

Department of the Attorney General Hawaii Criminal Justice Data Center

RELEASE DATE: March 27, 2020

INVITATION FOR BIDS
No. IFB-HCJDC-20-001

SEALED BIDS
FOR
Civil Electronic Fingerprinting Services and
Related Processing

STATE OF HAWAII DEPARTMENT OF THE
ATTORNEY GENERAL
Hawaii Criminal Justice Data Center

WILL BE RECEIVED NO LATER THAN 2:00 P.M. ON

April 10, 2020

VIA THE STATE OF HAWAII ELECTRONIC PROCUREMENT SYSTEM (HIePRO) AT
<http://hiepro.ehawaii.gov/>. QUESTIONS RELATING TO THIS INVITATION FOR BID (IFB), SHALL BE
COMMUNICATED THROUGH HIePRO.

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SECTION ONE

INTRODUCTION, TERMS AND ACRONYMS, AND KEY DATES

1.1 INTRODUCTION

The Hawaii Department of the Attorney General, Hawaii Criminal Justice Data Center (HCJDC) seeks to obtain electronic fingerprinting services and related processing, with equipment owned and managed by the contractor, for authorized state and national fingerprint-based criminal history record checks for non-criminal justice purposes.

1.2 CANCELLATION

This Invitation for Bids (IFB) may be cancelled and any or all bids rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State.

The State shall not be liable for any costs, expenses, loss of profits, or damages whatsoever, incurred by the Bidder in the event that this IFB is cancelled, or bid is rejected.

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

ADA	=	Americans with Disabilities Act
AES	=	Advanced Encryption Standard
AFIS	=	Automated Fingerprint Identification System
ANSI/NIST	=	American National Standards Institute/ National Institute of Standards and Technology
BIDDER	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent thereof, submitting a bid in response to this solicitation
CHRI	=	Criminal History Record Information
Contractor	=	The selected Bidder under contract to provide services described in the IFB
CPO	=	Chief Procurement Officer
EBTS	=	Electronic Biometric Transmission Specification
FBI	=	Federal Bureau of Investigation
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
GP	=	General Provisions
HAR	=	Hawaii Administrative Rules
HCJDC	=	Hawaii Criminal Justice Data Center
HRS	=	Hawaii Revised Statutes
IFB	=	Invitation for Bids
LOTG	=	Lights Out Transaction Controller
NGI	=	Next Generation of Identification

- Procurement Officer = The contracting officer for the State of Hawaii, Department of the Attorney General, Hawaii Criminal Justice Data Center
- State = State of Hawaii, including its departments, agencies, and political subdivisions
- TCN = Transaction Control Number

1.4 SCHEDULE AND SIGNIFICANT DATES

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

Release of Request for Bids	March 27, 2020
Due Date to Submit Questions	April 1, 2020
State’s Response to Questions	April 3, 2020
Invitation for Bids Due	April 10, 2020
Notice of Award	April 14, 2020
Contract Start Date	May 14, 2020

1.5 QUESTIONS AND ANSWERS PRIOR TO OPENING OF BIDS

Written questions must be received by the HCJDC via the HlePro system on or before the deadline specified in Section One, 1.4 Schedule and Significant Dates, or as amended. Written questions must state the page, paragraph and line or sentence to which the question relates.

The State will respond to written questions by the date indicated in Section One, 1.4 Schedule and Significant Dates, or as amended.

The response to Bidders’ written questions shall be issued as an addendum to the IFB and become, thereby, part of the IFB.

SECTION TWO

BACKGROUND

2.1 PROJECT OVERVIEW AND HISTORY

The HCJDC is a division of the Department of the Attorney General with program responsibilities and staffing that have grown significantly in recent years. This reflects the increasing number of program areas for which the HCJDC provides support and services to the State's criminal justice agencies, and the general public as well:

- The statewide central repository of adult criminal history information (CJIS-Hawaii).
- The statewide Automated Biometric Identification System (ABIS), which includes functioning as the State Identification Bureau, and providing automated lights-out identification of arrested individuals. Fingerprint, palm print, facial recognition data and arrest information are electronically reported to the Federal Bureau of Investigation (FBI).
- Statewide Sex Offender Registry, including mug photos.
- Expungement of qualifying criminal records.
- State Point-of-Contact for the FBI's National Crime Information Center (NCIC).
- Interstate Identification Index (III) participating state with the FBI.
- Hawaii Integrated Justice Information Sharing (HIJIS) program.
- Fingerprint-based criminal history record checks for authorized non-criminal justice agencies and entities in the State.

The last program area listed above is by far the fastest growing category of users. Currently, the HCJDC provides non-criminal justice fingerprint services for a host of public employees as well as a broad array of licensed professionals required by law to undergo criminal history record checks as a condition of employment or licensure. In the calendar years 2017-2019, there were a total of 159,452 fingerprint-based background checks performed for non-criminal justice purposes.

§846-2.7, Hawaii Revised Statutes, authorizes qualified public, private, non-profit or for-profit entities to obtain fingerprint-based state and national criminal history record checks on their applicants, employees and volunteers who provide care for children, the elderly, or individuals with disabilities.

The State makes no commitments as to the minimum or maximum number of applicants that will be processed through the use of the contract that results from this IFB.

2.2 PURPOSE

This IFB is being issued to acquire statewide electronic fingerprinting services and related processing, with the equipment owned and managed by the contractor **as an exclusive means** for qualified entities authorized under section 846-2.7(c), HRS, to process fingerprint-based criminal history record checks for their applicants, employees, and volunteers. Services being sought include collection of applicants identifying information, appointment scheduling, electronic fingerprint and demographic capture and submission, collection and remittance of federal and State fees, electronic funds transfer and reconciliation, information reporting, and all support and maintenance. In accordance with the executed Contract, the Contractor may assess a fixed fee (in addition to the Federal and State fees it will collect on behalf of HCJDC) for its services to the applicants, employees, and/or volunteers who are required to complete a fingerprint-based criminal history record check pursuant to section 846-2.7, HRS.

While other agencies and entities authorized under section 846-2.7(b), HRS, to submit fingerprints for state and national criminal history record checks may utilize the services provided in this IFB, this IFB shall not interfere with any existing contracts any authorized agencies and entities may currently have in place for similar services.

The goal of this IFB is to procure a solution to:

- Simplify the statewide process for applicants, employees and volunteers of qualified entities needing to be fingerprinted for state and national criminal history record checks.
- Reduce the overall cost and improve convenience to applicants, employees and volunteers of qualified entities.
- Reduce statewide costs by eliminating redundancy in livescan systems across multiple state and local agencies.
- Improve the quality and security of civil fingerprint and data submitted to the HCJDC, FBI and participating agencies.

This procurement will provide a single, convenient and affordable fingerprinting solution to benefit individuals applying for a position (whether paid or voluntary) or license that requires a fingerprint-based criminal history record check. It also permits the HCJDC to receive high quality fingerprint images and data electronically, permitting a streamlined operation that eliminates data entry and the scanning of hard-copy fingerprint cards.

The establishment of a statewide vendor-managed civil livescan capture system for the qualified entities to use would enhance the level of security and internal controls and provide a vehicle for addressing the ever-expanding need for civil fingerprint capture to support criminal history record checks.

Applicants, employees or volunteers of authorized agencies and qualified entities that require fingerprinting services will be able to arrange an appointed place and time for the fingerprinting to be performed. The Contractor shall provide all equipment needed, maintenance and fingerprinting and subsequent processing of information as detailed in the IFB. The fixed fee charged to the applicant, authorized agency or qualified entity will be established through this IFB and may be assessed by the Contractor in addition to the fees the Contractor will be required to collect and remit to HCJDC as established by the State and the FBI. For informational purposes, these are listed under the Attachment 2, Bid Form, BF-2 Fee Schedule for Services. Please note that the State and FBI fees are subject to change and the Contractor shall be responsible for collecting the then-applicable State and FBI fees. The collected fees shall be remitted to the HCJDC within thirty days from the date indicated on the Monthly Bill for Collection.

Due to safety, security, and confidentiality concerns, HCJDC reserves the right to conduct background and fingerprint-based criminal history record checks of all Contractor's officers, employees, and subcontractors who will provide any services under this procurement. The background check shall be conducted prior to any officer, employee, or subcontractor performing services provided under this IFB. The background check will be based upon information provided to the HCJDC, including but not limited to name and date of birth.

Due to safety, security, and confidentiality concerns, the State reserves the right to refuse to allow an employee or subcontractor to perform any services contracted pursuant to this IFB for any of the following reasons:

- Conviction of an offense other than a violation.
- Person under current investigation or pending trial involving criminal activity.
- Person with outstanding warrants.
- Person currently on parole or probation.

2.3 HAWAII DEPARTMENT OF THE ATTORNEY GENERAL RESPONSIBILITIES

- 2.3.1 The designated Point of Contact for this IFB is, Mary Rose Takenaka, Dissemination Services Section Supervisor of the HCJDC.
- 2.3.2 The HCJDC Information Technology staff will be responsible for the testing of the sample file that each Bidder submits.

2.4 TERM OF CONTRACT

The successful Bidder will be required to enter into a 5-year multi-term Contract.

2.5 CONTRACT ADMINISTRATOR

For the purposes of this contract, Christopher D.W. Young, Administrator, HCJDC, (808) 587-3100, or authorized representative, is designated the Contract Administrator.

SECTION THREE

BID SUBMITTAL AND CONTENT

3.0 ELECTRONIC PROCUREMENT

The State has established the HlePro system to electronically solicit and receive bids for procurement. Bidders interested in responding to this solicitation must be registered on the HlePRO in order to participate in the procurement. Registration information is available online at <https://hiepro.ehawaii.gov/vendor.html>.

CERTIFICATION AUTHORITY TO SUBMIT A BID

By submission of a bid in response to this solicitation, Bidder certifies as follows:

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

3.1 BIDDER'S AUTHORITY TO SUBMIT A BID

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

3.2 REQUIRED REVIEW

- 3.2.1 Before submitting a bid, each Bidder must thoroughly and carefully examine this IFB, any attachment, addendum, and other relevant document, to ensure Bidder understands the requirements of the IFB. Bidder must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.
- 3.2.2 Should Bidder find defects and questionable or objectionable items in this IFB, Bidder shall notify the HCJDC in writing prior to the deadline for written questions as stated in this IFB, Section 1.4, *IFB Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to this IFB by addendum and mitigate reliance on a defective solicitation and exposure of bid(s) upon which award could not be made.

3.3 BIDDER PREPARATION COSTS

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

3.4 TAX LIABILITY

- 3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawaii GET at the current 4.7% for sales made on Oahu, and at the 4% rate for the islands of Hawaii, Maui, Molokai, and Kauai. If, however, a Bidder is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Bidder shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.
- 3.4.2 Federal I.D. Number and Hawaii General Excise Tax License I.D. Bidder shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Bid Form, page BF-1, thereby attesting that the Bidder is doing business in the State and that Bidder will pay such taxes on all sales made to the State.

3.5 PROPERTY OF STATE

All bids become the property of the State of Hawaii.

3.6 CONFIDENTIAL INFORMATION

- 3.6.1 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.
- 3.6.2 If a Bidder believes that any portion of a bid, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Bidder shall inform the Project Manager named on this IFB in writing and provide justification to support the Bidder's confidentiality claim. **Price is not considered confidential and will not be withheld.**
- 3.6.3 A Bidder shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data the Bidder considers to be confidential. Such requests for nondisclosure shall accompany the bid, and the information claimed to be confidential shall be clearly marked and shall be readily separable from the bid in order to facilitate eventual public inspection of the non-confidential portion of the bid.

3.7 BID OBJECTIVES

- 3.7.1 One of the objectives of this IFB is to make bid preparation easy and efficient, while giving Bidders ample opportunity to highlight their bids.
- 3.7.2 Bids shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity and content.

3.9 BID FORMS

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

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

The Bidder's authorized signature on the Bid Form, BF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The bidder shall submit the Bid Form, BF-1 via PDF. The submission of the bid shall indicate Bidder's intent to be bound.

- 3.9.3 Bid Form, Page BF-2. Bidder's proposed processing fee shall be submitted on Bid Form BF-2. The processing fee shall be the total amount the Contractor will charge to each applicant, authorized agency or qualified entity seeking a fingerprint-based criminal history background check for the duration of the Contract awarded pursuant to this IFB, including any applicable taxes. The processing fee submitted shall not include the State or FBI fees that the Contractor will be required to collect and remit to HCJDC. Bidders may only submit one processing fee to be charged for each applicant, regardless of the service provided.

3.10 BID CONTENTS

Bids must:

- 3.10.1 Include a transmittal letter to confirm that the Bidder shall comply with the requirements, provisions, terms, and conditions specified in this IFB.
- 3.10.2 Include a signed Bid Form BF-1 with the complete name and address of Bidder's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Bidder's bid.
- 3.10.3 Provide all of the information requested in this IFB in the order specified.
- 3.10.4 Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually, and pages must be numbered.
- a. Experience and Capabilities.
 - 1) The Bidder shall have been in business and have performed electronic fingerprinting services via livescan for a minimum of five (5) years.
 - 2) A list of all personnel who will perform services contracted pursuant to this procurement.
 - b. Pricing, which shall also include all applicable State and FBI fees.
See SECTION SEVEN, Attachment 2, Bid Form BF-2.
 - c. Include a sample EBTS compliant ANSI/NIST test file to be used to validate successful processing against the State and FBI systems.
 - d. Proof of NGI Certified Equipment.

3.10.5 All bids submitted, questions, communications and submissions must be written in the English language with quantities expressed using Arabic numerals. All prices shall be expressed, and all payments shall be made, in U.S. Dollars (\$USD).

3.10.6 Any bid that does not meet the above criteria may be rejected at the sole option of the State.

3.11 ELECTRONIC SUBMISSION OF BIDS

The bid shall be submitted and received electronically through HlePRO. This electronically submitted bid shall be considered the original. Any original bids received outside of the HlePRO, including faxed or email bids, shall not be accepted or considered for the award. **Any bid received after the due date and time shall be rejected.** Bidder shall review all special instructions located on the HlePRO solicitation. Bidders are responsible for ensuring that all necessary files are included in their response upon submission on HlePRO by the due date and time.

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

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

3.12 FORMAT INSTRUCTION FOR SUBMITTING BID ON HlePRO

3.12.1 Bids shall be submitted as attachments on HlePRO.

3.12.2 Proprietary/confidential information shall be contained in a separate file that is clearly identified as proprietary/confidential information.

3.13 RECEIPT AND REGISTER OF BIDS

Bids will be received, and receipt verified by two or more procurement officials on or after the date and time specified in Section One, or as amended.

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

3.14 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF BIDS

3.15.1 The Bidder may modify or withdraw a bid before the bid due date and time.

3.15.2 Any change, addition, deletion of attachment(s) of a Bid may be made prior to the deadline for submittal of bids.

3.16 MISTAKES IN BIDS

- 3.16.1 Mistakes shall be handled according to the applicable provisions of chapter 103D and its associated administrative rules.

SECTION FOUR

CONTRACT AWARDS AND TERMS

4.1 Method of Award.

Award, if made, shall be to the responsive, responsible Bidder submitting the lowest bid.

4.2 RESPONSIBILITY OF BIDDERS

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

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

Bidders must submit evidence of compliance. Alternatively, bidders may use Hawaii Compliance Express (HCE).

4.2.1 Hawaii Compliance Express.

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

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

4.3.1 BID AS PART OF THE CONTRACT

This IFB and all or part of the successful bid may be incorporated into the contract.

4.4 PUBLIC EXAMINATION OF BIDS

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

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

The notice of award, if any, resulting from this solicitation shall be posted on the Hawaii Awards, Notices and Solicitations (HANDS), which is available on the SPO website: <http://hands.ehawaii.gov/hands/>.

4.5 APPROVALS

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

4.6 CONTRACT EXECUTION

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

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

4.7 INSURANCE

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

4.7.1.1 Commercial General Liability Insurance

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

4.7.1.2 Automobile Liability Insurance

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

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

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

4.7.3 The Contractor will immediately provide written notice to the State and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be

cancelled, limited in scope, or not renewed up expiration.

4.7.4 The certificates of insurance shall contain the following clauses:

4.7.4.1 "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

4.7.4.2 "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

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

4.8 REMITTANCE OF STATE AND FBI FEES

HCJDC will invoice the Contractor on a monthly basis for remittances of the State and FBI fees collected by the Contractor for all fingerprint transactions processed by the Contractor.

The Contractor shall have thirty (30) calendar days after receipt of invoice from HCJDC to remit fees collected by the Contractor for transactions completed for the State and the FBI.

4.9 CONTRACT INVALIDITY

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

SECTION FIVE

SPECIAL PROVISIONS

5.1 SCOPE

All work shall be in accordance with this IFB, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), attached as Exhibit A.

5.2 OFFER GUARANTY

A bid guaranty is NOT required for this IFB.

5.3 BIDDER QUALIFICATIONS

Bidder shall meet all of the qualifications required by this IFB.

5.4 BID ACCEPTANCE PERIOD

The State's acceptance of bid, if any, will be made within thirty (30) calendar days after the opening of bids. Price or commission quotes by the Bidder shall remain firm for a thirty (30) day period.

5.5 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price if any for the additional work.

Changes to the contract may be made only by written document (contract modification) signed by the Department of the Attorney General and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued

5.6 BID OPENING

Bids will be opened by the HCJDC at the date and time specified in Section One, or as amended. Bids shall not be opened publicly but shall be opened in the presence of two or more procurement officials. The register of bids and Bidder's bids shall be open to public inspection after all parties sign the contract.

5.7 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under the contract with the State.

5.8 NON-DISCRIMINATION

The Contractor shall comply with all applicable Federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

5.9 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 of the contract.

5.10 WAIVER

The failure of the State to insist upon the strict compliance with any term, provision or condition of the 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 the contract.

5.11 SEVERABILITY

In the event that any provision of the 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 the contract.

5.12 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

Competency of Bidder. Prospective Bidder must be capable of performing the work for which bids are being called. Either before or after the deadline for a bid, the purchasing agency may require Bidder to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Bidder to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Bidder who refuses to answer such inquiries will be considered non-responsive.

5.13 CERTIFICATION OF BIDDER CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

All Bidders for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any prospective Bidder is entitled to submit any bid for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Bidder shall certify that the services to be performed will be performed under the following conditions:

Wages: 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.

Compliance with labor laws: 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.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawaii Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

SECTION SIX
SCOPE OF SERVICES

1. General:

Under this Contract, CONTRACTOR shall provide the following to the STATE:

- (a) The contractor's fingerprinting services must either meet or exceed the requirements and specifications contained in this IFB.
- (b) Contractor shall provide fingerprint services on an as needed, if needed basis, to authorized agencies and qualified entities throughout the State. The Contractor must verify with the HCJDC that the qualified entity has registered with the HCJDC prior to providing fingerprinting services.
- (c) The Contractor shall be responsible for providing all materials, labor, training, facilities, utilities (including telecommunications medium and payment for all connection/usage fees), equipment, supplies, and all other items necessary to successfully perform the services required herein.
- (d) The Contractor shall provide secure fingerprint transmissions from its contractor-owned and maintained livescan systems that meet the current State and the FBI's Electronic Biometric Transmission Specification (EBTS) standards in the form of an EBTS compliant ANSI/NIST formatted electronic file.

If there are changes to the electronic file requirements, the Contractor shall modify/update the EBTS compliant ANSI/NIST format for the duration of the contract at no extra charge to the State.

The EBTS contains information on the data elements and allowable values required to send information to the FBI and contains information on the required compression algorithm. Reference the following website link: <http://www.fbibiospecs.cjis.gov>.

The ANSI/NIST data format for interchange of fingerprint information defines the overall structure of the electronic record, its header, delimiters and subsections. The current standard can be found at the following website link: <http://www.nist.gov>.

- (e) The Contractor must use livescan equipment that is on the NGI Certified Product List and ensure that all livescan equipment is properly maintained and receives routine preventative maintenance to assure availability of services during normal working hours. Livescan equipment shall include edit checks (based on all standards identified above) at the point of capturing demographic information and fingerprint images to ensure compliance with the requirements above. Reference the following website link where the NGI Certified Product List can be found: <https://www.fbibiospecs.cjis.gov/certifications>.

2. Performance Review:

The HCJDC has the right to review Contractor's performance at any time during the course of the contract to address any problems or issues related to services rendered under this IFB. Resolution of any problems or issues shall be in accordance with AG General Conditions.

The Contractor shall not use the 'Department of the Attorney General' or 'Hawaii Criminal Justice Data Center' or any variation thereof, when marketing the applicant system or its products.

A Notice to Proceed will be issued by the HCJDC prior to start-up of services.

3. Process Overview:

A typical process by which fingerprinting services could be obtained under this IFB's contract shall be as follows:

The applicant schedules fingerprinting with the Contractor.

Upon arrival of the applicant for fingerprinting at the scheduled time and location, the applicant's identity shall be authenticated. The Contractor shall provide all required notices, waivers and consents as outlined in Exhibits E & F prior to obtaining fingerprints from the applicant. The notices, waivers, and consents shall be kept on file with the Contractor and be made available to HCJDC, FBI, and authorized agency upon request. The Contractor shall immediately report to HCJDC, if a required notice, consent or waiver was not provided to an applicant(s). The Contractor is responsible to follow-up and provide/obtain all notifications, consents and waivers if failed to provide/obtain to an applicant(s) at the Contractor's expense. The required demographic information shall be captured, and fingerprints taken by trained and qualified livescan operators.

The applicant's information and fingerprints are encoded in the required electronic format for automatic transmission to the State and sent via Virtual Private Network (VPN) as an email transmission over the Internet to the HCJDC designated recipient. A unique transaction control number (TCN) associated with each fingerprinted applicant shall be assigned and utilized as the tracking number throughout the process.

The HCJDC will manage the transaction for the fingerprint request to and from the State and FBI's ABIS systems.

Responses to the fingerprint transmission from both the State and the FBI can be retrieved by the authorized agencies or qualified entities for those specific applicant fingerprints submitted for them via an HCJDC managed online facility with authorized access, or by routing responses to a specific designated printer.

Based on its own pre-determined criteria, the authorized agency or qualified entity evaluates the criminal history record check return and makes the suitability determination on the applicant, employee, or volunteer.

The HCJDC will send the Contractor a monthly invoice that lists all transmissions submitted in the last month and the amount that is owed to the HCJDC for State and FBI fees. The Contractor shall submit remittance of the total amount invoiced by HCJDC by certified check within 30 calendar days. All appropriate collection and distribution of fees will be made according to generally accepted accounting principles.

The State, authorized agency or qualified entity will notify the Contractor of any rejections via email including the appropriate rejection message, utilizing the state and federal transaction number.

The Contractor shall direct any questions from the applicant regarding fingerprint submission and status of their criminal history record information results to their respective authorized agency or qualified entity, not the HCJDC.

4. Applicant Scheduling and Fingerprint Locations:

The Contractor shall acquire, maintain and support a means for collecting the required identifying information, such as applicant name, date of birth, social security number, height, weight, eye color, hair color, gender, race, and place of birth, and scheduling appointments, such as a secure website or a toll-free telephone service.

The Contractor shall provide a secure website available 24 hours a day and accessible to persons with disabilities. Applicants shall have the ability to verify the required identifying information that was entered, make any necessary updates or corrections, reserve, cancel, and change appointments via the website. The scheduling function shall include controls to ensure that applicants can access and change only their own appointment and personal information. The Contractor shall take necessary steps to ensure the protection of personally identifiable information, such as masking of social security numbers.

The Contractor shall provide a toll-free telephone service available 24 hours a day. Hearing impaired services for scheduling appointments shall also be provided at a separate phone number during call center hours.

The Contractor must accept "walk-in" applicants who have exigent circumstances for bypassing the appointment process, such as same day fingerprinting requirement from an authorized agency or qualified entity.

The Contractor shall schedule fingerprinting services for completion within fourteen (14) calendar days after a request has been made. Applicants shall also have the option to schedule their appointments for future dates, beyond the fourteen (14) calendar-day timeframe.

The Contractor shall provide fingerprinting services throughout the entire State. The Contractor's fingerprinting services shall be available at permanent, clean, ADA-compliant sites on islands of Kauai, Oahu, Maui, and Hawaii. At least one site shall be within the following United State Postal Zip codes: Kauai 96766, Oahu (96813 and 96707), Maui 96793, and Hawaii (Hilo 96721 and Kona 96740). Fingerprinting services for Molokai and Lanai must be made accessible on a regular basis and meet the fourteen (14) calendar-day completion requirement. For Molokai and Lanai, this may require the use of mobile units scheduled to appear at specified locations at prearranged dates and times.

Minimally, fingerprinting services shall be available between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday. The Contractor is not prohibited from providing fingerprinting services at times outside of these days and hours when it is convenient and practical to do so.

The Contractor's fingerprinting services should be convenient to public transportation, where available. It is the Contractor's responsibility to provide a site(s) for fingerprinting applicants. However, with notification and prior approval from the HCJDC, the Contractor and authorized agency or qualified entity may select mutually agreed upon sites that are owned or operated by either the

Contractor or authorized agency or qualified entity in order to conduct large volumes of non-criminal justice fingerprinting.

Site closures shall not affect an applicant's ability to obtain service in a timely manner. If a site becomes temporarily or permanently unavailable for any reason, scheduled applicants must be notified within 24 hours of the closing and offered an alternative appointment scheduled no later than 7 calendar days from their original appointment. Scheduled applicants must be contacted by phone and/or email, depending on available contact information.

The Contractor shall provide directional signs, at each site, so applicants may easily locate the fingerprinting room or area.

The Contractor's personnel shall provide the procedures for entering demographic data for individuals being fingerprinted. The required demographic data is listed in Exhibit D.

5. Fingerprint Capture:

The Contractor shall require applicants to provide valid identification for authenticating their identity prior to being fingerprinted. The identification document must have a photograph of the applicant, the applicant's name and date of birth. The identification document must be current, and government issued. Examples of acceptable identification documents are:

- Driver's licenses issued by a state or outlying possession of the United States, provided it contains a photograph and information such as name, date of birth, gender, height, and eye color.
- Identification cards issued by a municipality, county, or state in lieu of a driver's license.
- U.S. Passport.
- Military ID.

See the National Crime Prevention and Privacy Compact Council's Identity Verification Guide at the following link: <http://www.fbi.gov/about-us/cjis/cc/current-initiatives/identity-verification-program-guide>, for additional guidance of acceptable identification documents.

The Contractor shall screen all applicants by asking appropriate questions at the time of scheduling and fingerprinting to ensure that they are being fingerprinted for the purpose intended with the correct authorized agency or qualified entity. If an applicant misrepresents his/her identity or the Contractor suspects a misrepresentation, the applicant shall be turned away and not serviced. The Contractor shall forward a report of the incident by contacting the authorized agency or qualified entity within one business day by email or telephone.

The Contractor shall provide a receipt to the applicant, in a format approved by the State, as evidence of successful completion of the fingerprinting. The receipt must include the unique transaction tracking number, fingerprinted person's name, last four digits of the person's social security number, date printed, authorized agency or qualified entity for which the service is being performed, time and reason printed.

The Contractor shall reprint, at no cost to the applicant or any authorized agency or qualified entity, any individual providing proof of rejection by either the HCJDC or the FBI due to the print quality or any contractor entry error.

The Contractor shall comply with certain specified standards to ensure that all persons having direct or indirect responsibility for taking, identifying, and electronically submitting fingerprints are qualified to do so and will ensure the integrity and security of all personal information gathered from the persons whose fingerprints are submitted. Such standards shall include, but not be limited to:

- Current written federal guidelines for identity verification (see section 5 above).
- Federal guidelines for recording legible fingerprints (Exhibit B).
- State and FBI's technical standards for the electronic submission of fingerprints.
- The electronically submitted fingerprint images satisfy the FBI's quality standards.
- The person does not take his or her own fingerprints.

The Contractor shall provide well-trained personnel to capture the fingerprint images on its livescan equipment and provide documentation of sufficient training. The responsibility and costs for training these personnel shall be borne entirely by the Contractor.

6. Fingerprint Transmission:

The Contractor shall electronically transmit all captured fingerprint images, date and time stamped acknowledgements and associated demographic data to the State within two (2) business days of initial capture. Refer to Section 11 below for security and encryption requirements.

The fingerprint and demographic data shall be submitted to the HCJDC in an EBTS compliant ANSI/NIST electronic record format (See Exhibit D).

The Contractor shall be required to produce an FBI-compliant hard copy fingerprint card, if transmissions fail or other transmission problems occur. If it becomes necessary for the Contractor to produce a paper fingerprint card and submit the card to the State for immediate processing, the Contractor will be responsible for removing the electronic record from their queue to avoid duplicate processing. If the record is not removed timely, and the record is processed again, the Contractor will be billed accordingly.

The Contractor's system shall identify programs/agencies that have been approved by the HCJDC to submit electronic fingerprints for criminal history record information.

The Contractor shall maintain an audit log of all transmissions.

7. Resubmission Processing:

The Contractor shall store existing fingerprint images and demographic data with the ability to retrieve and retransmit in the event that resubmission to the State may be necessary. In situations where a fingerprint transaction is rejected for failure to meet data or fingerprint quality standards for processing and the resultant transmission is rejected at the State and/or federal level, the Contractor shall contact and schedule a new fingerprinting session with the applicant at no additional cost to the applicant or the State. Resubmission must conform to State and FBI EBTS. Following two (2) failed submissions to the FBI, the Contractor will be charged a new fee, which may be collected from the applicant, for all subsequent submissions, as described in this IFB, Section 8 below.

8. Fees Processing, Billing and Distribution:

In addition to the State fee and FBI fee collected by the Contractor and remitted to HCJDC, the Contractor may assess a fixed service fee for obtaining the fingerprints of the applicants, employees,

and/or volunteers who are required to complete a fingerprint-based criminal history record check. The service fee charged by the Contractor must include all applicable taxes. All fees shall be collected from the applicant at the time of fingerprinting. The applicant shall be provided a receipt as per Section 5 of the Scope of Services.

The Contractor shall accept payments by major credit card, debit card, money orders, certified checks and cash. Any fee payment processed by the Contractor resulting in non-payment (bad checks, expired money orders, bad credit cards, etc.) is the sole responsibility of the Contractor to recover. The Contractor is also responsible for any collection processes and fees for obtaining money owed from an applicant.

The Contractor shall collect and submit to the HCJDC all State and FBI fees required to process fingerprint checks within the specified contract time frames, as defined by the HCJDC.

The Contractor shall be responsible for all recurring connection fees (i.e., telephone charges, internet service fees).

The Contractor shall be responsible for any and all costs or fees resulting from or associated with inaccurate or incorrect demographic data.

The Contractor shall not charge for any re-printing fees as a result of quality deficiencies or Contractor-related oversights. Further, the Contractor is responsible for all additional charges incurred due to rejected records that require a subsequent fingerprint submission. This will include additional fee payments to the State and the FBI. The fees will be the same as any new transaction submittal. The Contractor will not be required to submit new fees for rejected records that are clearly a result of errors on the part of the State or the FBI.

The failure rate may not exceed 2% of total submissions in a calendar month. The Contractor shall take all appropriate actions including calibration or other system maintenance on a monthly basis to ensure compliance. Failure to adhere to these standards for three (3) consecutive months may result in actions up to and including termination of the contract.

The State shall bear no responsibility for fees charged for state agency oversights unless otherwise provided by HRS.

9. Equipment and Interfaces:

The data link between the Contractor's equipment and the State's network equipment must be Ethernet or technology approved by the HCJDC.

The Contractor's system shall not be down for more than four (4) hours in any normal business day. If applicants have been scheduled, each individual fingerprint device must not be down for more than one hour.

The contractor shall ensure that all fingerprint images and demographic data of applicants are processed and housed at the Contractor's centralized point of storage. The Contractor is responsible for the security of all data collected, stored, and transmitted.

10. Installation and Testing:

The Contractor will be responsible for the acquisition, installation and testing of all equipment and

software necessary to complete all steps required for the Contractor's system to be in production and operational as required by this IFB.

Testing shall include, but not be limited to, iterations of connectivity, system and stress test of all components of the system until successful. Testing shall take place during set times as agreed upon by the Contractor and HCJDC. The Contractor is required to have the necessary qualified personnel to monitor traffic and debug transmission problems during testing.

The Contractor will be required to submit only test transactions as provided by the HCJDC to avoid incurring FBI fees or other State fees during the testing process.

The Contractor will be required to test any new connections or system network changes throughout the life of the contract as identified in this section. The HCJDC shall receive advance notice of any proposed changes or additions to ensure the proper personnel are available within HCJDC to assist with the testing. Notice for planned updates and changes shall be provided at least 72 hours in advance in writing. Emergency notice (for security concerns) may also be provided anytime.

11. Security:

The Contractor shall be responsible for all physical and equipment security at its site and locations.

The Contractor's signal transmission scheme must implement measures to prevent "eavesdropping" or signal diversion.

The Contractor must ensure that data at rest outside the boundary of a physically secure location is protected via encryption. When encryption is employed, the cryptographic module used shall be a minimum of 128 bit and be certified to meet the FIPS 140-2 standards.

The Contractor must protect and segregate government traffic through the use of VPN or similar technologies.

The Contractor must validate that State of Hawaii and related other jurisdictions hardware encryption devices work appropriately over landline transmission.

The Contractor must support encrypted point-to-point VPN connections from end to end.

The Contractor must explicitly agree to the security and privacy of government transmission through its facilities.

The Contractor must implement network-based and/or host-based intrusion detection tools and monitor inbound/outbound communications for unusual or unauthorized activities.

The Contractor must implement malicious code protection that includes automatic updates for all systems and employ virus protection mechanisms to detect and eradicate malicious code (e.g. virus, worms, Trojan horses).

The Contractor shall take appropriate measures to protect personally identifiable information. Such measures may include masking of social security numbers, wiping of data after successful transmission, etc.

The Contractor shall report all breaches of security to the HCJDC within two (2) hours of the time that the breach is discovered. If the breach occurs after normal business hours, then the Contractor shall

immediately report the breach to the HCJDC at the start of the next business day. In addition, the contractor shall report all breaches of security via email to each authorized agency or qualified entity utilizing the Contractor's services, within one business day. Breach of security means unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of personal information maintained by the Contractor.

Personnel employed or subcontracted by the Contractor and all subcontractors, if any, shall be fingerprinted and must be acceptable to the State following a criminal history and background check by the State.

Personnel employed or subcontracted by the Contractor and all subcontractors, if any, of whom will have access to CHRI must complete the required Security Awareness Training prior to accessing CHRI, and bi-annually thereafter.

12. Reports:

The Contractor must be able to provide to the HCJDC, authorized agencies and qualified entities documentation which must contain, at a minimum, the following data for each fingerprinted applicant:

- Unique transaction code
- Name
- Last four digits of Social Security Number
- Date of Birth
- Itemized dollar amount of fees collected by the Contractor
- Total amount of fees received
- Authorized agency or qualified entity to receive reporting
- Physical location of fingerprinting
- Reason for fingerprinting
- State agency pertinent identification numbers
- Date fingerprinted
- Date submitted to HCJDC

The Contractor may be required to provide additional data in an electronic format based upon the needs of the State.

The Contractor shall meet with the authorized agencies and qualified entities as necessary to tailor input and output reports based on their needs and requirements.

The Contractor shall distribute output reports to authorized agencies and qualified entities according to a frequency (daily, weekly, monthly, etc.) determined by their needs and requirements.

The Contractor must be able to provide reporting and reconciliation documentation to the HCJDC on a daily, weekly, monthly, and yearly cycle, as determined by HCJDC's needs and requirements.

The Contractor shall provide reports of all fingerprint activity in electronic media.

- Reports must be received by the fifth (5th) calendar day of the month (i.e. the documentation for October services must be received by the fifth (5th) calendar day of November). Any corrections must be completed by the tenth (10th) calendar day of the month.

- All reporting must be itemized by service location, authorized agency or qualified entity, applicant name, date of birth, and social security number.
- The reports shall indicate current charges, total amount due and payments applied.
- The electronic reports shall be submitted in one of the following formats: CD-ROM, FTP or secured PDF.
- Once agreed to, the Contractor shall not change the record layout without prior approval by the State. If a change is needed, the HCJDC must be given prior notice of thirty (30) working days.
- The Contractor shall provide an electronic test file of the electronic reporting data thirty (30) calendar days prior to implementation of the fingerprint services.
- Any or all credits posted for the Contractor by HCJDC shall include an explanation that is attached to the bill identifying the credit. The credit will indicate the rationale for applying it.

13. Support:

The Contractor must function as the single point of contact for the State, regardless of any approved subcontract arrangements, for all products and services provided. This shall include assuming responsibility and liabilities for all problems relating to the services provided and the billing of such services.

The Contractor shall design and implement processes and procedures to provide the HCJDC, authorized agencies and qualified entities with the desired accounting and reconciliation information. Accounting processes and procedures must be approved by the HCJDC before being implemented.

The Contractor shall at a minimum provide customer support help-desk services with toll-free access during 7:45 a.m. through 4:30 p.m. HST Monday through Friday to the HCJDC, authorized agencies, qualified entities, and their applicants.

The Contractor shall provide the State with information for the proper reporting of problems encountered by citizens using or attempting usage of the service.

The Contractor shall notify the State's designated representative within two (2) business days when events affecting the services provided by the Contractor are encountered. Notification must include, but not be limited to, locations affected, the facts surrounding the event, and the estimated time for a corrective or limiting resolution.

The Contractor shall have an escalation procedure for problem resolution in place to raise the level of awareness of the problem/issue/event in their organization.

The Contractor shall notify the State in writing at least 48 hours in advance of any and all preventive maintenance or upgrades that would affect the services required by this IFB. It is highly desirable that the Contractor provide one week or more notification in advance. The Contractor shall work with the State to obtain mutually agreed upon time frames for planned service interruptions.

The Contractor shall agree to allow the Project Manager or designee to enter the Contractor's

premises for fingerprinting services during normal business hours for the purpose of observing the authentication of identity and the actual fingerprinting process, and to perform any audit functions. Observed concerns or questions will only be discussed with the Contractor's designated office manager or appropriate contact.

The Project Manager may request that the Contractor immediately address and remedy personnel performance problems such as poor quality of work, attendance issues, inability to get along with people, noncompliance with agency standards, inability to follow directions, abuse of facilities, or other performance problems. Upon such request, the Contractor will provide a written description of the remedy within two (2) business days of the request. If a significant number of problems occur that are not remedied to the satisfaction of the HCJDC, the contract may be terminated.

14. Retention of Data:

The Contractor shall provide electronic storage of captured fingerprints, demographic data, and data on the identification verification documents for at least ninety (90) days. During this 90-day period, collected data must be made available to HCJDC for reporting and auditing purposes. Rejected or uncompleted transactions should never be routinely deleted but need to be available for possible modification and resubmission.

15. Electronic Media Sanitization and Disposal:

The Contractor shall sanitize, that is, overwrite at least three times or degauss electronic media prior to disposal or release for reuse. Inoperable electronic media shall be destroyed (cut up, shredded, etc.). The Contractor shall maintain written documentation of the steps taken to sanitize or destroy electronic media. The Contractor shall ensure the sanitization or destruction is witnessed or carried out by authorized personnel.

16. Disposal of Physical Media:

Physical media shall be securely disposed of when no longer required, using formal procedures. Formal procedures for the secure disposal or destruction of physical media shall minimize the risk of sensitive information compromise by unauthorized individuals. Physical media shall be destroyed by shredding or incineration. The Contractor shall ensure the disposal or destruction is witnessed or carried out by authorized personnel.

17. Experience:

The Contractor shall have at least five (5) years of significant prior experience in livescan service offerings.

18. Work in Process at Contract End:

The Contractor shall complete all work in process at contract end under the same policies and procedures that were in force during the contract term, including but not limited to applicant processing, data transmission, archiving, and payment processing. The Contractor shall cooperate in the transition to a new contractor at the end of contract term and when transition is complete shall delete all images and data per the requirements.

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Attachment 1: BID FORM, BF-1
- Attachment 2: BID FORM, BF-2
- Attachment 3: WAGE CERTIFICATION and BIDDER INFORMATION SHEET
- Exhibit A: AG GENERAL CONDITIONS
- Exhibit B: FEDERAL GUIDELINES FOR RECORDING LEGIBLE FINGERPRINTS
- Exhibit C: SPECIAL CIRCUMSTANCES
- Exhibit D: EBTS COMPLIANT ANSI/NIST ELECTRONIC RECORD FORMAT
- Exhibit E: VECHS CONSENT & WAIVER
- Exhibit F: CONSENT & NOTIFICATION

**BID FORM
BF-1**

CIVIL ELECTRONIC FINGERPRINTING SERVICES AND RELATED PROCESSING
STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
IFB-HCJDC-20-001

Procurement Officer
Hawaii Criminal Justice Data Center
Department of the Attorney General
State of Hawaii
Honolulu, Hawaii 96813

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in IFB-HCJDC-19- 003; 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 bid, 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 (specify): _____

*State of incorporation: _____

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

Federal I.D. No. _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____

Exact Legal Name of Company (Offeror)

**If Bidder 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:

**BID FORM
BF-2**

The Vendor Processing Fee proposed shall include labor, materials, supplies, all applicable taxes at a fixed rate. Bidder shall provide a breakdown of the fee being charged an applicant for each different service in the following format, and complete all columns for each entry:

Service Description	State Fee	FBI Fee	Vendor Processing Fee	Total Customer Fee
1. Non-Volunteer, Non-State, Non-County Employee	\$30.00	\$13.25		
2. Volunteer	\$30.00	\$11.25		
3. Volunteer of Approved 501(c)(3) Non-Profit QE	\$0.00	\$11.25		
4. State or County Employee	\$0.00	\$13.25		

Wage Certification

Subject: **Contractor-Owned and Managed Civil Electronic Fingerprinting Services and Related Processing – IFB No. HCJDC-20-001**

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract, the services to be performed will be performed under the following conditions.

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment insurance, payment of wages, and safety will be fully complied with.

I 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 wages required by Section 103-55, HRS.

Bidder: _____

Signature: _____

Title: _____

Date: _____

Bidder Information Sheet

The following information is submitted, as required:

1a. Office address _____

Contact Person _____ Telephone No. _____

Email _____

1b. Billing address _____

Contact Person _____ Telephone No. _____

Email _____

2. Provide below information regarding subcontractor, if any, to be used for this IFB:

Subcontractor Name: _____

Address: _____

Contact Person: _____ Telephone No.: _____

Type of work to be performed by Subcontractor and License No. (if applicable):

3. Insurance coverage is carried by:

Commercial General Liability Insurance: _____

Hawaii Motor Vehicle Insurance: _____

4. Listed below are the names and address of three references for which the Bidder has provided or is currently providing services as specified herein:

Company	Address	Contact Person	Telephone
---------	---------	----------------	-----------

1. _____

2. _____

3. _____

Bidder: _____
(Company Name)

EXHIBIT A

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 novation's 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 attorney's 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.

EXHIBIT B

Federal Guidelines for Recording Legible Fingerprints

Introduction to Recording Legible Fingerprints

The FBI's Integrated Automated Fingerprint Identification System (IAFIS) is the largest biometric database of criminals in the world. Clear, legible fingerprints form the foundation of the Fingerprint Master File, which continues to grow by approximately 13,000 records each day. Agencies submitting fingerprints to the FBI should be aware of the proper procedures for recording fingerprints. The following information will assist agencies in obtaining fingerprints that meet FBI standards.

Fingerprint Impression Types

Type 4

- Rolled impressions are the ten individually taken fingerprint images rolled from nail to nail. The plain impressions are used to verify the sequence and accuracy of the rolled impressions.

Type 14

- Identification flat impressions are taken simultaneously without rolling. These are referred to as plain, slap, or flat impressions. The individual's right and left four fingers should be captured first, followed by the two thumbs (4-4-2 method). Instituting this finger capture method ensures the highest level of fingerprint sequence accuracy.

Basic Fingerprint Equipment

Fingerprints can be recorded utilizing the following methods:

- Standard Fingerprint Card (e.g., FD-249 and FD-258)—Use ink to record fingerprint images on standard fingerprint cards.
- Live Scan—Fingerprint images can be submitted electronically using a live scan device. Electronic fingerprinting equipment should always be properly maintained. For a list of certified devices, please refer to the FBI Certified Products List at www.fbibiospecs.org.

Fingerprinting Process

- The recommended height for recording legible fingerprints is approximately 39 inches from the floor. This allows the forearm of an average adult to be parallel with the floor. This is the recommended position to record fingerprints.
 - Soap and water are preferred; however, rubbing alcohol may be substituted.
 - If hands are moist, wipe each finger with rubbing alcohol. If hands are dry or flaky use a small amount of hand lotion and wipe off any residue.

- If capturing fingerprints electronically, ensure the live scan fingerprint device is properly calibrated and the platen is free of dust, dirt, and any residual fingerprint images.
- The individual's hands should be cleaned prior to printing:
- Instruct the individual to look away from the fingerprint device, not to assist in the fingerprint process, and to relax. Grasp the individual's right hand at the base of the thumb with your right hand. Cup your hand over the individual's fingers, tucking under those fingers not being printed. Guide the finger being printed with your left hand.
- If using the ink and paper method, roll the finger on the inking plate or pad so the entire fingerprint pattern area is evenly covered with ink. The ink should cover from one edge of the nail to the other and from the crease of the first joint to the tip of the finger. Using the correct amount of ink is vital.
- When taking the rolled impression, the side of the finger bulb is placed upon the card or platen. The finger is then rolled to the other side until it faces the opposite direction. Care should be exercised so the bulb of each finger, from tip to below the first joint, is rolled evenly. Generally, the weight of the finger is the maximum pressure needed to clearly record a fingerprint. In order to take advantage of the natural movement of the forearm, the hand should be rotated from the more difficult position to the easiest position. This requires the thumbs be rolled toward and the fingers away from the center of the individual's body. Roll each finger from nail to nail in the appropriate space, taking care to lift each finger up after rolling to avoid smudging.
- When using the ink and paper method and a rolled impression is not acceptable, you may use an adhesive re-tab to cover the fingerprint in its space. (Only two re-tabs can be applied to each fingerprint block.) For live scan, the image should be deleted and retaken.
- For a Type-4, plain impressions are typically printed last. The technician simultaneously presses the individual's four fingers (of the right hand), keeping the fingers together on the surface of the card or live scan device (at a 45-degree angle) to capture all four fingers in the allotted space. Repeat this process for the left hand and then print both thumbs. Type-14 capture protocol requires the technician to simultaneously press the individual's four fingers on the surface of the live scan device at a 90-degree vertical angle. Care should be taken to capture all fingers in the allotted space. Repeat this process for the left hand and then print both thumbs simultaneously (4-4-2 method). Capturing all fingers and thumbs in a vertical position improves finger segmentation software accuracy.
- Complete all required textual information. It is important to enter the appropriate data in all fields when known.

EXHIBIT C

Special Circumstances

Deformed or missing fingers:

If the finger is deformed, every attempt should be made to record the fingerprint in both the rolled and plain impression blocks. A postmortem kit, which is more commonly known as a spoon can be utilized to assist in recording these images. If unable to record the image, simply place a notation in the fingerprint block (e.g., deformed, webbed) or electronically apply the Unable to Print (UP) code in data field 2.084.

Missing fingers are fingers physically present but cannot be recorded at the time of capture due to injury. Each missing finger should be designated via a notation in the fingerprint block (e.g., bandaged, injured, crippled, paralyzed) or electronically apply the UP code in data field 2.084.

Fully amputated fingers:

An amputated finger occurs when the finger's first joint is no longer physically present. Amputated fingers should be designated via a notation in the fingerprint block (e.g., amp, missing at birth, severed) or electronically apply the Amputated (XX) code in data field 2.084.

Tip-amputated fingers:

If a portion of the first joint is present, record the available fingerprint pattern area in both the rolled and plain impression blocks.

Extra fingers:

When fingerprinting an individual with an extra finger, record only the thumb and the next four fingers. Do not record the extra finger as either a rolled or plain impression.

Scarred fingers:

Record scarred fingers in both the rolled and plain impressions without a notation.

Worn fingerprints:


An individual, by the nature of their work or age, may have very thin or worn ridges in the pattern area. Apply light pressure and use very little ink to record these types of fingerprint impressions. A technique known as "milking the finger" can be used to raise the fingerprint ridges prior to printing. This technique involves applying pressure or rubbing the fingers in a downward motion from palm to fingertip.

EXHIBIT D

EBTS Compliant ANSI/NIST Electronic Record Format (Type 2)

Requested Fields		
	<u>NIST Tag</u>	<u>Comments</u>
Field		
Name (First, Middle, Last, Suffix)	2.018	
Alias #1	2.019	
Alias #2		
Alias #3		
Social Security #	2.016	
Date of Birth	2.022	
Sex	2.024	
Race	2.025	
Height	2.027	
Weight	2.029	
Eye Color	2.031	
Hair Color	2.032	
Place of birth	2.02	
Citizenship	2.021	
Person's Street Address	2.041	
City		
State		
County		
Zip Code		
Person's Phone #		
Employer	2.039	
Occupation	2.04	
Employer Street Address	2.039	
City		
State		
County		
Zip Code		
Employer Phone #		
Armed Forces #		
Miscellaneous ID #	2.017	
Originating Agency ID (ORI)	1.08	
Originating Agency Name		
Destination Agency ID	1.007	
OCA field	2.009	
Retention code	2.005	
Reason Fingerprinted	2.037	
Type of Transaction	1.004	
Submission Type	2.043	
Attention Indicator		
Unique ID (OTN)	2.1003	This number should be auto generated by the system. The format of this number should be 7 numeric characters long.
Device ID	2.502	This number will be issued by HCJDC
Bold Fields are Mandatory		

EXHIBIT E VECHS CONSENT AND WAIVER

	Hawaii Criminal Justice Data Center	VECHS Consent & Waiver Hawaii Volunteers & Employee Criminal History Service (VECHS) <small>Pursuant to the National Child Protection Act, P. L. 103-209, as amended, and Section 846-2.7(c), HRS</small>
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Pursuant to the National Child Protection Act, as amended by the Volunteers for Children Act (NCPA/VCA) and section 846-2.7(c), Hawaii Revised Statutes, this form must be completed and signed by every current or prospective applicant, employee and volunteer for whom fingerprint-based criminal history records are requested by a Qualified Entity (QE) under these laws.

Name:		Last four SSN:	
Address:			

- I have not been convicted of a crime.
 I have been convicted of the following crime(s):

Describe the crime(s) and the particulars:

I, the undersigned, hereby authorize (enter name of Qualified Entity) _____, herein after referred to as (QE) to submit a set of my fingerprints to the Hawaii Criminal Justice Data Center (HCJDC) and the Federal Bureau of Investigation (FBI) for the purpose of accessing and reviewing state and national criminal history records that may pertain to me. I understand that my fingerprints will be retained by the HCJDC and the FBI for all purposes and uses authorized for fingerprint submissions, including participation in the state and national rap back programs. I also understand that I would be able to receive my Hawaii criminal history record from the HCJDC, and my national criminal history record from the FBI, and that I could then freely disclose any such information to whomever I choose. By signing this Consent and Waiver, it is my intent to authorize the dissemination of my Hawaii and national criminal history record to the QE for which I am seeking to be employed or to serve as a volunteer for the purpose of determining my suitability to work or volunteer with Hawaii's vulnerable population.

I understand that, until the criminal history record check is complete, the QE may choose to deny me unsupervised access to children, vulnerable adults, or individuals with disabilities. I further understand that, upon my request, the QE may provide me a copy of the criminal history record check, if any, received as a result of my fingerprint-based criminal history record check and that I am entitled to challenge the accuracy and completeness of any information contained in such record. I may obtain a prompt determination as to the validity of my challenge before you make a final decision about my status as an employee or volunteer.

I acknowledge that I have read, understand, and agree to the attached FBI Privacy Act Notification.

- I do OR do not authorize the QE to release my criminal history record, if any, to other QEs after confirming that the recipient has a signed user agreement on file with the HCJDC and the dissemination of the criminal history record information is in accordance with state and federal law.

Signature: _____ Date: _____

Exhibit F Consent & Notification Form

State and National Criminal History Record Check Consent & Notification

At a minimum, the below consent & notification must be obtained from each applicant for which fingerprints are submitted to the HCJDC and the FBI. Electronic consent & notification is acceptable. All of the information is REQUIRED.

Department: _____

Division: _____

Position: _____

Name: _____

Alias(es): _____

SSN: _____ Sex: _____ Race: _____

Height: _____ Weight: _____ Eye: _____ Hair Color: _____

Place of Birth: _____ Date of Birth: _____

Citizenship: _____

- I have not been convicted of a crime.
 I have been convicted of the following crime(s):

Describe the crime(s) and the particulars, such as dates, offense, and disposition (attach additional sheets as necessary):

I, the undersigned, hereby authorize the Department/Division listed above to submit a set of my fingerprints to the Hawaii Criminal Justice Data Center (HCJDC) and the Federal Bureau of Investigation (FBI) for the purposes of accessing and reviewing state and national criminal history records that may pertain to me. I understand that my fingerprints will be retained by the HCJDC and the FBI for all purposes and uses authorized for fingerprint submissions, which may include participation in the state and national rap back program.

I understand that I have the right to challenge the accuracy and completeness of the results of my fingerprint-based criminal history record check. Should the Department/Division policy not allow a copy of the results to be given to me, I may obtain a copy of my criminal history record by submitting fingerprints and fees directly to the HCJDC and/or FBI. I understand that the procedures for obtaining a change, correction, or updating of my criminal history record are set forth in Title 28, Code of Federal Regulations, Section 16.34.

I acknowledge that I have read, understand, and agree to the FBI Privacy Act Statement.

Signature: _____ Date: _____

FBI Privacy Act Statement

Authority: The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal regulations. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Social Security Account Number (SSAN). Your SSAN is needed to keep records accurate because other people may have the same name and birth date. Pursuant to the Federal Privacy Act of 1974 (5 USC 552a), the requesting agency is responsible for informing you whether disclosure is mandatory or voluntary, by what statutory or other authority your SSAN is solicited, and what uses will be made of it. Executive Order 9397 also asks Federal agencies to use this number to help identify individuals in agency records.

Principal Purpose: Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses: During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental or authorized non-governmental agencies responsible for employment, contracting licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.

Additional Information: The requesting agency and/or the agency conducting the application-investigation will provide you additional information pertinent to the specific circumstances of this application, which may include identification of other authorities, purposes, uses, and consequences of not providing requested information. In addition, any such agency in the Federal Executive Branch has also published notice in the Federal Register describing any systems(s) of records in which that agency may also maintain your records, including the authorities, purposes, and routine uses for the system(s).

Non-Criminal Justice Applicant's Privacy Rights

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for a job or license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification¹ that your fingerprints will be used to check the criminal history records of the FBI.
- If you have a criminal history record, the officials making a determination of your suitability for the job, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The officials must advise you that the procedures for obtaining a change, correction, or updating of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the job, license, or other benefit based on information in the criminal history record.²

You have the right to expect that officials receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.³

If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, you may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <http://www.fbi.gov/about-us/cjis/background-checks>.

If you decide to challenge the accuracy or completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes/corrections to your record in accordance with the information supplied by that agency. (See 28 CFR 16.30 through 16.34.)

Endnotes

¹ Written notification includes electronic notification, but excludes oral notification.

² See 28 CFR 50.12(b).

³ See 5 U.S.C. 552a(b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d) and 906.2(d).