



Department of Business, Economic Development, and Tourism

LEGAL AD DATE: SEPTEMBER 30, 2016

REQUEST FOR PROPOSALS RFP-17-020-SID

The Department of Business, Economic Development, and Tourism (DBEDT) is leading the State of Hawaii's clean energy program via its Hawaii State Energy Office (HSEO) with a goal to transform Hawaii from the most fossil fuel-dependent state in the nation to a clean energy economy based on 100 percent clean and renewable energy by 2045. To aid in this effort, HSEO seeks to procure services for a Study to Evaluate Utility and Regulatory Models.

SEALED OFFERS
FOR A

STUDY TO EVALUATE UTILITY AND REGULATORY MODELS FOR HAWAII

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

WILL BE RECEIVED UP TO 4:30 P.M. (HST) ON

WEDNESDAY, NOVEMBER 16, 2016

IN THE STRATEGIC INDUSTRIES DIVISION (SID) 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/SID/CONTRACTS OFFICE. Please call Susan Gray-Ellis as 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/
LUIS P. SALAVERIA
DIRECTOR
DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM

RFP-17-020-SID

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SECTION ONE: INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

At the request of the Hawaii State Legislature, the Department of Business, Economic Development, and Tourism (DBEDT) is seeking proposals from individuals and/or entities experienced in evaluating electric utility and regulatory structures for a study to evaluate the alternative utility and regulatory models including, but not limited to, cooperative, municipal, and independent distribution system operators, and the ability of each model to: 1) achieve state energy goals; 2) maximize consumer cost savings; 3) enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer needs; and 4) eliminate or reduce conflicts of interest in energy resource planning, delivery, and regulation; provided further that the study shall include a long-term cost-benefit analysis of each model and the steps required to carry out each scenario for each county.

Specifically, the Study will determine the long term operational and financial costs and benefits of electric utility ownership and regulatory models to serve each county of the State. The Study will also aid in understanding: 1) the process to be followed to form such ownership and regulatory models; and 2) if establishing such models would create synergies that are not currently available, particularly in the areas of: (a) increasing local control over energy sources serving each county; (b) the ability to diversify energy resources; (c) economic development; (d) reducing greenhouse gas emissions; (e) increasing system reliability and power quality; and (f) lowering costs to all consumers.

As the most oil dependent state in the United States, Hawaii spends approximately \$3 billion a year on imported oil to support its energy needs. Impacts of a price volatile energy source are a significant detriment to Hawaii's economy, business and residents' way of life. Hawaii's reliance on oil for power generation is a major reason Hawaii's electricity prices are the highest in the nation. Hawaii's dependence on imported oil also poses risks to the State's energy security and its natural environment.

A fundamental principle of Hawaii's State energy policy is energy self-sufficiency and security. The quest for energy self-sufficiency is supported by Hawaii's diversity and abundance of renewable energy resources, including wind, solar, geothermal, biomass, ocean, and hydro.

DBEDT is driving energy transformation through the Hawaii Clean Energy Initiative (HCEI). Established in 2008, HCEI is a groundbreaking partnership between the State of Hawaii, the U.S. Department of Energy, and energy stakeholders. Through HCEI, the State is transitioning Hawaii's economy from import dependency to self-sufficiency in a single generation. Hawaii's energy policy and deployment success has resulted in its emergence as a national and international leader in renewable energy and energy efficiency.

DBEDT is leading the State of Hawaii's clean energy program through its Hawaii State Energy Office (HSEO) with an overall mission to transform Hawaii from the most fossil fuel-dependent State in the nation to an economy based on 100 percent clean energy by the year 2045. HSEO has four programmatic branches—Renewable Energy, Energy Efficiency, Clean Energy Solutions, and Energy Systems and Planning. HSEO's efforts focus on developing and deploying high impact and innovative energy programs and policies, while also providing technical assistance to utilities, investors, and developers on their projects.

The electricity sector in Hawaii is currently undergoing an extensive planning effort to determine the best path forward to achieve the State's 100% renewable portfolio standard (RPS) by 2045. Part of this effort is understanding if the State can achieve a 100% RPS future under the current ownership and regulatory models and whether the likelihood of achieving this future would improve under another model.

An award will result in a contract for the Study for use by DBEDT/HSEO to support and guide future efforts that will be instrumental in achieving Hawaii's 100% RPS by 2045.

1.2 CANCELLATION

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

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Attorney General
BAFO	=	Best and final offer
CPO	=	Chief Procurement Officer
DCCA	=	Department of Commerce and Consumer Affairs
DBEDT	=	Department of Business, Economic Development, and Tourism
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
GP	=	General Provisions
HAR	=	Hawaii Administrative Rules
HCE	=	Hawaii Compliance Express
HERA	=	Hawaii Electricity Reliability Administrator
HOPA	=	Head of the Purchasing Agency
HRS	=	Hawaii Revised Statutes
HSEO	=	Hawaii State Energy Office
HST	=	Hawaii Standard Time
IOU	=	Investor owned utility
Offeror	=	Any individual, partnership, firm, corporation, joint venture or other entity submitting directly, or through a duly authorized representative or agent, a bid for the goods and/or services contemplated in this RFP
Procurement Officer	=	The contracting officer for the State of Hawaii, State Procurement Office
PUC	=	Public Utilities Commission
RFP	=	Request for Proposals

- SID = Strategic Industries Division
- SPO = State Procurement Office
- State = State of Hawaii, including its departments, agencies, and political subdivisions
- Study = Study to Evaluate Utility and Regulatory Models for Hawaii

1.4 REGISTRATION

All interested Offerors are requested to register. If you do not register, any applicable addenda will not be sent to you, and you will be responsible for obtaining any applicable addenda through the State Procurement Office website by the submittal deadline.

Send registration by email to Susan Gray-Ellis:

Email: susan.gray-ellis@hawaii.gov

Provide the following information:

- Name of Company
- Name of Contact Person
- Solicitation Number
- Mailing Address
- Telephone Number
- Email Address

1.5 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the State’s best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum.

The approximate schedule is as follows:

Release of Request for Proposals	09/30/2016
Deadline to Register	11/04/2016
Deadline to Submit Written Questions	10/13/2016
State’s Response to Written Questions (if applicable)	10/20/2016
Proposal Due Date/time	11/16/2016; 4:30pm HST
Discussion with Priority Listed Offerors (if needed)	12/14-12/16/2016
Best and Final Offer deadline (if necessary)	01/06/2017
Notice of Award (approximate)	01/18/2017
Contract Start Date (estimate)	04/01/2017

1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

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

Questions must be submitted by the due date specified in SECTION 1.5, *RFP Schedule and Significant Dates*, as may be amended.

The State will respond to questions through Addenda/Amendments by the date specified in SECTION 1.5, *RFP Schedule and Significant Dates*, as may be amended.

Potential offerors are advised to contact Ms. Susan Gray-Ellis by email at susan.gray-ellis@hawaii.gov, to insure that offeror's name, address, telephone, email and facsimile number(s) are on record for addenda distribution. The State shall not be responsible for distribution of addenda to those potential offerors who have not provided this information to DBEDT.

1.7 PROPOSAL SUBMISSION

The unbound original proposal marked "Original" plus five (5) bound copies marked "COPY" (total of 6 sets) of the proposal, plus one (1) CD or DVD containing a PDF of the proposal, shall be submitted in a sealed package or envelope to:

State of Hawaii, Department of Business, Economic Development, and
Tourism
SID Contracts Office
Attn: Susan Gray-Ellis
235 S. Beretania St., 5th Floor, Room 502
Honolulu, Hawaii 96813

"Solicitation RFP-17-020-SID" shall be referenced on the outside of the sealed package or envelope.

NO facsimiles and/or emails of the proposal packet shall be accepted.

SECTION TWO: BACKGROUND AND SCOPE OF WORK

2.1 BACKGROUND

The State is soliciting proposals from qualified firms to conduct a Study to evaluate utility ownership and regulatory models in Hawaii and the ability of each model to:

1. Achieve State energy goals¹;
2. Maximize consumer cost savings;
3. Enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer and grid needs; and
4. Eliminate or reduce conflicts of interest in energy resource planning, delivery and regulation.

2.2 SCOPE OF WORK

2.2.1 GENERAL SCOPE REQUIREMENTS

Proposals should describe the approach identified to be performed along with a listing of deliverables, an estimated duration, and a fixed inclusive cost to complete each task.

Monthly status reports including an updated deliverable schedule and updated Gantt chart should be provided documenting the progress of the project. Offeror is responsible for all costs associated with meetings. This includes, but is not limited to: room rental fees, audio visual equipment, refreshments, and printed materials.

Proposals should indicate what information would be required by an Offeror to conduct the analyses. The State will not be able to provide datasets. Proposals should indicate where Offerors intend to source data used in all analyses.

Proposals should also enumerate what, if any, additions or modifications the Offeror proposes to the scope of work tasks listed to answer the fundamental question of the Study: What ownership and regulatory models best support State policy at the lowest cost to ratepayers. If the Offeror proposes to exclude any scope tasks due to budget constraints, an estimate of the cost and duration to complete and a recommendation whether to include each item in the Study should be provided.

Proposals should clearly identify all assumptions for the analyses for costs and benefits associated with ownership models, in particular, whether the market size of Hawaii is larger or smaller than the examples used as a basis for establishing costs and benefits, and how the size of the market (larger or smaller) impacts the values reported. The Study should evaluate each county individually and collectively as a part of a multi-county model (see TASK 3) which may include the ownership of electric utilities in two or more counties.

The performance of all tasks should consider current Hawaii Revised Statutes and Public Utilities Commission regulation. It is recommended that applicants be familiar with the Public Utilities Commission's 2014 white paper: "Commission's Inclinations on the Future of Hawaii's Electric

¹ e.g. HI Rev Stat § 269-92 (2015), *State of Hawaii energy policy directives* http://energy.hawaii.gov/wp-content/uploads/2011/08/EnergyPolicy_1pgr_rev-Feb2016.pdf

Utilities: Aligning the Utility Business Model with Customer Interests and Public Policy Goals”² and reference in responses when appropriate.

Proposals should include an outreach plan to solicit public input on each island and methodology for ensuring an open and participatory process.

2.2.2 PROPOSED SCOPE TASKS

TASK 1: OWNERSHIP MODELS

Task 1 will determine the long term operational and financial costs and benefits of electric utility ownership models to serve each county of the State of Hawaii. The Study should first evaluate each task for the identified utility ownership models as vertically integrated, then determine if any significant changes to the results for a given ownership model occur with the divestiture of generation.

Utility ownership models to be evaluated shall include:

1. Status Quo (current ownership structure);
2. New Parent Company to Investor Owned Utility (IOU);
3. Cooperative;
4. Municipal;
5. Hybrid (majority government ownership in IOU); and
6. Other (responses should list any other models to be evaluated).

1.1 Introduction of Ownership Models and Asset Identification

1.1.1 - Provide a brief narrative introduction of each ownership model. Provide a discussion on the potential advantages and disadvantages of ownership of generation, transmission, and distribution facilities needed to provide service from both operational/technical and economic perspectives.

1.1.2 - Prepare a map of the service area for each county. This map should delineate the generation, transmission, substation and distribution system facilities necessary to provide services.

1.1.3 - Provide a general assessment of the existing generation, transmission, substation and distribution facilities, including age and condition, located in each county required to provide and bill for service. List the number and type of meters currently in use in each county.

1.1.4 - Determine which facilities would likely need to be acquired and/or constructed as part of the establishment of a new electric utility ownership model (generation, transmission and distribution facilities; operations center, fleet, warehouse facilities, office facilities, and material yards).

1.1.5 - Identify what, if any, system capital improvements planned for installation in the next five years, and for the subsequent years through 2045 would be specifically required to provide safe, reliable service to customers.

1.1.6 - Identify and estimate the impact of any potential stranded assets that may result from a change in ownership model given the findings and conclusions from tasks 1.1.1 through 1.1.5.

² State of Hawaii. Public Utilities Commission. Commission’s Inclinations on the Future of Hawaii’s Electric Utilities: Aligning the Utility Business Model with Customer Interests and Public Policy Goals. April 2014. <http://puc.hawaii.gov/wp-content/uploads/2014/04/Commissions-Inclinations.pdf>.

1.2 Ownership Model Overview and Feasibility Assessment

1.2.1 - Provide a comparison of the ownership models: 1) how they are similar to and/or differ; 2) the relative advantages and disadvantages of each; 3) the steps required for their formation; and 4) their relative availability to provide electric service. Evaluate each model's ability to: (a) achieve State energy goals; (b) maximize consumer cost savings; (c) enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer and grid needs; (d) eliminate or reduce conflicts of interest in energy resource planning, delivery and regulation; and (e) align management, ownership and ratepayer interests.

1.2.2 - Provide a comparison of system acquisitions of comparable size in the United States within the past 20 years showing: 1) the outgoing and incoming ownership and regulatory models; 2) number of customers served; 3) capacity; 4) annual sales; 5) estimated book value; 6) initial acquisition cost estimate; and 7) actual acquisition cost for each system. Also provide average fixed and variable average retail rates and credit rating before ownership change and each year after ownership change as data is available.

1.2.3 - Provide a high-level assessment of the technical, financial and legal feasibility of each ownership model.

1.2.4 – Develop and carry out an outreach plan to solicit public input from each island currently served by an electric utility on the results of subtasks 1.1.1—1.2.3.

1.2.5 - Identify and recommend feasible ownership models for further consideration. Recommend options for the governance structure under each of these ownership models.

For the ownership model options judged to be feasible and recommended for further consideration, complete the following Formation and Risk, Economic Evaluation, Planning, and Revenue and Financing tasks in comparison to the status quo ownership model.

1.3 Formation and Risk.

1.3.1 - Identify the steps and costs required, along with a projected timeline, to change the ownership model and acquire the electric generation, transmission and distribution plant (including substations) currently operated in each county, including all necessary approvals and/or permitting requirements.

1.3.2 - Conduct a detailed analysis to determine the legality of the ownership models according to Hawaii laws and regulations and to identify what changes to existing statute and/or regulations are required and if any proceedings might be necessary. The analysis should also estimate costs, timing, and strategies for navigating through each proceeding.

1.3.3 - Identify the known or potential financial and operational risks and who bears those risks (e.g. ratepayers, utility shareholders, taxpayers) under each ownership model.

1.3.4 - Provide an estimate of the potential impacts a change in ownership model may have on the expertise and staffing requirements of related State agencies and stakeholders (e.g., Public Utilities Commission (PUC), Consumer Advocate).

1.4 Economic Evaluation

1.4.1 - Provide a substantive estimate of the book value (original cost less depreciation) of the existing facilities that would need to be acquired to provide electric service in each county.

1.4.2 - Provide an economic evaluation of ownership and operation, including assumptions or derivations as to the potential acquisition costs, severance costs, operating and maintenance costs, likely annual capital investments and costs, power supply sources and

costs, startup and other nonrecurring costs, information technology infrastructure, software systems, call center, lost tax revenues, lost franchise revenues and other key variables.

1.4.3 - Develop a management structure and staffing plan for each ownership model. Include an estimate of the number of local jobs and associated salaries under each model. The plans should also include an assessment on the oversight management and staffing needs (e.g. PUC, Consumer Advocate)

1.5 Planning

1.5.1 - Estimate the potential for each model to increase distributed energy resources, demand response programs, system security, reliability, resiliency, and meet Hawaii's RPS milestones through 2045. Provide the logic and analysis that drives any incremental difference between ownership models.

1.5.2 - Using historic, econometric and other data as appropriate, prepare projections of potential electrical load and numbers of customers (residential, commercial, industrial) to be served through 2045. The potential load projections should include energy and capacity loads, (hourly annual load shapes). The projections should account for distributed energy resources, energy efficiency goals and demand response programs currently available and which may become available in the future to customers.

1.6 Revenue and Financing

1.6.1 - Provide an overview of the differences in how the revenue requirement is calculated under each ownership model.

1.6.2 - Provide an analysis describing the cash flows of each model, including an overview of the accounting differences between ownership models (accrual vs cash basis and the treatment of: 1) operations and maintenance expense; 2) taxes; 3) financing capital improvements; 4) depreciation; and 5) return on invested capital). Include a summary of how net revenues are distributed.

1.6.3 - Provide the expected annual revenue requirement under each ownership model through 2045, including the identification of all major cost elements.

1.6.4 - Using the revenue requirement from 1.6.3, forecast system average retail rates through 2045. Provide a matrix comparison of forecasted retail rates under each ownership model.

1.6.5 - Identify options for potential financing mechanisms of each ownership model. Include an assessment of the cost and availability of each.

TASK 2. REGULATORY MODELS

TASK 2 will determine the long-term operational and financial costs and benefits of electric utility regulatory models to serve each county of the State of Hawaii. The Study should consider the following system operation and oversight regulatory models:

(Definitions are illustrative, Offeror should provide definitions for each model, as appropriate)

- a) System operator (utility) - Utility is the operator of the transmission and distribution system. Responsible for system reliability, maintaining open network access, facilitating market mechanisms, system planning and dispatch of energy resources;
- b) System operator (independent) - A non-utility company is the operator of the transmission and distribution system. An independent system operator is responsible for system reliability, maintaining open network access, facilitating market mechanisms, system planning and dispatch of energy resources;

- c) Electricity reliability administrator – For both utility and independent system operators, consider application of the Hawaii Electricity Reliability Administrator (HERA)³, which authorizes the Public Utilities Commission to: 1) develop, adopt, and enforce reliability standards and interconnection requirements; and 2) contract for the performance of related duties with a party that will serve as the Hawaii electricity reliability administrator; and authorizes the collection of a Hawaii electricity reliability surcharge to be collected by Hawaii's electric utilities; and
- d) Other (proposals should list any other models to be evaluated).

2.1 Introduction of Regulatory Models

2.1.1 - Provide a brief narrative introduction of each regulatory model.

2.1.2 - Provide a general assessment of the existing regulatory model in place in Hawaii.

2.2. Overview of Regulatory Models

2.2.1 - Provide a comparison of the regulatory models: 1) how they are similar to and/or different; 2) the relative advantages and disadvantages of each; and 3) the steps required for their formation. Evaluate each model's ability to: (a) achieve State energy goals; (b) maximize consumer cost savings; (c) enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer and grid needs; (d) eliminate or reduce conflicts of interest in energy resource planning, delivery and regulation; and (e) align management, ownership and ratepayer interests.

2.2.2 - Provide examples of current markets under each regulatory model, and provide examples of markets that have changed regulatory model in the last 20 years. Provide the outgoing and incoming regulatory and ownership models: 1) number of utilities serving the market; 2) number of customers served; 3) capacity; 4) annual sales; 5) average fixed and variable retail rates; and 6) utility credit rating of each utility in the market before regulatory change and each year after regulatory change as data is available.

2.2.3 - Provide a high-level assessment of the technical, financial and legal feasibility of each regulatory model.

2.2.4 - Identify and estimate the impact of any potential stranded assets as a result of change in regulatory model.

2.2.5 - Develop and carry out an outreach plan to solicit public input from each island currently served by an electric utility on the results of subtasks 2.1.1 – 2.2.4.

2.2.6 - Identify and recommend feasible regulatory models for further consideration.

For the regulatory model options judged to be feasible and recommended for further consideration, complete the following Formation and Risk, Planning, and Revenue and Financing tasks in comparison to the status quo regulatory model.

2.3. Formation and Risk

2.3.1 - Identify the steps and costs required, along with a projected timeline, to change the regulatory model in the State, including all necessary approval requirements.

2.3.2 - Conduct a detailed analysis to determine the legality of the regulatory models. This analysis should identify what changes to existing statutes or regulations are required and if any proceedings might be necessary. The analysis should also attempt to estimate costs, timing, and strategies for navigating through each proceeding.

2.3.3 - Identify the known or potential financial and operational risks and who bears those risks (e.g. ratepayers, utility shareholders, taxpayers) under each regulatory model.

³ [HI Rev Stat § 269:141-149 \(2013\)](#)

2.3.4 - Provide an estimate of the potential impacts a change in regulatory model may have on the expertise and staffing requirements of related State agencies and stakeholders (e.g., PUC, Consumer Advocate).

2.4 Planning

2.4.1 - Estimate the potential for each model to increase distributed energy resources, demand response programs, system security and reliability, and meet Hawaii's RPS milestones through 2045. Provide the logic and analysis that drives any incremental difference between regulatory models.

2.5 Revenue and Financing

2.5.1 - Provide the expected annual revenue requirement for operation under each regulatory model through 2045, including the identification of all major cost elements.

2.5.2 - Using the revenue requirement from 2.5.1, forecast system average retail rates through 2045. Provide comparison of forecasted retail rates for each regulatory model.

2.5.3 - Provide an overview of the differences, if any, of how costs differ and how revenue requirement is calculated under each regulatory model.

2.5.4 - Provide an analysis of any variation to the valuation of an electric utility caused by a change in regulatory model.

2.5.5 - Identify options for potential funding mechanisms of each regulatory model. Include an overview of the direct and indirect cost to customers for each model.

TASK 3. ADDITIONAL ANALYSES

TASK 3 will provide additional insight and analysis of ownership and regulatory model changes possible under the models identified in TASKS 1.2.4 and 2.2.5.

3.1 Additional Insight and Analyses

3.1.1 - Provide a qualitative discussion on the extent benefits of ownership and regulatory model changes, including the alignment of utility interests with State policy, can be accomplished through changes in rate design.

3.1.2 - Evaluate the ability of changes in rate design relative to ownership and regulatory model changes to: (a) maximize consumer cost savings; (b) enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer and grid needs; (c) eliminate or reduce conflicts of interest in energy resource planning, delivery and regulation; and (d) align management, ownership and ratepayer interests.

3.1.3 - Include an analysis of the relative advantages and disadvantages of each county operating independently and collectively as a part of a multi-county model which may include the ownership of electric utilities in two or more counties. Evaluate the potential for each model to: 1) achieve State energy goals; 2) maximize consumer cost savings; 3) enable a competitive distribution system in which independent agents can trade and combine evolving services to meet customer and grid needs; and 4) eliminate or reduce conflicts of interest in energy resource planning, delivery and regulation.

TASK 4. FINAL REPORT

4.1 Preparation and Presentation of Final Report

4.1.1 - Prepare a detailed outline of the executive summary, final report and presentation.

4.1.2 - Prepare an executive summary of the analyses and results of all tasks.

4.1.3 - Prepare a draft formal professional report documenting the analyses and results of all tasks, in accordance with State approved detailed outline.

4.1.4 - Prepare a formal presentation of the findings of the foregoing analyses and the draft report from 4.1.3 and present at a public meeting on each island currently served by an electric utility.

4.1.5 - Prepare the final formal professional report documenting the analyses and results of all tasks, in accordance with State approved detailed outline and draft report. The final report should incorporate feedback from the public outreach in 4.1.4.

2.3 SUCCESSION OF ADDITIONAL CONTRACTORS

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

2.4 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS

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

2.5 HAWAII DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM'S RESPONSIBILITIES

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

2.6 COMPENSATION

- 1) The award shall be made on a firm, fixed fee, including all taxes. All necessary expenses, including for contingencies, shall be included in the fixed fee. Travel and other direct costs should be identified in the proposed budget template as separate categories. (See Attachment 7 Project Budget Template.) All assumptions should be identified. The amount of each payment shall be consistent with the tasks/subtasks completed during the billing period.
- 2) Only proposals priced not to exceed \$1,000,000 shall be considered.

2.7 TERM OF CONTRACT

The solicitation shall be for a two-year contract, with a possible 12-month extension. The estimated period of performance for this contract may begin approximately on April 1, 2017.

Unless terminated, the Contractor and the State may extend the term of the contract for one (1), 12-month period or portions thereof without the necessity of re-soliciting, upon mutual agreement in writing prior to the expiration of the contract, contingent upon the

appropriation and availability of funds. The contract price paid to the Contractor for the extended period(s) shall remain the same or as described in the proposal.

2.8 LEGISLATIVE CHANGES

The State reserves the right to amend the requirements of the Contractor in response to legislative changes and regulatory changes that affect this RFP.

2.9 CONTRACT ADMINISTRATOR

For the purposes of this solicitation, Susan Gray-Ellis, Contracting Specialist, 808-587-9002, or another authorized representative, is designated the Contract Administrator.

SECTION THREE: PROPOSAL SUBMISSION AND CONTENT

3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

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

3.2 REQUIRED REVIEW

3.2.1 Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

3.2.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify DBEDT in writing prior to the deadline for written questions as stated in SECTION 1.5 RFP *Schedule and Significant Dates*, as may be amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance on a defective solicitation and exposure of proposal(s) upon which award could not be made.

3.3 PROPOSAL PREPARATION COSTS

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

3.4 TAX LIABILITY

3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawaii GET at the current 4.712% for sales made on Oahu. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall State its tax exempt status and cite the HRS chapter or section allowing the exemption.

3.4.2 Federal I.D. Number and Hawaii General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

3.5 PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

3.6 CONFIDENTIAL INFORMATION

- 3.6.1 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide the Procurement Officer with justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.
- 3.6.2 An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- 3.6.3 Pursuant to Section 3-122-58 HAR, the head of the purchasing agency (HOPA) or designee shall consult with the Attorney General and make a written determination in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the Offeror appeals the denial to the Office of Information Practices in accordance with Section 92F-15.5, HRS.

3.7 EXCEPTIONS

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

No exceptions to the requirements of the AG General Conditions shall be considered.

3.8 PROPOSAL OBJECTIVES

- 3.8.1 One of the objectives of this RFP is to make proposal preparation simple and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.
- 3.8.2 Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness, clarity, and content.
- 3.8.3 When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.
- 3.8.4 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in SECTION 2.2 SCOPE OF WORK.
- 3.8.5 Offeror shall submit a proposal that includes an overall strategy, timeline, and plan for the work proposed as well as expected results and possible shortfalls.

3.9 PROPOSAL FORMS

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

- 3.9.1 Proposal Transmittal Letter (Attachment 1). Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.

The Contractor represents that neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of this contract, if awarded. Should any conflict exist, it should be disclosed with the form.

- 3.9.2 Qualifications Questionnaire (Attachment 2)

- 3.9.3 Corporate Resolution (Attachment 3)

- 3.9.4 Offer Form, Page OF-1 (Attachment 4) Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (SECTION SEVEN, Attachment 4). Failure to do so may delay proper execution of the contract.

The Offeror's authorized signature on the Transmittal Letter and Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall automatically be rejected unless accompanied by other material containing an original signature, indicating the Offeror's intent to be bound.

- 3.9.5 Offer Form, Page OF-2 (Attachment 5) Pricing shall be submitted on Offer Form OF-2 (SECTION SEVEN, Attachment 5). The price shall be the all-inclusive cost, including the GET, to the State and not to exceed \$1,000,000.00. No other costs will be honored. Any unit prices shall be inclusive.

- 3.9.6. Work Breakdown Structure (Attachment 6)

- 3.9.7 Project Budget Template (Attachment 7)

- 3.9.8 Milestone/Deliverable Cost Summary (Attachment 8)

- 3.9.9 Certificate of Vendor Compliance or proof that one has been applied for. (SEE SECTION 5.3.)

- 3.9.10 If Subcontractor(s) will be used, append a statement to the transmittal from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

a) The general scope of work to be performed by the subcontractor; and

b) The subcontractor's willingness to perform the indicated work.

3.10 PROPOSAL CONTENTS

3.10.1 The Proposal must be organized into sections, following this exact format using all titles, subtitles, and numbering, with tabs separating each section as described below. Each section listed below must be addressed individually. Pages must be numbered consecutively.

- a) Table of Contents
- b) Forms. All forms listed in Section 3.9 Proposal Forms, except Attachments 6, 7, and 8
- c) Exceptions
- d) Offeror Background, Organization and Staffing

Offeror Background. The Offeror must provide the following information relative to the past five (5) years (or the number of years the Offeror has been in business, whichever is less):

- 1) Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including other party's name and reason therefor. If none, so state.
- 2) Whether the Offeror has had judgments or pending lawsuits or actions; adverse contract actions, suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against Offeror's firm. If none, so state.
- 3) Whether the Offeror has failed to complete any awarded work. If so, Offeror must provide full details, including other parties names, when action took place and why work was not completed.
- 4) Evidence that the Offeror has sufficient financial resources to meet all terms of the Contract.

Offeror Organization and Staffing. The Offeror must provide the following information:

- 1) Organizational charts of proposed key personnel and their job titles and responsibilities. The chart must describe the management approach and include a detailed narrative describing who the key personnel are and how the key personnel's experience and educational background will enable them to successfully complete the requested services. The State reserves the right to disqualify any potential Offeror that changes key personnel assigned to perform the responsibilities, prior to the execution of the contract.
- 2) Resumes of all proposed key personnel, which should include information relating to each person's experience, education, and skills (including, but not limited to, specific degrees, dates, names of employers, and education institutions). Each resume shall be no more than three (3) pages in length.

e) Narrative Project Proposal. This section shall not exceed 50 pages (excluding appendices). Provide an overall strategy for the project which shall include, but not be limited to:

1) Scope of Work.

- a. The Offeror's approach, including a description of the entire project, strategy, and detailed plan to effectively carry out the tasks described in the "Scope of Work," Section 2. 2, including a listing of deliverables and a fixed inclusive cost to complete each task.
- b. A delineation of any anticipated problems and risk factors, and proposed solutions and approaches to mitigate project risks.

2) Work Plan and Schedule.

- a. The Offeror shall include a detailed narrative work plan in addition to completion of the Work Breakdown Structure form (See Attachment 6) by the tasks and subtasks required to produce each of the deliverables proposed. Estimated budgets for tasks and subtasks shall be included in the Work Breakdown Structure.
- b. The Offeror should describe the timing and logistics of the work plan and the key issues involved.
- c. The Offeror shall also provide a Gantt chart for the work plan.

3) Price (budget).

- a. The Offeror's budget for the project shall be prepared by category in accordance with Attachment 7, Project Budget Template. All costs should be fully loaded with the exception of applicable taxes which should be listed separately.
- b. A payment plan shall be submitted that details payment amounts for each milestone or deliverable that the Offeror completes and will be approved by State. The Offeror shall complete the Milestone/Deliverable Cost Summary (See Attachment 8).
- c. The Offeror's submitted price shall be held firm for 186 days from the closing date of all submittals.

4) Appendices.

- a. The Offeror shall provide additional information in this section.
- b. The Offeror shall demonstrate quality of work product by providing a sample of one (1) previous work, preferably relating to a similar study.

3.10.2 Offerors shall provide all of the information requested in this RFP in the order specified above.

3.11 PROPOSAL SUBMISSION

See SECTION 1.7.

3.12 RECEIPT AND REGISTER OF PROPOSALS

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

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

3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

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

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

3.14 MISTAKES IN PROPOSALS

3.14.1 Mistakes shall not be corrected after award of contract.

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

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

b) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

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

3.14.3 Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only

if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

3.15 NO LATE SUBMITTALS AFTER DEADLINE

Proposals received after the due date and time will be marked late and ineligible for this solicitation. The SID Contracts Office time stamp will be used as the official time. Offerors are cautioned to make prior arrangements to ensure timely delivery prior to the due date and time as no late submittals will be accepted.

SECTION FOUR: EVALUATION CRITERIA

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

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

4.1 EVALUATION OF MANDATORY REQUIREMENTS (Pass/No Pass)

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

Mandatory requirements for the proposal are listed in SECTION 3.10 Proposal Contents. As part of these mandatory requirements, Offeror is to provide all forms listed in SECTION 3.9. The State, at its sole discretion, may deem a proposal as non-responsive (i.e., "no pass") based on a conflict of interest. Any proposal on Offer Form OF-2 exceeding \$1,000,000 shall be deemed non-responsive (i.e., "no pass").

4.2 PROPOSAL EVALUATION CRITERIA (200 TOTAL POSSIBLE POINTS)

The evaluation committee shall evaluate the Offeror's proposal against requirements specified in this RFP. The total number of points used to score proposals is 200. Proposals must score a minimum of 120 points to be considered a "Priority-listed Offeror" for further award consideration. Proposals scoring less than 120 points shall not be considered for project award.

Proposals will be evaluated against the following criteria and points:

1) Offeror's Approach and Comprehensiveness of Proposal (100 points)

The evaluation committee will evaluate the Offeror's approach and comprehensiveness of the proposal, as it relates to the services requested in Section 2.2 Scope of Work, based on the following:

- a) Approach and overall strategy to effectively carry out the project objectives - 50 points.
- b) Comprehensiveness of proposed plan including work plan (work breakdown structure) proposed deliverables (deliverable and milestone summary), and project budget template – 30 points.
- c) Overall presentation and professionalism of the proposal – 10 points.
- d) Demonstrated understanding of the ownership structures and regulation of utilities in Hawaii – 5 points.
- e) Demonstrated thorough understanding of the purpose and scope of Contractor's responsibilities as related to requirements of this RFP- 5 points.

2) Offeror Background, Organization and Staffing (65 points)

Offeror's proposed organization and staffing resources will be evaluated to assess the Offeror's capability and commitment to carry out the duties and responsibilities of this RFP.

The evaluation committee will evaluate the key management personnel and supporting personnel proposed for this Contractor's responsibilities, based on experiences listed under the individual resumes.

Specifically, proposals will be evaluated based on the following criteria:

- a) Organization of key personnel assigned to the project (including professional background and years of hands-on experience with similar types of projects or programs) – 30 points.
- b) Clear identification of roles key team members play for specific tasks performed. Key personnel resumes and credentials – 20 points.
- c) Offeror's financial condition and stability sufficient to meet all terms of the contract. – 10 points
- d) Offeror's experience working with federal, state and local regulatory commissions or government entities in areas relative to the required work described in this RFP. Examples of projects with federal, state, and/or local governments – 5 points.

NOTE: If there are any changes in key personnel and/or staffing after the discussions and prior to submitting the BAFO, the Offeror must notify the State immediately. The State may choose to reevaluate the Offeror's proposal which may result in its removal from the Priority-Listed Offerors. (See Exhibit B.)

3) Past performance on projects of similar scope for public agencies or private industry. (25 Points)

- a) Pertinence and description of services provided in past five (5) years related to this submittal – 10 points.
- b) Quality of a previous work sample submitted (SEE SECTION 3.10.1.e.4).b) – 7 points.
- c) Demonstrated ability to complete awarded work within allotted time. (Has Offeror failed to complete any awarded work, e.g. terminated for default or failed to complete a contract in the last 5 years) – 5 points.
- d) Reference quality – 3 points.

4) Competitiveness and reasonableness of price (10 points)

The Offeror's proposed (cost) price will be scored using an SPO numerical rating system. Of the proposals scored, the one with the lowest price will be awarded the maximum possible points for this component. Other proposals will be awarded points for this component equal to the lowest proposed price multiplied by the maximum possible points for this component, divided by the Offeror's proposed (higher) price.

Scoring for price formula is: Lowest proposal price received (\$) multiplied by 10 points (maximum no. of score points) divided by Offeror's Proposal (\$) Amount.

In the event that only one proposal qualifies (scores above 120 points qualification), reasonableness of price will be scored based on certified cost or pricing data or other data as necessary to perform a cost or price analysis of the data and determine that the price is fair and reasonable.

SECTION FIVE: CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 DISCUSSION WITH PRIORITY-LISTED OFFERORS

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

- 5.1.1. Proposals shall be classified initially as acceptable, potentially acceptable or unacceptable. Discussion may be conducted with Priority-Listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award. The object of these discussions is to clarify issues regarding the Priority-Listed Offeror's proposals before a best and final offer, if necessary. Priority-Listed Offerors may be required to give oral presentations to ensure a thorough, mutual understanding of each proposal. A Priority-Listed Offeror that is requested to make a presentation and fails to make the presentation on the schedule date to the Procurement Officer or Evaluation Committee shall not be considered for the final award. Any and all cost incurred by a Priority-Listed Offeror in making the presentation shall be the Priority-Listed Offeror's sole responsibility and shall not be reimbursed by the State.
- 5.1.2. If during discussions, there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed to the Priority-Listed Offerors who submit acceptable or potentially acceptable proposals.
- 5.1.3. Following any discussions, the Priority-Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or evaluation committee reserve the right to have additional rounds of discussions with the Priority-Listed Offerors prior to the submission of the BAFO, if necessary.
- 5.1.4. The date and time for the Priority-Listed Offerors to submit their BAFO, if any, will be indicated via an addendum to the Priority-Listed Offerors only. If a Priority-Listed Offeror does not submit a notice of withdrawal or a BAFO, the Priority Listed Offeror's immediate previous offer shall be construed as its BAFO. BAFOs shall be submitted only once unless it is determined in writing by the Chief Procurement Officer or the HOPA to be in the best interest of the State to conduct additional discussions or require another BAFO.

5.2 AWARD OF CONTRACT

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

5.3 RESPONSIBILITY OF OFFERORS

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

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

The State will verify compliance on Hawaii Compliance Express (HCE).

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.

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

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE as soon as possible. Although proof of application will be accepted as proof of submission, if a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror may not receive the award. The State reserves the right to move on to the next responsive, responsible Offeror.

5.4 PROPOSAL AS PART OF THE CONTRACT

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

5.5 PUBLIC EXAMINATION OF PROPOSALS

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

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

5.6 DEBRIEFING

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

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

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

5.7 PROTEST PROCEDURES

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

Mr. Luis P. Salaveria
Director
Department of Business, Economic Development, and Tourism
235 S. Beretania Street, 5th Floor
Honolulu, HI 96813

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 or if requested, within five (5) working days after the procurement officer's debriefing was completed.

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

5.8 APPROVALS

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

5.9 CONTRACT EXECUTION

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

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

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

5.10 INSURANCE

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

a) Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per

occurrence; personal injury of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability Stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

b) Automobile Liability Insurance

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

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

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

5.10.3 The Contractor will immediately provide written notice to the SPO and the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

5.10.4 The certificates of insurance shall contain the following clauses:

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

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

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

5.11 PAYMENT

Incremental payments shall be made to the awarded Contractor on a fixed-fee basis, upon receipt of deliverables that meet the expectations of the tasks listed in the Scope of Work. The receipt of monthly reports shall be due based on the timeline submitted by the Contractor in the proposal, or as amended.

5.12 CONTRACT INVALIDATION

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

SECTION SIX: ATTACHMENTS AND EXHIBITS

- Attachment 1: Proposal Transmittal Letter
 - Attachment 2: Qualifications Questionnaire
 - Attachment 3: Corporate Resolution
 - Attachment 4: OFFER FORM, OF-1
 - Attachment 5: OFFER FORM, OF-2
 - Attachment 6. Work Breakdown Structure (Template)
 - Attachment 7. Project Budget (Template)
 - Attachment 8. Milestone/Deliverable Cost Summary (Template)
-
- Exhibit A: OVERVIEW OF THE RFP PROCESS
 - Exhibit B: GENERAL PROVISIONS FOR GOODS AND SERVICES
 - Exhibit C: 103D GENERAL CONDITIONS

A

To be submitted on Offeror's official business letterhead

PROPOSAL
TRANSMITTAL LETTER
STUDY TO EVALUATE UTILITY AND REGULATORY MODELS FOR HAWAII

SOLICITATION RFP-17-020-SID

Department of Business, Economic Development, and Tourism
DBEDT/SID/Contracts Office
235 S. Beretania St., 5th Floor, Room 502
Honolulu, Hawaii 96813

The undersigned has carefully read and understands the terms, conditions and requirements specified in the Request for Proposal attached hereto and hereby submits the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned acknowledges receipt of any addendum issued by the Department of Business, Economic Development, and Tourism by recording in the space below the date of receipt:

Addendum No. 1 _____ Addendum No. 2 _____ Addendum No. 3 _____

Addendum No. 4 _____ Addendum No. 5 _____

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

Respectfully submitted,

Exact Legal Name of Offeror (company name)

Authorized signature (attach corporate resolution or evidence of authorization to bind)

Title

Date

Street Address

City, State, Zip Code

Telephone No.

Mailing Address (if different from street address)

QUALIFICATIONS QUESTIONNAIRE

1. How many years has your organization been in business under your present business name?
2. How many years' experience in this field of work has your organization had?
3. Show the five most recent projects your organization has completed that are related to this project.

Name of project owner and contact information	Project Description (Note for which Projects your organization was prime contractor)	Project period (dates)	Contract amount	Were project objectives met within budget and schedule

4. For what entities within the State of Hawaii other than government agencies have you performed work?

Name of project owner and contact information	Project Description (Note for which Projects your organization was prime contractor)	Project period (dates)	Contract amount	Comments

5. For what State departments and county agencies of the State of Hawaii have you performed work?

Name of project owner and contact information	Project Description (Note for which Projects your organization was prime contractor)	Project period (dates)	Contract amount	Comments

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

Name of project owner and contact information	Project Description (Note for which Projects your organization was prime contractor)	Project period (dates)	Contract amount	Comments

7. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? If so, list.

Name of project owner and contact information	Project Description (Note for which Projects your organization was prime contractor)	Project period (dates)	Contract amount	Comments

Attachment 2

8. List a minimum of three references for work performed similar to this project.

Company	Project Description (Note for which Projects your organization was prime contractor)	Contact Person	Phone	Email address

CORPORATE RESOLUTION

Attach here:

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

OFFER FORM
OF-1
STUDY TO EVALUATE UTILITY AND REGULATORY MODELS FOR HAWAII

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
RFP-17-020-SID

Ms. Susan Gray-Ellis
Department of Business, Economic Development & Tourism
State of Hawaii
Honolulu, Hawaii 96813

Dear Ms. Gray-Ellis:

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

Offeror is:

- Checkboxes for Sole Proprietor, Partnership, *Corporation, Joint Venture, and Other with a blank line for specification.

*State of incorporation: _____

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

Federal I.D. No. _____

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

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

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature

Telephone No.: _____

Name and Title (Please Type or Print)

Fax No.: _____

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

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

**OFFER FORM
OF-2**

STUDY TO EVALUATE UTILITY AND REGULATORY MODELS FOR HAWAII

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

\$ _____

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

Offeror _____
(Name of Company)

WORK BREAKDOWN STRUCTURE

OFFEROR NAME

WBS Task	Lead	Title	Description	Milestone/ Deliverable	Duration (days)	Estimated Start Date	Budget
1.0							
1.1							
1.2				Milestone			
1.3							
1.4				Deliverable			
2.0							
2.1							

WBS Task should identify each task and associated subtasks to be performed.

Lead should identify the staff responsible for leading each WBS task.

Title should have distinctive title for each WBS Task.

Description should summarize what work is to be accomplished and provide a concise statement of the objectives of that WBS task. In addition, description should indicate project deliverables that the task will help achieve. For subtasks, description should describe the specific and detailed work efforts that go achieving the higher level WBS tasks.

Milestone/Deliverable should identify tasks that are milestones or deliverables.

Duration should quantify the number of working days to complete the WBS task.

Estimated Start Date should list the day work is estimated to begin for each WBS task.

Budget should list the proposed all-in cost to complete each WBS task.

PROJECT BUDGET TEMPLATE

WBS Task	Time (Hrs)	Billing Rate	Labor	Travel	Other	Taxes	Total
<i>example</i>							
1.1	15	\$ 200	\$ 3,000	\$ 1,000	\$ 100	\$ 171	\$ 4,271
1.1.1	10	\$ 200	\$ 2,000	\$ -	\$ 100	\$ 88	\$ 2,188
1.1.2	5	\$ 200	\$ 1,000	\$ 1,000	\$ -	\$ 83	\$ 2,083

Billing Rate should be blended if forecasting labor with dissimilar billing rates.
 All costs should be fully loaded with the exception of applicable taxes, which should be listed separately.

MILESTONE/DELIVERABLE COST SUMMARY

WBS Task*	Title	Milestones**	Deliverables	Anticipated Completion Date (months from Start of project)	Cost
1.0	1 st Stakeholder mtg	Hold Initial Stakeholder Meeting with 20 participants from Utilities, and User groups			
1.1	2 nd Stakeholder mtg	Hold Second Stakeholder Meeting with 30 participants from Utilities, User groups and PUC		8	\$X,XXX
1.2					

*Milestone/Deliverable numbering convention should align with Task and Subtask numbers in the Work Breakdown Structure

**All Milestones/Deliverables should follow the SMART methodology: Specific, Measureable, Achievable, Relevant, and Timely.

EXHIBIT A
OVERVIEW OF THE RFP PROCESS

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

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

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

unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.

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

HAWAII REVISED STATUTES (HRS) CHAPTER 103D

(Updated 4/20/2013)

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

Offerors are cautioned to read and understand all the terms and conditions contained in the General Provisions as these provisions will also be made part of the contract for goods and services.

EXHIBIT B

GENERAL PROVISIONS FOR GOODS AND SERVICES

GENERAL PROVISIONS FOR GOODS AND SERVICES

1. **DEFINITIONS OF TERMS**

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

- a. **BID**
Bid means any offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.
- b. **BID PROPOSAL GUARANTY OR SECURITY**
The security when required, furnished by an offeror with his offer to ensure that the offeror will enter into the contract with the STATE and execute the required contract and payment bonds covering the work contemplated, if his offer is accepted.
- c. **CONTRACT**
Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.
- d. **CONTRACT BOND**
The approved form of security furnished by the CONTRACTOR and his surety or sureties or by the CONTRACTOR alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.
- e. **CONTRACTOR**
An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the STATE and acting directly or through his, their or its agents, employees or sub-contractors.
- f. **DAYS**
Days mean calendar days unless otherwise specified.
- g. **GENERAL CONDITIONS**
General Conditions issued by the Department of the Attorney General of the State of Hawaii, referred to as Form AG-008, as revised, and included in solicitations by reference. The applicable revised Form AG-008, which is included by reference, is the form dated and in effect at the date the solicitation is issued.

- h. GENERAL PROVISIONS
General Provisions are standard terms and conditions.
- i. HAR
Hawaii Administrative Rules
- j. HEAD OF THE PURCHASING AGENCY

The head of any agency with delegated procurement authority by law or from a chief procurement officer of this STATE to enter into and, administer contracts.
- k. HRS
Hawaii Revised Statutes
- l. IFB
Invitation for Bids
- m. OFFER
An offer means a bid or proposal as defined in sections 1a and 1p, in response to any solicitation.
- n. OFFEROR
Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1s.
- o. PROCUREMENT OFFICER
Procurement officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief procurement officer directly or through the head of a purchasing agency or designee to the procurement officer.
- p. PROPOSAL
A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1a.
- q. PURCHASING AGENCY
Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- r. RFQ
Request for Quotes
- s. RFP
Request for Proposals

t. SOLICITATION

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

u. SPECIAL PROVISIONS

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

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

v. SPECIFICATIONS

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

w. STATE

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

x. SURETY

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

y. WORK

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

2. COMPETENCY OF OFFEROR

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

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

3. **OFFER INCORPORATES SOLICITATION**

The solicitation, including the AG's General Conditions, Specifications, General Provisions and any Special Provisions, and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

4. **PREPARATION OF OFFER**

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

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

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

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

5. **LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS**

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

6. **DISQUALIFICATION OF OFFERORS**

An offeror shall be disqualified and his offer automatically rejected for any one of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; or offeror's delivery of the offer after the

deadline specified in the public notice calling for offers, or as amended, except as allowed in Section 3-122-29 (1), HAR.

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

7. **IRREGULAR OFFERS**

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

8. **STANDARDS OF CONDUCT**

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

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

who participated while in State office or employment in the matter with which the contract is directly concerned.

9. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

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

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

10. **ACCEPTANCE OF OFFER**

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

11. **EXECUTION OF CONTRACT**

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

- a. In cases where the contract award equals or exceeds the dollar level specified in Section 103D-305, HRS, the STATE shall forward a formal contract to the successful offeror for execution. The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten days

after receipt by the vendor or within such further time as the procurement officer may allow.

- b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.
- c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section shall be applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

12. **CONTRACT BOND**

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

13. **FAILURE TO EXECUTE CONTRACT**

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract, and to furnish satisfactory security as required by Section 30 within ten days after such award or within such further time as the procurement officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 7, into the State Treasury as a realization of the STATE.

The procurement officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method he may deem is in the best interest of the STATE.

14. **RETURN OF OFFER GUARANTIES**

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

15. **PAYMENT**

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

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

16. **DELIVERY EXTENSIONS**

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

17. **PERSONAL LIABILITY OF PUBLIC OFFICIALS**

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

EXHIBIT C
103D GENERAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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