

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
INFORMATION AND COMMUNICATION SERVICES DIVISION

HONOLULU, HAWAII

Legal Ad Date: May 1, 2013

INVITATION FOR BIDS
No. IFB-13-002

SEALED BIDS
TO FURNISH, DELIVER, INSTALL, AND PROVIDE SUPPORT MAINTENANCE FOR A VIDEO
SURVEILLANCE MANAGEMENT SYSTEM WITH CAMERAS FOR SIX (6) TELECOM SITES
FOR THE INFORMATION AND COMMUNICATION SERVICES DIVISION,
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

will be received up to and opened at 1:30 p.m. (HST)
on
May 15, 2013

in the Information and Communication Services Division (ICSD) Kalanimoku Building, 1151
Punchbowl Street, Room B-10, Honolulu, HI 96813.

Timely receipt of offers shall be evidenced by the date and time registered by the ICSD time
stamp clock in room B10. Offers received after the deadline shall be returned unopened.

Direct questions relating to this bid solicitation to Mr. David H. Fujimoto, telephone
(808) 586-1930, ext. 616, facsimile (808) 586-1962 or e-mail: david.h.fujimoto@hawaii.gov.



State Comptroller

TO FURNISH, DELIVER, INSTALL, AND PROVIDE SUPPORT MAINTENANCE FOR A VIDEO SURVEILLANCE MANAGEMENT SYSTEM WITH CAMERAS FOR SIX (6) TELECOM SITES FOR THE INFORMATION AND COMMUNICATION SERVICES DIVISION, DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
IFB-13-002

State Comptroller
Department of Accounting and General Services
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Sir or Madam:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Provisions, and in the General Conditions, Form AG-008 (Rev. 04/15/09) attached hereto; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawai'i Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: _____
Telephone No.: _____
Fax No.: _____
e-mail Address: _____

Respectfully submitted,

Exact Legal Name of Offeror

Payment address, if other than street address at right:

Authorized Signature (Original)

Title

Hawaii General Excise Tax Lic. I.D. No.:

Street Address

Social Security or Federal I.D. No.:

City, State, Zip Code

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

Offeror is: ___ Individual ___ Partnership ___ Corporation ___ Joint Venture ___ DBA

State of incorporation: Hawaii ___ *Other _____

*If "other", is corporate seal available in Hawaii? ___ Yes ___ No

To Furnish, Deliver, Install, and provide Support Maintenance for a Video Surveillance Management System with Cameras for six (6) Telecom Sites.

For the purpose of evaluation, the bid will be awarded based on the lowest GRAND TOTAL BID SUM of acquisition, delivery, installation, and support maintenance for the items below. This does not indicate a commitment by the State of Hawai'i to purchase the products and quantities listed below.

Video Surveillance Management System Site: ICSD Data Center Kalanimoku Building 1151 Punchbowl Street Honolulu, HI 96813				
Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Video Surveillance Management System			1	
Video Surveillance Management System Maintenance (1 Year)			1	
Installation Services • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: ICSD Round Top Radio Facility Within boundaries of Puu Ualakaa State Wayside in Makiki, Honolulu, HI Tax Map Key (TMK) 2-5-19:003				
Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Outdoor Camera			1	
Outdoor Camera Maintenance (1 Year)			1	
Indoor Camera			2	
Indoor Camera Maintenance (1 Year)			2	

Installation Services <ul style="list-style-type: none"> • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price 	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: Hemmeter Building - Main Distribution Frame (MDF)
250 South Hotel Street
Honolulu, HI 96813

Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Indoor Camera (External to MDF Door)			1	
Indoor Camera (External to MDF Door) Maintenance (1 Year)			1	
Indoor Camera			2	
Indoor Camera Maintenance (1 Year)			2	
Installation Services <ul style="list-style-type: none"> • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price 	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: Leiopapa A Kamehameha Building – Radio Room
235 South Beretania Street, Roof
Honolulu, HI 96813

Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Outdoor Camera			1	

Outdoor Camera Maintenance (1 Year)			1	
Indoor Camera (External to Radio Room Door)			1	
Indoor Camera (External to Radio Room Door) Maintenance (1 Year)			1	
Indoor Camera			2	
Indoor Camera Maintenance (1 Year)			2	
Installation Services <ul style="list-style-type: none"> • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price 	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: Leiopapa A Kamehameha - Main Distribution Frame (MDF) Mezzanine 235 South Beretania Street, Mezzanine Honolulu, HI 96813				
Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Outdoor Camera			1	
Outdoor Camera Maintenance (1 Year)			1	
Indoor Camera			2	
Indoor Camera Maintenance (1 Year)			2	
Installation Services <ul style="list-style-type: none"> • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. 	N/A			

• Bid Price X Quantity = Total Bid Price				
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: Keoni Ana Building - 2nd Floor Main Distribution Frame (MDF) 1177 Alakea Street Honolulu, HI 96813				
Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Indoor Camera (External to MDF Door)			1	
Indoor Camera (External to MDF Door) Maintenance (1 Year)			1	
Indoor Camera			1	
Indoor Camera Maintenance (1 Year)			1	
Installation Services • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

Telecom Site: Kapolei State Office Building - Main Distribution Frame (MDF) 601 Kamokila Boulevard, 1 st Floor Kapolei, HI 96707				
Item	Manufacturer and Model	Bid Price	Quantity	Total Bid Price
Indoor Camera (External to MDF Door)			1	
Indoor Camera (External to MDF Door) Maintenance (1 Year)			1	

Indoor Camera			1	
Indoor Camera Maintenance (1 Year)			1	
Installation Services <ul style="list-style-type: none"> • Enter Hourly Rate in Bid Price column. • Enter Hours needed in Quantity column. • Bid Price X Quantity = Total Bid Price 	N/A			
Total Shipping Cost for Location	N/A	N/A	1	
TOTAL				

GRAND TOTAL BID SUM

Site	Total Bid Price for Site
ICSD Data Center – Video Surveillance Management System	
Roundtop Drive	
Hemmeter Building MDF	
Leiopapa A Kamehameha Building; State Office Tower; Radio Room	
Leiopapa A Kamehameha Building; State Office Tower; MDF Mezzanine	
Keoni Ana Building 2 nd Floor MDF	
Kapolei State Office Building	
GRAND TOTAL BID SUM	

Offeror _____
(Name of Company)

QUALIFICATION FORM

The Offeror and personnel shall meet the Experience and Personnel Qualifications as indicated in the Special Provisions of this bid. Complete this form fully and explicitly to facilitate our evaluation of your offer. Use additional sheets and substantiating documents when necessary. Failure to complete this form may result in rejection of your offer.

Exact Legal Name of Company: _____

Business Location: _____

Street Address

City

State

Zip Code

Telephone Number: _____ Fax Number: _____

Contact Person Name: _____

E-mail Address (if applicable): _____

1. Installation:

- a. If a subcontractor shall be performing installation, please complete the information requested below. If there is more than one subcontractor, the Offeror shall complete information on a separate form and submit with bid proposal. Subcontractors shall be an Authorized Partner of the hardware/software/system.

1. Subcontractor Name: _____

Address: _____

Contact Person: _____ Telephone No: _____

Offeror _____

(Name of Company)

2. Maintenance:

b. If a subcontractor shall be performing maintenance, please complete the information requested listed below. If there is more than one subcontractor, the Offeror shall complete information on a separate form and submit with bid proposal.

1. Subcontractor Name: _____

Address: _____

Contact Person: _____ Telephone No: _____

Offeror _____
(Name of Company)

REFERENCES

Offeror shall provide the following information:

Client References: Offeror is required to supply the State with names, addresses, and telephone numbers of three (3) companies or entities for which the Offeror has furnished, delivered, installed, and provided maintenance support for Video Surveillance Management Systems and Camera Equipment and Software of similar size and requirements to those being requested in this IFB. State personnel may call and possibly make visits to the customers whose names you furnish.

1. Client Name: _____
Address: _____
Description of Contract
and Services Provided: _____

Reference Name: _____
Current Phone: _____

2. Client Name: _____
Address: _____
Description of Contract
and Services Provided: _____

Reference Name: _____
Current Phone: _____

3. Client Name: _____
Address: _____
Description of Contract
and Services Provided: _____

Reference Name: _____
Current Phone: _____

The State reserves the right to contact all of the references listed to inquire about Offeror's equipment, software, services, performance, and degree of customer satisfaction.

Offeror _____
(Name of Company)

SPECIFICATIONS

INTRODUCTION

This IFB is published for the purpose of Furnishing, Delivering, Installing, and Providing Support Maintenance for a Video Surveillance Management System with cameras at six (6) Telecom Sites.

1.0 GENERAL SPECIFICATIONS

All equipment, hardware items and components, accessories, and software furnished shall be new, of first quality as to workmanship and materials used, and designed specifically to provide its intended service and function.

All hardware offered shall be currently in production and not considered end of life. Equipment shall contain only manufacturer's factory-approved parts so as not to void manufacturer's warranties.

The products bid shall meet all applicable federal, state and local electrical, fire and safety codes.

All hardware and software provided shall be manufactured to meet the latest version of applicable standards for their use.

All board level modifications shall be made at the factory. All equipment furnished shall minimally include equivalent hardware components and features as specified, power cable, operation manuals, installation manuals and other informational literature as specified and/or as described in the manufacturer's published specifications and literature for such equipment.

2.0 TECHNICAL SPECIFICATIONS

2.1 Installation

A. Installation shall consist of at least all of the following:

1. Pre-installation coordination
2. Site inspection
3. Engineering and design
4. Product unpacking, inventory and inspection
5. Equipment power-up testing
6. Installation of all software/firmware
7. Peripherals connection

8. Product orientation for the State personnel including diagnostic and troubleshooting procedures, programming procedures, module function descriptions, product features, and network description.
 9. Network integration including product-to-product communication verification, connection of all available I/O port cables, network cutover, interface verification check and operator familiarization.
 10. Documentation of the final configurations of equipment hardware and software shall be provided in electronic or paper form upon request.
 11. Warranty (see Warranty Period)
- B. The OFFEROR shall provide installation services. Installation cost shall include all labor and all actual and estimated work to install the equipment to operable status. The OFFEROR shall be responsible for completing the installation of the hardware, software, and connection to the network and end-to-end testing at all sites to assure proper operation.

Due to network availability requirements, installation may be performed outside of normal business hours of 7:45 AM to 4:30 PM, Monday through Friday, including holidays and weekends subject to approval by the State.

- C. The installation shall be performed by a qualified manufacturer-authorized technician/engineer. The State may install all or some of the equipment ordered, using its own personnel. Installation by the State shall not nullify the warranty service in any way.
- D. Installation per site shall occur no more than fifteen (15) business days from date of delivery of equipment/software for that particular site. Installation of the entire bid (Video Surveillance Management System and cameras for the six (6) Telecom Sites) must be completed within one hundred eighty (180) calendar days of the Notice To Proceed date.

In the event the OFFEROR is not able to complete installation of the entire bid by the required due date, the OFFEROR may submit a written request for extension to the State. The written request for extension is subject to approval by the State before any extension is granted. If written request for extension is approved by the State, liquidated damages do not apply until after the new date of required completion.

2.2 Outdoor Camera Minimum Requirements

- A. The Outdoor Camera must be equivalent to or better than an AXIS P5534-E PTZ Dome Network Camera.
1. Camera
 - Image sensor: 1/3" progressive scan CCD 1.3 megapixel
 - Pan/tilt/zoom: 18x optical zoom and 12x digital zoom, total 216x zoom
 2. Video

- Video compression
 - H.264 (MPEG-4 Part 10/AVC)
 - Motion JPEG
- Resolutions: HDTV 720p 1280x720 to 320x180
- Video streaming: Multiple, individually configurable streams in H.264 and Motion JPEG
- Image settings
 - Manual shutter time, compression, color, brightness, sharpness, white balance, exposure control, backlight compensation, fine tuning of behavior at low light, rotation, text and image overlay, image freeze on PTZ.

3. Network

- Security: Password protection, IP address filtering, HTTPS encryption, IEEE 802.1X network access control, digest authentication, user access log
- Supported protocols: IPv4/v6, HTTP, HTTPS, SSL/TLS, QoS, FTP, CIFS/SMB, SMTP, UPnP™, SNMPv2c/v3, DNS, NTP, RTSP, RTP, TCP, UDP, IGMP, RTCP, ICMP, DHCP, ARP, SOCKS

4. System Integration

- Intelligent video: Video motion detection and audio detection
- Event triggers: Video motion detection, temperature, memory card full
- Event actions
 - File upload: FTP, HTTP, network share
 - Email Notification: email, HTTP and TCP PTZ preset, video recording to edge storage
- Event Data Streaming

5. General

- Casing: Metal casing, acrylic clear dome, sunshield
- Memory: 256 MB RAM, 128 MB Flash
- Power over Ethernet Plus (PoE+)
- RJ-45 for 10BASE-T/100BASE-TX PoE
- Storage
 - Slot supporting memory card up to 64 GB
 - Support for recording to network share (network-attached storage or file server)
- Operating conditions
 - -20 °C to 50 °C (-4 °F to 122 °F)
 - Humidity 10 - 100% RH (non-condensing)

2.3 Indoor Camera Minimum Requirements (includes external door cameras not outdoors)

A. The Outdoor Camera must be equivalent to or better than an AXIS P5534 PTZ Dome Network Camera.

1. Camera

- Image sensor: 1/3" progressive scan CCD 1.3 megapixel
- Pan/tilt/zoom: 18x optical zoom and 12x digital zoom, total 216x zoom

2. Video
 - Video compression
 - H.264 (MPEG-4 Part 10/AVC)
 - Motion JPEG
 - Resolutions: HDTV 720p 1280x720 to 320x180
 - Video streaming: Multiple, individually configurable streams in H.264 and Motion JPEG
 - Image settings
 - Manual shutter time, compression, color, brightness, sharpness, white balance, exposure control, backlight compensation, fine tuning of behavior at low light, rotation, text and image overlay, image freeze on PTZ.
3. Two- way Audio Streaming
 - Video compression
4. Network
 - Security: Password protection, IP address filtering, HTTPS encryption, IEEE 802.1X network access control, digest authentication, user access log
 - Supported protocols: IPv4/v6, HTTP, HTTPS, SSL/TLS, QoS, FTP, CIFS/SMB, SMTP, UPnP™, SNMPv2c/v3, DNS, NTP, RTSP, RTP, TCP, UDP, IGMP, RTCP, ICMP, DHCP, ARP, SOCKS
5. System Integration
 - Intelligent video: Video motion detection and audio detection
 - Event triggers: Video motion detection, audio detection, external input, temperature, memory card full
 - Event actions
 - File upload: FTP, HTTP, network share
 - Email Notification: email, HTTP and TCP, video recording to edge storage
 - Play audio clip
 - Event Data Streaming
6. General
 - Casing: Metal casing, acrylic clear dome
 - Memory: 256 MB RAM, 128 MB Flash
 - Power over Ethernet Plus (PoE+)
 - Connectors
 - RJ-45 for 10BASE-T/100BASE-TX PoE
 - Multi-connector (cable not included) for power in, 4 configurable alarm inputs/outputs, mic in, line mono input, line mono output to active speaker
 - Storage
 - Slot supporting memory card up to 64 GB
 - Support for recording to network share (network-attached storage or file server)
 - Operating conditions
 - -0 °C to 50 °C (32 °F to 122 °F)
 - Humidity 15 - 85% RH (non-condensing)

2.4 Video Surveillance Management System Minimum Requirements

A. Architecture and Integration

- System must be one that supports redundancy and provides high-availability.
- System must be able to integrate with large scale security management systems.
 - Large scale security management systems integrate functionality such as access control (logical and physical), identity management (including visitors), smart cards, biometrics, intercom systems, asset management, building automation, and alarm management.
 - Large scale security management system must support a distributed architecture where satellite servers/systems can be placed in logical and/or physical locations that provide additional access controls, while still being part of the overall system. For example a secure facility that only staff of that location be allowed to view video.
- System must be able to integrate with the City and County of Honolulu's Enterprise Security System. Integration may be necessary due to some common facilities for the State of Hawaii and the City and County of Honolulu.
- Ability to integrate with Microsoft Active Directory.
- Open platform for interoperability and integration.

B. Forensics

- Must support the use of live video surveillance and use for forensic evidence.
- Ability to have metadata with video. Software supports searching of metadata for efficient video location.
- Ability to watermark/digital signature video for legal evidence.

C. Video Support

- H.264 (MPEG-4 Part 10/AVC)
- Motion JPEG

D. Supports Audio Streaming and Audio Compression

E. Installation and Usage

- Automatic Camera Discovery
- Browser based access for monitoring and configuration.
- Operator notification of real-time events via video pop-ups, audible alerts, and or text alerts.
- Ability to watch live video.
- Ability to watch replay of events.

F. Storage

- No size limitation for recording database.
- Ability to record directly to local and/or network storage.

3.0 WARRANTY PERIOD

All hardware and software shall be covered by the manufacturer's warranty.

4.0 SPECIAL PROVISIONS

4.1 Scope

The furnishing, delivering, installation, and providing support maintenance for a Video Surveillance Management System with cameras for six (6) Telecom Sites shall be in accordance with these Special Provisions, the attached Specifications, Chapter 103D Hawai'i Revised Statutes (HRS), SPO General Provisions and, the Department of the Attorney General, General Conditions, Form AG-008 Rev. 04/15/09.

4.2 Contracting Office and Designated State Personnel

The Contracting Office is responsible for overseeing the contract(s) resulting from this IFB, including system operations, fiscal agent operations, and monitoring and assessing performance. The Contracting Office shall serve as the primary liaison with Offerors during all phases of the IFB process and with the contractor during all phases of the contract. The Contracting Office is:

Department of Accounting and General Services
 Information and Communication Services Division
 Planning and Project Management Office
 Kalanimoku Building
 1151 Punchbowl Street, Room B10
 Honolulu, HI 96813

The following State personnel are designated to perform the following roles in this procurement:

Head of State Purchasing Agency:	
Name:	Dean H. Seki
Title:	Comptroller
Business Address:	State of Hawai'i, Department of Accounting and General Services 1151 Punchbowl Street, Room 412, Honolulu, HI 96813

Procurement Officer:	
Name:	Sharon N.H. Wong
Title:	Acting ICSD Administrator
Business Address:	State of Hawai'i, Department of Accounting and General Services, Information and Communication Services Division 1151 Punchbowl Street, Room B-10, Honolulu, HI 96813

IFB Contact Person:	
Name:	David H. Fujimoto
Title:	IT Specialist VI
Phone:	(808) 586-1930 extension 616
Business Address:	State of Hawai'i, Department of Accounting and General Services, Information and Communication Services Division 1177 Alakea Street, Room 201, Honolulu, HI 96813
Fax:	(808) 586-1962
Email:	David.H.Fujimoto@hawaii.gov

Contract Administrator:	
Name:	Sharon N.H. Wong
Title:	Acting ICSD Administrator
Business Address:	State of Hawai'i, Department of Accounting and General Services, Information and Communication Services Division 1151 Punchbowl Street, Room B-10, Honolulu, HI 96813
Phone:	(808) 586-1920 extension 309
Fax:	(808) 586-1922
Email:	Sharon.n.wong@hawaii.gov

Project Manager:	
Name:	David H. Fujimoto
Title:	IT Specialist VI
Business Address:	State of Hawai'i, Department of Accounting and General Services, Information and Communication Services Division 1177 Alakea Street, Room 201, Honolulu, HI 96813
Phone:	(808) 586-1930 extension 616
Fax:	(808) 586-1962
Email:	David.H.Fujimoto@hawaii.gov

5.0 OFFEROR'S AUTHORITY TO BID

The State will not participate in determinations regarding an Offeror's authority to sell a product. If there is a question or doubt regarding an Offeror's right or ability to obtain and sell a product, the Offeror shall resolve that question prior to submitting a bid. If an Offeror offers a product that meets the specifications, is acceptable and the price submitted is the lowest price offered, the contract will be awarded to that Offeror.

6.0 OFFEROR QUALIFICATION

The Offeror shall have these qualifications in order to be considered for award. Unless these qualifications are met, Offeror cannot be considered for award.

- 6.2 Experience. The Offeror shall be an Authorized Partner of the hardware/software/system and if awarded the contract, shall remain an Authorized Partner for the entire term of the contract. The Offeror shall provide written documentation to support and verify this experience requirement within five (5) working days of State's request. The State reserves the right to be the sole judge of the acceptability and its decision shall be final.
- 6.3 Personnel Qualifications. All personnel shall have a minimum of one (1) year of experience in the field of Video Surveillance Management Systems and Telecom Site Indoor and Outdoor camera installations, maintenance, and repair. Upon request by the State, the Offeror shall submit written documentation listing all personnel that will be assigned to each site along with work experience and any other documents that support and/or verify work experience. Offeror shall furnish this information within five (5) working days of State's request. The State reserves the right to be the sole judge of the acceptability and its decision shall be final.

7.0 EXAMINATION OF SERVICE AREA AND EQUIPMENT

Prospective Offerors may visit each site; familiarize themselves with the existing conditions; and understand the amount and type of work to be performed before a bid is submitted. No additional compensation will be made by reason of any misunderstanding or error regarding conditions at the service areas or the amount and type of work to be performed. Offeror shall consider the existing equipment to be in "as is" condition. Prospective Offerors are responsible for their traveling expenses incurred for the examination of the Telecom and Video Surveillance Management System Sites.

Offerors must contact Mr. David Fujimoto, the Technical Representative, at telephone (808) 586 1930 x616, or facsimile: (808) 586-1962 to be included as a participant in the site visits. Please provide the names, phone numbers, and email addresses of staff that will be participating in the site visits. Staff must bring a valid picture ID on the day of the site visits for entry into these facilities.

Below is the site visit schedule for Prospective Offerors to be conducted on Monday, May 6, 2013. Prospective Offerors are strongly encouraged to attend these site visits as this is the only opportunity the State will be offering to visit these sites. Please note that the site visits involve walking and climbing stairs.

Report to the following by 9:00 a.m.:

Keoni Ana Building
1177 Alakea Street, Room 201
Honolulu, HI 96813

Sites to be visited:

- Keoni Ana Building - 2nd Floor Main Distribution Frame (MDF)
- Hemmeter Building - Main Distribution Frame (MDF)
- Leiopapa A Kamehameha Building – Radio Room
- Leiopapa A Kamehameha - Main Distribution Frame (MDF) Mezzanine
- ICSD Data Center

Report to the following by 1:30 p.m.:

ICSD Round Top Radio Facility - Within boundaries of Puu Ualakaa State Wayside in Makiki, Honolulu, HI - Tax Map Key (TMK) 2-5-19:003

Sites to be visited:

- ICSD Round Top Radio Facility - Within boundaries of Puu Ualakaa State Wayside in Makiki, Honolulu, HI - Tax Map Key (TMK) 2-5-19:003; followed by
- Kapolei State Office Building - Main Distribution Frame (MDF)

8.0 BID PREPARATION

8.1 Legal Name

Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on OFFER FORM, page OF-1. Failure to do so may delay proper execution of the contract.

Offeror's authorized signature shall be an original signature in black ink. If OFFER FORM, page OF-1, is unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

8.2 Bid Quotation

The equipment for the Video Surveillance Management System and six (6) Telecom Sites shall include all hardware/software, cost for delivery to destination statewide, and all other costs associated with the equipment being requested except the General Excise Tax (GET).

The Installation Hourly Rate and Hours needed to complete installation required for the Video Surveillance Management System and six (6) Telecom Sites shall include all costs for engineering, design, installation, system implementation, and all other associated costs required for a complete installation except the General Excise Tax (GET). All travel expenses associated with installation will be at no cost to the State. Offerors must submit Installation Hourly Rate offers for all sites listed to qualify for award.

The Maintenance Price for the Video Surveillance Management System and six (6) Telecom Sites shall include all costs associated with support maintenance for a period of one year, and all other costs associated with maintenance except the General Excise Tax (GET).

For evaluation purposes only, the GET Tax shall not be included in the Grand Total Bid Sum.

The GET may be added, when applicable, to the invoice as a separate line item.

The GET, currently 4.712% for sales made on Oahu and 4.166% for sales made on the Islands of Kauai, Molokai, Maui, Lanai, and Hawai'i, may be added, when applicable to the invoice as a separate line item and shall not exceed the current rate. If the GET rate is changed at any time during the term of the contract, the new rate will apply.

8.3 Tax Liability

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and contractors are advised that they are liable for the GET either at the current 4.712% rate for work done on Oahu, or at the 4.166% rate for work done on other Islands of Hawai'i. 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 and such exempt Offeror shall not charge GET.

8.4 Hawai'i General Excise Tax License

Offeror shall submit a current Hawai'i General Excise Tax I.D. number in the space provided on OFFER FORM, page OF-1, thereby attesting that Offeror is doing business in the State, and that Offeror will pay such taxes on all sales made to the State.

8.5 Responsibility of Offeror

Offeror is advised that if awarded a Contract under this solicitation, Offeror shall, upon award of the Contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

The Offeror, if awarded a Contract pursuant to this IFB, shall comply with all laws governing entities doing business in the State. The Offeror shall obtain and provide to the State:

Responsibility of Lowest Responsive Bidder. Reference §103D-310(c), HRS. If a compliance document (see **Hawai'i Compliance Express** below) has not been submitted to the ICSD prior to award, the lowest responsive Bidder shall produce the document to the Procurement Officer to demonstrate compliance with this section.

Final Payment Requirements. Contractor is required to submit a compliance document for final payment on the contract.

In addition to the compliance document, an original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the Form is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from under the "Quick Links" menu at the right of the webpage.

Hawai'i Compliance Express. Vendors shall use the Hawai'i Compliance Express (HCE) to show proof of compliance with the requirements of § 103D-310(c), HRS. The HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> for an annual fee payable to Hawai'i Information Consortium, LLC (currently \$12.00) to acquire a "Certificate of Vendor Compliance," which provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310(c), HRS, is accepted for both contracting purposes and final payment.

Timely Submission of all Certificates. If a valid Certificate of Vendor Compliance is not submitted on a timely basis as determined by the Procurement Officer for award of a contract, an offer otherwise responsive and responsible may not receive the award.

Campaign Contributions by State and County Contractors. Offerors are hereby notified of the applicability of HRS section 11-355, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, FAQs are available at the Campaign Spending Commission webpage (<http://hawaii.gov/campaign>). Information on spending issues should be directed to the Campaign Spending Commission's Executive Director or its General Counsel at (808) 586-0285.

8.6 Offer Guarantee

A bid security deposit is NOT required for this IFB.

8.7 Original Proposal and Copies to be Submitted

One (1) original and four (4) copies shall be submitted on the forms specified in this IFB. The original shall be clearly marked "ORIGINAL" and copies shall be clearly marked "COPY # of 4." It is imperative that the Offeror submit only one original and the required number of copies. The State will not provide any reimbursement for the cost of developing, presenting, submitting, or evaluating any offer in response to this IFB.

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected.

8.8 Contact and Support Information

Offeror shall furnish customer service and payment remittance information, and at least one fax number, website, and e-mail address on Offer Form page OF-1.

8.9 References

Offeror shall list on the appropriate offer form page at least three references and contact information in the State of Hawai'i, other than the State of Hawai'i government, for whom Offeror has performed maintenance service of Video Surveillance Systems hardware and software on a regular basis, that is similar in nature and volume to services specified herein. The State reserves the right to contact the references provided.

8.10 Insurance

Offeror shall provide insurance information as requested herein.

8.11 Rate of Wages & Wage Certificate

Offeror shall complete and submit a Wage Certificate by which the Offeror certifies that services required shall be performed pursuant to HRS §103-55. Offeror is advised that although item 2 of the Wage Certificate is not applicable to this solicitation since there are no public sector employees performing work similar to the requirements herein, item 1 of the certificate applies and therefore submission of the Wage Certificate is required.

8.12 Preference for Hawai'i Software Development Business

A ten percent (10%) price preference shall be given to Hawaii Software Development business pursuant to Chapter 3-124, Subchapter 5, HAR, to Offerors that meet the qualification of a Hawai'i software development business as specified in Section 3-124-33, HAR. Copies of this rule are available at the State Procurement website; <http://hawaii.gov/spo>. "Click" on Statute and Rules, then "click" on Chapter 103D, Hawai'i public procurement code for the list of chapters.

If applicable, Offeror shall indicate in the space provided on the Worksheets 1-4 whether Offeror is requesting the Hawai'i software development business preference. Offerors requesting a preference shall submit a complete certification form, SPO form 9.

Previous certifications shall not apply. Any Offeror who fails to indicate that it is a Hawai'i software development business will be presumed to be a non-Hawai'i software development business and shall be evaluated as such.

SPO form 9 (rev. 7/1/02), State Procurement Office: Certificate of Eligibility to Claim Preference as a Hawai'i Software Development Business as Defined by Section 103D-1006, H.R.S., is available at the SPO website <http://Hawaii.gov/spo>. "Click" on Forms for Vendor/Contractor/Service Providers.

9.0 AWARD

9.1 Method of Award

Award, if made, shall be to the responsive and responsible Offeror submitting the lowest evaluated GRAND TOTAL BID SUM.

To be considered for award, Offeror must submit bid prices for the Video Surveillance Management System and six (6) Telecom Sites and submit offers for all items in each group.

9.2 Certifications Required Prior to Award

Prior to awarding contract(s), the State will require certification of the insurance specified below in Section 13.0.

10.0 ACCEPTANCE OF OFFER

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.

11.0 CONTRACT EXECUTION

The State shall forward a formal contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned within ten (10) calendar days after receipt by the Offeror. NO PERFORMANCE AND PAYMENT BONDS ARE REQUIRED.

No work shall be undertaken by the successful Offeror prior to the commencement date specified on the Notice to Proceed. The State is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Offeror prior to the official starting date.

12.0 DELIVERY

Deliveries by the Contractor shall be made within thirty (30) calendar days after receipt of the purchase orders. Will call orders shall be ready for pick up within twenty (20) calendar days.

Prior to shipment, the Contractor shall contact the appropriate personnel to coordinate the delivery arrangements.

Any damaged or defective products will not be accepted and the Contractor shall be responsible for replacing them at no charge.

13.0 LIABILITY INSURANCE

Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of this IFB and the contract. The policy or policies of insurance maintained by the Contractor shall provide the following limit(s) and coverage(s):

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	Minimum bodily injury and broad form property damage combined single limits of liability of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. \$2,000,000 aggregate
Workers Compensation	Minimum coverage of Statutory: \$250,000 each accident, Liability: \$100,000 disease per each employee, and \$500,000 disease policy limit
Automobile Insurance	Minimum coverage of \$1,000,000 combined single limit per occurrence for bodily injury and property damage

Each insurance policy required by this IFB and the contract shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given both to the State of Hawaii, DAGS, State Procurement Office, P. O. Box 119, Honolulu, Hawai'i 96810-0119 and the State of Hawaii, DAGS, ICSD, Kalanimoku Building, 1151 Punchbowl Street, Room B-10, Honolulu, Hawai'i, 96813."
2. For Commercial General Liability coverage, "The State of Hawai'i is added as an additional insured as respects to operations performed for the State of Hawai'i."
3. "It is agreed that any insurance maintained by the State of Hawai'i will apply in excess of, and not contribute with, insurance provided by this policy."

The Contractor shall maintain minimum insurance required in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements. The policy or policies of insurance maintained by the Contractor shall provide the limits and coverages specified herein.

The Contractor shall deposit with the State of Hawai'i DAGS, ICSD on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this IFB and the contract have been complied with and to keep such insurance in effect and the certificate(s) therefor on deposit with the State during the entire term of the contract and any extensions thereof. Upon request by the State, Contractor shall furnish a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under the contract, entitling the State to exercise any or all of the remedies provided in the contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability or to fulfill the indemnification provisions and requirements of the contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect or willful misconduct connected with the contract.

14.0 SUBCONTRACTORS

The Contractor shall NOT delegate any duties specified in this solicitation to any subcontractor who is not an Authorized Partner of the hardware/software/system or certified by the manufacturer to perform these duties.

Offeror shall list on the appropriate Offer Form Page, all subcontractors to be used to perform any of services specified herein. The DAGS-ICSD reserves the right to request additional information about any subcontractor listed. Such information shall be provided within five (5) days of the request.

15.0 QUANTITIES

Quantities listed herein are estimates and for evaluation purposes. No guarantee to purchase the exact amount is intended or implied. The State may purchase more or less than the quantities listed. For this reason, the Offeror is cautioned that inventory hardships could arise from stocking materials for the State use only. In the event the estimated requirements do not materialize, such failure shall not constitute grounds for equitable adjustment under the contract.

The Contractor shall honor all orders placed prior to the effective termination date.

16.0 SUBMISSION OF OFFER

Offers shall be received no later than the date and time stated on the cover page of the IFB. Timely receipts of offers shall be evidenced by the date and time registered by the ICSD time stamp clock in room B10. Offers received after the deadline shall be returned unopened.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly. This may cause a delay in receipt and the offer may be received after the deadline, resulting in automatic rejection.

17.0 SERVICE AREAS

The CONTRACTOR shall perform the service at the various locations where the equipment will be located. It is the CONTRACTOR'S responsibility to examine the location where the equipment will be located.

The State will notify the CONTRACTOR of any subsequent change of unit locations and furnish any other pertinent information necessary for the proper execution of the contract.

18.0 REMOVAL OF CONTRACTOR'S EMPLOYEES

Contractor agrees to remove any of its employees from services rendered and to be rendered to the State, upon request in writing by the CA.

19.0 CLEAN UP

The Contractor shall keep the job sites free of debris, litter, refuse, etc. The Contractor shall remove all tools, equipment, and machines from the areas upon completion of the work.

20.0 INVOICING AND PAYMENT

State's purchasing card (pCard). The State's purchasing card shall be used for all orders totaling less than \$2500. The State may issue purchase orders for their transactions if the vendor does not accept the pCard or assesses customers for credit card usage. ICSD has been instructed to indicate on purchase order(s) that the vendor does not accept the pCard or that vendor assesses a fee for credit card usage.

Invoicing. Contractor shall forward invoices, original and three (3) copies, directly to:

Department of Accounting and General Services
Information and Communication Services Division
P.O. Box 119
Honolulu, HI 96810-0119

Attention: Fiscal Office

for orders issued by purchase orders. For all orders placed against this contract, Contractor(s) may assess the Hawai'i GET as a separate line item.

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

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.

21.0 QUALITY OF PRODUCT

All goods furnished under these specifications shall be new and of the best quality of its respective kind. It shall be free from defects which may render it unfit for use. Damaged or rejected items shall be immediately replaced with items of the quality required by these specifications.

Failure to replace any unacceptable item shall not relieve the Contractor from the responsibility imposed upon Contractor by the contract.

No payment, whether partial or final, shall be construed to be an acceptance of unacceptable items.

The State may, at any time, by written order, stop delivery of items not conforming to these specifications. Such stop order shall not relieve the Contractor of its obligation to complete the contract within the contract time limits, nor shall it in any way terminate, cancel or abrogate the contract or any part thereof.

22.0 INSPECTION

All products furnished, work done, and services performed shall be subject to inspection and approval in order to ascertain that products furnished and services rendered are in accordance with the Specifications and Special Provisions.

23.0 PRODUCT SUBSTITUTION

The Contractor is required to deliver the contracted products. If the Contractor is unable to do so, the Contractor shall be responsible for obtaining prior approval from the ICSD to deliver an acceptable product substitute at the contract price or lower. Delivery of the substitute shall be made in accordance with the terms and conditions of the contract. In the event a Contractor consistently needs to substitute or refuses to substitute products, the State reserves the right to terminate the contract and initiate suspension and debarment procedures pursuant to Chapter 3-126, HAR.

24.0 REMOVAL OF CONTRACTOR'S EMPLOYEES

Contractor agrees to remove any of its employees from services rendered and to be rendered upon request in writing by the Contract Administrator.

25.0 LIQUIDATED DAMAGES

Refer to Section 9 of the General Conditions. Liquidated damages are fixed at the sum of FIFTY DOLLARS (\$50.00) for each and every calendar day the Contractor delays in the completion of any item of the contract after the required date of said completion.

26.0 AUTHORITY

This IFB is issued under the provisions of the State Procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circulars and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

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

27.0 PROTEST

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved person(s) knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the bid opening date.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, ICSD, 1151 Punchbowl Street, Room B-10, Honolulu, Hawai'i 96813.

28.0 CANCELLATION OF SOLICITATIONS AND REJECTION OF OFFERS

This solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in Sections 3-122-95 through 3-122-97, Hawai'i Administrative Rules and Sections 4 through 8, SPO General Provisions.

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**
(See Special Provisions)

Subject: IFB-13-002

Title of IFB: FURNISH, DELIVER, INSTALL, AND PROVIDE SUPPORT MAINTENANCE FOR A VIDEO SURVEILLANCE MANAGEMENT SYSTEM WITH CAMERAS FOR SIX (6) TELECOM SITES

Pursuant to Section 103-55, Hawai'i Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. 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; and
2. 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, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____

**CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)**

Reference: IFB-13-002
(IFB Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawai'i to include the following:

1. Chapter 383, HRS, Hawai'i Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

TAX EQUALIZATION CERTIFICATE
(See Special Provisions)

SUBJECT: Offer No.: IFB-13-002

Description: Furnish, deliver, install, and provide support maintenance for a Video Surveillance Management System with Cameras for Six (6) Telecom Sites for the Information and Communication Services Division, Department of Accounting and General Services

(To be filled in by prospective Offeror)

Out-of-state Offerors not possessing a Hawai'i General Excise Tax (hereinafter "GET") license must answer all questions:

- | | <u>Yes</u> | <u>No</u> |
|---|------------------|-----------|
| | (check only one) | |
| 1. Does your business have an office, inventory, property, employees, or other representation in the State of Hawai'i (hereinafter "SOH")? | _____ | _____ |
| 2. Does the contract to be awarded require your business to have an office, inventory, property, employees, or other representation in the SOH? | _____ | _____ |
| 3. Does your business provide services in conjunction with the sales of property, such as training, installation, or repairs in the SOH? | _____ | _____ |
| 4. Will your business provide any services in the SOH under the contract to be awarded? | _____ | _____* |

*If the entire services are to be subcontracted, subject to the State's approval, provide the names of the subcontractor(s):

If you answered "Yes" to any question, then you have sufficient presence in the State and are advised that the gross receipts derived from this solicitation are subject to the GET imposed by Chapter 237, Hawai'i Revised Statutes (hereinafter "HRS"), at the current rate of 4.712% on Oahu and 4.166% on the Islands of Kauai, Molokai, Maui, Lanai, and Hawaii, and where applicable to tangible property imported into the SOH for resale, subject to the current 1/2% use tax imposed by Chapter 238, HRS.

If you answered "No" to all questions, then the taxpayer preference provision described in Section 103-1008, HRS, applies to you.

Offeror _____

Signature _____

Title _____

Date _____

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.

**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 103D-302;
 - (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
 - (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.
- b. A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

9. CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

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

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

10. ACCEPTANCE OF OFFER

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

11. EXECUTION OF CONTRACT

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

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

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

12. CONTRACT BOND

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

13. FAILURE TO EXECUTE CONTRACT

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

14. RETURN OF OFFER GUARANTIES

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

15. PAYMENT

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

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

16. DELIVERY EXTENSIONS

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

17. PERSONAL LIABILITY OF PUBLIC OFFICIALS

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

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
 - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
 - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

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

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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