

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
PROCUREMENT AND CONTRACTS BRANCH

December 30, 2020

REQUEST FOR PROPOSALS

RFP D21-067

SEALED PROPOSALS

FOR

SCHOOL IMPROVEMENT SERVICES  
TO ADDRESS HAWAII STATE PRIORITIES

**will be received through the State of Hawaii eProcurement System (HlePRO) at  
<https://hiepro.ehawaii.gov> until 4:30 p.m., Hawaii Standard Time (HST)**

on

February 2, 2021,  
or such later date as may be established by an addendum to this Request for Proposals (RFP)

Offerors interested in responding to this electronic solicitation must be registered on the HlePRO (<https://hiepro.ehawaii.gov>) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HlePRO solicitation.

Questions relating to this solicitation may be directed to Wendy Ebisui, Procurement and Contracts Support Specialist, at telephone (808) 675-0130, via facsimile (808) 675-0133, or via email at [wendy.ebisui@k12.hi.us](mailto:wendy.ebisui@k12.hi.us).

## **1. OVERVIEW OF PROCUREMENT PROCESS**

### **1.1 RFP Organization**

This RFP is organized as follows:

- Section 1. Overview of Procurement Process. Provides Offerors with a general overview of the RFP process.
- Section 2. Purpose and Overview. Provides Offerors with general information about the objectives of this project and RFP, and critical success factors.
- Section 3. Scope of Work and Requirements. Provides Offerors with a general description of the tasks to be performed, delineates Hawaii Department of Education (STATE) and PROVIDER's responsibilities, stipulates Offeror qualifications, and defines deliverables.
- Section 4. Proposal. Describes the required format and content for the Offeror's submittal, and establishes requirements for the Price Proposal.
- Section 5. Proposal Evaluation. Describes how proposals will be evaluated by the STATE.
- Appendix A. Proposal Identification and Information Form
- Appendix B. Summary Offer of Services and Price List
- Appendix C. Contract Minimum and Special Conditions
- Appendix D. State's General Conditions

### **1.2 Procurement Authority**

This procurement is being conducted as a competitive sealed proposals procurement in accordance with the procedures set forth in §103D-303 of the Hawaii Revised Statutes (hereinafter "HRS") and Title 3, Subtitle 11, Chapter 122, Subchapter 6 of the Hawaii Administrative Rules (hereinafter "HAR"). The relevant provisions of §103D, HRS, and their associated HAR, are incorporated by reference and made a part of this RFP.

### **1.3 Issuing Office and Contact Person**

The following person from the issuing office listed below is the sole point of contact for this RFP. Communication with any other contact person from the date of release of this RFP until the selection of the successful Offeror(s) without approval, may result in disqualification.

RFP Point of Contact: Wendy Ebisui  
email: wendy.ebisui@k12.hi.us  
Phone: (808) 675-0130  
Fax: (808) 675-0133

Issuing Office:  
State of Hawaii Department of Education (HIDOE)  
Procurement and Contracts Branch  
Waipahu Civic Center  
94-275 Mokuola Street, Room 200  
Waipahu, Hawaii 96797

#### 1.4 Procurement Timetable

Except as noted, the following schedule represents the STATE’s best estimate. All times indicated are Hawaii Standard Time (HST). If any component of this schedule is delayed, the rest of the schedule will likely be amended by the same number of days, however the STATE reserves the right to amend or revise the timetable without prior written notice when such revision or amendment is in the STATE’s best interest.

Public Notice announcing Request for Proposals (RFP)	December 30, 2020
Deadline for submission of written questions	On or before 2:00 p.m., January 13, 2021
STATE’s responses to written questions	on or about January 20, 2021
<b>Proposal Due Date/Time</b>  <b>Proposals will be received through the State of Hawaii eProcurement System (HlePRO) at <a href="https://hiepro.ehawaii.gov">https://hiepro.ehawaii.gov</a> until 4:30 p.m., Hawaii Standard Time (HST)</b>  <b>THERE ARE NO EXCEPTIONS TO THIS PROPOSAL DUE DATE UNLESS THE DATE IS AMENDED IN WRITING BY THE PROCUREMENT AND CONTRACTS BRANCH.</b>	4:30 p.m., February 2, 2021
Evaluation of Proposals	February 3, 2021 – February 16, 2021
Determination of Priority-Listed Offerors (if necessary)	February 17, 2021
Priority-listed Offerors discussions conducted (if necessary)	TBD
Best and Final Offers (if necessary)	TBD
PROVIDER(s) Selected	On or about February 28, 2021
Contract Award	on or about March 2021
Contract Commencement Date/Notice to Proceed	On or about April 2021

#### 1.5 Cancellation of RFP; Rejection of Proposals

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the STATE.

#### 1.6 Electronic Procurement

- 1.6.1 The STATE utilizes the Hawaii State eProcurement (HlePRO) System to promote an open and transparent system for vendors to compete for contracts electronically. Offerors interested in responding to this solicitation must be registered on HlePRO. Registration information is available at the State Procurement Office (SPO) website: <https://hiepro.ehawaii.gov>, select HlePRO Vendor Registration and then Vendor Registration Guide.
- 1.6.2 The STATE will use HlePRO to issue the RFP, receive Offers, and issue Addenda to the RFP. Addenda and the other information and materials shall be

provided by the STATE through HlePRO, including additions or changes with respect to the dates specified herein. The STATE shall not be responsible for any person's or entity's failure to do so for any reason. The STATE is not responsible for any delay or failure of any Offeror to receive any materials regarding this RFP on a timely basis.

- 1.6.3 As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through the HlePRO and shall therefore be subject to a mandatory .75% (.0075) transaction fee, not to exceed \$5,000 for the total contract term. The mandatory fee (.75%) is applicable for awards to Hawaii government agencies only, calculated on a quarterly basis for the first year only. This transaction fee shall be based on the total sales made against this contract, payable to Hawaii Information Consortium, LLC dba NIC Hawaii, the vendor administering HlePRO.
- 1.6.4 HlePRO Special Instructions. Offeror shall review all special instructions located in HlePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline.
- 1.6.5 Payment to Hawaii Information Consortium, LLC dba NIC Hawaii. HlePRO is administered by Hawaii Information Consortium, LLC dba NIC Hawaii (NIC). NIC shall invoice the PROVIDER(s) directly for payment of transaction fees. Payment must be made to NIC within thirty (30) days from receipt of invoice. NIC is an intended third-party beneficiary of transaction fees, which are used to fund the operation, maintenance and future enhancements of the HlePRO system.

Offerors are advised that they should not wait until the last minute to submit their proposal on HlePRO. Offerors should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline.

## **1.7 Required Review/Written Questions**

It is the Offeror's responsibility to carefully review this solicitation for defects and questionable or objectionable matter. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documentation.

Comments concerning defects, discrepancies, omissions, questionable or objectionable matter, or questions related to this RFP must be made in writing to allow issuance of any necessary amendments to the RFP. It will also help prevent exposure of Offeror's proposal prepared in response to a defective or inaccurate solicitation upon which award could not be made.

Comments related to this solicitation shall be communicated in writing to the RFP contact person identified via fax or e-mail by the date and time established for submission of written questions to ensure an official response. The STATE will not respond to verbal or informal questions.

Such comments shall contain pertinent information to identify the prospective Offeror, its telephone number, e-mail address, the RFP number, as well as reference to the specific page, section, and/or paragraph as applicable.

The response to the prospective Offerors' written questions received by the scheduled date shall be compiled, shall omit reference to the source(s) of the questions, shall be issued as an addendum to the RFP, and shall become a part of the RFP. The STATE will publish the questions as they are submitted including any background information provided with the question. The STATE at its sole discretion may omit questions which may be combined or paraphrase questions and background content for clarity.

The STATE's responses shall be communicated in writing via addenda and will be posted on the HlePRO. The STATE is not responsible for delays or non-receipt of any communications by the prospective Offerors.

If an Offeror submits a question after the scheduled date, the STATE may answer the question but does not guarantee that the answer will be provided prior to the Proposal due date.

### **1.8 RFP Addenda**

The STATE reserves the right to amend this RFP at any time prior to the closing date, or for best and final offers. All addenda issued shall be incorporated into the resulting contract. Failure of any Offeror's receipt of any such addenda or interpretations shall not relieve the Offeror of any obligation under this solicitation. It is the responsibility of the prospective Offeror to monitor the HlePRO to obtain RFP addenda or other information relating to the RFP.

### **1.9 Notice of Intent to Offer (Letter of Intent)**

A notice of intent to submit a Proposal is NOT required.

### **1.10 Deadline for Proposals**

Proposals shall be received through HlePRO. Proposals received after the deadline will not be accepted. Timely receipt of offers shall be evidenced by the date and time on HlePRO.

### **1.11 Proposal Opening**

Proposals shall not be opened publicly, but the register of proposals and Offerors' proposals shall be open to public inspection upon posting of the award.

### **1.12 Disqualification of Offers**

The STATE reserves the right to consider as acceptable only those proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work.

An Offeror shall be disqualified, and the Offeror's Proposal shall be rejected for any one or more of the following non-exclusive reasons as solely determined by the STATE:

- 1.12.1 Proposal received after specified deadline.
- 1.12.2 Proposals not received on HlePRO.
- 1.12.3 Proposal not properly completed as required herein or containing any unauthorized additions or deletions, defects including but not limited to irregularities of any kind which may make the Proposal incomplete, indefinite, or ambiguous as to its meaning (e.g. uninitialed erasures, prices which are obviously unbalanced).
- 1.12.4 A Proposal which is incomplete or conditional proposals including but not limited to a Proposal which includes any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP.
- 1.12.5 A Proposal signed by other than an authorized individual.
- 1.12.6 More than one Proposal from an individual, firm, corporation or joint venture under the same or different names (Offeror), whereby all proposals from the Offeror shall be rejected.
- 1.12.7 Evidence to the STATE's sole satisfaction of collusion among Offerors, lack of responsibility and cooperation to STATE requests during the RFP process or as shown by past work, being in arrears on existing contracts with the State of

Hawaii, or defaulting on previous contract(s).

1.12.8 Failure to possess proper licenses, facilities, equipment or sufficient experience to provide the proposed solution or to perform the work contemplated.

1.12.9 Evidence of any noncompliance with any applicable law or rule.

### **1.13 Proposal Evaluation**

The STATE will conduct a comprehensive, fair, and impartial evaluation of the proposals it receives in response to this RFP. Refer to Section 5 of this RFP for specific requirements and details of the process.

### **1.14 Proposal as Part of the Contract**

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

### **1.15 Additional Terms and Conditions**

The STATE reserves the right to add terms and conditions, if any. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

### **1.16 Offer Acceptance Period**

The STATE's acceptance of a proposal, if any, will typically be made within ninety (90) calendar days after the opening of proposals. Prices quoted by the Offeror shall therefore remain firm for ninety (90) calendar days from the receipt of proposals.

### **1.17 Price/Vendor List Performance Period**

Formal written contracts will not be required for awards made in response to this solicitation. Successful Offerors will receive "Notice of Award by Price/Vendor List" letters to which will be attached the Price/Vendor List Change indicating awarded Offerors. This method of award does not waive compliance with the Scope of Work, Special Conditions, and General Conditions, Form AG-008 (as revised).

#### **1.17.1 Price/Vendor List**

A Hawaii Department of Education Price/Vendor List will be issued as a result of any awards made against this solicitation. This Price/Vendor List will be made available to schools and offices for use throughout the contract period. The actual purchases will depend on the needs of the STATE and availability of funds

No work shall be undertaken by the successful Offeror(s) prior to the commencement date specified on the agreement. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the PROVIDER prior to the official starting date.

Schools and offices are not required to purchase from the resultant Price/Vendor list issued by the HDOE PCB. Schools and offices are allowed to purchase outside of the Price/Vendor list, utilizing the applicable procurement method and its procedures.

#### **1.17.2 Award Period**

Award shall commence upon full execution of the agreement, and shall end on June 30, 2022.

#### **1.17.3 Performance Period**

The PROVIDER shall complete the work within the time limits specified herein. The time specified herein is the maximum time allowed.

### **1.18 Award**

Award, if any, shall be made on a multiple-vendor basis to the responsible Offeror(s) with a minimum evaluation score of thirty (30) points and whose proposal the STATE deems most advantageous in accordance with the evaluation criteria specified.

### **1.19 Responsibility of Offerors; Hawaii Compliance Express**

The Offeror is advised that if awarded a contract under this RFP, offeror shall, upon award of contract, furnish proof of compliance with the requirements of HRS §103D-310 and HAR § 3-122-112 including:

- Chapter 237, General Excise Tax Law;
- Chapter 383, Hawaii Employment Security Law;
- Chapter 386, Workers' Compensation Law;
- Chapter 392, Temporary Disability Insurance;
- Chapter 393, Prepaid Health Care Act; and
- One of the following:
  1. Be registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
  2. Be registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

Offeror may demonstrate proof of compliance with the above-referenced requirements by submitting a *Certificate of Vendor Compliance* issued by the Hawaii Compliance Express (HCE) online system to the Hawaii Department of Education, Procurement and Contracts Branch upon award of a contract. The HCE service allows vendors to register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. PROVIDERS that elect to use HCE services are required to pay an estimated annual fee of \$12.00 to the Hawaii Information Consortium, LLC dba NIC Hawaii.

Due to the time required to obtain the HCE *Certificate of Vendor Compliance*, it is highly recommended that the interested Offeror begin the registration process immediately.

### **1.20 Failure to Execute Contract; Timely Submission of Certificates**

At time of contract award, the above *Certificate of Vendor Compliance* and any other documentation and certification shall be submitted to the Hawaii Department of Education, Procurement and Contracts Branch as soon as possible or by the deadline established by STATE. If a valid certificate or non-compliant documentation is not submitted on a timely basis for award of a contract, award made to an Offeror otherwise responsible may be annulled.

Failure to execute a contract as required within ten (10) calendar days or such further time as the STATE may allow after the Awardee has received the contract for execution shall be just cause for the annulment of the award. STATE may award the contract to the next responsible Offeror or may call for other offers, whichever is deemed to be in the best interest of the STATE.

### **1.21 Notification of Award; Non-selected Offeror(s)**

Upon award to the successful Offeror(s), the STATE shall post publicly, a notice of award which may be viewed on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>. Additionally, the STATE will provide notification of the award to any non-selected Offeror(s). The STATE is not responsible for delays or non-receipt of such notification.

Failure of any Offeror to receive any such notification shall not relieve the Offeror of any obligations or requirements herein.

### **1.22 Debriefing**

The purpose of a debriefing is to inform the non-selected Offerors of the basis for the source selection decision and contract award. An Offeror(s) not selected for contract award shall submit a written request for a debriefing within three (3) working days after the posting of the contract award. The debriefing shall be held, to the maximum extent possible, within seven (7) working days after the posting of the award.

### **1.23 Protest**

Pursuant to §103D-701, HRS and §3-126, HAR, a protest of the solicitation must be submitted prior to the date set for receipt of offers, and a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract or within five (5) working days following a debriefing. The notice of award(s), if any, resulting from this solicitation shall be posted on the Hawaii Awards and Notices Data System (HANDS) website at <https://hands.ehawaii.gov/hands/awards>.

Any protest pursuant to §103D-701, HRS and §3-126, HAR shall be submitted in writing to the Hawaii Department of Education's, Chief Procurement Officer, c/o Procurement and Contracts Branch at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.



## **2.0 GENERAL INFORMATION**

This solicitation is to supplement and does not replace RFP D20-092 issued on December 13, 2019. Any awards made for this solicitation will be added to the STATE, Department of Education Price/Vendor list VL E20-40. PROVIDER's who were awarded under RFP D20-092 need not respond to this solicitation.

### **2.1 RFP PURPOSE AND OVERVIEW**

The U.S. Department of Education (USDE) has articulated the goal for all American schools to graduate students who are college and career ready, at the same time focusing on closing the achievement gap among subgroups of students, offering greater flexibility, providing parents with more input, and delivering instruction that results in high achieving students. States must continue to assure that all students achieve academic proficiency in the core academic subjects, particularly reading and mathematics.

The State of Hawaii, Department of Education (STATE) Hawaii Consolidated State Plan for the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act plan provides the organizational changes that support actions and strategies that will target turning around the lowest performing schools in the state.

The STATE currently does not have the necessary resources or expertise to support its complex areas and schools to effectuate school turnaround. Therefore, the STATE seeks to partner with external Providers on two levels of services:

- 1) training for state offices and complex area personnel to empower and build their internal capacity in order that they can facilitate and sustain transformation and continuous school improvement in all schools, and
- 2) direct support services to schools that are focused on strategic and timely actions that will result in turning around low student achievement.

The School Transformation Branch has the responsibility to coordinate and monitor external Provider services that are contracted to specifically work with the identified schools. Decisions on what type of support services will be based on a needs assessment and approved Academic Plan. The Plan must be approved by the Complex Area Superintendent (CAS) or State Public Charter School Commission (SPCSC).

### **2.2 Purpose and Introduction**

The primary purpose of this solicitation is to identify, evaluate, and approve external service Providers who can provide targeted training on specific areas of state, complex area, and school needs that were identified through a needs assessment or Western Association of Schools and Colleges (WASC) self-study. The services will focus on supporting schools identified as Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI) and schools, including eligible Title I schools, identified by their CAS or by the SPCSC in need of additional targeted supports, if the specific target area of need is included in the school's approved Academic Plan.

The School Transformation Branch will be partnering with CASs and external Providers to identify the educational services and practices that have been proven effective through rigorous scientific research and documented with evidence, and customize them to each school.

External Providers will primarily be working at complex areas, charter school commission, and school sites to address the areas of low performance as indicated by the Strive HI Performance System. They will be working with school administrators, leadership teams and teachers in specific areas such as:

- how to conduct a needs assessment;
- how to conduct data analysis;
- how to design, implement and monitor school improvement;
- how to train professional learning communities in the cycle of school improvement;

- how to address the shifts in standards based instruction for English Language Arts and Mathematics
- how to develop a comprehensive system of support for all students;
- how to develop rubrics for assessment and evaluation of teaching and learning;
- provide instructional coaching and training to teachers on standards-based teaching and learning; and
- provide coaching and training to school level leaders, administrators, complex area and charter commission personnel on inclusive leadership practices for school improvement.

The STATE is seeking Providers of services that will be embedded in the school, with a commitment to ongoing support, such as frequent follow-up services onsite, customization of services to individual schools, and coaching for classroom teachers.

The STATE will be identifying high quality Providers with a proven track record. The Provider should document that its services for school transformation has achieved significant results with similar populations of students. The Provider should explain how progress will be assessed or measured. There should be evidence that the Provider’s approach is customized, rather than an “off the shelf” model repackaged as school transformation.

### **2.3 Background and Current-State (Environment)**

Since Fall of 2010, the STATE embarked on a total school system reform initiative through its Race to the Top (RTTT) Grant. The STATE also submitted a Flexibility Waiver Request Plan (Flex Plan) which was approved in May 2013. The Flex Plan measured school performance and progress using multiple measures of student achievement, as well as growth and readiness for success after high school (a “Strive HI” index score was calculated for each school). Schools were held accountable to meet attainable goals that were customized to each school complex and based on their Strive HI performance. The Hawaii Consolidated State Plan approved in January 2018 with revised TSI methodology approved in November 2019 describes a STATE Tri-Level Structure of Support for School Improvement and how the state will facilitate school improvement activities for schools identified for Comprehensive Support and Improvement (CSI) and Targeted Support and Improvement (TSI). Hawaii’s school accountability and improvement system aligns and connects key STATE education policies and initiatives to position students and educators for success and continues to use the Strive HI performance system to measure progress and target resources.

Based on their Strive HI performance, schools can receive technical assistance and customized supports that have been approved for implementation in Hawaii’s schools. The School Transformation Branch under the Office of Strategy, Innovation, and Performance is responsible for coordinating and monitoring the support system for the identified schools.

For additional information regarding the STATE and BOE Strategic Plan and Strive HI Performance System, see the STATE websites at:

- <http://www.hawaiipublicschools.org/VisionForSuccess/AdvancingEducation/StrategicPlan/Pages/home.aspx>
- <http://www.hawaiipublicschools.org/VisionForSuccess/AdvancingEducation/StriveHIPerformanceSystem/Pages/home.aspx>

### **2.4 Business Goals and Objectives**

The intent of this contract is for the PROVIDER to provide School Improvement Services using its expertise and materials in various methods and approaches so that each Client School is able to comply with the STATE and Federal requirements for the use of funds.

Specifically, each Client School, the consumer of school improvement services, shall demonstrate an improved performance within the Strive HI Performance System. The Strive HI will serve as a diagnostic

tool to understand a school's performance and progress and differentiate schools based on their individual needs for support and intervention.

The STATE will include each school's performance on the school level report. The performance scores will be used to customize the supports and interventions to meet the school's needs. Performance scores will be provided for the following categories in the Strive HI Performance System:

- **Achievement:** The Achievement indicators measure whether a school is providing students with the math, reading, and science skills for a solid academic foundation. Math, reading, and science proficiency will be measured by the statewide assessments in grades 3 - 8 and 11. The Smarter Balance assessment was administered starting in SY 2014-15 and continues to be administered until the state assessment policy is revised.
- **Growth:** The Growth indicators measure whether a school is improving students' reading and math scores over time in grades 4 – 8 and 11.
- **Readiness:** The Readiness indicators measure whether a school is doing its part in ensuring students are ready to move through the K-12 pipeline prepared to graduate for college and careers.
  - For elementary and middle schools, the chronic absenteeism rate is defined as the percentage of students absent for 15 or more days a year (excluding medical emergencies).
  - For high schools, the performance system will use graduation and college going rates.
- **Subgroup Performance:** The Achievement Gap indicators measure the achievement gap between student subgroups and how well a school is narrowing gaps over time.
  - The current year indicator measures the current year gap, while the multi-year indicator will measure how the school has narrowed the gap over time.
  - The Achievement Gap indicators compare reading and math proficiency between two subgroups: "High-Needs" students and "Non-High Needs" students. The High-Needs category includes students in any one of the federally defined subgroups: disability, language or family income. Each student will belong to only one group, "High-Needs" or "Non-High Needs."

All of Hawaii's public schools will participate in this Strive HI Performance System. All of Hawaii's public schools will be able to utilize the resulting Price/Vendor List upon obtaining necessary approvals. For school level reports and additional information regarding Strive HI Performance System, see the STATE website at:

- <http://www.hawaiipublicschools.org/VisionForSuccess/AdvancingEducation/StriveHIPerformanceSystem/Pages/home.aspx>

### **3. SCOPE OF WORK; PROJECT AND OFFEROR REQUIREMENTS**

External services Providers will be expected to partner with State of Hawaii, Department of Education (STATE) state office and Complex Area Superintendents (CAS), State Public Charter School Commission (SPCSC), school administrators, and school leadership teams to implement strategic actions and strategies as described in the Provider's turnaround model to address the targeted areas in the Academic Plans for each school. All CSI and TSI schools will have a comprehensive needs assessment conducted during the current year which will be the basis for the Academic Plan (school plan) for SY 2020-2021. Schools identified by their CAS or by the SPCSC in need of additional targeted supports must also justify any request for external Provider services based on a needs assessment and approved Academic Plan. External Provider services must be collaboratively determined with the school and the CAS or SPCSC.

School transformation or school improvement is generally defined in research literature as a dramatic and comprehensive intervention in a low-performing school that produces significant gains in student achievement within two academic years. At the same time, transformation must also prepare the school for the lengthier, subsequent and continuing process of transforming into a high-performing school organization.

The STATE has contracted with external services Providers for the past decade, and has documented evidence of successful strategies and actions that have resulted in a number of schools making significant progress. The STATE is cognizant of the importance of building the internal capacity of schools to sustain the progress in student achievement at the same time implementing a data driven approach that addresses systemic changes in school culture, organization and management. A key question for School Improvement Services is how long will it take to build sustainability for continuous improvement. For SY 2020-2021, the STATE is requesting that external Providers align their support services with the Strive HI Performance results for schools.

**The Proposal Narrative shall follow the following sequence:**

#### **A. Vision and Mission of Provider's Transformational Approach**

A Provider must describe the beliefs and values that drive its framework (approach) used in working with schools. The vision must reflect the core values and beliefs that can be shared with the school. What kinds of structures does the Provider have that support the implementation of its vision? What will it look like or feel like when the Provider's vision is implemented through its work at the school?

#### **B. Evidence of Effectiveness**

- A Provider must present evidence of a successful track record of working with transforming and sustaining school improvement in schools. Please provide a representative sampling of data that describe the results of various districts or schools. There should be documentation based on formative and summative data, on the effectiveness of the approach with unique or targeted populations (e.g. high poverty, English Language Learners, Special Education, etc.). Evidence should also include externally validated data, as well as other available data sources. Examples include but is not limited to: well-designed and well-implemented experimental studies, quasi-experimental studies, and correlational studies with statistical controls for selection bias.

#### **C. Programs and Services**

The priority areas of service are identified below with key questions to consider in preparing a description. After a description of the services, Providers should indicate a recommended number of days for training and follow-up that will assure positive outcomes. If there are prerequisites, clearly state them. Also, explain the parameters that allow for customization of services for each respective school.

Do not replicate the same description for each category of training. A generic description of a Provider's program(s) or services usually does not respond to "what will it look like when implemented at the school."

Descriptions should be concise and tailored to the specific topics identified: needs assessment, leadership, coaching and support, specialized areas such as SPED and ELL, RTI, innovation and creativity.

- 1) **Needs Assessment.** The approval to purchase any external Provider services will be based on a needs assessment, or for eligible Title I schools, a Comprehensive Needs Assessment (CNA) conducted at a school site to determine the need for the specific identified services. An external Provider may be requested to conduct a needs assessment or to train school personnel in conducting their own needs assessment.
  - a) How does the Provider conduct a needs assessment for a school?
  - b) How does the Provider train and guide a school to conduct its own needs assessment as an ongoing process?
  - c) What kinds of data, information and process are used to provide an analysis of where a school is at in areas such as School Culture, Leadership, Curriculum, Instruction, Assessment and Student Support?
  - d) How does the needs assessment address identifying causes of issues and problems?
  
- 2) **Training in Leadership**
  - a) How does the Provider train complex area personnel, charter commission personnel, principals, leadership teams, and professional learning teams in creating organizational structures that support inclusive practices and decision-making through a school improvement process?
  - b) How does the Provider empower administrators, teachers, and support staff to use multiple sources of data, analyze data, and draw appropriate conclusions that impact developing, implementing and monitoring an effective Academic Plan?
  
- 3) **Training in Coaching and Support for Complex Area Personnel, Charter Commission Personnel, School Level Coaches, and Teachers.**
  - a) How does the Provider design training for principals/administrators as coaches, and teacher leaders as coaches? Describe the process and strategies used in classroom observation protocols and providing feedback to teachers with a focus on improving student learning through effective instruction.
  - b) How does the Provider design training in the following areas:
    - 1) Common Core/NGSS content area knowledge and instruction,
    - 2) standards-based teaching and learning,
    - 3) implementation of best practices in instruction, and
    - 4) application of formative assessment strategies in the classroom to improve instruction and student learning?
  - c) How does the Provider help the school to improve the culture and environment for learning?
  
- 4) **Training in Specialized Areas**
  - a) How does the Provider help the school to assess its delivery of services to meet the needs of specialized target groups of students, especially a) Students in Poverty, b) English Language Learners, and c) Special Education students?
  
  - b) How does the Provider help the school to develop an effective Response to Intervention (RTI) A (Academic) and B (Social and Emotional Learning) system or Multi-Tiered System of Supports (MTSS)?
  
- 5) **Supporting Equity, Excellence, and Innovation in Effective Teaching and Learning in a School**

- a) How does the Provider help to create a deeper understanding of the shift from skills and knowledge to a focus on problem-solving learning that enables students to solve authentic community challenges and develop pathways to goals?
- b) How does the Provider help a school develop rigor and relevance in classrooms where students have an authentic voice and are empowered to direct their own learning?
- c) How does the Provider guide the school in building and sustaining a culture and learning environment designed to mitigate disempowering differences to enable all students to thrive academically, socially, and civically?

#### **D. Pricing of Services**

**Pricing for the services to be offered should be presented in terms of the cost per day.** The cost per day should be inclusive of consultant fee, air and ground travel, and per diem costs for the trainer. This per day cost should be calculated to include the consultant fee, one round-trip airfare (if the trainer is from the mainland), a per day rental car fee, and one day per diem cost (hotel and food costs) and taxes, if applicable. If there is a range in consultant fees for different trainers, that should be clearly identified in the pricing. Transportation and per diem costs should be the same for all trainers. A breakdown of costs shall be provided. No additional costs will be accepted except for additional days of services requested by the school or for resource materials required for the training.

#### **E. Provide a “Summary Offer of Services and Price List.” (Appendix B)**

Summary Offer of Services and Price List shall include separate pricing for each area of service available to be provided. Pricing should be presented in terms of the cost per day, which should be inclusive of consultant fee, air and ground travel and per diem and taxes, if applicable. Refer to Section D, *Pricing of Services*. If there are additional costs for materials, that should be stated separately and explained. Include options to customize services where a school can either request for fewer days or add additional days, and state the cost of each additional day of service. The summary description and pricing will be used to submit the request to purchase services to the CAS on the Exhibit 1, *Authorization of Services and Payment*, document and must be approved for authorization to begin the services and a later approval for payment of services upon completion of the training.

#### **3.1 Offeror Qualifications**

The purpose of the Offeror Qualifications section is to provide the STATE the ability to verify the experience and knowledge claims made in the proposal by the Offeror and to assess the Offeror's prior record in providing services to other organizations.

Minimum Qualifications of the Offeror are specified in Section 4.9, Offeror Qualifications.

Failure on the Offeror's part to meet the requirements herein may result in a determination of non-responsiveness and subsequent disqualification of Proposal. These requirements shall remain in effect throughout the entire contract period. Failure to maintain these requirements may result in cancellation of award or early, partial or termination of a contract.

Organizations doing business with the STATE must have the capacity to manage and monitor administrative contract requirements:

- The Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.
- The Offeror shall also comply with all business registration requirements prior to commencing work under the contract.

## **4. PROPOSAL**

### **4.1 General Requirements**

- 4.1.1 Any and all costs incurred by an Offeror in preparing and submitting a Proposal and conducting discussions, if any, shall be at the Offeror's sole expense and are the Offeror's sole responsibility. This includes the cost of any visits to client references, and STATE locations by an Offeror, but does not include any costs incurred by the STATE or its representatives for Offeror demonstrations or site visits.
- 4.1.2 Before submitting a proposal, each Offeror must examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, and any other relevant documentation.
- 4.1.3 Offerors are charged with presumptive knowledge of all requirements of all cited authorities. Offeror must become familiar with state, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work before submitting a proposal. Submission of a proposal by any prospective Offeror shall constitute admission of knowledge on the part of such Offeror.
- 4.1.4 The Scope of Work, Minimum Contract Provisions, General Conditions and other documents referenced in or attached to the proposal shall be considered a part of the proposal submitted, whether or not attached to the proposal at the time of submission. Such documents shall not be altered in any way; any alterations so made by the Offeror may result in rejection of the proposal.
- 4.1.5 Submission of a proposal shall constitute an incontrovertible representation by the Offeror of understanding, acceptance, and compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.
- 4.1.6 Any proposal may be withdrawn at any time on the HlePRO prior to the deadline for receipt of offers. The withdrawal of a proposal shall not prejudice the right of an Offeror to submit a new proposal, but any such new proposal must be received before the stated deadline.
- 4.1.7 A proposal that contains any omission, erasure, addition not called for, conditional offer or irregularity of any kind may be rejected. Corrections, if necessary, may be made by submitting a revised proposal on the HlePRO prior to the proposal due date and time or by lining out the materials to be corrected and by inserting the correction as close to the line-out as possible. Every such correction must be initialed by authorized individual signing the Proposal Identification and Information Form.

### **4.2 Confidential Information in Proposal**

The contents of any proposal shall not be disclosed during the review, evaluation, or discussion process. Once the notice of the award is posted, all proposals (both successful and unsuccessful) become available for public inspection.

If an Offeror believes that any portion of the proposal contains information that should be withheld as confidential, then the Procurement and Contracts Branch should be so advised in writing. Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential.

Such data shall accompany the Proposal, be clearly marked, and shall be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal.

Whether those parts shall remain confidential will be determined under § 3-122-58(b), HAR and Chapter 92F, HRS. Pursuant to Section 3-122-58, HAR, if a person requests to inspect the portions of a proposal designated as confidential, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, Hawaii Revised Statutes (HRS). If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with Section 92F-42(12), HRS.

### **4.3 Proposal Preparation**

One of the objectives of this RFP is to make proposal preparation easy and efficient, giving offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. When an offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the offeror has identified as necessary to successfully meet the obligations outlined in this RFP.

The proposal shall describe in detail the offeror's ability and availability of services to meet the primary project goal of this RFP as stated herein. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate to the purpose of this RFP. Emphasis shall be on completeness and clarity of content. If any additional information is required by the STATE regarding any aspect of an offeror's proposal, such information shall be provided within two (2) business days of the STATE's request unless otherwise stated or directed by STATE.

### **4.4 Proposal Security**

A Bond is not required if submitting a Proposal.

### **4.5 Proposal Submission and Format**

This section prescribes the standard format for a proposal submitted in response to this RFP.

Offeror shall submit a Proposal using the exact forms or reproductions of such forms as provided and as otherwise instructed by this RFP. Failure to comply may result in a determination that the proposal is non-responsive.

The standard format will facilitate the STATE's review, comparison, evaluation of proposals, and verification as to whether the minimum requirements are met by each Offeror and the Offeror's Proposal. The format is not intended to limit the content of a proposal in any way. The offeror may include any additional data or information that is deemed pertinent to this RFP.

This electronically submitted offer shall be considered the original. Any offers received outside of the HlePRO shall not be accepted or considered for award, unless otherwise specified herein. The maximum file size that HlePRO can accept is 100MB. Files larger than 100MB must be reduced into two or more files.

Proposals shall be submitted and received electronically by the specified due date and time through the HlePRO (<http://hiepro.hawaii.gov>).

### **4.6 Proposal Organization and Content**

Proposals shall be organized in this order:

Table of Contents: The table of contents shall clearly identify the material by section and by page number.



Section 1:	Proposal Identification and Information Form (See Appendix)
Section 2:	Executive Summary
Section 3:	Offeror Qualifications (including subsections: Offeror History and Background, Customer References, Project Team Organization and Project Team Staffing)
Section 4:	Subcontractors (if any)
Section 5:	Offer of Services (Proposal Narrative and Appendix B, Summary Offer of Services and Price List)
Attachment A:	Proof of Compliance Documents

Additional information about specific requirements of each section follow.

#### **4.7 Proposal Identification and Information Form**

Offeror shall submit the Proposal under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and shall indicate exact legal name in the appropriate space on the Proposal Identification and Information Form. Failure to do so may result in rejection of the proposal or delay proper execution of a resulting contract, if any.

The Offeror's authorized signature on the PROPOSAL IDENTIFICATION AND INFORMATION FORM shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

A hard copy of the PROPOSAL IDENTIFICATION AND INFORMATION FORM must also be received by the Hawaii Department of Education, Procurement and Contracts Branch, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, within five (5) working days after the proposal due date.

#### **4.8 Executive Summary**

The executive summary shall summarize the contents of the Proposal in a way that gives readers a broad understanding of the entire Proposal and must also contain the following:

Terms and Conditions - A statement that the Offeror understands and shall comply with all terms and conditions of the RFP (including the General Conditions).

Subcontracting - A statement that the products and services of the proposed solution shall be provided solely by the Offeror or whether a subcontractor(s) shall assist. The Offeror's use of subcontractor(s) requires the prior written approval of the STATE.

Taxable Transaction - Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they may be liable for payment of the Hawaii General Excise Tax (GET). If an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Pending Litigation - The Offeror shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain how litigation may materially impact the Offeror or the Offeror's ability to fully perform and complete the contract.

Other Notable Items - The Offeror shall disclose any other items of note that may have material impact the Offeror or the Offeror's ability to fully perform and complete the contract.

#### **4.9 Offeror Qualifications**

This section of the Proposals shall include the following:

Offeror History and Background. The Offeror shall describe its corporate background and experience including its size and resources, details of corporate experience relevant to the project and a list of other current or recent related projects.

Customer References (up to three (3)). A description of projects previously performed by the Offeror that are relevant to this project and demonstrate the Offeror's qualifications and experience, including customer name, brief description of the project, time period of the project and the computer environment used.

Project Team Organization. The Offeror shall present an organizational chart of staff who will be assigned to work on the contract. This shall include the Offeror's and STATE provided resources as defined to provide the STATE an understanding as to how the Offeror envisions utilizing its and STATE's resources. Descriptive information for personnel, indicating their titles, major areas of responsibility and location, with proposed estimates of the staff-hours to be provided by each individual.

Project Team Staffing. The Offeror shall include specific information regarding the role and function of its assigned staff. The Offeror shall also provide resume/vita for all staff who will be specifically assigned to the contract and provide a narrative description of their roles and expertise; particularly the staff with a track record of success in having worked with schools. If the Offeror's solution involves use of subcontractors in an amount greater than 10% of the project's budget, resumes of any subcontractors shall also be included.

Resumes of key personnel shall highlight experiences on specific projects that may be relevant to this project. Resumes should contain information relating to each person's experience, education, and skills. This should include, but is not necessarily limited to, specific degrees, dates, names of employers, position titles, and educational institutions attended.

#### **4.10 Subcontractors**

The Offeror may propose to fulfill any of the responsibilities outlined herein by entering into a sub-contract with an individual, organization, or other entity that possesses the requisite expertise to fulfill the requirements of the RFP. The Offeror shall retain sole responsibility for the completion of all tasks. The use of subcontractors shall not place additional burdens or demands on the STATE (e.g., coordinating with staff from multiple PROVIDERS).

For any item listed herein to be fulfilled by a subcontractor, the Offeror shall provide a description of the proposed partner and the subcontractor's capability to meet the demands of the RFP. In the event the Offeror elects to engage the participation of a subcontractor, the STATE retains the right to approve the selection of the subcontractor and the proposed role that the Offeror shall fulfill under this contract.

If a proposal involves the use of any subcontractor, the subcontractor shall also comply with the Offeror qualifications requirements identified in the following sections:

- Offeror History and Background
- Customer References
- Project Team Organization
- Project Team Staffing

#### **4.11 Offer of Services (Proposal Narrative and Appendix B, Summary Offer of Services and Price List)**

The Offer of Services shall include a description for each service area the Offeror is interested in providing. Each service area or bundled service (combined package) areas shall be presented separately in narrative format to describe the process or approach used in working with complex areas or individual schools in any service area.

The Offer of Services must address tasks described in the scope of work, and any other tasks necessary, and specify all costs to be incurred within the contract period. The costs in the proposal shall be based on equivalent market prices, and have been arrived at independently without consultation, communication, as to any matter related to such prices with any other Offeror for this RFP. In the event the Offeror intends to enter into a partnership with a subcontractor, the Offeror shall provide all necessary cost information regarding the subcontracted task.

The price proposal shall be inclusive of all costs, direct or indirect, and all applicable taxes, as required for the fulfillment of the contract.

If awarded, the *Summary Offer of Services and Price List* (Appendix B) may be utilized to make the Provider's information available for viewing by the interested state offices and complex area support staff and schools. Therefore, careful consideration should be given to the amount, type and presentation of the information Offerors include in the summary.

#### **4.12 Proof of Compliance Documents**

Offeror is advised that if awarded a Contract under this RFP, Offeror shall, upon award of Contract, furnish the required certificates and documentation (refer to RFP section regarding Responsibility of Offerors). In order to expedite contract execution, if any, it is highly recommended that the certificates be submitted with the Offeror's Proposal as follows:

- A. Certificate of Compliance as issued by the Hawaii Compliance Express online system
- B. Certificate of Insurance

#### **4.13 Certification of Independent Cost Determination**

By submitting a proposal in response to this solicitation, Offeror certifies as follows:

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

## 5. PROPOSAL EVALUATION

The STATE reserves the right to reject any or all Proposals, and waive any defects if the STATE believes the rejection or waiver to be in the best interest of the STATE.

The evaluation will be based solely on the evaluation criteria detailed in this RFP, and shall be performed by the selected members of the Evaluation Committee consisting of at least three (3) governmental employees with sufficient qualifications and experience in this area.

Evaluation criteria and the associated points are listed below. Quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

A contract may be awarded on the basis of initial Proposals received, without discussion. Therefore, each initial proposal shall contain the Offeror's best terms from a technical and cost/price standpoint.

Proposals may be classified initially as acceptable, potentially acceptable, or unacceptable. Discussions may be conducted with Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without such discussions.

The final selection of a Successful Offeror, if any, will be made in accordance with the evaluation criteria as specified herein.

### 5.1 Evaluation Process Overview

The Evaluation Committee will apply a numerical rubric to evaluate the proposals. The following sections describe the evaluation process in more detail.

- Phase 1: Preliminary Evaluation of Proposals
- Phase 2: Rating and Determination of Priority Listed Offerors
- Phase 3: Discussion with Priority-Listed Offerors (at STATE's option)
- Phase 4: Best and Final Offers (at STATE's option)
- Phase 5: Selection and Award

### 5.2 Evaluation Criteria

**Scoring under this RFP shall be based on a total of 75 points. Proposers must score a minimum of 30 points to be considered for award. Proposals that score less than 30 points will be rejected and shall not be considered for award.**

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt proposal submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

Criteria	Points
<b>Vision and Mission of Provider's Turnaround Approach</b>	<b>6</b>
1 Provider understands leading indicators of success that impact school turnaround and student achievement	3
2 Provider's vision is realistic and achievable	3
<b>Evidence of Effectiveness</b>	<b>6</b>
1 Evidence includes externally validated data that documents success with various student populations and school levels	3
2 Evidence documents sustainability of progress over time	3

<b>Provider Programs and Services</b>		
<b><u>Needs Assessment</u></b>		<b>9</b>
1	Provider's approach to needs assessment includes an extensive data collection process and analysis of data	3
2	Provider's approach includes strategies on conducting a needs assessment	3
3	Provider's needs assessment process addresses identification of root causes of issues and problems	3
<b><u>Training in Leadership</u></b>		<b>9</b>
1	Provider differentiates training for principals, leadership teams, and professional learning teams and creates organizational structures that support inclusive practices and decision-making	3
2	Provider empowers leadership at the school to use multiple sources of data, analyze data, and draw appropriate conclusions	3
3	Provider trains leadership on how to systematically implement and monitor progress based on measurable outcomes	3
<b><u>Training in Coaching and Support for Complex Area Personnel, Charter Commission Personnel, School Level Coaches and Teachers</u></b>		<b>21</b>
1	Provider trains school personnel in protocols and processes that support both coaches and classroom teachers	3
2	Provider describes a process and strategies used for classroom observation and providing feedback to teachers to support student learning	3
3	Provider describes training in the following areas:	
	a Common Core/NGSS – emphasis in ELA, Math, Science	3
	b Standards-based teaching and learning	3
	c Implementation of best practices in instruction	3
	d Application of formative assessment strategies to improve instruction and student learning	3
4	Provider describes training in building understanding of how school culture and the environment for learning impact student learning	3
<b><u>Training in Specialized Areas</u></b>		<b>15</b>
1	Provider describes training in Response to Intervention (RTI) A (Academic) and B (Social and Emotional Learning) or Multi-Tiered Systems of Support (MTSS) on addressing the needs of every student	3
2	Provider describes training in assessing and improving the delivery of services to meet the needs of targeted groups of students:	
	a Students in Poverty	3
	b English Language Learners (ELL)	3
	c Special Education (SPED)	3
3	Provider assures follow-up for schools to institutionalize a support system that supports academic achievement for all students	3
<b><u>Supporting Equity, Excellence, and Innovation in Effective Teaching and Learning in a School</u></b>		<b>3</b>
1	Provider describes research-based strategies that address equity, student voice, and rigor and relevance in classrooms that allow students to be empowered and direct their own learning	3
<b>Qualifications of Provider Staff</b>		<b>6</b>

- |   |  |   |
|---|--|---|
| 1 | Provider has high quality trainers based on their track record of success and evidence of effectiveness                    | 3 |
| 2 | Provider has the capacity and track record to provide long term and embedded services to support schools and complex areas | 3 |

**TOTAL POINTS POSSIBLE** **75**

**5.3 Preliminary Evaluation**

A preliminary evaluation shall determine whether each proposal is considered responsive, thus justifying further evaluation. In its preliminary evaluation, the STATE will examine the completeness of each proposal, and its compliance with the instructions, terms and conditions in this RFP. Subsequent review and evaluation will be based on the criteria stated in the following sections. Any proposals that are incomplete or that do not comply with the instructions or terms and conditions may be rejected by the STATE and excluded from further consideration.

Responsive proposals must meet all submittal requirements and the minimum eligibility requirements described in the RFP.

**5.4 Priority-List of Offerors**

Before conducting discussions, a priority list shall be generated by the Evaluation Committee. In order to generate a priority list, proposals shall be initially classified as acceptable, potentially acceptable or unacceptable.

All responsive Offerors who submit acceptable proposals or potentially acceptable proposals are eligible for the prioritized listing.

If numerous acceptable and potentially acceptable proposals are submitted, the Evaluation Committee may limit the priority list to at least three (3) responsible Offerors who submitted the highest-ranked proposals.

**5.5 Discussions with Priority-Listed Offerors**

Discussions may be conducted with Priority-Listed Offerors if deemed advantageous by the STATE. Discussions will be limited to only "priority-listed" offerors and are held 1) to promote understanding of the STATE requirements and the priority-listed offeror's proposals and 2) to facilitate arriving at a contract that will provide the best value to the STATE, taking into consideration the evaluation factors set forth in the RFP. Discussions may include Offeror presentation of its Proposal, interviews with Offeror's key personnel, demonstrations, site visits, or teleconferences. Any discussions shall be conducted in an organized and consistent manner established by the STATE, and in accordance with the following:

- 5.5.1 Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.
- 5.5.2 Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed Offeror.
- 5.5.3 If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to the priority-listed offerors.
- 5.5.4 Priority-listed offerors may be permitted to amend proposals already submitted, limited to the discussions conducted.

- 5.5.5 If in the opinion of the Evaluation Committee a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP will be issued.
- 5.5.6 The contents of any proposal shall not be disclosed so as to be available to competing offerors during the discussion process.

## **5.6 Best and Final Offers (at STATE's Option)**

Following discussions between the Evaluation Committee and the Priority-listed Offerors, each Priority-listed Offeror may be asked to provide their best and final offer. In that event, the procedure as listed below shall apply.

- 5.6.1 The Evaluation Committee will establish a date and time for submission of best and final offers.
- 5.6.2 Offerors may be afforded the opportunity to revise their proposals, including price, during the best and final offer phase.
- 5.6.3 If an Offeror does not submit a notice of withdrawal or a best and final offer, the Offeror's immediate previous proposal will be construed as their best and final offer.
- 5.6.4 After best and final proposals are received, final evaluations will be conducted for an award.
- 5.6.5 Best and final offers shall be submitted only once, unless the Head of the Purchasing Agency determines that it is in the STATE's best interest to conduct additional discussions or change the STATE's requirements by addendum distributed only to priority-listed offerors and require another submission of best and final offers. Otherwise, no discussion of or change in the best and final offers shall be allowed prior to award.

**APPENDICES:**

Appendix A: Proposal Identification and Information Form

Appendix B: Summary Offer of Services and Price List

Appendix C: Contract Minimum and Special Conditions

Appendix D: State's General Conditions



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TO ADDRESS HAWAII STATE PRIORITIES  
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Appendix A  
PROPOSAL IDENTIFICATION AND INFORMATION FORM

Exact Legal Name of Offeror, including "dba" or "division" of a corporation (furnish the exact legal name of the entity under which an awarded contract, if any, will be executed):	
Principal Place of Business (may not be a P.O. Box):	
Mailing Address (only if different):	
Offerors Primary Contact Person:	Name/Title: _____ Telephone/Fax No.s: _____ e-mail address: _____
Federal Tax Identification Number:	
State of Hawaii General Excise Tax License Number:	
Type of Business Entity (check one):	<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Other _____
If other than a Sole Proprietorship:	Offeror is either:  <input type="checkbox"/> A <b>Hawaii business</b> incorporated or organized under the laws of the State of Hawaii; <b>OR</b>  <input type="checkbox"/> A <b>Compliant Non-Hawaii business</b> incorporated or organized under the laws of the State of _____, and registered with the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.  Date of incorporation/organization: _____  All state(s) where Offeror is authorized to transact business: _____  Names of all Offeror's parent, affiliate and subsidiary organizations: _____ _____ _____

The undersigned certifies that the information provided above is to the best of his/her knowledge true and correct, has carefully read and understands the terms and conditions specified herein and hereby submits the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof, and further that the Offeror shall comply with all terms, conditions and requirements of the RFP. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

\_\_\_\_\_  
Authorized (Original in ink) Signature

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

SCHOOL IMPROVEMENT SERVICES  
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Appendix B  
SUMMARY OFFER OF SERVICES AND PRICE LIST

**Organizational Information:**

**Name of Provider:**

**Contact** (include Title):

**Address** (include street, city, state, zip code):

**Telephone:**

**Fax:**

**e-mail:**

**Service Area:**

- Needs Assessment
- Training in Leadership
- Training in Coaching and Support for Complex Area Personnel, Charter Commission Personnel, School Level Coaches, and Teachers
- Training in Specialized Areas
- Supporting Equity, Excellence, and Innovation in Effective Teaching and Learning in a School

**Description of Service (Including Delivery Method):**

*Provide brief descriptions for each area of service (areas may vary in length of time and methods of delivery)*

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**Cost / Cost Structure:**

*Provide breakdown of costs as follows:*

- 1) *Consultant Fee (if there is a range in fees, note which consultants are on a continuum from low to high fees)*
- 2) *Travel Costs (include one round-trip airfare, car rental per day, and per diem per day)*
- 3) *Provide total price for one-day of service (include taxes, if applicable)  
(One day should include time starting at 8 am and ending at 3:30 pm or adjusted to meet full day of service)*

**Materials Required or Offered (*indicate cost, if applicable*):**

**Recommended Target Participants:**

*For example: Principals and teachers*

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**Evidence of Effectiveness:**

Provide **summary** of Evidence of Effectiveness with reference to RFP application (e.g. the number of schools or districts where positive impact was made, strengths of the process or services provided that was documented in studies conducted, etc.)

**Explain Capacity to Embed Service Provider Personnel in Hawaii:**

**Geographic Areas of Service (List Islands or geographic areas. If all islands are covered note "All"):**

**Additional Information Attached. Additional materials will not be considered for evaluation.**

- Supplemental Narrative description
- Other (brochures, catalogs, etc.)

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Appendix C  
CONTRACT MINIMUM AND SPECIAL CONDITIONS

**1.1 Contract Administrator**

For purposes of this contract, the person named below or his/her duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator: Cynthia Henry  
Telephone Number: (808) 305-9859  
e-mail Address: cynthia.henry@k12.hi.us

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the PROVIDER's work, documenting that PROVIDER maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the PROVIDER, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- notifying Procurement and Contracts Branch in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the STATE.>").

**1.2 PROVIDER's Point of Contact**

PROVIDER's primary point of contact shall be listed by name, and shall identify the PROVIDER's point of contact's telephone, facsimile and email address.

PROVIDER shall notify the STATE, verbally within twenty-four (24) hours, upon the occurrence of any of the events indicated below:

- 1.2.1 Change in the PROVIDER's business address or phone number;
- 1.2.2 Change in the PROVIDER's tax identification number; or
- 1.2.3 Any other situation that could reasonably be expected to affect the PROVIDER's ability to carry out its obligation under this contract.

**1.3 Verification of PROVIDER Employees**

In accordance with State rules and regulations, PROVIDER shall conduct mandatory criminal background checks at no cost to the STATE, on any employee or subcontractor working directly with students.

PROVIDER shall notify the STATE, verbally within twenty-four (24) hours, upon learning of the occurrence of any of the events indicated below:

- 1.3.1 Any employee, agent or volunteer's license required to perform services under this contract is or has been suspended, conditioned, revoked, expired, or terminated;
- 1.3.2 Any employee, agent or volunteer becomes or has been the subject of any disciplinary proceeding or action before any federal or state agency or Board;

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- 1.3.3 Any employee, agent or volunteer is or has been convicted of a fraud or felony;
- 1.3.4 Any claim, judgment or settlement in which the PROVIDER or any of its employees, agents or volunteers is or has been named a defendant;

PROVIDER shall maintain the background check records, and shall make the records available for review upon request. Upon review of these records, the STATE reserves the right to request additional background information.

**1.4 Liability Insurance and Certificates**

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

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

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

<u>Coverage</u>	<u>Limits</u>
<b>General Liability</b> , Commercial (Occurrence Form)	\$2,000,000 aggregate \$1,000,000 combined single limit per occurrence for bodily injury and property damage
<b>Automobile Liability</b> Combined Single Limit	\$1,000,000 per accident

General liability and automobile liability policies required by this contract, including a subcontractor's policy, shall contain the following clauses:

- 1) "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."
- 2) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

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

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

The procuring of such required insurance shall not be construed to limit PROVIDER's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy(ies) of insurance, PROVIDER shall be obligated for the full and total amount of any damage, injury, or loss caused by the PROVIDER, its employees, officers, or agents, in connection with this contract.

PROVIDER shall notify the STATE, via written notice within twenty-four (24) hours should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

### **1.5 Invoicing**

The PROVIDER shall submit an invoice with each request for payment. Original and one (1) copy of the invoice shall be submitted to the individual schools accessing the offered services.

All invoices shall reference this RFP number and Price/Vendor List No. E20-40.

If a copy is submitted as the original, such invoice must bear an original signature certifying that the invoice is being submitted as the original.

### **1.6 Payment**

Section 103-10, HRS, provides that the STATE shall have thirty (30) calendar days after receipt of an accepted invoice and satisfactory delivery of goods or performance of the services, to make payment. For this reason, the STATE shall reject any Proposal submitted with a condition requiring payment within a shorter period. Further, the STATE shall reject any Proposal submitted with a condition requiring interest payments greater than that allowed by section 103-10, HRS. The STATE will not recognize any requirements established by the Offeror and communicated to the STATE after award of the contract, which requires payment within a shorter period or interest payment not in conformance with section 103-10, HRS.

### **1.7 Final Payment**

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract expiration date. In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

- 1.7.1 A tax clearance certificate, not over two months old and with an original green "certified copy" stamp, must accompany the invoice for final payment. In addition to the tax clearance certificate, the "Certification of Compliance for Final Payment" (DOE Form-22) with an original signature will be required for final payment.
- 1.7.2 In lieu of the above, PROVIDER may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

### **1.8 Availability of Funds**

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the STATE and the PROVIDER shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

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If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE's obligations for payments in the current fiscal year. In that event, the STATE will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the PROVIDER of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant to permit the STATE to terminate the contract in order to acquire similar equipment or services from a third party.

**1.9 Subcontracting**

Prior to award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. After award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. No subcontract shall under any circumstances relieve the PROVIDER of its obligations and liability under its contract with the STATE. All persons engaged in performing the work covered by the contract shall be considered employees of the PROVIDER.

**1.10 Contract Staffing Requirements**

Personnel, whose names and resumes are submitted in the Proposal, shall not be removed from the project without prior approval of the CA. Substitute or additional personnel shall not be used for the project until a resume is received and approved by the CA. In the event of employee turnover, PROVIDER shall notify the CA immediately. The STATE shall have the right, and the PROVIDER shall comply with any request, to remove and replace any personnel from all work on the project effective immediately upon notification by the STATE. Personnel changes that are not approved by the CA may be grounds for contract termination.

**1.11 Exclusion of Specific Workers**

The STATE reserves the right to require the PROVIDER to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The Contract Administrator shall notify the PROVIDER in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The PROVIDER may appeal this decision to the Contract Administrator, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the PROVIDER to employ the removed individual, but shall apply to any work requiring interaction with the STATE, its employees or students.

**1.12 Records Retention**

Should the CONTRACTOR be aware of or be made aware of any dispute, disagreement, or request relating to the files, books, or records prior to their destruction, the CONTRACTOR shall retain the files, books, and records until said dispute, disagreement, or request has been fully resolved, including any potential lawsuits or appeals. Said files, books, and records may thereafter be destroyed upon obtaining the agreement of the STATE.

**1.13 Inspection and Procedural Changes; Relief Available to State**

All work is subject to inspection, evaluation, and approval by the CA. The STATE may employ all reasonable means to ensure that the work is being performed in compliance with the contract. Should the CA determine that corrections or changes are necessary in order to accomplish the intent or purpose of the contract, the CA may direct the PROVIDER to make such changes.



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In addition to all rights and remedies available to the STATE provided in this contract or otherwise provided under law, if the PROVIDER is in non-compliance with contract requirements, the STATE may:

- 1.13.1 Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the PROVIDER;
- 1.13.2 Suspend Referrals – Suspend referrals to the PROVIDER should the PROVIDER fail to comply with any of the requirements or other term(s) or condition(s) of this contract and, further, the STATE may maintain the suspension of referrals until such time as the deficiency or non-compliance is corrected and the PROVIDER’s corrective actions are determined to be acceptable by the STATE; and
- 1.13.3 Seek Reimbursement – Seek reimbursement from the PROVIDER or withhold future payments for any funds paid to the PROVIDER subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- 1.13.4 Seek Market Value – In the event the PROVIDER fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the PROVIDER, the difference between the price named in the contract and the actual cost to the STATE. In case any money due the PROVIDER is insufficient for said purpose, the PROVIDER shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

**1.14 Confidentiality**

The following serves to supplement provision 24 of the General Condition, entitled "Confidentiality of Material" and provision 42, entitled "Confidentiality of Personal Information":

- 1.14.1 General Confidentiality Obligations. While performing under this contract, the PROVIDER may receive, be exposed to or acquire confidential information. Such information may include names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other educational, student, or personal employment information. The information may be in written or oral form, fixed in hard copy or contained in a computer database or computer readable form. Hereinafter, such language shall be collectively referred to as "Confidential Information."

The PROVIDER, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information: (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the STATE and subject to the STATE’s limitations on confidentiality of information and relevant legal requirements of the State to include, but not be limited to the Family Educational Rights and Privacy Act ("FERPA"). Permission will be granted through a formal written agreement concerning the disclosure of personally identifiable information (PII) from student education records, signed by the STATE and the PROVIDER, and must be provided as an attachment to this contract; (ii) They shall only permit access to Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this contract; and (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential in compliance with all relevant state and federal laws.

PROVIDER, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The PROVIDER shall provide the STATE with a list of individuals (by name and position) who are authorized to handle the Confidential Information (hereinafter

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referred to as “Authorized Handlers”). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which will be kept on password protected computers with the hard copy documents kept in a locked file cabinet. PROVIDER shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

PROVIDER will be responsible for safeguarding the confidentiality of all Confidential Information it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. PROVIDER shall be liable to the STATE and to any person whose records the PROVIDER receives custody of under this contract for records protection for any unpermitted release, viewing, or loss of such records. PROVIDER shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. PROVIDER shall return all documents containing Confidential Information upon completion of the services PROVIDER is contracted to provide under this contract.

1.14.1.1 Prior Written Approval: PROVIDER may not i) share Confidential Information or any other data received under this contract, ii) publish, or iii) distribute such information without the prior written approval of the STATE.

1.14.1.2 In the event of termination of this contract, PROVIDER shall return to STATE all student information received under this contract and further agrees to destroy any and all copies of, or references to, any student information shared by STATE as a result of this contract.

### **1.15 Approvals**

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

### **1.16 Ownership of Documents**

General Conditions paragraph 26 entitled “Ownership Rights and Copyright” is deleted entirely and replaced with the following:

All documents and reports and student data/records developed or generated under this contract shall be the sole property of the STATE. PROVIDER retains ownership of any proprietary or copyrighted materials, data, software, technologies, test items, test forms that are previously developed, owner and/or copyrighted by the PROVIDER and used or adapted for use under this contract.

### **1.17 Special Conditions are Supplemental**

Unless otherwise stated, these Special Conditions shall serve to supplement the General Conditions; both documents remain part of the Contract with full force and effect.

Appendix D  
STATE'S GENERAL CONDITIONS

ATTACHED

# GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 13. Termination for Default.

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

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



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

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

#### 14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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



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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

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