



**PROFESSIONAL AND VOCATIONAL
LICENSING
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
HONOLULU, HAWAII**

REQUEST FOR PROPOSALS ("RFP")

No. RFP-2026-002-PVL

SEALED PROPOSALS AND PRICING

FOR

SERVICES TO ADMINISTER
NURSE AIDE EXAMINATIONS AND FOR THE MAINTENANCE OF
A NURSE AIDE REGISTRY IN COMPLIANCE WITH
THE FEDERAL OMNIBUS BUDGET RECONCILIATION ACT (OBRA) OF 1987.

Will be received up to 2:00 p.m. (HST)

on

SEPTEMBER 21, 2026

QUESTIONS RELATING TO THIS SOLICITATION MAY BE SUBMITTED
VIA HiePRO TO: CHRISSY HOOGLAND BY SEPTEMBER 1, 2026

DEAN I HAZAMA
Procurement Officer

No. RFP-2026-002-PVL

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SECTION ONE
INTRODUCTION AND TIMETABLE

1.01 INTRODUCTION

The Professional and Vocational Licensing Division (“PVLD”), Department of Commerce and Consumer Affairs (“DCCA”), desires to contract with an organization to administer examinations in its licensure and registration for the Nurse Aide Program.

1.02 RFP SCHEDULE

The schedule set out herein represents the State’s best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as *Proposal Due* date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertisement of RFP	August 25, 2026
Deadline to Submit Written Questions	September 1, 2026
Response to Written Questions	September 8, 2026
Proposal Due	September 21, 2026, at 2:00pm, HST
Proposal Opening and Review Period	through October 9, 2026
Optional discussions with priority-listed offerors, if applicable	October 12 to October 16, 2026
Best and Final Offers (BAFO) Due, if necessary	November 6, 2026
Evaluation of Best and Final Offers	November 10, 2026
Issuance of Notice of Award	December 1, 2026
Contract Start Date	August 1, 2027

SECTION TWO
SCOPE OF WORK

2.01 EXAMINATIONS

1. Furnish services for the examination of Nurse Aides.

2.02 EXAMINATION SITES AND FREQUENCY

1. Each examination site shall be able to accommodate a minimum of eight (8) examinees per session.
2. Sufficient off-street parking at no cost or at a reasonable cost shall be available.
3. Sites shall have adequate security and provide examinees an appropriate environment (lighting, room temperature, ventilation, noise, etc.) for taking the examination. Sites are subject to approval by the DCCA/PVLD.
4. **Oahu:** There shall be a permanent site on Oahu with testing at least five (5) days a week, including Saturday.
5. **Island of Hawaii:** There shall be a test site centrally located between Hilo and Kona offering testing at least two (2) Saturdays each month.
6. **Maui:** There shall be a test site in Wailuku or Kahului offering testing at least one weekday and one Saturday each month.
7. **Kauai:** There shall be a test site in Lihue or Kapaa offering testing at least one (1) Saturday each month.
8. Examination schedules are subject to DCCA/PVLD approval.
9. Each site shall be adequately maintained and staffed, with at least one (1) trained test supervisor present for the duration of each examination session.
10. Contractor shall notify DCCA/PVLD if it is unable to maintain an examination site.

2.03 ADMINISTRATION AND DELIVERY

1. Delivery

- a. Contractor shall be able to administer the examination of each individual Nurse Aide examinee separately and be able to report results separately.
- b. Contractor shall provide a process for challenges to examination items (defense of questions) including but not limited to notification to the State of any challenge to an examination item; actual defense, at its expense, of its examination administration and validity of its examination content; and hiring at its expense necessary and appropriate subject matter experts.

2. Test Administration

- a. Test sites shall be staffed by a sufficient number of trained personnel to assure expeditious admission and adequate exam monitoring and security.
- b. Test site personnel shall verify the identities (using government-issued identifications with photographs) of examinees and their eligibility for admission to the examination, and distribute such forms, notices, and other documents as may be required by the DCCA/PVLD.
- c. Immediately following the test, examinees shall receive either a printed or electronic pass or fail notification. Failure notices shall include a diagnostic report showing performance by subject. Both pass and failure notices shall include a photo of the examinee.
- d. The DCCA/PVLD or its designee shall be allowed to visit test sites and monitor the examination procedures without notice.
- e. Question Database Review: Upon written request by the DCCA/PVLD, the Contractor shall provide the State with access to the examination question database. This access is intended to allow the State to conduct audits of the examination's technical specifications, verify the security of the items, and to ensure the content remains in strict alignment with Federal and State regulatory requirements. The Contractor shall facilitate this review through a secure electronic interface or onsite access as determined by the State.
- f. Contractor shall immediately investigate any administration problem or security breach and provide a written report to the DCCA/PVLD within 30 days of discovery of the problem or breach. Contractor shall have written exam procedures that describe their investigation and due process for examinees who allegedly breach security or violate examination procedures. These procedures shall include notice to and opportunity to be heard by the involved examinee. Upon approval by the DCCA/PVLD, Contractor shall void or cancel the examination score of any examinee

who has breached security, violated examination procedures, or has been improperly admitted and inform the examinee.

- g. Examination sites, administration, and delivery of examination shall comply with the Americans with Disabilities Act.
- h. To support the in-state testing mandate and ensure the validity of the competency evaluation, the Contractor shall adhere to the following staffing requirements for clinical examinations:
 - Hawaii-Licensed Evaluators: All clinical skill evaluations for nurse aide certification must be administered by Registered Nurses (RNs) who are currently licensed in the State of Hawaii.
 - Experience Requirements: These RN evaluators must possess at least one (1) year of experience caring for the chronically ill in any setting.
 - Local Staffing Presence: The Contractor is responsible for recruiting, selecting, and training a sufficient number of these Hawaii-licensed RNs to ensure adequate coverage and session availability on Oahu, the Island of Hawaii, Maui and Kauai.

3. Post Exam / Reporting Results

- a. Contractor shall provide written reports to the DCCA/PVLD on a monthly basis. Reports shall include examinee name, address, unique personal identification number, score on each section, overall pass or fail scores, and number of times exam taken. Upon request by the DCCA/PVLD, the Contractor shall also submit reports in electronic form in a format to be agreed upon.
- b. Contactor shall submit an annual Item Performance Report to the DCCA/PVLD and the DHS to ensure the continued validity, reliability, and legal defensibility of the Nurse Aide Competency Evaluation Program. This report shall provide a comprehensive psychometric analysis for Every question (item) in the active written and oral examination pools and must include:
 - Item Difficulty Analysis: Documentation of the p-value for each item, representing the proportion of candidates who answered the question correctly.
 - Discrimination Statistics: Point biserial correlation and Pearson correlations to measure the relationship between individual item performance and total test scores.
 - Distracter Performance: Analysis of the correlation between incorrect options (distracters) and total test scores to verify that distracters remain plausible to candidates with insufficient knowledge.

- Reliability Measures: The reliability coefficients for each test form and its respective content domains.
- Flagged Item Disposition: A summary of items flagged for performance anomalies (such as those outside recommended parameters), including details on whether such items were removed from the active bank, modified, or retired.
- Equating Data: Summary data from the equating process used to adjust for differences in test difficulty across forms, ensuring equitable scoring for all candidates.
- Format and Delivery: In accordance with standard reporting protocols, this report may be provided electronically. The DCCA/PVLD maintains the right of final approval over the content and format of all such program-related resources.

2.04 NURSE AIDE REGISTRY REQUIREMENTS

The Contractor shall establish, maintain, and operate the Nurse Aide Registry in compliance with all applicable federal and state laws, regulations, and requirements, including, but not limited to, the federal Omnibus Budget Reconciliation Act of 1987 (OBRA), 42 C.F.R. Part 483, and applicable Hawaii statutes and administrative rules.

In addition to other statutory requirements not enumerated herein, the Contractor shall:

1. Ensure that the Registry includes all individuals who:
 - a. Have successfully completed a state-approved Nurse Aide Training and Competency Evaluation Program (NATCEP);
 - b. Have successfully passed a DCCA/PVLD-approved competency evaluation program;
 - c. Are otherwise eligible for placement on the Registry pursuant to applicable federal waiver, reciprocity, endorsement, or equivalency provisions.
2. Maintain, at a minimum, the following information for everyone listed on the Registry:
 - a. Full legal name;
 - b. Unique identifying information as prescribed by the DCCA/PVLD;
 - c. Date of eligibility for placement on the Registry;
 - d. Certification status and effective dates, as applicable; and

- e. Findings of resident abuse, resident neglect, or misappropriation of resident property, when applicable.
3. Division of Responsibility for Findings. The State (via the Department of Human Services ("DHS"), Department of Health ("DOH") and/or the DCCA/PVLD) handles the investigative and authoritative processes, while the Contractor's role is restricted to the timely documentation of those findings within the Registry:
- Investigative Authority: The Contractor acknowledges that substantiated findings result from investigations conducted by the DHS and/or the DOH, or other agencies designated by law.
 - Authorization for Entry: The Contractor shall input substantiated findings into the Registry computer file only when authorized by the DCCA/PVLD.
 - Documentation Timeline: Once authorization is received, the Contractor must input the findings within five (5) business days of receipt.
 - Registry Status Management: The Contractor shall be responsible for inactivating, retaining, and placing red flags on nurse aide records with substantiated findings, in accordance with the specific instructions provided by the DCCA/PVLD.
 - Permanent Record: Once entered, this information becomes a permanent part of the nurse aide's registry record. On the public registry search, these individuals are clearly identified with a "Yes" indicator for findings/convictions to ensure the safety of residents in long-term care facilities.
 - Record Integrity and Procedural Protections: In support of these findings, the Contractor shall ensure the Registry contains and maintains documentation of the investigation, information regarding administrative hearings or appeals, the final disposition, and any written statements submitted by the nurse aide. This ensures the Registry accurately reflects that the affected nurse aide was afforded all required procedural protections under applicable law before the adverse finding was finalized.
4. Maintain all such records in accordance with applicable federal and state record retention requirements.
5. The Contractor shall manage all information and records in accordance with the Uniform Information Practices Act (UIPA), HRS Chapter 92F. The Contractor shall ensure a response is provided to the DCCA/PVLD within five (5) business days of their UIPA request.
6. Provide and maintain a system that allows nursing facilities, health care providers, state agencies, and members of the public to promptly verify an individual's Registry status, certification status, and any reportable findings of

misconduct, consistent with applicable federal and state confidentiality requirements. The Registry shall be accessible through electronic means twenty-four (24) hours per day, seven (7) days per week, except during scheduled maintenance periods approved by the DCCA/PVLD.

7. Identify nurse aides who have not performed nursing or nursing-related services for monetary compensation during any continuous twenty-four (24) month period and shall update the Registry status of such individuals in accordance with applicable federal and state requirements.
8. Prior to the entry of any adverse finding into the Registry, the Contractor shall ensure that the affected nurse aide is afforded all required procedural protections under applicable law, including:
 - a. Timely notice of the allegation or finding;
 - b. An opportunity to challenge or appeal the finding through the applicable administrative process; and
 - c. The opportunity to submit a written statement disputing the allegation or finding for inclusion in the Registry record.
9. Not assess, collect, or impose any fee upon an individual solely for inclusion, maintenance, or continued listing on the Nurse Aide Registry, unless expressly authorized by federal and state law and approved in writing by the DCCA/PVLD.
10. Administer and support nurse aide recertification activities in accordance with Hawaii law and any policies established by the DCCA/PVLD. At a minimum, the Contractor shall:
 - a. Maintain records necessary to support biennial recertification of nurse aides;
 - b. Monitor certification expiration dates and provide notification to nurse aides as directed by the State;
 - c. Verify eligibility for recertification, including employment as a nurse aide where required;
 - d. Administer or support competency evaluation requirements established by the State; and
11. Ensure that all recertification functions are performed in a manner consistent with applicable federal requirements governing nurse aide registries and Hawaii statutory and regulatory requirements governing nurse aide certification and recertification.

2.05 EXAMINEE HANDBOOK

The Contractor shall:

1. Develop examinee handbooks for the Nurse Aide examination, subject to the DCCA/PVLD's review and approval, which shall include information on licensing requirements, test content outlines, reference materials (including vocabulary lists), sample questions, and information on registration, procedures for admission to the examination, and permitted and prohibited conduct before, during, and after the examination.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.01 INTRODUCTION

One of objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. When an Offeror submits a Proposal via HlePRO, it shall be considered a complete plan for accomplishing the tasks described in this RFP and include any supplemental tasks the Offeror has identified as necessary to successfully complete this Project.

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

The Proposal shall:

1. Include a Transmittal Letter with the complete name and address of Offeror's firm and the name, mailing address, email address, and telephone number of the person the State should contact regarding Offeror's Proposal.
2. If subcontractor(s) will be used, a statement from each subcontractor shall be appended to the Transmittal Letter, signed by an individual authorized to legally bind the subcontractor and stating:
 - a. The general scope of work to be performed by the subcontractor; and
 - b. The subcontractor's willingness to perform the work indicated
3. Confirm that the Offeror will comply, and if applicable, the Offeror's subcontractor will comply with all of the provisions in this RFP.
4. Provide all of the information requested in this RFP in the order specified.
5. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section shall be addressed separately, and pages shall be numbered.
 - a. Experience and Capabilities
 - b. Test Development
 - c. Test Administration
 - d. Cost Proposal
 - e. Exceptions
6. All proposals, technical responses, and pricing worksheets must be uploaded directly via HlePRO before the official closing date and time. **Emailed, mailed, or faxed proposals, or any portion thereof, will be disqualified.**

The State will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP.

3.02 EXPERIENCE AND CAPABILITIES

The Proposal shall:

1. **Describe the Offeror's experience and capabilities** in providing licensing examination services by including: the name of the firm, a list of its officers, and background information on the firm and its officers; a list of all states in which the firm provides testing services and identify the types of examinations provided; a list of references, from among the firm's testing services clients who may be contacted with their names, titles, organizations, telephone numbers, addresses, and email addresses; and a list of key personnel who will be assigned to this project and information on their backgrounds.
2. **Provide a listing, description, and disposition of any adverse contract actions**, including termination, suspension, imposition of penalties, or other actions relating to failure to perform, breaches, improprieties, or deficiencies in test administration or test content. Upon request of the DCCA/PVLD, copies of court documents shall also be provided. If none, so state.

3.03 TEST DEVELOPMENT

The Proposal shall:

Describe how the Offeror will implement changes in examination questions, assuring the exam conforms to Federal Requirements for content, changes in laws and rules. Provide a timeline for implementation of changes.

3.04 TEST ADMINISTRATION

The Proposal shall:

1. Describe test site admission, monitoring, and security procedures.
2. Provide a sample examinee handbook.
3. Describe Offeror's exam procedures, including registration, availability, and cancellation of exam scores.
4. Describe Offeror's process for handling disputes with candidates, including but not limited to, notice to the candidate and opportunity to be heard, and defense of the exam.
5. Provide samples of reports that the DCCA/PVLD would receive as specified in *Section Two* of this RFP.
6. Provide a copy of Offeror's test center personnel training manual.
7. Describe Offeror's procedures to assure that the test location and the method of delivery comply with the Americans with Disabilities Act.

3.05 COST PROPOSAL AND BIDDING REQUIREMENTS

1. Fee Components and Unit Prices Bidders are required to specify unit prices for the following distinct services, which shall be used to determine the overall cost of the proposal:
 - Written Examination:
 - Oral Examination:
 - Clinical Examination:
 - Registry Placement: (One-time initiation and placement fee, including endorsed out-of-state certified nurse aides)
 - Renewal of Certification: (Applicable every two years for eligible candidates)
 - Retaking of Tests: Bidders must specify individual unit prices for candidates retaking the written, oral, or clinical examinations.
2. Bidding Requirements and Evaluation to be considered for the award, bidders must submit a comprehensive breakdown of the unit price per candidate for the following items:
 - a. Initial Suite of Services: Total cost including written, oral, and clinical examinations, Registry placement.
 - b. Subsequent renewal fee cost.
 - c. Retaking of Tests: Individual pricing for retaking each exam component (written, oral, or clinical).

Bid Example:

Written, oral and skills examination, certification, and recertification at \$324/Candidate:

Written Examination \$54; Oral Examination \$54; Skills Examination \$162; Certification \$27; Recertification \$27

Retaking the written, oral, skills tests at \$270/Candidate:

Written Examination \$54; Oral Examination \$54; Skills Examination \$162

3.06 EXCEPTIONS

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where the exception is taken, a description of the exception taken, and the proposed alternative, if any.

SECTION FOUR SPECIAL PROVISIONS

4.01 SCOPE

The offer to administer examinations in its licensure and registration for the Nurse Aide Program for the DCCA/PVLD, shall be in accordance with these Special Provisions, the attached Specifications, and the General Conditions which are included as part of this Contract and made a part hereof.

4.02 TERM OF CONTRACT

1. The Contract shall start on August 1, 2027.
2. The contract shall terminate on July 31, 2032, provided that the DCCA/PVLD shall have the option to extend the contract for five (5) years, to July 31, 2037. DCCA/PVLD shall exercise the option by delivering a written letter stating its intent to exercise such option to the Contractor by June 1, 2031.
3. Either party may terminate the Contract by providing written notice to the other twelve (12) months in advance.

4.03 CONTRACT ADMINISTRATOR

For the purpose of this contract, Chrissy Hoogland, Boards, Commissions, and Programs Regulatory Specialist, Nurse Aide Program, telephone 1-844-808-3222, nurse_aide@dcca.hawaii.gov or her authorized designee, or successor, is the designated Contract Administrator.

4.04 SUBMISSION OF PROPOSAL

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

Before submitting a Proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plan referred to herein, and any other relevant documentation;
2. Become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of work.

4.05 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be

made in writing and submitted via HlePRO prior to the deadline to submit written questions as specified in the **RFP Schedule** in *Section One*. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of a defective solicitation and exposure of Offeror's Proposal upon which award could not be made. Any exception taken to the terms, conditions, specification, or other requirements listed herein, shall be listed in the **Exceptions** section of the Offeror's Proposal (refer to **Section 3.06**), if the exception is unresolved by the deadline to submit written questions.

4.06 WRITTEN QUESTIONS

All questions must be submitted via HlePRO. The State will respond to written questions by the date indicated in *Section One*, or as amended.

4.07 PROPOSAL PREPARATION

1. Offer Form, Page OF-1 and Offer Form, Page OF-2 (Attachments 1 and 2). Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate exact legal name in the appropriate space on Offer Forms, Page OF-1 and Page OF-2. Failure to do so may delay proper execution of the contract.

Offeror's authorized signature shall be an original signature in ink. If Offer Form Page OF-1 is unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

2. Offer Guaranty. An offer guaranty is not required for this Request for Proposals.
3. Tax Clearance. Pursuant to Section 103D-328, Hawaii Revised Statutes ("HRS"), the successful offeror shall be required to submit a tax clearance certificate issued by the Hawaii Department of Taxation (DOTAX) and the Internal Revenue Service (IRS).

The certificate is valid for six months from the most recent approval stamp date on the certificate. The certificate must be valid on the date offer is submitted via HlePRO.

The tax clearance certificate shall be obtained on the State of Hawaii, Department of Taxation *TAX CLEARANCE APPLICATION* Form A-6. Form A-6 is available at the DOTAX and IRS Offices in the State of Hawaii and may be requested by calling the DOTAX on Oahu at (808) 587-4242 or toll free at 1-800-222-3229; or can be downloaded from the DOTAX website at <http://tax.hawaii.gov/forms>.

4. 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). 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.

5. Department of Labor & Industrial Relations Form LIR27. The Contractor shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, Hawaii Administrative Rules ("HAR"), that is current and within six months of the date of issuance.
6. Department of Commerce and Consumer Affairs Certification of Good Standing Form. The Contractor shall obtain a certificate of good standing (COGS) issued by the Department of Commerce and Consumer Affairs, Business Registration Division (BREG), State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current and within one year of the date of issuance. If the Contractor has been registered in this State for LESS THAN one (1) year, and is unable to provide a certificate of good standing, the Contractor may attach a "filed-stamped" copy of the document filed with BREG, State of Hawaii, P.O. Box 40, Honolulu, Hawaii, 96810.

State and Federal Tax Clearances, DLIR Compliance and COGS may be obtained via Hawaii Compliance Express (HCE).

7. Wage Certificate. Offerors shall complete and submit the attached Wage Certificate (**Attachment 3**) by which Offeror certifies that the services required will be performed pursuant to Section 103-55, HRS. Only Section No. 1 of the certificate pertains to this contract.
8. Refer to **Section Six, General Conditions, AG-008 103D, No. 2 – Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.**

Offeror is urged to submit the applicable clearance certificates together with the offer. If the valid certificates are not submitted by November 10, 2026, an offer otherwise responsive and responsible may be rejected and not considered for award.

4.08 PRICING: PAYMENT AND REIMBURSEMENT

The contractor shall be compensated through the following mechanisms, ensuring that there is no expenditure of State funds and that all costs to perform the contract are covered:

- **Direct Collection:** The contractor is reimbursed through fees collected directly from employers or, as allowable by law, from candidates for evaluations and registry placement.
- **DHS Reimbursement:** In accordance with State and Federal Standards, the DHS is responsible for reimbursing the contractor for each nurse aide who is successfully recertified and who is currently employed in a Medicaid participating facility.
- The Contractor may charge a nominal fee for each duplicate certificate or re-issuance of corrected certificates where the incorrect information is the result of the applicant's improper completion of the application for examination and/or

certification. No fee shall be charged for the re-issuance of a certificate in the event the error is deemed the fault of the Contractor.

4.09 ECONOMY OF PRESENTATION

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate to the purpose. Emphasis shall be on completeness and clarity of content. If any additional information is required by the State regarding any aspect of the Offeror's Proposal, it shall be provided within four (4) business days of the State's request to the Offeror.

4.10 ORAL PRESENTATION

Respondents to this RFP may be required to make an oral presentation of their proposal to ensure thorough, mutual understanding. The State will schedule the time and location for these presentations (if required), normally within three (3) weeks following the Proposal Due date.

4.11 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains confidential information that should remain private, then the Contract Administrator named on the cover of this RFP should be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be kept private.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the Proposal, be clearly marked confidential, and shall be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal.

Pursuant to Section 3-122-58, HAR, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42 (12), HRS.

Refer to **Section Six, General Conditions, AG-008, No. 24 – Confidentiality of Materials**

4.12 PROPOSAL PREPARATION COSTS

The Offeror assumes sole responsibility for all costs associated with the preparation, submittal, or evaluation of the Proposal in response to this RFP, including travel expenses to attend informational sessions, oral presentations, Offeror's discussion or negotiations sessions, if held. The State of Hawaii will not reimburse the Offeror for any costs relating to the Proposal preparation.

4.13 PROPOSAL OPENING

Proposals will be opened and reviewed as specified in **Section 1.02** or as amended. Proposals shall not be opened publicly but shall be opened in the presence of two or more evaluation committee members. The register of Proposals and Offerors' Proposals shall be open to public inspection after the Contract is signed by all parties.

All Proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

4.14 EVALUATION OF PROPOSALS

The evaluation committee, composed of at least three State employees selected by the DCCA/PVLD, shall evaluate Proposals. The evaluation will be based solely on the evaluation criteria set out in **Section Five** of this RFP.

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. Proposals determined to be acceptable or potentially acceptable are considered "Priority listed Offerors" and discussions may be conducted with these Offerors. Proposals may also be accepted without any discussions.

If there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change.

The date and time of Offerors to submit their best and final offers is indicated in **Section One**. If Offeror does not submit a notice of withdrawal or another best and final offer, the Offeror's immediate previous offer will be construed as their best and final offer.

4.15 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of Proposals.

4.16 PROPOSAL AS A PART OF THE CONTRACT

Part or all of this RFP and the successful Proposal will be incorporated into the Contract.

4.17 ADDITIONAL TERMS AND CONDITIONS

The State reserves the right to add terms and conditions during Contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

4.18 CONTRACT EXECUTION AND TERM OF CONTRACT

The Offeror who submits the Proposal selected by the Evaluation Committee (hereinafter "Contractor") shall enter into a formal written Contract. No performance or payment bond is required for this Contract.

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

As provided in **Section 4.02**, should the DCCA/PVLD exercise its option to extend for an additional five (5) year period, the Contractor shall be required to execute a supplement to the Contract for the additional extension period.

4.19 ADJUSTMENTS TO THE EXAMINATION FEE

1. The examination fees shall be as contracted for the first three (3) years of the Contract. During the third year of the Contract, either the State or the Contractor may submit a written request justifying a modification to the fees (increase or decrease) for the next two (2) year period. The adjusted fees shall be mutually agreed upon, shall not increase the original examination fees by more than 25%, and shall be implemented by the execution of a Supplement to the Contract.
2. If the DCCA/PVLD and Contractor mutually agree to exercise the option to extend the Contract for an additional five (5) year period, or portion thereof, the State or the Contractor may submit a written request justifying an adjustment (increase or decrease) to the examination fees at the beginning of the extended contract period, and/or during the third year of the extended term for the last two years of the extended contract. Any request for increases to the examination fees shall be mutually agreed upon, shall not increase the examination fees by more than 25% of the current fee at the time of the request and shall be implemented by execution of a Supplement to the Contract.
3. The Contractor may request a fee increase when a fee is no longer mandated by Hawaii Revised Statutes or Hawaii Administrative Rules. Any request for increases to the examination fees shall be mutually agreed upon and shall be implemented by execution of a Supplement to the Contract.

4.20 LIABILITY INSURANCE

Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of this Contract. The policy or policies of insurance maintained by the Contractor shall provide the following limit(s) and coverage(s):

<u>Coverage</u>	<u>Limits</u>
Public Liability (occurrence form)	\$1 million combined single per occurrence for bodily injury and property damage and with aggregated limit of \$2 million.

The insurance policy required by this Contract shall contain the following clauses:

1. "This insurance shall not be canceled, suspended, limited in any manner, especially regarding scope of coverage, or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Accounting and General Services and to the DCCA/PVLD, Nurse Aide Program, 335 Merchant Street, Room 301, Honolulu, Hawaii 96813"

2. "The State of Hawaii is added as an additional insured with respect to services performed pursuant to this Contract 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 Contractor shall maintain the minimum insurance required in full compliance with the Hawaii Insurance Code, Hawaii Revised Statutes, Chapters 431, throughout the entire term of the Contract, including any supplemental agreements. The policy or policies of insurance maintained by the Contractor shall provide the limits and coverages specified herein.

The Contractor agrees to deposit with the State of Hawaii, on or before the effective date of this Contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this Contract have been complied with, and to evidence the maintenance of such insurance in effect shall deposit the certificate(s) of insurance with the State during the entire term of this Contract, including any Supplements to the Contract. Upon request by the State, Contractor shall furnish a copy of the insurance policy or policies.

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

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

4.21 RE-EXECUTION OF WORK

The Contractor shall re-execute any services that fail to conform to the requirements of this Contract which appear during the performance of the services.

4.22 CONTRACT INVALIDATION

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

4.23 SMOKING POLICY

The Contractor shall implement and maintain a written smoking policy as required by State law.

4.24 NOTICES

Any written notice required to be given by a party to this Contract shall be (a) delivered personally to DCCA/PVLD, Nurse Aide Program, 335 Merchant Street, Room 301, Honolulu, Hawaii 96813 or (b) sent by United States first class mail, postage prepaid, to, DCCA/PVLD, Nurse Aide Program, PO Box 3469, Honolulu, Hawaii 96801 or to the

Contractor at the Contractor's address as 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 providing written notification to the Nurse Aide Program of any change of address within ten (10) business days of the change in address.

4.25 ADDITIONS AND EXCEPTIONS TO SECTION SIX, GENERAL CONDITIONS (AG-008 103D):

Approvals. Any Contract arising out of this offer is subject to the approval of the Department of the Attorney General as to form, and to any other necessary approvals, as required by statute, regulation, rule, order, or other directive.

Cancellation of Solicitations and Rejection of Offers. The solicitation may be cancelled, or the offers may be rejected in whole or in part, when in the best interest of the purchasing agency, as provided in Sections 3-122-95 through 3-122-97, HAR.

Preparation of Offer. An Offeror shall submit only one Proposal in response to this Request for Proposals. If an Offeror submits more than one offer in response to this RFP, then all such Proposals shall be rejected. Similarly, an Offeror shall submit only one offer for each line item (if any) of the RFP. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.

Preference for Hawaii Products. A purchasing agency shall review all specifications in a bid or proposal for purchase from the Hawaii products list where these products are available; provided that the products: Meet the minimum specification and the selling price f.o.b. jobsite; unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price of a similar non-Hawaii product by more than: three per cent where class I Hawaii products are involved; five per cent where class II Hawaii products are involved; or ten per cent where class III Hawaii products are involved.

All persons submitting bids or proposals to claim Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a Hawaii product.

Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a Hawaii product item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III Hawaii product items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

Provision for Record Transmission and Transition. In the event of the expiration or termination of the Contract, or a change in the designated Contractor, the following protocols shall apply to ensure program continuity and avoid disruptions in serve to facilities and users needing access to critical information:

1. 14-Day Transmission Deadline: The Contractor shall transmit all records related to the registry to the DCCA/PVLD or its newly designated contractor within fourteen (14) calendar days of the contract termination or expiration date.
2. Comprehensive Data Transfer: The transmission must include the complete Nurse Aide Registry (NAR) database, consisting of file records for the 8,300+ active Certified Nurse Aides and all historical records for individuals with lapsed certifications.
3. Permanent Substantiated Findings: All records of substantiated findings regarding resident abuse, neglect, mistreatment, or misappropriation of resident property, which are required to remain a permanent part of the registry, must be included in the transfer.
4. Inquiry and Audit Logs: The Contractor shall provide the full inquiry log, documenting the date, nature, and action taken for all registry searches and status checks.
5. Format and Security: Data must be delivered electronically in a fully interactive and searchable format. All transmissions must utilize the DCCA/PVLD-approved security procedures to maintain the integrity and confidentiality of candidate Personally Identifiable Information.
6. Proprietary and Confidentiality Restrictions: Following transmission, the Contractor is prohibited from divulging any information related to test content, materials, or proprietary aspects of the registry unless expressly authorized in writing by the DCCA/PVLD. All records must continue to be handled in accordance with Hawaii Revised Statute Chapter 92F.

coSECTION FIVE
EVALUATION CRITERIA AND CONTRACTOR SELECTION

5.01 EVALUATION CRITERIA

All submitted proposals will be evaluated by an evaluation committee, which shall be composed of members selected by DCCA/PVLD and may include representatives of other State agencies deemed appropriate by DCCA/PVLD.

Discussions may be conducted with the top Priority Listed Offerors who submit Proposals determined to be acceptable and potentially acceptable of being selected for award, but Proposals may also be accepted without such discussions. The objective of these discussions is to clarify issues before the best and final offer, if necessary.

Proposals will be evaluated to determine those that are acceptable, potentially acceptable, or unacceptable. Best and final offers shall be allowed when applicable.

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

THE TOTAL NUMBER OF POINTS USED
TO SCORE THIS CONTRACT IS 100

1.	Experience and Capabilities	25%
2.	Test Development	25%
3.	Test Administration	25%
4.	Cost	25%

SECTION SIX
GENERAL CONDITIONS

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GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

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

21. Price Adjustment.

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

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

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

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

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

- (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.

SECTION SEVEN
ATTACHMENTS 1-3

ATTACHMENT 1

**OFFER FORM
OF-1**

**OFFER FORM
OF-1**

PROFESSIONAL AND VOCATIONAL LICENSING EXAMINATIONS
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
RFP NO.: RFP-2026-002-PVL

Contract Administrator
Department of Commerce and Consumer Affairs
Nurse Aide Program
State of Hawaii
Honolulu, Hawaii 96813

Dear Sir:

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

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____

*State of incorporation: _____

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

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

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

Respectfully submitted:

Date: _____ (x) _____
Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____ Name and Title (Please Type or Print)

E-mail Address: _____ **
Exact Legal Name of Company (Offeror)

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

ATTACHMENT 2

OFFER FORM OF-2

**OFFER FORM
OF-2**

PROFESSIONAL AND VOCATIONAL LICENSING EXAMINATIONS
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
NURSE AIDE PROGRAM
RFP NO.: RFP-2026-002-PVL

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

\$ _____

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

Offeror _____
Name of Company

ATTACHMENT 3

WAGE CERTIFICATE

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS
(See Special Provisions)**

Subject: RFP No.: RFP-2026-002-PVL

Title of RFP: Services to Administer Nurse Aide Program Examinations and
for the Maintenance of A Nurse Aide Registry in Compliance with
The Federal Omnibus Budget Reconciliation Act (OBRA) of 1987

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror (Company Name): _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

SECTION EIGHT

EXHIBIT A

EXHIBIT A

OVERVIEW OF THE RFP PROCESS

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

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