="list-style-type: none"> • Past Performance Relevancy and Recency Ratings • Record of Contract Performance • References 	45
Evaluation Criteria 3: Price	Price	10
Total Possible Points		100

5.8 Scoring Process

The evaluation committee shall score proposals by reviewing the narrative for each of the evaluation criteria above.

Evaluators shall use a rating of 0 to 5 for each evaluation criteria. Rating is defined as follows:

- 0- The Proposal fails to address the criterion or cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how the requirement(s) is met.
- 1- **Poor.** The criterion is inadequately addressed, Offeror demonstrates only a slight ability to comply, or there are serious inherent weaknesses.
- 2- **Fair.** The Proposal broadly addresses the criterion, but there are significant weaknesses. May have one or more deficiencies, or Offeror has not adequately explained how its services fit the requirement.
- 3- **Good.** The Proposal addresses the criterion well; meets the requirement. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted regarding technical approach.
- 4- **Very Good.** The Proposal addresses the criterion very well, highly comprehensive. No deficiencies noted.

- 5- **Excellent.** The Proposal successfully addresses all relevant aspects of the criterion. Excellent reply that goes beyond the requirements listed in the RFP to provide added value. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency. The response includes a full, clear, detailed explanation of how the requirement(s) are met. No errors in technical writing.

The average of each evaluators' rating for each evaluation criteria shown in Table 1, shall be converted based on the following formula:

Rate Achieved	X	Points Possible For that Criteria	= Points
Total Rating Achievable			

Example:

4 Very Good	X	25	= 20
5			

1 Poor	X	25	= 5
5			

5.9 Notice of Award

After a final selection is made, the State will issue a notice of award on its electronic procurement system (HlePRO). Upon award, proposal files are public records are available for review by submitting a Request for Access to Government Record. Information on the Office of Information Practices and forms may be found at <http://oip.hawaii.gov>.

5.10 Debriefing

Any request for debriefing shall be submitted in writing to the Director of Transportation in accordance with HRS §103D-303, and HAR §3-122-60.

Any protest of this solicitation shall be submitted in writing to the Director of Transportation in accordance with HRS §103D-701 and HAR §3-126. See Special Provisions Section 8.14 Protest Procedures for submitting a protest.

Section 6: Evaluation Criteria

Evaluation Criteria 1: Program Administration Plan

6.1 Program Administration Plan

The program administration plan shall describe how the project objectives will be achieved through a logical plan. The Offeror's methodology to achieve the scope of work shall be described in sufficient detail to permit objective evaluation of the Proposal. The program administration plan shall clearly define how the Offeror intends to approach the project, and how the Offeror's capabilities, expertise, resources, and experience (including past experience in representing transportation interests, government-related, and transportation industry organizations and other entities) will accomplish the project objectives. Submittal font size shall be size 12 Arial font or equivalent.

6.1.1 Program Administration Plan Approach

A detailed narrative, not to exceed three (3) pages, shall explain how the Offeror will meet the needs and coverage for the scope of this RFP. The program administration plan portion of the Proposal must include, at a minimum:

- a) Understanding of the Federal Requirements;
- b) An overview of the proposed project approach, highlighting specific management considerations;
- c) Primary features and benefits of the Offeror's proposed approach;
- d) The program administration plan should also include how the offeror proposes to manage the project. This management plan shall include how the offeror might organize the project team, and the methods for organizing and controlling the effort. The management plan shall also detail the Offeror's management guidelines for ensuring promptness in responding to the State's requests for service.

Evaluation Criteria 2: Past Performance

6.2 Qualifications/Past Performance & Experience and References Submittal

This section contains requirements pertaining to qualifications, past performance, and references. Offeror shall submit a narrative of a maximum of eight (8) pages, not including references. Submittal font size shall be size 12 Arial font or equivalent.

6.2.1 Qualifications

Offeror shall have at least five (5) years' experience with 49 U.S.C. 5329(e) and its subordinate requirements within Title 49 Code of Federal Regulations Part 674, 673 and 672.

6.2.1.1 References

The Offeror shall provide a list of References, with the names and contact information of customer references for at least three (3) government or similar agencies that received similar services and shall submit the list of References with the Proposal.

The State reserves the right to conduct reference checks beyond those provided by references.

The results of the reference checks will be reflected in the evaluation score for this criterion. Full points will not be awarded without confirmation of services from at least three (3) listed agencies. Offerors are encouraged to notify references with due notice.

6.2.1.2. Past Performance Relevancy and Recency Ratings

The State will evaluate the Offeror's demonstrated record of contract performance in supplying services that meet the State's needs. The recency and relevancy of the information, the source of the information, context of the data and general trends in the Contractor's performance will be considered. More recent and more relevant performance usually has a greater impact in the confidence assessment than less recent and less relevant performance. The State will perform an independent determination of relevancy of the data provided or obtained. A relevancy determination will be made in addition to the reference responses received. The State is not bound by the Offeror's opinion of relevancy. The following relevancy criteria apply and will be assigned to each effort

identified in the Offeror's proposal on past performance.

PAST PERFORMANCE RELEVANCY RATING	
Rating	Definition
Very Relevant	Present/past performance effort involved essentially the same performance and magnitude of effort and complexities this solicitation requires.
Relevant	Present/past performance effort involved similar performance and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Present/past performance effort involved some of the performance and magnitude of effort and complexities this solicitation requires.
Not Relevant	Present/past performance effort involved little or none of the performance and magnitude of effort and complexities this solicitation requires.
Unknown Relevancy	No performance record identifiable. This is a <u>neutral rating</u> , it neither hinders or helps the Offeror.

For the purpose of this evaluation, recency is defined as active or completed efforts performed within the past six (6) years from the closing date of this solicitation. The more recent the effort the higher Recency score it will receive, as follows:

PAST PERFORMANCE RECENCY RATING	
Rating	Definition
Very Recent	Completion of a service project within the last one (1) to three (3) years
Recent	Completion of a service project within the last four (4) to six (6) years
Not Recent	Completion of a service project done more than six (6) years prior

6.2.2 Responsible Offeror: Certification of Non-Debarment

The Offeror must certify that neither the Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the State.

List any lawsuits that have been filed against it in the past three (3) years, with a brief description of the nature and status of these lawsuits. Explain how the Offeror is financially stable.

Evaluation Criteria 3: Price

6.3 Price Evaluation

The Offeror's price proposal for the example given below is worth 10% of the total points. The Offeror's price proposal shall be submitted through HlePRO.

6.3.1 Price Formula

In converting price to points, pursuant to HAR §3-122-52 the Lowest Total Price will automatically receive the maximum number of points allocated to Evaluation Criteria 3: Price shown in Table 1 Evaluation Criteria. The point allocations for price on the other Proposals for each service category will be determined through the method set out in the following formula: [Lowest Total Price multiplied by maximum points divided by [Offeror's Proposed Price] = Price Points Awarded.

Section 7: Contract Management

Contract management refers to post-award type activities, such as contract implementation, contract administration, measurement of work completion, and payment computation based on deliverables. Moreover, it involves the monitoring of a contract, making important changes and modifications to the contract, and dealing with related problems. Focused attention to contract management considerations facilitates a positive working relationship between the government customer, procurement staff, and the contractor for the successful implementation of the contract award.

7.1 Post-Award Communications: Contract Administrator

The Contract Administrator identified below is the single point of contact (POC) **post-award**. The contractor shall direct to the Contract Administrator all questions concerning the post-award process and any other questions that may arise related to the resulting contract. The Contract Administrator designated by the State of Hawaii, Department of Transportation is:

Brandon Eshenour
Acting Rail Transit Safety Administrator
Hawaii Department of Transportation
869 Punchbowl St 4th floor
Honolulu HI 96813
Brandon.J.Eshenour@hawaii.gov
Phone: (808) 587-2136; Fax: (808) 271-6789

7.2 Contractor/State Meetings

The contractor shall participate in initial meetings with the State to discuss the contract, including but not limited to; an estimated timeline for transition and implementation, status reports of the transition and implementation, the expectation of deliverables, training sessions, and follow-up meetings.

7.3 Dispute Process and Escalation

The following steps address any issues or concerns that may occur during the transition/implementation stage or at any time throughout the contract period:

Follow 103D General Conditions - Disputes. Disputes shall be resolved in accordance with section 103D-703, Hawaii Revised Statutes (HRS), and chapter 3-126, Hawaii Administrative Rules (HAR), as the same may be amended from time to time.

7.4 Quality Control

Does not apply to this procurement

7.5 Post Award Deliverables

Does not apply to this procurement

Section 8: Special Provisions

8.1 Scope

The State of Hawaii is requesting proposals to implement the State Safety Oversight Program Standards and Procedures in compliance with Federal Transit Administration Requirements for State Safety Oversight of Fixed Guideway Public Transportation Systems.

Services to be provided include but shall not be limited to:

- Provide appropriate updates to and implementation of the HDOT SSO Program Standard and Procedures, in compliance with Federal Transit Administration (FTA) regulation 49 Code of Federal Regulation Part 674 and guidance with regard to safety and security of fixed guideway public transportation.
- Assist the HDOT SSO Program Manager with oversight activities of the Honolulu Authority for Rapid Transportation (HART) including the review of safety plans and supporting documents and activities during design, construction testing and start-up phases of the project.
- Assist the HDOT SSO Program with; achieving FTA SSO Certification; annual reporting to FTA; and, FTA SSO Audits of the HDOT SSO Program.
- Assist the HDOT SSO Program with accident / incident investigations when appropriate and necessary for HDOT SSO Program to mobilize for an investigation.

8.2 Acceptance and Testing

Does not apply to this procurement.

8.3 Intellectual Property Rights

The State reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for State purposes.

8.4 Warranties and Disclaimer of Implied Warranties

Does not apply to this procurement.

8.5 Termination for Convenience or Unavailability of Funds

Refer to Section 13 of Exhibit 1, 103D General Conditions, Form AG-008.

8.6 Preferences

Does not apply to this procurement.

8.7 Certification of Offeror Concerning Wages, Hours and Working Condition of Employees Supplying Services

Does not apply to this procurement.

8.8 Responsibility of Offerors

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

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

8.8.1 Vendor Compliance - Hawaii Compliance Express (HCE)

Vendors may use the HCE, which 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.

8.8.2 Timely Registration on HCE

Vendors/Contractors/service providers intending to use the HCE to demonstrate compliance are advised to register on HCE as soon as possible at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of a contract and final payment. If a vendor/Contractor/service provider is not compliant on HCE at the time of award, the Offeror will not receive the award.

8.8.3 Verification of Compliance on the HCE

Prior to awarding this contract, the State shall verify compliance of the Contractor(s).

8.8.4 Vendor Compliance - Paper Documents

Vendors not utilizing the HCE to demonstrate compliance shall provide the paper certificates to the Hawaii Department of Transportation as instructed below. All certificates must be valid on the date it is received by the Hawaii Department of Transportation. Timely applications for all applicable clearances are the responsibility of the Offeror.

8.8.4.1 HRS Chapter 237 Tax Clearance Requirement for Award

Pursuant to Section 103D-328, HRS, the Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green-certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The *Tax Clearance Application*, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

8.8.4.2 HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award

Pursuant to Section 103D-310(c), HRS, the Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the Hawaii Department of Transportation].

The *DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR*, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

8.8.5 Compliance with Section 103D-310(c), HRS, for an entity doing business in the State.

[This is not required if utilizing the Hawaii Compliance Express]

The Contractor shall be required to submit a *Certificate of Good Standing (COGS)* issued by the State of Hawaii Department of Commerce and Consumer Affairs

(DCCA) - Business Registration Division (BREG). The Certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the Hawaii Department of Transportation.

To obtain the certificate, the Contractor must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

8.8.6 Timely Registration

The above certificates should be applied for and submitted to the State as soon as possible. If a valid certificate is not submitted on a timely basis for an award of a contract, an Offeror otherwise responsive, may not receive the award.

8.8.7 Verification of Compliance

Upon receipt of compliance documents, the State reserves the right to verify their validity with the respective issuing agency. The Contractor shall maintain their compliance throughout the term of the contract.

8.8.8 Required Review

Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and any 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.

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 Section 1.3 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 on a defective solicitation and exposure of proposal(s) upon which award could not be made.

8.9 Proposal Preparation

8.9.1 Offer Form 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 page OF-1.

The Offeror's authorized signature on the OFFER FORM, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

Completion of Offer Form OF-1 is Offeror's acknowledgment and agreement to provide services in all categories identified in the RFP, agreement to provide services in all fifty states, and the understanding of evaluation criteria and process.

8.9.2 Offer Guaranty

An offer guaranty is NOT required for this RFP.

8.9.3 Tax Liability and County Surcharge

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Offerors are advised that they are liable for Hawaii GET at the current 4.0% rate for transactions made on Oahu, Hawaii, Maui, Kauai, Molokai, and Lanai or the applicable Use tax. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

County surcharges on state general excise (GE) tax or Use tax may be visibly passed on but are not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at <http://tax.hawaii.gov/geninfo/countysurcharge>.

8.9.4 Federal I.D. No. and Hawaii General Excise Tax License I.D.

Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on OFFER FORM, page OF-3, 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.

8.10 Confidentiality

8.10.1 If an Offeror in good faith considers a portion of an Offer, or correspondence with the State, to contain confidential information, it shall follow the procedures set forth in Section 4.5 Required Format and Content. Costs included or required to be included in an Offer cannot be confidential and will not be withheld from public access.

8.10.2 Any Offeror may request the nondisclosure of designated trade secrets or other proprietary data it considers confidential. Such request shall be in writing specifically identifying the information or material asserted to be confidential and the justification for confidential treatment. The

request shall be submitted with the submission of the Offer. The information or material asserted by the Offeror to be confidential to the Offeror shall be clearly marked and be submitted in or with the Offer in such manner as to be readily separable from the Offer (or remaining portion of the Offer) to facilitate public access to and inspection of the non-confidential portion of the Offer. Total Cost proposals cannot be marked confidential.

- 8.10.3** Pursuant to HAR §3-122-58, the State will consult with the Attorney General regarding an Offeror's request for confidentiality of part of its Offer. The Attorney General shall determine what portions of the request are confidential under Law and what portions are not, in accordance with HRS Chapter 92F. The State shall communicate the Attorney General's determination to the Offeror in writing. If the request for confidentiality is denied in whole or in part, the information or material deemed to be non-confidential shall be made available as public information unless the Offeror appeals pursuant to HRS § 92F-42(1).

8.11 Redaction by the State

If the State determines, pursuant to HRS §92F-13, that any information or material in an Offer, any written question or submission by a Prospective Offeror, an Offeror or a Contractor, any response to any question or submission from a Prospective Offeror, Offeror or Contractor, and/or any Contract document is not required to be disclosed, then the State shall segregate, or redact, or otherwise cause any such information or material to not be made available as public information.

8.12 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 Director of Transportation at:

Director of Transportation
Hawaii Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813

Any 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 State of Hawaii electronic procurement site.

8.13 Notice to Proceed

Work will commence on the official commencement date specified on the Notice to Proceed.

8.14 Contract Execution

The successful Offeror receiving award shall enter into a formal written contract to be signed by the Contractor and returned within ten (10) working days.

No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed. The State of Hawaii 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.

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

8.15 Liability Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his Subcontractors, if any, from claims for damages for personal injury, accidental death, and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a Subcontractor and naming the Subcontractor as additional insured, the Contractor may require the Subcontractor to provide its insurance, which meets the requirements herein. It is understood that a Subcontractor's insurance policy or policies are in addition to the Contractor's policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its Subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (Occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence \$2,000,000 aggregate

Automobile Liability

\$1,000,000 per accident

Professional Liability shall be required from vendors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services, etc.

Each insurance policy required by this contract (with the exception of the Professional Liability policy), including a Subcontractor's policy, shall contain the following clauses:

- A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- B. "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."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability, and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

Prior to award, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this RFP have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price list and price list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all of the remedies provided in the contract and this RFP for default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this RFP. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price list.

8.16 Contract Invalidation

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

8.17 Mistakes in Proposals

- 8.17.1** Mistakes shall not be corrected after awarding of the contract.
- 8.17.2** When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer may request the offeror to confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.
- 8.17.3** If discussions are not held, or if the best and final offers 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.
- 8.17.4** 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 before award 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 the price, quality, or quantity. If discussions are not held or if the best and final offers 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 the price, quality or quantity.

8.18 Modification Prior to Submittal Deadline or Withdrawal of Offers

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

8.19 Contract Changes – Unanticipated Amendments

During the course of the contract, the Contractor may be required to perform additional work which shall 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.

Contractor will not commence additional work until the Contract Administrator has secured the required State approvals necessary for the amendment and an executed written contract amendment has been issued.

8.20 Re-execution of Work

The Contractor shall re-execute any work that fails to conform to the requirements of the contract which appear during the course of the work and shall immediately remedy any defects due to faulty work by the Contractor.

State Safety Oversight Professional Services
RFP- RTS-SSO-2023

Brandon Eshenour
Department of Transportation
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Eshenour:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, dated XX/XXXX, and the AG General Conditions, Form AG-008 or as amended; 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 bid, 1) Offeror is declaring this offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) Offeror 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. _____

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

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

Respectfully submitted:

_____	(x)	_____
Date		Authorized (Original) Signature
_____		_____
Telephone No.		Name and Title (Please Type or Print)
_____		_____
Fax No.	**	Exact Legal Name of Company (Bidder)
_____		_____
E-mail Address		_____

**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:

**CLIENT REFERENCES
OFFER FORM OF-2**

Client References: Offeror is required to fill out Section 1 for a minimum of three (3) references to customers who received services similar to those called out in this RFP. Offeror shall then complete Section 2 for each reference and email to referenced customer to complete Section 3.

Section 1. To be completed by the offeror and submitted with offer.

Customer Name #1: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #2: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #3: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #4: _____
Address: _____
Reference Name: _____
Current Phone: _____

Customer Name #5: _____
Address: _____
Reference Name: _____
Current Phone: _____

The State may contact all of the references listed to inquire about Offeror's equipment, services, performance, and degree of customer satisfaction. Full points for references will not be awarded unless Section 2 and 3 are emailed from referenced customers.

Section 2. OF-3 To be completed by the Contractor – Offeror or Sub-contractor

Contractor Name:	Contractor Contact/Name:
Project Dates:	Contractor Contact Phone:
Customer Organization:	Customer Contact Name:
	Customer Phone:
Customer Address:	Customer Fax:
Operating Budget of Organization:	
<p>Project included implementation in which of the following procurement categories (Check all that apply):</p> <p><input type="checkbox"/> Acquisition Planning <input type="checkbox"/> Market Research <input type="checkbox"/> Solicitation and Award</p> <p><input type="checkbox"/> Contract Management <input type="checkbox"/> Completion & Closeout <input type="checkbox"/> Other Services</p>	
<p>Project included implementation of procurement categories listed above in a government and/or education organization:</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
Scope of Project:	
Number of employees staffed for this project:	
Total One-Time Cost of Project (Estimated/Actual):	

Reason for Change in Total One-Time Cost of Project, if applicable:					
Scope of Contractor/Offeror's Involvement in this project:					
Number of employees Contractor/Offeror staffed for this project:					
Original Value of Contractor/Offeror's Contract:		Actual Total Contract Value:			
Reason(s) for Change in Value:					
Estimated Start & Completion Dates:		From:	Click here to enter a date.	To:	Click here to enter a date.
Actual Start & Completion Dates:		From:	Click here to enter a date.	To:	Click here to enter a date.
Reason(s) for Difference Between Estimated and Actual Dates:					

Section 3. OF- 4 To be completed by the Customer Organization

Contractor Name (maybe subcontractor to Offeror):

Customer Organization:

Contractor Name:

Customer Organization:

A. Validation of Referenced Project Data Provided by Offeror in Section 2

Comments from the Customer Organization

B. Past Performance Reference

RATING GUIDELINES

Selection	Rating
5	Significantly exceeded your expectations.
4	Somewhat exceeded your expectations.
3	Met your expectations.
2	Somewhat below your expectations.
1	Significantly below your expectations.

Please explain ratings of 1, 2, or N/A in the Comments section below.

Criteria	Rating	Not Applicable
1. The Contractor provided sufficient project resources with appropriate skill sets to meet all project goals and objectives.	Choose an item.	<input type="checkbox"/>
2. The Contractor effectively managed its project staff to achieve project goals and objectives.	Choose an item.	<input type="checkbox"/>
3. The Contractor met all required tasks and deliverables timely and satisfactorily.	Choose an item.	<input type="checkbox"/>
4. The Contractor provided effective training and knowledge transfer to meet project goals.	Choose an item.	<input type="checkbox"/>
5. The Contractor satisfactorily managed project scope and risk to adhere to project schedule, control costs, and meet project goals.	Choose an item.	<input type="checkbox"/>
6. The Contractor provided effective post-implementation maintenance and operations support.	Choose an item.	<input type="checkbox"/>

Comments:
For Criteria with Ratings of 1, 2, or N/A:
General Comments:

As a representative of the Customer Organization listed above, I approved the responses to the previous statements about the performance of the Contractor listed above on the project identified in Section 2 of this Offeror Experience Reference Form.	
Printed Name:	Printed Title:
Signature:	Date:

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements	3
4. Nondiscrimination	3
5. Conflicts of Interest	3
6. Subcontracts and Assignments	3
7. Indemnification and Defense	4
8. Cost of Litigation.....	4
9. Liquidated Damages	4
10. STATE'S Right of Offset.....	4
11. Disputes	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses	8
17. Payment Procedures; Final Payment; Tax Clearance	9
18. Federal Funds	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment	11
22. Variation in Quantity for Definite Quantity Contracts	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material	12
25. Publicity.....	12
26. Ownership Rights and Copyright	12
27. Liens and Warranties	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data	13
30. Audit of Cost or Pricing Data	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law	14
35. Compliance with Laws	14
36. Conflict between General Conditions and Procurement Rules	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver	14
40. Pollution Control	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

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 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.

or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS (\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(If available)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.