



**Department of Business, Economic  
Development, and Tourism  
Hawaii State Energy Office**

**REQUEST FOR PROPOSALS**

**RFP-21-029-HSEO-EERE**

The purpose of the Hawaii State Energy Office (HSEO) is to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient clean energy economy by 2045 (Hawai'i Revised Statutes §196-71).

The HSEO is the primary government entity leading this charge. Under the new authority granted by the Hawai'i State Legislature in Act 122, Session Laws of Hawai'i 2019, the HSEO will carry out the activities and coordination necessary to achieve Hawai'i's clean energy transformation. To advance the state's collective energy vision and the HSEO's statutory responsibilities, HSEO is developing a statewide clean energy public education and outreach program. This project is an important element of the program.

**OFFERS  
FOR**

**Clean Energy Education Program**

**STATE OF HAWAI'I  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM  
HAWAII STATE ENERGY OFFICE**

**WILL BE RECEIVED UP TO 2:00 P.M. (HST) ON**

**WEDNESDAY, MARCH 17, 2021**

BY SUBMISSION TO THE HAWAI'I EPROCUREMENT SYSTEM (HiePRO). PLEASE DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO SUSAN GRAY-ELLIS AT [SUSAN.GRAY-ELLIS@HAWAII.GOV](mailto:SUSAN.GRAY-ELLIS@HAWAII.GOV).

Due to the COVID-19 pandemic, a hard copy of the solicitation may be obtained from the HSEO CONTRACTS OFFICE only with advanced notice. Please call Susan Gray-Ellis at 808-587-9002 to make prior arrangements. There will be a five cent (\$0.05) per page charge for copies. This solicitation may also be accessed via the following URL: <http://spo.hawaii.gov>>click on HiePRO (eProcurement System tile).

The Hawaii State Energy Office is committed to providing equal access consistent with the Americans with Disabilities Act (ADA), the Americans with Disabilities Amendment Act of 2008 (ADAAA), and other state and federal laws. If you have a disability that may restrict your ability to meaningfully participate in this solicitation, we will provide you with a reasonable and appropriate accommodation at no cost to you. If you need an auxiliary aid, service or other reasonable accommodation, please contact Susan Gray-Ellis at 808-587-9002 or [susan.gray-ellis@hawaii.gov](mailto:susan.gray-ellis@hawaii.gov). Requests made as early as possible will allow adequate time so that we may best serve you.

\_\_\_\_\_/s/  
SCOTT J. GLENN  
PROCUREMENT OFFICER  
DEPARTMENT OF BUSINESS, ECONOMIC  
DEVELOPMENT AND TOURISM  
HAWAII STATE ENERGY OFFICE

HAWAII STATE ENERGY OFFICE

**TABLE OF CONTENTS**

SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES .....3  
SECTION TWO: BACKGROUND AND SCOPE OF WORK.....7  
SECTION THREE: PROPOSAL SUBMISSION AND CONTENT ..... 11  
SECTION FOUR: EVALUATION CRITERIA..... 18  
SECTION FIVE: CONTRACTOR SELECTION AND CONTRACT AWARD.....21  
SECTION SIX: ATTACHMENTS AND EXHIBITS .....27

- Attachment 1: Offer Checklist
- Attachment 2: Proposal Transmittal Letter
- Attachment 3: Corporate Resolution
- Attachment 4: Qualifications Questionnaire
- Attachment 5: Contractor Reference Form
- Exhibit A: Overview of the RFP Process
- Exhibit B: General Provisions
- Exhibit C: General Conditions for 103D
- Exhibit D: Special Conditions (USDOE SEP Conditions)

For screen reader users. The Hawaii State Energy Office recognizes the use of diacritical markings of the Hawaiian language such as the ‘okina (also called a glottal stop) and the kahakō (also called a macron). Please note that screen readers may not read or pronounce the Hawaiian words correctly.

## SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

### 1.1 INTRODUCTION

The Hawaii State Energy Office (HSEO) is seeking proposals to develop a Statewide Clean Energy Public Education and Outreach Program in coordination with Hawai'i's Institutions of Public Education per HRS196-10.5 (a)(4). The objective is to help develop and expand clean energy curricula that support the U.S. Department of Education Common Core State Standards and the Hawai'i Department of Education Strategic Plan, Next Generation Science Standards, and to foster the adoption of clean energy curricula in schools.

HSEO believes Hawai'i's K-12 students are the next generation of clean energy leaders and sees value in investing in educational programs. Educating our K-12 students about clean energy and Hawai'i's carbon free economy goals will empower them to be part of the solution to reach our state's clean energy goals.

### 1.2 CANCELLATION

The Request for Proposals (RFP) may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State, pursuant to HAR §3-122-96 thru §3-122-97.

### 1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Attorney General
BAFO	=	Best and Final Offer
CPO	=	Chief Procurement Officer
GE	=	General Excise Tax
GP	=	General Provisions
HAR	=	Hawai'i Administrative Rules
HCE	=	Hawai'i Compliance Express
HlePRO	=	Hawai'i State eProcurement System
HOPA	=	Head of the Purchasing Agency
HRS	=	Hawai'i Revised Statutes
HSEO	=	Hawaii State Energy Office
HST	=	Hawai'i Standard Time
NGSS	=	Next Generation Science Standards
Offeror	=	Any individual, partnership, firm, corporation, joint venture or other entity submitting directly, or through a duly authorized representative or agent, a bid for the goods and/or services contemplated in this RFP
RFP	=	Request for Proposals

- SEP = State Energy Program, United States Department of Energy
- State = State of Hawai'i, including its departments, agencies, and political subdivisions
- USDOE = United States Department of Energy

**1.4 ELECTRONIC PROCUREMENT**

- 1.4.1 The State has established the Hawai'i State eProcurement System (HlePRO) to promote an open and transparent system for vendors to compete for state 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: <http://spo.hawaii.gov/HlePRO>, then select HlePRO Vendor Registration Guide.
- 1.4.2 The State will use HlePRO to issue the RFP, receive all Offers, and issue any 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 in Section 1.4 Schedule and Significant Dates. The State shall not be responsible for any person's or entity's failure to use HlePRO for any reason. The State is not responsible for any delay or failure of any Offeror to receive any materials updated through the RFP Process on a timely basis.
- 1.4.3 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 from Hawai'i government agencies only, calculated on a quarterly basis for the term. This transaction fee shall be based on the total sales made against this contract, payable to NIC Hawaii (formerly Hawaii Information Consortium), the vendor administering HlePRO. Refer to the "Instructions" tab in the HlePro solicitation for more details.
- 1.4.4 Offerors 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. 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.
- 1.4.5 Changes to the RFP, including but not limited to answers to questions and procurement requirements, shall be made via formal written addenda issued by the State. The State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the Hawai'i State eProcurement System (HlePRO) to obtain any RFP addenda or other information relating to the RFP.

**1.5 RFP SCHEDULE AND SIGNIFICANT DATES**

The schedule represents the State's best estimate of the schedule that will be followed. All times indicated are Hawai'i Standard Time (HST). If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same

number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. No questions will be received after the Question/Answer deadline.

The approximate schedule is as follows:

Release of Request for Proposals	<i>February 1, 2021</i>
Deadline to Register for Pre-Proposal Conference	February 10, 2021 2:00 PM HST
Pre-Proposal Conference	February 17, 2021 10:00 AM HST
Deadline to Submit Written Questions	February 24, 2021 2:00 PM HST
State's Response to Written Questions (if applicable)	March 1, 2021 4:30 PM HST
Proposal Due Date/Time	<i>March 17, 2021</i> 2:00 PM HST
Discussion with Priority Listed Offerors (if needed)	<i>TBD</i>
Best and Final Offer deadline (if necessary)	<i>TBD</i>
Notice of Award (estimate)	April 2, 2021
Contract Start Date (estimate)	May 3, 2021

## 1.6 PRE-PROPOSAL CONFERENCE

The purpose of the pre-proposal conference is to provide Offerors an opportunity to be briefed on this procurement and to ask questions about the procurement process. The pre-proposal conference is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP. If attending, please register via email to: [susan.gray-ellis@hawaii.gov](mailto:susan.gray-ellis@hawaii.gov) no later than Wednesday, February 10, 2021 at 2:00 PM HST. Email subject line should read: Pre-proposal Conference RFP-21-029-HSEO-EERE.

Offerors are advised that anything discussed at the pre-proposal conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

The pre-proposal conference will be held as follows:

Date: Wednesday, February 17, 2021

Time: 10:00 AM (Hawaii Time)

Location: Zoom – invitation will be sent directly to those participants who register by the deadline

**1.7 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS**

All questions must be submitted through the Hawai'i State eProcurement System (HlePRO). Questions must be submitted by the question deadline date and time shown in Section 1.5 RFP Schedule and Significant Dates. Answers will be given via the Hawai'i State eProcurement System (HlePRO) site as noted in Section 1.5 RFP Schedule and Significant Dates.

## SECTION TWO: BACKGROUND AND SCOPE OF WORK

### 2.1 PROJECT OVERVIEW AND BACKGROUND

With the passage of Act 122, Session Laws of Hawai'i 2019, the Hawaii State Energy Office (HSEO) has transformed into an attached agency of the Department of Business, Economic Development, and Tourism. The Legislature gave the HSEO a clearly defined mission: promote energy efficiency, renewable energy, and clean transportation to help Hawai'i achieve a resilient clean energy economy. Act 122 also created the position of the chief energy officer to lead the HSEO and assume the responsibility for guiding the State to reach its clean energy and decarbonization goals.

Learn more about the HSEO's statutory mandates:

- [Act 122 \(SLH 2019\)](#)
- [HRS §196-71, Hawaii state energy office](#)
- [HRS §196-72, Chief energy officer of the Hawaii state energy office](#)
- [HRS §196-10.5, Hawaii clean energy initiative](#)

Learn more about the priorities HSEO is focusing on to guide Hawai'i's transition to a resilient, clean energy economy in its [2020 Annual Report](#).

The HSEO provides the community and energy sector stakeholders with information, analysis, tools, and technical assistance needed to achieve Hawai'i's ambitious clean energy and climate goals. The HSEO is helping diversify and strengthen Hawai'i's economy by growing jobs, raising incomes and cultivating innovation. Programs developed and implemented by the HSEO play a significant role in promoting greater energy efficiency, increasing renewable energy penetration, and advancing clean transportation, with the aim of transitioning to a zero emission clean economy by 2045.

The HSEO aims to develop, as directed in HRS §196-10.5 (a)(4), "A statewide clean energy public education and outreach plan to be developed in coordination with Hawai'i's institutions of public education". HSEO sees value in investing in a clean energy educational program to help Hawai'i's K-12 students become the next generation of clean energy leaders. Educating our K-12 students about the function and importance of clean energy to meet our state goals and the United Nations Sustainable Development goals--as part of the State's responsibilities as a signatory to the Paris Agreement--will empower them to be part of the solution to reach our State's clean energy goals.

The educational program should provide age appropriate curricula and professional development for teachers to deliver curricula that ultimately achieve energy conscious and educated students. At the end of the program the students should be able to demonstrate basic knowledge about the following topics: Hawai'i's clean energy goals, energy production and delivery systems, energy efficiency and conservation, renewable energy, and clean transportation.

## 2.2 PURPOSE

The purpose of this Request for Proposals (RFP) is to establish a contract with a qualified Offeror to provide clean energy education and outreach program support to the Hawai'i Department of Education in partnership with the HSEO. This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data.

The selected Offeror will work directly with the HSEO's Clean Energy Outreach and Education Team including the Hawai'i Department of Education Specialist for Science and Science, Technology, Engineering, and Mathematics (STEM).

## 2.3 SCOPE OF WORK

The Contractor shall be able to provide **all services in all categories** described below. If the Contractor does not maintain the in-house subject matter expertise it will be their responsibility to secure the needed services as the Prime Contractor. Pursuant to the AG General Conditions (Exhibit A), the State shall have complete ownership of all material which is developed, prepared, assembled, or conceived by the Contractor.

- A. Develop and/or expand existing curricula and professional development programs: The educational program(s) should empower teachers to deliver clean energy curricula that ultimately achieve energy conscious and educated students. At the end of the program, the teachers should have competency in delivering the curricula and students should demonstrate basic, grade-level appropriate knowledge about Hawai'i's clean energy goals, energy production and delivery systems, energy efficiency and conservation, renewable energy, and clean transportation.

Develop and/or expand student classroom clean energy curricular materials aligned with the Common Core and Next Generation Science Standards, for both in-classroom and on-line delivery methods. Curricular materials shall be made freely available (i.e. Open Educational Resources) and posted on-line including via Hawai'i Department of Education and HSEO websites.

Develop and/or adapt clean energy professional development modules aligned with the Common Core and Next Generation Science Standards, for both in-classroom and on-line delivery methods.

Implement professional development modules with teachers from Title 1 and other schools to reach a minimum of 180 teachers and approximately 4,500 students (based on an assumption of about 25 students per classroom). Participants in the professional development should implement lessons with students, optionally as part of completing a portfolio for Professional Development credit.

Provide at least one classroom project-based learning toolkit to each teacher, including materials required to implement lessons.



- B. Administer pre- and post- assessments to teachers who participate in the professional development (PD) to demonstrate participant growth in knowledge and pedagogy. Student assessments or work are optional, including as part of completing a portfolio for PD credit.
- C. Create a Program Plan including outreach to schools, curricula development and/or expansion, targeted grade level(s), targeted number of teachers, classrooms and students, timeline, and budget.
- D. Quarterly and final reports shall include, but not be limited to: quantitative data demonstrating number of teachers trained and demographics reached, number of hours of teacher and student involvement, training evaluations and testimonials, images of training, recordings, student and other testimonials recorded for website, sustainability of program, and quarterly progress report with training updates and budget details.

## **2.4 SUCCESSION OF ADDITIONAL CONTRACTORS**

In the event the State chooses to contract with another vendor to provide the services of the Contractor at the end of this contract term or upon cancellation of the Contract, or if the State contracts with one or more additional vendors, the Contractor must provide reasonable transition assistance to the State and cooperation with one or more contractors. Under no circumstances will the existing Contractor have any right to compensation for investments or other expenditures that were undertaken pursuant to, or in anticipation of, an extension of the Contract.

## **2.5 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS**

Unless otherwise provided in this RFP, the Contractor is responsible for obtaining all official licenses, approvals, clearances and similar authorizations required by any local, State, or federal agency to perform the work required in this RFP.

## **2.6 INHERENT GOVERNMENT FUNCTIONS**

It is important to recognize, however, that the State has fundamental inherent government functions that should not be delegated to a contractor. Governmental personnel should be the only people making final decisions on proposed Contractor's services. Federal Procurement Law defines inherent functions to be performed only by government employees. The HSEO considers the following responsibilities inherently governmental:

- Determining what supplies or services are to be acquired by the Government;
- Approving any solicitation documents, to include documents defining requirements, specifications, incentives, and evaluation criteria;
- Negotiating cost and pricing;
- Awarding contracts;
- Approving post-award contract changes to include, but not limited to, ordering changes in contract scope, schedule, budget;
- Responding to evaluations of contractor performance and accepting or rejecting contractor products or services; and
- Terminating contracts.

## **2.7 HAWAII STATE ENERGY OFFICE RESPONSIBILITIES**

1. Provide direction and guidance as requested.
2. Provide general information in a timely manner.
3. Pay invoices in a timely fashion upon verification of satisfactory performance.
4. Maintain an oversight and advisory role for each of the tasks outlined above.

## **2.8 COMPENSATION**

1. The award shall be made on a firm, fixed fee, including all taxes.
2. The Contractor, and Sub-Contractor(s) if applicable, will document all expenses and expenditures in relation to this project.
3. The Contractor, and Sub-Contractor(s) if applicable, shall perform all of the above requirements within but not to exceed the amount specified by contract.

**Only proposals priced not to exceed \$150,000, including all taxes, shall be considered.** Funding for this project comes from the United States Department of Energy State Energy Program Formula Grants for Program Year 2020.

## **2.9 TERM OF CONTRACT**

The term of this Contract is intended to begin on approximately May 3, 2021 and end on June 30, 2022, unless otherwise terminated pursuant to the provisions contained in the General or Special Conditions. Should the federal funding be extended, a contract extension may be available upon mutual agreement between the STATE and the CONTRACTOR. The fees and other terms and conditions shall remain substantially the same as set forth in the Contract, unless otherwise authorized by the STATE.

All payments and term extensions are subject to the availability of funds and allotment by the Director of Finance, State of Hawai'i. The STATE agrees to make every reasonable effort to obtain all required approvals and perform and fulfill all requirements necessary to facilitate the availability and allotment of funds to pay CONTRACTOR's compensation under this contract, however, due to the current economic situation, early termination of the contract may be required due to potential funding reductions.

## **2.10 CONTRACT ADMINISTRATOR**

For the purposes of this solicitation, Susan Gray-Ellis, Program Specialist, susan.gray-ellis@hawaii.gov (808-587-9002), or another authorized representative will be designated as the Contract Administrator. The Contract Administrator is the single point of contact during the procurement process. Offerors and interested persons shall direct all questions regarding the procurement process and any other procedural questions that may arise related to this solicitation and resulting contract to the Contract Administrator. All other questions must be submitted in HlePro by the deadline for written questions.

## **SECTION THREE: PROPOSAL SUBMISSION AND CONTENT**

### **3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER**

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

### **3.2 REQUIRED REVIEW**

- 3.2.1 Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.
- 3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror must notify DBEDT in writing prior to the deadline for written questions as stated in SECTION 1.5 RFP *Schedule and Significant Dates*, as may be amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum and mitigate reliance on a defective solicitation and distribution of proposal(s) upon which award could not be made.

### **3.3 PROPOSAL PREPARATION COSTS**

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

### **3.4 TAX LIABILITY**

- 3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawai'i GET at the current 4.712% for sales made on O'ahu. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror must state its tax exempt status and cite the HRS chapter or section allowing the exemption.
- 3.4.2 Federal I.D. Number and Hawai'i General Excise Tax License I.D. Offeror must submit its current Federal I.D. No. and Hawai'i General Excise Tax License I.D. number in the space provided on the Proposal Transmittal Letter, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made in the State.

### **3.5 PROPERTY OF STATE**

All proposals become the property of the State of Hawai'i.

### **3.6 CONFIDENTIAL INFORMATION**

3.6.1 All government records are open to the public unless access is restricted by law.

The Uniform Information Practices Act requires an agency to make a government record available for inspection and copying, unless the agency can show that an exception to disclosure under Chapter 92F-13, HRS, authorizes the agency to restrict or deny access to that record.

3.6.2 All Offerors are advised that confidential information in a proposal, offer, specification, protest, or correspondence may be subject to disclosure. The State may only restrict or deny access to items deemed confidential pursuant to Chapter 92F, HRS. Any data submitted to the State that the Offeror wishes to remain confidential shall be clearly marked and be readily separable from the submittal in order to facilitate eventual public inspection of the non-confidential portion of the submittal.

3.6.3 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure pursuant to the Chapter 92F-13, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide the Procurement Officer with justification to support the Offeror's confidentiality claim at the time of submittal. Price is not considered confidential and will not be withheld; however, actual costs or pricing information that would enable competitors to estimate profit margins and production costs may be marked as confidential. These include selling prices, inventory balances, profit margins, purchase activity, cost of good and freight charges.

3.6.4 Pursuant to §3-122-63(b), HAR, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination on any request for confidentiality in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with § 92F-15.5(a), HRS.

### **3.7 EXCEPTIONS**

Should an Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, the Offeror must list such exceptions in the Exceptions section of the Offeror's proposal (see SECTION 3.10.1.c). Offeror must reference the RFP SECTION where exception is taken, a description of the exception taken, and the proposed alternative, if any. If none, state so in the Exceptions section of the Offeror's proposal. The State reserves the right to accept or reject any exceptions.

Offerors are cautioned that award may be made on receipt of initial proposals without clarifications or an opportunity for discussions, and the nature of exceptions will be evaluated as part of the Offeror's proposal. In the sole discretion of the State, exceptions may be evaluated to determine the extent to which the alternative language or approach poses unreasonable, and/or additional risk to the State; inhibits achieving the objectives of the RFP; or creates ambiguity making evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP.

No exceptions to the statutory requirements of the AG-008 General Conditions will be considered.

### **3.8 PROPOSAL OBJECTIVES**

- 3.8.1 One of the objectives of this RFP is to make proposal preparation simple and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.
- 3.8.2 Proposals must be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.
- 3.8.3 When an Offeror submits a proposal, it must 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 complete the obligations outlined in this RFP.
- 3.8.4 The proposal must describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in SECTION 2.3 SCOPE OF WORK.
- 3.8.5 Offeror must submit a proposal that includes an overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

### **3.9 PROPOSAL FORMS**

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

- 3.9.1 Offer Checklist. Offeror must complete and submit all items noted on the Offer Checklist form (Attachment 1).
- 3.9.2 Proposal Transmittal Letter (Attachment 2). On the Offeror's business letterhead, include a transmittal letter to confirm that the Offeror will comply with the requirements, provisions, terms, and conditions specified in this RFP. Offeror shall use the exact legal name as registered with the Department of Commerce and Consumer Affairs. The price shall be submitted on the transmittal letter and shall be the all-inclusive cost, including the GET, and not to exceed \$150,000.

The Contractor represents that neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of this Contract, if awarded. Should any conflict exist, it must be disclosed. If no conflict exists, state no conflict on the transmittal letter.

This form must have an electronic signature, which is required before an award, if any, can be made. If unsigned, the offer will be automatically rejected.

- 3.9.3 Corporate Resolution (Attachment 3). On the Offeror's business letterhead, include a copy of the corporate resolution or written authorization of Offeror's representative to sign this proposal.

- 3.9.4 Qualifications Questionnaire (Attachment 4). Offeror must respond to all questions on the Qualifications Questionnaire form. See Attachment 4 for detailed questions.
- 3.9.5 Contractor Reference Form (Attachment 5). Offeror must use this form to provide three (3) references for previous work performed as the prime contractor and similar to this project. More recent and more relevant performance usually has a greater impact in the confidence assessment than less recent and less relevant projects. If subcontractors will be used, complete the Subcontractor Reference Form for each subcontractor. If no subcontractors will be used, disregard the subcontractor reference form.
- 3.9.6 Certificate of Vendor Compliance Form. Offeror may submit a copy of the Certificate of Vendor Compliance from Hawai'i Compliance Express, proof that one has been applied for from Hawai'i Compliance Express, or paper documentation forms from authorized agencies. Although this form is not required for proposal submission, no award can be made without verification of vendor compliance (SEE SECTION 5.3).
- 3.9.7 If Subcontractor(s) will be used, Offeror shall append a statement to the transmittal from each subcontractor, signed by an individual authorized to legally bind the subcontractor stating:
- a. The general scope of work to be performed by the subcontractor; and,
  - b. The subcontractor's willingness to perform the indicated work.

### **3.10 PROPOSAL CONTENTS**

- 3.10.1 The Proposal must be organized into sections, following this exact format using all titles, subtitles, and numbering as described below. Each section listed below must be addressed individually. Pages must be numbered consecutively.
- a) Table of Contents. A Table of Contents must be included with each proposal. All major parts of the RFP described in proposal forms and proposal contents must be identified by referencing page number.
  - b) Forms. All forms listed in Section 3.9 Proposal Forms must be included, in the specified order stated in the solicitation.
  - c) Exceptions, if applicable. List any exception in this section. If none, state so.
  - d) Narrative project proposal (not to exceed 20 pages)
- 3.10.2 The Offeror must provide a narrative project proposal not to exceed 20 pages, excluding the forms required in this RFP, divided into four sections:
- 1) Organization's Background, Capabilities, and Staffing
  - 2) Approach and Comprehensiveness of Proposal
  - 3) Project Timeline and Budget Sheet
  - 4) Sample Work comparable to this project

## **1) Organization's Background, Capabilities and Staffing**

- A. Offeror must provide a one page or less executive summary of the company background, including a brief history of the company, the type of business (corporation, partnership, etc.), principle owners, current organization of the company, current office location(s), local representation, and total number of employees.
- B. Offeror must provide a statement verifying within the last 5 years that Offeror has not had any judgments, pending lawsuits or actions, adverse contract actions, suspension, or imposition of other penalties relating to failure to perform of deficiencies in fulfilling contractual obligations against the Offeror's organization.
- C. Offeror must provide qualifications of all proposed key personnel for this project, which should include their job titles and responsibilities, information relating to each person's length of employment, previous experience, and specialized skills (including, but not limited to: specific degrees, dates, names of previous employers, education institutions, awards or accolades). The State reserves the right to disqualify any potential Offeror that changes key personnel assigned to perform the responsibilities, prior to the execution of the Contract.

## **2) Approach and Comprehensiveness of Proposal**

- A. Offeror must include a detailed narrative including a description of the entire project, strategy, and detailed plan to effectively carry out the work of the project.
- B. Offeror's narrative must address each deliverable as stated in SECTION 2.3 SCOPE OF WORK and identify how each deliverable will be executed.
- C. The detailed narrative must describe the timing and logistics of the work plan and the key issues involved, including the Offeror's personnel identified to execute each task and subtask.
- D. Offeror bids will be evaluated by professionalism and completeness; i.e., free from typos and grammatical errors, tabbed and in correct order, and all sections thoroughly addressed.

## **3) Project Timeline and Budget Sheet**

- A. Offeror must include a timeline of the entire project in an easy to read format (e.g., Gantt chart).
- B. Offeror must include a budget sheet for the project amount not to exceed \$150,000 itemizing each task.

## **4) Sample Work comparable to this project**

Offeror must include sample work (three minimum, five maximum) that is comparable to this project. Sample work should include project overview, project description, project timeframe, project budget, and project imageries.

3.10.3 Proposals must be detailed and concise and must be structured in the form referenced in the RFP, addressing all requirements.

### **3.11 PROPOSAL SUBMISSION**

#### **SUBMITTAL REQUIREMENTS: ELECTRONIC SUBMITTAL ONLY VIA HlePRO**

Proposals shall be submitted and received electronically through HlePRO by the date and time listed in Section 1.4 Schedule and Significant Dates. This electronically submitted offer shall be considered the original. Any offers received outside of the HlePRO, including faxed or e-mailed bids, shall not be accepted or considered for award. Any offer received after the due date and time shall be rejected. (See Section 1.4 Electronic Procurement for further information.) The maximum file size that HlePRO can accept is 100MB. Files larger than 100MB must be reduced into two or more files.

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply 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.

Offerors are advised to carefully read Section 3.9 Proposal Forms and 3.10 Proposal Content and submit all necessary documents required for this RFP.

NO emails or facsimiles of the proposal packet will be accepted. All submittals must be made on HlePRO.

### **3.12 RECEIPT AND REGISTER OF PROPOSALS**

3.12.1 Proposals will be received on HlePRO and receipt verified by two or more procurement officials, on or after the date and time specified in SECTION ONE, or as amended.

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

### **3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS**

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

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

### **3.14 MISTAKES IN PROPOSALS**

3.14.1 Mistakes may not be corrected after award of Contract.

3.14.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges a mistake, the proposal may be corrected or withdrawn pursuant to this section.

- a) Once discussions are commenced or after best and final offers are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.



- b) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes may be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- c) If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

3.14.3 Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include, but are not limited to: failure of an Offeror to return the correct number of signed proposals required by the request for proposals; failure to sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of incorrect number of amendments to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendments and intended to be bound by its terms; or if the missing amendment involved had no effect on price, quality or quantity.

3.14.4 If the State requests additional information regarding aspects of an Offeror's Offer, the Offeror shall provide the same within five (5) Business Days of the State's request, unless the State specifies another time period. Each Offeror shall submit only one (1) Offer. If an Offeror submits more than one (1) Offer, then the State reserves the right to reject and or dismiss the Offeror from the RFP process.

### **3.15 NO LATE SUBMITTALS AFTER DEADLINE**

Proposals received after the due date and time will be marked late and shall be ineligible for this solicitation. Any offers received outside of the HlePRO shall not be accepted. No hard copies will be accepted.

### **3.16 OFFER GUARANTY**

An offer guaranty or performance bond is NOT required for this RFP.

## **SECTION FOUR: EVALUATION CRITERIA**

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

The Procurement Officer, or an evaluation committee of at least three (3) qualified state employees selected by the Procurement Officer, will evaluate proposals. The evaluation will be based on the proposal contents (SECTION THREE) and on the evaluation criteria (SECTION FOUR) of this RFP.

### **4.1 EVALUATION OF MANDATORY REQUIREMENTS (Pass/No Pass)**

The HSEO Procurement Officer or his/her designee shall evaluate each submission to ensure the proposal meets the mandatory requirements as specified herein. No points will be assigned for these requirements. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the mandatory requirements ("no pass") may be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the mandatory requirements ("pass") will be considered as per SECTION 4.2.

Mandatory requirements for the proposal are listed in SECTION 3.9 Proposal Forms and SECTION 3.10 Proposal Contents. The State, at its sole discretion, may deem a proposal as non-responsive (i.e., "no pass") based on a conflict of interest. Any proposal on Proposal Transmittal Letter (Attachment 2) exceeding \$150,000 shall be deemed non-responsive (i.e., "no pass").

#### 4.2 PROPOSAL EVALUATION CRITERIA (100 TOTAL POSSIBLE POINTS)

<b>1. Organization's Background, Capabilities, and Staffing</b>		<b>40</b>
A	Offeror clearly describes company background and capabilities to perform and execute all services as categorized in the Scope of Work	15
B	Offeror clearly describes previous experience within last five (5) years to demonstrate ability to perform all aspects of the Scope of Work	10
C	Offeror clearly identifies the roles of key team members play for specific tasks to be performed and key team members' credentials and/or qualifications	10
D	Offeror has no judgements, adverse contract actions, suspension, penalties or other actions relating to failure to perform	5
<b>2. Approach and Comprehensiveness of Proposal</b>		<b>30</b>
A	Offeror's proposal clearly describes ability to accomplish the entire project in the allotted timeframe	10
B	Offeror's proposal includes a work plan which clearly describes how tasks and subtasks will be executed	10
C	Offeror's proposal describes work plan with timing, logistics, and assigned personnel	5
D	Proposal is free from typos and grammatical errors, tabbed and in correct order, and all sections are thoroughly addressed	5
<b>3. Project Timeline and Budget Sheet</b>		<b>10</b>
A	Offeror's proposal includes comprehensive timeline of entire project	5
B	Offeror's proposal includes itemized budget clearly defining cost for each task item	5
<b>4. Sample Work Comparable to this Project</b>		<b>20</b>
A	Offeror's proposal includes a minimum of three, maximum of five sample work comparable to this project	10
B	Sample work is comprehensive demonstrating Offeror's abilities	10
<b>Total Possible Points</b>		<b>100</b>

### 4.3 Scoring Process

The Procurement Officer or Evaluation Committee shall score proposals by reviewing the information submitted for each of the evaluation criteria above.

The Procurement Officer or Evaluation Committee shall use a rating of 0 to 5 for each evaluation criteria. Rating is defined as follows:

**0 - No confidence.** Extreme doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that regardless of State intervention/oversight, successful performance is doubtful. The Proposal fails to address the criterion or cannot be assessed due to missing or incomplete information. Offeror has not demonstrated sufficient knowledge of the subject matter or has grossly failed to explain how requirement(s) is met.

**1 - Little Confidence.** Doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that substantial State intervention/oversight will be required to achieve the proposed levels of performance. The criterion is inadequately addressed, Offeror demonstrates only slight ability to comply, or there are serious inherent weaknesses.

**2 - Confidence.** The Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that some State intervention/oversight may be required to achieve the proposed levels of performance. The Proposal broadly addresses the criterion, but there are significant weaknesses. May have one or more deficiencies, or Offeror has not adequately explained how its services fit the requirement.

**3 - Significant Confidence.** Evaluated with a certainty that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that little or no State intervention/oversight is expected to be required to achieve the proposed levels of performance. The Proposal addresses the criterion well; meets the requirement. Demonstrates knowledge and understanding of the subject matter, with no deficiencies noted regarding technical approach.

**4 - High Confidence.** Evaluated that virtually no doubt exists that the Offeror can successfully perform the required effort. The levels of insight and participation afforded the State are such that little or no State intervention and no State oversight is expected to be required to achieve the proposed levels of performance. The Proposal addresses the criterion very well, highly comprehensive. No deficiencies noted.

**5 - Excellent.** The Proposal successfully addresses all relevant aspects of the criterion. Excellent reply that goes beyond the requirements listed in the RFP to provide added value. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency. The response includes a full, clear, detailed explanation of how requirement(s) are met. No errors in technical writing.

The following formula shall be used to convert the rating for each criteria into points to determine the score for each Proposal Evaluation Criteria:

$\text{Rating for that Scoring Criteria (0 through 5)} \div 5 \text{ (Maximum Rating Achievable)}$ $\times \text{ Possible Points for that Scoring Criteria} = \text{Points for that Scoring Criteria}$
---

## **SECTION FIVE: CONTRACTOR SELECTION AND CONTRACT AWARD**

### **5.1 DISCUSSION WITH PRIORITY-LISTED OFFERORS**

The State may invite Priority-Listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State may also conduct discussions with Priority-Listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary; however, proposals may be accepted without such discussions at the discretion of the State. The State, in its sole discretion, will schedule the time and location for these discussions, generally within the timeframe indicated in SECTION 1.5. RFP Schedule and Significant Dates.

- 5.1.1. In the initial phase of the evaluation process, the State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals

Proposals will be classified initially as acceptable, potentially acceptable or unacceptable. Discussion may be conducted with Priority-Listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award or limited to the three (3) highest scoring Offerors who submitted acceptable proposals. The object of these discussions is to clarify issues regarding the Priority-Listed Offeror's proposals before a best and final offer, if necessary. Priority-Listed Offerors may be required to give oral presentations to ensure a thorough, mutual understanding of each proposal. A Priority-Listed Offeror that is requested to make a presentation and fails to make the presentation on the scheduled date to the Procurement Officer or Evaluation Committee will not be considered for the final award. Any and all cost incurred by a Priority-Listed Offeror in making the presentation will be the Priority-Listed Offeror's sole responsibility and will not be reimbursed by the State.

- 5.1.2. If during discussions, there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to the Priority-Listed Offerors who submit acceptable or potentially acceptable proposals.
- 5.1.3. Following any discussions, the Priority-Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or evaluation committee reserves the right to have additional rounds of discussions with the Priority-Listed Offerors prior to the submission of the BAFO, if necessary.
- 5.1.4. The date and time for the Priority-Listed Offerors to submit their BAFO, if any, will be indicated via an addendum to the Priority-Listed Offerors only. If a Priority-Listed Offeror does not submit a notice of withdrawal or a BAFO, the Priority Listed Offeror's immediately previous offer will be construed as its BAFO. BAFOs will be submitted only once unless the Chief Procurement Officer or the HOPA or designee of either officer above the level of procurement officer determines in writing that it is in the best interest of the State to conduct additional discussions or require another BAFO.

## 5.2 AWARD OF CONTRACT

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

## 5.3 RESPONSIBILITY OF OFFERORS

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

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

If an Offeror is not compliant with the above HRS chapters at the time of award, the Offeror may not receive the award. The State reserves the right to move on to the next responsive, responsible Offeror who is compliant. The State will verify compliance on Hawai'i Compliance Express (HCE). Offerors who do not participate in HCE may submit paper compliance certificates to DBEDT at the time of award.

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

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

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

Vendors not utilizing HCE to demonstrate compliance shall provide paper certificates to HSEO's Contracts Office. All certificates must be valid on the date it is received by HSEO. Timely application for all applicable clearances are the responsibility of the Offeror.

Upon receipt of paper compliance documents, HSEO reserves the right to verify their validity with the respective issuing agencies. The Contractor shall maintain their compliance throughout the term of the contract.

#### **5.4 PROPOSAL AS PART OF THE CONTRACT**

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

#### **5.5 PUBLIC EXAMINATION OF PROPOSALS**

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

If a person is denied access to a State procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-15.5.

#### **5.6 DEBRIEFING/PROTEST**

A protestor may file a protest pursuant to Hawai'i Revised Statutes (HRS) §103D-701, prior to receipt of offers, on any phase of a solicitation including, but not limited to, specifications or disclosure of information marked confidential in the bid or offer. Pursuant to HAR §3-126-3, a protestor initially should seek an informal resolution of the protestor's complaint with the procurement officer named on the cover of the solicitation prior to the deadline for receipt of offers.

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

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

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

A protest shall be submitted, in writing, within five (5) working days after the aggrieved person knows or should have known of the facts giving rise to the protest, provided that a protest of an award or proposed award shall be submitted in writing within five (5) working days after the posting of award of the contract under HRS 103D-303, if no request for debriefing has been made.

To expedite handling of protests, the envelope should be labeled "PROTEST" and either personally delivered to the Hawaii State Energy Office, Attention: Susan Gray-Ellis, 235 S. Beretania Street, Room 502, Honolulu, Hawai'i, 96813 or mailed via registered or certified mail, with return receipt requested.

At a minimum, the protest shall contain the following information:

- Name and address of the protestor;
- Appropriate identification of the procurement;
- A statement of the reasons for the protest; and
- Supporting exhibits, evidence, or documents to substantiate any claims unless not available with the required filing time in which case the expected availability date shall be indicated.

Any protest pursuant to HRS §103D-701 and HAR §3-122-70, must be received within the deadline specified by statute. Submit the required information, in writing, to the following procurement officer for this solicitation:

Mr. Scott J. Glenn  
Chief Energy Officer  
Department of Business, Economic Development, and Tourism  
Hawaii State Energy Office  
Attention: Susan Gray-Ellis  
235 S. Beretania St., 5<sup>th</sup> floor, Room 502  
Honolulu, HI 96813

Awards, if any, resulting from this solicitation shall be posted to the State Procurement Office (SPO) website via HlePRO.

## **5.7 APPROVALS**

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

## **5.8 CONTRACT EXECUTION**

The successful Offeror receiving an award shall enter into a formal written contract. No performance or payment bond is required for this Contract.

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

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

## **5.9 INSURANCE**

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

### **a) Commercial General Liability Insurance**

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



The Contractor shall be responsible for payment of any deductible applicable to this policy.

b) Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident; or a \$2,000,000.00 single limit.

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

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

5.9.3 The Contractor shall immediately provide written notice to the State should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

5.9.4 The certificates of insurance shall contain the following clauses:

a) "The State of Hawai'i is added as an additional insured with respect to operations performed for the State of Hawai'i."

b) "It is agreed that any insurance maintained by the State of Hawai'i will apply in excess of, and not contribute to, insurance provided by this policy."

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

## 5.10 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.

## 5.11 PAYMENT

The awarded Contractor shall submit all invoices electronically in accordance with the State's invoicing guidelines. Pursuant to HRS 103-10, the State shall have thirty (30) calendar days

after receipt of invoice or satisfactory completion of deliverable to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period of time.

HlePRO is administered by NIC Hawaii (NIC). NIC shall invoice the Contractor 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.

#### **5.12 CONTRACT INVALIDATION**

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

#### **5.13 ADA COMPLIANCE**

At the request of the State, the Contractor shall produce all deliverables and reports in an accessible format that is compliant with Title II of the Americans with Disabilities Act (ADA) and Sections 504 and 508 of the Rehabilitation Act of 1973, as amended. The Contractor shall produce all reports and deliverables into the communication auxiliary aid(s), as directed by the State during the duration of the contract period.

#### **5.14 HAWAIIAN DIACRITICAL MARKINGS**

The HSEO recognizes the use of diacritical markings of the (modern) Hawaiian language including the 'okina ['] or glottal stop and the kahakō [ō] or macron. The Contractor shall produce all deliverables using Hawaiian diacritical markings as directed by the State during the duration of the contract period.

## **SECTION SIX: ATTACHMENTS AND EXHIBITS**

- Attachment 1: Offer Checklist
- Attachment 2: Proposal Transmittal Letter
- Attachment 3: Corporate Resolution
- Attachment 4: Qualifications Questionnaire
- Attachment 5. Contractor Reference Form
- Exhibit A: Overview of the RFP Process
- Exhibit B: General Provisions for Goods and Services
- Exhibit C: General Conditions for 103D
- Exhibit D: Special Conditions (USDOE SEP Federal Conditions)

<b>OFFER CHECKLIST</b>			
Offeror must address ALL sections and attachments and provide the information and documentation as required in the table below. Submit this checklist with proposal.			
<b>No.</b>	<b>Description</b>	<b>Reference in RFP</b>	<b>Completed</b>
1	Offeror registered on HlePRO	Reference Section 1.4.1	<input type="checkbox"/>
2	Offer Checklist - submit checklist with all items checked "Completed." – Attachment 1	Reference Section 3.9.1	<input type="checkbox"/>
3	Table of Contents	Reference Section 3.10.1(a)	<input type="checkbox"/>
4	Proposal Transmittal Letter - Attachment 2	Reference Section 3.9.2	<input type="checkbox"/>
5	Corporate Resolution – Attachment 3	Reference Section 3.9.3	<input type="checkbox"/>
6	Qualification Questionnaire – Attachment 4	Reference Section 3.9.4	<input type="checkbox"/>
7	Contractor Reference Form – Attachment 5	Reference Section 3.9.5	<input type="checkbox"/>
8	Certificate of Vendor Compliance, proof that one has been applied for or paper documentation forms.	Reference Section 5.3	<input type="checkbox"/>
9	Certification of Non-Debarment	Reference Attachment 2	<input type="checkbox"/>
10	Subcontractor(s) statement signed by an individual authorized to legally bind the subcontractor describing scope of work to be performed and willingness to perform the indicated work, if applicable	Reference Section 3.9.7	<input type="checkbox"/>
11	Exceptions, if applicable. If none, state none.	Reference Section 3.7 & 3.10.1	<input type="checkbox"/>
12	Narrative Project Proposal shall not exceed 20 pages, excluding the forms required in this RFP. Narrative Project Proposal shall be divided into four (4) sections:	Reference Section 3.10.2	<input type="checkbox"/>
1.	Organization's Background, Capabilities and Staffing	Reference Section 3.10.2	<input type="checkbox"/>
2.	Approach and Comprehensiveness of Proposal	Reference Section 3.10.2	<input type="checkbox"/>
3.	Project Timeline and Budget Sheet	Reference Section 3.10.2	<input type="checkbox"/>
4.	Sample Work Comparable to this Project	Reference Section 3.10.2	<input type="checkbox"/>

To be submitted on Offeror's official business letterhead

**PROPOSAL**  
TRANSMITTAL LETTER  
SOLICITATION RFP-21-029-HSEO-EERE

Mr. Scott J. Glenn  
Chief Energy Officer  
Department of Business, Economic Development, and Tourism  
Hawaii State Energy Office/Attn. Contracts Office  
235 S. Beretania St., 5<sup>th</sup> Floor, Room 502  
Honolulu, Hawai'i 96813

Dear Mr. Glenn:

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

Offeror is:

- Sole Proprietor     Partnership     \*Corporation     Joint Venture
- Other \_\_\_\_\_
- \*State of incorporation: \_\_\_\_\_

Hawai'i General Excise Tax License I.D. No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

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

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

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

\_\_\_\_\_

Acknowledgment of receipt of addendum/addenda issued by the Department of Business, Economic Development, and Tourism in accordance with this solicitation: Record in the space below the date of receipt for each addendum.

Addendum No. 1 \_\_\_\_\_      Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_      Addendum No. 4 \_\_\_\_\_

The undersigned hereby certifies that the proposal attached has been carefully checked and is submitted as correct.

Respectfully submitted,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Exact Legal Name of Offeror (Company name)

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Authorized signature (Attach corporate resolution or evidence of authorization to bind)

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
Name of Authorized Signer (Please Type or Print)

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Title

**OFFER TOTAL:**

Total contract cost for accomplishing the development and delivery of these services is

\$ \_\_\_\_\_

**Pricing must include labor, materials, supplies, all applicable taxes, and any other costs and fees incurred to provide the specified services.**

**CONFLICT OF INTEREST:**

By signature above, the Offeror represents that neither the Offeror, nor any employee or agent of the Offeror, 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 Offeror's performance of this contract.

Conflict of Interest

Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, attach list of conflict(s)

**CERTIFICATION OF NON-DEBARMENT**

By signature above, the Offeror must certify that neither the Offeror nor its principals, employees or agent of the Offeror are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the State.

Any debarment action

Yes\_\_\_\_\_

No\_\_\_\_\_

Is yes, attach written explanation

**PREFERENCES:**

No preferences apply to this solicitation.

**To be submitted on Offeror's official business letterhead**

**CORPORATE RESOLUTION**

**Attach here:**

**Corporate resolution or written authorization of Offeror's representative to sign this proposal.**



**QUALIFICATIONS QUESTIONNAIRE**

1. How many years has your organization been in business under your present business name?
2. How many years' experience does your organization have in this field of work?
3. Show the five most recent projects your organization has completed in the past five years that are related to this project. Include at least two projects accomplished during the preceding year.

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Were project objectives met within budget and schedule?

4. Have you every failed to complete any work awarded to you?  
If so, provide a brief description including when and where work took place and why work was not completed.
5. In the last five (5) years, has the Offeror had any judgments or pending lawsuits or actions, adverse contract actions, suspensions, imposition of penalties, or other action relating to failure to perform or deficiencies in fulfilling contractual obligations again the Offeror's organization? If yes, the Offeror must submit all non-confidential details. If none, so state.
6. Has any officer or partner of your organization in the past five years been an officer, partner, or individual of some other organization that failed to complete a contract?  
If so, state name of individual, other organization and reason, therefore.
7. For what entities within the State of Hawai'i other than government agencies have you performed work for?

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Comments


8. For what State departments and county agencies of the State of Hawai'i have your performed work for?

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Comments

9. Have you performed work for the U.S. Government?  
If so, list.

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Comments

10. Have you performed work for any other governmental agencies outside the State of Hawai'i? If so, list.

Name of Project (owner and contact information)	Project Description (Note for which Projects your organization was the prime Contractor)	Project Period (dates)	Contract Amount	Comments



**CONTRACTOR REFERENCES**

To be completed by the Offeror. At least three (3) references for whom services were rendered as the Prime Contractor and for work similar to this project.

**PROVIDER INFORMATION**

1. Name of Provider	2. Solicitation Reference Number
---------------------	----------------------------------

**CLIENT #1 INFORMATION**

3. Organization Name	4. Organization Address
----------------------	-------------------------

5. Project Name	6. Project Dates Start:                      End:
-----------------	--

7. Contact Name/Title                      Email:                      Phone
---

8. Scope of Services
----------------------

**CLIENT #2 INFORMATION**

3. Organization Name	4. Organization Address
----------------------	-------------------------

5. Project Name	6. Project Dates Start:                      End:
-----------------	--

7. Contact Name/Title                      Email:                      Phone
---

8. Scope of Services
----------------------

Empty rectangular box for client information.

**CLIENT #3 INFORMATION**

3. Organization Name	4. Organization Address
5. Project Name	6. Project Dates Start:                      End:

7. Contact  
Name/Title                      Email:                      Phone

8. Scope of Services

Empty rectangular box for scope of services.

9. Additional Comments



## SUBCONTRACTOR REFERENCES (If applicable)

To be completed by the Offeror.

### PROVIDER INFORMATION

1. Name of Provider

2. Solicitation Reference Number

### SUBCONTRACTOR #1 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title

Email:

Phone

8. Scope of Services to be Rendered:

### SUBCONTRACTOR #2 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title

Email:

Phone

8. Scope of Services to be Rendered.

### SUBCONTRACTOR #3 INFORMATION

3. Organization Name

4. Organization Address

5. Project Name

6. Project Dates

Start:

End:

7. Contact

Name/Title

Email:

Phone

8. Scope of Services to be Rendered.

## EXHIBIT A

### OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

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

4. The Procurement Officer, or an evaluation committee approved by the Procurement Officer, will evaluate the proposals in accordance with the evaluation criteria in Section Four.
5. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals will be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
6. If during discussions, there is a need for any substantial clarification or change in the RFP, the RFP will be amended by an addendum to incorporate such clarification or change. Addenda to the RFP will be distributed only to Priority-Listed Offerors who submit acceptable or potentially acceptable proposals.
7. Following any discussions, Priority-Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority-Listed Offerors prior to the submission of the BAFO.
8. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.5, RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer will be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Four.
10. The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State

agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.

11. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
12. The RFP, any addenda issued, and the successful Offeror's proposal may become a part of the contract. All proposals shall become the property of the State of Hawai'i.



## **HAWAII REVISED STATUTES (HRS) CHAPTER 103D**

**(Updated 4/20/2013)**

Attached are the General Provisions, dated April 2013, which are made a part of all offers in response to the solicitation for goods and services. These provisions are in addition to the General Conditions and Special Conditions.

Offerors are cautioned to read and understand all the terms and conditions contained in Exhibits B, C, and D, as these provisions will also be made part of the contract for goods and services.

## EXHIBIT B

### GENERAL PROVISIONS FOR GOODS AND SERVICES

1. DEFINITIONS OF TERMS

Terms as used in these General Provisions, unless the context requires otherwise, must have the following meaning:

a. BID

Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.

b. BID PROPOSAL GUARANTY OR SECURITY

The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the STATE and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.

c. CONTRACT

Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.

d. CONTRACT BOND

The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.

e. CONTRACTOR

An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the STATE and acting directly or through his, their or its agents, employees or sub-contractors.

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

General Conditions issued by the Department of the Attorney General of the State of Hawai'i, referred to as Form AG-008, as revised, and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect at the date the solicitation is issued.

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

i. HAR

Hawai'i Administrative Rules

j. HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.

k. HRS  
Hawai'i Revised Statutes

l. IFB  
Invitation for Bids

m. OFFER  
An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.

n. OFFEROR  
Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.

o. PROCUREMENT OFFICER  
Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.

p. PROPOSAL  
A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.

q. PURCHASING AGENCY  
Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.

r. RFQ  
Request for Quotes

s. RFP  
Request for Proposals

t. SOLICITATION  
Solicitation means an invitation for bids ("IFB"), used in the competitive sealed bidding process, a request for quotes ("RFQ") used in the small purchases process, or a request for proposals ("RFP"), used in the competitive sealed proposal process for the purpose of obtaining quotes, bids or proposals to perform a STATE contract.

u. SPECIAL PROVISIONS

The terms and conditions pertaining to the specific solicitation in which they are contained and in addition to these General Provisions; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the CONTRACTOR.

Additions or revisions to the General Provisions, which must be considered a part of the General Provisions, setting forth conditions or requirements applicable to the particular project or contract under consideration must be included in the Special Provisions. Should any Special Provisions conflict with these General Provisions, said Special Provisions must govern.

v. SPECIFICATIONS

A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

w. STATE

STATE means the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawai'i, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.

x. SURETY

The individual, firm, partnership or corporation other than the CONTRACTOR, which executes a bond with and for the CONTRACTOR to ensure the CONTRACTOR's acceptable performance of the contract.

y. WORK

The furnishing by the CONTRACTOR of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

2. COMPETENCY OF OFFEROR

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

The purchasing agency reserves the right to visit an offeror's place of business to inspect its facilities and equipment and to observe its methods of operation in order to facilitate evaluation of performance capabilities.

3. OFFER INCORPORATES SOLICITATION

The solicitation, including the AG's General Conditions, Specifications, General Provisions and any Special Provisions, and other documents referenced in or attached to the solicitation must be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents must not be altered in

any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

4. PREPARATION OF OFFER

An offeror may submit only one offer in response to a solicitation. If an offeror submits more than one offer in response to a solicitation, then all such offers must be rejected. Similarly, an offeror may submit only one offer for each line item (if any) of a solicitation. If an offeror submits more than one offer per line item, then all offers for that line item must be rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their bids or proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

Unless otherwise specified in the solicitation, all prices must include applicable Federal, State and local taxes. Any illegible or otherwise unrecognizable price offer must cause automatic rejection of the offer.

Offers submitted in response to an IFB or RFP must be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of an offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal must not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. A late offer or late modification that will not be considered for award must be returned to the bidder unopened as soon as practicable and accompanied by a letter from the procurement activity stating the reason for its return. A late withdrawal request must be responded to with a Statement of the reason for non-acceptance of the withdrawal.

6. DISQUALIFICATION OF OFFERORS

An offeror must be disqualified and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; or offeror's delivery of the offer after the deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR.

An offeror may be disqualified and his offer rejected for any one or more of the following reasons: offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the STATE or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; or offeror's failure to pay, or

satisfactorily settle, all bills overdue for labor and material on former STATE contracts at the time of issuance of solicitation.

7. IRREGULAR OFFERS

Offers will be considered irregular and must be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror, unless otherwise specified in the solicitation; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with the solicitation; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the STATE or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

8. STANDARDS OF CONDUCT

All offerors should be certain that their offer is not in violation of HRS §84-15. This section provides as follows:

- a. A State agency must not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:
  - (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
  - (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
  - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the State ethics commission at least ten days before the contract is awarded.
- b. A State agency must not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned.

9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Unless otherwise specified in the solicitation, a legislative body has appropriated the funds for this contract.

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

10. ACCEPTANCE OF OFFER

- a. Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror must remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE must be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

11. EXECUTION OF CONTRACT

The following subsections must not apply to any contract in which the total amount payable to the CONTRACTOR cannot be accurately estimated at the time the contract is to be awarded:

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE must forward a formal contract to the successful offeror for execution. The contract must be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days after receipt by the vendor or within such further time as the procurement officer may allow.
- b. No such contract must be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller must only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the

fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

- c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section must be applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract must be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection must be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

12. CONTRACT BOND

- a. The requirement for contract performance and payment bonds, if any, must be stated in the Special Provisions of the solicitation.
- b. When required by the Special Provisions, a performance bond and a payment bond must be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds must not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds must be as stated in the solicitation.
- c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in Section 7. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond must be provided.

13. FAILURE TO EXECUTE CONTRACT

If the offeror to whom a contract is awarded must fail or neglect to enter into the contract, and to furnish satisfactory security as required by Section 30 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency must pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE. The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the STATE.

14. RETURN OF OFFER GUARANTIES

All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, must be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the procurement officer's determination is made to cancel the solicitation. At such time, all offer guaranties, except surety bonds, will be returned.

15. PAYMENT

Section 103-10, HRS, provides that the State must have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a



shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

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

16. DELIVERY EXTENSIONS

In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the STATE in its solicitation requirements, and all goods must be delivered with the time specified. However, the CONTRACTOR will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond his control, provided that he notifies the STATE of such delay and the reason therefore as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time must be accompanied by documents such as the CONTRACTOR's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes for delay were beyond the control of the CONTRACTOR. The STATE must be the sole judge of whether such delay is truly beyond the control of the CONTRACTOR and whether extension will be granted. The STATE reserves the right to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there must be no liability upon the procurement officer or his authorized representatives, either personally or as officials of the STATE, it being understood that in such matters, they act solely as agents and representatives of the STATE.

## GENERAL CONDITIONS

## Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements .....	3
4. Nondiscrimination .....	3
5. Conflicts of Interest .....	3
6. Subcontracts and Assignments .....	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages .....	4
10. STATE'S Right of Offset.....	4
11. Disputes .....	4
12. Suspension of Contract .....	4
13. Termination for Default.....	5
14. Termination for Convenience .....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses .....	8
17. Payment Procedures; Final Payment; Tax Clearance .....	9
18. Federal Funds .....	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment .....	11
22. Variation in Quantity for Definite Quantity Contracts .....	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material .....	12
25. Publicity .....	12
26. Ownership Rights and Copyright .....	12
27. Liens and Warranties .....	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data .....	13
30. Audit of Cost or Pricing Data.....	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law .....	14
35. Compliance with Laws .....	14
36. Conflict between General Conditions and Procurement Rules .....	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver .....	14
40. Pollution Control .....	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

## GENERAL CONDITIONS

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



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

3. Personnel Requirements.

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

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

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

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

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

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

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



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

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



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

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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



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

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

14. Termination for Convenience.

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



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

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

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

- d. Compensation.

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



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

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

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

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

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
  - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
  - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

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

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

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
  - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
  - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
  - c. Prompt payment.
    - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.



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

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

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

21. Price Adjustment.

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

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

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

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



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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

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

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

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



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

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

    - (1) Social security number;
    - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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



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

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

e. Records Retention.

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



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

1. **FEDERAL, STATE, AND MUNICIPAL LAW REQUIREMENTS.** The CONTRACTOR shall obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Contract.
2. **FEDERAL STEWARDSHIP.** DOE will exercise normal Federal stewardship in overseeing the project activities performed under this Contract. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the objectives have been accomplished.
3. **FEDERAL INVOLVEMENT.** DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The CONTRACTOR shall provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.
4. **PERFORMANCE OF WORK IN UNITED STATES.**

a. Requirement.

All work performed under this Contract must be performed in the United States unless the STATE provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the CONTRACTOR should make every effort to make purchase supplies and equipment within the United States. The CONTRACTOR must flow down this requirement to its SUBCONTRACTORS.

b. Failure to Comply.

If the CONTRACTOR fails to comply with the Performance of Work in the United States requirement, the STATE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable cost share regardless if the work is performed by the CONTRACTOR, SUBCONTRACTOR, VENDORS or other project partners.

c. Waiver for Work Outside the U.S.

All work performed under this Contract must be performed in the United States. However, the STATE may approve the CONTRACTOR to perform a portion of the work outside the United States under limited circumstances. The CONTRACTOR must obtain a waiver for the STATE prior to conducting any work outside the U.S. To request a waiver, the CONTRACTOR must



STATE OF HAWAII  
SPECIAL CONDITIONS

submit a written waiver request to the STATE's Contracting Officer, which includes the following information:

- The rationale for performing the work outside the U.S.;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The countries in which the work is proposed to be performed.

For the rationale, the CONTRACTOR must demonstrate to the satisfaction of the STATE that the performance of work outside the United States would further the purposes of the FOA that the Contract was selected under and is in the economic interests of the United States. The STATE may require additional information before considering such request.

5. **NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.** To the greatest extent practicable, all equipment and products purchased with funds under this Contract should be American-made.
6. **LOBBYING.** By accepting funds under this Contract, the CONTRACTOR agrees that none of the funds obligated on the Contract shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.
7. **PUBLICATIONS.** An acknowledgement of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

*Acknowledgment:* "This material is based upon work supported by the Department of Energy under Award Number DE-EE0006986 Office of Energy Efficiency and Renewable Energy (EERE).

*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The view and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."



STATE OF HAWAII  
SPECIAL CONDITIONS

8. **INTELLECTUAL PROPERTY.** Under this contract, the CONTRACTOR agrees that all intellectual property rights are subject to 2 CFR 200.315 or 910.362.
9. **RECORDS RETENTION.** The CONTRACTOR agrees that all required records shall be retained for three years after the STATE makes final payment and all other pending matters are closed.
10. **RIGHT TO AUDIT.** The CONTRACTOR agrees that the STATE, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this CONTRACT for the purpose of making audit, examination, excerpts, and transcriptions.
11. This Contract is also subject to the following terms and conditions, as applicable:
  - a. **EQUAL EMPLOYMENT OPPORTUNITY.** The CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for all construction contracts awarded in excess of \$10,000.
  - b. **ANTI-KICKBACK ACT.** The CONTRACTOR shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Works Financed in Whole or in Part by Loans or Grants from the United States) for all contracts and sub grants for construction or repair. The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
  - c. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** The CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704) as supplemented by Department of Labor regulations (29 CFR Part 5), for construction contracts in excess of \$10,000, that involve the employment of mechanics or laborers. Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a



STATE OF HAWAII  
SPECIAL CONDITIONS

- half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d. RIGHTS TO INVENTIONS. The CONTRACTOR shall comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” in the performance of experimental, developmental, or research work, as applicable.
- e. CLEAN AIR ACT and the FEDERAL WATER POLLUTION CONTRACT ACT. The CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) for contracts in excess of \$150,000. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- f. ENERGY POLICY AND CONSERVATION ACT. The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- g. DEBARMENT AND SUSPENSION. This Contract is a covered transaction for purposes of 2 CFR 180. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940. In accordance with OMB guidelines at 2 CFR 180 that implements Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235) “Debarment and Suspension” the System for Award Management (SAM) exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The CONTRACTOR shall comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.



STATE OF HAWAII  
SPECIAL CONDITIONS

By signing this Contract, the CONTRACTOR certifies as follows:

**“The certification in this clause is a material representation of fact relied upon by the STATE. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to the remedies available to the STATE, the Federal Government may pursue available remedies, including but not limited to suspension and debarment. The CONTRACTOR agrees to comply with the requirements of 2 CFR 180, Subpart C throughout the period of the Contract. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.”**

- h. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352). CONTRACTOR must file the required certification if the Contract is \$100,000 or more that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- i. PROCUREMENT OF RECOVERED MATERIALS. The CONTRACTOR shall comply with section 6002 Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.