



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

LEGAL AD DATE: JUNE 30, 2016

**REQUEST FOR PROPOSALS
No. RFP-17-019-SID**

**PROPOSALS
FOR
HAWAII STATE ENERGY OFFICE SPONSORSHIP**

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

WILL BE RECEIVED BEGINNING 8:00 A.M. (HST) ON

AUGUST 1, 2016

IN THE HSEO CONTRACTS OFFICE, 235 S. BERETANIA ST., 5TH FLOOR, ROOM 502, HONOLULU, HAWAII 96813. PLEASE DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO MS. SUSAN GRAY-ELLIS AT SUSAN.GRAY-ELLIS@HAWAII.GOV.

This solicitation may be obtained from the DBEDT/HSEO CONTRACTS OFFICE. Please call Susan Gray-Ellis at 808-587-9002 to make pick up arrangements. There will be a five cent (\$0.05) per page charge for copies. This solicitation may be also be accessed via the following URL:

<http://spo.hawaii.gov/for-vendors/bidding-opportunities/>.

_____/s/
MARK B. GLICK
ADMINISTRATOR, HAWAII STATE ENERGY OFFICE
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM



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TABLE OF CONTENTS

SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES	2
SECTION TWO: BACKGROUND AND SCOPE OF WORK.....	4
SECTION THREE: APPLICATION FORMAT AND CONTENT	6
SECTION FOUR: EVALUATION CRITERIA AND APPLICANT SELECTION	7
SECTION FIVE: SPECIAL PROVISIONS	9
SECTION SIX: ATTACHMENTS.....	16

- Attachment 1: APPLICANT FORM, AF-1
- Attachment 2: SPONSORSHIP APPLICATION, AF-2
- Exhibit A: 103D GENERAL CONDITIONS & SEP CONDITIONS

SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The Hawaii State Energy Office (HSEO), a division of the Department of Business, Economic Development, and Tourism (DBEDT), is accepting applications for sponsorship of events that are closely aligned with HSEO's mission. Sponsorship applications will be accepted from the beginning date for submission of applications listed in section 1.4 through June 30, 2017. Sponsored events must be completed by June 30, 2017.

1.2 CANCELLATION

The Request for Proposals (RFP) may be cancelled and any or all applications rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State.

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

Applicant	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent submitting an application in response to this solicitation.
Application/Proposal	=	These terms may be used interchangeably
DBEDT	=	Department of Business, Economic Development, and Tourism
FY	=	Fiscal Year (July of current year to June of next year)
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
GP	=	General Provisions
HCE	=	Hawaii Compliance Express
HSEO	=	Hawaii State Energy Office
Procurement Officer	=	The contracting officer for the State of Hawaii, Hawaii State Energy Office
RFP	=	Request for Proposals
State	=	State of Hawaii, including its departments, agencies, and political subdivisions

1.4 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Advertising of Request for Proposals" 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. The approximate schedule is as follows:

Advertising of Request for Sponsorship Applications	June 30, 2016
Initial Deadline to Submit Written Questions	July 8, 2016 4:30 P.M. (HST)
State's Response to Questions & Posted Addenda	July 13, 2016
Beginning Date for Submission of Applications	August 1, 2016
Sponsorship Review and Award Periods	Multiple, See Section 5.4 (h)
Expiration of RFP	June 30, 2017 or until funds are exhausted, whichever occurs first.

1.5 QUESTIONS AND ANSWERS

All questions shall be submitted in writing and directed to:
Susan Gray-Ellis via email: susan.gray-ellis@hawaii.gov

Questions shall be submitted by the due date specified in SECTION 1.4, *RFP Schedule and Significant Dates*, as may be amended.

The State will respond to questions through Addenda/Amendments by the date specified in SECTION 1.4, *RFP Schedule and Significant Dates*, as may be amended.

SECTION TWO: BACKGROUND AND SCOPE OF WORK

2.1 PURPOSE OF THE REQUEST FOR PROPOSAL

HSEO is posting this open solicitation to provide public notice, promote fair competition, and create a consistent documented procedure for evaluating and handling event sponsorships.

2.2 HAWAII STATE ENERGY OFFICE: MISSION AND GOALS

With the State's goal to reach 100 percent renewable energy generation by 2045, HSEO is leading the charge toward clean energy independence. It is HSEO's mission to develop and deploy high impact solutions that will maximize Hawaii's renewable energy resources and improve energy efficiency and transportation standards. Through effective policies and innovative programs, HSEO has positioned Hawaii as a leader in clean energy innovation, which will generate quality jobs, attract investment opportunities and accelerate economic growth.

Led by the State Energy Administrator, HSEO has four programs – Clean Energy Solutions, Energy Efficiency, Energy Systems and Planning, and Renewable Energy. HSEO's programs support a strategic plan that resolves clean energy penetration barriers and advocates for programs, policies, and incentives to make clean energy development cost-effective.

HSEO is leading Hawaii's clean energy transformation and has set forth five key energy policy goals: (1) diversifying our energy portfolio; (2) connecting and modernizing our grids; (3) balancing technical, economic, environmental, and cultural considerations; (4) leveraging our position as an innovation test bed; and (5) creating an efficient marketplace that benefits producers and consumers.

For more information about HSEO, visit <http://energy.hawaii.gov/>.

2.3 HSEO SPONSORSHIP PRIORITIES

HSEO is seeking applications for events which assist in the efforts to raise awareness and garner support of Hawaii's clean energy goals. The type of events that may be sponsored may include, but are not limited to the following:

- Clean energy conferences/summits
- Clean energy workshops
- Clean energy seminars
- Clean energy educational events
- Clean energy trade fairs
- Clean energy workforce development events

2.4 SPONSORSHIP OBJECTIVES AND REQUIREMENTS

One of the strategies that HSEO employs to fulfill its mission is the sponsorship of events that promote Hawaii's clean energy goals. HSEO sponsored events should:

- Deliver public awareness and support of Hawaii's clean energy goal of 100 percent clean energy by the year 2045
- Promote HSEO's various programs, initiatives, and mission

- Deliver HSEO's message to a clean energy audience
- Form partnerships with organizations that benefit and support HSEO's mission
- Leverage funds for a broader reach

Events must include branding and recognition opportunities for HSEO's various programs and initiatives. Documentation (i.e., photography, video) of the event and a completion summary report will be required by HSEO 60-days post-event.

2.5 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS

Unless otherwise provided in this RFP, the sponsorship awardee will be responsible for obtaining all official licenses, approvals, clearances, and similar authorizations required by any local, state, or federal agency for the sponsored event.

2.6 TERM OF SOLICITATION

This solicitation shall be open from the initial advertising date of the RFP through June 30, 2017, or until funds are exhausted, whichever occurs first.

SECTION THREE: APPLICATION FORMAT AND CONTENT

3.1 INTRODUCTION

One of the objectives of this RFP is to make the application preparation easy and efficient. All applications must be a complete submission which includes all attachments as specified below:

Applicants must:

1. Include a transmittal/cover letter to confirm that the Applicant shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
2. Include signed Applicant Form (AF-1) with the complete name and address of Applicant's firm and the name, mailing address, telephone number, and fax number of the person that HSEO should contact regarding the application.
3. Complete the Sponsorship Application (AF-2)
4. Provide any supplemental information (Section 3.3) describing and evidencing the event and sponsorship amount requested as referenced in Pricing, Section 3.2.
5. Be compliant with all State laws as described in Section 5.2 and 5.13. Compliance to be verified using [Hawaii Compliance Express](#).
6. Applications to be submitted six (6) weeks prior to event for consideration.
7. No facsimiles and/or faxes of the application packet shall be accepted.

Applicants may submit multiple applications for the same fiscal year. Each application should be for a single event or a series of related events.

3.2 PRICING

Provide pricing information on all sponsorship levels offered and the preferred amount/level requested by the application. Sponsorship applications should not exceed \$10,000.00

3.3 SUPPLEMENTAL INFORMATION

Include as attachments all other relevant material to be considered – information about the host, related events, personnel/staff, other sponsors, speaker biographies, references, etc. The additional material may help the selection committee better understand the benefit of sponsoring the event. Please limit attachments to five (5) pages.

SECTION FOUR: EVALUATION CRITERIA AND APPLICANT SELECTION

The Sponsorship Review Committee will score applications on the following criteria. The total number of points used to score applications is 100.

General Information

- Name of Event
- Date of Event
- Sponsorship Request Amount (maximum amount is \$10,000)
- Lead Organization
- Contact Person (name, email, telephone information)

General Criteria

The event should be relevant to Hawaii's clean energy goals and/or specific to clean energy innovation and solutions, renewable energy, energy efficiency, clean energy policy, the transportation sector, or other HSEO programs and initiatives. Learn more about HSEO at <http://energy.hawaii.gov/>.

Scoring Criteria

Based on a 100-point scale, applications must score a minimum of 75 points for sponsorship award consideration. Applications scoring less than 75 points shall not be considered for sponsorship award.

1. Alignment with Hawaii and HSEO's clean energy mission and policy directives (30 points)
 - a. Relevance of event to Hawaii's clean energy mission – 10 points
 - b. Relevance of event's topics/theme to HSEO's policy directives – 10 points
 - c. Evidence that the organization is a demonstrated contributor to Hawaii's clean energy agenda – 10 points
2. Qualifications, experience, and capabilities (20 points)
 - a. Previous experience, capability, and proficiency in producing similar events – 5 points
 - b. Key personnel/staff experience and qualifications – 5 points
 - c. References from previous sponsors – 5 points
 - d. Comprehensiveness of application – 5 points
3. Impact/Quality of Event (35 points)
 - a. Expertise of speakers/participants – 10 points
 - b. Host organization's experience in facilitating clean energy events – 10 points
 - c. Event components covered by HSEO sponsorship – 5 points

- d. Direct and indirect impact on Hawaii's economy (i.e. jobs, sub-contractors, out-of-state visitors, etc.) – 5 points
 - e. Green and sustainable measures for event – 5 points
4. Promotion/Partnership Opportunities for HSEO's clean energy goals (15 points)
- a. Marketing/Public Relations no-cost opportunities for HSEO's clean energy goals (TV/Radio/Newspaper interview, TV mention, Radio mention, Newspaper mention, website impressions, social media impressions, event signage) – 5 points
 - b. Opportunity for HSEO's participation in event (i.e., speaker/presenter, panel, exhibitor space, etc.) – 5 points
 - c. Quality (brand recognition) of co-sponsors, partners, participants for event – 5 points

SECTION FIVE: SPECIAL PROVISIONS

5.1 SCOPE

All resulting agreements shall be in accordance with, and may incorporate, this RFP, including special provisions in this section, the Scope of Work specified herein, and the State General Conditions.

5.2 RESPONSIBILITY OF APPLICANT

Applicant is advised that in order to be awarded a sponsorship (\$2,500.00 and more) under this solicitation, Applicant is required to be compliant with all laws governing entities doing business in the State, including the following chapters and pursuant to HRS Section 103D-310(c) and verified through Hawaii Compliance Express (HCE). Awards under \$2,500.00 will not require verification through HCE.

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

The State will verify compliance on HCE prior to awarding a sponsorship.

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

Applicant should register with HCE prior to submitting an application at <https://vendors.ehawaii.gov>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of the sponsorship award and final payment.

Timely Registration on HCE. Applicants are advised to register on HCE as soon as possible. If the Applicant is not compliant on HCE at the time of award, the Applicant may not receive the sponsorship award.

5.3 SOLICITATION ADMINISTRATOR

For the purposes of this solicitation, Susan Gray-Ellis, Contracting Specialist, 808-587-9002, susan.gray-ellis@hawaii.gov, is designated the Solicitation Administrator.

5.4 OVERVIEW OF THE MODIFIED RFP PROCESS

- a. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303. This solicitation is a modified version of the typical RFP process via exemption PE16-066S.

- b. 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 written Addendum.
- c. All applications and other material submitted by Applicants become the property of the State and may be returned only at the State's option.
- d. The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the applications in accordance with the evaluation and selection criteria in Section Four. Applications may be accepted on evaluation without discussion or the Procurement Officer may enter discussions with Applicant to clarify details regarding the Applicant's application before finalizing the evaluation.
- e. After evaluation, the Procurement Officer or the evaluation committee will make its recommendations. The Procurement Officer will award the sponsorship if the application is determined to be advantageous to the State taking into consideration the evaluation factors set forth in Section Four and availability of funds.
- f. Sponsorship awards are to be posted on the State's Awards reporting system (<http://gpcprod.spo.hawaii.gov/spo2/source/>) based on the guidelines in place at the time of the award for procurements exempt from the requirements of HRS Chapter 103D. Once an award is made, all applications, successful and unsuccessful, become available for public inspection.
- g. The Procurement Officer or the evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating applications submitted in response to the RFP. The Procurement Officer or the evaluation committee will conduct a comprehensive, fair and impartial evaluation of applications received in response to the RFP.
- h. There will be two (2) Review and Award periods during the FY:
 - August 2016. Application deadline is August 1, 2016, 4:30 P.M. (HST)
 - February 2017. Application deadline is February 1, 2017, 4:30 P.M. (HST)

HSEO will continue to receive applications after the August 1, 2016, 4:30 P.M. (HST) deadline, but these applications shall remain sealed and shall be reviewed during the February 2017 Review and Award period.

Applications received after February 1, 2017, 4:30 P.M. (HST) shall be ineligible for this solicitation.

Notice of sponsorship award or decline will be provided by email within an estimated four (4) weeks of submission of application or six (6) weeks prior to event, whichever is later. Any request submitted less than six (6) prior to the event is at risk of not being accepted or processed in time. A delay in this process may occur if there are questions about the application, missing information, or a need to discuss the request with the Applicant.

5.5 REQUIRED REVIEW OF RFP

Applicant shall carefully review this solicitation for defect and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be submitted per Section 5.6 below and must be received by HSEO prior to the deadline to submit written questions as stated in the RFP Schedule and Significant Dates. Section 1.4. This will allow issuance of any necessary corrections and/or amendments, if any, to the RFP.

5.6 QUESTIONS ABOUT THE RFP

All questions must be submitted in writing and directed to the delegated HSEO procurement officer. Questions may be submitted to Susan Gray-Ellis at susan.gray-ellis@hawaii.gov with subject line "Ref. RFP-17-019-SID: Sponsorship." HSEO will respond to written questions by the date indicated in Section One, 1.4 RFP Schedule and Significant Dates, or as amended by posting an addendum to the solicitation.

5.7 APPLICATION PREPARATION

- a. **Applicant Form AF-1.** See Attachment 1. Application shall be submitted using Applicant's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate fields on Applicant Form AF-1. Failure to do so may delay proper execution of the sponsorship.

The authorized signature on the first page of the Application Form shall be an original signature. If unsigned, the application shall be automatically rejected unless accompanied by other material containing an original signature and indicating the Applicant's intent to be bound.

- b. **Offer Guaranty.** An offer guaranty is NOT required for this RFP.
- c. **Tax Liability.** Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii general excise tax (GET) and the applicable use tax. If, however, an Applicant is exempt by the HRS from paying the GET and not liable for the taxes on the gross receipts derived from this solicitation, Applicant shall state its tax exempt status and cite the HRS allowing the exemption.

- d. **Applications to be Submitted.** Applicant shall submit one (1) original application marked "ORIGINAL" plus five (5) copies marked "COPY" (total of 6 sets).

Applicant is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Applicant is cautioned that illegible applications may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

- e. Costs for developing the Application are solely the responsibility of the Applicant, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs.
- f. All applications become the property of the State of Hawaii.

5.8 PRICING

The pricing shall be the all-inclusive sponsorship amount and no other costs will be honored. Maximum sponsorship request amount shall be \$10,000.

5.9 CONFIDENTIAL INFORMATION

If an Applicant believes any information, data, or other material submitted contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP must be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

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

If a request is made to inspect the confidential or proprietary data, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F. 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 HRS Section 92F-42(1).

5.10 SUBMISSION OF APPLICATION

The submission of an application shall constitute an incontrovertible representation by the Applicant of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of the scope of services.

Before submitting an application, each Applicant must:

- (1) Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents;
- (2) 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.

Applications shall be received at HSEO: Contracts Office, 235 S. Beretania St., 5th Floor, Room 502, Honolulu, HI 96813, from the beginning date for submission of applications (Section 1.4) throughout the remaining 2017 fiscal year.

5.11 APPLICATION OPENING

Applications shall not be opened publicly. After a sponsorship is awarded the following information shall be open to the public:

- a. Award letter
- b. Procurement Officer or Sponsorship Evaluation Committee's criteria for selection

c. Application, except any confidential portions

5.12 CANCELLATION OF RFP AND APPLICATION REJECTION

The State reserves the right to cancel this RFP and to reject any and all applications in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Applicant in the event this RFP is cancelled or an application is rejected.

5.13 AWARD OF SPONSORSHIP

Awards will be made to the responsible Applicants whose applications are determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP.

5.14 ADDITIONAL TERMS AND CONDITIONS

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

5.15 SPONSORSHIP EXECUTION

Successful Applicants receiving an award shall enter into a written agreement.

No work pertaining to the sponsorship award shall be undertaken by an Applicant prior to the commencement date set forth in the agreement. The State is not liable for any work, agreement costs, expenses, loss of profits, or any damages whatsoever incurred by the Applicant prior to the official commencement date.

5.16 PAYMENT

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

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

5.17 PROTEST

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 thereto; provided that a protest based upon

the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Sponsorship or notice of decline of application.

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

Any protest shall be submitted in writing to the HSEO Procurement Officer, 235 S. Beretania Street, #502, Honolulu, HI 96813. Parties who protest will be offered a consultation prior to the formal protest. Due to the limited size and scope of awards, decisions of the Procurement Officer are final. Protests will serve as feedback on the effectiveness of this RFP process in evaluating sponsorship opportunities in the future.

5.18 NON-DISCRIMINATION

The Applicant awarded an agreement pursuant to this solicitation shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, creed, sex, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Applicant or in participation in the benefits of any program or activity funded in whole or in part by the State.

5.19 CONFLICTS OF INTEREST

The Applicant represents that neither the Applicant, nor any employee or agent of the Applicant, 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 Applicant's performance of the agreement.

5.20 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

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

If awarded a sponsorship in response to this solicitation, Applicant agrees to comply with HRS Section 11-355, 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 the legislative body between the execution of the contract through the completion of the contract.

5.21 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

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

Records Retention. The Applicant and any subcontractors shall maintain the books and records that related to the agreement and any cost or pricing data for three (3) years from the date of final payment under the agreement.

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

Preparation of Application. An Applicant should submit only one (1) application for each event or series of events Applicant is seeking sponsorship for. If an Applicant submits more than one application for each event then all such applications shall be rejected.

SECTION SIX: ATTACHMENTS

- Attachment 1: APPLICANT FORM, AF-1
- Attachment 2: SPONSORSHIP APPLICATION, AF-2
- Exhibit A: 103D GENERAL CONDITIONS & SEP CONDITIONS

**APPLICANT FORM
AF-1**

HSEO Sponsorship
STATE OF HAWAII
HAWAII STATE ENERGY OFFICE
RFP-17-019-SID

Procurement Officer
Hawaii State Energy Office
State of Hawaii
Honolulu, Hawaii 96813

Dear HSEO:

The undersigned has carefully read and understands the terms and conditions specified in the RFP, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following application 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 application, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Applicant is:

- Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

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

Federal Taxpayer Identification Number: _____

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

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

Date: _____

Respectfully submitted:

Telephone No.: _____

(x) _____
Authorized (Original) Signature

Fax No.: _____

E-mail Address:

Name and Title (Please Type or Print)

**

Exact legal name of Company (Applicant)

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



SPONSORSHIP APPLICATION, AF-2

Thank you for your interest in seeking sponsorship support from HSEO. Please complete **all items** on this application, sign and return to: Hawaii State Energy Office, Attn: Susan Gray-Ellis, 235 S. Beretania Street #502, Honolulu, Hawaii 96813. After committee review, notice of sponsorship award or decline will be provided by email within an estimated 4 weeks of submission of application or 6 weeks prior to event, whichever is later. Any request submitted with less than 6 weeks prior to the event is at risk of not being accepted or processed in time. A delay in this process may also occur if there are questions about the application, missing information, or a need to discuss the request with the Applicant. Sponsored events must be completed by June 30, 2017.

Date of Application: _____

Amount Requested: \$_____

(maximum amount is \$10,000)

A. EVENT

Name of Event:	
Date of Event (Required):	
Location:	

B. PRIMARY CONTACT INFORMATION

Lead Organization:	
Name of Contact:	
Title:	
Address:	
Phone:	
E-Mail:	
Website:	

C. INFORMATION ON LEAD ORGANIZATION

1. Please provide information about the lead organization and contribution to their community.

2. What experience does the organization have on coordinating/hosting events?



SPONSORSHIP APPLICATION, AF-2

D. SPONSORSHIP DETAILS FOR EVENT AND/OR PROGRAM

1. Describe the event.

2. Purpose of the event.

3. Who is the audience?

4. Number and type of attendees anticipated.

5. How will the event be marketed, promoted?

6. List keynote speakers, title, organization, and qualifications (1 sentence each).

SPONSORSHIP APPLICATION, AF-2

7. Describe how the event meets the HSEO mission.

8. Describe how the event will create awareness of Hawaii's clean energy goals.

9. List sponsoring organizations, potential sponsors and amount raised.

10. What costs will the HSEO sponsorship cover?

E. SPONSORSHIP PACKAGE / OFFERING

What benefits and opportunities are you offering HSEO for the sponsorship? Include any marketing, media, and branding opportunities for HSEO (i.e. speaker opportunities, exhibit space, sponsor recognition, etc.).

Please also submit with this application additional information:

- ✓ Completed AF-1 form.
- ✓ Any Supplemental Information (Section 3.3) and marketing materials that would help describe and evidence the event.
- ✓ Detailed budget with all costs.
- ✓ Evidence of compliance w/ all State laws via HCE Certificate. See sections 5.02 and 5.13 of the RFP.

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 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

This Contract is subject to the following terms and conditions:

1. **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.
2. **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.
3. **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 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.
4. **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



STATE OF HAWAII
SPECIAL CONDITIONS

reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

5. **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).
6. **SUSPENSION AND DEBARMENT.** 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.

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."

7. **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



STATE OF HAWAII
SPECIAL CONDITIONS

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 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.



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

1. **STATEMENT OF 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.
2. **SITE VISITS.** 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.
3. **FEDERAL, STATE, AND MUNICIPAL LAW REQUIREMENTS.** The CONTRACTOR shall obtain any required local permits and comply with applicable federal, state, and municipal laws, codes, and regulations for all work performed under this Contract.
4. **ANTI-LOBBYING AMENDMENT.** The CONTRACTOR shall comply with the Byrd Anti-Lobbying Amendment for an award exceeding \$100,000. The CONTRACTOR and each tier shall certify that the funds 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. This restriction is in addition to those prescribed elsewhere in statute and regulation.
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. **INTELLECTUAL PROPERTY.** Under this contract, the CONTRACTOR agrees that all intellectual property rights are subject to 2 CFR 200.315 or 910.362.
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:



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

Acknowledgment: “This material is based upon work supported by the Department of Energy under Award Number DE-EE00069.86.0000 Office of Energy Efficiency and Renewable Energy (EERE).

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8. **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.

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.