



**HAWAII STATE PUBLIC LIBRARY SYSTEM**  
**REQUEST FOR PROPOSALS**  
**No. HSPLS RFP 24-01**

**PROFESSIONAL SERVICES FOR THE REBRANDING OF  
THE HAWAII STATE PUBLIC LIBRARY SYSTEM**

Legal Ad Date: March 8, 2024

Proposal Due Date and Time:  
April 5, 2024  
2:00 PM (HST)

Offerors interested in responding to this electronic solicitation must be a registered user on the State of Hawaii eProcurement System - HlePRO (<https://hiepro.ehawaii.gov/welcome.html>) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HlePRO solicitation.

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**SECTION ONE**  
**INTRODUCTION, TERMS AND ACRONYMS, KEY DATES**

**1.1 INTRODUCTION**

The Hawaii State Public Library System (HSPLS) is requesting proposals from qualified vendors to conduct the professional services identified in this document.

**1.2 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

CPO	=	Chief Procurement Officer
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
HSPLS	=	Hawaii State Public Library System
HST	=	Hawaii Standard Time
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent submitting an offer in response to this solicitation.
Procurement Officer	=	The contracting officer for the State of Hawaii, Hawaii State Public Library System
RFP	=	Request for Proposal
State	=	State of Hawaii, including each departments, agencies, and political subdivisions
LDSS	=	Library Development Services Section

**1.3 RFP SCHEDULE AND SIGNIFICANT DATES**

The schedule represents the HSPLS’ best estimate of the schedule that will be followed. All times indicated is Hawaii Standard Time (HST). If a component of this schedule, like the "Proposal Due" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Deadline to Submit Questions	March 15, 2024, 2 p.m. HST
Response to Written Questions	March 22, 2024, 2 p.m. HST
Proposals Due	April 5, 2024, 2 p.m. HST
Discussion with Priority Listed Offerors (if applicable)	TBD
Estimated Contract Award	May 3, 2024
Estimated Contract Start Date	June 1, 2024
Deadline for completion of services	December 31, 2024

## **SECTION TWO**

### **BACKGROUND AND SCOPE OF WORK**

#### **2.1 HSPLS INFORMATION AND STATISTICS**

The Hawaii State Public Library System (HSPLS) is a statewide system consisting of 51 public libraries located on six major islands (Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu). There are 12 libraries on Hawaii, 6 libraries on Kauai, 1 library on Lanai, 6 libraries on Maui, 1 library on Molokai, and 25 libraries on Oahu. Twelve (12) of these libraries are a combination public and school (P/S) libraries serving both school and general public populations.

- See Appendix A for a listing of all branch locations and relevant support offices, by island.

The State of Hawaii has a population of 1.435 million (as of 2023) with 974,747 HSPLS library cardholders.

HSPLS has 2,808,601 physical items as of July 2023. In addition, we have 214,706 eBooks and audiobooks.

The annual circulation during FY2023 was 3,616,963 physical materials, and 1,363,611 eBooks, audiobooks and eMagazines.

#### **2.2 SCOPE OF WORK**

The Hawaii State Public Library System seeks bids from qualified vendors to deliver rebranding, logo-design, collateral material development that raise the HSPLS profile positively and measurably. Specifically, the scope of work entails:

- Initial research and stakeholder engagement to understand how different groups perceive HSPLS' current brand and what they value in library services. Analysis of the findings must be used to develop the executable brand package and include:
  - Identifying and analyzing the diverse audience segments the library system serves; this includes demographics, preferences, behaviors, and needs
  - Performing key stakeholder surveys and interviews
  - Conducting focus groups with key stakeholders; at least one focus group must be conducted on each of the six islands where HSPLS has branches
- A comprehensive, executable brand package that aligns with the HSPLS mission and vision; deliverables must include:
  - Primary and secondary system-wide logo design with tagline; must anticipate the possibility of future island- and branch-specific logos
  - Color palette
  - Typology/Fonts
  - Icons
  - Artwork
  - Photography examples that align with brand
  - Letterhead
  - Business cards
  - Templates, including: emails, e-newsletters, reports, presentations, social media graphics, signage, electronic and printed program announcements
  - Style guidelines

- Training to ensure that the HSPLS executive team and library development staff are able to use the style guidelines effectively.
- Post-implementation assessment instrument and plan so HSPLS can measure the success of this effort. Project Work Plan must include metrics to be used in this assessment.
- Effective account management services to ensure that the rebranding effort progresses smoothly, achieves its objectives, and delivers value to HSPLS and its stakeholders. This task includes:
  - Communication: Ensuring clear and consistent communication between HSPLS and the consultant regarding the objectives, timelines, and expectations of the rebranding effort.
  - Problem-solving: Addressing any challenges or issues that arise during the rebranding process, such as budget constraints, creative disagreements, or unforeseen obstacles.
  - Ongoing coordination:
    - Working with the State Librarian and HSPLS executive team to plan and execute the scope of work and create the deliverables
    - Managing the budget and timeline, scheduling, conducting and documenting decisions made at regular meetings with HSPLS principals, and ensuring that milestones are met and deliverables produced within the agreed-upon parameters.

With these services/deliverables, HSPLS seeks to better inform community members about the library's extensive offerings. This will enable individuals to pursue their life goals and provide the tools for building a strong, vibrant civic network.

A successful partnership will lead to:

- Improved visibility and recognition of the libraries' essential and relevant role in our communities; and
- Increased awareness of and virtual/physical use of HSPLS collections, programs and services, particularly by currently underserved members of our community.

### **2.3 TIMELINE**

All services and deliverables must be completed by December 31, 2024.

## **SECTION THREE**

### **OFFEROR AND GENERAL REQUIREMENTS**

#### **3.1 GENERAL REQUIREMENTS**

Offeror must be able to demonstrate a proven ability to provide and implement the following:

1. Registered and licensed to do business in the State of Hawaii.
2. Past experience providing the proposed services/deliverables with at least three (3) public libraries.
3. Knowledge and familiarity with the ethnicities and cultures of Hawaii residents to ensure that the design and creative concepts developed accurately and appropriately reflect the people of Hawaii and their values.
4. Demonstrated understanding of the purpose and scope of this service, as well as the necessary knowledge, skills, abilities, and experience relating to the delivery of the proposed service.
5. Ability to assure non-discrimination on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability.
6. Training and management of staff to execute the listed deliverables.
7. Demonstrated experience with data collection and assessment of programs.

## **SECTION FOUR**

### **PROPOSAL PREPARATION AND SUBMISSION**

#### **4.1 PROPOSAL PREPARATION COSTS**

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility and shall not be reimbursed by the Hawaii State Public Library System.

All proposals become the property of the State of Hawaii.

#### **4.2 SUBMISSION OF PROPOSALS**

1. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent Addenda. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions set forth herein or in any subsequent Addenda may be rejected without further consideration.
2. Offer Form, Page OF-1. Offeror is required to submit its offer using Offer Form, OF-1 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, OF-1 (Attachment 1). Failure to do so may delay proper execution of the Contract.
3. Offer Form, Page OF-2. Offeror is required to submit Offer Form, OF-2, a Questionnaire with the following elements:
  - a. Proposed Detailed Project Work Plan
  - b. Proposed Budget and Expenditure Plan
  - c. Demonstration of Offeror's Past Performance
  - d. Qualifications of Key Personnel
  - e. References

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

4. Before submitting a proposal, each Offeror shall:
  - a. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments and any other relevant documentation.
  - b. Become familiar and comply with State, local and federal laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the work.

5. Electronic Submission
  - a. **Offer Forms OF-1 and OF-2 shall be received electronically** through the Hawaii State eProcurement called HiePRO. Offers received outside of the HiePRO shall be rejected and not be considered for award. To register for HiePRO, please go to <http://hiepro.hawaii.gov>. If you need assistance in registering or submitting your offer, please call (808) 695-4620 or go to the HiePRO website and click on Help-Chat online.
  - b. Offeror is encouraged to submit a typewritten offer. If handwritten, it should be clearly printed. Offeror is cautioned that evaluation committee members may automatically reject illegible proposals to avoid misinterpretation.
6. The Offeror may modify or withdraw a proposal before the Offer due date and time.
7. Confidential Information
  - a. If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support confidentiality claim. Price is not considered confidential and will not be withheld.
  - b. An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

#### **4.3 POLICIES**

Communication with other State officials, the Evaluation Committee, or others associated with the HSPLS with regard to this Request for Proposals is prohibited.

#### **4.4 QUESTIONS, RESPONSES AND EXCEPTIONS**

Questions and clarifications concerning discrepancies, omissions, or non-compliance with this RFP's requirements, evaluation criteria or special provisions shall be submitted electronically through HiePRO by the due date indicated in Section 1.3 RFP Schedule and Significant Dates, or as amended. When asking a question, Offeror shall identify the RFP page number and section(s) being addressed.

Answers to questions shall be made through the issuance of an addendum which will be posted to HiePRO by the date indicated in Section 1.3, or as amended.

Any exception taken to technical requirements, evaluation criteria, or special provisions of the RFP that are submitted with the proposal shall be considered as a condition to the Offerors proposal, which may be negatively affect the evaluation of the Offeror's proposal or result in the non-consideration of their proposal. The HSPLS reserves the right to reject any exceptions listed.

All addenda shall become a part of the RFP.



**SECTION FIVE**  
**EVALUATION CRITERIA AND CONTRACTOR SELECTION**

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

**5.1 EVALUATION OF MANDATORY REQUIREMENTS – (Pass / No Pass)**

The evaluation of the mandatory requirements shall be on a “pass/no pass” basis. No points shall be assigned for these requirements. The purpose of this phase is to determine whether an Offeror’s proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the minimum, mandatory requirements (“no pass”) will be grounds for deeming the proposal nonresponsive to the RFP and rejection of the proposal. Only those proposals meeting the following mandatory requirement (“pass”) will be considered in the Criteria Evaluation.

MANDATORY REQUIREMENTS FOR THE PROPOSAL  
Offer Form OF-1  
Offer Form OF-2

**5.2 EVALUATION CATEGORIES AND THRESHOLDS**

<b>Evaluation Categories</b>	<b>Possible Points</b>
Written Project Work Plan that responds to the Scope of Work defined in Sec. 2.2 of this RFP	40%
Proposed budget and expenditure plan	20%
Demonstration of offeror’s past success	20%
Qualifications of key personnel	14%
References	6%
Total Possible Points	100%

## **SECTION SIX**

### **SPECIAL PROVISIONS**

#### **6.1 SCOPE**

All materials acquisition services provided to HSPLS shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the Department of Attorney General, General Condition (GC) included by reference and available on the Internet at <http://hawaii.gov/forms/department-of-attorneygeneral/internal-forms/aq008/view>.

#### **6.2 RESPONSIBILITY OF OFFERORS**

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

1. Chapter 237, 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.

Refer to the Section 6.11 Award for Contract for instructions to register for Hawaii Compliance Express (HCE) utilized for verification of compliance.

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

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

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

**Timely Registration on HCE**. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

### 6.3 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section Three – Offeror and General Requirements will likely have an adverse effect on Offeror’s proposal evaluation.

### 6.4 TERM OF CONTRACT

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

The initial term of the contract shall begin on the official commencement date of the Notice to Proceed and end on December 31, 2024. The contract may be extended for up to four (4) additional twelve (12) month periods of any portion thereof, if mutually agreed upon in writing prior to contract expiration.

Upon extension of the contract, the Contractor shall be required to execute the State’s Supplemental Agreement to the Contract.

The Contract or State may terminate the extended contract period at any time upon sixty (60) days prior written notice.

### 6.5 CONTRACT ADMINISTRATOR

For the purposes of this contract, Mallory C. Fujitani, Special Assistant to the State Librarian or her appointed representative is designated the Contract Administrator. She may be reached at [mallory.fujitani@librarieshawaii.org](mailto:mallory.fujitani@librarieshawaii.org).

### 6.6 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by the Hawaii State Public Library System prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates, Section 1.3.** This will allow issuance of any necessary corrections and/or amendments to the RFP. It will help prevent the opening of a defective solicitation and exposure of Offeror’s proposal upon which award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the *Exceptions* section of the Offeror’s proposal, if the exception is unresolved by the Proposal Due date.

### 6.7 ECONOMY OF PRESENTATION

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity of content. If any additional information is required by the State regarding any aspects of the Offeror’s proposal, it shall be provided within five (5) business days.

## 6.8 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support confidentiality claim. Price is not considered confidential and will not be withheld.

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

Pursuant to HAR §3-122-58, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS §92F-42(12).

## 6.9 CANCELLATION OF RFP AND PROPOSAL REJECTION

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

## 6.10 OFFER ACCEPTANCE PERIOD

The HSPLS' acceptance of an offer, if any, will be made within sixty (60) calendar days after the opening of proposals. Prices or commissions quotes by the Offeror shall remain firm for a sixty (60) day period.

## 6.11 AWARD OF CONTRACT

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

**Responsibility of Offeror.** Pursuant to HRS §103D-310(c), the selected Offeror shall at the same time of award be compliant with all laws governing entities doing business in the State. The HSPLS will verify compliance on Hawaii Compliance Express (HCE).

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

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

**Timely Registration on HCE.** Vendors/contractors/service providers are advised to register on HCE as soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

#### **6.12 PROPOSAL AS PART OF THE CONTRACT**

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

#### **6.13 PAYMENT**

Payment will be made to the contractor upon receipt of services and on the original invoice provided for services received.

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

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

#### **6.14 SUBCONTRACTING**

No work or services shall be subcontracted or assigned to any subcontractor unless prior written approval is given by the Hawaii State Public Library System. The HSPLS reserves the right to approve all subcontractors and shall require the Contractor to replace any subcontractors found to be unacceptable. The Contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract, and shall be responsible for all services whether or not Contractor performs them.

#### **6.15 CONTRACT INVALIDATION**

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

#### **6.16 CONTRACT MODIFICATIONS – UNANTICIPATED AMENDMENTS**

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

Changes to the contract may be modified only by written document (contract modification) signed by the Hawaii State Public Library System and Contractor personnel authorized to sign contracts on behalf of the Contractor.

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

**6.17 ADDITIONAL TERMS AND CONDITIONS**

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

**6.18 NON-DISCRIMINATION**

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

**6.19 CONFLICTS OF INTEREST**

The Contractor represent the neither the Contractor, nor any employee or agent of the Contractor, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of this contract.

**6.20 WAIVER**

The failure of the State to insist upon the strict compliance with any term, provision, or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the State's right to enforce the same in accordance with this contract.

**6.21 SEVERABILITY**

In the event that any provision of this contract is declared invalid or enforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this contract.

**6.22 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

**HRS §11-355: Contributions by state and county contractors prohibited.**

(a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be

made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

1. Directly or indirectly make any contribution or promise expressly or implied to make any contribution to any candidate committee or non-candidate committee, or to any candidate or to any person for any political purpose or use; or
2. Knowingly solicit any contribution from any person for any purpose during any period.

## **6.23 ADDITIONS, AMENDMENTS AND CLARIFICATIONS**

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

**Confidentiality of Material.** 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 with the prior written approval of the STATE.

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, HRS Chapter 92F. The Offeror shall designate in writing to the Procurement Officer those portions of its unpriced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to HAR §3-122-58, in case of an RFP, or HAR §3122-30, in the case of an IFB. The Offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of Attorney General in accordance with HRS Chapter 92F. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under HAR §3-126. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with HRS §92F-15.5.

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

**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.

**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.



## **SECTION SEVEN**

### **ATTACHMENTS**

- Attachment A: List of Library and Support Offices Locations
- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2

**ATTACHMENT A – List of Library & Support Offices Location**

<b>Island</b>	<b>Library</b>	<b>Street Address</b>	<b>City</b>	<b>Zip</b>
Hawaii	Hilo Public Library	300 Waianuenue Ave	Hilo	96720
Hawaii	Honokaa Public Library	45-3380 Mamane St Building #3	Honokaa	96727
Hawaii	Kailua-Kona Public Library	75-138 Hualalai Rd	Kailua-Kona	96740
Hawaii	Keaau Public & School Library	16-571 Keaau Pahoa Rd	Keaau	96749
Hawaii	Kealakekua Public Library	81-6619 Mamalahoa Hwy	Kealakekua	96750
Hawaii	Laupahoehoe Public & School Library	35-2065 Old Mamalahoa Hwy	Laupahoehoe	96764
Hawaii	Mountain View Public & School Library	18-1235 Volcano Hwy	Mountain View	96771
Hawaii	Naalehu Public Library	95-5669 Mamalahoa Hwy	Naalehu	96772
Hawaii	North Kohala Public Library	54-3645 Akoni Pule Hwy	Kapaau	96755
Hawaii	Pahala Public & School Library	96-3150 Pikake St	Pahala	96777
Hawaii	Pahoa Public & School Library	15-3070 Pahoa Kalapana Rd	Pahoa	96778
Hawaii	Thelma Parker Memorial Public & School Library	67-1209 Mamalahoa Hwy	Kamuela	96743
Kauai	Hanapepe Public Library	4490 Kona Rd	Hanapepe	96716
Kauai	Kapaa Public Library	4-1464 Kuhio Hwy	Kapaa	96746
Kauai	Koloa Public & School Library	3451 Poipu Rd	Koloa	96756
Kauai	Lihue Public Library	4344 Hardy St	Lihue	96766
Kauai	Princeville Public Library	4343 Emmalani Dr	Princeville	96722
Kauai	Waimea Public Library	9750 Kaumualii Hwy	Waimea	96796
Maui	Hana Public & School Library	4111 Hana Hwy	Hana	96713
Maui	Kahului Public & School Library	90 School St	Kahului	96732
Maui	Kihei Public Library	35 Waimahaihai St	Kihei	96753
Maui	Lahaina Public Library (Temp Closed)	680 Wharf St	Lahaina	96761
Maui	Lanai Public & School Library	555 Fraser Ave	Lanai City	96763
Maui	Makawao Public Library	1159 Makawao Ave	Makawao	96768
Maui	Molokai Public Library	15 Ala Malama Ave	Kaunakakai	96748
Maui	Wailuku Public Library	251 High Street	Wailuku	96793
Oahu	Aiea Public Library	99-374 Pohai Pl	Aiea	96701
Oahu	Aina Haina Public Library	5246 Kalaniana'ole Hwy	Honolulu	96821
Oahu	Ewa Beach Public & School Library	91-950 North Rd	Ewa Beach	96706
Oahu	Hawaii Kai Public Library	249 Lunalilo Home Rd	Honolulu	96825
Oahu	Hawaii State Library	478 King St.	Honolulu	96813
Oahu	Kahuku Public & School Library	56-490 Kamehameha Hwy	Kahuku	96731
Oahu	Kailua Public Library	239 Kuulei Rd	Kailua	96734
Oahu	Kaimuki Public Library	1041 Koko Head Ave	Honolulu	96816
Oahu	Kalihi-Palama Public Library	1325 Kalihi St	Honolulu	96819
Oahu	Kaneohe Public Library	45-829 Kamehameha Hwy	Kaneohe	96744
Oahu	Kapolei Public Library	1020 Manawai St	Kapolei	96707
Oahu	Library for the Blind & Print Disabled	402 Kapahulu Ave	Honolulu	96815
Oahu	Liliha Public Library	1515 Liliha St	Honolulu	96817

<b>Island</b>	<b>Library</b>	<b>Street Address</b>	<b>City</b>	<b>Zip</b>
Oahu	Manoa Public Library	2716 Woodlawn Dr	Honolulu	96822
Oahu	McCully-Moiliili Public Library	2211 S. King St	Honolulu	96826
Oahu	Mililani Public Library	95-450 Makaimoimo St	Mililani	96789
Oahu	Nanakuli Public Library	89-070 Farrington Hwy	Waianae	96792
Oahu	Pearl City Public Library	11338 Waimano Home Rd	Pearl City	96782
Oahu	Salt Lake-Moanalua Public Library	3225 Salt Lake Blvd	Honolulu	96818
Oahu	Wahiawa Public Library	820 California Ave	Wahiawa	96786
Oahu	Waialua Public Library	67-068 Kealohanui St	Waialua	96791
Oahu	Waianae Public Library	85-625 Farrington Hwy	Waianae	96792
Oahu	Waikiki-Kapahulu Public Library	400 Kapahulu Ave	Honolulu	96815
Oahu	Waimanalo Public & School Library	41-1320 Kalaniana'ole Hwy	Waimanalo	96795
Oahu	Waipahu Public Library	94-275 Mokuola St	Waipahu	96795
Oahu	Logistic Support Section (LSS)	99-143 Moanalua Road	Aiea	96701
Oahu	Technical Services Section (TSS)	3225 Salt Lake Blvd, Suite 200	Honolulu	96818

**ATTACHMENT 1  
OFFER FORM OF-1  
Professional Services for the Rebranding of Hawaii State Public Library System  
HSPLS RFP 24-01**

Hawaii State Public Library System  
Fiscal Services Office  
44 Merchant St.  
Honolulu, Hawaii 96813

Dear Sir or Madam:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Scope of Work and the General Conditions (Form AG-008) 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, Hawaii Revised Statutes, concerning prohibited State contracts, and
- 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

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

- A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; or  
 A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Offeror is:  Sole Proprietor  Partnership  \*Corporation  Joint Venture  Other

Federal I.D. No.: \_\_\_\_\_ Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted,

Date: \_\_\_\_\_

(x) \_\_\_\_\_

Authorized Signature (Original)

Telephone No.: \_\_\_\_\_

\_\_\_\_\_

Name and Title (Please type or Print)

Fax No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

\* \_\_\_\_\_

Exact Legal Name of Company (Offeror)

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

**ATTACHMENT  
OFFER FORM – 2**

**Questionnaires**

**Professional Services for the Rebranding of the Hawaii State Public Library System  
HSPLS RFP 24-01**

**1. Proposed Project Work Plan (40 points)**

Please provide a detailed written Project Work Plan with clearly defined tasks and services that responds to the Scope of Work defined in Sec. 2.2 of this RFP and includes these specific elements:

- Approach and methodology
- Research and stakeholder engagement plan
- Comprehensive and executable plan to rebrand HSPLS including required deliverables
- Timeline with milestones
- HSPLS staff training plan
- Provide post-implementation assessment instrument and plan
- Effective account management services

**2. Proposed Budget and Expenditure Plan (20 points)**

Please provide a proposed budget that includes costs for each element of the Project Work Plan and an accompanying expenditure plan; must include taxes and any/all anticipated hard costs.

The total cost of all items must not exceed \$200,000. Offeror will be responsible for staying within the budget presented in the proposal and as outlined in a contract. It will be expected that the successful applicant will be able to achieve all the goals set out in the proposal and within the approved timeframe without the need for additional monies.

**3. Demonstration of Applicant's Past Performance (20 points)**

Please describe your firm's experience in providing rebranding services for other public library projects. Specifically cite your firm's roles and responsibilities for each project or contract. Please list the following:

- Project title, location, year completed and scope
- Client's name
- Relevance to this project
- Successful project elements
- Project challenges and how they were overcome including corrective actions and other responses to notices of deficiencies, if any
- How successes or lessons learned can apply to this contract

**4. Qualifications of Key Personnel (14 points)**

Identify key employee(s) who will conduct the proposed Work Plan that responds to the Scope of Work defined in Sec. 2.2 of this RFP. Include:

- Name, title, resume
- Role and responsibilities for this project
- Describe their experience in providing the services required in this RFP; include:
  - Project title
  - Location
  - Year completed
  - Scope

If offeror is selected, offeror will be obligated to staff the project with those key employee(s) listed unless they are no longer employed by your firm, and their replacement shall be subject to HSPLS approval.

**5. References (6 points)**

Please provide a listing of at least three public library clients with which you currently have or have had contracts of similar scope; include the name, address, telephone number, and email address of the contact person.

# GENERAL CONDITIONS

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## GENERAL CONDITIONS

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



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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 13. Termination for Default.

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

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

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

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

#### 14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

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

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

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

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



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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.