



Department of Accounting and General Services
Office of Elections

Release Date: June 28, 2021

Request for Proposals
No. RFP-22-001-SW
Sealed Offers for a
Voter Education Program

will be received up to and opened at 12:00 P.M. HST on
July 30, 2021

at the Office of Elections 802 Lehua Avenue, Pearl City, Hawaii, 96782. Direct questions relating to this solicitation to Ms. Aulii Tenn, Procurement Officer, at (808) 453-VOTE (8683) or email aulii.c.tenn@hawaii.gov.

AULII TENN
Procurement Officer

Name of Company

RFP-22-001-SW

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ATTACHMENTS

- Offer Form OF-1
- Offer Form OF-2
- SPO-013 Certificate of Current Cost-Pricing Data
- AG General Conditions

Section 1: Overview

The State of Hawaii, Office of Elections is issuing this Request for Proposals (RFP) to procure a voter education program that will assist the Office of Elections in accomplishing its mission to provide secure, accessible, and convenient election services to all citizens statewide.

1.1 Goals and Objectives

The goals and objectives of this RFP are to enter into a contract that:

- Meets the scope of work and associated specifications and requirements of this RFP.
- Ensures compliance with any federal or state laws relating to elections.
- Otherwise facilitates the voting process.
- Costs not more than \$200,000 per election cycle.

1.2 Terms and Acronyms

AG GC is Attorney General's General Conditions (AGS-008) (Revised 12/20/2017).

BAFO means the Offeror's Best and Final Offer if requested.

Contractor is the Offeror which is named in the Notice of Award.

CPO is the Chief Procurement Officer.

DAGS is the Department of Accounting and General Services in the State of Hawaii. The Office of Elections is attached to DAGS.

Election Cycle is from January 1 of a non-regularly scheduled election year to December 31 of a regularly scheduled election year or the conclusion of any litigation, recount, or new election associated with the litigation, whichever is longer. For this RFP, the election cycle will begin from the date of the Notice to Proceed and will end on December 31, 2022, or the conclusion of any litigation, recount, or new election associated with the litigation, whichever is longer. To the extent any of the options to extend are exercised, the election cycle will begin on January 1 of a non-regularly scheduled election year to December 31 of a regularly scheduled election year or the conclusion of any litigation, recount, or new election associated with the litigation, whichever is longer.

GET is the general excise tax.

GP are General Provisions.

HAR are Hawaii Administrative Rules.

HRS are Hawaii Revised Statutes.

Offeror is a qualified entity that submits a proposal in response to the RFP.

OE is the State of Hawaii, Office of Elections.

Procurement Officer is the contracting officer for the Office of Elections. For this RFP, Ms. Aulii Tenn will serve as the Procurement Officer. Any inquiries or submissions should reference the RFP number and be directed to Ms. Tenn by mail to 802 Lehua Avenue, Pearl City, Hawaii, 96782 and/or by email to aulii.c.tenn@hawaii.gov.

RFP is request for proposals.

SPO is the State Procurement Office for Hawaii located at 1151 Punchbowl Street, Room 416, Honolulu, Hawaii, 96813; P.O. Box 119, Honolulu, Hawaii, 96810-0119.

State refers to the Office of Elections unless the context indicates otherwise.

1.3 Term of Contract

The State will contract with one Offeror. The term of the contract shall be from the date stated on the Notice to Proceed up to and including December 31, 2022.

The State and Contractor may extend the term of the contract for up to six additional 24-month periods or any portion thereof without the necessity of resoliciting if it is mutually agreed upon in writing. Specifically, there are six separate options to extend for an additional 24-month period each. However, the State may decide to exercise multiple options to extend at any one time.

The contract is subject to the availability of funds after the first State fiscal year. As such, the contract will be cancelled if funds are not available to support the contract performance in any subsequent fiscal year. This, however, does not affect either the State's rights or the Contractor's rights under any termination clause of the contract.

1.4 Cancellation

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State. The State shall not be liable for any costs, expenses, loss of profits, or damages whatsoever that an Offeror may incur in the event this RFP is cancelled or a proposal is rejected.

1.5 Schedule and Significant Dates

The dates below represent the State's current projected timeline of events. If a component of this schedule is delayed, the rest of the schedule may be amended, and notice will be provided.

By submitting a proposal, each Offeror 1) agrees to complete its performance in compliance with the dates set forth unless the State expressly agrees to modify any or all dates; and 2) represents and warrants to the State that such Offeror can comply with the requirements of the RFP.

Date	Event
June 28, 2021	Release date of RFP
July 12, 2021, 12:00 P.M. HST	Deadline for written questions
July 19, 2021	Issue addendum for responses to questions
July 30, 2021, 12:00 P.M. HST	Proposals due and opened
August 2 to 6, 2021	Proposal evaluation
August 9 to 13, 2021	Discussions, if necessary
August 20, 2021, 12:00 P.M. HST	Best and final offers due, if any
August 27, 2021	Notice of Award

1.6 Written Questions

Written questions regarding this RFP must be submitted in writing to the Procurement Officer by July 12, 2021, 12:00 P.M. HST. Written questions should include any exceptions the Offeror may have to the terms, conditions, specifications, or other requirements listed herein. No oral questions by telephone or other similar communication about the content and substance of the RFP will be recognized or answered.

Offerors are encouraged to use written questions to seek any changes to the RFP rather than waiting until the submission of the Offeror's proposal. An exception requested in the actual proposal which is not granted may result in rejection of the proposal as non-responsive. As such, requests for changes to the RFP, such as to the scope of work, in regard to the Attorney General's General Conditions (AG GC), and other matters, to the greatest extent possible should be made while written questions are accepted to avoid the possibility of submitting a proposal which could, among other things, be considered non-responsive if the exceptions are not granted.

The Offeror has the duty to identify and address any requirements, features, or services that such Offeror knows and/or reasonably believes are necessary or advisable, in addition to, or in lieu of, those specifically identified in this RFP, to make the Offeror's program functional, reasonable, and interactive for the voters in the State of Hawaii during the period to submit written questions. The State will then consider the written questions and determine whether to issue an addendum/addenda to this RFP.

Section 2: Background and Scope of Work

This Section, in addition to providing the scope of work, provides information about the conduct and administration of elections in the State of Hawaii to assist the Offeror in developing their proposal.

2.1 Scope of Work

Any proposed voter education program shall be in accordance with this RFP, including its appendices, attachments, and any addenda. To meet the specifications and requirements of this RFP, the proposed voter education program by the Offeror must be capable of serving the citizens of the State of Hawaii.

The Offeror is responsible for developing, branding, and managing an integrated voter education program. The Offeror will play an integral role in providing their subject matter expertise in marketing, advertising, production, and media buying. As part of these services, the Offeror is expected to make recommendations regarding the development and execution of an overall voter education campaign that includes a significant role for guerilla marketing. The Offeror will meet with the State to provide strategic and planning services to address the Office of Elections' needs. At the option of the Office of Elections, the Offeror shall be responsible for the actual execution of any materials (e.g. radio, television, social media, or print materials). For example, the Offeror in regard to commercials may be expected to be responsible for concept/theme, video production, and post-production. Likewise, at the option of the Office of Elections, the Offeror shall be responsible for the actual distribution of the commercials, media products, or similar messaging that has been developed. However, nothing will prevent the State from obtaining goods or services separately from other vendors, in connection with the voter education program. In the end, the State will be the final arbiter of what it chooses to buy or not buy from the Offeror.

The State shall own the rights to the use of all assets including marketing, advertising, and production developed for the voter education program on an unlimited basis.

Messaging and Theme Development

The Offeror's overall voter education campaign should address, but not be limited to the following messages:

- **Voter Registration** – Inform eligible voters about how to register to vote in Hawaii elections, and remind voters to update their voter registration if they have changed residence or mailing address, or name.

- **Voting by Mail and Ballot Arrival** – Inform voters about voting by mail and provide general reminders including how to properly mark, sign, and return their ballot. Alert registered voters to expect the arrival of their mail ballots.
- **Ballot Return and Same-Day Registration** – Alert voters of the ballot return deadline and places of deposit. Inform voters of same-day registration services at Voter Service Centers.

Advertisement Planning and Production

The Offeror is responsible for the planning and production, for television and radio advertising campaigns. This would include, among other things, the following:

- Develop the creative concepts and scripts for a series of television and radio commercials in consultation with the State.
- Scout, select, and coordinate filming locations, in consultation with the State.
- Secure on-screen or voice over talent, in consultation with the State.
- Provide a professional crew to shoot the commercials.
- Provide all necessary equipment (e.g. film video cameras, professional lighting equipment, professional audio equipment, professional quality makeup/wardrobe, and set logistics).
- Furnish file footage as necessary.
- Edit, finalize, and deliver final commercials to TV and/or radio stations.

Note: Talent shall not be involved or affiliated with any political campaign.

The Offeror may be expected to be the agent of the Office of Elections for purchases from television, radio, digital, and print entities. The Offeror may recommend additional avenues of advertising (e.g. sponsorships, digital or print advertising).

Outreach Material Development (Education Collateral)

The Offeror is responsible for producing branded collateral to support general voter education efforts. The deliverables are to include, but not be limited to, the items listed below. All collateral is to be translated into alternative languages as established by the State.

- **Voter Registration Application** – The application used to register to vote and update a voter record.

- **Absentee Ballot Application** – The application used to request a ballot be sent to an alternative mailing address.
- **Outreach Brochure** – To provide comprehensive information about Hawaii elections and voting by mail. Brochure is to be utilized for general outreach, including community event tabling and partner organization distribution efforts.
- **Bulletin Poster** – To build election awareness and direct voters to online resources. For use in public locations such as supermarkets, community associations, college campuses, community centers, state agencies, offices, and businesses.
- **Educational Videos** – At least four video explainers for the following topics: (1) Candidate Filing; (2) Voter Registration; (3) Voting by Mail; and (4) Counting Center and Election Security.
- **Newsletter Layout and Template** – Provide a branded template for the State to utilize for newsletters or email blasts to partner organizations and the public.
- **Mail Ballot Insert** – Included in the mail ballot packet to provide voting instructions for the primary election.

Event Marketing

The Offeror is responsible for advising on event marketing strategies to increase the State's presence in the community and to maximize the reach of its voter education efforts.

- Maintain consistent branding for in-person events including, but not limited to, tabletop displays, promotional items, informational takeaways, or banners and tent design.
- Maintain consistent branding for virtual events (e.g. Office of Elections' "Ask an Elections Official" Facebook Live events) including, but not limited to, virtual backgrounds and video banners.
- Identify community events for the State to conduct tabling outreach to promote voter registration and voter education. Community events should target key audiences including persons with disabilities, the houseless, senior citizens, high school students, college students, military members, and Limited English Proficiency (LEP) communities.
- Identify speaking engagements and presentations for the State to provide voter education. Community events should target key audiences including persons with disabilities, the houseless, senior citizens, high school students, military members, and LEP communities.

- Coordinate statewide events in consultation with the State to celebrate National Voter Registration Day 2022, and provide recommendations as it sees fit for additional standalone events.
- Generate interest in the State’s events through promotional channels including media releases and social media.

Website Branding

The Offeror will work with the State to execute website branding, as permissible within the State of Hawaii’s standard website template, including informational sliders.

2.2 Voting in Hawaii

The State of Hawaii is an archipelago extending approximately 1,500 miles and comprising eight major islands – Hawaii, Maui, Molokai, Lanai, Kahoolawe, Kauai, Niihau, and Oahu. For election purposes, there are four Counties within the State: County of Hawaii is the island of Hawaii; County of Maui includes the islands of Maui, Molokai*, Lanai, and Kahoolawe; County of Kauai includes the islands of Kauai and Niihau; and City and County of Honolulu is the island of Oahu. The general population for each county in 2020 was reported as follows:

County of Hawaii.....	203,340
County of Maui.....	167,989
County of Kauai	71,851
City and County of Honolulu.....	963,826
State of Hawaii.....	1,407,006

The mission of the Office of Elections is to provide secure, accessible, and convenient election services to all citizens statewide. The goals and objectives of the office are to 1) conduct efficient and honest elections; 2) encourage participation in the electoral process; 3) protect voter rights (the franchise); and 4) promote elections.

In 2019, Hawaii transitioned to elections by mail. Now, registered voters receive their ballot packet in the mail, complete the ballot in the privacy of their own home, and return it.

The Office of Elections is responsible for printing and counting ballots and voter education. We work collaboratively and collegiately with the four County Elections Divisions, which are responsible for voter registration, mailing and receipt of ballots, places of deposit, and voter service centers.

* For election purposes, the County of Kalawao on the island of Molokai is assigned to the County of Maui.

2.3 Registration

Voter registration from 2012 to 2020 General Elections:

	2012	2014	2016	2018	2020
Hawaii	104,323	105,138	113,083	115,406	127,348
Maui	86,053	87,327	93,912	96,721	107,930
Kauai	40,738	41,869	44,332	44,461	47,253
Honolulu	474,554	472,556	498,590	500,163	549,935
State	705,668	706,890	749,917	756,751	832,466

There are various opportunities to register to vote in Hawaii. To register to vote, a person must be a U.S. citizen, a resident of Hawaii, and at least 18 years old. Registrants may pre-register to vote at 16 years old and will automatically be mailed a ballot for each election after they turn 18.

Online: Voter registration can be completed or updated online at elections.hawaii.gov by individuals who have a Hawaii Driver License or Hawaii State ID.

Paper Application: Paper voter registration applications are available for those that do not have a Hawaii Driver License or Hawaii State ID. These applications can be submitted in person or mailed to the County Elections Division for processing.

DMV: Voter registration is also a part of the Hawaii Driver License and Hawaii State ID Applications. When applying for a driver license or State ID, individuals may opt to register to vote if they meet the qualifications.

Voters must be properly registered to ensure they receive a ballot. Voters who have moved to a new residence or changed their name or mailing address must update their voter registration record. Updates can be made online, with a paper application, or at the DMV.

Voters can also check their voter registration online or by contacting the Office of Elections or their County Elections Division to confirm that their record is up to date.

A first-time Hawaii voter submitting a paper application to register must do so at least 10 days before Election Day. However, voters can continue to register online. Additionally, same-day voter registration is available at a voter service center. Voter service centers are established by each County Elections Division and are open 10 business days before and on Election Day. Within 10 days of Election Day, voters should go to a voter service center to ensure they get their ballot and vote in time.

Voters do not indicate a political party preference when registering to vote in Hawaii. On the Primary Election ballot, a voter must select a political preference, but this information is kept anonymous and is not tied to a voter's registration record in any way.

2.4 Ways to Vote

Registered voters receive a ballot packet in the mail at least 18 days before Election Day. Packets are sent by the County Elections Divisions via the United States Postal Service (USPS) and include a ballot, a secrecy sleeve, and a postage-paid return envelope. The secrecy sleeve is optional and further ensures anonymity when the ballot is being removed from the return envelope that indicates the voter's name.

Voters who do not receive a ballot in the mail should check that their voter registration is up-to-date and contact their County Elections Division for a replacement.

Voters with Special Needs

When voting by mail, an electronic ballot is available to voters with special needs and uniformed and overseas voters. The electronic ballot is emailed to voters to mark using a compatible device like a computer or tablet. After voting the ballot, the voter may choose to return the ballot electronically or by mail using the original return envelope. Electronic ballots are also available to voters who have not received a ballot or need a replacement within 5 days of Election Day. Voters may request an electronic ballot from their County Elections Division.

Accessible in-person voting is also available at the voter service centers.

Marking the Ballot

The Primary Election ballot includes candidates who filed nomination papers by the candidate filing deadline. Hawaii conducts a single-party Primary Election to nominate the candidates who will represent each political party in the General Election. On the Primary Election ballot, voters must first select one political preference, then only vote for candidates within that political preference. Votes for candidates of another political preference are not counted. While a voter must select a political preference for partisan contests on the Primary Election ballot, this does not register a voter with that political party. Everyone may vote for the Office of Hawaiian Affairs and County contests, regardless of selected political preference.

The General Election ballot includes the candidates that were nominated in the Primary Election and ballot questions. In presidential election years, the candidates for president and vice president appear on the General Election ballot only. The General Election ballot does not require the selection of a political party and voters may vote for any candidates across parties.

If a voter makes a mistake, damages the ballot, or changes their mind while voting, they may request a replacement from their County Elections Division. Voting errors cannot be fixed using correction tape or by initialing the error.

Once a voter completes their ballot, they may place it in the optional secrecy sleeve before sealing it in the return envelope. The ballot secrecy sleeve helps to ensure the voter's right to secrecy as ballots are prepared for counting. Part of the ballot should stick out, but the votes are concealed. Voters must sign the return envelope.

Returning the Voted Ballot

The return envelope is postage-paid and pre-addressed to the County Elections Division, so voters can simply place it back in the mail. Voters can also return their ballots by hand delivery to a ballot drop box. These secured boxes are located throughout the county and ballots are collected by the County Elections Division.

The voted ballot must be received by the County Elections Division by 7:00 P.M. on Election Day to be counted. Ballots postmarked by the deadline but received after cannot be counted.

After returning the voted ballot, voters may confirm it was received online at elections.hawaii.gov or by calling their County Elections Division.

Signature Verification

Ballots are received by the County Elections Divisions either from USPS or collected from ballot drop boxes. Return envelopes are scanned upon receipt, validating them by matching the signatures on the outside of the return envelopes to the signatures on file with the voter registration records. If a signature matches, the ballot is counted as "voted." Ballots validated by the County Elections Division are secured for transfer to the Office of Elections.

If a signature is missing or does not match, it is reviewed by the County Elections Division and the voter is contacted to remedy the signature. If the signature is corrected within 5 business days following Election Day, the ballot is validated and counted. If it is not corrected, the ballot remains invalid and not counted.

Voter Service Centers

Voter service centers are established in each county to provide accessible in-person voting, same-day registration, and a replacement ballot.

A voter may only cast one ballot. If a voter has submitted a ballot by mail and then arrives at a voter service center to vote, the voter will not be allowed to vote in person. Likewise, if a voter votes in person at a voter service center, their mail ballot will be canceled. If that mail ballot is received by the County Elections Division, it would not be accepted as the barcode would indicate the ballot has been canceled.

Transfer of Ballots

Once ballots are validated by County Election Officials, they are secured for transfer to the State counting centers to be opened and counted. There are four counting centers statewide, with one in each county. Ballots are transferred to the counting centers in the presence of Official Observers, who serve as the “eyes and ears” of the public. Official Observers are required by law to be present during the counting of ballots to ensure the security and integrity of the election.

Counting of Ballots

At the counting center, ballots are opened, counted, and securely stored beginning 18 days before an election. The counting centers are managed by the Office of Elections, with additional support provided by the County Elections Divisions. Volunteers are also recruited to help open and process ballots. Operations within the counting center are monitored by Official Observers who volunteer as the “eyes and ears” of the public. Official Observers are required by law to be present during the counting of ballots to ensure the security and integrity of the election.

Ballots are opened in a three-step process to ensure voter secrecy. First, return envelopes are opened and the secrecy sleeve containing the ballot is removed. The empty return envelopes are placed in a separate pile and kept away from the secrecy sleeves. Once all envelopes on the table have been emptied, the envelopes are collected and checked to ensure they are empty. Finally, the ballots are removed from their secrecy sleeves, unfolded, and placed into securable boxes for easy transport. Boxes of voted ballots are brought to the vote counting equipment within the counting center, where they are scanned. Once scanned, boxes are secured maintaining the integrity of the ballot.

Release of Election Results

Although ballots are opened and scanned up to 18 days before Election Day, no votes are tabulated until Election Day. The first set of election results are released after the close of voting, 7:00 P.M., on Election Day. While this is the earliest results can be released, results cannot be released until all voters in line to vote at 7:00 P.M. have cast their ballots. Results are released by the Office of Elections once all voter service centers are closed.

The first set of results includes mail ballots that were received before Election Day. The second set of results is typically released around 10:00 PM, which includes in-person votes from the voter service centers. The third set of results is released as each County finishes counting the ballots. These results include the last mail ballots that had been picked up from the drop boxes or received by mail by the 7:00 P.M. deadline and were validated later in the evening/early morning. The final set of results is released no earlier than 5 business days after Election Day, after the deadline to correct missing or non-matching signatures.

Results are then certified after the contest for cause deadline and the resolution of any election challenge. The deadline to file a contest for cause with the Hawaii Supreme Court is the 13th day after the Primary Election and the 20th day after the General Election.

Audit of Election Results

Election results are audited on and after Election Day. Election Officials, in the presence of Official Observers, audit at least 10% of the district/precincts. The results of the audit are compared to the result reports to ensure that the program is operating properly.

2.5 Voter Services

In terms of educating the public on voter registration and voting information, the Voter Services Section of the Office of Election is responsible for, among other things, the following:

- Working with the Department of Education to implement the Young Voter Registration Program (YVRP) within the Hawaii school system.
- Public outreach to ensure that different sectors of the community are aware of their voting rights and key election dates.
- The National Voter Registration Act (NVRA) program which furnishes State offices with voter registration materials.
- Production of posters promoting voting in Hawaii to be posted in public locations such as supermarkets, community groups, and college campuses.
- Producing a commercial that will bring voting awareness and election information to the residents of Hawaii.
- Producing scripts to be aired on radio stations, including ethnic radio stations to promote election information to residents of Hawaii.
- Producing ads to be placed in daily, community, and college newspapers promoting election information.
- Translating and disseminating materials to languages determined by the Department of Justice.
- Partnering with organizations to increase voter registration in areas targeted by the Voter Equalization and Maximization Project (VEMP).
- Recruiting and training staff for the Voter Hotline and Election Information Services.

- Identifying venues and events to conduct voter registration drives including disability-related events, fairs, and college campuses.
- Having at least one voter registration drive/voter education presentation per month.
- Identifying organizations within VEMP areas to approach to help spread the word of voting rights and election information within their communities.
- Capturing media such as images and/or video to use for social media or b-roll use to submit to TV stations to promote OE public outreach.
- Operating the Office of Elections' social media and website.
- Maintaining an in-house voter registration process by processing statewide and nationwide voter cancellation notices, voter name changes, Federal Post Card Applications, voter registration forms, and parole release notices.
- Working with individuals, candidates, unions, and other organizations to supply voter registration forms upon request.
- Attending monthly Judicial and Administration Oath Hearing to promote voter registration to newly qualified naturalized U.S. citizens.
- Targeting public libraries and post offices statewide for replenishment of voter registration forms throughout the election season.
- Outreach to targeted groups, including persons who have blindness or visual impairments, Deafness or who are hard of hearing, mobility impairments, mental illness, developmentally delayed, youth in transition, and seniors with disabilities.
- Identifying organizations within the disability groups that the Office of Elections can partner with for voter registration drives, election accessibility education, and voter education presentations.
- Educating voters with disabilities and family members, community groups, and professionals that serve them about their voting options.

As part of educating the public on voter registration and voting information, the Office of Elections conducts a voter media campaign, which utilizes radio, television, digital, and print, covering a variety of topics. This requires the development of an overall voter education plan, the production of materials (e.g. print materials, commercials), and the dissemination of those materials (e.g. media buys and in-person outreach).

2022 Projected Timeline

November 2021	Facebook Live “Ask an Election Official” EP. 1 Newsletter launch (once monthly through Dec. 2022) Distribute materials to community partnerships
December 2021	Distribute Voter Registration and Absentee Ballot applications
January 2022	Facebook Live “Ask an Election Official” EP. 2 In-Person Outreach Events (ongoing through Nov. 2022) Virtual Outreach Events (ongoing through Nov. 2022)
February 2022	Pledge to Vote Campaign launch Young Voter Registration Program (YVRP) SY2021 end
March 2022	Facebook Live “Ask an Election Official” EP. 3
May 2022	Facebook Live “Ask an Election Official” EP. 4
June 2022	Message: Voter Registration Facebook Live “Ask an Election Official” EP. 5
July 2022	Message: Voting by Mail and Ballot Arrival Facebook Live “Ask an Election Official” EP. 6
August 2022	Message: Ballot Return and Same-Day Registration Facebook Live “Ask an Election Official” EP. 7
September 2022	Message: Voter Registration Facebook Live “Ask an Election Official” EP. 8 Young Voter Registration Program (YVRP) SY2022 start National Voter Registration Day
October 2022	Message: Voting by Mail and Ballot Arrival Facebook Live “Ask an Election Official” EP. 9

November 2022

Message: Ballot Return and Same-Day Registration

Facebook Live “Ask an Election Official” EP. 10

December 2022

Facebook Live “Ask an Election Official” EP. 11

2.6 Election Schedule

In Hawaii, elections are regularly scheduled in even-numbered years, with a Primary Election in August and a General Election in November. Hawaii is a vote-by-mail state, which means all registered voters automatically receive a ballot in the mail. Voters may choose to vote in person at a voter service center or request an absentee ballot be mailed to a different address if they are away from home during the election. Voted ballots are due by the close of voting, 7:00 P.M., on Election Day.

2022 Contest Schedule

Federal

U.S. Senate	1 Seat
U.S. House of Representatives	2 Seats

State

Governor	1 Seat
Lieutenant Governor	1 Seat
State Senate	25 Seats
State House of Representatives	51 Seats
Office of Hawaiian Affairs Trustee	5 Seats

County of Hawaii

Councilmember	9 Seats
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County of Maui

Mayor	1 Seat
Councilmember	9 Seats

County of Kauai

Mayor	1 Seat
Councilmember	7 Seats

City & County of Honolulu

Councilmember	4 Seats
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2022 Election Calendar

The following election calendar includes amendments made by Senate Bill No. 548 SD1 HD2 CD1 which is pending enactment. The Offeror should keep in mind that the dates and deadlines may be amended during the course of the contract and this would require the voter education program to likewise be adjusted.

Thursday, February 24	Deadline for new political parties to file a petition to form, party rules, and officers with the Office of Elections
Tuesday, March 1	Candidate filing opens
Wednesday, March 16	Deadline for a political party to file rules with the Office of Elections
Thursday, March 24	Deadline to file new political party objections with the Office of Elections
Saturday, May 14	Deadline for political parties to file party officers with the Office of Elections
Tuesday, June 7	Last day for candidates to file nomination papers to appear on the 2022 Election ballots
Wednesday, June 8	Deadline to submit a request to withdraw from the Primary Election for any reason
Tuesday, June 14	Deadline to file written objections to nomination papers
Friday, June 24	Deadline to submit a request to withdraw from the Primary Election for reasons of ill health
Wednesday, June 29	Deadline for County Elections Divisions to mail Primary Election ballots to overseas voters
Saturday, July 23	Deadline for political parties to submit names of voter service center watchers for the Primary Election
Tuesday, July 26	Voters receive Primary Election mail ballot packet. Places of deposit may open as scheduled by the County Elections Divisions.
Monday, August 1	Voter service centers and same-day voter registration open for the Primary Election

Wednesday, August 3	Final day to register to vote for the Primary Election online or by mail to automatically be sent a ballot. Voters are eligible for same-day voter registration for the Primary Election at voter service centers.
Saturday, August 6	Last day to request an absentee mail ballot for the Primary Election
Saturday, August 13	PRIMARY ELECTION. Voter service centers and places of deposit close. Voted ballots must be received by the County Elections Divisions by 7:00 P.M.
Thursday, August 25	Deadline to receive Constitutional Amendment questions, County Charter Amendment questions, and County Initiative questions
Friday, August 26	Deadline to file a complaint on contests for cause in the Primary Election with the Hawaii State Supreme Court
Monday, September 19	Deadline to submit a request to withdraw from the General Election for reasons of ill health
Friday, September 23	Deadline for County Elections Divisions to mail General Election ballots to overseas voters
Wednesday, October 19	Deadline for political parties to submit names of voter service center watchers for the General Election
Friday, October 21	Voters receive General Election mail ballot packet. Places of deposit may open as scheduled by the County Elections Divisions.
Tuesday, October 25	Voter service centers and same-day voter registration open for the General Election
Monday, October 31	Final day to register to vote for the General Election online or by mail to automatically be sent a ballot. Voters are eligible for same-day voter registration for the Primary Election at voter service centers
Tuesday, November 1	Last day to request an absentee mail ballot for the General Election

Tuesday, November 8	GENERAL ELECTION. Voter service centers and places of deposit close. Voted ballots must be received by the County Elections Divisions by 7:00 P.M.
Monday, November 28	Deadline to file a complaint on contests for cause in the General Election with the Hawaii State Supreme Court
Wednesday, March 8, 2023	Deadline to determine political party disqualifications

2.7 Election Laws

To review the statutes and rules governing elections, visit <https://elections.hawaii.gov/resources/election-laws/>.

Hawaii Revised Statutes (HRS)

- Chapter 10: Office of Hawaiian Affairs
- Chapter 11: Elections, Generally
- Chapter 12: Primary Elections
- Chapter 13: Board of Education
- Chapter 13D: Board of Trustees, Office of Hawaiian Affairs
- Chapter 14: Presidential Elections
- Chapter 14D: Agreement among the states to elect the president by national popular vote
- Chapter 15: Absentee Voting
- Chapter 16: Voting Systems
- Chapter 17: Vacancies
- Chapter 19: Election Offense
- Chapter 25: Reapportionment
- Chapter 50: Charter Commissions

Hawaii Administrative Rules (HAR)

- Chapter 3-170: Election Commission
- Chapter 3-177: Office of Elections

Section 3: Proposal Requirements

The Offeror's filed proposal shall be considered a complete plan satisfying the requirements of this RFP and any supplemental tasks the Offeror has identified as necessary to successfully meet the obligations outlined in this RFP to the extent such supplemental tasks are consistent with, but not different than, the specification for the program and are not inconsistent with the State's procurement and election laws.

The proposal shall describe in detail the Offeror's ability to meet the Goals and Objectives of this RFP. Additionally, only one proposal will be accepted from any Offeror. Multiple proposals or several alternatives as part of a single proposal will not be accepted.

3.1 Offeror's Authority to Submit a Proposal

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

3.2 Required Review

Before submitting a proposal, the Offeror has a duty and obligation to examine thoroughly the solicitation documents, such as this RFP, any attachments, addendum, and other relevant documents to ensure the Offeror understands the requirements of this RFP. The Offeror must also become familiar with federal, state, and local laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

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

By submitting a proposal, the Offeror's proposal constitutes and is deemed its understanding of and acceptance and compliance with the requirements of this RFP and any addendum/addenda. An Offeror's proposal constitutes its certification and acceptance that the RFP documents are sufficient in scope and detail to convey and express all the terms and conditions of performance for the State's elections and agreement to be bound by all its terms and conditions.

3.3 Costs of Preparation

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

3.4 Tax Liability

Work to be performed under this RFP is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. The Offeror is advised that they are liable for the Hawaii General Excise Tax (GET). If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, the Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

The Offeror shall submit its current Federal I.D. number and Hawaii GET License I.D. number in the space provided on the attached **Offer Form OF-1**, thereby attesting that the Offeror is doing business in the State and that the Offeror will pay such taxes on all sales made to the State.

Offerors seeking information or assistance regarding the tax consequences of this solicitation may wish to contact their tax professional or the State of Hawaii, Department of Taxation.

3.5 Confidential Information

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

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

In determining any Offeror's confidentiality request, pursuant to Section 3-122-58, HAR, the Purchasing Officer or designee shall consult with the attorney general and make a written determination in accordance with Chapter 92F, HRS. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices under Section 92F-42(12), HRS.

3.6 Exceptions

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

No exceptions to constitutional, statutory, or administrative rule requirements shall be considered. As such, no exceptions to the AG General Conditions (AG GC), Special Provisions, and other matters in the RFP, to the extent they are required to comply with legal requirements, shall be considered. Offerors are reminded that most AG GCs are based on either a statutory or administrative rule basis.

3.7 Proposal Objectives

The proposal shall describe in detail the Offeror's ability and availability of services to meet the Goals and Objectives of this RFP. One of the aims of this RFP is to make proposal preparation easy and efficient while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.

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

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

3.8 Proposal Forms

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

Offer Form OF-1 is required to be completed using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on the form. Failure to do so may delay the proper execution of the Contract. The Offeror's signature on **Offer Form OF-1** shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate the Offeror's intent to be bound.

Offer Form OF-2. Pricing shall be submitted on **Offer Form OF-2.** The price shall be the all-inclusive cost, including the GET, to the State. No other costs will be honored. Any unit prices shall be inclusive.

3.9 Proposal Format

Proposals are to be organized in the following format using all titles, subtitles, and numbering, with tabs separating each part. Each part is to be addressed individually and pages are to be numbered consecutively. The proposal must also provide a table of contents listing the individual parts of the proposal and the corresponding page numbers.

Part 1: Executive Summary

The proposal must include a brief synopsis of the highlights of the proposal and the overall benefits of the proposal to the State. This synopsis should not exceed three pages and should be easily understandable.

Part 2: Offeror Information

Cover Letter

Offerors must provide a letter, signed by the officer of the company, describing the following:

- Official name
- Organization structure (e.g., corporation, partnership, limited liability company)
- Jurisdiction where organized and the date of such organization
- Address of headquarters and any local office
- Federal tax identification number
- Name and contact information (e.g., email, mailing address, telephone, fax) for the person(s) who will serve as the contact(s) with the State, and authorized to make representations on behalf of, and can bind, the Offeror
- Statement that the Offeror is in good standing in the State of Hawaii and has all the necessary licenses, permits, approvals, and authorizations necessary in order to perform all the obligations in connection with this RFP
- Acknowledgement and agreement that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP and any addenda

Subcontractors

Offerors must provide complete information for all subcontractors or development partners that will have a role or responsibility in providing any part or otherwise be involved in meeting the requirements of this RFP and addenda. Include the company name and location, scope of services to be performed, and the name and contact information (e.g., email, mailing address, telephone, fax) for reference information.

Offer Form OF-1

Offerors must complete, sign, and submit the **Offer Form OF-1** attached to this RFP using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs (DCCA), if applicable; the exact legal name of the Offeror shall be reflected in the appropriate spaces. Failure to do so may delay the proper execution of the contract.

Evidence of Authority to Execute Proposal

Include evidence satisfactory to the State that the person(s) signing the proposal are authorized to execute the proposal on behalf of the Offeror (e.g., a corporation's copy of the board resolution authorizing such execution).

Wage Certificate

Offerors must complete, sign, and submit **Offer Form OF-2** attached to this RFP. At the time of this RFP, although there are no public employee positions listed in the classification plan of the public sector that are like those expected to be used in the performance of this project, the Offeror must sign and show compliance with Section No. 1 of the Wage Certificate.

Evidence of Insurance

Certificate of insurance evidencing Commercial General Liability Insurance (occurrence form) is to be completed and included with the proposal. Refer to **Insurance** provision in **Section 5: Special Provisions** of this RFP.

Part 3: Pricing

The cost to the State for the purposes of this RFP shall not exceed \$200,000 per election cycle. Any proposal that exceeds \$200,000 per election cycle shall be deemed nonresponsive and not considered.

The pricing of the Offeror's proposal should be based on the hourly rate proposed for each position and the number of hours proposed per task. The proposal price should be presented in a tabular format similar to the following:

<u>Position</u>	<u>Type</u>	<u>Rate</u>	<u>Hours</u>	<u>Expense</u>	<u>Task</u>
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Title	[Hourly]	[\$]	[No. Hours]	[Rate x Hours]	
Grand Total				\$ _____	

All hours will be tracked by the Contractor and reported to the State monthly. If the number of actual hours used is less than the number budgeted by the Offeror for the Contract, including any options to extend that may have been exercised, the unused hours will, at the option of the State, be saved for future election use or serve to reduce the contract price for that election. Within the time of performance, if the number of hours is more than what was budgeted by the Contractor, the State will not be charged. The Offeror bears any risk of the number of hours actually being necessary to complete the contract being greater than what it estimated.

As such, the Offeror is discouraged from inflating or minimizing their estimate of the amount of labor that will be necessary to fulfill its obligations under the contract. The Offeror must complete and submit **Offer Form OF-2** of this RFP indicating the pricing, including any taxes, of their services through December 31, 2022.

Reasonableness of Price

The Offeror should articulate in writing why its proposed price is reasonable and acceptable. A non-exhaustive list of possible documentation would be the following: (1) prior price quotations or contract prices for similar services; (2) prices published in catalogs or price lists; and (3) prices available on the open market.

In explaining that the price is reasonable and acceptable, consideration should be given by the Offeror to any differing terms and conditions for contract prices, catalog prices, prices available on the market, or whatever appropriate documentation is provided by the Offeror.

For example, in regard to the provision of prior contract prices, jurisdictions and contracts vary widely in what is required. As such, the Offeror may wish to explain what consideration should be given to any differing terms, conditions, or other factors between the prior contracts and the one sought by this solicitation.

To substantiate statements, Offerors may provide copies of actual prior contracts, proposals, solicitations (e.g., RFPs, IFBs, etc.), or other appropriate documentation. A failure to provide appropriate documentation may result in statements being discounted by the State.

The State reserves the right to contact any client cited by the Offeror for additional information.

Offerors should familiarize themselves with the cost and pricing data requirements of Hawaii Administrative Rules (HAR) available through the State Procurement Office (SPO) at <http://spo.hawaii.gov/>. The attached **SPO-013 Certificate of Current Cost-Pricing Data** should be completed and submitted with any proposal. The certificate form is also available at <http://spo.hawaii.gov/all-forms/>.

Part 4: Documentation

The Offeror's proposal shall be accompanied by the following:

- A signed statement that the Offeror acknowledges and agrees to pay all costs related to the preparation of its proposal incurred by the Offeror to submit its proposal without any liability to the State
- A list of prior and existing clients that the Offeror provided similar services
- Sample work or advertisements, including commercials and educational videos

Part 5: Technical Proposal

The Offeror must provide a complete description of the proposed voter education program it proposes. The description must include:

- A basis of estimates, exclusive of cost data, for services, which identifies each activity and scheduled start and completion dates
- The number of the Offeror's and Office of Elections' personnel and hours required for each activity
- A description of the manner of applying these services to meet or exceed the requirements of the State

Strengths and Weaknesses of the Voter Education Program

The Offeror shall provide a complete description of the unique features and strengths of the voter education program to meet the State's Goals and Objectives.

Similarly, the Offeror must provide a complete description of any disadvantages or limitations of the voter education program that the State should be aware of when evaluating the program.

Part 6: Qualifications and Financial Stability of Offeror

The Offeror must provide a complete description of the capabilities of the Offeror to perform the requirements of this RFP. This description should not exceed five pages and should include a detailed summary of the Offeror's experience relative to educational campaigns for government agencies.

The Offeror must be a marketing or advertising firm that has been in operation in Hawaii for at least five years. The head of the marketing firm must have at least ten years of experience in the marketing industry in Hawaii in a management capacity.

The Offeror must have provided consultant services to a government agency that resulted in a statewide or countywide educational campaign. The educational campaign must have lasted a minimum of three months and occurred in the State of Hawaii, within the last five years. Educational campaigns that lasted between three months and six months must have involved the expenditure of at least \$200,000, in the aggregate, in radio, television, social media, and print advertisements by the government agency during that time frame. Educational campaigns that lasted for more than six months must have involved expenditures of at least \$200,000, in the aggregate, in radio, television, social media, and print advertisements by the government agency during a six-month period of that time frame (e.g. a three-year campaign must have involved at least \$200,000 in paid advertisements over a set six-month period during one of those three years, as opposed to two months from each year being permitted to be put together to reach six months).

The Offeror cannot have worked with the campaign of any candidate or ballot question for the 2020 Elections and must agree to not work on any such campaigns for the 2022 Elections or any subsequent elections, to the extent an option to extend is exercised. Additionally, the Offeror agrees to comply with HRS § 11-355, which prohibits campaign contributions by a State contractor during the term of the contract.

The Offeror shall enter into non-compete, non-disparagement, and non-disclosure agreements with its performers, spokespersons, employees, and subcontractors. In regard to commercial or printed material involving actors or spokespeople, the competing products or services for such agreements include anything related to political activity (e.g., political

campaigns, candidate endorsements, or activity associated with a political contest or question).

The time frame for any non-compete agreement would be a period of at least five years from the first airing of any commercial or publication of any material, to the extent the commercial or material is to be used for two election cycles. In regard to a commercial or material that is targeted solely for a single election cycle, then the time frame is two years from the first airing of any commercial or publication of any material. Any non-disparagement and non-disclosure agreements shall have no expiration date unless otherwise required by law.

Financial Statements

The Offeror must provide copies of the Offeror's last two annual financial statements. In responding, the Offeror shall provide the highest level of reporting available for the company's financial statements (i.e., audited, reviewed, or compiled). The State may elect to require the vendor, after reviewing its financial statements, to use agreed upon procedures determined by the State, to determine the financial stability of the Offeror. The cost of any such procedures will be the sole responsibility of the Offeror.

Audited financial statements include the independent auditor's report on the auditor's letterhead, the financial statements (i.e., Balance Sheet, Income Statement, Statement of Cash Flows, etc.), and the related footnotes for which the auditor opined.

Reviewed and compiled financial statements include the independent accountant's report on the accountant's letterhead, the financial statements (i.e., Balance Sheet, Income Statement, Statement of Cash Flows, etc.), and the related footnotes for which the independent accountant performed their review or compilation on.

To the extent a partnership, joint venture, or a combination of companies seeks to submit a joint proposal or similar proposal, each individual company is required to provide the last two annual financial statements as noted above.

Each Offeror must also certify that they will provide ongoing annual financial statements during the term of the contract.

References

The Offeror must provide complete reference information for public institutions or agencies for which the Offeror provides or has provided comparable services. Each such reference must include the project name and location, the scope of services performed, and the name, address, telephone, and fax numbers of the contact person. Letters of reference may be included.

Key Personnel – Qualifications and Experience

The Offeror must provide a complete list of and resumes for all key personnel associated with their proposal. The information for each person listed as Key Personnel shall not exceed three pages per person. For each person listed, the following information shall be included:

- Mailing address, telephone number, and email address
- Relationship with the Offeror, including job title and years of employment
- Role in connection with the proposal
- Educational background
- Relevant experience as well as awards, certificates, or other achievements
- Any felony convictions
- Contributions to any political campaign in the State of Hawaii in the past 10 years

Note: Key personnel shall not be a parent, spouse, child, or sibling of a candidate, contributed to any political candidate in the State of Hawaii within the past 10 years, or taken an active part in political management or political campaigns in the State of Hawaii.

Part 7: Implementation Plan and Schedule

A plan for implementing the voter education program for the 2022 Elections must be submitted as part of the Offeror's proposal.

The plan shall also include a discussion of the Offeror's staffing necessary to meet the requirements of this RFP.

Part 8: Exceptions

The Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. The Offeror shall reference the RFP section where an exception is taken, a description of the exception taken, and the proposed alternative, if any. The absence of any exception by the Offeror represents compliance with the requirements of this RFP.

The Offeror shall not submit their organization's terms and conditions, standard contracts, or other agreements. General references to such items or attempts at the complete substitution of such items may result in disqualification of the Offeror's proposal. Offerors are encouraged to submit specific alternate language to the State's terms and conditions if such changes are desired. The decision to accept or reject any exceptions taken shall be at the discretion of the State and its decision shall be final.

No exceptions to constitutional, statutory, or administrative rule requirements shall be considered. As such, no exceptions to the AG General Conditions (AG GC), Special Provisions, and other matters in the RFP, to the extent they are required to comply with legal requirements, shall be considered. Offerors are reminded that most AG GC are based on either a statutory or administrative rule basis. The AG GC is attached and considered part of

this RFP. It is also available at <https://spo.hawaii.gov/wp-content/uploads/2017/12/AG-008-103D-1.pdf>.

A non-exhaustive list of matters, depending on the specific language of the proposed exception, which may touch upon administrative rules, statutes, and the AG GC are provided.

A request for a limitation on liability would touch on AG GC ¶ 13 and HAR § 3-125-17. HAR § 3-125-17 provides that if the contractor defaults, the State will be able to procure similar goods or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue the 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.

5.2 Subject to Available Funds by implication impacts AG GC ¶¶ 14 & 17b (termination for convenience & subject to available funds) and the laws that it was created to comply with. The Hawaii State Constitution provides that “[n]o law shall be passed mandating any political subdivision to pay any previously accrued claim.” Article VIII, Section 6. In other words, one cannot agree to a future debt on behalf of the government. Instead, State agencies cannot enter into contracts obligating the State beyond what has been appropriate that fiscal year for that purpose. For this reason, HRS § 103D-309 provides that a contract is not binding unless funds are available, and that certification of funds is only necessary for the first year of a multi-year contract. Additionally, this issue is the reason why the utilization of multi-term must comply with HAR § 3-122-149 (Multi-term contract). The procurement code addresses situations in which the State chooses not to complete a contract due to funding by allowing for termination by convenience. HAR § 3-125-21 (Termination for convenience of goods and services contracts).

5.12 Subcontracting. Any exception may impact AG GC ¶ 6 Subcontracts and Assignments, and possibly to the statutory requirement of HRS § 40-58 (In favor of assignees).

5.17 Inspection and Modification and Reimbursement for Unacceptable Deliverables. Reimbursement for Unacceptable Deliverables, addresses, in part, termination for default and the seeking of reimbursement and damages. This is intertwined with AG GC ¶¶ 11, 12, 13, and 14 (Disputes, Suspension of Contract, Termination for Default, Termination for Convenience). As such, any request for an exception may impact the related AG GC, and the statutes and administrative rules that may serve as the basis for those provisions. For example, AG GC 13 Termination for Default language is required to be a part of the contract, pursuant to HAR § 3-125-17 (Termination for default in goods and services contracts).

5.18 Contract Staffing Requirements. Requires the Offeror to obtain approval before making personnel changes, if not it may be grounds for termination. This is intertwined with AG GC 19 Modification of Contract, which is based on HAR § 3-125-3 and AG GC 13 Termination for Default. As such, a requested exception to § 6.270 may impact HAR § 3-125-3 and AG GC 13.

5.21 Termination is based on the ability to terminate for convenience found in AG GC 14. This language is required to be a part of the contract, pursuant to HAR § 3-125-21 (Termination for convenience).

Part 9: Answers to State's Questions

The Offeror must provide detailed answers to each of the questions posed by the State in **Appendix A: State's Questions to Offerors.**

3.10 Submission of Proposals

The Offeror shall submit an original proposal, marked *ORIGINAL*, and at least 1 USB-drive copy in sealed envelopes or packages to the Procurement Officer by July 30, 2021, 12:00 P.M. HST to the following address:

Ms. Aulii Tenn
RFP-22-001-SW
802 Lehua Avenue
Pearl City, Hawaii 96782

Proposals shall be stamped with the date and time of receipt for evidence of timely receipt. The Offeror accepts all risks associated with the delivery of their proposal including but not limited to, incorrect delivery or failure to deliver the proposal before the deadline by any courier, mail, or other delivery services, such as the United States Postal Service. A proposal received after the deadline will be rejected and returned unopened. In all cases by filing a proposal, each Offeror agrees its proposal filed after the deadline will be rejected and the State has no liability of any nature whatsoever for any proposal delivered after July 30, 2021, 12:00 P.M. HST.

All proposals become the property of the State of Hawaii.

Receipt and Register of Proposals

Proposals will be received, and receipt verified by two or more Procurement Officials on or after the date and time specified above, or as amended. The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of the award pursuant to HRS §103D-701.

Modification or Withdrawal of Offer

The Offeror may modify or withdraw a proposal before the proposal due date and time. Any change, addition, deletion of attachment(s), or data entry of a proposal may be made prior to the deadline for the submittal of offers.

Mistakes in Proposals

Mistakes shall not be corrected after the award of the contract.

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

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

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

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

Best and Final Offer (BAFO)

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

Section 4: Evaluation Criteria

Evaluation of the proposals shall be within the sole judgment and discretion of the Evaluation Committee. A proposal that is unrealistic in terms of technical or schedule commitments or unrealistically high or low in price may be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the requirements of this RFP. The Evaluation Committee will review proposals based on four criteria:

1. Experience and Capability, 35 points
2. Personnel: Project Organization and Staffing, 15 points
3. Service Delivery, 35 points
4. Pricing, 15 points

The proposals will be initially classified as acceptable, potentially acceptable, or unacceptable. Discussions may be conducted with Priority Listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award to promote understanding of the requirements of the RFP and the interested Offeror's proposal.

The Procurement Officer may request that each Priority Listed Offeror prepare and submit a written supplemental proposal to address any concerns and questions by the State and to present the State with the Offeror's final proposal. The Offeror's final proposal will be known as the Best and Final Offer (BAFO). The requirements of the BAFO will be specified by the Procurement Officer. The State reserves the right to conduct additional rounds of discussions with Priority Listed Offerors before the submission of the BAFO.

The award of this RFP will be made to the Offeror whose proposal is determined to be responsive and the most advantageous to the State based on the established evaluation criteria and their respective weight. Each proposal is subject to and may earn a maximum of 100 points.

4.1 Experience and Capability, 35 points

Up to 35 points will be awarded based on the degree to which the interested Offeror clearly and concisely demonstrates that it has the experience, necessary skills, abilities, knowledge of, and participated in and successfully completed similar projects.

4.2 Personnel: Project Organization and Staffing, 15 points

Up to 15 points will be awarded based on the degree to which the interested Offeror clearly and concisely demonstrates that it has the qualified personnel, expertise, capacity, and time to perform the requested services.

4.3 Service Delivery, 35 points

Up to 35 points will be awarded based on the degree to which the interested Offeror clearly and concisely demonstrates its approach to the scope of work, cost-effectiveness, and reliability.

4.4 Pricing, 15 points

The proposal offering the lowest price will be automatically allocated 15 points. The number of points assigned to each other proposal will be determined using the following formula:

$$\frac{\text{Lowest price (\$)} \times 15 \text{ points (max)}}{\text{Offeror's Proposal (\$)}} = \text{_____ points}$$

4.5 Discussions with Priority Listed Offerors

The Evaluation Committee and any person designated by the Evaluation Committee may meet with Priority Listed Offerors to discuss possible solutions to any issues and how those issues or potential issues may impact the State's schedule. However, proposals may be accepted without discussion.

Note: The provisions of HAR §3-122-53 are applicable to such discussions.

4.6 Best and Final Offer (BAFO)

The requirements of the BAFO will be specified by the Procurement Officer. The State reserves the right to conduct additional rounds of discussions with Priority Listed Offerors before the submission of the BAFO.

If a BAFO is requested, and an Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's latest proposal shall be construed as its BAFO. The evaluation of any BAFO shall be within the sole judgment and discretion of the Evaluation Committee. If no BAFO is requested, any selection for the award will be based on the Offeror's latest proposal.

4.7 Disqualification

An Offeror's proposal may be disqualified at any stage of the procurement based on the RFP requirements. As such, designation as a Priority Listed Offeror, or receipt of a BAFO does

not prevent the Evaluation Committee from subsequently determining that a proposal should be disqualified for failure to comply with the RFP requirements.

Section 5: Special Provisions

Proposals shall be in accordance with the requirements of this RFP and of the Attorney General's General Conditions (AG GC) (AGS-008) (Revised 12/20/2017), which are part of this RFP and appear in the attachments. Copies of the AG GC are additionally available at: <https://spo.hawaii.gov/wp-content/uploads/2017/12/AG-008-103D-1.pdf>.

5.1 Responsibility of Offeror

The Offeror is advised that, if awarded a contract under this solicitation then upon the award, Offeror shall furnish proof of compliance with the requirements of §103D-310(c), HRS by providing the certifications and documents as follows:

- Good standing to do business in the State under Ch. 103D-310(c), HRS;
- Tax clearance under Ch. 237, HRS;
- Unemployment insurance under Ch. 383, HRS;
- Workers' compensation under Ch. 386, HRS;
- Temporary disability insurance under Ch. 392, HRS; and
- Prepaid health care under Ch. 393, HRS

The instructions for furnishing such certifications and documents acceptable to the State as proof of compliance with the above requirements appear in **5.6 Award of Contract Required Documents** on page 39.

Additionally, the Procurement Officer must determine whether the Offeror has the *financial ability, resources, skills, capability, and business integrity necessary to perform the work*. HRS § 103D-310(b) (Emphasis added). Specifically, the Procurement Officer will make a determination of the responsibility or non-responsibility of an Offeror to perform the work called for in the RFP. This determination is based on available information.

For this purpose, the Officer, in the Officer's discretion, may require any prospective Offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board.

It should be noted that the provision of documents to satisfy HRS § 103D-310(b) is separate and apart from the requirements of HRS § 103D-310(c) for the Procurement Officer to determine that the Offeror has the financial ability, skills, capability, and business integrity necessary to perform the work called for in the RFP, based on any available information they may require.

5.2 Subject to Available Funds

The contract is subject to the availability of funds after the first State fiscal year. As such, the contract will be cancelled if funds are not available to support the contract performance in any subsequent fiscal year. This, however, does not affect either the State's rights or the Contractor's rights under any termination clause of the contract.

5.3 Contract Administrator

Mr. Scott T. Nago, Chief Election Officer, telephone (808) 453-8683, or his authorized representative, is designated the Contract Administrator and represents the Office of Elections.

5.4 Permits, Certificates, and Licenses

The Contractor shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations related to and arising from the conduct of the work specified.

The Contractor shall comply with all business registration requirements before commencing work under this contract. The Contractor's failure to comply with the requirements of this paragraph may be grounds for a proposal to be rejected or the contract to be terminated summarily.

5.5 Proposal Preparation

The following conditions apply:

- Tax Liability. Any Offeror's tax liability shall be included in and made a part of, its proposal contract price. Each Offeror agrees to be solely liable for any and all taxes under this RFP, any addenda, and the contract, and the State shall not have any liability for any tax of any nature.

Offerors seeking information or assistance regarding the tax consequences of this solicitation may wish to contact their tax professional or the State of Hawaii Department of Taxation.

- All costs and expenses that may be incurred for developing a proposal are each Offeror's sole and exclusive responsibility and agrees to accept such costs under all circumstances whether or not any award results from this solicitation and the State of Hawaii will not reimburse any such costs; and

- Only copies of Offerors' documents for any proposed modifications to and withdrawal of any proposal may be transmitted via facsimile machines under sections 3-122-108 and 3-122-28, HAR, respectively.

5.6 Award of Contract Required Documents

HRS § 103D-310(c) – Responsibility of Offeror Before Contract Award. Before award, the Offeror shall file with the Procurement Officer under section 3-122-112, HAR, all documents that demonstrate compliance with this section as follows:

- Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The Offeror shall file with the Office of Elections (OE) a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The certificate is valid for six months from the date of issue and must be valid on the date it is received by the OE. A photocopy of the certificate is acceptable to the OE.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

Online business registration and the certificate are available at www.BusinessRegistrations.com. To register or to obtain the certificate by phone, call (808) 586-2727 (M-F 7:45 A.M. to 4:30 P.M. HST). Offerors are advised that there are costs associated with registering and obtaining the certificate.

- Tax clearance under Ch. 237, HRS. Pursuant to §103D-328, HRS, the Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green-certified copy stamp and shall be valid for six months from the most recent approval stamp date on the certificate. It must be valid on the date it is received.

The tax clearance certificate may be obtained by filing the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii, on the DOTAX website, <https://tax.hawaii.gov/>, by mail, by phone at (808) 587-7572 or fax at 1-800-222-7572.

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX.....(808) 587-1488

IRS(808) 539-1573

The Offeror is responsible to obtain and file the clearance application with the DOTAX or IRS but not the OE. The tax clearance certificate, however, shall be filed with the OE.

- Unemployment Insurance under Ch. 383; workers' compensation under Ch. 386; temporary disability under Ch. 392; and prepaid health care under Ch. 393, HRS, respectively. Pursuant to §103D-310(c), HRS, the Offeror shall file with the OE a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six months from the date of issue and must be valid on the date it is received by the OE. A photocopy of the certificate is acceptable to the OE.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#27 which is available at <https://labor.hawaii.gov/> (at the menu click on Employer Forms, LIR#27), or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the OE.

Responsibility of Offeror After Contract Award. Offerors will need to continue to be in compliance with the responsibility requirements after the award of the contract. As such, any requests for payment under the contract will require the provision of current certificates documenting compliance at that time.

Alternative to Obtain Required Certificates. Instead of separately applying at the various State agencies for these certificates identified above, Offerors may choose to use the Hawaii Compliance Express (HCE) that allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides the current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that the vendor's status is compliant with the requirements of Ch. 103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sections previous to this one.

Important Notice. The above certificates should be applied for and submitted to the Purchasing Officer as soon as possible. If a valid certificate (certificates) is (are) not filed timely to enable an award of a contract, an Offeror's proposal otherwise responsive and responsible may not receive the award.

5.7 Economy of Presentation

Proposals shall be prepared in a straightforward and concise manner in a format that is reasonably consistent and appropriate for its purpose. Emphasis shall be on completeness and clarity of content. If any additional information is required by the State regarding any aspect of the Offeror's proposal, it shall be provided within two business days of the State's request.

5.8 Additional Terms and Conditions

The State reserves the right to add terms and conditions before the execution of the contract. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

5.9 Proposal Acceptance Period

The State's acceptance of a proposal, if any, will be within 365 calendar days after the opening of proposals. Each Offeror, by submitting its proposal, agrees to keep its quoted price firm and unchangeable for any reason for 365 calendar days after the date of Proposals Due and Opening.

5.10 Insurance

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

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

the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

2. Automobile Liability Insurance. Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.
3. Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

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

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

5.10.4 The certificates of insurance shall contain the following clauses:

1. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

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

5.11 Contract Execution

Successful Offeror receiving award shall be required to enter into a formal written contract. Upon execution of the contract, a Notice to Proceed will be issued.

No work is to be undertaken by the Contractor before the commencement date specified in the Notice to Proceed. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor before the official starting date.

5.12 Subcontracting

No work or services shall be subcontracted or assigned without the prior written approval of the Procurement Officer. No subcontract shall under any circumstances relieve the Contractor of its obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

5.13 Invoicing

The Contractor shall submit an invoice to the Office of Elections (OE) in the format required by the State, along with whatever supporting documentation is required to process payment. The invoices should include a section listing the billable hours on a daily basis explaining the services rendered. For example, the invoices should indicate the name of the worker, the general type of work performed, [†] the hourly rate for that type of work, and a task-specific

[†] (1) marketing and account service management; (2) media strategy and planning; (3) media negotiation and placement; (4) creative direction; (5) video and art direction; business, copywriting, and proofreading; (6) production management; or (7) any other category typically used to allow an objective third party to know what type of work was done

description of what was done tied to a specific deliverable. Invoices should not include clerical or secretarial services including billing for the time it takes them to draft the invoice.

Billing should be done in 0.1-hour increments (6 minutes) as opposed to 0.25-hour increments (15 minutes) and should be noted contemporaneously when the billing event occurs (i.e. timesheets should be completed on at least a daily basis, as opposed to reflecting back on notes and estimating what occurred). Daily time sheets may be requested to substantiate invoices.

To the extent professional work could be performed by a lower hourly rate worker, a higher hourly rate will not be permitted. Billing will be sufficiently descriptive to permit an objective third party to know what work was performed. If the time descriptions are incomplete, or if such descriptions fail to describe adequately the services rendered, the State may reduce the invoice accordingly. For example, entries describing the preparation of a document must include an identification of the document prepared and the activities associated with such preparation.

Finally, block billing will not be permitted. Block billing is the practice of assigning a one-time charge to multiple tasks. Such a practice is not permitted as there is no clear itemization of the work performed, and as such, it is unclear how much time was spent on each activity, making it challenging for the State to assess the reasonableness of the time spent.

5.14 Payment

Section 103-10, HRS, provides that the State shall have 30 calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services, to make payment. For this reason, the State may reject any proposals submitted with a condition requiring payment within a shorter period. Further, the State may reject any proposals submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

The State will not recognize any requirements established by the Contractor and communicated to the State after awarding of the contract which requires payment within a shorter period or interest payment not in conformance with Section 103-10, HRS, as amended.

5.15 Contract Modification

The Offeror agrees that any resulting contract from the Request for Proposals may be modified by a written document signed by the Contract Administrator, or their designee, and Contractor personnel authorized to sign contracts on behalf of the Contractor. Additionally, the State will have the option, if it chooses, to pay for additional goods or services through a

purchase order. As such, notwithstanding any statement to the contrary, a purchase order will satisfy the requirements for a contract modification.

The Offeror recognizes that the State requires a modern and dynamic voter education program and that this is a broadly conceived request for proposals meant to address the successful execution of our elections during the term of the contract. Additionally, the Offeror recognizes that there may be a need to adapt the program during the term of the contract and that the contract will cover a broad range of goods and services. As such, the Offeror recognizes and agrees that substantial changes may be expected to the provision of goods and services to facilitate the successful execution of the voter education program during the term of the contract.

5.16 Contract Invalidation

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

5.17 Inspection and Modification and Reimbursement for Unacceptable Deliverables

The Contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Contract Administrator. The State may employ all reasonable means to ensure that the work is being performed in compliance with the contract. Should the Contract Administrator determine that corrections or modifications are necessary in order to accomplish its intent, the Contract Administrator may direct the Contractor to make such changes.

Substantial failure of the Contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the Contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek damages.

5.18 Contract Staffing Requirements

Key personnel whose names and resumes are submitted in the proposal, if so required, shall not be removed from this project without prior approval of the Contract Administrator.

Substitute or additional personnel shall not be used for this project until a resume is received and approved by the Contract Administrator.

Personnel changes that are not approved by the Contract Administrator may be grounds for contract termination.

The State shall have the right, and the Contractor will comply with any request, to remove any personnel from all work on this project effective immediately upon notification by the State.

5.19 Protest

A protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing before the date set for receipt of proposals. Protest of an award or proposed award shall be submitted within five working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be issued to the successful Offeror, and posted on the Procurement Reporting System.

Any protest pursuant to §103D-701, HRS, and Sections 3-126-3 and 3-126-4, HAR, shall be submitted in writing to the Procurement Officer.

5.20 Governing Law; Cost of Litigation

The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the Contractor in connection with this contract, the Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

5.21 Termination

The State reserves and has the right, at any time during the term of this contract, in its sole discretion, to terminate and cancel said contract in the public interest or for the convenience of the State.

Appendix A: State's Questions to Offerors

The Offeror must answer the following questions as completely as possible.

1. How will the company measure the overall success of the voter education program and ROI of the budget?
2. Who will we be working with on a regular basis? How will the company communicate with the client on the progress of projects?
3. How much of the work will be outsourced?
4. Has your company provided education or training to voters in jurisdictions comparable in size (voter registration) to the State? Describe the services provided.
5. Has your company provided education or training to members of the public on behalf of a government agency for non-election matters? Describe the services provided.
6. What experience does your company have in preparing educational materials for members of the community with disabilities? Describe the services provided.
7. What experience does your company have in preparing educational materials for specific audiences such as persons with disabilities, the houseless, senior citizens, high school students, college students, military members, and Limited English Proficiency (LEP) communities? Describe the services provided.
8. What experience does your company have in executing a social media campaign? Describe a social media campaign your company has managed including metrics.
 - 8.1. What criteria are used to evaluate demographics for advertising and events? How would the success of these efforts be measured? Define the Key Performance Indicators (KPI),
 - 8.2. How will your company measure and share results against the KPIs defined above?
9. What is the projected lifespan of the proposed plan and materials?
10. What program formats will be used for materials?
11. Describe a challenge that you have experienced with past advertising or education campaigns? How did you address this challenge?

Attachments

Offer Form OF-1

Offer Form OF-2

SPO-013 Certificate of Current Cost-Pricing Data

AG General Conditions

Offer Form OF-1

RFP-22-001-SW

Voter Education Program

Procurement Officer

Office of Elections

State of Hawaii

Pearl City, Hawaii 96782

Dear Procurement Officer:

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

Offeror is:

Sole Proprietor Partnership Corporation (STATE OF INCORPORATION _____) Joint Venture

Other: _____

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

Federal I.D. No.: _____

Business address: _____

City, State, Zip Code: _____

Payment address (if different than business address): _____

City, State, Zip Code: _____

Respectfully submitted:

Authorize Original Signature

Date

Name

Title

Exact Legal Name of Company*

Telephone Number

Fax Number

Offeror's Email

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

Offer Form OF-2

RFP-22-001-SW

Voter Education Program

Procurement Officer

Office of Elections

State of Hawaii

Pearl City, Hawaii 96782

The following offer is hereby submitted for a voter education program for the State of Hawaii, Department of Accounting and General Services, Office of Elections:

Total Price for 2022 Election Cycle: \$ _____ *

* For purpose of this RFP, the initial 2022 election cycle will begin from the date of the Notice to Proceed and will end on December 31, 2022 or the conclusion of any litigation, recount, new election associated with the litigation, whichever is longer. To the extent any of the options to extend are exercised, the election cycle will begin on January 1 of a non-regularly scheduled election year to December 31 of a regularly scheduled election year or the conclusion of any litigation, recount, new election associated with the litigation, whichever is longer.

The price should be based on the table provided by the Offeror pursuant to Part 3:Pricing of 3.9 Proposal Format. For example, if the table reflects \$X, then your total price should be \$X.

Having said that, nothing will prevent the State from obtaining goods or services separately from other vendors, in connection with the voter education program. The State will be the final arbiter of what it chooses to buy or not buy from the Offeror.

Company Name

Authorized Signature

Date

Wage Certificate for Service Contracts

RFP-22-001-SW

Voter Education Program

Procurement Officer
Office of Elections
State of Hawaii
Pearl City, Hawaii 96782

See Section 5: Special Provisions

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

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

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

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

Company Name

Authorized Signature

Date

STATE OF HAWAII
CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122 and submitted pursuant to section 3-122-125; either actually or by specific identification in writing to the procurement officer in support of _____*, are accurate, complete, and current as of _____**”.
(month, date, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the (State) which are part of the proposal. Please type or print:

Vendor / Firm:	Date of Execution: ***
----------------	------------------------

Name:	Title
-------	-------

(Signature)

(Print Name and Title)

(Date)

(End of Certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (e.g. RFP Number).

** The effective date shall be a mutually determined date prior to but as close to the date when price negotiations were concluded and the contract price was agreed to as possible. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror’s or contractor’s negotiator if the offeror or contractor had information reasonably available at the time of the agreement, showing that the negotiated price is not based on accurate, complete, and current data.

*** This date should be as soon after the date when the price negotiations were concluded and the contract price was agreed to as practical.

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.