



Department of Health Environmental
Health Administration
State Laboratories Division

RELEASE DATE: October 18, 2024

INVITATION FOR BIDS
IFB No.:SLD-CS-25-005

SEALED OFFERS
FOR

Building Maintenance Technician, State Laboratories Division,
Hawaii Department of Health located at 2725 Waimano Home
Road, Pearl City, Hawaii 96782.

WILL BE RECEIVED UP TO AND OPENED AT 2:00 PM (HST) ON

November 07, 2024.

IN THE STATE LABORATORIES DIVISION OFFICE, STATE LABORATORY FACILITY,
2725 WAIMANO HOME ROAD, ROOM 3216, PEARL CITY, HAWAII 96782. DIRECT
TECHNICAL QUESTIONS RELATING TO THIS SOLICITATION TO Stephen
Schanzenbach, TELEPHONE (808) 453-6668, FACSIMILE (808) 453-6662 OR E-MAIL at
Stephen.schanzenbach@doh.hawaii.gov

Edward Desmond, Ph. D.
Administrator, State Laboratories Division
Department of Health

IFB NO.: SLD-CS-25-005

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IT IS THE RESPONSIBILITY OF ALL OFFERORS TO CHECK THE TABLE OF CONTENTS TO CONFIRM THAT ALL PAGES LISTED THEREIN ARE CONTAINED IN THEIR BID PACKAGE.

CONTACT INFORMATION:

PROCUREMENT OFFICER

The Procurement Officer is responsible for administering and overseeing the Contract, including monitoring, and assessing contractor performance. The Procurement Officer for the Contract is:

Marion Wong

Procurement Officer, State Laboratories Division

2725 Waimano Home Road, Room 3216

Pearl City, HI 96782

Telephone: (808) 453-6667

Facsimile: (808) 453-6662

Email: MARION.WONG@DOH.HAWAII.GOV

ISSUING OFFICER

The individuals listed below are the **sole** point of contact from the date of release of this IFB until the selection of the Offeror to which a Contract will be awarded:

Primary Technical Contact

Stephen Schanzenbach

Building Manager

2725 Waimano Home Road

Pearl City, HI 96782

Telephone: (808) 453-6688

Facsimile: (808) 453-6662

SECTION I
NOTICE TO OFFERORS

BID FORMS for IFB NO.: SLD-CS-25-005, to provide an experienced, skilled and qualified Building Maintenance Technician for the State Laboratories Division, Hawaii Department of Health located at 2725 Waimano Home Road, Pearl City, Hawaii 96782, will be available from and received in the STATE LABORATORIES DIVISION OFFICES, STATE LABORATORY FACILITY, DEPARTMENT OF HEALTH, 2725 WAIMANO HOME ROAD, PEARL CITY, HAWAII 96782, and must be submitted no later than **2:00 p.m., November 07, 2024**, and at that time will be publicly opened.

Bids received after the time and date fixed for opening will not be considered.

The offer/bids shall be submitted and received electronically through the State's eProcurement system, HlePRO. The electronically submitted offer shall be considered the original. Any original offers received outside of the HlePRO, including faxed, hand delivered, or e-mailed offers, shall not be accepted or considered for award. Any offer received after the due date and time shall be rejected. Please refer to the Electronic Submission of Offer section on page SC-4 of this IFB for additional details and instructions. There is no cost for vendors to register or to submit quotes or bids. However, upon award, the awarded vendor must pay NIC Hawaii 0.75% of the original awarded amount, capped at \$5,000.

When the vendor receives a notice of award in HlePRO, HlePRO will automatically generate an invoice to the vendor. The vendor will have 30 days to pay NIC Hawaii. Online payments are available in the application at <https://hiepro.ehawaii.gov/payment.html>

Direct all technical questions to Stephen Schanzenbach at (808) 453-6651 or Stephen.schanzenbach@doh.hawaii.gov.

Edward Desmond, Ph.D., D(ABMM)
Administrator, State Laboratories Division
Director of Health

SECTION II
OFFER (BID) FORM
IFB No. SLD-CS-25-005

Procurement Officer
State of Hawaii
Department of Health
State Laboratories Division
2725 Waimano Home Rd, Room 3216
Pearl City, Hawaii 96814

RE: Invitation For Bids No.: SLD-CS-25-005. to provide an experienced, skilled and qualified Building Maintenance Technician, State Laboratories Division, Hawaii Department of Health located at 2725 Waimano Home Road, Pearl City, Hawaii 96782

Dear Sir/Madam:

The undersigned has carefully examined, read, and understands the Specifications, Special Conditions, and General Conditions specified in the Invitation for Bids IFB No.: SLD-CS-25-005. The State of Hawaii's ("STATE") Agreement for Goods and Services Based Upon Competitive Sealed Bids, Form AG-003 Rev. 6/22/09 and the General Conditions, Form AG-008 (4/15/09) as provided herein this solicitation. The undersigned hereby submits the following offer to provide the goods and services for IFB No.:SLD-CS-25-005 as specified herein, all in accordance with the true intent and meaning thereof.

The undersigned understands and agrees that:

1. The STATE reserves the right to reject any and all offers and to waive any items that are defective when, in the STATE's opinion, such rejection or waiver will be in the best interest of the STATE. A solicitation may be rejected in whole or part when in the best interest of the STATE.
2. If required, letters from joint contractors, subcontractors, or allied enterprises, if any, stating their commitment to participate in this offer in the role set forth in the offer must be enclosed in the envelope with the offer.
3. If awarded the contract, all services performed will be in accordance with Hawaii Revised Statutes (HRS) §103-55.
4. In submitting this offer, the Offeror is not in violation of HRS Chapter 84, concerning prohibited State contracts.
5. By submitting this offer, the Offeror certifies that the offer was independently arrived at without collusion and the Offeror did not participate in any practices to restrict competition.

It is understood that the failure to receive any addendum shall not relieve the Offeror from any obligations under this IFB.

The undersigned represents that he/she/it is a (check one only)

Sole Proprietor Partnership Corporation Joint Venture

Other _____

*State of incorporation: _____

Federal I.D. No.: _____

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

Payment address (if other than street address below): _____

City, State, Zip Code: _____

Respectfully submitted:

Authorized Signature

Date

Name and Title (Please Type or Print)

Exact Legal Name of Company (Offeror)**

Business Address

Business Telephone Number

Business Facsimile Number

Business E-mail Address

** If the Offeror shown above is a 'dba' or a "division" of a corporation, furnish the exact legal name of the corporation on behalf of which the contract will be executed.

The following bid is hereby submitted for providing an experienced, skilled and qualified Building Maintenance Technician to State Laboratories Division, State of Hawaii Department of Health (2725 Waimano Home Road) in Pearl City, Hawaii.

Offeror shall provide the following information:

<u>Description</u>	<u>Estimated Number Days Per Contract</u>	<u>Estimated Number of Hours Per Day</u>	<u>Unit Bid Price Per Hour</u>	<u>Estimated Total Bid Price</u>
State Laboratory Division	259 days	X 6 hours / day	X \$ _____ / hour	= \$ _____

The provided number of days and hours is to be used as an estimate and the amount may increase or decrease during the duration of the Contract depending upon the needs of the STATE.

Reference List. Offeror shall provide 3 references to accompany the bid offer on a separate page. Reference List shall include the following information:

- IFB No.: SLD-CS-25-005
- Name and address of Offeror
- Contact Name and contact information of the Offeror
- Name of the Referral
- Contact Name and contact information for the Referral

Offeror Information:

Offeror (name of company): _____

Contact Person and Title:

Telephone No.: _____ Fax No.: _____

E-mail Address: _____

Offeror _____
Name of Company

SECTION III
RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision in the Special Conditions section herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)

Reference: _____ SLD-CS-25-005
(Contract Number) (IFB Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker’s Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a “Certificate of Good Standing” from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

SECTION IV

SPECIFICATIONS

This section indicates the Specifications for the Building Maintenance Technician. The Specifications listed herein are the minimum requirements and are mandatory for an accepted bid.

SCOPE OF WORK

I. Purpose: The OFFEROR shall provide an experienced, skilled, and qualified Building Maintenance Technician to the State Laboratories Division (SLD), Hawaii State Department of Health, located at 2725 Waimano Home Road, Pearl City, Hawaii 96782. The SLD is looking for a hard-working, dependable Building Maintenance Technician. In this role, the main task is to assist with maintenance around the property, ensuring SLD's building remains safe and functional. The individual shall perform basic repairs on plumbing, carpentry, electrical systems, painting, landscaping, and deep cleaning tasks. The SLD is looking for someone with experience in these areas.

II. The OFFEROR shall:

A. Ensure it is able to perform the type of work described in Section IV Duties and Responsibilities.

B. Candidate identification process. The OFFEROR shall provide the STATE with a list of qualified individuals and resumes who have met the prescreening requirements within five (5) business days.

C. Be the general or primary employer of its employees. All matters relating to the employment of its employees shall be processed through the OFFEROR. The OFFEROR reserves the sole right to establish the wages and fringe benefits, if any, of its employees, and assumes responsibility for the payment of such compensation. The OFFEROR warrants its employees are adequately covered by worker's compensation insurance and it assumes total responsibility to pay all applicable Federal and STATE withholding taxes, as well as Social Security, Temporary Disability Insurance, Federal Unemployment Tax Act, State Unemployment Insurance and mandated health insurance coverage. The OFFEROR's employees are additionally covered by its fidelity bond. The OFFEROR shall comply with all applicable Federal and State laws and regulations including but not limited to HRS 103-55.

D. OFFEROR shall complete the attached STATE of Hawaii Wage Certificate (page W-1) and include a copy submitted online with the bid package. The Original signed copy shall be submitted to the STATE upon request.

III. Scheduling of Work

The standard scheduled work hours for this position are defined as Monday thru Friday, 9:00 am to 3:00 pm. The schedule may be adjusted to begin earlier than 9:00 am and end later than 3:00p pm depending upon the needs of the STATE. The standard work hours exclude STATE holidays. After-hours work is defined as Monday-Friday before 6:00am and after 6:00 pm, State Holidays, and weekends. Hours worked exclude travel time to and from the SLD Facility. Any modifications to the standard scheduled work hours and any afterhours work must have prior approval by the STATE.

IV. Duties and Responsibilities

- A. All work will be assigned will be assigned, directed and prioritized by the Building Manager.
- B. Primary responsibility is to perform maintenance of the building. Any work performed on equipment will be directed by the Building Manager and performed according to manufacturer's recommendations.
- C. Perform preventative maintenance, repairs, and routine building inspections to identify possible issues including but limited to:
 - o Replacing plumbing fixtures
 - o Replacing ceiling tiles
 - o Replacing door closures
 - o Replacing drywall
 - o Patch and paint drywall
 - o Power wash concrete wash walkways and stairs
- D. Assist with landscape maintenance, including removal of debris. ~~and~~
- E. Assembly of chairs and other equipment
- F. Remove pallets
- G. Assigned workshop and areas where work is performed, will maintain a clean, organized and safe work environment.
- H. Check control panels and electrical wiring to identify issues.

- I. To perform routine inspection, service and troubleshooting on building equipment according to manufacturer's recommendations and directions outline in the owner's manuals.
- J. And perform other duties as assigned by the STATE.

V. Requirements and Qualifications

- A. Prior to selection and beginning an assignment with the STATE, the candidate have already passed a background check inclusive of a criminal history record check in Hawaii for the previous ten (10) years.
- B. Prior to beginning an assignment with the STATE, require selected employees to sign the State of Hawaii Department of Health Confidentiality and Access Agreement Regarding Access/ Use/Disclosure of Confidential Information which is attached hereto as Exhibit "A", and/or other appropriate confidentiality agreement forms.
- C. High school diploma or GED certificate (preferred)
- D. Prior building maintenance experience
- E. Experience working with tools, including hand and electrical tools
- F. Ability to read and utilize technical manuals and drawings
- G. Excellent communication and interpersonal skills
- H. Problem solving skills
- I. Ability to work independently
- J. Ability to prioritize tasks
- K. Specialized experience with plumbing, carpentry, electricity, and HVAC maintenance
- L. Familiarity with common cleaning products and equipment
- M. Mechanical skills
- N. Manual dexterity
- O. Physical stamina necessary to perform the required tasks
- P. Attention to detail
- Q. Ability to regularly lift items that are 50-70 lbs.
- R. Ability to climb and stand on ladders that are up to 10 feet in height

VI. The STATE shall:

- A. Provide all equipment necessary to conduct duties.
- B. Provide an orientation appropriate for the position.
- C. Coach and provide guidance appropriate to ensure satisfactory performance.
- D. Train employees on STATE Policies and Procedures.
- E. Selection process. Within five (5) business days of receipt, the STATE shall review the list of qualified individuals and resumes and notify the OFFEROR which individual has been selected and in what STATE office that individual shall be assigned.
- F. Agree that employees will not perform the following duties without prior written approval of the OFFEROR as follows:
 - 1. Handle cash, checks, credit cards, receive STATE building keys and equipment, or any other STATE property;
 - 2. Perform work outside of the agreed upon Position Descriptions; and
 - 3. Perform work outside of the agreed upon schedule.
- G. Not require employees to operate any vehicles while on assignment.
- H. Shall maintain the confidentiality of employees' personal data and shall not disclose such information to third parties without the OFFEROR's prior consent.
- I. Comply with all relevant Occupation Safety and Health Act regulations as applicable.
- J. Assist in maintaining a safe work site and working conditions.

VII. Substitutions and Replacement

- A. Employees may be substituted or replaced for any reason at the request of the STATE or the OFFEROR.
- B. Should an employee need to be substituted or replaced, the party requesting the action shall inform the other as soon as practicable.
 - 1. If the substitution or replacement is requested by the

OFFEROR, the OFFEROR shall have up to three (3) business days to provide the STATE with another qualified individual for selection by the STATE.

2. If the substitution or replacement is requested by the STATE, the OFFEROR shall replace the employee as soon as practicable using the candidate identification process and selection process enumerated above in Sections IV and V.

VIII. Incidental Hire

- A. The STATE and CONTRACTOR mutually agree that:
 1. The Hawaii State Department of Health and the State of Hawaii, as a whole, is a large employer;
 2. Employees should be free to apply for any position within Hawaii State government; and The STATE may identify employees for direct employment into civil service exempt positions with the STATE.
- B. For the purposes of this section, "incidental hire" means the direct hiring of an employee by the STATE into a civil service exempt position, which was the direct result of STATE identification and recruitment of the employee.
 1. Should an employee apply for and accept a position within the Hawaii State government but was not actively identified and recruited by the STATE, it shall not be considered an incidental hire.
 2. Any hiring of an employee into a civil service position shall not be considered an incidental hire.
- C. An employee shall not be eligible for incidental hire unless the employee has been assigned to the STATE for at least one-hundred sixty (160) hours.
- D. In the event of incidental hire:
 1. The STATE shall notify the CONTRACTOR within two (2) business days. Notification shall include:

- a. The name and position of the employee;
- b. The start date of employment;
- c. The starting salary of the employee to be paid by the STATE;
and
- d. Whether a replacement employee is requested.

2. The CONTRACTOR shall approve the employment start date with the STATE for any employee that has been assigned to the STATE for less than three hundred-nineteen (319) hours.

SECTION V SPECIAL CONDITIONS

INTRODUCTION

The State of Hawaii, Department of Health, State Laboratory Division, is seeking offers for an experienced, skilled and qualified Building Maintenance Technician for the State Laboratories Division, Hawaii Department of Health located at 2725 Waimano Home Road, Pearl City, Hawaii 96782, pursuant to HRS chapter 103D, all in accordance with the Specifications, Special Conditions, and General Conditions of this IFB No. SLD-EHASB-23-006.

AUTHORITY

This IFB is issued under the provisions of the State Procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circulars and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

Any Agreement arising out of this offer is subject to the approval of the State Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

TERM OF CONTRACT

The Contractor shall enter into the State's Contract for an experienced, skilled and qualified Building Maintenance Technician, State Laboratories Division, Hawaii Department of Health located at 2725 Waimano Home Road, Pearl City, Hawaii 96782 for a TWELVE (12) month period commencing from the effective date of the State's Contract or official date on the Notice to Proceed but no earlier than January 1, 2025.

Unless terminated, the Contract may be extended by the STATE for specified periods of time not to exceed ONE (1) year or for not more than TWELVE (12) additional ONE (1)-month period(s), upon mutual agreement and the execution of a supplemental contract or contract modification.

The Contract may be extended provided that the price shall remain the same or is adjusted per the Price Adjustment provision stated herein.

The STATE may terminate the extended agreement at any time in accordance with General Conditions no. 14.

Insurance required by the Contract shall not be canceled, limited in scope of coverage or not renewed until after 30 days written notice has been given to the Department of Health, State Laboratories Division (SLD), 2725 Waimano Home Road, Pearl City, Hawaii, 96782-1496

RESPONSIBILITY OF OFFEROR

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a bid in response to this IFB, Offeror certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the offeror prior to award, directly or indirectly, to any other Offeror prior to the award of the contract.
3. No other attempt has been made or will be made by the Offeror to influence any other person or firm to submit or not to submit for the purpose of restricting competition.

OFFER PREPARATION

Offer Form, Page OF-1. Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorizing signature on the first page of the Offer Form may be signed with an e-signature or a photocopied ink signature. If first page of the Offer Form is unsigned or the affixed signature is a facsimile, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Bid Quotation. Bid price shall be all inclusive, and include, but not be limited to, all applicable taxes and expenses incurred to provide services specified herein.

Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii General Excise tax (GET) at the current rate for each county. 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.

Taxpayer Preference. For evaluation purposes, pursuant to §103D-1008, HRS, the Offeror's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

Insurance. Offeror shall provide insurance information as requested on the appropriate Offer Form page. Further, Offeror shall provide insurance coverage for contents in accordance with the attached Specifications.

References. Offeror shall list as references companies for whom Offeror has provided or is currently providing on a regular basis services similar in nature and in volume to services specified herein. The STATE reserves the right to contact the references to inquire about Offeror's past performance. See Bid Offer Form page OF-3

Confidential Information.

Offerors shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential subject to Hawaii Administrative Rules (HAR) §§ 3-122-21(a)(7) and 3-122-30 (c) and (d). Material designated as confidential shall be readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices, makes and models, or catalogue number of items offered, deliveries and terms of payment, shall be publicly available at the time of opening regardless of any designation to the contrary.

ELECTRONIC SUBMISSION OF OFFER

The offer shall be submitted and received electronically through the HlePRO. This electronically submitted offer shall be considered the original. Any original offers received outside of the HlePRO, including faxed, hand delivered, or e-mailed offers, shall not be accepted or considered for award. Any offer received after the due date and time shall be rejected.

HlePRO Special Instructions. Offeror shall review all special instructions located on the HlePRO solicitation. Offerors are responsible for ensuring that all necessary files are included in their response upon submission on HlePRO by the due date and time.

Offerors are advised to not wait until the last minute to submit their offer on HlePRO. Offerors should allow ample time to review their submittals on HlePRO, including all attachments, prior to the due date and time. Submission must be completed and submitted by due date and time. If submission is not completed and submitted by the due date and time, HlePRO will not accept the offer.

The submission of an offer shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the solicitation, and that the solicitation documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

There is no cost for vendors to register or to submit quotes or bids. However, upon award, the awarded vendor must pay NIC Hawaii 0.75% of the original awarded amount, capped at \$5,000, within 30 days. When the vendor receives a notice of award in HlePRO, HlePRO will automatically generate an invoice to the vendor. The vendor will have 30 days to pay NIC Hawaii. Online payments are available in the application at

FORMAT INSTRUCTIONS FOR SUBMITTING OFFER ON HiePRO

- 1 Format. Offers shall be submitted as attachments on HiePRO.
- 2 Proprietary/Confidential Information. Proprietary information, if any, shall be contained in a separate file that is clearly identified as proprietary/confidential information.

MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

- 1 The Offeror may modify or withdraw an offer before the due date and time.
- 2 Any change, addition, deletion of attachment(s) of an offer may be made prior to the deadline for submittal of offers in the electronic system.

AWARD OF CONTRACT

Method of Award. Award, if made, shall be to the lowest responsive, responsible Offeror.

Responsibility of Lowest Responsive Offeror. Reference §103D-310(c), HRS. If compliance documents have not been submitted to the State prior to award, the lowest responsive and responsible Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

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

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): http://www.hawaii.gov/tax/a1_1alphalist.htm

DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror and must be submitted directly to the DOTAX or IRS and not to the State. However, the tax clearance certificate shall be submitted to the State.

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

Instructions are as follows:

Pursuant to §103D-310(c), HRS, the lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the State. A photocopy of the certificate is acceptable to the State.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the State.

The application for the certificate is the responsibility of the Offeror and must be submitted directly to the DLIR and not to the State. However, the certificate shall be submitted to the State.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The lowest responsive Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the State. A photocopy of the certificate is acceptable to the State.

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

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements. Offeror is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services, & Construction - Chapter 103D, HRS menu.

Hawaii Compliance Express. Alternatively, instead of separately applying for these certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance"

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indicating that Offeror's status is compliant with the requirements of §103D-310(c), HRS, shall be accepted for contracting and final payment purposes. Offerors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Offerors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sections previous to this one.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

ACCEPTANCE OF OFFER

Acceptance of Offeror, if any, will be made within sixty (60) calendar days after the opening of Offers, and the prices quoted by the Offeror shall remain firm for the sixty-day period or a longer period as may be allowed upon mutual agreement of the parties.

CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this contract have been appropriated by a legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

CONTRACT EXECUTION

The State shall forward a formal contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned within ten (10) days after receipt by the Offeror or as may be otherwise allowed by the Procurement Officer. **NO PERFORMANCE OR PAYMENT BONDS ARE REQUIRED FOR THIS CONTRACT.**

If the option(s) to extend are mutually agreed upon, Offeror shall be required to execute a supplement or modification to the contract.

The Offeror or the State may terminate the extended contract period at any time upon three (3) months prior written notice.

INSPECTION

The State retains the general right of inspection by a designated representative in order to judge, whether in the State's opinion, such work is being performed by the Offeror in accordance with terms of this bid proposal.

INVOICING AND PAYMENT

Invoices shall be payable upon certification by the Contract Administrator that the Contractor has satisfactorily performed the required services.

Offeror shall submit original and three copies of the invoice to the following address:

Department of Health
State Laboratories Division
Environmental Health Analytical Services Branch
2725 Waimano Home Rd.
Pearl City, HI 96782

The Offeror can also submit invoices electronically to the email address of the Procurement Officer: MARION.WONG@DOH.HAWAII.GOV.

Invoice shall reference both the contract number and the contract number.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services, & Construction – Chapter 103D, HRS menu. Alternatively, a "Certificate of Vendor Compliance," issued through the Hawaii Compliance Express system, shall be acceptable for final payment requirements.

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

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

LIABILITY INSURANCE

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

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

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

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 in aggregate
Basic Motor Vehicle Insurance And Liability Policies	\$1,000,000 per accident

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the Department of Health, State Laboratories Division (SLD), 2725 Waimano Home Road, Pearl City , Hawaii, 96782-1496"
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "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."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Offeror's execution of the contract, the Offeror agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

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

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

SUBCONTRACTORS

The Offeror shall not delegate any duties listed in this IFB to any subcontractor, unless the Contract Administrator has given prior written approval.

RIGHTS AND REMEDIES FOR DEFAULT

In the event the Offeror fails, refuses, or neglects to perform the services in accordance with the requirements of these Special Conditions, the Specifications, and General Conditions herein, in addition to any other recourse allowed by law, the State reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Offeror, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Offeror is insufficient for said purpose, the Offeror shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

NO MULTIPLE OR ALTERNATE OFFERS

Multiple or alternate offers from the same Offeror will not be accepted. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, than all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

PROTEST

A protest shall be submitted in writing within five (5) working days after the posting of the award as listed below; 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.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, State of Hawaii, Department of Health, State Laboratories Division, State Laboratory Facility, 2725 Waimano Home Road, Room 3216, Pearl City, Hawaii 96782.

SECTION VI

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section I03D-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 IOJD-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 It 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 I 030-703, 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, design, 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 I 4d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has tiled 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 I 4d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph I 4d(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 I 4d(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. CPO 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 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
- 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 I);
 - (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, condition, 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 11-205.5, 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;
 - (8) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to

notification of a security breach of personal information.

e. Records Retention.

- 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.
- 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
 - 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.



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____
 _____ and _____
 ("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.

B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.

E. Pursuant to _____, the STATE
(Legal authority to enter into this Contract)
 is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:
 (1) _____
(Identify state sources)
 or (2) _____
(Identify federal sources)

or both, in the following amounts: State \$ _____
 Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the

Invitation for Bids number _____ ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

_____ DOLLARS (\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

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

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

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

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

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

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

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

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

CORPORATE SEAL
(If available)

(Signature
)

(Print
Name)

(Print
Title) *

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

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

AG-003 Rev. 06/22/2009