

**Department of Business, Economic
Development and Tourism
Hawai'i State Energy Office**

**REQUEST FOR PROPOSALS
SOLICITATION NO. RFP-24-038-HSEO-RCA**

The Hawai'i State Energy Office (HSEO) is leading the State of Hawai'i's clean energy and energy assurance programs with a goal to transform Hawai'i from the most fossil fuel-dependent state in the nation to a clean energy economy based on 100 percent clean and renewable energy by 2045. Achieving this clean and secure energy future for Hawai'i requires increased grid resilience and hazard mitigation, as grid demand increases to support electrification of transportation and buildings. Furthermore, natural disasters are becoming more disruptive due to changing climate conditions, requiring energy system infrastructure and processes to become more agile, flexible, and adaptable.

To aid in this effort, HSEO is inviting proposals for projects to be included in the Hawai'i Grid Resilience Program, which aims to make Hawai'i's energy system and critical infrastructure more resilient in the face of increasing natural and man-made threats. HSEO will award funding to one or more entities to conduct projects which enhance grid resilience against disruptive events, reduce outage frequency and magnitude, and support community initiatives while promoting equity.

The Hawai'i Grid Resilience Program is funded by the U.S. Department of Energy Grid Resilience State and Tribal Formula Grants program through Section 40101(d) of the Infrastructure Investment and Jobs Act.

**OFFERS
FOR**

HAWAI'I GRID RESILIENCE PROGRAM

**WILL BE RECEIVED UP TO 2:00 P.M. (HST) ON
SEPTEMBER 30, 2024**

The Hawai'i State Energy Office is committed to providing equal access consistent with the Americans with Disabilities Act (ADA), the Americans with Disabilities Amendment Act of 2008 (ADAA), and other state and federal laws. If you have a disability that may restrict your ability to meaningfully participate in this solicitation, we will provide you with a reasonable and appropriate accommodation at no cost to you. If you need an auxiliary aid/service or other reasonable accommodation, please contact Kathy Yim at 808-460-7995 or kathy.yim@hawaii.gov. Requests made as early as possible will allow adequate time so that we may best serve you.

For screen reader users. The Hawai'i State Energy Office recognizes the use of diacritical markings of the Hawaiian language such as the 'okina (also called a glottal stop) and the kahakō (also called a macron). Please note that screen readers may not read or pronounce the Hawaiian words correctly.

**MARK B. GLICK
PROCUREMENT OFFICER
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT AND TOURISM
HAWAI'I STATE ENERGY OFFICE**

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SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The purpose of the Hawai'i State Energy Office (HSEO) is to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient clean energy economy by 2045 (Hawai'i Revised Statutes §196-71). HSEO is the primary government entity leading this charge. Under the authority granted by the Hawai'i State Legislature in Act 122, Session Laws of Hawai'i 2019, HSEO will carry out the activities and coordination necessary to achieve Hawai'i's clean energy transformation.

Learn more about the priorities HSEO is focusing on to guide Hawai'i's transition to a resilient, clean energy economy at [Hawai'i State Energy Office – What We Do](#) and [Hawai'i State Energy Office 2023 Annual Report](#).

1.2 SCHEDULE AND SIGNIFICANT DATES

The dates and times below represent the schedule that will be followed for this Request for Proposals (RFP). All times indicated are Hawai'i Standard Time (HST). Any changes to the schedule shall be made via written addendum issued by the State.

Release of Request for Proposals	June 28, 2024
Deadline to Register for Pre-Proposal Conference	July 12, 2024, 2:00 P.M. HST
Pre-Proposal Conference	July 16, 2024, 10:00 A.M. HST
Deadline to Submit Written Questions	August 12, 2024, 4:30 P.M. HST
State's Response to Written Questions (if applicable)	August 26, 2024, 4:30 P.M. HST
Proposal Due Date/Time	September 30, 2024, 2:00 P.M. HST
Discussion with Priority-Listed Offerors (if needed)	+15 days from Proposal Due Date/Time (estimate)
Best and Final Offer Deadline (if needed)	+25 days from Proposal Due Date/Time (estimate)
Notice of Award (estimate)	+35 days from Proposal Due Date/Time (estimate)
Contract Start Date (estimate)	+50 days from Proposal Due Date/Time (estimate)

1.3 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held to provide Offerors an opportunity to be briefed on this procurement and to ask questions about the procurement process. Pre-proposal conference attendance is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

If attending, please register via email to dbedt.hseo.solicitations@hawaii.gov no later than **July 12, 2024 at 2:00 PM HST**. Email subject line should read: **“Pre-Proposal Conference, RFP-24-038-HSEO-RCA”**

Offerors are advised that anything discussed at the pre-proposal conference will not change any part of this RFP. All changes and/or clarifications to this RFP shall be made via written addendum posted to HlePRO.

The pre-proposal conference will be held as follows:

Date: July 16, 2024

Time: 10:00 A.M. (HST)

Location: Zoom – Invitation will be sent directly to registered participants.

1.4 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Attorney General
BABA	=	Build America Buy America
BAFO	=	Best and Final Offer
Community Lifeline	=	Fundamental service in a community that, when stabilized, enables all other aspects of society to function
Contract	=	Subaward agreement
CFR	=	Code of Federal Regulations
CPO	=	Chief Procurement Officer
DAC	=	Disadvantaged Community as identified in the Justice40 Initiative
GET	=	General Excise Tax
HAR	=	Hawai'i Administrative Rules
HCE	=	Hawai'i Compliance Express
HlePRO	=	Hawai'i State eProcurement System
HOPA	=	Head of the Purchasing Agency
HRS	=	Hawai'i Revised Statutes
HSEO	=	Hawai'i State Energy Office
HST	=	Hawai'i Standard Time
IIJA	=	Infrastructure Investment and Jobs Act, also known as Bipartisan Infrastructure Law
Justice40 Initiative	=	The initiative established by Executive Order 14008 which establishes a federal government-wide goal that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution

NEPA	= National Environmental Policy Act
Offeror	= Any individual, partnership, firm, corporation, joint venture or other entity submitting directly, or through a duly authorized representative or agent, a proposal for the goods and/or services contemplated in this RFP
PMP	= Project Management Plan
Priority-Listed Offeror	= Responsible Offerors whose proposals are determined to be acceptable or potentially acceptable and who are selected by the Procurement Officer or evaluation committee to conduct discussions pursuant to §3-122-53(a)(3), HAR
RFP	= Request for Proposals
SAM	= System for Award Management
SPO	= State Procurement Office
State	= State of Hawai'i, including its departments, agencies, and political subdivisions
Subrecipient	= Recipient of subaward. May also referred to as Contractor
UEI	= Unique Entity Identifier
USDOE	= U.S. Department of Energy
Weatherization	= Technologies or equipment that can be used to enhance reliability and resiliency of electric grid components in preparation for extreme weather conditions

1.5 ELECTRONIC PROCUREMENT

The State has established the Hawai'i State eProcurement System (HlePRO) to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HlePRO. Registration information is available at the [HlePRO website](#) under the "Vendor Registration" tab.

The State will use HlePRO to issue the RFP, receive all offers, and issue any addenda to the RFP. Changes and additions to the RFP, including but not limited to answers to questions and changes to procurement requirements and solicitation schedule shall be made via formal written addenda issued by the State. The State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor HlePRO to obtain any RFP addenda or other information relating to the RFP.

Offerors shall review any special instructions related to offer submission in HlePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline. Offerors are advised that they should not wait until the last minute to submit their proposal on HlePRO and should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline.

Offerors are informed that awards for this solicitation, if any, shall be made through HlePRO and shall therefore be subject to a mandatory transaction fee of 0.75% of the original award amount, not to exceed \$5,000 for each award. Hawaii Information Consortium, LLC dba Tyler Hawaii, the vendor that operates HlePRO, will invoice the awarded Offeror directly for payment of transaction fees. Payment must be made to Tyler Hawaii within thirty (30) days of invoice receipt. Transaction fees are used by Tyler Hawaii to fund the operation, maintenance, and future enhancements of the HlePRO system. Refer to the "Instructions" tab in the HlePRO solicitation for more details.

1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions must be submitted through HlePRO. Questions must be submitted by the Deadline to Submit Written Questions shown in Section 1.2, Schedule and Significant Dates. Answers to questions received will be posted on the HlePRO solicitation page.

1.7 DESIGNATED PROCUREMENT ADVISOR

For this solicitation, Amy Chang, Procurement Specialist (dbedt.hseo.solicitations@hawaii.gov) will be designated as the Procurement Officer's advisor to the procurement. The Procurement Officer's designee is the single point of contact during the procurement process.

1.8 CANCELLATION

This RFP may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State, pursuant to Hawai'i Administrative Rules (HAR) §3-122-96 and §3-122-97.

SECTION TWO: BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND BACKGROUND

In recent years, Hawai'i has experienced increased uncertainty about energy security due to impacts from natural hazards as well as human activity. These events and aging infrastructure threaten grid reliability, public safety, community and economic prosperity, and ecosystems. This solicitation invites proposals from eligible entities to enhance grid resilience against disruptive events, reduce outage frequency and magnitude, and support community initiatives while promoting equity.

Funding for this program was appropriated under Section 40101(d) of the federal Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL). The Grid Resilience State and Tribal Formula Grants program established through the appropriation focuses on funding deployment projects that enhance community energy resilience and reliability, promote energy justice and equity, and generate good-paying jobs.

Under this program, the U.S. Department of Energy (USDOE) awarded approximately \$6.1 million to the State of Hawai'i for the first two years (fiscal years 2022 and 2023) of the five-year program. In total, Hawai'i is expected to receive approximately \$15 million in funding to support its grid resiliency efforts.

As the sole entity responsible for administering these funds for the State of Hawai'i, HSEO has chosen to organize the distribution of funds by county to allow for more equitable allocation based on each county's unique needs and demographics. The City and County of Honolulu will receive funding in Years 1 and 2 of the program, and the Counties of Kaua'i, Maui, and Hawai'i – in no set order – will receive funding in Years 3 through 5.

2.2 PURPOSE

The purpose of this Request for Proposals (RFP) is to solicit project proposals from eligible entities to be subawarded under Years 1 and 2 of the Grid Resilience State and Tribal Formula Grants program for the City and County of Honolulu.

Investment selection will prioritize projects that will generate the greatest community benefit in reducing the likelihood and consequences of disruptive events. A disruptive event, as defined in IIJA Section 40101(a)(1), is "an event in which operations of the electric grid is disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster."

2.3 PROGRAM GOALS AND FUNDING

HSEO has established high-level objectives to guide program development and criteria for project selection. The selected projects should align with the goals of the Hawai'i Grid Resilience Program which are to:

- Mitigate threats and hazards to protect Community Lifelines
- Deploy projects that impact disadvantaged communities

- Invest in modernized grid infrastructure that promotes clean energy technologies that create good-paying jobs with fair and free access to training and a union
- Invest in projects with the highest likelihood of implementation

Proposed projects should meet one or more of the goals outlined above. More specific information regarding requirements can be found in Section 4.5, Narrative Project Proposal.

There is **up to \$5,786,020** available under this solicitation. It is anticipated that there will be one to two (2) subawards under this RFP. Only proposals priced not to exceed \$5,786,020 of funds provided from the State, including all taxes, shall be considered. Parties or individuals granted a subaward will be referred to as Subrecipients and will be expected to enter into a contractual agreement (Contract) with HSEO to carry out the subaward.

2.4 ELIGIBILITY

Consistent with HSEO's intent for equitable funding allocation for all counties over the five years of the program, for Years 1 and 2 of the federal program, responses to this RFP are **limited to domestic eligible entities with project proposals benefiting the City and County of Honolulu**. Proposals for projects benefiting the Counties of Kaua'i, Maui, and Hawai'i will be received through future solicitations.

Eligible entities, as expressly defined in IIJA Section 40101(a)(2), include:

- Electric grid operator
- Electricity storage operator
- Electricity generator
- Transmission owner or operator
- Distribution provider
- Fuel supplier

To qualify as a domestic entity, an entity must be organized, chartered or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States; have majority domestic ownership and control; and have a physical place of business in the United States.

A proposed project must meet at least one of the following objectives to be considered:

1. Increase grid resilience by improving:
 - a. Weatherization of electricity distribution systems
 - b. Wildfire mitigation
 - c. System redundancy
2. Increase grid reliability by:
 - a. Replacing deteriorating infrastructure
 - b. Hardening system by mitigating infrastructure deterioration
3. Improve public safety by:
 - a. Relocation of power lines with low-sag
 - b. Reconductoring of power lines with low-sag
 - c. Equipment undergrounding

The following types of resilience investments or projects are permitted under this program:

1. Utility pole management
2. Hardening of power lines, facilities, substations, or other systems
3. The undergrounding of electrical equipment
4. The replacement of old overhead conductors and underground cables
5. The relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors
6. Vegetation and fuel-load management
7. Weatherization technologies and equipment
8. Fire-resistant technologies and fire prevention systems
9. Monitoring and control technologies
10. The use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including:
 - a. Microgrids
 - b. Battery-storage subcomponents
11. Adaptive protection technologies
12. Advanced modeling technologies

The following types of projects are **ineligible** for funding under this program:

1. Construction of a new electric generating facility
2. Construction of a large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events
3. Cybersecurity

2.5 COST MATCH REQUIREMENTS

Subrecipients must provide 115% cost match unless they are an electric utility which supplies less than 4,000,000 megawatt hours of electricity per year. If below the threshold of electricity supply, the required cost match for an entity is 48% of the subaward amount. Fuel suppliers are required to provide 115% cost match unless they sell electricity and supply under 4,000,000 megawatt hours of electricity per year, in which case the required cost match is 48%.

Allowable cost match contributions must be in the form of either cash or in-kind contributions and must come from non-federal sources unless otherwise allowed by law.

Cash contributions include, but are not limited to, personnel costs, fringe costs, supply and equipment costs, indirect costs, and other direct costs.

In-kind contributions are those where the value of the contribution can be readily determined, verified, and justified but where no actual cash is transacted to secure the good or service comprising the contribution. Allowable in-kind contributions include, but are not limited to, the donation of volunteer time (personnel hours), the donation of space, or the use of equipment.

Upon award, Offerors must provide a Cost Match Commitment Letter agreeing to meet the cost matching requirement. The letter shall state the Offeror is committed to providing a specific minimum dollar amount of cost match, identify the type of proposed

cost match (e.g., cash, services, and/or property) to be contributed, confirm that the cost match source is non-federal (unless otherwise allowed by law), and be signed by the person authorized to commit the expenditure of funds by the entity. While submitting a Cost Match Commitment Letter at the time of offer submission is optional, Offerors who choose to submit with a qualifying Cost Match Commitment Letter will receive additional points in proposal evaluation.

2.6 MULTIPLE OFFERS

Each Offeror may submit up to two (2) proposals in response to this RFP. Each proposal shall be priced not to exceed \$5,786,020, including all taxes. Offerors who submit more than two offers will have all offers rejected.

Each proposal shall be evaluated and considered for award individually. Therefore, an Offeror who submits two proposals may receive one, two, or no awards, with a cumulative award amount of no more than \$5,786,020. See Section 4.1, Proposal Objectives, and Section 4.7, Proposal Submission, for instructions regarding submission of multiple proposals.

2.7 PROJECT MANAGEMENT PLAN (PMP)

Upon execution of the Contract, the Subrecipient will be required to submit a comprehensive Project Management Plan (PMP) to HSEO within 45 days. This PMP will be a dynamic document that will track the progress and issues related to the project. It will be the responsibility of the Subrecipient to work closely with HSEO to review, refine, update, and enhance the PMP as often as necessary to ensure it covers all the approved work elements for project management and completion.

2.8 REPORTING

The Subrecipient shall be required, at minimum, to submit monthly progress reports and a project completion report to HSEO for review. Additionally, the Subrecipient will be expected to provide presentations and updates on project progress, process, or outcomes for HSEO staff via virtual meetings and in other venues as requested.

As a component of federal reporting requirements, the Subrecipient must also provide quarterly and annual progress and metrics reports to HSEO for submission to the U.S. Department of Energy (USDOE). These reports may contain data requests for outages avoided as a result of the project, avoided costs, and reduced restoration time, as well as information on community and labor engagement; workforce and community agreements; investments in job quality and job training; diversity, equity, inclusion, and accessibility; and Justice40 Initiative benefits.

It will be the responsibility of the Subrecipient to provide HSEO with all reports and documentation necessary to comply with USDOE reporting requirements. Instructions and templates for reporting requirements can be viewed on [USDOE's Post-Award Resource website](#) under Project Management Reporting Documents.

2.9 ADA COMPLIANCE

At the request of HSEO, the Subrecipient shall produce deliverables and reports in an accessible format that is compliant with Title II of the Americans with Disabilities Act (ADA) and Sections 504 and 508 of the Rehabilitation Act of 1973, as amended. The Subrecipient may also be requested to reproduce reports and deliverables to be compatible with communication auxiliary aid(s).

2.10 HAWAIIAN DIACRITICAL MARKINGS

HSEO recognizes the use of diacritical markings of the (modern) Hawaiian language including the 'okina ['] or glottal stop and the kahakō [ō] or macron. The Subrecipient shall produce deliverables using Hawaiian diacritical markings as directed by HSEO.

2.11 SUCCEEDING AND/OR ADDITIONAL CONTRACTORS

In the event HSEO chooses to contract with another vendor to provide the services of the Subrecipient at the end of the Contract term or upon cancellation of the Contract, or if HSEO contracts with one or more additional vendors, the Subrecipient must provide reasonable transition assistance to HSEO and cooperation with one or more contractors. Under no circumstances will the Subrecipient have any right to compensation for investments or other expenditures that were undertaken in anticipation of an extension of the Contract.

2.12 GENERAL RESPONSIBILITY TO COMPLY WITH REQUIREMENTS

The Subrecipient shall at all times comply with applicable state, federal, and local laws and regulations relating to its operations.

Unless otherwise provided in the Contract, the Subrecipient is responsible for obtaining all official licenses, approvals, clearances, and similar authorizations required by any local, state, or federal agency to perform the work required in the Contract.

2.13 INHERENTLY GOVERNMENTAL FUNCTIONS

The State has inherently governmental functions that shall not be performed by the Subrecipient. HSEO considers the following responsibilities relating to subawards from this solicitation inherently governmental, to be performed only by government employees:

1. Determining what supplies or services are to be acquired by the government
2. Approving any solicitation documents, including documents defining requirements, specifications, incentives, and evaluation criteria
3. Negotiating cost and pricing
4. Awarding contracts
5. Approving post-award contract changes to include, but not limited to, ordering changes in contract budget and schedule
6. Responding to evaluations of contractor performance and accepting or rejecting contractor products or services
7. Terminating contracts

2.14 HAWAI'I STATE ENERGY OFFICE RESPONSIBILITIES

1. Provide direction and guidance as requested.
2. Provide general information in a timely manner.
3. Pay invoices in a timely fashion upon verification of satisfactory performance.
4. Maintain an oversight and advisory role for the approved project work.
5. Compile and submit reports to USDOE to comply with federal reporting requirements (see Section 2.8, Reporting, for details).

SECTION THREE: CONTRACT TERM, COMPENSATION, AND PAYMENT

3.1 TERM OF CONTRACT

The term of the Contract will begin upon execution of the agreement and end on April 30, 2028, unless otherwise terminated or extended pursuant to the provisions contained in the General or Special Conditions.

Subject to approval by HSEO and the U.S. Department of Energy (USDOE), the Contract may be extended to cover the necessary time for the Subrecipient to complete all subaward project efforts, up to an additional five (5) years. Any extension of the contract term shall be done through execution of a supplement to the Contract for the additional extension period. The fees and other terms and conditions shall remain substantially the same as set forth in the Contract, unless otherwise authorized by HSEO.

3.2 COMPENSATION

Contract award shall be made on a firm, fixed price, including all taxes, with compensation not to exceed the amount specified by the Contract.

All payments and term extensions are subject to the availability of funds and allotment by the Director of Finance, State of Hawai'i. HSEO agrees to make every reasonable effort to obtain all required approvals and perform and fulfill all requirements necessary to facilitate the availability and allotment of funds to pay the compensation under the Contract.

3.3 PAYMENT

The Subrecipient shall document all expenses and expenditures in relation to this project and shall submit all invoices electronically in accordance with the State's invoicing guidelines. Pursuant to Hawai'i Revised Statutes (HRS) §103-10, the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of deliverable to make payment, except where the time of payment is contingent upon the receipt of federal funds, or federal approval. For this reason, HSEO will reject any offer submitted with a condition requiring payment within a shorter period of time.

3.4 FEDERAL FUNDS

If the Contract is payable in whole or in part from federal funds, the Subrecipient agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the Subrecipient 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 Subrecipient.

3.5 TAX LIABILITY

Work to be performed under the Contract is a business activity taxable under HRS Chapter 237 and if applicable, HRS Chapter 238. The Subrecipient is liable for the Hawai'i GET unless exempted by HRS.

SECTION FOUR: PROPOSAL SUBMISSION AND CONTENT

4.1 PROPOSAL OBJECTIVES

Proposals submitted shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror identifies as necessary to successfully execute the scope of work. Components of such a plan include but are not limited to:

- Detailed description of the Offeror's ability and availability of services to meet the goals and objectives of this RFP.
- Overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

To be considered responsive, an Offeror's proposal must respond to and include all items specified in this RFP, as revised by all addenda.

Proposals must be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.

Offerors who submit multiple proposals may describe any potential synergies between projects but must ensure that each proposal stands on its own, without dependence on another proposal to make the project complete or to meet Program Goals.

4.2 PROPOSAL ORGANIZATION

Proposals must be organized into the following sections, using all titles, subtitles, and numbering as described below. The required contents of each section must be addressed individually. Pages must be numbered consecutively.

Section 1: Table of Contents. A Table of Contents must be included with each proposal and must list the page numbers for each proposal section, as well as all items requested by Section 4.3, Proposal Forms, and Section 4.5, Narrative Project Proposal.

Section 2: Proposal Forms. The forms listed in Section 4.3, Proposal Forms, must be included in the specified order.

Section 3: Exceptions. List any exceptions taken to the terms, conditions, specifications, or other requirements listed in the RFP. If none, state so. See Section 4.4, Exceptions, for detailed requirements.

Section 4: Narrative Project Proposal. The Offeror must provide a narrative project proposal not to exceed 15 pages. See Section 4.5, Narrative Project Proposal, for detailed requirements.

4.3 PROPOSAL FORMS

1. Offer Checklist (Attachment 1). Offeror must complete and submit all items noted on the Offer Checklist form (Attachment 1).

2. Proposal Transmittal Letter (Attachment 2). On the Offeror's business letterhead, include a transmittal letter to confirm that the Offeror will comply with the requirements, provisions, terms, and conditions specified in this RFP. The Offeror shall use its legal name under which the contract, if awarded, will be executed. The offer price shall be included on the transmittal letter and shall be the all-inclusive price, including Hawai'i General Excise Tax (GET), not to exceed \$5,786,020 total.

The Offeror must submit its current Federal Tax I.D. Number and Hawai'i General Excise Tax License I.D. Number in the Proposal Transmittal Letter, thereby attesting that the Offeror is doing business in the State and that it will pay such taxes on all sales made in the State. If, however, an Offeror is exempt by the HRS from paying the GET and therefore not liable for taxes on the Contract, Offeror must state its tax exempt status and cite the HRS chapter or section allowing the exemption.

The letter shall also state that the Offeror represents that neither the Offeror, nor any employee or agent of the Offeror, 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 its performance of the Contract, if awarded. Should any conflict exist, it must be disclosed. If no conflict exists, state "no conflict" on the transmittal letter.

The transmittal letter must have an electronic signature. If unsigned, the offer will be automatically rejected.

3. Corporate Resolution (Attachment 3). On the Offeror's business letterhead, include a copy of the corporate resolution or written authorization of the Offeror's representative to sign the proposal.
4. Qualifications Questionnaire (Attachment 4). Offeror must complete and submit the Qualifications Questionnaire form (Attachment 4).
5. Contractor Reference Form (Attachment 5). Offeror must use the Contractor Reference Form (Attachment 5) to provide three (3) references for previous work performed similar to this project for which the Offeror was the prime contractor. More recent and more relevant performance usually has a greater impact in the confidence assessment than less recent and less relevant projects. If subcontractors will be used, complete the Subcontractor References section for each subcontractor. If no subcontractors will be used, disregard the Subcontractor References section of the form.
6. Certification Regarding Lobbying (Attachment 6). Offeror must submit a signed Certification Regarding Lobbying (Attachment 6). If the Offeror has used non-federal funds to conduct lobbying in connection with obtaining any federal award, a completed [Standard Form-LLL](#) is also required to be submitted.
7. Compliance Documentation. Offeror must submit one of the following items demonstrating its compliance or intention to comply with Hawai'i Revised Statutes (HRS) §103D-310(c), by the time of contract award:

- A copy of the Offeror's Certificate of Vendor Compliance from Hawai'i Compliance Express (HCE)
- Proof that the Offeror has applied for a Certificate of Vendor Compliance from HCE
- Paper compliance documentation forms from Hawai'i Department of Taxation, the Internal Revenue Service, the Hawai'i Department of Labor and Industrial Relations, and the Hawai'i Department of Commerce and Consumer Affairs.

See Section 6.3, Responsibility of Offerors, for more information regarding this requirement.

8. Subcontractor Statement. If subcontractor(s) will be used, Offeror shall append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor, stating the general scope of work to be performed by the subcontractor and the subcontractor's willingness to perform the indicated work.
9. Cost Match Commitment Letter (optional at time of proposal submission). Offerors may submit a Cost Match Commitment Letter committing to providing match funding in the amount required by Section 2.5, Cost Match Requirements. If a Commitment Letter is not submitted with an Offeror's proposal, one will be requested if the Offeror is selected for award. No award may be made without a Cost Match Commitment Letter. The letter shall state the Offeror is committed to providing a specific minimum dollar amount of cost match, identify the type of proposed cost match (e.g., cash, services, and/or property) to be contributed, confirm that the cost match source is non-federal (unless otherwise allowed by law), and be signed by the person authorized to commit the expenditure of funds by the entity.

4.4 EXCEPTIONS

Should an Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, the Offeror must list such exceptions in the Exceptions section of the Offeror's proposal. The Offeror must reference the RFP Section where exception is taken, a description of the exception taken, and the proposed alternative, if any. If none, state so in the Exceptions section of the Offeror's proposal. The State reserves the right to accept or reject any exceptions.

Offerors are cautioned that award may be made on receipt of initial proposals without clarifications or an opportunity for discussions, and the nature of exceptions will be evaluated as part of the Offeror's proposal. In the sole discretion of the State, exceptions may be evaluated to determine the extent to which the alternative language or approach poses unreasonable, and/or additional risk to the State; inhibits achieving the objectives of the RFP; or creates ambiguity making evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP.

4.5 NARRATIVE PROJECT PROPOSAL

The Offeror must provide a narrative project proposal, not to exceed 15 pages (excluding Table of Contents, Proposal Forms, and Exceptions) and divided into the following five subsections:

1. Organization's Background, Capabilities, and Staffing
2. Approach and Demonstration of Comprehensiveness of Proposal
3. Ability to Meet Program Goals
4. Project Timeline and Budget Sheet
5. Comparable Sample Work

1. Organization's Background, Capabilities and Staffing

- A. Offeror must provide detailed descriptions of previous experience and knowledge that demonstrates their ability to complete the proposed project.
- B. Offeror must provide a two-to-three-page summary of the company background, including a brief history of the company, the type of business (corporation, partnership, etc.), principal owners, current organization of the company, current office location(s), local representation, and total number of employees. The Offeror must clearly establish its eligibility to be granted a subaward as an eligible entity defined in Section 2.4, Eligibility.
- C. Offeror must provide qualifications of all proposed key personnel for this project, which should include their job titles and responsibilities, information relating to each person's length of employment, previous experience, and specialized skills (including, but not limited to: specific degrees, dates, names of previous employers, education institutions, awards or accolades). HSEO reserves the right to disqualify any Offeror that changes key personnel assigned to the project prior to execution of the Contract.

2. Approach and Demonstration of Comprehensiveness of Proposal

- A. Offeror must include a detailed narrative description of the resilience issue identified, to what extent it enhances reliability/resiliency, strategy to address the identified issue, and detailed plan to effectively carry out the work of the project within the allotted timeframe.
- B. Offeror's narrative must include proposed project deliverables and identify how each deliverable will be executed.
- C. The detailed narrative must describe the timing and logistics of the work plan and the key issues involved, including the Offeror's personnel identified to execute each task and subtask.
- D. Offeror's proposal will be evaluated for professionalism and completeness, i.e., free from typos and grammatical errors, tabbed and in correct order, and all sections thoroughly addressed.

3. Ability to Meet Program Goals

Project proposals will be evaluated on their projected outcomes. These outcomes should be clear, quantifiable, suitable, and realistic. Offerors must articulate in specific terms how the requested funding will support the below Program Goals, providing supporting data where available and applicable. Favorable consideration will be given to proposals that meet more than one goal.

- A. Mitigate threats/hazards to protect Community Lifelines. This goal relates to the project's ability to mitigate risk to at least one of the seven Community

Lifelines. These lifelines represent the most fundamental services in the community, the stabilization of which enables all other aspects of society to function. Further information on Community Lifelines can be found on the [Federal Emergency Management Agency website](#). Favorable consideration will be given to proposals that address multiple hazards with the greatest impact on stabilizing community lifelines.

- B. Deploy projects that impact Disadvantaged Communities (DACs). This goal relates to the project's ability to ensure quantifiable benefits of the project flow to DACs as identified in the [Justice40 Initiative](#) and defined by established datasets such as the [Climate and Environmental Justice Screening Tool](#), the [U.S. Census Bureau's American Community Survey](#), [United for ALICE tools](#), and local sources like the [O'ahu Social Vulnerability Index](#). Impactful projects in this area will conduct meaningful engagement with stakeholders to ensure community members have an opportunity to provide input on program decisions, including the identification of projects. Favorable consideration will be given to proposals that promote equity or protect energy service for DACs.
- C. Invest in modernized grid infrastructure that promotes clean energy technologies that create good-paying jobs with access to training and a union. This goal relates to the project's ability to create or maintain local jobs, support job training or apprenticeships, and/or provide job-related benefits to DACs. Offerors should quantify the expected number of local jobs created or maintained, describe the job types created or maintained and whether they are union jobs, describe any training or apprenticeships offered as part of the project, and how any job-related benefits flow to DACs.
- D. Invest in projects with the highest likelihood of implementation. This goal relates to the project's ability to harness partnerships and community support to facilitate project implementation. Offerors should identify any local project partners, specify the partners' role in the project, describe how the partnership improves the project's ability to meet community needs, and specify any portion of the cost-share provided by the partner. Favorable consideration will be given to proposals that have support from asset owners and community groups.

4. Project Timeline and Budget Sheet

- A. Offeror must include a timeline of the entire project in an easy-to-read format (e.g., Gantt chart).
- B. Offeror must include a budget sheet for the project including 40101(d) funding in the amount of not more than \$5,786,020 total.

5. Comparable Sample Work

- A. Offeror must include descriptions of sample work (three minimum, five maximum) that is comparable to this project. Descriptions should include project overview, project description, project timeframe, project budget, and project imageries. Comparable work may include but is not limited to the successful completion of energy projects in the State of Hawai'i.

4.6 PRE-SUBMISSION REVIEW

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

Before submitting a proposal, the Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure the Offeror understands the requirements of the RFP. Offerors are advised to carefully read Section 4.3, Proposal Forms, and 4.5, Narrative Project Proposal and submit all necessary documents required for this RFP.

The Offeror must also become familiar with State, local and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Should the Offeror find defects or questionable or objectionable items in the RFP, the Offeror must notify HSEO in writing by email to dbedt.hseo.solicitations@hawaii.gov prior to the Proposal Due Date/Time listed in Section 1.2, Schedule and Significant Dates or as revised by addendum. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum.

4.7 PROPOSAL SUBMISSION

Proposals shall be submitted and received electronically through HlePRO by the Proposal Due Date/Time listed in Section 1.2, Schedule and Significant Dates or as revised by addendum. This electronically submitted offer shall be considered the original.

Any offers received outside of HlePRO, including faxed or e-mailed bids, shall not be accepted or considered for award.

See Section 1.5, Electronic Procurement, for information regarding the HlePRO system. Instructions on how to submit an offer through HlePRO are available on the [HlePRO website](#) at the link for "Vendor Quick Reference Guide". The maximum file size that HlePRO can accept is 100 MB. Files larger than 100 MB must be split into two or more files.

Each Offeror may submit up to two (2) proposals in response to this RFP. Each proposal must be prepared as an individual electronic file containing all required components described in Section 4.2, Proposal Organization. **Multiple proposals shall be submitted as separate file attachments to the offer, with file names that clearly identify each proposal.** Failure of the Offeror to clearly distinguish files for multiple proposals may result in the rejection of both proposals, as an evaluator will be unable to determine which file corresponds to which proposal.

Note that the fillable offer form in HlePRO is unable to accommodate multiple proposal prices. For submission on HlePRO, Offerors should enter the price for one of their proposals. The price entered in the HlePRO form will not have any bearing on

proposal evaluation or, if awarded, an Offeror's award amount. Instead, HSEO will recognize the price(s) submitted in the Offeror's proposal transmittal letter(s) as their official offer price(s).

4.8 MODIFICATION OR WITHDRAWAL OF OFFERS PRIOR TO DEADLINE

Any Offeror may modify or withdraw a proposal before the Proposal Due Date/Time. Any change, addition, deletion of attachment(s) or data entry of an offer must be made prior to the deadline for submittal of proposals.

4.9 MISTAKES IN PROPOSALS

When the Procurement Officer or designee knows or has reason to conclude before award that a mistake has been made, the Procurement Officer or designee will request the Offeror to confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.

1. Once discussions have commenced or after Best and Final Offers are requested, any Priority-Listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of Best and Final Offers.
2. If discussions are not held, or if the Best and Final Offers upon which award will be made have been received, mistakes may be corrected to the intended correct proposal whenever the mistake and the intended correct proposal are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
3. If discussions are not held, or if the Best and Final Offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
4. Material mistakes may not be corrected after award of the Contract.

4.10 NO LATE SUBMITTALS AFTER DEADLINE

Proposals received after the Proposal Due Date/Time will be marked late and shall be ineligible for award, except when the submittal would have been timely but for the action or inaction of personnel within the procurement activity.

4.11 OFFER GUARANTY

An offer guaranty or performance bond is NOT required for this RFP.

4.12 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

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

4.13 RECEIPT AND REGISTER OF PROPOSALS

Proposals will be received on HlePRO shall not be opened publicly but shall be opened in the presence of two or more State officials after the Proposal Due Date/Time. A register of proposals shall be prepared which shall include for all proposals:

- The name of each offeror
- The number of modifications received, if any
- A description sufficient to identify the good, service, or construction item offered

Received proposals (except as provided for in Section 4.14, Confidential Information) and the register of proposals shall be open to public inspection upon posting of award pursuant to Hawai'i Revised Statutes (HRS) §103D-701.

4.14 CONFIDENTIAL INFORMATION

All government records are open to the public unless access is restricted by law. The Uniform Information Practices Act requires an agency to make a government record available for inspection and copying, unless the agency can show that an exception to disclosure under HRS §92F-13 authorizes the agency to restrict or deny access to that record.

All Offerors are advised that confidential information in a proposal, offer, specification, protest, or correspondence may be subject to disclosure. The State may only restrict or deny access to items deemed confidential pursuant to HRS Chapter 92F. Any data submitted to the State that the Offeror wishes to remain confidential shall be clearly marked and be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion of the submittal.

If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains trade secrets or other proprietary data that must be designated as confidential or contains information that should be withheld from disclosure pursuant to HRS §92F-13, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide justification to support the Offeror's confidentiality claim at the time of submittal. Price is not considered confidential and will not be withheld; however, actual costs or pricing information that would enable competitors to estimate profit margins and production costs may be marked as confidential. These include selling prices, inventory balances, profit margins, purchase activity, cost of good and freight charges.

If a person requests to inspect the portions of an Offeror's proposal designated as confidential, pursuant to Hawai'i Administrative Rules (HAR) §3-122-58(b), the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination on any request for confidentiality in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as

public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS §92F-42(1).

4.15 PROPOSAL PREPARATION COSTS

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

4.16 PROPERTY OF STATE

All proposals become the property of the State of Hawai'i.

SECTION FIVE: EVALUATION CRITERIA

5.1 EVALUATION OVERVIEW

Evaluation criteria and the associated scoring of proposals are described herein. Award will be made to one or more responsive and responsible Offerors whose proposals are determined to be the most advantageous to the State based on the evaluation criteria listed in this section. The Procurement Officer, or an evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer, will evaluate proposals.

Each proposal shall be evaluated and considered for award individually. Therefore, multiple proposals submitted by a single Offeror shall each receive an individual evaluation and score.

5.2 EVALUATION OF MINIMUM SUBMISSION REQUIREMENTS (Pass/No Pass)

The Procurement Officer or designee shall evaluate each submission to ensure the proposal meets the minimum submission requirements as specified herein. No points will be assigned for these requirements. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation.

Failure to meet the submission requirements ("no pass") may be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the submission requirements ("pass") will be scored according to the evaluation criteria in Section 5.3, Proposal Evaluation Criteria.

Submission requirements for the proposal are listed in Section 4.3, Proposal Forms, and Section 4.5, Narrative Project Proposal. The State, at its sole discretion, may deem a proposal as non-responsive (i.e., "no pass") based on a conflict of interest. A proposal which does not meet the criteria for subaward eligibility outlined in Section 2.4, Eligibility shall be deemed non-responsive (i.e., "no pass"), as will any proposal in which the offer price listed on the Proposal Transmittal Letter (Attachment 2) exceeds \$5,786,020.

5.3 PROPOSAL EVALUATION CRITERIA (305 TOTAL POSSIBLE POINTS)

1. Organization's Background, Capabilities, and Staffing		60
A	Offeror clearly describes relevant experience and knowledge that demonstrates ability to complete the proposed project.	35
B	Offeror's background and capabilities demonstrate capacity to perform and execute all activities required for proposed project.	15
C	Offeror clearly identifies the roles that key team members play for specific tasks to be performed and key team members' credentials and/or qualifications.	10
2. Approach and Comprehensiveness of Proposal		80
A	Offeror's proposal clearly identifies specific resilience and/or reliability problem being addressed and has included a detailed narrative of the entire project and strategy which includes project tasks and how they will be managed within the allotted timeframe.	30
B	Offeror's proposal includes a work plan that clearly outlines and describes how proposed deliverables will be executed.	25
C	Offeror's proposal describes work plan with project schedule, logistics, and assigned personnel.	15
D	Proposal thoroughly addresses all sections and is free from typos and grammatical errors, tabbed and in correct order.	10
3. Ability to Meet Program Goals		100
A	Offeror's proposal demonstrates the project's ability to mitigate threats and hazards to the community through the Community Lifelines.	25
B	Offeror's proposal demonstrates the quantifiable benefits of the project flow to Disadvantaged Communities (DACs).	25
C	Offerors proposal quantifies and describes the expected number of local jobs created or maintained, as well as any training or apprenticeships offered as part of the project and how any job-related benefits flow to disadvantaged communities.	25
D	The Offeror's proposal identifies local project partners, specifies the partners' role in the project, describes how the partnership improves the project's ability to meet community needs, and specifies any portion of the cost-share provided by the partner.	25
4. Project Timeline and Budget Sheet		45
A	Offeror's proposal includes comprehensive timeline of entire project which clearly describes Offeror's ability to accomplish work in the allotted timeframe.	25
B	Offeror's proposal includes itemized budget sheet that clearly defines cost for each task or budget item.	20
5. Comparable Sample Work		10
A	Offeror's proposal includes sample work from the past five years comparable to this project.	10
6. Bonus Points		10
A	Offeror's proposal exceeds the 115% cost match requirement	5
B	Offeror's proposal includes a Cost Match Commitment Letter at the time of submission	5
Total Possible Points		305

5.4 SCORING PROCESS

The Procurement Officer or evaluation committee shall score each proposal by reviewing the content against each of the evaluation criteria above. The Procurement Officer or Evaluation Committee shall use a rating of 0 to 5 for each evaluation criterion. Each rating number is defined as follows:

0 - No confidence. Extreme doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that regardless of State intervention/oversight, successful performance is doubtful. The proposal fails to address the criterion or cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how requirement(s) is met.

1 - Little Confidence. Doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that substantial State intervention/oversight will be required to achieve the proposed levels of performance. The criterion is inadequately addressed, Offeror demonstrates only slight ability to comply, or there are serious inherent weaknesses.

2 - Confidence. The Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that some State intervention/oversight may be required to achieve the proposed levels of performance. The proposal broadly addresses the criterion, but there are significant weaknesses. May have one or more deficiencies, or Offeror has not adequately explained how its services fit the requirement.

3 - Significant Confidence. Evaluated with a certainty that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that little or no State intervention/oversight is expected to be required to achieve the proposed levels of performance. The proposal addresses the criterion well; meets the requirement. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted regarding technical approach.

4 - High Confidence. Evaluated that virtually no doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that little or no State intervention and no State oversight is expected to be required to achieve the proposed levels of performance. The proposal addresses the criterion very well, highly comprehensive. No deficiencies noted.

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

The following formula shall be used to convert the rating for each criterion into points:

$$\text{Rating for the Evaluation Criterion (0 through 5)} \div 5 \text{ (Maximum Rating Achievable)} \\ \times \text{ Total Possible Points for the Evaluation Criterion} = \text{Points for Evaluation Criterion}$$

SECTION SIX: SUBRECIPIENT SELECTION AND CONTRACT AWARD

6.1 DISCUSSION WITH PRIORITY-LISTED OFFERORS

The State may invite Priority-Listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State may also conduct discussions with Priority-Listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers (BAFOs), if necessary. However, proposals may be accepted without such discussions at the discretion of the State. The State, in its sole discretion, will schedule the time and location for these discussions, generally within the timeframe indicated in Section 1.2, Schedule and Significant Dates.

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

1. In the initial phase of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.
2. Proposals will be classified initially as acceptable, potentially acceptable, or unacceptable to be selected for award. Discussions may be conducted with all Offerors who submitted proposals determined to be acceptable or potentially acceptable or may be limited to at least three (3) of the highest-scoring Offerors who submitted acceptable or potentially acceptable proposals. Those selected for discussions are considered Priority-Listed Offerors.
3. Priority-Listed Offerors may be required to give oral presentations to ensure a thorough, mutual understanding of each proposal. A Priority-Listed Offeror that is requested to make a presentation and fails to make the presentation on the scheduled date to the Procurement Officer or evaluation committee may be eliminated from consideration for the final award. Any and all cost incurred by a Priority-Listed Offeror in making the presentation will be the Priority-Listed Offeror's sole responsibility and will not be reimbursed by the State.
4. If during discussions, there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to the Priority-Listed Offerors. If in the opinion of the Procurement Officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP issued.
5. Following any discussions, Priority-Listed Offerors may be invited by the Procurement Officer or evaluation committee to submit a BAFO. The Procurement Officer or evaluation committee reserves the right to have additional rounds of discussions with the Priority-Listed Offerors prior to submission of the BAFO.

6. The date and time for Priority-Listed Offerors to submit their BAFO, if any, will be indicated via an addendum distributed only to the Priority-Listed Offerors. If a Priority-Listed Offeror does not submit a notice of withdrawal or a BAFO, the Priority-Listed Offeror's immediately previous offer will be construed as its BAFO. BAFOs will be received only once unless the Chief Procurement Officer or the Head of Purchasing Agency or designee of either officer above the level of the Procurement Officer determines in writing that it is in the best interest of the State to conduct additional discussions or require another BAFO.

6.2 METHOD OF AWARD

After receipt and evaluation of proposals (including any requested BAFOs) in accordance with the evaluation criteria set forth in the RFP, the Procurement Officer or evaluation committee will make a recommendation of award. Award will be made to one or more responsive and responsible Offerors whose proposals are determined to be the most advantageous to the State based on the stated evaluation criteria.

Each Offeror may receive up to two (2) awards, with a cumulative award amount of no more than \$5,786,020.

6.3 RESPONSIBILITY OF OFFERORS

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

- Chapter 237, General Excise Tax Law.
- Chapter 383, Hawai'i Employment Security Law.
- Chapter 386, Workers' Compensation Law.
- Chapter 392, Temporary Disability Insurance.
- Chapter 393, Prepaid Health Care Act.

If an Offeror is not compliant with the above HRS chapters at the time of award, the Offeror may not receive the award. HSEO reserves the right to move on to the next responsive, responsible Offeror who is compliant.

HSEO will verify Offeror compliance on Hawai'i Compliance Express (HCE), which is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws through an electronic Certificate of Vendor Compliance. This electronic certificate replaces the equivalent paper compliance certificates that would otherwise need to be obtained from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Offerors intending to use an electronic certificate to demonstrate compliance are encouraged to register at the [HCE website](#) prior to submitting an offer. Although not a requirement for offer submission, if an Offeror is not compliant at the time of award, HSEO reserves the right to move on to the next responsive, responsible Offeror who is

compliant. As of the posting date of this solicitation, the annual subscription fee for a vendor to utilize HCE is \$12.00.

Offerors who do not wish to use HCE may submit paper compliance certificates to HSEO to demonstrate compliance at the time of award. All certificates must be valid on the date they are received by HSEO. Timely application for all applicable clearances/certificates is the responsibility of the Offeror. Upon receipt of paper compliance documents, HSEO reserves the right to verify their validity with the respective issuing agencies.

The Subrecipient shall maintain their compliance throughout the term of the Contract. Compliance status will be verified by HSEO at the time of contract award and final payment.

6.4 UNIQUE ENTITY IDENTIFIER (UEI)

In order to be awarded a contract under this solicitation, Offerors are required to have a Unique Entity Identifier (UEI) number, obtained through the federal System for Award Management (SAM). Offerors can apply for a UEI at [SAM.gov](https://sam.gov).

6.5 SUSPENSION AND DEBARMENT

Pursuant to Code of Federal Regulations (CFR), 2 CFR Part 180, Offerors that are listed as debarred, suspended, excluded by agencies, or declared ineligible under statutory or regulatory authority in the SAM.gov system may not be awarded a contract under this solicitation.

6.6 INSURANCE

Prior to entering into a contract with the State of Hawai'i, an awarded Offeror shall procure at its sole expense and maintain, in full force and effect, insurance coverage acceptable to the State throughout the term of the Contract. Prior to contract execution, the Offeror shall provide to HSEO valid certificate(s) of insurance as proof of the following minimum insurance coverages and limits:

1. Commercial General Liability Insurance. Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Subrecipient, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Subrecipient shall be responsible for payment of any deductible applicable to this policy.
2. Automobile Liability Insurance. Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident; or a \$2,000,000 single limit.

3. Workers' Compensation and Other Required Coverage. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by federal or state law.

In addition, each certificate of insurance shall contain the following clauses:

1. "The State of Hawai'i is added as an additional insured with respect to operations performed for the State of Hawai'i."
2. "It is agreed that any insurance maintained by the State of Hawai'i will apply in excess of, and not contribute to, insurance provided by this policy."

Upon request by the State, the Subrecipient must furnish a copy of the policy or policies. The Subrecipient shall immediately provide written notice to the State should any of the insurance policies evidenced on its certificate(s) of insurance filed with HSEO be cancelled, limited in scope, or not renewed upon expiration.

Failure of the Subrecipient to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including, without limitation, terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Subrecipient's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Subrecipient shall be responsible for the full and total amount of any damage, injury, or loss caused by the Subrecipient's negligence or neglect in the provision of services under the Contract.

6.7 SUBAWARD NOTIFICATION

For all subawards made under this solicitation, HSEO is required to provide written notification to the U.S. Department of Energy (USDOE) contracting officer and project officer prior to the execution or modification of a subaward contract. HSEO may not proceed with the subaward until the USDOE determines and provides written notification that the information provided is adequate.

To satisfy this notification requirement, HSEO must provide information to USDOE regarding Offerors' eligibility for subaward, the budget of proposed projects, and other key information relating to the Offeror's proposed execution of the project. If selected for award, Offerors shall be required to provide information and documentation to HSEO to support preparation of a written notification. Items required for the notification include but are not limited to:

- SF-424A Budget Information form and Budget Justification
- A completed Environmental Questionnaire covering the subaward activity
- Cost match commitment letter from the Offeror
- The proposed metrics that will be collected and reported in the Quarterly Progress Report to measure and demonstrate the beneficial impact of the resilience project on the resilience of the grid and to the community served
- Listing of foreign nationals

- Performance of Work in the United States waiver (if applicable)
- Buy American for Infrastructure Projects waiver (if applicable)
- A summary/brief description of any application, similar in nature, submitted by the Offeror to the Department of Energy under Infrastructure Investment and Jobs Act (IIJA) Section 40101(c), DE-FOA-0002740, Grid Resilience and Innovation Partnerships (GRIP)

6.8 CONTRACT EXECUTION

The successful Offeror(s) who receive an award shall enter into a formal written contract with the State of Hawai'i. No performance or payment bond is required for this Contract.

No work is to be undertaken by the Subrecipient prior to the effective date of the contract. The State of Hawai'i is not liable for and will not reimburse for any work, contract, costs, expenses, loss of profits, or damages incurred by the Subrecipient prior to the official starting date.

6.9 PROPOSAL AS PART OF THE CONTRACT

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

6.10 APPROVALS

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

6.11 DEBRIEFING AND PROTEST

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest pursuant to HRS §103D-701 and HRS §103D-303. For complaints prior to the deadline for receipt of offers, pursuant to HAR §3-126-3, a protestor initially should seek an informal resolution of the complaint with the Procurement Officer.

For protests of an award, pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award. A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days, to the extent practicable, from the receipt date of the written request. Any protest by the requestor following a debriefing shall be filed within five (5) working days of the debriefing, as specified in HRS §103D-303(h).

A protest shall be submitted, in writing, within five (5) working days after the aggrieved person knows or should have known of the facts giving rise to the protest, provided that a protest of an award or proposed award shall be submitted in writing within five (5) working days after the posting of award of the contract, if no request for debriefing has been made. No protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.

To expedite handling of protests, the envelope should be labeled "PROTEST" and either personally delivered or sent via registered or certified mail to the address below, with return receipt requested.

At a minimum, the protest shall contain the following information:

- Name and address of the protestor
- Appropriate identification of the procurement
- A statement of the reasons for the protest
- Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the required filing time in which case the expected availability date shall be indicated.

Any protest pursuant to HRS §103D-701 and HRS §103D-303, must be received within the deadline specified by statute. Submit the required information, in writing, to the following procurement officer for this solicitation:

Mark B. Glick
Procurement Officer
Department of Business, Economic Development and Tourism
Hawai'i State Energy Office
Attention: Amy Chang
235 S. Beretania St., 5th floor, Room 502
Honolulu, HI 96813

Awards, if any, resulting from this solicitation shall be posted to the State Procurement Office (SPO) website via HlePRO.

SECTION SEVEN: ATTACHMENTS AND EXHIBITS

- Attachment 1: Offer Checklist
- Attachment 2: Proposal Transmittal Letter
- Attachment 3: Corporate Resolution
- Attachment 4: Qualifications Questionnaire
- Attachment 5: Contractor Reference Form
- Attachment 6: Certification Regarding Lobbying
- Exhibit A: Overview of the RFP Process
- Exhibit B: General Provisions
- Exhibit C: General Conditions for 103D
- Exhibit D: Special Conditions

OFFER CHECKLIST			
Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below. Submit this checklist with proposal.			
No.	Description	Reference in RFP	Completed
1	Offeror registered on HlePRO	Section 1.5	<input type="checkbox"/>
2	Offer Checklist (Attachment 1) – Submit checklist with all required items checked "Completed."	Section 4.3	<input type="checkbox"/>
3	Table of Contents	Section 4.3	<input type="checkbox"/>
4	Proposal Transmittal Letter (Attachment 2) – Must contain all required information and have a signature	Section 4.3	<input type="checkbox"/>
5	Corporate Resolution (Attachment 3)	Section 4.3	<input type="checkbox"/>
6	Qualifications Questionnaire (Attachment 4)	Section 4.3	<input type="checkbox"/>
7	Contractor Reference Form (Attachment 5)	Section 4.3	<input type="checkbox"/>
8	Certification Regarding Lobbying (Attachment 6)	Section 4.3	<input type="checkbox"/>
9	Compliance Documentation – Submit one of the following: <ul style="list-style-type: none"> • A copy of the Offeror's Certificate of Vendor Compliance • Proof that the Offeror has applied for a Certificate of Vendor Compliance • Paper compliance documentation forms 	Section 4.3	<input type="checkbox"/>
10	Subcontractor Statement – To be submitted if subcontractors will be used	Section 4.3	<input type="checkbox"/>
11	Exceptions – State any exceptions or if none, state none	Section 4.4	<input type="checkbox"/>
12	Cost Match Commitment Letter – If not submitted with proposal, one will be requested if selected for award	Section 2.5 Section 4.3	<input type="checkbox"/> (optional)
13	Narrative Project Proposal – Not to exceed 15 pages. Shall be divided into five subsections: <ol style="list-style-type: none"> 1. Organization's Background, Capabilities, and Staffing 2. Approach and Demonstration of Comprehensiveness of Proposal 3. Ability to Meet Program Goals 4. Project Timeline and Budget Sheet 5. Comparable Sample Work 	Section 4.5	<input type="checkbox"/>

To be submitted on Offeror's official business letterhead

PROPOSAL TRANSMITTAL LETTER
RFP-24-038-HSEO-RCA

Mark B. Glick
Procurement Officer
Department of Business, Economic Development and Tourism
Hawai'i State Energy Office/Attn. Contracts Office
235 S. Beretania St., 5th Floor, Room 502
Honolulu, Hawai'i 96813

Dear Mr. Glick:

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

Offeror is:

- Sole Proprietor Partnership *Corporation Joint Venture
- Other _____
- *State of incorporation: _____

Hawai'i General Excise Tax License I.D. No. _____

Federal Tax I.D. No. _____

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

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

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

Acknowledgment of receipt of addendum/addenda issued by the Department of Business, Economic Development and Tourism in accordance with this solicitation: Record in the space below the date of receipt for each addendum.

Addendum No. 1 _____ Addendum No. 2 _____

Addendum No. 3 _____ Addendum No. 4 _____

The undersigned hereby certifies that the proposal attached has been carefully checked and is submitted as correct.

Respectfully submitted,

Date

Exact Legal Name of Offeror (Company Name)

Telephone No.

Authorized signature (Attach corporate resolution or evidence of authorization to bind)

Fax No.

Name of Authorized Signer (Please type or print)

E-mail Address

Title

OFFER TOTAL:

Total contract cost for accomplishing the development and delivery of these services is

\$ _____

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

CONFLICT OF INTEREST:

By signature above, the Offeror represents that neither the Offeror, nor any employee or agent of the Offeror, 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 Offeror's performance of this contract.

Conflict of Interest

Yes _____

No _____

If yes, attach list of conflict(s).

CERTIFICATION OF NON-DEBARMENT:

By signature above, the Offeror must certify that neither the Offeror nor its principals, employees or agent of the Offeror are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the State.

Any debarment action

Yes_____

No_____

Is yes, attach written explanation.

PREFERENCES:

No preferences apply to this solicitation.

To be submitted on Offeror's official business letterhead

CORPORATE RESOLUTION

Attach here:

Corporate resolution or written authorization of Offeror's representative to sign this proposal.

QUALIFICATIONS QUESTIONNAIRE

1. **How many years has your organization been in business under your present business name?**
2. **List principal place of business and location of all offices.**
3. **What other lines of businesses are you financially interested in?**
4. **Provide a company overview.**
Provide a brief history of your company, including founding year, key milestones, and core business areas.
5. **Product or service overview and description.**
Provide a description of your company's products or services, including key features and benefits.
6. **Licenses and certifications.**
List specific licenses and certifications held by key personnel, including the issuing organizations and validity periods. Explain how these credentials elevate your qualifications for this contract.
7. **Resources and expertise.**
Describe the material, equipment, facility, and personnel resources and expertise available, or the ability to obtain them, in order to meet contract requirements.
8. **Approach to project management.**
Outline your project management methodology, including how projects are planned, monitored, and reported. Highlight the tools and practices used to ensure successful project management.
9. **Project delivery and budget.**
Provide statistics or percentages that reflect your track record for completing projects on time and within budget. Include measures and practices established to manage timelines and costs effectively.

10. **What state departments and county agencies of the State of Hawai'i have you performed work for?**

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Were project objectives met within budget and schedule?

11. **Has your organization ever failed to complete any work awarded to you?**

If yes, provide a brief description, including when and where it took place and why work was not completed.



CONTRACTOR REFERENCES

To be completed by the Offeror. At least three (3) references for whom services were rendered as the Prime Contractor and for work similar to this project.

PROVIDER INFORMATION

1. Name of Provider	2. Solicitation Reference Number
---------------------	----------------------------------

CLIENT #1 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title: Email: Phone:	
8. Scope of Services	

CLIENT #2 INFORMATION

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start: End:
7. Contact Name/Title: Email: Phone:	
8. Scope of Services	

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CLIENT #3 INFORMATION

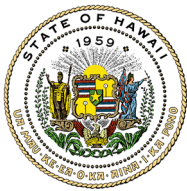
3. Organization Name	4. Organization Address
----------------------	-------------------------

5. Project Name	6. Project Dates Start: End:
-----------------	--

7. Contact Name/Title: Email: Phone:

8. Scope of Services

9. Additional Comments



SUBCONTRACTOR REFERENCES (if applicable)

To be completed by the Offeror.

PROVIDER INFORMATION

1. Name of Provider

2. Solicitation Reference Number

SUBCONTRACTOR #1 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title:

Email:

Phone:

8. Scope of Services to be Rendered

SUBCONTRACTOR #2 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title:

Email:

Phone:

8. Scope of Services to be Rendered

SUBCONTRACTOR #3 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title:

Email:

Phone:

8. Scope of Services to be Rendered

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) None of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.
- (4) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Offeror Legal Name: _____

Business Address: _____

CERTIFIED BY:

Print Name

Title

Signature

Date

EXHIBIT A: OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.
4. The Procurement Officer, or an evaluation committee approved by the Procurement Officer, will evaluate the proposals in accordance with the evaluation criteria in Section Five.
5. Proposals may be accepted on evaluation without discussion. However, if discussions are determined to be necessary by the Procurement Officer or an evaluation committee, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals will be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to ensure thorough, mutual understanding of the RFP and to clarify any issues regarding the Offerors' proposals.
6. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to Priority-Listed Offerors. If in the opinion of the Procurement Officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP issued.
7. Following any discussions, Priority-Listed Offerors may be invited by the Procurement Officer or evaluation committee to submit a Best and Final Offer (BAFO). The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the Priority-Listed Offerors prior to the submission of the BAFO.
8. The date and time for Offerors to submit their BAFO, if any, will be indicated via an addendum distributed only to the Priority-Listed Offerors. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer will be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Five, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in Section Five.

10. The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access pursuant to the confidentiality determination process in §3-122-58, HAR.
11. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
12. The RFP, any addenda issued, and the successful Offeror's proposal may become a part of the contract. All proposals shall become the property of the State of Hawai'i.

EXHIBIT B: GENERAL PROVISIONS

Exhibit B contains the General Provisions, dated April 2013, which are made a part of all offers in response to the solicitation for goods and services. These provisions are in addition to the General Conditions and Special Conditions.

Offerors are cautioned to read and understand all the terms and conditions contained in Exhibits B, C, and D as these provisions will also be made part of the contract for goods and services.

1. DEFINITIONS OF TERMS

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

a. BID

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

b. BID PROPOSAL GUARANTY OR SECURITY

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

c. CONTRACT

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

d. CONTRACT BOND

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

e. CONTRACTOR

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

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

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

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

- i. HAR
Hawai'i Administrative Rules
- j. HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.
- k. HRS
Hawai'i Revised Statutes
- l. IFB
Invitation for Bids
- m. OFFER
An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.
- n. OFFEROR
Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.
- o. PROCUREMENT OFFICER
Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.
- p. PROPOSAL
A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.
- q. PURCHASING AGENCY
Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- r. RFQ
Request for Quotes
- s. RFP
Request for Proposals
- t. SOLICITATION
Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process, a request for quotes ("RFQ") used in the small purchases process,

or a request for proposals (“RFP”), used in the competitive sealed proposal process for the purpose of obtaining quotes, bids or proposals to perform a STATE contract.

u. SPECIAL PROVISIONS

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

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

v. SPECIFICATIONS

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

w. STATE

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

x. SURETY

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

y. WORK

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

2. COMPETENCY OF OFFEROR

Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries must be made and replied to in writing; replies must be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive. The purchasing agency reserves the right to visit an offeror’s place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate evaluation of performance capabilities.

3. OFFER INCORPORATES SOLICITATION

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

4. PREPARATION OF OFFER

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

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

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

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

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

6. DISQUALIFICATION OF OFFERORS

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

An offeror may be disqualified and his offer rejected for any one or more of the following reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or

satisfactorily settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

7. IRREGULAR OFFERS

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

8. STANDARDS OF CONDUCT

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

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

9. ACCEPTANCE OF OFFER

- a. Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror must remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and

purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE must be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

10. EXECUTION OF CONTRACT

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

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE must forward a formal contract to the successful offeror for execution. The contract must be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller must only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.
- c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), in any contract involving not only STATE but supplemental funds from the Federal government, this section must be applicable only to that portion of the contract price as is payable by the STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract must be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This

subsection must be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

11. CONTRACT BOND

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

12. FAILURE TO EXECUTE CONTRACT

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

13. RETURN OF OFFER GUARANTIES

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

14. PAYMENT

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

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

15. DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the STATE in its solicitation requirements, and all goods must be delivered with the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his

control, provided that he notifies the STATE of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time must be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE must be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

16. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

EXHIBIT C: GENERAL CONDITIONS

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GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.

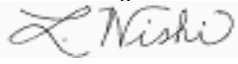
EXHIBIT D: SPECIAL CONDITIONS

Subrecipients awarded under this solicitation shall comply with the terms and conditions of the U.S. Department of Energy (USDOE) award agreement, Award No. DE-GD0000012, which is attached hereto and incorporated by reference, as well as all other applicable federal laws, regulations, and policies governing the funds provided under the Contract.

Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in the award agreement must be referred to the USDOE award administrator for guidance. Otherwise, should there be any conflict between federal requirements, the terms of the Contract, and/or state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

[Remainder of page intentionally left blank]

ASSISTANCE AGREEMENT

1. Award No. DE-GD0000012		2. Modification No.	3. Effective Date 06/14/2023	4. CFDA No. 81.254
5. Awarded To BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, Attn: DONNA MAU P.O. BOX 2359 HONOLULU HI 968132406		6. Sponsoring Office Grid Deployment Office (GD) U.S. Department of Energy 1000 Independence Avenue, SW Forrestal Building , GD-1 Washington DC 20585		7. Period of Performance 06/14/2023 through 04/30/2028
8. Type of Agreement <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other	9. Authority See Page 2		10. Purchase Request or Funding Document No. 23GD000064	
11. Remittance Address BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, Attn: Donna Mau 999 BISHOP STREET HONOLULU HI 96813		12. Total Amount Govt. Share: \$6,090,547.00 Cost Share : \$913,582.00 Total : \$7,004,129.00		13. Funds Obligated This action: \$6,090,547.00 Total : \$6,090,547.00
14. Principal Investigator	15. Program Manager Megan A. Yachini [REDACTED]		16. Administrator U.S. DOE/NETL NATIONAL ENERGY TECH LAB 3610 Collins Ferry Road Morgantown WV 26505-2353	
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury		18. Paying Office Payment - Direct Payment from U.S. Dept of Treasury		19. Submit Reports To See Attachment 3
20. Accounting and Appropriation Data See Schedule				
21. Research Title and/or Description of Project BIL - PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID FORMULA GRANTS TO STATES AND INDIAN TRIBES.				
For the Recipient			For the United States of America	
22. Signature of Person Authorized to Sign			25. Signature of Grants/Agreements Officer 	
23. Name and Title	24. Date Signed	26. Name of Officer Lani D. Nishimura		27. Date Signed 06/14/2023

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
DE-GD0000012

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NAME OF OFFEROR OR CONTRACTOR
BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, HAWAII DEPARTMENT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>UEI: FXW3PQB45AU7 Project Period: 06/14/2023 - 04/30/2028 Budget Period: 06/14/2023 - 04/30/2028</p> <p>Block 9 Authority: Infrastructure Investment and Jobs Act of 2021, Section 40101(d), 42 U.S.C. § 18711(d) (2023).</p> <p>DOE Award Administrator: Maureen B. Davison [REDACTED] [REDACTED]</p> <p>DOE Program Manager: Megan A. Yachini [REDACTED] [REDACTED]</p> <p>Recipient Business Point-of-Contact: Donna Mau [REDACTED] [REDACTED]</p> <p>Principal Investigator: Jonathan Chin [REDACTED] [REDACTED]</p> <p>***** ASAP: YES Extent Competed: NOT COMPETED Davis-Bacon Act: Yes PI: Jonathan R. Chin</p>				

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**SPECIAL TERMS AND CONDITIONS FOR USE IN FORMULA GRANTS ISSUED UNDER THE
GRID DEPLOYMENT OFFICE (GDO) ADMINISTRATIVE AND LEGAL REQUIREMENTS DOCUMENT
(ALRD)**

LEGAL AUTHORITY AND EFFECT (JUNE 2015)

- (a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.
- (b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

AWARD AGREEMENT TERMS AND CONDITIONS (DECEMBER 2014) (NETL – MARCH 2023)

This award/agreement consists of the Assistance Agreement cover page, plus the following:

- a. Special terms and conditions.
b. Attachments:

Attachment No.	Title
1	Intellectual Property Provisions
2	Statement of Project Objectives
3	Federal Assistance Reporting Checklist

- c. Applicable program regulations: NONE
- d. DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- e. Research Terms and Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp> (if the Award is for research and the Award is to a university or non-profit).
- f. Application/proposal as approved by DOE.
- g. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at <https://www.nsf.gov/awards/managing/rtc.jsp>.
- h. Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL)

FLOW DOWN REQUIREMENT

The Recipient agrees to apply the terms and conditions of this Award, as applicable, including the Intellectual Property Provisions, to all subrecipients (and subcontractors, as appropriate), as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subrecipients (and subcontractors, as appropriate), and to require their strict compliance therewith.

CONFERENCE SPENDING (FEBRUARY 2015)

The recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant or cooperative agreement was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

- a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.
- b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disburse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close as is administratively feasible to actual disbursements.
- c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE/NNSA.
- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

COST MATCH

- a. "Cost Matching" for the non-federal share is calculated as a percentage of the Federal funds only, rather than the Total Project Cost. The Total Project Cost is the sum of the Government share and Recipient match. The Recipient's cost match must come from non-Federal sources unless otherwise allowed by law.

Each Recipient is required to match 15 percent of their allocation. In addition, eligible entities performing resilience projects are required to provide a 100 percent cost match, unless the eligible entity sells not more than 4,000,000 megawatt hours of electricity per year, then the eligible entity is required to provide a one-third cost match.

By accepting federal funds under this award, the Recipient is liable for the cost match percentage of total expenditures incurred, even if the project is terminated early or is not funded to its completion.

- b. If the Recipient discovers that you may be unable to provide the required cost matching under this award, the Recipient should immediately provide written notification to the DOE Award Administrator indicating whether the Recipient will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost matching will be secured.
- c. The Recipient must maintain records of all project costs that you claim as cost match, including in-kind costs, as well as records of costs to be paid by DOE/NNSA. Such records are subject to audit.
- d. Failure to provide the cost matching required by this term may result in the subsequent recovery by DOE of some or all the funds provided under the award.

REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS

- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.
- b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

POST-AWARD DUE DILIGENCE REVIEWS (MARCH 2023)

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

ANNUAL ALLOCATION REQUEST

The Recipient shall submit their annual allocation request in accordance with the instructions provided in the Reporting Requirements Checklist attached to this award. The Annual Allocation Request must be submitted to the DOE Program Manager whose name is in Block 15 of the Award Agreement and the DOE Award Administrator whose name is identified on Page 2 of the Assistance Agreement cover page.

The Annual Allocation Request must include the following information:

- SF 424 reflecting the current year allocation and cost match amounts.
- Cost Match Information for current year allocation.
 - Cost Match Value
 - Identify the source/organization of the proposed cost match.
 - Type of Cost Match (cash or in-kind)
 - Provide a description of their proposed cost match.
- Program Narrative – copy of current Program Narrative if there are no changes or an updated Program Narrative to reflect any changes. If changes have occurred, a Public Notice and Hearing must be documented in the updated Program Narrative.

RESILIENCE PROJECT AND SUBAWARD/SUBCONTRACT NOTIFICATION

For all resilience project subawards and any other subaward over \$250,000, the Recipient must notify the DOE Contracting Officer and Project Officer in writing prior to the execution of new or modified subawards/subcontracts. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR 200, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

The Recipient is responsible for making a final determination to award or modify subawards/subcontracts under this agreement, but the Recipient may not proceed with the subaward/subcontract until the DOE determines, and provides the Recipient written notification, that the information provided is adequate.

In order to satisfy this notification requirement, Recipient documentation must, at a minimum, include the following:

- (a) Recipient confirms that the subawardee:
- (i) is an eligible entity type identified in BIL section 40101(a)(2);
 - (ii) is a domestic entity; to qualify as a domestic entity, the entity must be organized, chartered or incorporated (or otherwise formed) under the laws of a particular state or territory of the United States; have majority domestic ownership and control; and have a physical place of business in the United States;
 - (iii) is not a debarred or a suspended entity; and
 - (iv) will pay all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 on projects funded directly by or assisted in whole or in part by and through funding under the award, wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 1 of Title 40, United State Code commonly referred to as the “Davis-Bacon Act” (DBA).
- (b) Recipient confirms that:
- (i) the process undertaken to solicit the subaward/subcontract complies with their written procurement procedures as outlined in 2 CFR 200.318;
 - (ii) the proposed work to be done is an eligible activity identified in BIL Section 40101(e)(1);
 - (iii) the proposed subaward effort is consistent with the Program Narrative being executed under the award;
 - (iv) the primary purpose of the proposed project is not cyber security but that the implementation of the proposed project will adhere to any applicable cybersecurity requirements, and where possible, best practices in deploying technologies under their subaward;
 - (v) no planned, actual or apparent conflict of interest exists between the Recipient and the selected subawardee/subcontractor and that the Recipient’s written standards of conduct were followed;
 - (vi) as applicable, subaward/subcontracts address the Small Utilities Set Aside requirement set forth in BIL Section 40101(d)(6); and
 - (vii) all required award provisions will be flowed down in the resulting subaward/subcontract.
- (c) Recipient provides:
- (i) SF-424A Budget Information form and Budget Justification form for all resilience project subawards; and any other subaward over \$250,000;
 - (ii) a completed Environmental Questionnaire covering the subaward activity;
 - (iii) cost match commitment letter from the eligible entity committing to meet the cost matching as required in BIL Section 40101(h);
 - (iv) the proposed metrics that will be collected and reported in the Quarterly Progress Report to measure and demonstrate the beneficial impact of the resilience project on the resilience of the grid and to the community served;
 - (v) listing of Foreign Nationals for subrecipients/eligible entities and technical assistance contractors in accordance with the Foreign National Participation – Approval term;
 - (vi) Performance of Work in the United States waiver (if applicable);
 - (vii) Buy America for Infrastructure Projects waiver (if applicable);
 - (viii) Domestic entity waiver for subrecipients (if applicable); and
 - (ix) a summary/brief description of any application, similar in nature, submitted by the proposed subawardee to the DOE under BIL Section 40101(c), DE-FOA-0002740, Grid Resilience and Innovation Partnerships (GRIP).

If a State or Indian Tribe petitions the Secretary to be designated as an eligible entity for the purpose of executing a resilience project, it must provide both the 15% cost match for the entire allocation made by DOE to the State or Tribe (see BIL section 40101(d)(8)) and the project specific cost match requirement of 100% or 1/3 (see BIL section 40101(h)).

REPORTING

Reporting requirements are identified on the Federal Assistance Reporting Checklist and Instructions, DOE F 4600.2, attached to the award agreement. Additional reporting requirements apply to projects funded by BIL. As part of tracking progress toward key Departmental goals – ensuring justice and equity, creating jobs, boosting domestic manufacturing, reducing greenhouse gas emissions, and advancing a pathway to private sector – DOE may require specific data collection. Examples of data that may be collected include:

- project locations,
- measurable improvements of resilience,
- transmission capacity upgraded, expanded, or built,
- electricity storage capacity installed,
- funding leveraged,
- stakeholders engaged,
- technical assistance provided, and
- value of contracts or agreements with minority owned business for supplies, services, or equipment.

Recipients must maintain sufficient records to substantiate this information upon request.

FOREIGN NATIONAL PARTICIPATION – APPROVAL REQUIRED (MARCH 2023)

If the Recipient (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of this award, the Recipient must provide DOE with specific information about each foreign national to ensure compliance with the requirements for foreign national participation and access approvals. The volume and type of information required may depend on various factors associated with the award.

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State’s list of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) must be obtained from DOE before they can participate in the performance of any work under this award.

A “foreign national” is defined as any person who is not a United States citizen by birth or naturalization. DOE may elect to deny a foreign national’s participation in the award. Likewise, DOE may elect to deny a foreign national’s access to a DOE sites, information, technologies, equipment, programs, or personnel.

The Recipient must include this term in any subaward and in any applicable contractual agreement(s) associated with this award.

STATEMENT OF FEDERAL STEWARDSHIP

DOE/NNSA will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

SITE VISITS

DOE/NNSA's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

CATEGORICAL EXCLUSION (CX) – Initial Application

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of federal funds. Based on the initial information provided by the Recipient, DOE has made a NEPA determination by issuing a CX, thereby **authorizing use of funds for technical assistance and administrative project activities only**.

NEPA review and approval of proposed resilience project activities are required as per the Resilience Project and Subaward/Subcontract Notification Term. If any of the proposed projects are likely to require an Environmental Assessment (EA) or Environmental Impact Statement (EIS), the DOE NEPA Compliance Officer will provide further guidance. Should the recipient elect to undertake activities prior to authorization from the DOE, the Recipient is doing so at risk and such costs may not be authorized and recognized as allowable cost.

FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

ELIGIBLE ENTITY PRIORITIZATION – 40101(d)(5)

In making subawards to eligible entities using funds made available under the program, the Recipient shall give priority to projects that, in the determination of the Recipient, will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events.

SMALL UTILITIES SET ASIDE – 40101(d)(6)

The Recipient shall ensure that, of the amounts made available to eligible entities, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the Recipient State or Indian Tribe (as applicable) that are served by those eligible entities.

TECHNICAL ASSISTANCE AND ADMINISTRATIVE EXPENSES – 40101(d)(7)

Of the amounts made available to the Recipient under the program each fiscal year, the Recipient may use not more than 5 percent for technical assistance (*see* BIL Section 40101(g)(1)(A)) and administrative expenses associated with the program.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

INSURANCE COVERAGE (DECEMBER 2014)

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

REAL PROPERTY – GRID RESILIENCE

Acquisition of land or easements is not permitted under this grant program. Improvements to real property for the purpose of grid hardening or resilience is not considered acquisition of real property for the purpose of this grant program, and therefore may be permitted.

EQUIPMENT (DECEMBER 2014)

Subject to the conditions provided in 2 CFR Part 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.313 before disposing of the property.

States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by the Federal awarding agency in the priority order specified in 2 CFR Part 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR Part 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency; (b) Non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in CFR Part 200.313(e)(3).

See 2 CFR Part 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

SUPPLIES (DECEMBER 2014)

See 2 CFR Part 200.314 for requirements pertaining to supplies acquired under a Federal award.

See also § 200.453 Materials and supplies costs, including costs of computing devices.

CONTINUED USE OF REAL PROPERTY AND EQUIPMENT (OCTOBER 2022)

Real property and equipment purchased with project funds (federal share and recipient cost share) under this Award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

- a. Continues to use the property for the authorized project purposes;
- b. Complies with the applicable reporting requirements and regulatory property standards;
- c. As applicable to for-profit entities, UCC filing statements are maintained; and
- d. Submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Contracting Officer.

The Recipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance (“Request for Continued Use”). The Recipient’s written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Recipient expects to submit disposition instructions); acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310-200.316.

PROPERTY TRUST RELATIONSHIP (DECEMBER 2014)

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

The Recipient must include the insolvency, bankruptcy or receivership term in any for-profit/non-profit sub-award(s), at any tier.

- a. You shall immediately notify the DOE of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the first paragraph, DOE reserves the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the DOE review determines that there are significant deficiencies or concerns with your performance under the award, DOE reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.
- d. Failure of the Recipient to comply with this term may be considered a material noncompliance of this financial assistance award by the Contracting Officer.

PERFORMANCE OF WORK IN UNITED STATES

The Recipient agrees that at least **100%** of the direct labor cost for the project (including subrecipient labor) shall be incurred in the United States, unless the Recipient can demonstrate to the satisfaction of the DOE that the United States economic interest will be better served through a greater percentage of the work being performed outside the United States.

REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if

i. the total Federal funding authorized to date under this award is \$30,000 or more;

ii. in the preceding fiscal year, you received;

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. **Where and when to report.** You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.sam.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if;

i. in the subrecipient's preceding fiscal year, the subrecipient received;

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the prime recipient must remain registered and maintain current information in SAM for the entire period of performance of the award. This includes providing information on the prime recipient's immediate and highest level owner and subsidiaries, as well as on all of its predecessors that have been awarded a Federal contract or Federal financial assistance agreements within the last three years, if applicable, until the prime recipient submits the final financial report required under this award or receives the final payment, whichever is later. This requires the prime recipient to review its information in SAM at least annually after the initial registration, and to update its information as soon as there are

changes. Reviews and updates may be required more frequently due to changes in recipient information or as required by another award term.

B. Requirement for Unique Entity Identifier

If authorized to make subawards under this award, the prime recipient:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward until the entity has provided its unique entity identifier to the prime recipient.

2. Must not make a subaward to an entity unless the entity has provided its unique entity identifier to the prime recipient. Subrecipients are not required to obtain an active SAM registration, but must obtain a unique entity identifier.

C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity;
- c. A domestic for-profit organization; and
- d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

FINAL INCURRED COST AUDIT (DECEMBER 2014)

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

INDEMNITY

The Recipient must include the following indemnity provision in any sub-awards to eligible entities performing the resilience projects at any tier:

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or

loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

LOBBYING RESTRICTIONS (MARCH 2012)

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

CORPORATE FELONY CONVICTION AND FEDERAL TAX LIABILITY ASSURANCES (MARCH 2014)

By entering into this agreement, the undersigned attests that Hawaii State Energy Office has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

The undersigned further attests that Hawaii State Energy Office does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES (JUNE 2015)

(1) By entering into this agreement, the undersigned attests that Hawaii State Energy Office does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The undersigned further attests that does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

a. "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose

any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (DECEMBER 2015)

a. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

b. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five year period; and
3. Is one of the following:
 - (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (D) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

c. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

d. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or A. Reporting of Matters Related to Recipient Integrity and Performance.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (B) The value of all expected funding increments under a Federal award and options, even if not yet

EXPORT CONTROL (MARCH 2023)

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under the award, including subrecipient work.

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (MARCH 2023)

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

- (1) Procure or obtain;

- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

PROHIBITION RELATED TO FOREIGN GOVERNMENT-SPONSORED TALENT RECRUITMENT PROGRAMS (MARCH 2023)

A. Prohibition

Persons participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk* are prohibited from participating in this Award. The Recipient must exercise ongoing due diligence to reasonably ensure that no individuals participating on the DOE-funded project are participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. Consequences for violations of this prohibition will be determined according to applicable law, regulations, and policy. Further, the Recipient must notify DOE within five (5) business days upon learning that an owner of the Recipient or subrecipient or individual on the project team is or is believed to be participating in a *Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk*. DOE may modify and add requirements related to this prohibition to the extent required by law.

B. Definitions

1. **Foreign Government-Sponsored Talent Recruitment Program.** An effort directly or indirectly organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United

States research facilities or receipt of federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2. **Foreign Country of Risk.** DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

IMPLEMENTATION OF EXECUTIVE ORDER 13798, PROMOTING FREE SPEECH AND RELIGIOUS LIBERTY (NOVEMBER 2020)

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

INTERIM CONFLICT OF INTEREST REQUIREMENTS FOR FINANCIAL ASSISTANCE (MARCH 2023)

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE’s interim COI Policy.

FRAUD, WASTE AND ABUSE (MARCH 2023)

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE’s programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR

Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

TRANSPARENCY OF FOREIGN CONNECTIONS (MARCH 2023)

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or subrecipients:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

FOREIGN COLLABORATION CONSIDERATIONS (MARCH 2023)

- A. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- B. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- C. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

BUY AMERICAN REQUIREMENTS FOR INFRASTRUCTURE PROJECTS (MARCH 2023)

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;

2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IJJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

REPORTING, TRACKING AND SEGREGATION OF INCURRED COSTS (MARCH 2023)

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

DAVIS-BACON REQUIREMENTS (MARCH 2023)

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2000 on projects funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- (7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards

determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS (MARCH 2023)

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide¹ should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

¹ See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec>
 Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>.

For construction projects valued at \$35 million or more and lasting more than one year, Recipients, contractors, or subcontractors may be selected by OFCCP as a mega construction project. If selected, DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see <https://www.dol.gov/agencies/ofccp/construction/mega-program>.

POTENTIALLY DUPLICATIVE FUNDING NOTICE (MARCH 2023)

If the Recipient or subrecipients have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

**Intellectual Property Provisions (NRD-821)
Nonresearch and Development**

Intellectual property rights are subject to 2 CFR 200.315 (e.g. institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g. for-profit).

ATTACHMENT 2 – STATEMENT OF PROJECT OBJECTIVES

BIPARTISAN INFRASTRUCTURE LAW (BIL) - PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID

PROJECT OBJECTIVES

This project is in direct support of Section 40101(d) of the Infrastructure Investment and Jobs Act (i.e., Bipartisan Infrastructure Law (BIL)). The objective of this project is to improve the resilience of the electric grid against disruptive events. Per BIL Section 40101(a)(1), a disruptive event is an event in which operations of the electric grid are disrupted, preventively shut off, or cannot operate safely due to extreme weather, wildfire, or a natural disaster.

SCOPE OF WORK

To achieve the objectives of this project, a Recipient shall implement a wide range of resilience measures, as described in Appendix A.1, “Section 40101 Allowances and Requirements”, of the SOPO, intended to mitigate the impact of disruptive events. The Recipient may execute resilience projects that in the determination of the Recipient, will generate the greatest community benefit in reducing the likelihood and consequences of disruptive events to the electricity grid serving its jurisdiction. Resilience projects under this project shall comply with limitations and requirements that are detailed in Appendix A.1 of the SOPO.

Each year, the Recipient shall provide a Program Narrative that describes the criteria and methods that will be used by the Recipient to make subawards to eligible entities; is adopted after notice and a public hearing; and describes the proposed funding distributions and recipients of the subawards to be provided by the Recipient. The requirements of the Program Narrative are described in the Appendix A.2, Section 40101(d) Program Narrative Template and Instructions, of the SOPO.

The Recipient shall not use more than 5 percent of the total Federal grant allocation amount to administer the grant and provide technical assistance in support of grant objectives.

TASKS TO BE PERFORMED

Task 1.0: Project Management & Administration

The Recipient shall manage and administer activities in order to achieve project objectives. The activities will include tracking and disseminating information regarding the performance of the project, as well as administrative tasks associated with Government reporting.

An initial Project Management Plan (PMP) shall be provided within ninety (90) days after the initial award. Revised PMPs shall be submitted when major project changes are proposed, with less significant changes documented in the submitted Quarterly Progress Report (QPR).

Phase I – Planning

Task 2.0: Technical Assistance and Planning

The Recipient shall conform to all aspects of the Program Narrative approved at execution of the award. If the Program Narrative is revised mid-year, the Recipient must provide the revised Program Narrative within 5 days following the Recipient's official adoption of the revised Program Narrative. Program Narrative revisions must be subjected to a public notice and hearing prior to adoption.

Task 3.0: Resilience Project Approval

The Recipient shall prepare and submit to the DOE Program Manager Resilience Project Packages in accordance with the Resilience Project and Subaward/Subcontract Notification Term in the Assistance Agreement.

The Recipient may not execute a proposed resilience project or issue subawards/subcontracts for resilience projects without DOE Program Manager review and written determination of adequacy of the Resilience Project Package.

Phase II – Project Execution

Task 4.0: Resilience Project Execution

Upon DOE's written determination of adequacy of the Resilience Project Package, the Recipient shall execute the approved resilience project and/or issue subawards to eligible entities to execute the resilience project. For each resilience project and subaward/subcontract, the Recipient shall:

- A. monitor the performance of the entity/awardee to assure adherence to the Terms and Conditions of the subaward
- B. collect necessary information for the Recipient to provide measurable progress towards completion of the funded activity, and
- C. collect necessary information for the Recipient to verify the extent to which its established objectives are being realized.

The Recipient shall monitor the execution and performance of the resilience projects and provide the implementation status, progress towards measurable performance targets, and verifiable progress towards resilience objectives, as part of its QPRs to the Department of Energy.

DELIVERABLES

Periodic and final reports will be submitted in accordance with the attached "Federal Assistance Reporting Checklist" and the instructions accompanying the checklist. In addition to the reports specified in the "Federal Assistance Reporting Checklist", the Recipient will provide the following

Task	Deliverable	Due Date	Instructions/ Template	Where to Submit
1.0	Project Management Plan (PMP)	<ul style="list-style-type: none"> Due 90 days after the effective date of the award. Revised PMPs due within grant years as a result of major project plan changes 	Section 40101(d) Formula Grants to States & Indian Tribes netl.doe.gov	https://www.eere-pmc.energy.gov/SubmitReports.aspx
2.0	Program Narrative	If it is revised mid-year, Program Narrative must be submitted within 5 days following adoption	Appendix A.2 of the SOPO	Email to DOE Program Manager identified in Block 15 of Assistance Agreement
3.0	Resilience Project Package	Submitted prior to the execution of resilience projects and/or issuance of subawards for resilience projects	Award Document and Section 40101(d) Formula Grants to States & Indian Tribes netl.doe.gov	Email to DOE Program Manager identified in Block 15 of Assistance Agreement
4.0	Subaward Monitoring Reports	Due quarterly with QPR	Section 40101(d) Formula Grants to States & Indian Tribes netl.doe.gov	https://www.eere-pmc.energy.gov/SubmitReports.aspx

All reports noted in the Deliverables section must be high quality, verified for technical accuracy, and suitable for publishing in Federal records. Other major products/materials developed shall be submitted to DOE as they are completed.

BRIEFINGS AND TECHNICAL PRESENTATIONS

Upon request by DOE, the Recipient will provide additional project metrics information and briefings for presentation to the DOE explaining the plans, progress, and results of the grant activities.

APPENDIX A.1 - Section 40101 Allowances and Requirements

The Recipient may use Federal funds to make subawards to eligible entities for activities, technologies, equipment, and hardening measures to reduce the likelihood and consequences of disruptive events, including:

- A. weatherization technologies and equipment
- B. fire-resistant technologies and fire prevention systems
- C. monitoring and control technologies
- D. the undergrounding of electrical equipment
- E. utility pole management
- F. the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors
- G. vegetation and fuel-load management
- H. the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including:
 - a. microgrids; and
 - b. battery-storage subcomponents
- I. adaptive protection technologies
- J. advanced modeling technologies
- K. hardening of power lines, facilities, substations, of other systems; and
- L. the replacement of old overhead conductors and underground cables, and
- M. other measures as determined or approved by DOE.

A subaward to an eligible entity under this grant program may not be used for:

- A. construction of a
 - a. new electric generating facility or
 - b. large-scale battery-storage facility that is not used for enhancing system adaptive capacity during disruptive events, or
- B. cybersecurity.

Eligible entities are:

- A. an electric grid operator
- B. an electricity storage operator
- C. an electricity generator
- D. a transmission owner or operator
- E. a distribution provider
- F. a fuel supplier, and
- G. any other relevant entity as determined by the Secretary of Energy.

The Recipient shall ensure that, of the amounts made available to eligible entities from funds made available to the Recipient under the program, the percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year is not less than the percentage of all customers in the State, Territory or Indian Tribe that are served by those eligible entities.

The Recipient may not use more than 5 percent of the Federal funding for:

- A. providing technical assistance and facilitating the distribution and sharing of information to reduce the likelihood and consequences of disruptive events; and
- B. administrative expenses associated with the program.

APPENDIX A.2 – Section 40101(d) Program Narrative Template and Instructions

[Delete instructions in *italics* when completing Program Narrative.]

Bipartisan Infrastructure Law - SECTION 40101(d)

PREVENTING OUTAGES AND ENHANCING THE RESILIENCE OF THE ELECTRIC GRID

[Name of Indian Tribe or State]

[Date]

Program Narrative

1. Objectives and Metrics:

List 3-5 objectives that the applicant intends to apply for guiding their resilience investment decisions. The intent of this section of the Program Narrative is to ultimately develop a planning framework for resilience to address all-hazards including future climate implications. The first year, DOE is seeking input on criteria for determining investment decisions. At a minimum, the objectives and metrics should address:

- a. resilience and energy justice concerns, including reducing the frequency and duration of outages in disadvantaged communities,*
- b. how the project will use strong labor standards and protections (including for direct employees, contractors, and sub-contractors), such as through the use of project labor agreements, local hire agreements, and outline of a plan to attract, train, and retain an appropriately skilled workforce (i.e., through registered apprenticeships and other joint labor-management training programs that serve all workers, particularly those underrepresented or historically excluded); plans to partner with a training provider (labor, community college, etc.); and the use of an appropriately credentialed workforce (i.e., requirements for appropriate and relevant professional training, certification, and licensure).*

Provide the metrics that will accompany the objectives to measure outcomes associated with improving resilience, creating good-paying jobs with the free and fair choice to join a union, and advancing energy justice.

Indicate whether the objectives and metrics are provisional pending further discussion and consideration by the State or Indian Tribe with its stakeholders. DOE expects that recipients will establish a formal set of objectives and metrics in order to receive Year 2 formula funding. Examples of objectives and metrics, in addition to reporting on any DOE required metrics, and approaches for establishing them are available at: [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](https://www.netl.doe.gov)

2. Criteria:

Describe the criteria used for selecting and determining the awards to eligible entities. At a minimum, the criteria should address the following specific requirements set forth in Section 40101(d):

Priority should be given to projects that will generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events,

The percentage made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year should not be less than the percentage of all customers in the State or Indian Tribe that are served by those eligible entities, and

Awards should be provided to eligible entities for projects within the State or on the land of the Indian Tribe.

3. Methods:

Provide a description of the methods the applicant anticipates using for soliciting, awarding, and distributing funds. These might include several options, including the use of competitive solicitations, direct awards, and the use of financial instruments, such as Green Banks, to leverage the funds through 40101(d).

Provide also a description of the methods the applicant anticipates using to track and make public the metrics achieved by awardee uses of program funds to improve resilience by reducing the likelihood and consequences of disruptive events, to generate quality jobs, and to improve equity and community benefits.

4. Funding Distribution:

Provide a description of the proposed funding distributions and categories of recipients of the subgrants to be provided to eligible entities. Also, indicate preferences for eligible entities if they do not explicitly appear on the list of eligible entities provided in Section 40101.

5. Equity Approach:

To achieve the greatest impact for all Americans with this once-in-a-generation investment in infrastructure, it is critical that the BIL-funded projects not only contribute to the country's energy technology and climate goals, but also (1) support the BIL objectives to invest in America's workforce by including specific elements to accelerate job growth and job quality, including approaches to give workers a free and fair choice to join or form a union; and (2) advance DOE's equity, environmental and energy justice priorities, including DOE's commitment to the Justice40 Initiative. Accordingly, the

Program Narrative must describe how the State or Indian Tribe will ensure their proposed project will incorporate:

- a. *Quality Jobs: Strengthening prosperity by expanding good-paying, safe jobs accessible to all workers and supporting job growth through investments in domestic supply chains is a key goal set by President Biden, discussed in depth in his Executive Orders on Ensuring the Future Is Made in All of America by All of America's Workers (EO 14005), Tackling the Climate Crisis at Home and Abroad (EO 14008), Worker Organizing and Empowerment (EO 14025), Boosting Quality of Federal Construction Contracts (EO 14063), Promoting Competition in the American Economy (EO 14036), and Implementing the Infrastructure Investment and Jobs Act (EO 14052). Accordingly, this section of the Program Narrative should address efforts to achieve these goals, including*
 - i. *efforts to attract, train, and retain a skilled workforce and*
 - ii. *workforce opportunities in communities that have lost jobs due to the displacements of fossil energy jobs; and*
- b. *Community Benefits: Section 40101(d)(5) requires a State or Indian Tribe to give priority to projects that would generate the greatest community benefit (whether rural or urban) in reducing the likelihood and consequences of disruptive events. The Program Narrative should include an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.*
- c. *Diversity, Equity, Inclusion and Accessibility: DOE strongly encourages efforts to reach historically underserved populations, racial minorities, and women. These strategies should create the connectivity and conditions for growth where they may not exist, such as in rural and underserved communities. The Program Narrative should articulate the strategy the State or Indian Tribe will use for sharing and maximizing the project's benefits across disadvantaged communities and include a discussion of how resident, worker, and community leadership will be engaged throughout the project's duration.*

Provide an explanation of how the State or Indian Tribe will make such a determination for the projects that will be receiving funding and should include information on how the projects go beyond measures that are already being undertaken through current resilience planning by the State or Indian Tribe.

6. Technical Assistance and Administration:

Provide a description of how the State or Indian Tribe intends to utilize up to 5 percent of Federal grant funds for project administration and technical assistance.

7. Public Notice and Hearing:

Section 40101(d)(2)(B)(ii) requires that eligible applicants give notice and undertake a public hearing to review the criteria and methods they anticipate using to grant awards to eligible entities and the proposed funding distributions and recipients of the grant awards to eligible entities. The applicant should use the public hearing to share the approach envisioned for setting objectives and metrics and the proposed funding distributions and recipients of the grant awards to eligible entities. Provide a brief description of the notice and public hearing process, including the number and types of organizations that attended. Also, report on the outcome of the public hearing such as approaches for engaging stakeholders for establishing formal objectives and metrics and for implementing strategic planning processes. Provide a copy of the notice as an attachment to the Program Narrative.

Note: *DOE anticipates that the Program Narrative will be between 5 and 15 pages, depending upon the grant amount and complexity of resilience activities. DOE may reject applications and require revisions, if it determines that the program narrative lacks sufficient detail or does not comply with stated requirements. Save the information in a single file named (APPLICANT NAME PROGRAM NARRATIVE.pdf).*

**U.S. Department of Energy
FEDERAL ASSISTANCE REPORTING CHECKLIST
AND INSTRUCTIONS**

1. Award Number: DE- GD0000012/ 0000	2. Program/Project Title: BIL – Preventing Outages and Enhancing the Resilience of the Electric Grid, Formula Grants to States and Indian Tribes.	
3. Recipient: Hawaii State Energy Office		
4. Reporting Requirements (see attached "Federal Assistance Reporting Instructions" for additional guidance) <i>Detailed instructions included after the Table of Contents</i>	Frequency	Addresses <i>*See attached "Federal Assistance Reporting Instructions" for complete submission instructions.</i>
<p>I. PROJECT MANAGEMENT REPORTING</p> <p><input type="checkbox"/> A. Research Performance Progress Report (RPPR)</p> <p><input checked="" type="checkbox"/> B. Financial Report (SF-425)</p> <p><input type="checkbox"/> C. Scientific and Technical Reporting</p> <p style="padding-left: 20px;"><input type="checkbox"/> 1. Accepted Manuscript of Journal Article(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> 2. Conference Product(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> 3. Technical Report(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> 4. Software & Manual(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> 5. Dataset(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> 6. Other STI (Dissertation / Thesis, etc.)</p> <p><input type="checkbox"/> D. Intellectual Property Reporting</p> <p style="padding-left: 20px;"><input type="checkbox"/> 1. Intellectual Property Reporting</p> <p style="padding-left: 20px;"><input type="checkbox"/> 2. Invention Utilization Report</p> <p><input checked="" type="checkbox"/> E. Project Management Plan (PMP)</p> <p><input checked="" type="checkbox"/> F. Special Status Report</p> <p><input type="checkbox"/> G. Continuation Application</p> <p><input checked="" type="checkbox"/> H. Other (see Special Instructions)</p> <p>II. AWARD MANAGEMENT REPORTING</p> <p><input type="checkbox"/> A. Participants and Collaborating Organizations</p> <p><input type="checkbox"/> B. Current and Pending Support</p> <p><input checked="" type="checkbox"/> C. Demographic Reporting</p> <p><input type="checkbox"/> D. Tangible Personal Property Report - Annual Property Report (SF-428 & SF-428A)</p> <p><input checked="" type="checkbox"/> E. Tangible Personal Property Report – Disposition Request/Report (SF-428 & SF-428C)</p> <p><input checked="" type="checkbox"/> F. Uniform Commercial Code (UCC) Financing Statements</p> <p><input checked="" type="checkbox"/> G. Federal Subaward Reporting System (FSRS)</p> <p><input type="checkbox"/> H. Annual Incurred Cost Proposal</p> <p><input type="checkbox"/> I. DOE For-Profit Compliance Audit</p> <p><input checked="" type="checkbox"/> J. Single Audit: States, Locals, Tribal Governments, and Non-Profits</p> <p><input checked="" type="checkbox"/> K. Other (see Special Instructions)</p> <p>III. CLOSEOUT REPORTING</p> <p><input type="checkbox"/> A. Final Scientific/Technical Report</p> <p><input type="checkbox"/> B. Invention Certification (DOE F 2050.11)</p> <p><input checked="" type="checkbox"/> C. Tangible Personal Property Report – Final Report (SF-428 & SF-428B)</p> <p><input type="checkbox"/> D. Verification of Receipt of Accepted Manuscripts</p> <p><input type="checkbox"/> E. Other (see Special Instructions)</p> <p>IV. POST-PROJECT REPORTING</p> <p><input type="checkbox"/> A. Scientific and Technical Reporting</p>	<p>Q</p> <p>F, Q</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5, P</p> <p>A5</p> <p>A5</p> <p>A5</p> <p>O, Q, F</p> <p>Q</p> <p>A5</p> <p>A5</p> <p>Y</p> <p>A5</p> <p>A5</p> <p>Y180</p> <p>O</p> <p>O</p> <p>A</p> <p>F</p> <p>F</p> <p>F</p> <p>F</p> <p>F</p> <p>P</p>	<p>A. EERE PMC</p> <p>B. EERE PMC</p> <p>C.1. OSTI E-Link</p> <p>C.2. OSTI E-Link</p> <p>C.3. OSTI E-Link</p> <p>C.4. DOE CODE</p> <p>C.5. OSTI E-Link Datasets</p> <p>C.6. OSTI E-Link</p> <p>D.1. iEdison</p> <p>D.2. iEdison</p> <p>E. EERE PMC</p> <p>F. EERE PMC</p> <p>G. EERE PMC</p> <p>H. See Special Instructions</p> <p>A. EERE PMC</p> <p>B. EERE PMC</p> <p>C. EERE PMC</p> <p>D. EERE PMC</p> <p>E. EERE PMC</p> <p>F. See the Special Instructions and Section II. F. for instructions and due dates</p> <p>G. FSRS</p> <p>H. See the Special Instructions and Section II. H. for instructions and due dates</p> <p>I. See the Special Instructions and Section II. I. for instructions and due dates</p> <p>J. See section II. J. for instructions and due dates</p> <p>K. See Special Instructions</p> <p>A. OSTI E-Link</p> <p>B. EERE PMC</p> <p>C. EERE PMC</p> <p>D. See section III.D. for instructions and due dates</p> <p>E. See Special Instructions</p> <p>A. OSTI E-Link</p>

B. Intellectual Property Reporting

P

B. [iEdison](#)

FREQUENCY CODES AND DUE DATES:

A5 – As Specified or within five (5) calendar days after the event.

F – Final; within 120 calendar days after expiration or termination of the award.

O – Other: See instructions for further details.

P – Post-project (after the period of performance); within five (5) calendar days after the event, or as specified.

Q – Quarterly; within 30 calendar days after the end of the federal fiscal year quarter.

S – Semiannually; within 30 days after end of the reporting period.

Y – Yearly; within 90 calendar days after the end of the federal fiscal year.

Y180 – Yearly; within 180 calendar days after the close of the recipient's fiscal year.

FULL URLS:

OSTI E-Link: <https://www.osti.gov/elink-2413>

OSTI E-Link Datasets: <https://www.osti.gov/elink/2416-submission.jsp>

DOE CODE: <https://www.osti.gov/doecode/>

iEdison: <https://www.nist.gov/iedison>

EERE PMC: <https://www.eere-pmc.energy.gov/SubmitReports.aspx>

FIRS: <https://www.firs.gov>

5. Special Instructions:

I. Project Management Reporting:

H. Other:

SOPO Deliverables

All deliverables identified in the Statement of Project Objectives (SOPO) must be submitted to the address identified in the SOPO deliverables table.

Quarterly Progress Reports (QPR)

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
First QPR Submission Deadline:	Due within 30 calendar days after the end of the first full quarterly reporting period following the issuance of the award.
Submission Deadline for Subsequent QPRs:	Within 30 calendar days after the end of the quarterly reporting period (January 30, April 30, July 30, October 30)
Template and Instructions	Section 40101(d) Formula Grants to States & Indian Tribes netl.doe.gov

The QPR template utilizes the same template document as the Project Management Plan (PMP). The Recipient will use the QPR to report the progress made from the baseline information set forth in the PMP. The final QPR shall reflect any final close-out activities, costs, payments and reimbursements that occurred following the submission of the QPR for the last reporting period of the Period of Performance.

Annual Program Metrics and Impact Report

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 30 calendar days after the end of the annual reporting period (i.e., October 30). The reporting period is the Federal fiscal year (i.e., October 1 – September 30).

The Annual Program Metrics and Impact Report will capture benefits that communities realize through the program. Information collected will include communities affected by specific projects, avoided outages and reduced restoration time because of projects, community and labor engagement; workforce and community agreements, collective bargaining agreements and project labor agreements, investments in job quality and skilled workforce; diversity, equity, inclusion and accessibility; and Justice40 benefits. The annual reporting template is available here [Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](#) or is available upon request from the DOE Project Officer.

Annual Allocation Request

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx DOE Program Manager identified in Block 15 and the DOE Award Administrator identified on Page 2 of the Award Agreement
Submission deadline:	Within 90 calendar days after issuance of the ALRD DE-FOA-00002736 amendment publicizing the Annual Allocations.
Content and Information	See the "Annual Allocation Request" provision in the Special Terms and Conditions.

II. Award Management Reporting:

F. Uniform Commercial Code (UCC) Financing Statements:

If a piece of equipment is planned to be purchased by a for-profit Recipient or a for-profit Subrecipient with either Federal and/or non-Federal funds, and when the DOE share of the award exceeds \$1M, the for-profit Recipient or the for-profit Subrecipient must record Uniform Commercial Code (UCC) financing statement(s) before being reimbursed for the DOE share of the equipment. See "Federal Assistance Reporting Instructions" for specific guidance.

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Federal Assistance Reporting Instructions (09/2022)

Throughout the performance of the project, it is important that you mark Protected Data/Limited Rights Data as described in Appendix A. It is equally important that you not submit Protected Personally Identifiable Information (Protected PII). See Appendix A for guidance on Protected PII.

Report Templates Link: <https://netl.doe.gov/business/business-forms/financial-assistance>

I. Project Management Reporting

A. Research Performance Progress Report (RPPR) – Not Required

B. Financial Report SF-425 Federal Financial Report

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 30 calendar days after the end of the quarterly reporting period (January 30, April 30, July 30, October 30) and within 120 calendar days after expiration or termination of the award

Every quarter, the prime recipient is required to submit a completed SF-425 for the project to DOE, covering the entirety of work performed by the prime recipient, subrecipients, and contractors. A fillable version of the SF-425 is available at

<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html> or <https://www.netl.doe.gov/business/business-forms/financial-assistance>.

C. Scientific and Technical Reporting – Not Required

D. Intellectual Property Reporting -- Not Required

E. Project Management Plan (PMP)

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 90 days of the effective date of the DOE award
Template and Instructions	Section 40101(d) Formula Grants to States & Indian Tribes netl.doe.gov

The recipient is required to develop, update, and adhere to a project management plan. The purpose of the plan is to establish cost, schedule, and technical performance baselines, and to formalize the processes by which the project will be managed. These processes include considerations such as risk management, change management, and communications management. While it is primarily the project recipient's responsibility to maintain the plan,

federal staff may request changes. The plan is intended to be a living document, modified as necessary, and comprising the following iterations:

1. Revised Plan(s)

During the life of the project the recipient must submit a revised project management plan based on the following circumstances:

- a.** Developments that have a significant favorable impact on the project.
- b.** Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require the program office to respond to questions relating to such events from the public. Specifically, the recipient must update the plan when any of the following incidents occur:
 - i. Any event which is anticipated to cause significant schedule or cost changes, such as changes to the funding and costing profile or changes to the project timeline.
 - ii. Any change to Technology Readiness Level.
 - iii. Any significant change to risk events (including both potential and realized events) or to risk management strategies.
 - iv. Failure to meet a milestone or milestones; any dependencies should be adjusted.
 - v. Any changes to partnerships.
 - vi. Any significant change to facilities or other project resources.
 - vii. Any other incident that has the potential for high visibility in the media.

2. Content of revised PMP

All interim and draft PMP revisions can be exchanged via email with the NETL project officer. However, all final versions of the PMP need to be uploaded to the EERE PMC website. The revised PMP must stay consistent with the PMP instructions and template located at:

[Section 40101\(d\) Formula Grants to States & Indian Tribes | netl.doe.gov](#)

F. Special Status Reports

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within five (5) calendar days after the event, or as specified

The recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition.

The prime recipient is required to report the following events to DOE:

1. Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public.
2. Any notices or claims of patent or copyright infringement arising out of or relating to the performance of the DOE award;
3. Refusal of a subrecipient to accept flow down requirements in the Special Terms and Conditions and/or any Attachment to the DOE award;
4. Potential or actual violations of federal, state, and municipal laws arising out of or relating to work under the award;
5. Any improper claims or excess payments arising out of or relating to work under the award;
6. Potential or actual violations of the cost share requirements under the award;
7. Potential or actual noncompliance with DOE reporting requirements under the award;
8. Potential or actual violations of the lobbying restrictions in the award;
9. Potential or actual bankruptcy/insolvency of the prime recipient or subrecipient;
10. Potential or actual violation of U.S. export control laws and regulations arising out of or relating to the work under the award;
11. Any fatality or injuries requiring hospitalization arising out of or relating to work under the award;
12. Potential or actual violations of environmental, health, or safety laws and regulations, any significant environmental permit violation, and any incident which causes a significant process or hazard control system failure;

- 13. Any event which is anticipated to cause a significant schedule slippage or cost increase;
- 14. Any damage to Government-owned equipment in excess of \$50,000;
- 15. Developments that have a significant favorable impact on the project; and,
- 16. Any incident arising out of or relating to work under the award that has the potential for high visibility in the media.

G. Continuation Application – Not Required

H. Other (see Special Instructions)

II. Award Management Reporting

A. Participants and Collaborating Organizations – Not Required

B. Current and Pending Support – Not Required

C. Demographic Reporting

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 30 days after issuance of award

DEMOGRAPHIC INFORMATION FOR SIGNIFICANT CONTRIBUTORS
(Research Performance Progress Report, Appendix)

Demographic data (i.e., gender, ethnicity, race, and disability status) should be provided directly by the Principal Investigator and Business Contact with the understanding that the submission of this report is mandatory for awards made after 03/01/2022. There are no adverse consequences for responding “Do not wish to provide” in any question. Principal Investigators and Business Contacts of awards made prior to 03/01/2022 are encouraged, but not required, to submit demographic reporting. Confidentiality of demographic data will be in accordance with agency’s policy and practices for complying with the requirements of the Privacy Act.

Gender:

- Male
- Female
- Do not wish to provide

Ethnicity:

- Hispanic or Latina/o
- Not-Hispanic or not-Latina/o
- Do not wish to provide

Race (select one or more):

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White
- Do not wish to provide

Disability Status:

- Yes (check yes if any of the following apply to you)
 - Deaf or serious difficulty hearing
 - Blind or serious difficulty seeing even when wearing glasses
 - Serious difficulty walking or climbing stairs
 - Other serious disability related to a physical, mental, or emotional condition.
- No
- Do not wish to provide

This measure is designed as a binary measure; it encompasses all self-reported disabilities. Please do not use it to report the number of individuals who have different types of disabilities (e.g., hearing impairments).

Note: This construct is not designed to be used at an individual-level (i.e., it should not be used for determining accommodation needs or disability status for particular individuals associated with the project).

D. Tangible Personal Property Report – Annual Property Report (SF-428 & SF-428A) – Not Required

E. Tangible Personal Property Report – Disposition Request/Report (SF-428 & SF-428C)

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 5 calendar days of the event or as specified

The prime recipient must request disposition instructions for or report disposition of federally-owned property or equipment acquired with project funds, whether the property or equipment is/was in the possession of the prime recipient or subrecipient(s). Recipients may also be required to provide compensation to the awarding agency when acquired equipment is sold or retained for use on activities not sponsored by the federal

government. Any equipment with an acquisition cost above \$5,000 must be included in the inventory.

If disposition occurs at any time other than award closeout (i.e., at any time throughout the life of the project or after project completion and closeout as long as the federal government retains an interest in the item), the prime recipient must complete an SF-428 and SF-428C, available at <https://netl.doe.gov/business/business-forms/financial-assistance>.

If disposition instructions are requested at the time of award closeout, the prime recipient must submit the SF-428 and SF-428B (see **III. Closeout Reporting**).

Only the DOE Contracting Officer has authority to approve disposition requests and issue disposition instructions.

F. Uniform Commercial Code (UCC) Financing Statements

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within five (5) calendar days after the event, or as specified.

If a for-profit recipient or subrecipient desires to purchase a piece of equipment for their project, and the per-unit dollar value of said equipment is \$5,000 or more, and the federal share of the financial assistance agreement is more than \$1M, the recipient or subrecipient must file a UCC financing statement. These financing statement(s) must be approved in writing by the Contracting Officer prior to the recording.

A UCC financing statement provides public notice that the federal government has an undivided reversionary interest in the equipment, and as such the equipment cannot be sold or used as collateral for a loan (encumbered).

The for-profit recipient or subrecipient must file the UCC financing statement(s) with the Secretary of State where the equipment will be physically located and must pay any associated costs for such filings.

The initial UCC financing statement may also be referred to as a UCC1. For additional pieces of equipment not specified in the award budget, TBD equipment, or equipment needed in future budget periods, the recipient can file an amendment to the original UCC1 financing statement, by submitting the UCC3 financing statement amendment.

Each UCC financing statement or amendment is to be filed with the appropriate Secretary of State office, where the equipment will be physically located.

Note: All costs associated with filing UCC financing statements, UCC financing statement amendments, and UCC financing statement terminations, are allowable and allocable costs which can be charged to the federal award.

At a minimum, the recipient must have stated in their UCC financing statement in block 4. (collateral) the following:

- “Title to all equipment (not real property) purchased with federal funds under this financial assistance agreement is conditional pursuant to the terms of 2 CFR 910.360, and the federal government retains an undivided reversionary interest in the equipment at the federal cost-share proportion specified in the award terms and conditions.”
- Federal Award Identification Number (e.g., DE- CR000XXXX)

G. Federal Subaward Reporting System (FSRS)

Submit to:	https://www.fsr.gov/
Submission deadline:	The prime recipient is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$30,000.

The Federal Subaward Reporting System (FSRS) is the reporting tool prime recipients use to capture and report subaward and executive compensation data regarding their first-tier subrecipients to meet the Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. Prime recipients will report against subrecipients’ awards. The subrecipient information entered in FSRS will then be displayed on USASpending.gov associated with the prime recipient’s award furthering federal spending transparency.

The prime recipient is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-award greater than or equal to \$30,000.

H. Annual Incurred Cost Proposals – Not Required

I. DOE For-Profit Compliance Audit – Not Required

J. Single Audit: States, Local Government, Tribal Governments, Institution of Higher Education (IHE), or Non-Profit Organization

Submit to:	Federal Audit Clearinghouse - https://harvester.census.gov/facweb/Default.aspx
Submission deadline:	Within the earlier of 30 days after receipt of the auditor’s report(s) or 9 months after the end of the audit period (recipient’s fiscal year-end)

As required by 2 CFR 200 Subpart F, non-federal entities that expend \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single or program-specific audit conducted. The single audit must be conducted in accordance with §200.514 Scope of audit, except when it elects to have a program-specific audit conducted.

For most single audits, the requirement is for annual single audits. However, there are occasions where a single audit is not required annually. Per 2 CFR 200.504 - Frequency of audits, a state, local government, or Indian tribe that is required by constitution or statute to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. Also, any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its single audits biennially.

For a program-specific audit, when a recipient expends federal award funds under only one federal program (excluding R&D) and the federal program's statutes, regulations, or the terms and conditions of the federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted. A program-specific audit may not be elected for R&D unless all of the federal awards expended were received from the same federal agency, or the same federal agency and the same pass-through entity, and that federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

The single audit report shall include audited financial statements.

K. Other (see Special Instructions)

III. Closeout Reporting

A. Final Scientific/Technical Report – Not Required

B. Invention Certification (DOE F 2050.11) – Not Required

C. Tangible Personal Property Report – Final Report (SF-428 & SF-428B)

Submit to:	https://www.eere-pmc.energy.gov/SubmitReports.aspx
Submission deadline:	Within 120 calendar days after expiration or termination of the award

The prime recipient must submit a final inventory of and request disposition instructions for any federally-owned property and/or property or equipment acquired with project funds with an acquisition cost above \$5,000, whether the property is/was in the possession of the prime recipient or subrecipients.

The prime recipient must complete an SF-428 and SF-428B, available at <https://www.netl.doe.gov/business/business-forms>

If disposition occurs at any time other than award closeout, the prime recipient must complete an SF-428 and SF-428C (see IV. Other Reporting H. Property Disposition Request/Report).

Only the DOE Contracting Officer has authority to approve disposition requests and issue disposition instructions.

D. Verification of Receipt of Accepted Manuscripts – Not Required

E. Other - Not Required

IV. Post-Project Reporting

A. Scientific and Technical Reporting – Not Required

B. Intellectual Property Reporting – Not Required