

**Department of Health
Executive Office on Aging**

Release Date: Monday, September 16, 2024

**REQUEST FOR PROPOSALS
No. RFP-09-2024-AEOS**

**SEALED OFFERS
for
AEOS Web-Based Resource Finder Tool**

WILL BE RECEIVED UP TO 12:00 PM (HST) ON

Thursday, October 17, 2024

PROPOSALS SHALL BE SUBMITTED ELECTRONICALLY TO THE EXECUTIVE OFFICE ON AGING. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO NORMA KOP AT 808-586-0100 OR E-MAIL: norma.kop@doh.hawaii.gov

**SHANNON CHUN, ADMINISTRATIVE OFFICER
DOH/EXECUTIVE OFFICE ON AGING**
Procurement Officer

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SECTION ONE

INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The Advocacy, Education and Outreach Section (AEOS) of the Department of Health (DOH), Executive Office on Aging (EOA) is requesting proposals for a qualified vendor who can successfully work with AEOS to develop a web-based resource finder tool for older adults to aid them with questions related to Medicare, billing questions, scam calls or long-term care services.

1.2 CANCELLATION

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

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AEOS	=	Advocacy, Education, and Outreach Section
BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
DAGS	=	Department of Accounting and General Services
EOA	=	Executive Office on Aging
GC	=	General Conditions (Department of AG attached)
GET	=	General Excise Tax
Procurement Officer	=	The contracting officer for the State of Hawaii, State Procurement Office
State	=	State of Hawaii, including its departments, agencies, and political subdivision
SPO	=	State Procurement Office
Tool	=	Web-based Resource Finder Tool

1.4 RFP SCHEDULE AND SIGNIFICANT DATES

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

Release of Request for Proposals	Monday, September 16, 2024
Due date to Submit Questions	Thursday, September 26, 2024
State's Response to Questions*	Wednesday, October 2, 2024
Proposals Due date/time	Thursday, October 17, 2024
Proposal Evaluations	October 17 – October 23, 2024
Discussion with Priority Listed Offerors (if necessary)	---
Best and Final Offer (if necessary)	---
Notice of Award	Wednesday, October 23, 2024
Contract Start Date	Friday, November 1, 2024

1.5 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

Please submit all questions in writing by the due date specified in Section 1.4, *RFP Schedule and Significant Dates*, or as amended.

The State will respond to questions through Addenda/Amendments by the date specified in Section 1.4, *RFP Schedule and Significant Dates*, or as amended.

All potential vendors who submitted written questions will receive all questions and answers by the date specified in Section 1.4.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND HISTORY

Scope of Work consists of development, management, and promotion of a web-based resource finder tool to expand access to information and services through the Advocacy, Education and Outreach Section (AEOS) programs which include, but are not limited to:

- **Hawaii State Health Insurance Assistance Program (SHIP)** educates and empowers Medicare beneficiaries, their families, caregivers, and soon-to-be retirees to make cost-effective, informed healthcare decisions based on their own individual health needs and ability to pay.
- **Long-Term Care Ombudsman Program (LTCOP)** advocates to improve the quality of care and quality of life for residents in licensed and certified long-term care (LTC) settings such as nursing homes, expanded and adult residential care homes, community care foster family homes, and assisted living facilities.
- **Senior Medicare Patrol (SMP) Hawaii** educates Medicare beneficiaries to protect their personal identity and information, detect medical billing discrepancies, and report suspected fraud to the U.S. Office of Inspector General.

AEOS works with Federal, State, County, and community partners to plan, develop, and deliver services and supports to meet the changing needs of Hawaii's older adults.

The aging population is growing with the influx of baby boomers reaching Medicare eligibility. This population's usage and reliance on technology has increased since the pandemic in 2020. More inquiries are received through the secure, interactive website portal for information, assistance, or to learn about volunteering; confirming that web-based searches are a popular way to find information, updates, and announcements.

2.2 SCOPE OF WORK

All services and for who services are to be provided for shall be in accordance with this RFP, including its attachments and any addenda.

Web-based Resource Finder Tool ("Tool")

The purpose of this solicitation is to solicit and award a qualified vendor to successfully develop, manage, and promote a tool to support web-based searches that easily connects older visitors to accurate, reliable, and responsive information and assistance.

The tool shall provide an easy and streamlined way to access information on health care coverage, health care fraud prevention, long-term care services, and other resources. The tool, which shall be the property of EOA in its entirety, shall incorporate a user-friendly interface that enables visitors to find information they are seeking quickly and efficiently and include capabilities to measure performance and effective for reporting purposes.

2.3 SCHEDULE

EOA operates during the hours of 7:45 A.M. to 4:30 P.M., Monday through Friday, and is

closed on weekends and State holidays. Vendor must be responsive, including weekends and evenings, for emergency maintenance or updates. EOA anticipates a contract start date of November 1, 2024, for a duration of 12-months ending on or before October 31, 2025, with an option to extend contingent upon availability of funding.

2.4 BASIC OFFEROR QUALIFICATIONS

Primary selection for this Award shall be based on the ability to meet the scope of work and price. To be considered a responsive offer, the OFFEROR responsible for the submission must have met the following qualifications, subject to review and verification:

2.4.1. Offeror Experience.

At least three (3) years of relevant experience developing, managing, and promoting web-based projects for a government entity that focuses on serving older audiences. Experience must include the following and specified in detail in the proposal:

- a. Proficiency with development software to build web-based tools.
- b. Tracking and reporting of performance-based analytics.
- c. Evaluating of analytics to support program reporting, monitoring, and planning.
- d. Managing web-based applications and plug-ins, including search engine optimization to expand the tool based on needs.
- e. Optimizing cross-platform compatibility on all desktop and mobile browsers.
- f. Building securities to prevent hostile intrusion or malicious attacks.
- g. Conducting fail-safe, rolling backups of content and functions.
- h. Tool must serve as a secure interactive platform with 24/7 uptime.

2.4.2 Offeror Compliance.

To be awarded a contract under this solicitation, the OFFEROR must be compliant with all laws governing entities doing business in the State, including the following chapters and pursuant to HRS 103D-310(c). The State will verify compliance on Hawaii Compliance Express (HCE). OFFEROR should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. To be considered a responsive proposal, the vendor is required to provide an HCE "Certificate of Vendor Compliance" upon submission of their proposal. Vendor agrees to remain in compliance until the completion of the project period.

2.5 ADMINISTRATIVE REQUIREMENTS AND QUALIFICATIONS

- 2.5.1 The OFFEROR shall incorporate user-centered design and include accessibility features to ensure that persons with visual impairments, hearing impairments, motor impairments, limited English proficiencies, or cognitive impairments are able to understand, access, and utilize the tool for information and resources.
- 2.5.2 The OFFEROR shall always regard the tool, as approved and authorized by EOA, as an official representation of DOH.
- 2.5.3 Accordingly, the OFFEROR shall, in good faith, make all reasonable efforts to ensure the security of the tool against external intrusion and to prevent downtime due to hardware or software malfunction.
- 2.5.4 The web-based resource finder tool is expected to function on a 24/7 basis with an automatic fail-over system in the event of a catastrophic event that presents the identical content and functionality as authorized prior to disruption of service.

- 2.5.5 The OFFEROR shall only add new content as approved or assigned by AEOS.
- 2.5.6 The OFFEROR shall provide an interface, which shall be the property of the EOA, for AEOS to have administrative access to the tool, as needed.
- 2.5.7 The OFFEROR shall, in the event of termination of services, provide to the EOA an archive of all content and functionalities of the tool.
- 2.5.8 Provide a minimum of 5 hours per month of technical support to AEOS by email, phone, or video conference for issues, consultations, planning, and implementation.
- 2.5.9 For federal and state reporting purposes, provide monthly, quarterly, and annual summaries in simple, easy-to-understand formats of usage data and performance.
- 2.5.10 Attend planning and reporting meetings, as requested, with AEOS to review performance, content, updates, and proposed expansion plans.

2.6 TERM OF CONTRACT

The term of this Contract shall commence on November 1, 2024, through October 31, 2025. Unless terminated, this Contract may be extended by EOA for specified periods of time not to exceed three (3) year(s) or for not more than three additional twelve (12) month period(s), upon mutual agreement and the execution of a contract modification. The Contract price may be adjusted prior to the beginning of each extension period and shall be subject to the availability of funding.

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

2.7 CONTRACT ADMINISTRATOR

Norma Kop, (808) 586-0100 or norma.kop@doh.hawaii.gov.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

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

3.2 REQUIRED REVIEW

3.2.1 Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP pursuant to Hawaii Revised Statutes 103D. 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.

3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the EOA in writing prior to the deadline for written questions as specified in Section 1.4, *RFP Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which award could not be made.

3.3 PROPOSAL PREPARATION COSTS

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

3.4 TAX LIABILITY

3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii GET at the current 4.5% for sales made on Oahu. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

3.4.2 Offeror shall submit its current Hawaii GET License I.D. number and Federal I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State of Hawaii and that Offeror will pay such taxes on all sales made to the State.

3.5 PROPERTY OF STATE: All proposals become the property of the State of Hawaii.

3.6 CONFIDENTIAL INFORMATION

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

3.7 EXCEPTIONS

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

No exceptions to statutory requirements of the AG General Conditions shall be considered.

3.8 PROPOSAL OBJECTIVES

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

3.9 PROPOSAL FORMS

3.9.1 To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions provided in the RFP, or in any subsequent addendum, may be rejected without further consideration.

3.9.2 Offer Form, Page OF-1. Offer Form, OF-1, is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (SECTION SEVEN, Attachment 1). Failure to do so may delay proper execution of the Contract.

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

3.9.3 Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (SECTION SEVEN, Attachment 2). The price shall be the all-inclusive cost, including the GET, to the State. The OFFEROR shall submit a budget for each annual time period.

3.10 PROPOSAL CONTENTS

3.10.1 Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.

3.10.2 Include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal.

3.10.3 If subcontractor(s) will be used, append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

- a. The general scope of work to be performed by the subcontractor.
- b. The subcontractor's willingness to perform for the indicated.

3.10.4 Provide all the information requested in this RFP in the order specified.

3.10.5 Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually, and pages must be numbered. The proposal in its entirety shall not exceed 20 pages.

- a. Transmittal Letter

See SECTION SEVEN, Attachment 1, Offer Form OF-1.

- b. Experience and Capabilities

See SECTION 2.4.1

- c. Vendor Compliance. To be awarded a contract under this solicitation, the OFFEROR must be compliant with all laws governing entities doing

business in the State, including the following chapters and pursuant to HRS 103D-310(c). The State will verify compliance on Hawaii Compliance Express (HCE) for awards \$2,500 or greater. OFFEROR should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. To be considered a responsive proposal, the vendor is required to provide an HCE "Certificate of Vendor Compliance" upon submission of their proposal. Vendor also agrees to remain in compliance until the completion of the project period.

- d. Provide a complete, relevant, and current client listing.
- e. The number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
- f. A list of key personnel and associated resumes for those who will be dedicated to this project.
- g. A list of at least three (3) references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide names, titles, organizations, telephone numbers, email, and postal addresses.
- h. A summary listing of judgments or pending lawsuits or actions against; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state.
- i. A list of sample projects and/or examples of written plans.
- j. Proposal including an overall strategy, timeline, and plan.

3.10.6 Pricing. See SECTION SEVEN, Attachment 2, Offer Form OF-2.

3.11 RECEIPT AND REGISTER OF PROPOAL

Proposals must be submitted electronically on the State of Hawaii eProcurement website at www.hiepro.ehawaii.gov no later than 12:00 p.m., Hawaii Standard Time (HST), on Thursday, October 17, 2024.

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

3.12 BEST AND FINAL OFFER (BAFO)

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

3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

3.13.1 The Offeror may modify or withdraw a proposal before the proposal due date and time.

3.13.2 Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

3.14 MISTAKES IN PROPOSALS

- 3.14.1 Mistakes shall not be corrected after award of contract.
- 3.14.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
- 3.14.3 Once discussions are 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.
- 3.14.4 If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- 3.14.5 If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity.

If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

SECTION FOUR

EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

The total number of points used to score this contract is 100.

4.1 Cost of Services (30)

4.2 Organizational Capacity (10)

4.2.1 Number of years in business

4.2.2 Complete, relevant, and current client listing.

4.2.3 List of key personnel and associated resumes for those who will be dedicated to this project.

4.3 Relevant Experience (30)

At least three (3) years of relevant experience developing, managing, and promoting complex web-based tools for a government entity that focuses on serving older audiences. Experience must include the following:

4.3.1 Proficiency with development software to build web-based tools.

4.3.2 Tracking and reporting of performance-based analytics.

4.3.3 Evaluating of analytics to support program reporting, monitoring, and planning.

4.3.4 Managing web-based applications and plug-ins, including search engine optimization, to expand the tool based on needs.

4.3.5 Optimizing cross-platform compatibility on all desktop and mobile browsers.

4.3.6 Building securities to prevent hostile intrusion or malicious attacks.

4.3.7 Conducting fail-safe, rolling backups of content and functions.

4.3.8 Tool must serve as a secure interactive platform with 24/7 uptime.

4.4 Project Proposal (30)

4.4.1 Description of Methodology

4.4.1.1 Timeline - Offeror shall describe the timeline they expect to start and complete all deliverables.

4.4.1.2 A list of sample projects and/or examples of written plans.

4.4.1.3 Proposal shall include an overall strategy and plan.

4.4.2 Expected Results

4.4.2.1 Obtain utilization data based on initial and revisits to determine efficiency.

4.4.2.2 Increase in inquiries and volunteers.

4.4.2.3 Increase in program capacity to serve older, diverse populations.

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSALS

The Procurement Officer, or an evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer, shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

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

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

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

The State may invite priority listed Offerors to discuss with their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in Section 1.4, *RFP Schedule and Significant Dates*. The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

5.3 AWARD OF CONTRACT

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

5.4 RESPONSIBILITY OF OFFERORS

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

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

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

Hawaii Compliance Express (HCE). The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to demonstrate compliance quickly and easily with applicable laws. It is an online system that replaces

the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service, Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00, and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE as soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

5.5 PROPOSAL AS PART OF THE CONTRACT

This RFP and the successful proposal may be incorporated into the contract.

5.6 PUBLIC EXAMINATION OF PROPOSALS

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

If a person is denied access to a state procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-42(12).

5.7 DEBRIEFING

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

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

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

5.8 PROTEST PROCEDURES

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

Shannon Chun, Procurement Officer
250 South Hotel Street, Suite 406
Honolulu, Hawaii 96813
Shannon.Chun@doh.hawaii.gov

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set

for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the PO's debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

5.9 APPROVALS

Any agreement arising out of this offer 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.

5.10 CONTRACT EXECUTION

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

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

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

5.11 INSURANCE

5.11.1 Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

1. Commercial General Liability Insurance

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

2. Automobile Liability Insurance

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

3. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

5.11.2 The Contractor shall deposit with the State Procurement Office (SPO), on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the SPO that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the SPO during the entire term of the Contract. Upon request by the SPO, the Contractor shall furnish a copy of the policy or policies.

5.11.3 The Contractor will immediately provide written notice to the SPO and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

5.11.4 The certificates of insurance shall contain the following clauses:

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

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

5.12 PAYMENT

Incremental payments shall be made to the awarded Contractor on a quarterly basis, upon receipt of reports that meet the expectations of the RFP. The receipt of quarterly reports shall be due based on the proposal timeline submitted by the Contractor, or as amended.

5.13 CONTRACT INVALIDATION

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

SECTION SIX

SPECIAL PROVISIONS

6.1 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.2 INTELLECTUAL PROPERTY RIGHTS

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

6.3 TERMINATIONS FOR CONVENIENCE OR UNAVAILABILITY OF FUNDS

Clarify conditions when funds are limited but assurance of payment for completed performance.

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
- Exhibit A: OVERVIEW OF THE RFP PROCESS
- Exhibit B: GENERAL CONDITIONS

**OFFER FORM
OF-1**

[Title of RFP]
STATE OF HAWAII
DEPARTMENT OF Health
RFP-09-2024-AEOS

Procurement Officer
[Dept / Agency]
State of Hawaii
Honolulu, Hawaii 96813

Dear Procurement Officer:

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

Offeror is:

- Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

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

Federal I.D. No. _____

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

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

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

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

**OFFER FORM
OF-2**

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

\$ _____

Note:

- 1. Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.**
- 2. Please describe the price per year = total described above.**

Offeror _____
Name of Company

OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. Proposals shall be received electronically on HlePRO. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.
4. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.
5. The Procurement Officer, or an evaluation committee approved by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.
6. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
7. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
8. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.
9. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4, RFP *Schedule and Significant Dates*. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
10. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, 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 Four.

11. 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.
12. 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.
13. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

GENERAL CONDITIONS

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EXHIBIT B

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.