State of Hawai`i Department of Health
Environmental Health Administration
Office of Hazard Evaluation and Emergency Response

RELEASE DATE: **March 14, 2016**

REQUEST FOR PROPOSALS
No. RFP-HEER-NES2016

SEALED OFFERS
FOR
NON-EMERGENCY ENVIRONMENTAL SERVICES CONTRACTS
STATE OF HAWAII
DEPARTMENT OF HEALTH, HAZARD EVALUATION AND EMERGENCY RESPONSE OFFICE

PROPOSALS WILL BE RECEIVED UP TO 4:30 PM (HST) ON **APRIL 20, 2016**

IN THE HAZARD EVALUATION AND EMERGENCY RESPONSE (HEER) OFFICE; 919 ALA MOANA BOULEVARD, ROOM 206; HONOLULU, HAWAI'I 96814-4920. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO HAROLD LAO ("Official Contact"), TELEPHONE (808) 586-4249, FACSIMILE (808) 586-7537 OR E-MAIL AT Harold.Lao@doh.hawaii.gov.

HAROLD LAO
Procurement Officer

Name of Company

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SECTION ONE

INTRODUCTION, TERMS AND ACRONYMS, KEY DATES

1.1 INTRODUCTION

The Hawaii State Procurement Office (SPO) is requesting proposals for non-emergency services (NES) contractors who will be used to assist the State of Hawaii, Department of Health (DOH), Hazard Evaluation and Emergency Response (HEER) Office. Selected NES contractors will expand HEER Office capacity, enhance the consistency of regulatory oversight, and provide access to expert subject matter resources, as needed. This will allow the HEER Office to fulfill its statutory responsibility to protect human health and the environment, complete its mission to actively support safe and efficient redevelopment of brownfields, and complete its grant commitment to enhance Hawaii's state response program. Based on Offeror's expertise, at least one but not more than three contracts will be awarded.

The HEER Office and its contractors are required to seek, encourage, and utilize disadvantaged, minority, and woman-owned business enterprises (DBE, MBE, and WBE) for their procurement needs. An Overview of the RFP process is provided as SECTION SEVEN, Exhibit A.

1.2 CANCELLATION

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

1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

AG	=	Department of the Attorney General
BAFO	=	Best and Final Offer
CERCLA	=	Comprehensive Environmental Response, Compensation & Liability Act of 1980 (CERCLA)
COGS	=	Certificate of Good Standing
DBE	=	Disadvantaged-owned Business Enterprise
DOH	=	State of Hawaii, Department of Health
EHE	=	Environmental Hazard Evaluation
EHMP	=	Environmental Hazard Management Plan
EMR	=	Experience Modification Rate
EPA	=	United States Environmental Protection Agency
FTC	=	Fast Track Cleanup
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HEER Office	=	Hazard Evaluation and Emergency Response

		Office
HCE	=	Hawaii Compliance Express
HRS	=	Hawaii Revised Statutes
HST	=	Hawaii Standard Time
MBE	=	Minority-owned Business Enterprise
NES	=	Non-emergency Services
Official Contact	=	The HEER Office point of contact for applicant requests for information or other questions
Procurement Officer	=	The contracting officer for the State of Hawaii, State Procurement Office
RFP	=	Request for Proposal
SPO	=	Hawaii State Procurement Office
State	=	State of Hawaii, including its departments, agencies, and political subdivisions
TGM	=	Technical Guidance Manual (the TGM for the Implementation of the Hawaii State Contingency Plan)
UXO	=	Unexploded ordnance
VRP	=	Voluntary Response Program
WBE	=	Woman-owned Business Enterprise

1.4 RFP SCHEDULE AND SIGNIFICANT DATES

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

Release of Request for Proposals	Mar. 14, 2016 (Mon)
Pre-proposal Conference	Mar. 29, 2016 (Tue)
Due Date to Submit Questions	Mar. 31, 2016 (Thu)
State's Response to Questions*	Apr. 6, 2016 (Wed)
Proposals Due Date/Time	Apr. 20, 2016 (Wed)
Proposal Evaluations	May 11, 2016 (Wed)
Discussion with Priority Listed Offerors (if necessary)	May 25, 2016 (Wed)
Notice of Award	Jun 8, 2016 (Wed)
Contract Start Date	Oct. 10, 2016 (Mon)

1.5 PRE-PROPOSAL CONFERENCE

The purpose of the pre-proposal conference is to provide Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. The pre-proposal conference is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

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

Since space may be limited, those planning to attend must RSVP and provide the number of people by calling or writing the Official Contact specified on the first page of this RFP, or the designee for the Official Contact. The pre-proposal conference will be held as follows:

Date: March 29, 2016 (Tue)

Time: 1:30 p.m. – 3:30 p.m.

Location: 919 Ala Moana Blvd.; Honolulu, HI 96814; 5th Floor

1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.4, *RFP Schedule and Significant Dates,* as amended.

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

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND HISTORY

The State of Hawai'i is responsible for protecting human health and the environment from releases of hazardous substances according to Chapter 128D, Hawaii Revised Statutes (HRS) and Chapter 11-451 of the Hawaii Administrative Rules (HAR). The DOH, HEER Office has been designated to carry out the State's responsibility in this area.

2.2 HAWAII DEPARTMENT OF HEALTH, HAZARD EVALUATION AND EMERGENCY REPONSE OFFICE RESPONSIBILITIES

To fulfill this responsibility, the HEER Office undertakes activities such as the following:

a. Receives notifications and responds to releases of hazardous substances and oil on land and at sea.

b. Conducts, manages, or oversees preliminary site assessments, brownfields environmental site assessments and cleanups, historical research and site discovery activities, sampling of opportunity field events, and environmental hazard evaluations (EHE) pursuant to State and federal guidelines.

c. Oversees federal assessments, investigations and remedial actions responding to unexploded ordnance, following the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process.

d. Oversees remedy selection, design, and implementation of cleanup actions.

e. Implements programs including the Voluntary Response Program (VRP) and Fast Track Cleanup (FTC) that aid landowners and developers with environmental investigation, site assessment, and cleanup oversight.

f. Ensures contaminants that are left in place long-term are documented in Environmental Hazard Management Plans (EHMP) and managed in a manner that will remain protective of human health and the environment.

g. Develops and implements areawide EHE and EHMP approaches to raise public awareness of historic contamination, responsibilities under HRS 128D and provides recommendations about risk management activities to reduce likelihood of exposures and ensure compliance with state laws.

h. Develops, updates, and maintains the on-line Technical Guidance Manual for the Implementation of the Hawaii State Contingency Plan (TGM). The TGM provides HEER Office guidance on acceptable methods and practices for site environmental investigations, cleanups, and long-term site management to address hazardous substance releases.

i. Provides training to varied stakeholder groups about contaminant awareness, HEER Office technical guidance, cleanup assistance and other topics.

j. Formulates new rulemaking, guidance, and policy for environmental investigations and cleanups in the State.

k. Gathers information and conducts research to evaluate, prevent, and/or address releases of hazardous substances and oil to the environment. Develops guidance, as necessary, to address known or newly recognized chemical-related hazards to human health or the environments.

l. Conducts extensive public outreach, utilizing meetings, fact sheets, website information, mailings, publications, and other communication methods.

m. Performs outreach to potential developers to assist them with grants and encourage the beneficial reuse of potentially contaminated property that may otherwise lie fallow.

n. Oversees unpermitted landfills that were closed before the 1993 implementation of Environmental Protection Agency's (EPA) Resource Conservation and Recovery Act Subtitle D, 40 CFR Parts 257 and 258.

o. Conducts Brownfields Conferences on a semi-annual basis and other large events as needed to communicate with stakeholders.

p. Prepares Quality Assurance Project Plans and Quality Assurance Program Plans as required by EPA Grant Terms and Conditions.

2.3 SCOPE OF WORK

The HEER Office is seeking assistance from qualified firms to support its non-emergency response program. Offerors shall recommend and perform the work subject to HEER Office approval and oversight. Contractor(s) will be selected based on expertise in any of the following three categories: 1) Knowledge of and experience with our program, 2) Ability to quickly engage technical experts, and/or 3) Unexploded ordnance (UXO) expertise. Each bidder is encouraged to bid on one or more categories. Based on the Offerors' qualifications, at least one but not more than three contracts will be awarded.

Offerors shall provide and be responsible for all personnel, certifications, services, equipment, materials, and subcontractors used to perform the work. Note, the HEER Office reserves the right to solicit and award separate contracts for certain projects that may be within the scope of this contract, but because of their size and/or complexity the HEER Office believes the projects would benefit by being addressed through separate solicitations.

All non-emergency services provided by the selected contractors shall be in accordance with this RFP, including its attachments and any addenda.

2.3.1 GENERAL ADMINISTRATIVE AND TECHNICAL EXPECTATIONS. In addition to the three expertise categories that contractors may elect to bid on, all selected contractors must first demonstrate ability to meet the following general expectations. Failure to meet these general requirements will indicate the

Offeror is not qualified to bid on the three categories of professional expertise, as defined in Section 2.3.2

a. General Administrative Expectations – These basic requirements are expected for the successful administration of contract responsibilities.

    1) Remain accessible, generally, by phone from 7:45 a.m. to 4:30 p.m., Monday through Friday, except for State holidays throughout the year. Be accessible, on an occasional basis, for matters that do not constitute an emergency but which still require immediate attention seven days per week, 24-hours per day. An example would be an issue that needs to be resolved on a weekend to avoid costly delays in a sampling event scheduled to start on Monday.

    2) As needed, have the capacity to schedule dedicated staff for work in their offices, in the Honolulu HEER Office, in the Hilo HEER Office, or elsewhere within the State for multiple, possibly consecutive, days, weeks, or months on specific projects as requested by the HEER Office.

    3) Adjust staffing capabilities to accommodate flexible and variable schedule of work. Expect high volumes near the end of each Federal Fiscal Year.

    4) Develop appropriate scopes of work and cost estimates based on guidance provided by HEER Office Project Managers.

b. General Technical Expectations – It is expected that qualified environmental professionals are proficient and experienced in general environmental oversight. Failure to meet these objectives will disqualify an Offeror for being considered further (See Section 4 for details). These basic technical skills are required for all bidders, regardless which of the three scopes in Section 2.3.2 they will bid on:

    1) Know how to access DOH public records, including HEER Office site data, releases, and other branch records (example underground storage tank information, permit records).

    2) Conduct tasks related to preparation and review of key HRS, Chapter 128D and CERCLA documents including: sampling and analysis plans, remedial investigations, site characterizations, remedial alternatives analyses, remedial action memorandums, removal action reports and site closure documents.

    3) Demonstrate general understanding of the EHE process, including proper application of DOH Environmental Action Levels and development and implementation of basic EHMP.

    4) Develop general outreach plans for HEER Office activities and targeted, site-specific community involvement plans for specific projects.

5) Understand basic sampling requirements including data quality objectives and standard data validation protocols.

6) Provide data in formats specified by HEER Office Project Managers. Electronic spreadsheets, geodatabases, shapefiles, .pdf files, .csv files, or other formats may be required.

7) Be able to quickly provide direct labor contracts with a variety of subcontractors (laboratories, waste-disposal, equipment, administrative, etc.).

2.3.2 PROFESSIONAL EXPERTISE. The requirements of this RFP are divided into three scopes. Offerors may bid on one or more scopes. Each scope will be evaluated separately as described in Section 4. The selected contractor(s) will be proficient in at least one area of professional expertise, as described in the three scopes below:

a. SCOPE 1. HEER Office Program-Specific Knowledge and Experience

The qualified offeror will have experienced, local, personnel or will have easily available access to proficient local subcontractors who can:

1) Develop EHEs and EHMPs for a variety of Hawaii sites, at various stages of a project, in a manner that shows strong familiarity with HRS 128-D and the TGM. The EHEs and EHMPs may be developed during characterization, prior to construction, or at site closure. Sites may involve different affected media, off-site contamination, and/or area-wide contamination. Offeror will also be expected to manage sites in accordance with stipulations in existing EHMPs. Expertise for this scope is expected to be much more proficient than the EHE/EHMP requirements described in the general expectations scope (Section 2.3.1.b).

2) Provide technical assistance regarding investigations and response actions related to HRS 128-D and HAR 11-451 (e.g. VRP projects; FTC program projects, Sampling of Opportunity activities; and other State site projects).

3) Perform human health and/or ecological hazard evaluations and risk assessments. This may include routine scientific research.

4) Perform non site-specific tasks related to prevention and response activities to protect human health and the environment.

5) Provide information, analyses and recommendations to support environmental policy development by the HEER Office.

6) Assist with development and implementation of trainings and materials for consultants, to increase knowledge, technical expertise and compliance with state law, the state contingency plan and the TGM.

7) Compile, sort, evaluate, and interpret data extracted from the HEER Office databases, as needed to investigate and enhance regulatory effectiveness or address other data research questions.

8) Periodically update specific HEER Office scientific literature databases or assist in the creation of new subject/topic literature databases, in Endnote or other systems to be used in the future.

9) Identify, develop, and distribute fact sheets, newsletters, and other materials to promote stakeholder education and awareness of Hawaii response activities, laws, and processes, and to encourage close engagement with HEER Office stakeholders.

10) Provide support for drafting and editing specific sections or subsections of the HEER Office TGM, and any related technical information on hazardous substances or response to hazardous substance releases. This might include actively editing documents or websites.

11) Assist the HEER Office, as necessary, with coordinating data management or integration of data from other state or federal geographic information system databases.

12) Provide logistical, field, and laboratory support for implementing Sampling and Analysis Plans designed by the HEER Office. Provide sample analytical services meeting the TGM criteria with a turn-around time of 2 to 4 weeks upon receipt of the samples. Provide rush sample analyses when requested and/or approved by the HEER Office Project Manager.

13) Conduct environmental site assessments at specific brownfields sites.

14) Research innovative site characterization and/or cleanup methodologies. This research will build on and enhance current HEER Office guidance.

15) Assist the HEER Office in planning, conducting, and evaluating innovative field technologies through pilot tests, field tests, and other trials.

16) Demonstrate familiarity with other laws and guidance that directly support the HEER Office mission (examples, HAR 11-452, HRS 128E, HAR 11-453).

b. SCOPE 2: Ability to Quickly Engage Technical Experts

In the past, the HEER Office has used a variety of subject matter experts in fields such as ecological risk assessment, landfill engineering, industrial hygiene, air sampling, and geology. The HEER Office would like the ability to access such resources in the future and understands that these resources may not be available locally. The Offeror should have the capability to

support DOH with direct or subcontracted niche labor capable of the following:

1) Provide a subject matter expert in marine and avian contaminant ecology. The expert should be familiar with Hawaii's tropical environment and be able to provide field support, as well as assist with technical guidance and policy development.

2) Provide expert environmental engineering resources to assess integrity of proposed remedial designs for landfill closures or other engineered solutions. The expert is expected to summarize and interpret results of leachate, groundwater monitoring, and soil gas data; oversee the maintenance of landfill cover, and evaluate and correct erosion and drainage problems.

3) Provide public health, risk assessment, epidemiology expertise in the event of a community exposure to contaminants.

4) Assist in ongoing development and publication of effective on-line systems of identifying and sharing information about contaminated and potentially contaminated sites.

5) Identify and subcontract (as necessary) with subject matter experts to assist in the development of HEER Office technical guidance, policy, or strategic plans.

6) Identify and subcontract (as necessary) with subject matter experts in other disciplines that may be needed to provide training, technical consultation or to assist in environmental or public health investigations under the State's Response Program.

7) Provide expert witnesses for court cases and other official proceedings.

c. SCOPE 3: UXO Expertise

1) Provide expert UXO technical assistance to assist the state with ongoing development, revision and implementation of Areawide EHMPs to inform the public and provide hazard management guidance concerning UXO hazards.

2) Assist the state in assessing the feasibility of establishing a state UXO oversight program to provide public outreach, guidance and site-specific comment to non-federal UXO investigations, construction support and areawide development planning.

3) Demonstrate expertise and maintain detailed familiarity with United States Army Corps of Engineers and Department of Defense UXO guidance and policies. Identify and provide written recommendations detailing revisions required to existing areawide EHMP and state UXO guidance to match significant changes in federal safety, investigatory or remedial procedures.

4) Provide quality assurance/quality control support for UXO remedial investigations. In-depth knowledge of Visual Sample Plan and UXO Estimator is required to assess the adequacy of the investigative work performed.

5) Prepare and review Explosive Safety and Evacuation Plans as needed to support investigations in sensitive use areas.

6) Provide UXO site visit support when entering contaminated sites. Able to do safety briefings prior to those site visits.

7) Provide UXO technical expert support during public and other stakeholder meetings

8) Prepare comments and recommendations to private parties, state agencies and others seeking DOH oversight of UXO investigatory or hazard reduction activities.

9) Provide any other logistical, field, and technical support for UXO investigations. UXO Technicians must meet the criteria outlined in SECTION SEVEN, Exhibit B.

2.4 TERM OF CONTRACT

The initial period of the awarded contracts may be twelve (12) months and will be specified at the time the contracts are awarded. The contracts may be extended up to four (4) additional twelve-month periods, without re-solicitation, upon mutual agreement in writing prior to expiration of the contract and the execution of a supplemental agreement. A Contractor or the State may terminate its contracts or a supplemental agreement to extend the contract at any time by providing sixty (60) days prior written notice. No automatic escalation of rates is provided, but rates are evaluated during annual contract negotiations. Incremental escalation may be indicated if contractor performance under the contract has been judged by the HEER Office to be outstanding, and adequate state resources are available for funding an incremental rate escalation.

The contract is intended to begin approximately on October 10, 2016 and end on October 10, 2017.

Unless terminated, the Contractor and the State may extend the term of the contract for four (4) additional 12-month periods or portions thereof without the necessity of re-soliciting, upon mutual agreement in writing at least sixty (60) days prior to the expiration of the contract. The contract price or commission paid to the Contractor for the extended period shall remain the same or as negotiated at renewal.

When interests of the State or the Contractor so require, the State or the Contractor may terminate the contract for convenience by providing six (6) weeks prior written notice to the other party.

Work is assigned in the form of individual Task Orders that are created with mutual agreement between the HEER Office and the Contractor. Task Orders are individual work projects within the general scope of the Contract to provide a specific work product or deliverable. Task Orders may be fixed-price or time and materials based depending on the specific available funding source.

2.5 CONTRACT ADMINISTRATOR

For the purposes of this contract, Harold Lao, Planner, (808) 586-4249, or authorized representative, is designated the Contract Administrator.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 OFFEROR'S AUTHORITY TO SUBMIT AN OFFER

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

3.2 REQUIRED REVIEW

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

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

3.3 PROPOSAL PREPARATION COSTS

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

3.4 TAX LIABILITY

3.4.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii General Excise Tax (GET) at the current 4.5% for sales made on Oahu, and at 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.

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

3.5 PROPERTY OF STATE

All proposals become the property of the State of Hawaii.

3.6 CONFIDENTIAL INFORMATION

3.6.1 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provided with justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.

3.6.2 An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

3.7 EXCEPTIONS

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in this section of the Offeror's proposal. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

No exceptions to statutory requirements of the General Conditions issued by the Department of the Attorney General (AG) and provided as SECTION SEVEN, Exhibit C shall be considered.

3.8 PROPOSAL OBJECTIVES

3.8.1 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.

3.8.2 Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content.

3.8.3 When an Offeror submits a proposal for one or more of the scopes identified in this RFP, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

3.8.4 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.3 SCOPE OF WORK.

3.8.5 Offeror shall submit a proposal that includes an overall strategy, timeline, price list/rate schedule and approach for the work proposed for the first year of the contract, as well as expected results and possible shortfalls.

3.9 PROPOSAL FORMS

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

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

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

3.9.3 Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (SECTION SEVEN, Attachment 2). The price shall be the all-inclusive cost, including the GET, to the State. No other costs will be honored. Any unit prices shall be inclusive.

3.10 PROPOSAL CONTENTS

Submit no more than two hard copies and one electronic version of the proposal. Proposals must be organized into sections, using titles and subtitles. Pages must be numbered and tabs (hard copy) or bookmarks (electronic) must separate each section described below.

3.10.1 Provide all of the information requested in this RFP in the order specified.

3.10.2 See SECTION SEVEN, Attachment 1, Offer Form OF-1. Include a signed Offer Form OF-1 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. Offer Form OF-1 confirms that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP. The header should indicate which of the three scopes the Offeror is bidding on.

3.10.3 If the Offer is made by a joint venture or a partnership, or if (a) specific subcontractor(s) will be used throughout the term of the contract, append a statement to Offer Form OF-1 from each partner or subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

a. The general scope of work to be performed by the partner/subcontractor;

b. The partner's/subcontractor's willingness to perform for the indicated.

3.10.4 Experience and Capabilities.

a. Location. The firm's principal place of business and location of all its offices.

b. Experience. The number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP, and the average number of employees over the past 3 years.

c. Key Personnel. An organization chart or a list of key personnel and associated resumes for those who will be dedicated to this contract, including the resume of the Offeror's proposed Program Manager who will be the primary point of contact for the HEER Office regarding the contract. Failing to identify a Program Manager may be grounds for rejecting a proposal. The designated Program Manager must be based full-time on the island of Oahu. Offerors should also include the percentage of time they expect the designated Program Manager to be billable to specific projects versus covered by the firm's general and administrative or overhead expense accounts.

d. References – Clients. The names and phone numbers of three to five clients who may be contacted as references, including at least two from the preceding year.

e. References – Regulatory. The contact information for at least one individual at no more than three separate regulatory agencies, including DOH, who may be contacted as references. If possible, at least one individual from the preceding year should be included.

f. General Administrative Expectations. A description of company staffing, structures or policies that demonstrates Offeror's ability to meet General Administrative Expectations required in Section 2.3.1 a.

g. General Technical Expectations - Experience. A brief description of three projects or other experience that demonstrate Offeror's ability to meet General Technical Expectations required in Section 2.3.1 b. Descriptions should be one to two paragraphs long for each.

h. General Technical Expectations – Supporting Documents. Electronic examples of any of the following reports:
- Phase I Environmental Site Assessment (ASTM E1527 compliant)
- Sampling and Analysis Plan
- Removal Action Report or Remedial Site Investigation
- Analysis of Remedial Action Alternatives
- Environmental Hazard Evaluation
- Environmental Hazard Management Plan
- Fact sheet or other risk communication materials to assist community members in understanding proposed regulatory decisions

The reports should exemplify the Offeror's work, or the work of its subcontractor(s), particularly in regard to Section 2.3.1b. General

Technical Expectations. If the work is that of a subcontractor, it must be clearly identified as such. If the Offeror did do the work but currently does not have the capability to do similar work, this must be stated. Otherwise, the HEER Office will assume that the sample reports submitted present a reasonable indication of the Offeror's current capabilities. Offerors should select those reports that most closely follow current HEER Office technical guidance for environmental investigations.

Unless a report is part of the public record, Offerors should obtain permission from clients whose work they may want to submit and/or indicate that DOH should treat the sample report as confidential material. Offerors may also delete or mask material in a report that refers to specific clients or sites, but must balance the degree to which doing so makes it more difficult to evaluate the quality of the work

i. Professional Expertise. Additional project information, personnel, or experience that directly demonstrates professional expertise required for Scope(s) that the offeror wishes to bid on. The Offeror should clearly indicate which Scope(s) he or she is bidding on and provide separate subsections for each Scope (example, Subsection 10c. SCOPE 3 UXO Expertise). For each scope, Offerors should provide enough specific information about the projects to clearly demonstrate the professional expertise capabilities described in Section 2.3.2, and meet the evaluation criteria in Section 4.2.

3.10.5 Safety. Offeror may provide the Experience Modification Rates (EMR) and three-year period covered by the EMR for Offeror and any subcontractors who will be used throughout the length of the contract. The EMR disclosure is optional for all bidders, unless bidding on UXO Expert contract (Section 2.3.2c.). Safety record is required for Offerors wishing to qualify as UXO Expert.

3.10.6 Former Contractual Obligations. 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 your firm. If none, so state.

3.10.7 Contract Management. Proposal including an overall strategy, timeline, price list/rate schedule and approach for the work proposed for the first year of the contract, as well as expected results and possible shortfalls. See also SECTION SEVEN, Attachment 2, Offer Form OF-2.

3.10.8 Partner/Subcontractor Pricing. Each specific partner or subcontractor included in the proposal must submit a price list and a statement, signed by an individual authorized to legally bind the subcontractor, and stating:

a. Name, address, telephone number, fax number, and contact person.
b. The general scope of work to be performed by the partner or subcontractor.
c. The subcontractor's willingness to perform the work indicated.
d. Information regarding the qualifications of the partner or subcontractor.
Note: If a subcontractor is a DBE, or WBE, or MBE a statement to that effect should be included. Follow the EPA rule and policy guidelines.

See also SECTION SEVEN, Attachment 2, Offer Form OF-2.

3.10.9 Exceptions.

3.11 RECEIPT AND REGISTER OF PROPOSALS

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

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

3.12 BEST AND FINAL OFFER (BAFO)

If the State determines a BAFO is necessary, it shall request one from the Offeror. The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS

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

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

3.14 MISTAKES IN PROPOSALS

3.14.1 Mistakes shall not be corrected after award of contract.

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

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

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

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

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

SECTION FOUR

EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror (s) whose proposal (s) is/are determined to be the most advantageous to the State based on the evaluation criteria listed in this section.

The scoring will be performed in two phases. Phase 1 will ensure each Offeror meets General Administrative and Technical Expectations, as identified in Section 2.3.1 of this RFP. Bid packages of Offerors who score less than 80 points do not meet General Expectations and will not be considered during Phase 2. Phase 2 will evaluate the Offeror's Professional Expertise, as described in Section 2.3.2 of this RFP. Each Scope will be scored separately. Failure to score well or bid on one Professional Expertise category does not preclude an Offeror from being considered for other Professional Expertise categories.

Evaluation criteria for Phase 1 and the each individual scope of Phase 2 will be scored as specified in the parenthetical text at the end of each line item.

4.1 PHASE 1 – EVALUATION CRITERIA – General Expectations (100 Points)

a. Staffing, company structure, and support that indicate Offeror can meet the HEER Office accessibility, capacity, and surge needs described in Section 2.3.1a. (30 points)

b. Projects and experience that clearly indicate Offeror is experienced in General Technical Requirements described in Section 2.3.1b. See also Section 3.10.4g. (35 points)

c. Example supporting documents listed in Section 3.10.4.h that clearly demonstrate proficiency in General Technical Requirements described in Section 2.3.1b (30 points)

d. Other (5 points)

NOTE: "Other" considerations include: a) Efforts to encourage and utilize DBE, MBE, and WBE; b) Feedback from provided references, and c) Overall quality and presentation of proposal.

4.2 PHASE 2: EVALUATION CRITERIA – Professional Expertise

If an Offeror receives a score of 80 or higher on the Phase I Evaluation Criteria, Phase 2 will be evaluated. During Phase 2, each scope is scored as a separate, stand-alone evaluation worth 100 points. Based on the Offerors' expertise at least one, but not more than three separate contracts will be awarded.

4.2.1 SCOPE 1 - HEER Office Program-Specific Knowledge and Experience

a. Cost structure, cost control and contract administration (30 points)

b. Previous experience, capability and proficiency (i.e. experience working with the HEER Office, comprehensive knowledge of HRS 128-D, HAR 11-451,

and the current TGM, as well as other expertise identified in Section 2.3.2a and Section 3.10.4.i (40 points):

1) Number of years in the business and number of years performing services specified in this RFP and operational details including percentage of work associated with 128D releases, etc. (Section 3.10.4b)

2) Reference and client listings (Sections 3.10.4d and e)

3) Provide a brief descriptions of three to five projects demonstrating experience and capabilities. Desired experience and skill sets include those specified in Section 2.3.2a, as well as the following:

- Site discovery activities including historical research, stakeholder interviews, sampling design and implementation, early risk management recommendations and implementation. Field project planning that includes development of: 1) field sampling plans, 2) health and safety plans, and 3) quality assurance plans prepared in accordance with the HEER Office TGM.
- Air studies/monitoring using active and passive approaches, summarization of data, recommendations for site
- Hydrogeologic studies that include: 1) monitoring well installation, 2) groundwater monitoring program, 3) groundwater analyses, 4) contaminant plume delineation, 5) groundwater gradient flow and direction determination, 6) fate and transport modeling, 7) monitoring well closure, 8) vertical profiling, and 9) ground water modeling
- Utilization of HEER-approved practices to provide cost effective and representative sampling data. Including, 1) statistical environmental methods, 2) representative decision unit design, 3) multi-increment sampling approach, and 4) low-flow groundwater sampling techniques
- Planning, staging, and executing public outreach or professional training events related to environmental investigations or cleanups.
- Development, application, and implementation of EHEs and EHMPs on a variety of sites, at various stages of a project.

c. Specific Technical Support Capacity in Section 2.3.2a - A list or organizational chart of qualified personnel who are presently with the Offeror's company, or who can easily be subcontracted by the Offeror (see Section 3.10.4c). Specify whether the personnel are on staff or are subcontractors, if on staff, identify how many people are available for each specialty and where they are based. Identify any who are locally based. (25 points)

d. Additional expertise not required in RFP, but potentially beneficial to DOH (5 points)

e. Other (5 points)
NOTE: "Other" considerations include: a) efforts to encourage and utilize DBE, MBE, and WBE; b) Offeror EMR, and c) overall quality and presentation of proposal.

4.2.2 SCOPE 2 - Ability to Quickly Engage Technical Experts

a. Cost structure, cost control and contract administration (30 points)

b. Examples of projects that demonstrated advanced technical expertise in the areas described in Section 2.3.2b. This may include industrial hygiene, toxicology, ecology, marine science, or other specialties. Include the following information: (30 points)

   1) Number of years in the business and number of years performing specialized services (please specify areas of expertise) (Section 3.10.4b).

   2) Reference and client listings (Sections 3.10.4d and e).

c. Specific Technical Support Capacity in Areas described in Section 2.3.2b - A list or organizational chart of qualified personnel who are presently with the Offeror's company, or who can easily be subcontracted by the Offeror (see Section 3.10.4c). Specify whether the personnel are on staff or are subcontractors, if on staff, identify how many people are available for each specialty and where they are based. Identify any who are locally based.

d. Examples of written plans and/or journal articles that demonstrate advanced scientific or technical expertise, as described in Section 2.3.2b. (10 points)

e. Additional expertise not required in RFP, but potentially beneficial to DOH (5 points)

f. Other (5 points)
NOTE: "Other" considerations include: a) efforts to encourage and utilize DBE, MBE, and WBE; b) Offeror EMR, and c) overall quality and presentation of proposal.

4.2.3 SCOPE 3 - UXO Expertise

a. Cost structure, cost control and contract administration (30 points)

b. Previous experience, capability and proficiency with UXO projects and familiarity with all applicable Federal regulations (30 points):

1) Number of years in the UXO business and number of years performing services specified in this RFP (Section 3.10.4b).

2) Reference and client listings (Sections 3.10.4d and e).

3) A list of projects demonstrating UXO-specific experience and capabilities. Experience may include, policy development, health and safety oversight, geophysical classification, field identification of UXO, and/or removal expertise. (Section 3.10.4.i)

c. Specific Technical Support Capacity in Areas described in Section 2.3.2c - A list of qualified personnel who are presently with the Offeror's company, or who can easily be subcontracted by the Offeror (see SECTION SEVEN, Exhibit B and Sections 2.3.2c and 3.10.4c). Specify whether the personnel are on staff or are contractors. Identify any who are locally based. (25 points)

d. EMR Rates(Section 3.10.5), corporate safety policies, etc. (10 points)

e. Additional expertise not required in RFP, but potentially beneficial to DOH (5 points)

f. Other
NOTE: "Other" considerations include: a) efforts to encourage and utilize DBE, MBE, and WBE, and b) overall quality and presentation of proposal. (5 points)

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSALS

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

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked, responsible Offerors for each scope.

5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS

The State may invite priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates.* The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

5.3 AWARD OF CONTRACT

Method of Award. A minimum of one, but not more than three, contracts will be awarded. Award will be made to the responsible Offeror(s) whose proposals are determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP (see Section 4).

5.4 RESPONSIBILITY OF OFFERORS

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

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

See also SECTION SEVEN, Exhibit D, General Provisions. The State will verify compliance on Hawaii Compliance Express (HCE).

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.

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.

5.5 PROPOSAL AS PART OF THE CONTRACT

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

5.6 PUBLIC EXAMINATION OF PROPOSALS

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

If a person is denied access to a State procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-42(12).

5.7 DEBRIEFING

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

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

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

5.8 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:

Harold Lao
919 Ala Moana Boulevard, Room 206
Honolulu, HI 96822

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the PO's debriefing was completed.

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

5.9 APPROVALS

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

5.10 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract in the form as in SECTION SEVEN, Exhibit E. 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.

5.11 INSURANCE

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

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.

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

5.11.3 The Contractor will immediately provide written notice to the SPO 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.

5.11.4 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."

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

5.12 PAYMENT

Upon receipt of invoices documenting work that meet the expectations of the RFP Payments shall be made to the awarded Contractor on a monthly basis or as specified in the Task Order,.

Under this contract work is assigned in the form of individual Task Orders that are created with mutual agreement between the HEER Office and the Contractor. Task Orders are individual work projects within the general scope of the Contract to provide a specific work product or deliverable. Task Orders may be fixed-price or time and materials based depending on the specific available funding source.

Contractor invoices will be Task Order-specific and each will include a monthly status report documenting, budget percent complete, work percent complete, specific Task Order scope of work/deliverables completed during the invoice period, anticipated scope of work/deliverables during the next invoice period, and hours worked by each employee.

5.13 CONTRACT INVALIDATION

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

Note: Any change of Program Manager or Program Manager status requires a minimum of 180 days notice, and the express written consent of the HEER Office. Failure to follow these guidelines will be grounds for limitation and/or termination of the contract agreement at the discretion of the HEER Office.

SECTION SIX

SPECIAL PROVISIONS

6.1 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

6.2 ACCEPTANCE AND TESTING

Invoices from the contractor shall be reviewed and approved for payment expeditiously. Where feasible, any questioned costs or adjustments shall be credited to DOH on the next invoice.

6.3 INTELLECTUAL PROPERTY RIGHTS

The State reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for State purposes.

6.5 TERMINATIONS FOR CONVENIENCE OR UNAVAILABILITY OF FUNDS

Clarify conditions when funds are limited but assurance of payment for completed performance.

6.6 PREFERENCES

SOFTWARE DEVELOPMENT BUSINESSES PREFERENCE: Subchapter 5, Chapter 3-124, HAR, provides that: The preference shall apply to all bids or offers issued by a purchasing agency when so stated in the solicitation.

Bids issued by a governmental agency pursuant to Section 103D-301, HRS, shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the bid price, and will be used for bid evaluation.

Bidders requesting a preference shall submit a completed certification form, as required by Section 3-124-33, with each bid. Previous certifications shall not apply unless allowed by the bid.

Any bidder who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the bidder's proposal will be increased by ten per cent for purposes of evaluation.

Where a bid or purchase contains both Hawaii software development businesses and non-Hawaii software development businesses, than for the purpose of determining the lowest evaluated bid, the original bid price for the non-Hawaii software development businesses shall be increased by ten per cent.

The responsible bidder submitting the lowest evaluated bid(s), taking into consideration all applicable preferences shall be awarded the contract, provided the product being offered meets the minimum bid specifications.

The contract amount of any contract awarded shall be the original bid price offered, exclusive of any preferences.

6.7 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, 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.

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: UXO TECHNICIAN CRITERIA
- Exhibit C: GENERAL CONDITIONS, issued by the Department of the Attorney General
- Exhibit D: GENERAL PROVISIONS
- Exhibit E: CONTRACT FORM

Attachment 1:
OFFER FORM, OF-1

OFFER FORM
OF-1

SEALED OFFERS
FOR
NON-EMERGENCY ENVIRONMENTAL SERVICES CONTRACTS
[Scope(s) Applying For]
STATE OF HAWAII
DEPARTMENT OF HEALTH, HAZARD EVALUATION AND EMERGENCY RESPONSE OFFICE
RFP-HEER-NES2016

Procurement Officer
Department of Health, Hazard Evaluation and Emergency Response Office
State of Hawaii
Honolulu, Hawaii 96814

Dear Procurement Officer:

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.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____
*State of incorporation: _____

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

Federal I.D. No. _____

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

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

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature

Telephone No.: _____

_____
Name and Title (Please Type or Print)

Fax No.: _____

E-mail Address:
_____

** _____
Exact Legal Name of Company (Offeror)

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

_____

Attachment 2:
OFFER FORM, OF-2

OFFER FORM
OF-2

Price List/Rate Schedule for accomplishing the development and delivery of the services.

$_____

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

Offeror _____
Name of Company

Exhibit A:
OVERVIEW OF THE RFP PROCESS

OVERVIEW OF THE RFP PROCESS

5.1 The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.

5.2 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.

5.3 Proposals shall be received on HePS. 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.

5.4 The Procurement Officer, or an evaluation committee approved by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 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.

Exhibit B:
UXO TECHNICIAN CRITERIA

EXHIBIT B – UXO TECHNICIAN CRITERIA

UXO Personnel Types and Minimum Requirements

Note: This section summarizes the requirements for the UXO Expert Position. Ideal candidates should also be familiar with the qualifications, duties, and responsibilities defined in the Department of Defense Explosives Safety Board's Technical Paper 18, *Minimum Qualifications for Personnel Conducting Munitions and Explosives of Concern-Related Activities* which is dated 1 September 2015 and is effective as of 1 October 2015.

Senior UXO Supervisor (SUXOS) – oversees UXO activities. Required on operations requiring more that UXO avoidance support that include interrogation and identification.

UXO Safety Officer (UXOSO) – oversees all UXO site safety. Required on operations requiring more that UXO avoidance support that include interrogation and identification.

UXO Quality Control Specialist (UXOQCS) – inspects the UXO operations to ensure project objectives and deliverables are met. Required on operations requiring more that UXO avoidance support that include interrogation and identification.

UXO Technician IIII (UXOT III) – directs UXO team and performs identification of UXO. Required on operations requiring more than UXO avoidance support.

UXO Technician II (UXOT II) – performs activities under the direction of a UXOT III and can provide UXO avoidance support; not capable of intrusive operations or rendering positive identification.

UXO Technician III (UXOT I) – performs activities under the direction of UXOT II and UXOT III. Not capable of providing UXO avoidance support.

UXO Sweeper (UXOSW) – performs surface anomaly location under the direction of UXO Technicians. Not capable of providing UXO avoidance support.

UXO Support Person (UXOSP) – performs ancillary tasks such as heavy equipment operation, etc. Not capable of providing UXO avoidance support.

UXO Professional Management

Position Description	Training Required	Minimum MEC-related Experience	Minimum MEC-Supervisory Experience	Minimum Total EOD/MEC Experience
SUXOS	Notes 5, 7, 8, 9, 10, and 11	2 years	1 year	10 years
	Notes 6, 7, 8, 9, 10, and 11	10 years	5 years	13 years
UXOSO	Notes 5, 7, 8, and 9	1 year	0.5 year	8 years
	Notes 6, 7, 8, and 9	8 years	2 years	10 years
UXOQCS	Notes 5, 7, 8, 10, and 11	1 year	0.5 year	8 years
	Notes 6, 7, 8, 10, and 11	8 years	2 years	10 years
Dive Qualified	Note 12	As indicated above for the position description.		

Notes:

1. By definition, UXO-TII and UXO-TIII are UXOQP (minimum qualifications for UXO-T are provided on Table 4.2.
2. Graduate of an Occupational Safety and Health Administration (OSHA)-compliant (29 CFR 1910.120) 40-hour HAZWOPER course.
3. Limited to performance of MEC-related activities as a UXOT or UXOQP or similar civilian government service (e.g., Ordnance and Explosives Safety Specialist (OESS)). Conduct of activities performed as an SP or SW are not considered MEC-related experience and are not counted toward the experiential requirements for UXOQP.
4. Limited to experience in UXO supervisory positions (i.e., UXO-TIII, UXOQCS, UXOSO, OESS).
5. Graduate of a military EOD School of the United States, Canada, Great Britain, Germany, or Australia. (See Paragraph 4.6. for EOD personnel who were terminated for gross negligence in the performance of assigned duties, a flagrant violation of EOD safety procedures or regulation, or who self-terminated the performance of EOD duties before reaching 18 consecutive months.)
6. Graduate of a UXO-TI Course (see Chapter 3), the EOD assistant's course or pass a comprehensive assessment.
7. Graduate of an OSHA-compliant (29 CFR 1910.120(e)(4)) 8-hour Management and Supervisor Training course, if supervising other personnel.
8. Possesses an understanding of applicable explosives safety criteria and experience in the various phases of a munitions response to MEC or the conduct of range clearance activities, as appropriate for the operations to be performed.
9. Must have completed a 10-hour OSHA Construction Safety and Health Training and earned a Department of Labor Construction Safety Course Completion Card.
10. UXOQCS must have either:
    a. Successfully completed training as a quality professional (i.e., International Standards Organization 9001 internal auditor, American Society of Quality Certified quality auditor);
    b. Possess a quality-professional certification by a recognized organization (e.g., U.S. Army the Corps of Engineers Naval Facility Engineering Command Training Course Construction Quality Management for Contractors; or
    c. Receive company- and project-specific QC training and work under the supervision of a certified quality professional.
11. UXOQCS must demonstrate an understanding of QC and QA practices associated with MEC-related activities and managing and processing MPPEH, including documentation of its explosives safety status.
12 Divers who are independently performing the duties of a UXOT or UXOQP must:
    a. Meet this TP's criteria for the duties performed and the requirements of 29 CFR 1910, Subpart T.
    b. Possess the dive-related certifications required for the tasks they are to perform or supervise. (Note: Certifications (dive or training) must be from an accredited school and meet the requirements contained in ANSI/ACDE Standard-01; be documented as valid by an ADC Commercial Diver Certification Card for the appropriate training level; and/or have documentation of successful completion of an appropriate level of training from an ACDE accredited school.)

UXO Technicians

Position Description	Training Required	Minimum MEC-related Experience	Minimum Total EOD/MEC Experience
UXO-TIII	Notes 4, 6, and 7	0 years	8 years
	Notes 5, 6, and 7	8 years	8 years
UXO-TII	Notes 4 and 7	0 years	3 years
	Notes 5 and 7	3 years	3 years
UXO-TI	Notes 4 and 7	0 years	0 years
	Notes 5 and 7	0 years	0 years
Dive Qualified	Note 8	As indicated above for the position description.	

Notes:

1. By definition, UXO-TII and UXO-TIII are also UXOQP.
2. Graduate of an OSHA-compliant (29 CFR 1910.120) 40-hour HAZWOPER course.
3. Limited to performance of MEC-related activities as a UXOT or UXOQP or similar civilian government service (e.g., OESS). Conduct of activities performed as an SP or SW are not considered MEC-related experience and are not counted toward the experiential requirements for UXOQP.
4. Graduate of a military EOD School of the United States, Canada, Great Britain, Germany, or Australia. (See Paragraph 4.6. for EOD personnel who were terminated for gross negligence in the performance of assigned duties, a flagrant violation of EOD safety procedures or regulation, or who self-terminated the performance of EOD duties before reaching 18 consecutive months.)
5. Graduate of a UXO-TI Course (see Chapter 3), the EOD assistant's course or pass a comprehensive assessment.
6. Graduate of an OSHA-compliant (29 CFR 1910.120(e)(4)) 8-hour Management and Supervisor Training course.
7. On-the-job training including, but not limited to familiarity with the process, procedures, and equipment (e.g., geophysical) used for conducting MEC-related activities.
8. Divers who are independently performing the duties of a UXOT or UXOQP must:
   a. Meet this TP's criteria for the duties performed and the requirements of 29 CFR 1910, Subpart T.
   b. Possess the dive-related certifications required for the tasks they are to perform or supervise. (Note: Certifications (dive or training) must be from an accredited school and meet the requirements contained in ANSI/ACDE-01; be documented as valid by an ADC Commercial Diver Certification Card for the appropriate training level; and/or have documentation of successful completion of an appropriate level of training from an ACDE accredited school.)

UXO Support and Sweep Personnel

Position Description	Training Required	Minimum MEC-related Experience[3, 4]
SP	Note 2	0 years
SW	Note 2	0 years

Notes:
1. Job- and site-specific training including, but not limited to, general and site specific safety (e.g., proper use of equipment and PPE, physical, biological, and chemical hazards); explosives safety training (e.g., recognition of military munitions, 3Rs); and proper use of equipment to be used.
2. Personnel who are working at a hazardous waste site may require successful completion of an OSHA-compliant (29 CFR 1910.120) 40-hour HAZWOPER course.
3. Experience as an SP or SW is not required for UXO-TI certification.
4. Activities performed as an SP or SW are not counted toward the experiential requirements for a UXOT or UXOQP.

Exhibit C:
GENERAL CONDITIONS,
Issued by the Department of the Attorney General

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 section103D-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 nade 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.

Exhibit D:
GENERAL PROVISIONS

GENERAL PROVISIONS

FOR

GOODS AND SERVICES

HAWAII REVISED STATUTES (HRS)
CHAPTER 103D

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

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

EXHIBIT D

GENERAL PROVISIONS
FOR
GOODS AND SERVICES

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1. DEFINITIONS OF TERMS

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

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

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

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

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

e. CONTRACTOR

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

f. DAYS

Days mean calendar days unless otherwise specified.

g. GENERAL CONDITIONS

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

h. GENERAL PROVISIONS

General Provisions are standard terms and conditions.

i. HAR

Hawaii Administrative Rules

j. HEAD OF THE PURCHASING AGENCY

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

k. HRS

Hawaii Revised Statutes

l. IFB

Invitation for Bids

m. OFFER

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

n. OFFEROR

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

o. PROCUREMENT OFFICER

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

p. PROPOSAL

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

q. PURCHASING AGENCY

Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for

procurement of goods, services, or construction.

r. RFQ

Request for Quotes

s. RFP

Request for Proposals

t. SOLICITATION

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

u. SPECIAL PROVISIONS

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

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

v. SPECIFICATIONS

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

w. STATE

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

x. SURETY

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

y. WORK

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

2. COMPETENCY OF OFFEROR

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

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

3. OFFER INCORPORATES SOLICITATION

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

4. PREPARATION OF OFFER

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

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

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

Offers submitted in response to an IFB or RFP shall be signed in ink in the

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

5. LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

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

6. DISQUALIFICATION OF OFFERORS

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

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

7. IRREGULAR OFFERS

Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror, unless otherwise specified in the solicitation; if the required offer guaranty received separately from the offer is not identifiable as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with the solicitation; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the STATE or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or

contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite, or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

8. STANDARDS OF CONDUCT

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

a. A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of $10,000 unless:

(1) The contract is awarded by competitive sealed bidding pursuant to section 1O3D-3O2;

(2) The contract is awarded by competitive sealed proposal pursuant to section 103D-3O3; or

(3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

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

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

10. ACCEPTANCE OF OFFER

a. Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty-day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to

the satisfactory performance of the contract. Products or servicing capabilities must be of a quality and nature that will meet the needs and purposes of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The STATE shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.

b. If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at their discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.

c. The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

11. EXECUTION OF CONTRACT

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

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

b. No such contract shall be considered binding upon the STATE until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with Section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the State Comptroller shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

c. Pursuant to the Attorney General's General Conditions (AG-008, as revised), Section 18, in any contract involving not only STATE but supplemental funds from the Federal government, this section shall be

applicable only to that portion of the contract price as is payable out of STATE. As to the portion of the contract price as is expressed in the contract to be payable out of Federal funds, the contract shall be construed to be an agreement to pay the portion to the CONTRACTOR, only out of Federal funds to be received from the Federal government. This subsection shall be liberally construed so as not to hinder or impede the STATE in contracting for any project involving financial aid from the Federal government.

12. CONTRACT BOND

a. The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.

b. When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the CONTRACTOR to the STATE at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty per cent of the amount of the contract price; provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation. ‘

c. The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in Section 7. If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety’s attorney-in-fact executing the bond shall be provided.

13. FAILURE TO EXECUTE CONTRACT

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

14. RETURN OF OFFER GUARANTIES

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

15. PAYMENT

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

than that allowed by §103-10, HRS, as amended.

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

16. DELIVERY EXTENSIONS

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

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

Exhibit E:
CONTRACT FORM

STATE OF HAWAII

CONTRACT FOR GOODS OR SERVICES
BASED UPON COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is _____
_____and_____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship. or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal
and state taxpayer identification numbers are as follows: _____
_____

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)
or both, in the following amounts: State $ _____
Federal $ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number ___ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS ($ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS ($ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS ($ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

CONTRACTOR

CORPORATE SEAL (If available)

_____
(Name of Contractor)

_____
(Signature)

_____
(Print Name)

_____ *
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.