

HAWAII STATE DEPARTMENT OF EDUCATION
PROCUREMENT AND CONTRACTS BRANCH

August 3, 2023

REQUEST FOR PROPOSALS

RFP D23-153

SEALED PROPOSALS

TO

PROVIDE ADULT EDUCATION MARKET RESEARCH SERVICES
FOR THE HAWAII STATE DEPARTMENT OF EDUCATION

**will be received through the State of Hawaii eProcurement System (HlePRO) at
<https://hiepro.ehawaii.gov> until 4:30 p.m., Hawaii Standard Time (HST)**

on

SEPTEMBER 7, 2023,

or such later date as may be established by an addendum to this Request for Proposals (RFP)

Offerors interested in responding to this electronic solicitation must be registered on the HlePRO (<https://hiepro.ehawaii.gov>) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HlePRO solicitation.

A Pre-Proposal Conference will be held on August 15, 2023 at 10:00 a.m. (HST). Attendance is optional but highly recommended. Refer to RFP Section 1.11, Pre-Proposal Conference for more information.

Questions relating to this solicitation may be directed to Wendy Ebisui, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at wendy.ebisui@k12.hi.us.

1. OVERVIEW OF PROCUREMENT PROCESS

1.1 Definitions and Acronyms

The following definitions apply to this solicitation.

- a. **Contract** means the combination of the signed agreement, solicitation, including the scope of work, the special conditions, the general conditions, and any addenda to the solicitation; the offer and any best and final offer(s); and any amendments to the contract; and any terms implied by law.
- b. **CONTRACTOR** means an individual, partnership, firm, organization, corporation, joint venture or other legal entity having a contract with the Hawaii State Department of Education and undertaking the execution of work under the terms of the contract and acting directly or through its agents, employees or sub-contractors.
- c. **Department** or **STATE** means the Hawaii State Department of Education.
- d. **General Conditions** means the General Conditions issued by the Department of the Attorney General of the State of Hawaii, referred to as Form AG-008, as revised, and included herein by reference. The applicable Form AG-008, as revised, included by reference, is the form in effect at the date the solicitation is issued.
- e. **HAR** means **Hawaii Administrative Rules**.
- f. **HRS** means **Hawaii Revised Statutes**.
- g. **Offer** means a proposal submitted in response to this solicitation.
- h. **Offeror** means any individual, partnership, firm, organization, corporation, joint venture, or other legal entity, submitting an offer in response to this solicitation.
- i. **Project** means this RFP to develop a contract.
- j. **Proposal** means the document submitted by an offeror in response to this solicitation.
- k. **RFP** means **Request for Proposals**, the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda, whether attached or incorporated by reference.
- l. **STATE** or **Department** means the Hawaii State Department of Education.

1.2 RFP Organization

This RFP is organized as follows:

- Section 1. Overview of Procurement Process. Provides Offerors with a general overview of the RFP process.
- Section 2. Purpose and Overview. Provides Offerors with general information about the objectives of this project and RFP, and critical success factors.
- Section 3. Scope of Work and Requirements. Provides Offerors with a general description of the tasks to be performed, delineates Hawaii State Department of Education and CONTRACTOR's responsibilities, stipulates Offeror qualifications, and defines deliverables.
- Section 4. Proposal. Describes the required format and content for the Offeror's submittal, and establishes requirements for the Price Proposal.
- Section 5. Proposal Evaluation. Describes how proposals will be evaluated by the Hawaii State Department of Education.

- Appendix A. Proposal Identification and Information Form
- Appendix B. Offeror Reference Form / Offeror Experience
- Appendix C. Contract Minimum and Special Conditions
- Appendix D. State of Hawaii's General Conditions

1.3 Procurement Authority

This procurement is being conducted as a competitive sealed proposals procurement in accordance with the procedures set forth in §103D-303 HRS and Title 3, Subtitle 11, Chapter 122, Subchapter 6 of the HAR. The relevant provisions of §103D, HRS, and their associated HAR, are incorporated by reference and made a part of this RFP.

1.4 Issuing Office and RFP Contact Person

The following person from the issuing office listed below is the sole point of contact for this RFP. Communication with any other contact person from the date of release of this RFP until the selection of the successful Offeror(s) without approval, may result in disqualification.

RFP Point of Contact: Wendy Ebisui
 Email: wendy.ebisui@k12.hi.us
 Phone: (808) 675-0130
 Fax: (808) 675-0133

Issuing Office:
 Hawaii State Department of Education
 Procurement and Contracts Branch
 Waipahu Civic Center
 94-275 Mokuola Street, Room 200
 Waipahu, Hawaii 96797

1.5 Procurement Timetable

Except as noted, the following schedule represents the STATE's best estimate. All times indicated are Hawaii Standard Time (HST). If any component of this schedule is delayed, the rest of the schedule will likely be amended by the same number of days, however the STATE reserves the right to amend or revise the timetable without prior written notice when such revision or amendment is in the STATE's best interest.

Activity	Estimated Dates
Public Notice announcing Request for Proposals (RFP)	August 3, 2023
Pre-Proposal Conference	10:00 a.m., August 15, 2023
Deadline for submission of written questions	On or before 2:00 p.m., August 21, 2023
STATE's responses to written questions	on or about August 25, 2023
Proposal Due Date/Time	
Proposals will be received through the State of Hawaii eProcurement System (HiePRO) at https://hiepro.ehawaii.gov until 4:30 p.m., Hawaii Standard Time (HST)	4:30 p.m., September 7, 2023

THERE ARE NO EXCEPTIONS TO THIS PROPOSAL DUE DATE UNLESS THE DATE IS AMENDED IN WRITING BY THE PROCUREMENT AND CONTRACTS BRANCH.	
Evaluation of Proposals	September 8 through 15, 2023
Determination of Priority-Listed Offerors (if necessary)	On or about September 2023
Priority-listed Offerors discussions conducted and/or notified to schedule presentation to STATE (if necessary)	TBD
Best and Final Offers (if necessary)	TBD
Contractor(s) Selected	On or about October 2023
Contract Award	On or about October 2023
Contract Commencement Date/Notice to Proceed	On or about November 2023

1.6 Cancellation of RFP; Rejection of Proposals

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the STATE.

1.7 Electronic Procurement

- 1.7.1 The STATE utilizes the Hawaii State eProcurement (HlePRO) System to promote an open and transparent system for vendors to compete for 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>, select HlePRO Vendor Registration and then Vendor Registration Guide.
- 1.7.2 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 specified herein. The STATE is not responsible for any delay or failure of any Offeror to receive any materials regarding this RFP on a timely basis.
- 1.7.3 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. The transaction fee shall be based on the original award amount and is payable to Tyler Hawaii, the vendor administering HlePRO.
 - 1.7.3.1 For resultant Price and/or Vendor Lists, the mandatory fee (.75%) is applicable for sales calculated on a quarterly basis for the first year only. This transaction fee shall be based on the total sales made against this contract, payable to Tyler Hawaii, the vendor administering HlePRO.
- 1.7.4 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.
- 1.7.5 Payment to Tyler Hawaii. HlePRO is administered by Tyler Hawaii. Tyler Hawaii shall invoice the Contractor(s) directly for payment of transaction fees. Payment must be made to Tyler Hawaii within thirty (30) days from receipt of invoice. Tyler Hawaii is an intended third-party beneficiary of transaction fees, which are used to fund the operation, maintenance and future enhancements of the HlePRO system.

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.

1.8 Required Review/Written Questions

It is the Offeror's responsibility to carefully review this solicitation for defects and questionable or objectionable matter. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documentation.

Comments concerning defects, discrepancies, omissions, questionable or objectionable matter, or questions related to this RFP must be made in writing to allow issuance of any necessary amendments to the RFP. It will also help prevent exposure of Offeror's proposal prepared in response to a defective or inaccurate solicitation upon which award could not be made.

Comments related to this solicitation shall be communicated in writing to the RFP Contact Person identified via fax or e-mail by the date and time established for submission of written questions to ensure an official response. The STATE will not respond to verbal or informal questions.

Such comments shall contain pertinent information to identify the prospective Offeror, its telephone number, e-mail address, the RFP number, as well as reference to the specific page, section, and/or paragraph as applicable.

The response(s) to the prospective Offerors' written questions received by the scheduled date shall be compiled, shall omit reference to the source(s) of the questions, shall be issued as an addendum to the RFP, and shall become a part of the RFP. The STATE will publish the questions as they are submitted including any background information provided with the question. The STATE at its sole discretion may omit questions which may be combined or may paraphrase questions and background content for clarity.

The STATE's responses shall be communicated in writing via addenda and will be posted on the HlePRO. The STATE is not responsible for delays or non-receipt of any communications by the prospective Offerors.

If an Offeror submits a question after the scheduled date, the STATE may answer the question but does not guarantee that the answer will be provided prior to the Proposal due date.

1.9 RFP Addenda

The STATE reserves the right to amend this RFP at any time prior to the closing date, or prior to the date for best and final offers. All addenda issued shall be incorporated into the resulting contract. Failure of any Offeror's receipt of any such addenda or interpretations shall not relieve the Offeror of any obligation under this solicitation. It is the responsibility of the prospective Offeror to monitor the HlePRO to obtain RFP addenda or other information relating to the RFP.

1.10 Notice of Intent to Offer (Letter of Intent)

A notice of intent to submit a Proposal is NOT required.

1.11 Pre-Proposal Conference

Interested Offerors are invited to participate in the Pre-Proposal Conference via WebEx. Attendance shall be voluntary but interested Offerors are encouraged to participate to gain an understanding of the breadth and scope of work involved under this RFP. Official responses to questions and revisions to the original terms will be issued in writing as an addendum to this RFP.

Pre-Proposal Conference: August 15, 2023, at 10:00 a.m., HST

Interested Offerors may participate in the pre-proposal conference with the following:

RFP D23-153

WebEx: <https://bit.ly/MarketingRFP>
Or: <https://hidoe.webex.com>
Meeting Number: 808 529 754
Password:
Phone Number (regular call charges may apply): 1-844-621-3956
Access code: 808 529 754

1.12 Deadline for Proposals

Proposals shall be received through HlePRO. Proposals received after the deadline will not be accepted. Timely receipt of offers shall be evidenced by the date and time on HlePRO.

1.13 Proposal Opening

Proposals shall not be opened publicly, but the register of proposals and Offerors' proposals shall be open to public inspection upon posting of the award.

1.14 Disqualification of Offers

The STATE reserves the right to consider as acceptable only those proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work.

An Offeror shall be disqualified, and the Offeror's Proposal shall be rejected for any one or more of the following non-exclusive reasons as solely determined by the STATE:

- 1.14.1 Proposal received after specified deadline.
- 1.14.2 Proposals not received on HlePRO.
- 1.14.3 Proposal not properly completed as required herein or containing any unauthorized additions or deletions, defects including but not limited to irregularities of any kind which may make the Proposal incomplete, indefinite, or ambiguous as to its meaning (e.g. un-initialed erasures, prices which are obviously unbalanced).
- 1.14.4 A Proposal which is incomplete or conditional proposals including but not limited to a Proposal which includes any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP.
- 1.14.5 A Proposal signed by other than an authorized individual.
- 1.14.6 More than one Proposal from an individual, partnership, firm, organization, corporation, joint venture, or other legal entity under the same or different names (Offeror), whereby all proposals from the Offeror shall be rejected.
- 1.14.7 Evidence to the STATE's sole satisfaction of collusion among Offerors, lack of responsibility and cooperation to STATE requests during the RFP process or as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
- 1.14.8 Failure to possess proper licenses, facilities, equipment or sufficient experience to provide the proposed solution or to perform the work contemplated.
- 1.14.9 Evidence of any noncompliance with any applicable law or rule.

1.15 Proposal Evaluation

The STATE will conduct a comprehensive, fair, and impartial evaluation of the proposals it receives in response to this RFP. Refer to Section 5 of this RFP for specific requirements and details of the process.

1.16 Proposal as Part of the Contract

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

1.17 Additional Terms and Conditions

The STATE reserves the right to add terms and conditions, if any. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

1.18 Offer Acceptance Period

The STATE's acceptance of a proposal, if any, will typically be made within ninety (90) calendar days after the opening of proposals. Prices quoted by the Offeror shall therefore remain firm for ninety (90) calendar days from the receipt of proposals.

1.19 Contract; Contract and Performance Period

The CONTRACTOR receiving the award shall be required to enter into a formal written contract. Upon execution of contract, the STATE will issue a notice to proceed and a fully executed copy of the contract to the CONTRACTOR. No work will be undertaken by the CONTRACTOR prior to the commencement date specified on the contract as the STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to official starting date.

1.19.1 Contract Term

The Contract shall commence upon full execution of the contract by the Superintendent of the Hawaii State Department of Education and shall end on October 31, 2024.

1.19.2 Contract Renewal

The Contract may be extended for not more than three (3) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration and iii) under the same terms and conditions of the original agreement or as negotiated between the STATE and the CONTRACTOR. Contract extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplement to the Contract for each additional period.

1.19.3 Performance Period

The CONTRACTOR shall complete the work within the time limits specified herein. The time specified herein is the maximum time allowed.

1.20 Contract Award

Award, if any, shall be made to the responsible Offeror with the highest number of points and whose proposal the STATE deems most advantageous in accordance with the evaluation criteria specified.

1.21 Responsibility of Offerors; Hawaii Compliance Express

The Offeror is advised that if awarded under this RFP, Offeror shall, upon award, furnish proof of compliance with the requirements of HRS §103D-310 and HAR § 3-122-112 including:

RFP D23-153

- Chapter 237, General Excise Tax Law;
- Chapter 383, Hawaii Employment Security Law;
- Chapter 386, Workers' Compensation Law;
- Chapter 392, Temporary Disability Insurance;
- Chapter 393, Prepaid Health Care Act; and
- One of the following:
 1. That Offeror is registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
 2. That Offeror is registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

Offeror may demonstrate proof of compliance with the above-referenced requirements by submitting a *Certificate of Vendor Compliance* issued by the Hawaii Compliance Express (HCE) online system to the Hawaii State Department of Education, Procurement and Contracts Branch upon award. The HCE service allows vendors to register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. CONTRACTORS that elect to use HCE services are required to pay an estimated annual registration fee of \$12.00.

Due to the time required to obtain the HCE *Certificate of Vendor Compliance*, it is highly recommended that the interested Offeror begin the registration process immediately.

1.22 Failure to Execute Contract; Timely Submission of Certificates

At time of award, the above *Certificate of Vendor Compliance* and any other documentation and certification shall be submitted to the Hawaii State Department of Education, Procurement and Contracts Branch as soon as possible or by the deadline established by STATE. If a valid certificate or compliant documentation is not submitted on a timely basis for award, award made to an Offeror otherwise responsible may be annulled.

Failure to execute a contract as required within ten (10) calendar days or such further time as the STATE may allow after the Awardee has received the contract for execution shall be just cause for the annulment of the award. STATE may award the contract to the next responsible Offeror or may call for other offers, whichever is deemed to be in the best interest of the STATE.

1.23 Notification of Award; Non-selected Offeror(s)

Upon award to the successful Offeror(s), the STATE shall post publicly, a notice of award which may be viewed on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>. Additionally, the STATE will provide notification of the award to any non-selected Offeror(s). The STATE is not responsible for delays or non-receipt of such notification. Failure of any Offeror to receive any such notification shall not relieve the Offeror of any obligations or requirements herein.

1.24 Debriefing

The purpose of a debriefing is to inform the non-selected Offeror(s) of the basis for the source selection decision and award. An Offeror(s) not selected for award shall submit a written request for a debriefing within three (3) working days after the posting of the award. The debriefing shall be held, to the maximum extent possible, within seven (7) working days after the posting of the award.

1.25 Protest

Pursuant to §103D-701, HRS and §3-126, HAR, a protest of the solicitation must be submitted prior to the date set for receipt of offers, and a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or within five (5) working days following a debriefing. The award(s), if any, resulting from this solicitation shall be posted on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>.

Any protest pursuant to §103D-701, HRS and §3-126, HAR shall be submitted in writing to the Hawaii State Department of Education's, Chief Procurement Officer, c/o Procurement and Contracts Branch at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

2. RFP PURPOSE AND OVERVIEW

2.1 Purpose and Introduction

The Adult Education Family Literacy Act (AEFLA) is authorized as Title II of the Workforce Innovation and Opportunity Act (WIOA). It is administered by the Office of Career, Technical, and Adult Education (OCTAE) at the U. S. Department of Education.

The Hawaii State Department of Education (Department) Office of Curriculum and Instructional Design is the AEFLA grant recipient for the State of Hawaii.

Hawaii receives approximately 2.3 million dollars annually to provide adult education services. The amount each state receives is based on a formula established by Congress.

The local eligible provider of adult education services is McKinley and Waipahu Community Schools for Adults.

2.2 Background and Current-State (Environment)

Under AEFLA, the program of Basic Grants to States is the primary source of federal support for basic skills programs. The program's purpose is to provide educational opportunities below the postsecondary level for individuals 16 or older who:

- Are not currently enrolled in school;
- Lack a high school diploma; or
- Lack the basic skills to function effectively in the workplace and their daily lives.

Instructional services are offered in four program areas:

- Adult Basic Education – basic skills instruction below the high school level;
- Adult Secondary Education – high school level instruction;
- IELCE – Integrated English Literacy and Civics Education; and
- ELA – English Language Acquisition instruction.

In Hawaii, approximately 53,453 adults ages 18 – 64 do not have a high school credential. Approximately 98,067 adults ages 18 – 64 do not speak English very well or at all. The current enrollment for adult education services is 3,322.

2.3 Business Goals and Objectives

The AEFLA program goal is to increase enrollment in adult education services.

The AEFLA program objectives are:

- Measure the effectiveness of its outreach efforts;
- Utilize the data available through the Program for the International Assessment of Adult Competencies (PIAAC) and the American Community Survey to conduct an analysis to inform its outreach efforts;
- Obtain Hawaii public perception of adult education to improve outreach efforts; and
- Create a survey for adult education participants, to monitor the implementation of required AEFLA services for participants and inform program improvement.

3. SCOPE OF WORK; PROJECT AND OFFEROR REQUIREMENTS

3.1 PROJECT OVERVIEW

The Office of Curriculum and Instructional Design (OCID), Career Readiness Team (CRT), Adult Education (AE) program is seeking market research services to:

1. Collect and analyze statewide data on the effectiveness of an adult education outreach campaign designed to ensure the public knows about the Adult Education and Family Literacy Act (AEFLA) services provided through the Hawaii State Department of Education (Department) community schools for adults.
2. Collect and analyze statewide data on public perception of adult education in Hawaii.
3. Analyze and report on adults with low literacy skills in the state using data from the PIAAC Skills Map and American Community Survey.
4. Design and develop a survey to collect data on adult school participants' experience in the program and if the experiences included the required services of the AEFLA.

3.2 SCOPE OF WORK

- 3.2.1 Collect and analyze statewide data on the effectiveness of an adult education outreach campaign.

The CONTRACTOR shall meet with representatives from the AE program to develop a plan to collect data from the statewide adult population to determine the effectiveness of the outreach campaign. The plan will focus on whether key message points of the AEFLA were retained, which includes, but is not limited to:

- Assist adults in becoming literate and obtaining the knowledge and skills necessary for employment and economic self-sufficiency;
- Assist adults in attaining a recognized secondary school diploma equivalent and in the transition to postsecondary education and training through career pathways; and
- Assist immigrants and other individuals who are English language learners in:
 1. improving their (i) reading, writing, speaking, and comprehension skills in English; and (ii) mathematics skills; and
 2. acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

- 3.2.2 Collect and analyze statewide data on the public perception of adult education in Hawaii.

The data collection and analysis on the effectiveness of the adult education outreach campaign will also determine the public perception of adult education in Hawaii.

- 3.2.3 Analyze and report on adults with low literacy skills in the state.

The CONTRACTOR shall meet with representatives from the AE program to:

- Assist the AE program to develop a plan to analyze the adult population in Hawaii using PIAAC Skills Map and American Community Survey data to determine those that have low literacy skills; and
- Develop reports with sections that shall include, but are not limited to, introduction, methodology, data analysis, results and implications, and conclusions. Reports shall also include any other appropriate materials, which includes, but is not limited to, infographics. Reports will be used by the AE program to present and communicate the findings to AEFLA stakeholders and may be organized by geographic and demographic characteristics.

- 3.2.4 Design and develop a survey to collect data on adult school participants' experience in the program.
The CONTRACTOR shall meet with representatives from the AE program to design and develop a survey to collect program participants' experiences in the adult school program for AEFLA quality control purposes. The survey shall not collect personal identifiable information.

3.3 OFFEROR QUALIFICATIONS

The purpose of the Offeror Qualifications section is to provide the STATE the ability to verify the experience and knowledge claims made in the proposal by the Offeror and to assess the Offeror's prior record in providing services to other organizations.

Failure on the Offeror's part to meet the requirements herein may result in a determination of non-responsiveness and subsequent disqualification of Proposal. These requirements shall remain in effect throughout the entire contact period. Failure to maintain these requirements may result in cancellation of award or early, partial or full termination of a contract.

Minimum Qualifications of the Offeror are as follows:

- 3.3.1 No less than five (5) years' experience conducting surveys similar in size and scope of this Project.
- 3.3.2 Have experience in writing reports of similar scope.
- 3.3.3 Experience using the PIAAC Skills Map data system and American Community Survey data.
- 3.3.4 Permits, Certifications, and Licenses

Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

Offeror shall comply with all business registration requirements prior to commencing work under the contract.

4. PROPOSAL

4.1 General Requirements

- 4.1.1 Any and all costs incurred by an Offeror in preparing and submitting a Proposal and conducting discussions, if any, shall be at the Offeror's sole expense and are the Offeror's sole responsibility. This includes the cost of any visits to client references, and STATE locations by an Offeror, but does not include any costs incurred by the STATE or its representatives for Offeror demonstrations or site visits.
- 4.1.2 Before submitting a proposal, each Offeror must examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, and any other relevant documentation.
- 4.1.3 Offerors are charged with presumptive knowledge of all requirements of all cited authorities. Offeror must become familiar with state, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work before submitting a proposal. Submission of a proposal by any prospective Offeror shall constitute admission of knowledge on the part of such Offeror.
- 4.1.4 The Scope of Work, Minimum Contract Provisions, General Conditions and other documents referenced in or attached to the proposal shall be considered a part of the proposal submitted, whether or not attached to the proposal at the time of submission. Such documents shall not be altered in any way; any alterations so made by the Offeror may result in rejection of the proposal.
- 4.1.5 Submission of a proposal shall constitute an incontrovertible representation by the Offeror of understanding, acceptance, and compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.
- 4.1.6 Any proposal may be withdrawn at any time on the HlePRO prior to the deadline for receipt of offers. The withdrawal of a proposal shall not prejudice the right of an Offeror to submit a new proposal, but any such new proposal must be received before the stated deadline.
- 4.1.7 A proposal that contains any omission, erasure, addition not called for, conditional offer or irregularity of any kind may be rejected. Corrections, if necessary, may be made by submitting a revised proposal on the HlePRO prior to the proposal due date and time.

4.2 Confidential Information in Proposal

The contents of any proposal shall not be disclosed during the review, evaluation, or discussion process. Once the notice of the award is posted, all proposals (both successful and unsuccessful) become available for public inspection.

If an Offeror believes that any portion of its proposal contains information that should be withheld as confidential, then the Procurement and Contracts Branch should be so advised in writing. Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the Proposal, be clearly marked, and shall be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal.

Whether those parts shall remain confidential will be determined under § 3-122-58(b), HAR and Chapter 92F, HRS. Pursuant to Section 3-122-58, HAR, if a person requests to inspect the portions of a proposal designated as confidential, the head of the purchasing agency or designee shall consult with the Department of the Attorney General and make a written determination in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information,

unless the Offeror appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

4.3 Proposal Preparation

One of the objectives of this RFP is to make proposal preparation easy and efficient, giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. 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 meet the obligations outlined in this RFP.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the primary project goal of this RFP as stated herein. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate to the purpose of this RFP. Emphasis shall be on completeness and clarity of content. If any additional information is required by the STATE regarding any aspect of an Offeror's proposal, such information shall be provided within two (2) working days of the STATE's request unless otherwise stated or directed by the STATE.

4.4 Proposal Security

A Bond is not required if submitting a Proposal.

4.5 Proposal Submission and Format

This section prescribes the standard format for a proposal submitted in response to this RFP.

Offeror shall submit a Proposal using the exact forms or reproductions of such forms as provided and as otherwise instructed by this RFP. Failure to comply may result in a determination that the proposal is non-responsive.

The standard format will facilitate the STATE's review, comparison, evaluation of proposals, and verification as to whether the minimum requirements are met by each Offeror and the Offeror's Proposal. The format is not intended to limit the content of a proposal in any way. The Offeror may include any additional data or information that is deemed pertinent to this RFP.

This electronically submitted offer shall be considered the original. Any offers received outside of the HlePRO shall not be accepted or considered for award, unless otherwise specified herein. The maximum file size that HlePRO can accept is 100MB. Files larger than 100MB must be reduced into two (2) or more files.

Proposals shall be submitted and received electronically by the specified due date and time through the HlePRO (<http://hiepro.hawaii.gov>).

4.6 Proposal Organization and Content

Proposals shall be organized in this order:

- Table of Contents: The table of contents shall clearly identify the material by section and by page number.
- Section 1: Proposal Identification and Information Form (Appendix A)
- Section 2: Executive Summary
- Section 3: Offeror Qualifications (including subsections: Offeror History and Background, Offeror Reference Form / Offeror Experience (Appendix B), Project Team Organization, Project Team Staffing, and Information/Data Security and Confidentiality)
- Section 4:
- Section 5: Subcontractors (if any)

Section 6:	Proposed Solution; Technical Proposal
Section 7:	Price Proposal
Attachment A:	Proof of Compliance Documents

Additional information about specific requirements of each section follow.

4.7 Proposal Identification and Information Form (Appendix A)

Offeror shall submit the Proposal under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and shall indicate exact legal name in the appropriate space on the Proposal Identification and Information Form. Failure to do so may result in rejection of the proposal or delay proper execution of a resulting contract, if any.

The Offeror's authorized signature on the PROPOSAL IDENTIFICATION AND INFORMATION FORM 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.

A hard copy (original signature in ink) of the PROPOSAL IDENTIFICATION AND INFORMATION FORM must also be received by the Hawaii State Department of Education, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, within five (5) working days after the proposal due date.

4.8 Executive Summary

The executive summary shall summarize the contents of the Proposal in a way that gives readers a broad understanding of the entire Proposal and must also contain the following:

Terms and Conditions - A statement that the Offeror understands and shall comply with all terms and conditions of the RFP (including the General Conditions). If an Offeror does not plan to comply with one or more of the terms or conditions of the RFP, this must be stated; ALL exceptions must be listed and fully described. The STATE reserves the right to accept or not accept any exceptions.

Assumptions or Constraints - A statement on whether the Proposal contains any assumptions or constraints and must also identify and describe each such assumption and constraint. If neither assumptions nor constraints are included in the Proposal, a statement to that effect must be made.

Deviations - If the Proposal deviates from the specifications or requirements of the RFP, a statement must be included identifying and describing each such deviation. If no deviations are included in Offeror's Proposal, a statement to that effect must be made.

Subcontracting - A statement that the products and services of the proposed solution shall be provided solely by the Offeror and the Offeror's company or whether a subcontractor(s) shall assist. The Offeror's use of subcontractor(s) requires the prior written approval of the STATE.

Taxable Transaction - Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they may be liable for payment of the Hawaii General Excise Tax (GET). If an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Pending Litigation - The Offeror shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain how litigation may materially impact the Offeror or the Offeror's ability to fully perform and complete any work under the contract.

Other Notable Items - The Offeror shall disclose any other items of note that may have material impact the Offeror or the Offeror's ability to fully perform and complete any work under the contract.

4.9 Offeror Qualifications

This section of the Proposal shall include the following:

Offeror History and Background. The Offeror shall describe its corporate background and experience including its size and resources, details of corporate experience relevant to the Project, and a list of other current or recent related projects by providing the following:

- General information about the Offeror's organization, including but not limited to, the number of years' experience conducting surveys similar in size and scope.
- Ownership (e.g., public company, partnership, or subsidiary)
- Corporate office location
- Corporate experience, including but not limited to, experience in writing reports similar in scope, and experience using the PIAAC Skills Map data system and the American Community Survey data.
- Number of technical and service staff available to accomplish the scope of work

Offeror Reference Form / Offeror Experience (Appendix B). The Offeror shall include in their proposal a minimum of three (3) recent client references that are relevant to this Project and demonstrate the Offeror's qualifications and experience. Offeror's references, preferably government references, should be within the last three (3) years, should include Offeror's experience with work in Hawaii, and should be similar in scope and complexity to this Project.

Information provided should include the name of the client organization; name, title, email, and telephone number of the contact person; date or duration of the project, brief description of work performed for the client; its use of technology; and a list of past reports completed by the Offeror that required survey design, data collection, data analysis, methodology summary, and report drafting and completion.

The Offeror grants the Department authorization to contact any of the Offeror's previous clients, including but not limited to the client references submitted in their Proposal, to evaluate the Offeror and its work.

Project Team Organization. The Offeror shall present an organizational chart of staff who will be assigned to work on the contract. This shall include the Offeror's and STATE provided resources as defined to provide STATE an understanding as to how the Offeror envisions utilizing its and STATE's resources. Descriptive information for personnel, indicating their titles, major areas of responsibility and location during each phase of the contract, with proposed estimates of the staff-hours to be provided by each individual.

Project Team Staffing. The Offeror shall include specific information regarding the role and function of its assigned staff, including but not limited to, conducting the survey, follow ups, and final reporting. The Offeror shall also provide resume/vita for all staff who will be specifically assigned to the contract and provide a narrative description of their roles and their experience. If the Offeror's solution involves use of subcontractors in an amount greater than 10% of the anticipated work, resumes of any subcontractors shall also be included.

The Proposal shall include a resume of each individual who appears on the organization chart. Resumes shall highlight experiences on specific projects that may be relevant to this project. Resumes should contain information relating to each person's experience, which includes, but is not limited to, data cleaning, statistical analysis, and report writing; education; and skills. This should include, but is not necessarily limited to, specific degrees, dates, names of employers, position titles, and educational institutions attended.

Information/Data Security and Confidentiality. The Offeror shall include specific information regarding its internal control environment, security history, legal compliance and confidentiality compliance (for example: SAS70/SSAE16/SOC2 reports) to ensure processes and policies related to data sharing are performed to STATE's satisfaction.

The Offeror shall confirm that it complies with State and Federal privacy laws and will follow the Department's requirements relating to privacy, including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and chapters 8-6 and 8-34, HAR.

Should the Department anticipate the use or collection of PII and/or upon the Department's request, CONTRACTOR shall enter into a Data Sharing Agreement before engaging in any work.

4.10 Subcontractors

The Offeror may propose to fulfill any of the responsibilities outlined herein by entering into a subcontract with an individual, organization, or other entity that possesses the requisite expertise to fulfill the requirements of the RFP. The Offeror shall retain sole responsibility for the completion of all tasks and for the quality of the work product. The use of subcontractors shall not place additional burdens or demands on the STATE (e.g., coordinating with staff from multiple CONTRACTORS).

For any item listed herein to be fulfilled by a subcontractor, the Offeror shall provide a description of the proposed partner and the subcontractor's capability to meet the demands of the RFP. In the event the Offeror elects to engage the participation of a subcontractor, the STATE retains the right to approve the selection of the subcontractor and the proposed role that the Offeror shall fulfill under this contract.

If a proposal involves the use of any subcontractor, the subcontractor shall also comply with the Offeror qualifications requirements identified in the following sections:

- Offeror History and Background
- Offeror Reference Form / Offeror Experience
- Project Team Organization
- Project Team Staffing
- Information/Data Security and Confidentiality

4.11 Proposed Solution; Technical Proposal

The Offeror shall include in their proposed solution their approach, strategies, and/or process for achieving the scope of work specified herein. Offeror's proposal shall include a work plan to address the following areas, which includes, but is not limited to:

- a. Survey instrument design and survey methodology.
- b. Proposed data collection strategy, which includes, but is not limited to, mail, phone, internet, personal interview(s) to complete the scope of work specified.
- c. The follow up methods to be used to increase the response rate.
- d. The drafting and finalizing of a professional report with sections that shall include, but are not limited to, introduction, methodology, data analysis, results and implications, and conclusions to meet the reporting requirements in the scope of work.

Offeror shall also include in their proposed solution a reasonable proposed budget demonstrating an ability to achieve the stated objectives of the project. In addition, in their proposed solution, Offeror shall highlight any project improvements that would decrease or manage costs.

4.12 Price Proposal

The price proposal shall be inclusive of all costs, direct or indirect, and all applicable taxes, as required for the fulfillment of the contract.

The price proposal must address tasks described in the scope of work, and any other tasks necessary, and specify all costs to be incurred within the contract period. The costs shall be broken down by the scope of work deliverable, which includes, but is not limited to:

- The effectiveness of the outreach campaign;
- Determine the public perception of adult education in Hawaii;
- Analyze and report on the adult population in Hawaii using PIAAC Skills Map and American Community Survey data to determine those that have low literacy skills; and
- Design and develop a survey to collect program participants' experiences in the adult school program.

Where cost items are not fixed, the Offeror shall estimate the proposed cost and provide an explanation regarding the methodology used to reach the cost estimate. This shall include a break-out by contract time/hours as one underlying rationale for the cost estimate. The costs in the proposal shall be based on equivalent market prices, and have been arrived at independently without consultation, communication, as to any matter related to such prices with any other Offeror for this RFP. In the event the Offeror intends to enter into a partnership with a subcontractor or a technical assistance provider, Offeror shall provide all necessary cost information regarding the subcontracted task.

4.13 Proof of Compliance Documents

Offeror is advised that if awarded under this RFP, Offeror shall, upon award, furnish the required certificates and documentation (refer to RFP section regarding Responsibility of Offerors). In order to expedite contract execution, if any, it is highly recommended that the certificates be submitted with the Offeror's Proposal as follows:

- A. Certificate of Compliance as issued by the Hawaii Compliance Express online system
- B. Certificate of Insurance

4.14 Certification of Independent Cost Determination

By submitting a proposal in response to this solicitation, Offeror certifies as follows:

- 4.14.1 The costs in this RFP have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
- 4.14.2 Unless otherwise required by law, the costs which have been quoted in response to this RFP have not been knowingly disclosed by the Offeror prior to award, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
- 4.14.3 No other attempt has been made or will be made by the Offeror to solicit or implore any other person or firm to submit or not to submit a proposal in response to this RFP for the purpose of restricting competition.

5. PROPOSAL EVALUATION

The STATE reserves the right to reject any or all Proposals, and waive any defects if the STATE believes the rejection or waiver to be in the best interest of the STATE.

The evaluation will be based solely on the evaluation criteria detailed in this RFP, and shall be performed by the selected members of the Evaluation Committee consisting of at least three (3) governmental employees with sufficient qualifications and experience in this area.

Evaluation criteria and the associated points are listed below. Quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

A contract may be awarded on the basis of initial Proposals received, without discussion. Therefore, each initial proposal shall contain the Offeror's best terms from a technical and cost/price standpoint.

Proposals may be classified initially as acceptable, potentially acceptable, or unacceptable. Discussions may be conducted with Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without such discussions.

The final selection of a Successful Offeror, if any, will be made in accordance with the evaluation criteria as specified herein.

5.1 Evaluation Process Overview

The Evaluation Committee will apply a numerical rubric to evaluate the proposals. The following sections describe the evaluation process in more detail.

- Phase 1: Preliminary Evaluation of Proposals
- Phase 2: Rating and Determination of Priority Listed Offerors
- Phase 3: Discussion with Priority-Listed Offerors (at STATE's option)
- Phase 4: Best and Final Offers (at STATE's option)
- Phase 5: Selection and Award

5.2 Evaluation Criteria

Scoring under this RFP shall be based on a total of 100 points. Offerors must score a minimum of 70 points to be considered for award. Proposals that score less than 70 points will be rejected and shall not be considered for award.

Criteria		Maximum Points
A. Offeror Qualifications		30
A.1. Offeror's provided history of the establishment, development, and accomplishments of the organization.	3	
A.2. Qualifications and expertise of the individuals responsible for implementing the project.	9	
A.3. Experience, description, and methodology listed in the past reports that required survey design, data collection, data analysis, methodology summary, and report drafting and completion of similar scope of work and complexity to this project, and recent client references.	9	
A.4. Offeror's capability to conduct the survey (adequate staff, follow ups to increase response rate, final report, staff has extensive survey experience including data cleaning, statistical analysis, and report writing).	9	

B. Quality and Reasonableness of the Proposed Solution		70
B.1. Offeror's approach, strategies, and/or process for achieving the scope of work described in this solicitation. Offeror highlights any project improvements that would decrease or manage costs.	35	
B.2. Offeror's proposed work plan to address survey instrument design and survey methodology; data collection strategy; follow up methods to increase the response rate; and the drafting and finalizing of a professional report with appropriate sections.	25	
B.3. Costs are broken down and demonstrate the ability to achieve the stated objectives of the project.	10	
Total:		100

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt proposal submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

5.3 Preliminary Evaluation

A preliminary evaluation shall determine whether each proposal is considered responsive, thus justifying further evaluation. In its preliminary evaluation, the STATE will examine the completeness of each proposal, and its compliance with the instructions, terms and conditions in this RFP. Subsequent review and evaluation will be based on the criteria stated in Section 5.2. Any proposals that are incomplete or that do not comply with the instructions or terms and conditions may be rejected by the STATE and excluded from further consideration.

Responsive proposals must meet all submittal requirements and the minimum eligibility requirements described in the RFP.

5.4 Priority-List of Offerors

Before conducting discussions, a priority list shall be generated by the Evaluation Committee. In order to generate a priority list, proposals shall be initially classified as acceptable, potentially acceptable or unacceptable.

All responsive Offerors who submit acceptable proposals or potentially acceptable proposals are eligible for the prioritized listing.

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

5.5 Discussions with Priority-Listed Offerors (at STATE's Option)

Discussions may be conducted with Priority-Listed Offerors if deemed advantageous by the STATE. Discussions will be limited to only "priority-listed" Offerors and are held 1) to promote understanding of the STATE requirements and the priority-listed Offeror's proposals and 2) to facilitate arriving at a contract that will provide the best value to the STATE, taking into consideration the evaluation factors set forth in the RFP. Discussions may include Offeror presentation of its Proposal, interviews with Offeror's key personnel, demonstrations, site visits, or teleconferences. Any discussions shall be conducted in an organized and consistent manner established by the STATE, and in accordance with the following:

- 5.5.1 Priority-listed Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

- 5.5.2 Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed Offeror.
- 5.5.3 If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to the priority-listed Offerors.
- 5.5.4 Priority-listed Offerors may be permitted to amend proposals already submitted, limited to the discussions conducted.
- 5.5.5 If in the opinion of the Evaluation Committee a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP will be issued.
- 5.5.6 The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the discussion process.

5.6 Best and Final Offers (at STATE's Option)

Following discussions between the Evaluation Committee and the Priority-listed Offerors, each Priority-listed Offeror may be asked to provide their best and final offer. In that event, the procedure as listed below shall apply.

- 5.6.1 The Evaluation Committee will establish a date and time for submission of best and final offers.
- 5.6.2 Offerors may be afforded the opportunity to revise their proposals, including price, during the best and final offer phase.
- 5.6.3 If an Offeror does not submit a notice of withdrawal or a best and final offer, the Offeror's immediate previous proposal will be construed as their best and final offer.
- 5.6.4 After best and final proposals are received, final evaluations will be conducted for an award.
- 5.6.5 Best and final offers shall be submitted only once, unless the Head of the Purchasing Agency determines that it is in the STATE's best interest to conduct additional discussions or change the STATE's requirements by addendum distributed only to priority-listed offerors and require another submission of best and final offers. Otherwise, no discussion of or change in the best and final offers shall be allowed prior to award.

APPENDICES:

Appendix A: Proposal Identification and Information Form

Appendix B: Offeror Reference Form / Offeror Experience

Appendix C: Contract Minimum and Special Conditions

Appendix D: State's General Conditions

**APPENDIX A
PROPOSAL IDENTIFICATION AND INFORMATION FORM**

The undersigned certifies that the information provided below is to the best of the undersigned's knowledge true and correct, has carefully read and understands the terms and conditions specified herein and hereby submits the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof, and further that the Offeror shall comply with all terms, conditions, and requirements of the RFP. The undersigned further understands and agrees that by submitting this offer, 1) the undersigned is declaring the undersigned's offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) the undersigned is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Type of Business Entity:

- Sole Proprietor Partnership Corporation Joint Venture
- Limited Liability Company Other: _____

If other than a Sole Proprietorship, the undersigned represents; **(Check ✓ one only)**

<input type="checkbox"/>	A Hawaii business incorporated or organized under the laws of the State of Hawaii; OR
<input type="checkbox"/>	A Compliant Non-Hawaii business <u>not</u> incorporated or organized under the laws of the State of Hawaii, and, if applicable, registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of Incorporation _____

Date of Incorporation/Organization _____

All State(s) where Offeror is authorized to transact business _____

Names of all Offeror's parent affiliate and subsidiary organizations: _____

Exact Legal Name of Offeror, including "dba" or "division" of a corporation (furnish the exact legal name of the entity under which an awarded contract, if any, will be executed): _____

Principal Place of Business (may not be a P.O. Box): _____

Mailing Address (only if different): _____

Name and Title of Offeror's Primary Contact Person: _____

 Telephone and Fax Number _____

 Email Address _____

Federal Tax Identification Number _____

State of Hawaii General Excise Tax Number _____

Authorized (Original in Ink) Signature Name (Printed)

Title Date

APPENDIX B
OFFEROR REFERENCE FORM / OFFEROR EXPERIENCE

Directions:

- Offeror shall provide a minimum of three (3) recent client references that are relevant to this Project and demonstrate the Offeror's qualifications and experience. Offeror's references, preferably government references, should be within the last three (3) years, should include Offeror's experience with work in Hawaii, and should be similar in scope and complexity to this Project.
- Any supplemental information related to this project although not required, should be attached to the respective Appendix B, Offeror Reference Form / Offeror Experience.
- The Department reserves the right to contact any of the Offeror's previous clients to evaluate the Offeror and their work.

Name of Your Company:	
<i>Name of Client Organization:</i>	
<i>Name of Client Contact Person:</i>	
<i>Title of Client Contact Person:</i>	
<i>Client's Contact Person Phone Number:</i>	
<i>Client's Contact Person E-Mail Address:</i>	
<i>Date or period of project/service:</i>	

Description of Offeror's experience with work in Hawaii, work performed for the client, its use of technology, and a list of past reports completed by the Offeror that required survey design, data collection, data analysis, methodology summary, and report drafting and completion:

Other Information or comments:

check here if supplemental information related to this project is attached.

APPENDIX C
CONTRACT MINIMUM AND SPECIAL CONDITIONS

1. Contract Administrator

For purposes of this contract, the person named below or the duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator: Dan Miyamoto
Telephone Number: (808) 305-9701
e-mail Address: dan.miyamoto@k12.hi.us

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the CONTRACTOR's work, documenting that CONTRACTOR maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the CONTRACTOR, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- notifying Procurement and Contracts Branch in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE:").

2. Verification of Employees

In accordance with State rules and regulations, CONTRACTOR shall conduct mandatory criminal background checks at no cost to the STATE, on any employee or sub-contractor having contact or working directly with students.

CONTRACTOR shall notify the STATE, verbally within twenty-four (24) hours, upon learning of the occurrence of any of the events indicated below:

- 2.1 Any employee, agent or volunteer's license required to perform services under this contract is or has been suspended, conditioned, revoked, expired, or terminated;
- 2.2 Any employee, agent or volunteer becomes or has been the subject of any disciplinary proceeding or action before any federal or state agency or Board;
- 2.3 Any employee, agent or volunteer is or has been convicted of a fraud or felony; and
- 2.4 Any claim, judgment or settlement in which the CONTRACTOR or any of its employees, agents or volunteers is or has been named a defendant.

CONTRACTOR shall maintain the background check records, and shall make the records available for review upon request. Upon review of these records, the STATE reserves the right to request additional background information.

3. Exclusion of Specific Workers

The STATE reserves the right to require the CONTRACTOR to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The Contract Administrator

shall notify the CONTRACTOR in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The CONTRACTOR may appeal this decision to the Contract Administrator, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the CONTRACTOR to employ the removed individual, but shall apply to any work requiring interaction with the STATE, its employees or students.

4. Liability Insurance

The CONTRACTOR shall maintain in full force and effect, during the life of this contract, liability and property damage insurance. This insurance shall protect the CONTRACTOR and the CONTRACTOR's 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 a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, 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, CONTRACTOR may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy(ies) are in addition to the CONTRACTOR's own 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>
General Liability , Commercial (Occurrence Form)	\$2,000,000 aggregate \$1,000,000 combined single limit per occurrence for bodily injury and property damage
Automobile Liability Combined Single Limit	\$1,000,000 per accident

General liability and automobile liability policies required by this contract, including a subcontractor's policy, shall contain the following clauses:

- 1) "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."
- 2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

Upon execution of the contract, the CONTRACTOR agrees to deposit with the STATE certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this contract 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 this contract, including those of its subcontractor(s), where appropriate. Upon request by the STATE, CONTRACTOR shall be responsible for furnishing a copy of the policy(ies).

Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the STATE to exercise any or all of the remedies provided herein.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy(ies) of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR, its employees, officers, or agents, in connection with this contract.

CONTRACTOR shall notify the STATE, via written notice within twenty-four (24) hours should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

5. Invoicing

The CONTRACTOR shall submit an invoice with each request for payment. Original of the invoice shall be submitted to:

Hawaii State Department of Education
Office of Curriculum and Instructional Design
Attn: Dan Miyamoto
475 22nd Avenue, Room 219
Honolulu, Hawaii 96816

All invoices shall reference the contract number. If a copy is submitted as the original, such invoice must bear an original signature certifying that the invoice is being submitted as the original.

6. Payment

Section 103-10, HRS, provides that the STATE shall have thirty (30) calendar days after receipt of an accepted invoice and satisfactory delivery of goods or performance of the services, to make payment. For this reason, the STATE shall reject any Proposal submitted with a condition requiring payment within a shorter period. Further, the STATE shall reject any Proposal submitted with a condition requiring interest payments greater than that allowed by section 103-10, HRS. The STATE will not recognize any requirements established by the Offeror and communicated to the STATE after award, which requires payment within a shorter period or interest payment not in conformance with section 103-10, HRS.

7. Final Payment

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract expiration date. In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

- 7.1 A tax clearance certificate, not over two months old and with an original green "certified copy" stamp, must accompany the invoice for final payment. In addition to the tax clearance certificate, the "Certification of Compliance for Final Payment" (DOE Form-22) with an original signature will be required for final payment.
- 7.2 In lieu of the above, CONTRACTOR may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

8. Availability of Funds

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the STATE and the CONTRACTOR shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended

appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE's obligations for payments in the current fiscal year. In that event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the CONTRACTOR of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant to permit the STATE to terminate the contract in order to acquire similar equipment or services from a third party.

9. Federal Funds

9.1 Availability of Funds and Use of Funds – This contract may involve the use of federal funds.

The STATE and CONTRACTOR shall be guided by and subject to the provisions of all Federal and State regulations, directives, guidance and circulars issued for the purposes of implementing the federal program standards.

STATE shall provide the CONTRACTOR with specific Federal and/or State requirements including but not limited to reporting requirements, funding allocations, and timeframes, as they are issued or are otherwise made available to the STATE by the Federal and State government, which requirements shall be binding on the CONTRACTOR as a condition of the CONTRACTOR's performance and as a condition of receipt of funds under this agreement.

It is expressly understood and agreed that the obligation of the STATE to proceed under this contract is conditioned upon the appropriation of funds by the federal government and/or the appropriation of funds by the Hawaii State Legislature and the receipt of federal and/or state funds. If the funds anticipated for the continuing fulfillment of the agreement are, at anytime, not forthcoming or insufficient, either through the failure of the Federal government to provide funds of the State of Hawaii to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the STATE, the STATE shall have the right to terminate this agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The STATE shall notify the CONTRACTOR of its right to terminate this agreement in writing. The effective date of termination shall be as specified in the notice of termination.

9.2 Suspension and/or Debarment – CONTRACTOR certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any federal department or agency; (b) have, within a three (3) year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements of receiving stolen property, and (d) have, within a three (3) year period preceding this Contract, had one or more public transactions (federal, state or local) terminated because of default. See System for Award Management at www.sam.gov.

10. Subcontracting

Prior to award, no work or services shall be subcontracted or assigned without the prior written approval of the CA. After award, no work or services shall be subcontracted or assigned without the prior written approval of the CA. No subcontract shall under any circumstances relieve the CONTRACTOR of its obligations and liability under its contract with the STATE. All persons engaged in performing the work covered by the contract shall be considered employees of the CONTRACTOR.

11. Contract Staffing Requirements

Personnel, whose names and resumes are submitted in the Proposal, shall not be removed from the Project without prior acceptance of the CA. Substitute or additional personnel shall not be used for the Project until a resume is received by and the CA has accepted the new personnel. The STATE shall have the right, and the CONTRACTOR shall comply with any request, to remove and replace any personnel from all work on the Project effective immediately upon notification by the STATE. Personnel changes that are not accepted by the CA may be grounds for contract termination.

12. Inspection and Procedural Changes; Relief Available to State

All work is subject to inspection, evaluation, and approval by the CA. The STATE may employ all reasonable means to ensure that the work is being performed in compliance with the contract. Should the CA determine that corrections or changes are necessary in order to accomplish the intent or purpose of the contract, the CA may direct the CONTRACTOR to make such changes.

In addition to all rights and remedies available to the STATE provided in this contract or otherwise provided under law, if the CONTRACTOR is in non-compliance with contract requirements, the STATE may:

- 12.1 Suspend Payments – Temporarily withhold or disallow all or part of the billing cost and/or payments pending correction of a deficiency or a non-submission of a required deliverable by the CONTRACTOR;
- 12.2 Suspend Referrals – Suspend referrals to the CONTRACTOR should the CONTRACTOR fail to comply with any of the requirements or other term(s) or condition(s) of this contract and, further, the STATE may maintain the suspension of referrals until such time as the deficiency or non-compliance is corrected and the CONTRACTOR's corrective actions are determined to be acceptable by the STATE; and
- 12.3 Seek Reimbursement – Seek reimbursement from the CONTRACTOR or withhold future payments for any funds paid to the CONTRACTOR subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- 12.4 Seek Market Value – In the event the CONTRACTOR fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the CONTRACTOR, the difference between the price named in the contract and the actual cost to the STATE. In case any money due the CONTRACTOR is insufficient for said purpose, the CONTRACTOR shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

13. Confidentiality Obligations

The following serves to supplement provision 24 of the General Condition, entitled "Confidentiality of Material" and provision 42, entitled "Confidentiality of Personal Information":

ADULT EDUCATION MARKET RESEARCH SERVICES
FOR THE HAWAII STATE DEPARTMENT OF EDUCATION

General Confidentiality Obligations. While performing under this contract, the CONTRACTOR may receive, be exposed to or acquire confidential information. Such information may include names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other educational, student, or personal employment information. The information may be in written or oral form, fixed in hard copy or contained in a computer database or computer readable form. Hereinafter, such language shall be collectively referred to as "Confidential Information."

The CONTRACTOR, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information: (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the STATE and subject to the STATE's limitations on confidentiality of information and relevant legal requirements of the State to include, but not limited to the Family Educational Rights and Privacy Act ("FERPA"). Permission will be granted through a formal written agreement concerning the disclosure of personally identifiable information (PII) from student education records, signed by the STATE and the CONTRACTOR, and must be provided as an attachment to this contract; (ii) They shall only permit access to Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this contract; and (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential in compliance with all relevant state and federal laws.

CONTRACTOR, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The CONTRACTOR shall provide the STATE with a list of individuals (by name and position) who are authorized to handle the Confidential Information (hereinafter referred to as "Authorized Handlers"). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which will be kept on password protected computers with the hard copy documents kept in a locked file cabinet. CONTRACTOR shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

CONTRACTOR will be responsible for safeguarding the confidentiality of all Confidential Information it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. CONTRACTOR shall be liable to the STATE and to any person whose records the CONTRACTOR receives custody of under this contract for records protection for any unpermitted release, viewing, or loss of such records. CONTRACTOR shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. CONTRACTOR shall return all documents containing Confidential Information upon completion of the services CONTRACTOR is contracted to provide under this contract.

- a. Prior Written Approval: CONTRACTOR may not i) share Confidential Information or any other data received under this contract, ii) publish, or iii) distribute such information without the prior written approval of the STATE.
- b. In the event of termination of this contract, CONTRACTOR shall return to STATE all Confidential Information, including student information, received under this contract and further agrees to destroy any and all copies of, or references to, any Confidential Information, including student information, shared by STATE as a result of this contract. CONTRACTOR shall certify in writing that all such copies have been destroyed or returned to the STATE.

14. Ownership Of Documents

General Conditions paragraph 26 entitled "Ownership Rights and Copyright" is deleted entirely and replaced with the following:

All documents and reports and student data/records developed or generated under this contract shall be the sole property of the STATE. CONTRACTOR retains ownership of any proprietary or copyrighted

ADULT EDUCATION MARKET RESEARCH SERVICES
FOR THE HAWAII STATE DEPARTMENT OF EDUCATION

materials, data, software, technologies, test items, test forms that are previously developed, owned and/or copyrighted by the CONTRACTOR and used or adapted for use under this contract.

15. Records Retention

The following serves to supplement provision 31 of the General Condition, entitled "Records Retention":

Should the CONTRACTOR be aware of or be made aware of any dispute, disagreement, or request relating to the files, books, or records prior to their destruction, the CONTRACTOR shall retain the files, books, and records until said dispute, disagreement, or request has been fully resolved, including any potential lawsuits or appeals. Said files, books, and records may thereafter be destroyed upon obtaining the agreement of the STATE.

16. Approvals

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

**APPENDIX D
STATE'S GENERAL CONDITIONS**

Attached

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.