



Department of Defense

LEGAL AD DATE: December 30, 2014

**REQUEST FOR PROPOSALS
No. RFP-CA-1506
SEALED OFFERS
FOR
DISASTER STAFFING FOR THE
STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY**

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

JANUARY 23, 2015

IN THE STATE OF HAWAII, DEPARTMENT OF DEFENSE, ENGINEERING OFFICE, 3949
DIAMOND HEAD ROAD, ROOM 228, HONOLULU, HAWAII 96816-4495. DIRECT
QUESTIONS RELATING TO THIS SOLICITATION TO CATHY SIU; TELEPHONE (808) 733-
4041, FACSIMILE (808) 733-4235 OR E-MAIL AT csiu@dod.hawaii.gov.

Darrell D.M. Wong
Major General
Hawaii National Guard
Adjutant General

RFP-CA-1506

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SECTION ONE
INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.01 INTRODUCTION

The State of Hawaii, Department of Defense – Hawaii Emergency Management Agency (HI-EMA) is requesting proposals from qualified applicants to provide recovery staffing support to plan, execute, and monitor the provision of the Federal Emergency Management Administration (FEMA), public assistance approved for the State of Hawaii.

- a. Objective: To obtain temporary public assistance staffing support when a FEMA declared disaster is declared.

1.02 CANCELLATION

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

1.03 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

BAFO	= Best and Final Offer
CPO	= Chief Procurement Officer
DAGS	= Department of Accounting and General Services
GC	= General Conditions, issued by the Department of the Attorney General
GET	= General Excise Tax
HAR	= Hawaii Administrative Rules
HI-EMA	= Hawaii Emergency Management Agency, Department of Defense
HRS	= Hawaii Revised Statutes
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation
Procurement Officer	= The contracting officer for the State of Hawaii, Department of Defense.
RFP	= Request for Proposals
SDOD	= State of Hawaii, Department of Defense

- State = State of Hawaii, including each departments and political subdivisions
- SOW = State of Work
- Vendor = Company proposing goods and services in response to this document

1.04 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein 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 "Proposals Due" date is delayed, the rest of the schedule may be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	12/30/2014
Deadline to Submit Written Questions	1/09/2015 4:30PM
State’s Response to Written Questions	1/13/2015
Proposals Due	1/23/2015 4:30PM
Proposal Evaluations	1/26/2015
Discussion with Priority Listed Offerors If required	N/A
Request for Best and Final Offer (Est.)	1/27/2015
Best and Final Offer (Est.)	2/03/2015
Estimated Contract Award	2/04/2015
Estimated Contract Start Date	3/02/2015

1.05 QUESTIONS PRIOR TO OPENING OF PROPOSALS

All questions must be submitted in writing via FAX at 808-733-4235 or may be delivered to the State of Hawaii, Department of Defense, Engineering Office, Building 306-A, Room 228, 3949 Diamond Head Road, Honolulu, HI 96816-4495, Attn: Cathy Siu, Contracts Assistant (808-733-4041). The State will respond to written questions by the date indicated in Section One, 1.04 RFP Schedule and Significant Dates, or as amended, through an Addenda.

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-95 through 3-122-97. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.01 PROJECT OVERVIEW AND HISTORY

Overview: To provide project support and debris management expertise in the applications for and provision of FEMA public assistance to the State of Hawaii.

History: The Disaster Assistance Branch (DAB) of the Hawaii Emergency Management Agency is responsible for managing the Federal Emergency Management Agency's (FEMA) Public Assistance Grant Program for the State of Hawaii. The DAB is responsible for working with FEMA as the applicants' advocate to ensure applicants are compensated for eligible work; DAB is not staffed to handle the additional work that must be completed after a federal declaration is received.

2.02 SCOPE OF WORK

Disaster Assistance staffing support. Scope of Work:

Project Officer (Program Specialist VI): The number of positions required may be different with each disaster.

- Support the Public Assistance Officer in the preparation of a public assistance (PA) plan and milestones to accomplish efficient, accurate, and expeditious provision of FEMA PA support to the affected applicants.
- Support the Public Assistance Officer in the execution of this plan.
- Be the primary contact with state and county applicants, advocating for them in the coordination/negotiating for FEMA support for PA projects.
- Provide subject matter expertise and advice in the preparation of applicant project worksheets.
- Provide training for state and county disaster assistance personnel.
- Experience working on federally-declared disasters, including closing project worksheets.
- Experience in at least one of the following technical specialties: roads and bridges, utilities, debris removal, environmental issues, historic preservation, insurance and cost estimating. Specific area of experience will be determined by the type of disaster.
- Provide liaison support to designated county Emergency Operations Centers, as required.

2.03 STATE OF HAWAII DEPARTMENT OF DEFENSE – HAWAII EMERGENCY MANAGEMENT AGENCY (HI-EMA) RESPONSIBILITIES

- (1) Provide Joint Field Office location for FEMA and State/County personnel (including personnel listed in 2.02 above) to include the provision of appropriate electrical power and Information Technology (IT) connectivity.
- (2) Provide full access to FEMA and state/county stakeholders and applicants and to schedule/support required meetings between the relevant parties.
- (3) Provide administrative support for PA project activities.

2.04 TERM OF CONTRACT

Successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The initial term of the contract shall be for a period of up to 180 calendar days beginning on the official commencement date stipulated in the Notice to Proceed. Unless terminated, the Contractor and the State may extend the term of the contract for additional periods of up to 180 calendar days each or portions thereof without the necessity of re-bidding, upon mutual agreement in writing prior to the expiration of the contract. The contract price paid to the Contractor for the extended periods shall remain the same or shall be renegotiated for a lesser rate in the event services are not required for the full duration of the contract. The contract will end when the services are no longer needed. The Contractor or State may terminate the extended contract period at any time upon 14 days prior written notice.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.01 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

The State will not participate in determinations regarding an Offeror's authority to sell a produce to 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 an offer.

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.

3.02 SUBMISSION OF PROPOSAL

- A. The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.
- B. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the *Exceptions* section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.
- C. 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.
- D. By submission of a proposal, 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.

3.03 REQUIRED REVIEW

- A. The Offeror shall thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror shall also become familiar with State, County, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect the cost, progress, or performance of the work required.

- B. Should the Offeror discover what is considered to be a discrepancy, ambiguity, omission or doubt as to the intent and meaning of the terms noted in this RFP, the Offeror shall complete the "Questions and Clarifications" form found at the end of this section, and submit by fax, to the number below, and by the date noted in the RFP *Schedule and Significant Dates*, as amended.

3.04 PROPOSAL PREPARATION COSTS

Any and all costs incurred by the Offeror in the preparation, submission, or presentation of 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.

3.05 RESPONSIBILITY OF OFFERORS

- A. Pursuant to HRS §103D-310(c), the Offeror shall be compliant with all laws governing entities doing business in the State including the following chapters:
1. Chapter 237, General Excise Tax Law;
 2. Chapter 383, Hawaii Employment Security Law;
 3. Chapter 386, Worker's Compensation Law;
 4. Chapter 392, Temporary Disability Insurance;
 5. Chapter 393, Prepaid Health Care Act; and
 6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

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

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

Vendors/contractors/service providers 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.

- C. Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.
- D. 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 they are liable for the Hawaii GET at the current 4.5% for sales made on Oahu and the 4% rate for the islands of Hawaii, Maui, Molokai, and Kauai. 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.

- E. Offeror shall submit its current Federal I.D. Number 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.

3.06 PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

3.07 CONFIDENTIAL INFORMATION

- A. If an Offeror believes that any portion of their proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential (e.g. trade secrets or other proprietary data), the Offeror shall submit the information under a separate package clearly labeled "CONFIDENTIAL" to facilitate inspection of the non-confidential portion of the proposal. Price is not considered confidential and will not be withheld. The Offeror shall also include a written statement, indentifying those portions of the proposal that contain trade secrets or other proprietary information that is to remain confidential.

- B. Public requests to inspect the portions of an offeror's proposal designated as confidential pursuant to HAR Section 3-122-58, the inspection shall be subject to a written determination by the Attorney General for confidentiality in accordance with HRS Chapter 92F. If the Attorney General determines in writing that the material designated as confidential is subject to disclosure, the material shall be open to public inspection unless the offeror appeals pursuant to HRS 92F-42(1). If the request for inspection is denied, the person may appeal the denial to the Office of Information Practices in accordance with HRS Section 92F-15-5.

3.08 EXCEPTIONS AND SUBSEQUENT REQUESTS TO AMEND THE RFP

Any exceptions taken by an Offeror to the requirements of this RFP and requests to amend the requirements of the RFP as a result of the exception taken, shall only be considered prior to proposal due date, and as follows:

1. The Offeror, in writing, shall identify the RFP section and requirement to which an exception is taken, the reason for the exception, and requested change to the requirement.
2. Written exception(s) and request(s) to amend the RFP shall be submitted to the Contracts Assistant identified in Section 1.05 by the date and time specified in Section 1.04, RFP Schedule and Significant Dates, or as amended.
3. Written exception(s) and request(s) to amend the RFP shall be reviewed by the State. Any changes to the RFP shall be made through the issuance of a written Addendum to the RFP.

4. Any exception taken to any requirement of the RFP or requests to amend the RFP that was not submitted by the date and time specified shall be considered as a condition to Offeror's proposal, which may negatively affect the evaluation of Offeror's proposal or result in the disqualification of that proposal.

Offeror shall not submit their organization's terms and conditions, standard contracts, or other agreements. General references to such items or attempts at substitution for such items may result in disqualification of Offeror's proposal.

The State reserves the right to accept or not accept any exceptions.

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

3.09 PROPOSAL OBJECTIVES

- A. One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective. Therefore,
 1. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis shall be placed on it's completeness, clarity and content.
 2. 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. 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 2.02 SCOPE OF WORK.
 4. The 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.

3.10 PROPOSAL FORMS

- A. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Proposals offering terms and conditions that conflict with the terms and conditions provided in the RFP or in subsequent addendum may be rejected without further consideration.
- B. Offer Form, Page OF-1. Indicate the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space. Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall signify the Offeror's intent to be bound.

- C. Offer Form, Page OF-2. The prices offered shall be an all-inclusive cost, including labor, materials, supplies and all applicable taxes, including the GET to the State.

3.11 PROPOSAL CONTENTS

Proposals shall:

- A. Include a transmittal letter with a statement that the Offeror agrees with and accepts the requirements, provisions, terms, and conditions specified in this RFP.
- B. Include the original signed in ink Offer Form OF-1 through OF-2 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal.
- C. If subcontractor(s) will be used, append a statement to the transmittal letter 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;
 - b. The subcontractor's willingness to perform for the indicated price.
- D. Provide all of the information requested in this RFP in the order specified.
- E. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section shall be tagged individually and pages numbered.
 - a. Transmittal Letter. This should include at a minimum the project name and company information.
 - b. Offer Form.
 - c. Experience and Capabilities.
 - 1) Client listing. Provide a listing with a summary of services that were provided to include but not limited to budget and scope of work, type of FEMA disaster, State and the specific FEMA disaster number.
 - 2) Number of years in business. Related to Emergency management.
 - 3) Listing of key personnel and associated resumes for those who will be dedicated to this contract. Provide awards, certificates, letters of appreciation, etc.
 - 4) Listing of references. That can be called to discuss the quality of work, repercussions, expertise, etc.
 - 5) Summary listing of judgments or pending lawsuits or legal actions.

- 6) Samples of projects similar to those described in this RFP. Provide detailed accounts that describe expertise, experience and capability to accomplish the work.
- d. Proposed overall strategy, timeline and plan.
- e. Other pertinent information.
- f. Exceptions.
If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within four (4) business days.

3.12 PROPOSAL PREPARATION

Offer Guaranty (Proposal Security). An offer guaranty is NOT required for this RFP.

Taxpayer Preference. For evaluation purposes, pursuant to HRS §103D-1008, the Offeror's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

Original Proposal and Copies to be Submitted. Offeror shall submit one (1) original proposal marked "ORIGINAL" and three (3) **copies** of the original marked "COPY". It is imperative to note that the Offeror submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

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

Copies of documents transmitted by Offerors via facsimile machines shall be limited to the modifications or withdrawal of an offer pursuant to HAR Sections 3-122-108 and 3-122-28, respectively.

3.13 SUBMISSION AND RECEIPT OF PROPOSAL

Offers shall be received at the Department of Defense, Engineering Office, located in Building 306-A, Room 228, 3949 Diamond Head Road, Honolulu, HI 96816-4495, no later than the date and time stated in Section 1.04, Significant Dates, as amended. Timely receipt of offers shall be evidenced by the date and time registered by the Engineering Office time stamp clock. Offers received after the deadline shall be returned unopened.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the receiving office, but to a central mailroom. This may cause a delay and the offer may not reach the Engineering Office until after the deadline, resulting in automatic rejection.

3.14 EXPERIENCE AND CAPABILITIES

Provide the following information:

- (1) A complete, related and current client listing.
- (2) Indicate the number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
- (3) A list of key personnel and associated resumes for those who will be dedicated to this project.
- (4) A list of at least three (3) references from the Offeror's client listing that may be contacted by the State as to the Offeror's past and current job performance. Offeror shall provide the names, titles, organizations, telephone numbers, email and postal addresses for the references cited.
- (5) A summary listing of judgments or pending lawsuits or actions against; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against the Offeror. If none, so state.
- (6) A listing of sample projects and/or examples of written plans.

3.15 PROPOSAL, STRATEGY AND PROJECTED TIMETABLE

Offeror shall submit an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

3.16 GENERAL INSTRUCTIONS

The following instructions establish the minimum acceptable requirements for the format and content of a vendor's proposal.

- Incomplete proposals (e.g., those that do not address all the evaluation factors), may be rejected and not evaluated.
- Proposals for products or services other than those specified will not be considered.
- A one-page cover letter must accompany each proposal. Prepare this letter on your company letterhead with the following information:
 - Solicitation Number
 - Project Title
 - Full Legal Name and Address of Company
 - Date of the Proposal
 - Principal Point of Contact Name, Title, Address (if different from the above), Telephone Number, Fax Number and email address.

- Proposals that fail to address all required documentation requested in the solicitation package and its attachments will be evaluated accordingly.
- All proposals must be produced on 8-1/2" x 11" white paper with a font size no smaller than 12 point.
- The proposal must be bound in either in a loose-leaf binder or by means of a mechanical or equivalent secure binding style.
- Each evaluation factor must be contained and labeled in its own separately tabbed section within the proposal.
- Each proposal must contain a Table of Contents following the cover letter.

3.17 PROPOSAL OPENING

Proposals will be opened at the date, time, and place specified in Section One or as amended. Proposals will not be opened publicly, but shall be opened in the presence of two or more state officials. Proposals and modifications will only be shown to members of the evaluation committee and state personnel, or their designees having a legitimate interest in them. The register of proposals and Offeror's proposals shall be open to public inspection upon posting of award pursuant to section 103D-58 HRS.

3.18 EVALUATION AND SELECTION PROCESS

- A. General Description: The proposal evaluation and selection process will be made by a Section Committee. After the proposals are received, the Section Committee will convene to evaluate the proposals and will award up to 100 points based on the parts listed in section X.XX Evaluation Categories.
- B. Selection Committee: This Selection Committee will review and evaluate each offeror's proposal. The Committee is composed of employees of the State of Hawaii, Emergency Management Agency.
- C. Proposal Clarifications: In the event the Selection Committee finds, in the course of its review, that clarification of a proposal is necessary and/or is required for a fair and objective evaluation, such clarification will be requested in writing to the proposer, the the proposer shall respond in writing. The same confidentiality will be observed in this exchange as in the original submittal. Since time is of the essence, if a response is not received in the time allowed, evaluations will be made accordingly.
- D. Non-Responsive Proposals: During the evaluation process it may become apparent that one or more of the proposals do not quality on the basis of technical deficiencies or non-responsiveness to the RFP requirements. If required items are not included in the proposal as described in the RFP documents, the Offeror's proposal will be deemed non-responsive. If so determined by the Selection Committee, these proposals will be recommended to the Procurement Officer for disqualification and returned to the proposer. In certain situations, the non-responsive portion may be a

minor or easily adjusted modification in an otherwise responsive proposal, and the Department may waive such irregularities. The decision of the Department in this matter is final and no appeal will be considered. Minimum requirements such as experience, insurance, tax clearance are considered mandatory and will not be waived.

E. Evaluation Criteria:

- F. Rating System: Each submission will be evaluated individually on its own merits and shortcomings. The evaluation of the individual criteria will be based on the value of that which is specified relative to what has been established as the criteria within the RFP. That is, each subcategory will be rated relative to the baseline with the following system. Each of the rating points represents a percentage of the total points available for that specific criterion.

SUPERIOR: Submission exceeds the minimum requirements and is particularly noteworthy in some aspects for that item. This rating will be awarded between 100-86% of the available points for that criterion.

EXCELLENT: Submission exceeds the minimum requirements for that item. This rating will be awarded between 85-71% of the available points for that criterion.

ABOVE AVERAGE: Submission is slightly above the minimum requirements for that item. This rating will be awarded between 70-56% of the available points for that criterion.

NORMAL: Submission merely meets the minimum requirements for that item. This rating will be awarded between 55-41% of the available points for that criterion.

BELOW AVERAGE: Submission does not totally meet the minimum requirements for that item. This rating will be awarded between 40-26% of the available points for that criterion.

3.19 BEST AND FINAL OFFER (BAFO) (HAR §3-122-54)

- A. If the State determines a BAFO is necessary, the procurement officer shall establish a date and time for priority-listed offerors to submit their BAFO.
- B. Unless otherwise determined by the state in accordance with section 3-122-54 HAR, BAFOs shall be submitted only once. If a priority-listed offeror does not submit a notice of withdrawal or another BAFO, their immediate previous offer will be construed as their BAFO.
- C. After BAFOs are received, final evaluation will be conducted for an award pursuant to §3-122-57 HAR.

3.20 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS (HAR §3-122-16.07)

A. The Offeror may modify or withdraw a proposal before the established proposal due date and time by any one of the following documents.

1. Modification of proposals:

- a. A written notice accompanying the actual modification, received in the office designated in the solicitation, stating that a modification to the proposal is submitted; or
- b. A facsimile or electronic notice accompanying the actual modification, submitted either by facsimile machine, electronic mail, or an electronic procurement system pursuant to section 3-122-9 to the office designated in the solicitation; provided that if other than through an electronic system, offeror submits the actual written notice and modification within two working days of receipt of the facsimile or the electronic submittal.

2. Withdrawal of proposals:

- a. A signed, written notice received in the office designated in the solicitation; or
- b. A written notice by facsimile machine or other electronic method pursuant to section 3-122-9, to the office designated in the solicitation.

3.21 CORRECTION OF PROPOSALS AND WITHDRAWAL OF PROPOSALS (HAR §3-122-31)

A. Corrections to proposals after the established proposal due date and time but prior to award may be made under the following conditions:

1. If the mistake is attributable to an arithmetical error. In the case of an error in the extension of proposal price, the unit price shall govern.
2. If the mistake is a minor informality which shall not affect price, quality, quantity, delivery, or contractual conditions, the offeror shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Adjutant General shall prepare a written approval or denial in response to this request. Examples of such mistakes include:
 - a. Typographical errors;
 - b. Transposition errors;
 - c. Failure of the offeror to sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offerors intent to be bound.
3. For reasons not allowable under paragraphs 3.23 A.1 and A.2, when the Adjutant General determines that the correction or waiver of an obvious

mistake is in the best interest of the Department or is warranted for the fair treatment of other proposers.

- B. Withdrawal of proposals after the receiving of proposals but prior to award may be made when the proposal contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the proposer requests withdrawal in writing by submitting proof of evidentiary value which demonstrates that a mistake was made. The Adjutant General shall prepare a written approval or denial in response to this request.
- C. Correction or withdrawal of proposals after award is not permissible except in response to a written withdrawal or correction request by the offeror, and the Adjutant General makes a written determination that the Department's procurement practices and policies would not be materially affected by such correction or withdrawal.

DISCUSSIONS WITH OFFERORS

- A. Discussions may be conducted with "priority-listed" offerors pursuant to §3-122-53 HAR. However, proposals may be accepted upon evaluation, without discussions.
- B. Discussions will be limited to only "priority-listed" offerors, and are held to:
 - 1. Promote understanding of the State's requirements and priority-listed offeror's proposals; and
 - 2. Facilitate arriving at a contract that will provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals.
- C. Priority-listed offers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.
 - 1. Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror;
 - 2. If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by addendum to incorporate the clarification or change.
- D. Addenda to the request for proposals shall be distributed only to priority-listed offerors.
 - 1. Priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;

If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be cancelled and a new request for proposals issued.

- E. The contents of any proposal shall not be disclosed to competing offerors during the discussion process.

LATE SUBMITTAL OF OFFER, LATE WITHDRAWAL, AND LATE MODIFICATION [HAR §3-122-16.08]

- A. Proposals or modifications received after the established proposal due date and time will not be considered for award, and shall be returned to the offeror unopened, as soon as practicable, accompanied by a letter stating the reason for its return.
- B. Requests for withdrawal of proposals received after the established proposal due date and time, except as provided for in §3-122-31 HAR regard mistakes in bid, will not be accepted, and shall be responded to with a letter stating the reason for the non-acceptance.

AWARD OF CONTRACT [HAR §3-122-57]

- A. The Selection Committee will compile the rating points achieved under the evaluation criteria categories and those achieved under the cost evaluation. The Offeror with the highest aggregate number of points will be selected and recommended for award of the contract.
- B. The award shall be issued in writing to the responsible offeror whose proposal is determined in writing to provide the best value to the State taking into consideration price and the evaluation criteria in the request for proposals.
- C. Pursuant to §103D-701 HRS, the award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

OTHER CONDITIONS FOR AWARD

- A. The Adjutant General may reject any and all proposals and waive any defects if the Adjutant General believe the rejection or waiver is in the best interest of the State.

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

- B. The Adjutant General may hold all proposals up to sixty (60) calendar days from the date proposals are due. Unless otherwise required by law, proposals may not be withdrawn without penalty.
- C. The award of the contract is conditioned upon the availability of funds.

- D. Any agreement or contract is subject to the approval by the Department of the Attorney General, and the approval by the Governor, as required by statute, regulation, rule, order, or other directive.

REQUESTS FOR DEBRIEFING [HAR §3-122-60]

- A. The purpose of a debriefing is to inform non-selected offerors of the basis for the source selection decision and contract award. Requests for a debriefing shall be submitted in writing within three (3) working days after the posting of the award of contract.
- B. Pursuant to §103D-701 HRS, a protest following a debriefing shall be submitted within five (5) working days, as specified in section 103D-303(h), HRS.

SECTION FOUR
EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below.

The total number of points used to score this contract is 100.

- 1) Cost of services (40)
- 2) Previous experience, capability and proficiency in FEMA Disaster Recovery Programs (30)
 - a. Number of years in the business and number of years performing services specified in this RFP
 - b. Reference and client listings
- 3) Project Proposal (20)
 - a. Methodology
 - b. Timeline
 - c. Expected Results
 - d. Possible Shortfalls
- 4) Resumes, proposed staff qualifications (10)

SECTION FIVE

CONTRACTOR SELECTION & CONTRACT AWARD

5.01 PROPOSAL AS PART OF THE CONTRACT

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

5.02 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:

State of Hawaii
Department of Defense
Engineering Office
LTC Neal S. Mitsuyoshi, P.E.
3949 Diamond Head Road
Honolulu, HI 96816-4495

A protest shall be submitted in writing within five (5) working days after the date upon which debriefing is completed. If no request for debriefing has been made, a protest of an award or proposed award shall be submitted in writing within five (5) working days after the posting of award of the contract. Protests based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers.

5.03 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract in the form as in Exhibit C. 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.

5.04 INSURANCE

- A. 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:

1. Commercial General Liability Insurance

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

2. Automobile Liability Insurance

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

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

4. NOTE: Error & Omissions insurance is available for technology suppliers and may be required for the specific procurement being conducted.

B. The Contractor shall deposit with the DOD, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the DOD 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 DOD during the entire term of the Contract. Upon request by the DOD, the Contractor shall furnish a copy of the policy or policies.

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

D. The certificates of insurance shall contain the following clauses:

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

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

E. 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.

5.05 REQUIREMENTS FOR PERFORMANCE BONDS – Not required for this contract.

5.06 PAYMENT

Incremental payments shall be made to the awarded Contractor on a monthly basis. HRS Section 103-10, 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 offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, 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.

Final Payment Requirements - Contractor is required to submit a current Certificate of Vendor Compliance with the final invoice.

SECTION SIX

SPECIAL PROVISIONS

6.01 SCOPE

All staffing support for the Hawaii Emergency Management Agency shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), available at the State Department of Defense, Engineering Office, Building 306-A, Room 228, 3949 Diamond Head Road, Honolulu, Hawaii, 96816-4495. Also available at the State Procurement Office website - <http://spo.hawaii.gov/> and the State Department of Defense website <http://dod.hawaii.gov/> go to "staff offices" then "Engineering Office" then "Bids".

6.02 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 3.20, Experience and Capabilities, will likely have an adverse affect on Offeror's proposal evaluation.

6.03 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.04 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES

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

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

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

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

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

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

This section shall not apply to:

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

6.05 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

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

Changes to the contract may be modified only by written document (contract supplement) signed by the Department of Defense, Deputy Adjutant General and Contractor personnel authorized to sign contracts on behalf of the Contractor.

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

6.06 GOVERNING LAW: COST OF LITIGATION

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 equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part 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.

6.07 ADDITIONAL TERMS AND CONDITIONS

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

6.08 NON-DISCRIMINATION

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

6.09 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.

6.10 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.

6.11 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

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

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

6.12 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

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

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

SECTION SEVEN

ATTACHMENTS AND EXHIBITS

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
- Exhibit A: OVERVIEW OF THE RFP PROCESS
- Exhibit B: WAGE CERTIFICATION
- Exhibit C: GENERAL CONDITIONS

**OFFER FORM
OF-1**

DISASTER STAFFING, STATE OF HAWAII, DEPARTMENT OF DEFENSE, HAWAII
EMERGENCY MANAGEMENT AGENCY, RFP-CA-1506

Adjutant General
State Department of Defense
3949 Diamond Head Road
Honolulu, Hawaii 96816-4495

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and 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.

The undersigned represents: **(Check \checkmark one only)**

- A Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
 A Compliant Non-Hawaii business not incorporated or organized under the laws of the State of Hawaii. Business shall be registered prior to award at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii. State of incorporation: _____

Offeror is:

- Sole Proprietor Partnership Corporation Joint Venture
 Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License 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 (*1)

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

Exact Legal Name of Company (Offeror) (*2)

(*1) Original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

(*2) 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

Hourly cost for "Project Officer (Program Specialist VI)" (\$_____).
_____ DOLLARS

[BIDDER'S INSTRUCTIONS: Fill in the total hourly cost in numbers and write out the total hourly cost in words. Prices shall be written in ink or typed.]

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

Offeror _____
Name of Company

OVERVIEW OF THE RFP PROCESS

- 7.1** The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.
- 7.2** 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.
- 7.3** Proposals shall be received in accordance with “Section One, 1.04 and Section Three, Proposal Format and Content”. 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.
- 7.4** 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.
- 7.5** 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.
- 7.6** 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.
- 7.7** 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.
- 7.8** The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4, 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.

- 7.9** 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.
- 7.10** 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.
- 7.11** 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.
- 7.12** 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.

WAGE CERTIFICATE

Description of Project: _____

(To be filled in by prospective bidder)

Pursuant to Selection 103-55, Hawaii Revised Statutes, as amended, I hereby certify that if awarded the contract in excess of \$5,000, the services to be performed will be under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work.
2. All applicable laws of the Federal and State governments relating to workers' compensation, payment of wages, and safety will be fully complied with.

<u>Job Description / Civil Service Class</u>	<u>BU</u>	<u>SR</u>
Program Specialist VI	13	26

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the wages required by Section 103-55, Hawaii Revised Statutes.

Firm _____

By _____

Print Name _____

Title _____

Date _____

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.