

Employees' Retirement System of the State of Hawaii

**Request for Proposals
Investment Consultant Services
RFP 2017-02**



Issued March 20, 2017

**POTENTIAL OFFERORS WHO WISH TO RECEIVE ADDENDA TO THIS
REQUEST FOR PROPOSALS MUST REGISTER WITH THE ERS AS POTENTIAL
OFFERORS.**

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Employees' Retirement System of the State of Hawaii
Investment Consulting Services
Request for Proposal

ADMINISTRATIVE OVERVIEW

I. Background

The Employees' Retirement System of the State of Hawaii ("ERS") was established by Chapter 88, Hawaii Revised Statutes ("HRS") for the purpose of providing retirement allowances and other benefits for public employees. The statewide program has a contributory and a non-contributory defined benefit program with over 74,000 active and inactive vested members, as well as over 45,000 retirees and beneficiaries. There are five employers for the State and county employees, teachers, police officers, firefighters, judges and elected officials.

Administration of the ERS falls under the policy and executive direction of a Board of Trustees with certain areas of administrative control vested in the State of Hawaii Department of Budget and Finance.

The ERS investment portfolio is valued at over \$15 billion as of December 31, 2016 and is managed by 54 investment firms in a combination of separate and commingled accounts. Current asset classes include domestic equity, international equity, domestic fixed income, international fixed income, real estate, mortgage loans, alternative investments (including private placements, buyouts venture capital and restructuring loans) and timber farming. The Board of Trustees adopted a functional risk allocation framework in 2014 with current strategic targets as follows: Broad Growth 66%; Principal Protection 7%; Real Return 7%; Crisis Risk Offset 20%; Opportunities 0%; and Other 0%. The ERS anticipates achieving strategic target risk class allocations by 2020.

Additional investment information, regarding the ERS's investments, including the ERS's Investment Policy, Guidelines and Procedures manual, is available on the ERS website at: <http://ers.ehawaii.gov/resources/financials>.

The ERS's Comprehensive Annual Financial Reports from 2001 to 2015 are available at: <http://ers.ehawaii.gov/resources/financials>.

II. Purpose

The ERS is soliciting proposals from qualified firm(s) to provide domestic and international general investment consulting services to the Employees' Retirement System of the State of Hawaii. A more detailed description of these services is set forth in Paragraph VI of the Scope of Work section. When responding to this RFP we encourage you to describe the ways in which you believe your organization's service capability is unique or would add particular value. Please be succinct in your answers and, if certain services cannot be provided, please state where appropriate.

III. Authority

This RFP is issued under the provisions of Chapters 88 and 103D, Hawaii Revised Statutes, and the

implementing Administrative Rules. All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any prospective offeror shall constitute a representation of such knowledge on the part of such prospective offeror.

IV. Procurement Officer and Contract Administrator

This RFP is issued by the Employees' Retirement System of the State of Hawaii. The individual listed below is the Procurement Officer and Contract Administrator for this procurement.

Mr. Thomas Williams, Executive Director
Employees' Retirement System of the State of Hawaii
City Financial Tower
201 Merchant Street, Suite 1400
Honolulu, HI 96813
Phone: (808) 586-1700
Fax: (808) 586-1677

V. Procurement Timetable

Listed below are the important actions and corresponding final dates by which the actions must be taken or completed. **Offerors are notified that these dates are estimated by the ERS and are subject to change at the discretion of ERS. The ERS reserves the right to change any date(s) as deemed necessary and in the best interest of the ERS.** If ERS decides to change a date for any reason, notification will be given via the addendum process described in Paragraph XIII of this section.

Actions	Date
RFP Announced	March 20, 2017
RFP Available to Prospective Offerors	Starting at 9:30 am March 20, 2017
Closing Date for Submission of Questions	April 3, 2017
ERS's Response to Offerors' Question	April 17, 2017
Closing Date for Receipt of Proposals	April 28, 2017 at 4:00 pm, HST
Determination of priority-listed offerors	May 8, 2017
ERS Visits to Offerors' Facilities (optional at ERS's discretion)	May 22-June 2, 2017
Oral Presentations (in Honolulu at ERS's discretion)	June 14-21, 2017
Best and Final Offers Due	June 23, 2017
Contractor Selection and Award (approximately)	July 1, 2017

Priority-listed offerors selected in accordance with Paragraph V of the Proposal Evaluation section of this RFP will be required to make a presentation sometime during June 14-21, 2017 in Honolulu, Hawaii. Priority-listed offerors will be contacted by the ERS staff to arrange a specific time and location for the presentation.

VI. Communications and Questions

Offerors and potential offerors (including agents of offerors or potential offerors) should **not** contact any member of the ERS Board of Trustees or any member of the ERS staff. An exception to this rule applies to firms who currently do business with ERS; provided that any contact made by any such firm should be related to that business, and should not relate to this RFP.

If additional information is required regarding this RFP requests for such information must be submitted in writing (fax and email are acceptable) to the Procurement Officer. The Procurement Officer, listed in Paragraph IV of this section, is the sole point of contact from the date of release of this RFP until the selection of the offeror or offerors to whom an agreement will be awarded.

Questions will be accepted until **4:30 p.m. (Hawaii Standard Time) April 3, 2017**. A written response to any questions will be provided by ERS via the addendum process described in Paragraph XIII of this section.

VII. Submission of Proposals

Offerors must carefully examine the solicitation, amendments (if any), required contract forms, and other documents, laws and rules, as necessary, before submitting a proposal. The submission of a proposal shall be considered to be a warranty and representation that the offeror has made a careful examination and understands the work and the requirements of this solicitation.

Each qualified offeror may submit only one (1) proposal. Alternate proposals will not be accepted.

The proposal should be labeled "Employees' Retirement System of the State of Hawaii Investment Consulting Services RFP 2011-02." A master (so marked), sixteen (16) copies (one copy must be unbound and ready to photocopy), and one (1) electronic copy (MS Word or Adobe Acrobat format on a 650MB/74 minute format CD) of the response must be received no later than **4:30 p.m. (Hawaii Standard Time) April 28, 2017**. The sealed package should be addressed to the Procurement Officer listed in Paragraph IV of this section.

The outside cover of the package containing the proposal shall be marked as indicated below:

Employees' Retirement System
State of Hawaii
Investment Consulting Services Proposal
RFP 2017-02
(Name of Firm)

No faxed or e-mailed proposals will be considered or accepted.

VIII. Receipt, Opening and Recording of Proposals; Late Proposals

Proposals and modifications will be time-stamped upon receipt and held in a secure place by the Procurement Officer until the established due date.

Proposals may be modified or withdrawn, prior to the deadline for submission of proposals, by the following:

- **Modifications** - a written notice received by the Procurement Officer stating that a modification to the proposal is submitted; or a written notice by facsimile machine sent to the Procurement Officer stating that a modification to the proposal is submitted; and the written notice accompanying the actual modification securely sealed in a separate envelope or container.
- **Withdrawal** - a written notice received by the Procurement Officer; or a notice by facsimile machine to the Procurement Officer.

Proposals will not be opened publicly, but will be opened in the presence of two or more procurement officials. Proposals and modifications will be shown only to personnel having a legitimate interest in them.

After the date established for receipt of proposals, a register of proposals will be prepared which will include the name of each offeror and the number of modifications received, if any. The register of proposals shall be open to public inspection only after a contract has been awarded.

Any notice of withdrawal, notice of modification of a proposal with the actual modification, or any proposal received by the Procurement Officer after the time and date set for receipt and opening of proposals is late and will not be considered for award. A late proposal, late modification, or late withdrawal shall not be considered late if received before contract award and if it would have been timely but for the action or inaction of personnel within the ERS. A late withdrawal request shall be answered with a statement of the reasons for non-acceptance of the withdrawal.

An offeror may withdraw and resubmit a proposal prior to the final submission date. No withdrawals or re-submissions will be allowed after the final submission date.

IX. Best and Final Offer

Priority-listed offerors will be given an opportunity to submit a best and final offer.

X. Mistakes in Proposals

Mistakes shall not be corrected after award of contract. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer will request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn.

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 evidenced on the face of the proposal, in which event, the proposal may not be withdrawn.

If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive 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.

ERS reserves the right to waive or permit cure for minor informalities, errors or omissions, and to conduct discussion with all qualified offerors in any manner necessary to serve the best interests of ERS.

XI. Costs for Proposal Preparation

Expenses for the development and submission of responses to the RFP are the sole responsibility of the organization submitting the response. Travel and expenses to and from the State of Hawaii are also the sole responsibility of the organization submitting the response.

XII. Disqualification of Proposals

The ERS reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the scope of work. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included in this RFP, may be disqualified without further notice.

An offeror will be disqualified and the proposal automatically rejected for any one or more of the following non-exclusive reasons:

- Proof of collusion among offerors, in which case all proposals and offerors involved in the collusive action will be rejected.
- The offeror's lack of responsibility and cooperation as shown by past work.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation.
- The delivery of the proposal after the deadline specified in the timetable.
- The offeror being in arrears on existing contracts with the State or having defaulted on previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated.
- The offeror's conflicts of interest or lack of independence in judgment.

XIII. RFP Amendments and Addendum

ERS may modify any part of the RFP, prior to the date fixed for final submission of responses, by issuance of an addendum to all participating parties. ERS will respond to questions and inquiries via the addendum process. Addenda will be numbered consecutively.

XIV. Cancellation of Request for Proposals/Rejections of Proposals

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the ERS.

XV. Uncertainties Beyond the Control of the ERS

The ERS recognizes that circumstances beyond the control of the ERS may arise that may significantly affect the ability of the contractor to provide the services described in this RFP or as proposed by the contractor. Accordingly, the ERS reserves the right to modify the agreement to address such circumstances.

XVI. Proposal Bonds; Performance and/or Payment Bonds

No bid bond is required to be submitted with the proposal, and no performance or payment bond will be required for the contract awarded pursuant to this RFP.

XVII. Acceptance of Proposal and Execution of Contract

Acceptance of a proposal, if any, will be made as provided in the Procurement Timetable. The offeror must have the ability to perform as called for in the RFP and in the contract. The ERS shall be the sole judge of capability. The successful offeror will be notified by letter that its proposal has been accepted and that the offeror is being awarded the contract.

ERS reserves the right to award a contract based upon the written responses received and without prior discussion or negotiations.

Attachment A is a sample contract used by the ERS for investment consulting services. In submitting a proposal, the offeror will be deemed to have agreed to each provision set forth in Attachment B unless the offeror identifies the provision to which objection is made and submits alternative language. The ERS reserves the right to further negotiate the terms and conditions of the contract with the successful offeror. The contract awarded pursuant to this RFP shall consist of the RFP and any amendments thereto, and the specific terms and conditions of the negotiated contract.

The ERS shall forward a contract to the successful offeror for execution. The contract shall be signed by the successful offeror and returned within ten days after receipt by the offeror or within such further time as may be allowed.

No contract shall be considered binding upon the ERS until the contract has been fully and properly executed by all parties thereto.

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract within ten

days after such award or within such further time as may be allowed, the Procurement Officer will consider the next highest ranked offeror or may call for new proposals, if it is deemed to be in the best interests of the ERS.

XVIII. Debriefing

Nonselected offerors may submit a written request for debriefing to the Procurement Officer or designee within three working days after the posting of the award of the contract. If a debriefing is requested by one or more of the nonselected offerors, a combined debriefing will be held. The debriefing will be held by the Procurement Officer or designee, to the maximum extent practicable, within seven working days after receipt by the Procurement Officer or designee of the first request for debriefing; and may be conducted via teleconference at the sole discretion of the ERS. The debriefing will be held at:

Employees' Retirement System of the State of Hawaii
City Financial Tower
201 Merchant Street, Suite 1400
Honolulu, HI 96813

XIX. Requirements for Doing Business in the State of Hawaii

Section 3-122-112, Hawaii Administrative Rules ("HAR"), requires that, before award of contract may be made, the successful offeror must provide proof of compliance with the requirements of the following chapters of the Hawaii Revised Statutes ("HRS"):

- 1) Chapter 237, general excise taxes
- 2) Chapter 383, unemployment insurance
- 3) Chapter 386, workers' compensation
- 4) Chapter 392, temporary disability insurance
- 5) Chapter 393, prepaid health care

And one of the following:

- 1) Be registered and incorporated or organized under the laws of the State of Hawaii, or
- 2) Be registered to do business in the State of Hawaii.

Proof of compliance with the foregoing requirements can be provided through the Hawaii Compliance Express (HCE), which allows vendors, contractors and service providers doing business with the State to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the date the Certificate of Vendor Compliance is issued. The Certificate of Vendor Compliance indicating that offeror or contractor's status is compliant with the requirements of HRS Chapter 103D-310(c), will be accepted for both contracting purposes and final payment.

If a Certificate of Compliance showing that the offeror's status is "Compliant" is not submitted on a timely basis for award of the contract, an offeror otherwise responsive and responsible may not receive the award.

The contractor must maintain such compliance during the term of the contract and for final payment. The ERS may conduct periodic checks to confirm that a contractor maintains compliance with the foregoing requirements throughout the term of the contract, including any extensions. If a contractor's Certificate of Vendor Compliance shows that the contractor's status is "Not Compliant" or "Expired", the ERS has the right to withhold any and all payments to the contractor until the contractor's Certificate of Vendor Compliance shows that the contractor's status is "Compliant." Such withholding shall not be considered or constitute a breach of contract and shall not be a basis or excuse for nonperformance of the contract by the contractor, or entitle contractor to claim interest for a late payment.

Employees' Retirement System of the State of Hawaii
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PROPOSAL

I. Introduction

The offeror shall prepare a written proposal that will fully describe the qualifications and availability of the offeror to provide the services requested and the compensation the offeror proposes in response to this RFP. The proposal shall include, without limitation, the following:

- Cover Letter
- Questionnaire Answers
- Form ADV (Parts 1 and 2)
- Code of Ethics
- References
- Fee Proposal
- Sample Reports (performance, research, manager search, asset/liability modeling, etc.)
- Financial Statement
- Mandatory Requirements Certification

II. Cover Letter

The RFP response must include a cover letter addressed to the Procurement Officer. The letter, which will be considered an integral part of the Proposal, must contain the following:

i. Contact Information

The cover letter shall include the offeror's name, address, telephone/fax numbers, and e-mail address.

ii. Terms and Conditions of RFP

A statement that the offeror fully understands and will comply with all terms and conditions contained in the RFP.

The offeror must include written acknowledgement of receipt of any and all amendments or addenda made to this RFP.

iii. Legal Entity

A statement indicating that the offeror is an individual, a partnership, a limited liability company or a corporation, and the legal entity name with whom the ERS will contract. If the

offeror is a corporation, a partnership, a limited liability company or other legal entity, include a statement indicating the jurisdiction where the offeror is organized.

iv. Authorized Signature

The cover letter must be signed by an individual or individuals authorized to legally bind the offeror (i.e., the firm that will contract with the ERS). If the offeror is a corporation, evidence in the form of a certified copy of a corporate resolution or certified copy of articles of incorporation or bylaws shall be submitted showing the individual's authority to bind the corporation. If the offeror is a partnership, the proposal must be signed by all the partners or evidence in the form of a certified copy of the partnership agreement shall be submitted showing the individual's authority to bind the partnership. Similar evidence must be submitted for an individual signing the proposal letter on behalf of any other kind of entity.

v. Federal Tax ID No.

The cover letter shall include the offeror's federal tax identification number.

vi. Hawaii General Excise Tax ID No.

A Hawaii General Excise Tax (GET) ID must be provided or a representation that a Hawaii General Excise Tax ID will be obtained prior to commencement of the work.

vii. Current Licenses and Registration

A statement that the offeror maintains the current licenses necessary to provide the services required. In addition, an offeror must provide evidence that the offeror is registered to do business in the State of Hawaii prior to commencement of the work. True and accurate copies of the offeror's license(s) and certificates must be provided.

viii. Subcontracting of Services

A statement by the offeror indicating that the work described in the RFP will not be subcontracted, except as described in the proposal, or assigned. The extent to which the work will be subcontracted and the qualifications of any subcontractor will be considered in evaluating the offeror's ability to perform the service referred to in the RFP.

ix. Non-discrimination

A statement of affirmative action that the offeror does not discriminate in employment and practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap or disability.

x. ERS Approval of Contractor's Recommendations

A statement that the offeror understands that the ERS reserves the right to disapprove contractor recommendations without penalty when they conflict with the policy or fiscal interests of the ERS, as determined by the ERS Board of Trustees.

xi. Terms and Conditions of Contract

Affirm that the provisions of the sample contract in Attachment B are acceptable or state any proposed modifications. ERS reserves the right to decline or classify as "unresponsive" any substantive changes, modifications, or revisions to the provisions of the sample contract.

III. Confidential or Proprietary Information

The offeror shall designate those portions of the proposal that contains trade secrets or other proprietary data/information that the offeror wishes to remain confidential. This information must be clearly marked and readily separable from the proposal to facilitate public inspection of the non-confidential portions. Any request for public inspection is subject to the requirements of Chapter 92F, Hawaii Revised Statutes. The entire proposal CANNOT be considered confidential. The fee proposal CANNOT be considered confidential.

Employees' Retirement System of the State of Hawaii
Investment Consulting Services
Request for Proposal

PROPOSAL EVALUATION

I. Introduction

ERS seeks to retain the highest quality organization to provide investment consulting services in a fair and competitive process. Through the selection process, ERS reserves its sole discretion in awarding the contract. ERS reserves the right:

1. To not award the contract to the lowest cost offeror.
2. To not award the contract at all.

II. Evaluation Process

A committee selected by the Procurement Officer will review and evaluate all proposals submitted by the deadline specified in this RFP.

The evaluation process will be conducted in six phases:

- Phase 1 - Evaluation of Minimum Qualifications and Mandatory Requirements
- Phase 2 - Establishment of Priority List of Offerors
- Phase 3 – Facilities Inspection (at ERS's discretion); Interviews with Priority-Listed Offerors
- Phase 4 – Best and Final Offers
- Phase 5 -- Final Evaluation of Proposals
- Phase 6 – Award

III. Evaluation Criteria

The evaluation criteria listed in sections V and VII below will be used to evaluate and rank offerors' proposals. ERS reserves the right to modify the evaluation criteria, or any other part of this RFP, prior to the date for final submission of responses.

IV. Phase 1 – Evaluation of Minimum Qualifications and Mandatory Requirements

The evaluation of the mandatory requirements shall be on a "pass/no pass" basis. The purpose of this phase is to determine whether an offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the minimum qualifications and mandatory requirements ("no pass") will be grounds for deeming the proposal nonresponsive to the RFP and rejection of the proposal. Only those proposals meeting the following mandatory requirements ("pass") of Phase 1 will be considered in Phase 2:

The minimum qualifications are:

- Offeror must be an investment advisor registered under the Investment Advisors Act of 1940.
- Offeror must have been in business for a minimum of seven (7) years.
- Offeror must provide investment consulting services to at least one public retirement system

defined benefit client with assets greater than \$5 billion.

- Offeror must be based in the United States. "Based in the United States" means that offeror's principal place of business is in the United States and that offeror is subject to service of process in the United States.
- The primary consultant assigned to the ERS account shall have a minimum of ten (10) years experience providing domestic and international investment consulting services to public pension plans.

The mandatory requirements are submission of:

- Cover Letter.
- Questionnaire Responses
- Form ADV (Parts 1 and 2)
- Code of Ethics
- References
- Financial Statement.
- Fee Proposal
- Sample reports (performance, research, manager search, asset/liability modeling, etc.)
- Minimum Qualifications Certification.

V. Phase 2 – Establishment of Priority List of Offerors

All offerors who pass Phase 1, Evaluation of Minimum Qualifications and Mandatory Requirements, shall be classified as "acceptable." If there are more than three "acceptable" offerors, the Evaluation Committee will evaluate all proposals and establish a priority list of no more than three (3) offerors who received the best preliminary evaluations. The order, priority and points to be applied to each evaluation criteria are as follow:

CRITERIA	POINTS
Ability, including resources, knowledge, and independence of judgment and avoidance of conflicts of interest, to perform the services referred to in the RFP	40
Stability and relevant history and experience of the firm and the individual consultants proposed for the ERS	25
Philosophy, process, soundness of approach and understanding of the needs of the ERS	25
Client references	10
Fees	0
Total	100

VI. Phase 3 – Site Inspections; Interviews with Priority-Listed Offerors

During the course of this phase, the ERS Board of Trustees may conduct interviews with the priority-listed offerors in Honolulu during June 14-21, 2017.

The ERS may conduct inspections of priority-listed offerors' facilities May 22-June 2, 2017, or as can be conveniently scheduled.

VII. Phase 4 -- Best and Final Offerors

The priority-listed offerors' best and final offer must be received by the Procurement Officer no later than 4:30 p.m. HST on June 23, 2017. If the Procurement Officer does not receive a best and final offer from a priority-listed offeror, the immediate previous offer will be construed as the priority-listed offeror's best and final offer.

VIII. Phase 5 -- Final Evaluation of Proposals

During this phase, the ERS will conduct final evaluations of the priority-listed offerors' proposals in accordance with the following criteria:

CRITERIA	POINTS
Ability, including resources, knowledge, and independence of judgment and avoidance of conflicts of interest, to perform the services referred to in the RFP	30
Fees * Lowest fee for first 3 years = 15 points **Lowest fee for 6 years = 10 points	25
Stability and relevant history and experience of the firm and the individual consultants proposed for the ERS	20
Philosophy, process, soundness of approach and understanding of the needs of the ERS	20
Client references	5
Total	100

***Formula for determining allocation of points for fee for the first 3 years:**

allocated points = (\$ amount of the lowest fee proposal x 15) + \$ amount of the fee proposal being evaluated

****Formula for determining allocation of points for fee for six years:**

allocated points = (\$ amount of the lowest fee proposal x 10) + \$ amount of the fee proposal being evaluated

IX. Phase 6 – Award

The ERS Board of Trustees will make the final selection.

Employees' Retirement System of the State of Hawaii
Investment Consulting Services
Request for Proposal

SCOPE OF WORK

I. Introduction

The purpose of the agreement resulting from this RFP is to obtain comprehensive pension fund investment consulting services for the ERS.

The contractor must be an investment advisor registered under the Investment Advisors Act of 1940, as amended, and shall provide investment advisory and consulting services as described in this RFP.

The contractor will enter into an agreement in substantially the form set forth in **Attachment A** that will obligate the contractor to provide investment consulting services.

II. Agreement Period

The term of the agreement is three years with a three year extension at the option of the ERS. The term of the agreement will commence on or around July 1, 2017. The ERS will determine in 2020 whether to extend the term of the contract. If the two year contract extension is not granted, the contract will expire on June 30, 2020. If the two year extension is granted, the contract will expire on June 30, 2023.

The last payment due to the contractor will be issued after the quarterly performance report and other contracted materials, for June 30 of the expiring year, have been received.

The term of the agreement may be extended by the ERS at the ERS's option to facilitate the completion of any investment manager or custodian bank searches in progress at the end of the then existing term. Such extension shall be solely for the purpose of completing the searches and shall be at no additional cost to the ERS.

III. Compensation

The annual fixed fee shall be paid in equal quarterly installments. The contractor shall submit to the ERS a quarterly statement for the work covered under the annual fixed fee.

Any work not covered by the annual fixed fee AND if approved in writing in advance by the ERS Administrator or his designee, shall be submitted for payment upon completion of the work. The contractor shall submit to ERS a statement upon completion of the work not covered by the annual fixed fee.

The statements shall include the work performed by the contractor in sufficient detail to justify payment. The ERS shall process the claim for payment in accordance with the standard operating procedures of the ERS.

Funds are not presently available for performance under this contract beyond the current fiscal year. The ERS' obligation for performance of the contract beyond the fiscal year is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the ERS for any payment may arise for performance under the contract beyond the current fiscal year until funds are made available for performance of the contract.

IV. Multi-Term Solicitation

This solicitation is for a multi-term contract. The proposed annual fixed fee shall be the same throughout the contract, except to the extent that price adjustment may be provided in this RFP and the resulting contract. The multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect the ERS's rights or the contractor's rights under any termination clause of the contract. The head of the purchasing agency must notify the contractor on a timely basis if funds are not available for the continuation of the contract for each succeeding fiscal period. Offerors must submit prices for the entire time of performance only. In the event of cancellation, the contractor will be reimbursed unamortized reasonably incurred nonrecurring costs, if applicable.

V. Liaison and Authorization to Proceed

The ERS Chief Investment Officer will serve as the primary liaison with the contractor during the term of the agreement. The Chief Investment Officer will chair status meetings, assist in scheduling, and monitor and assess the contractor's performance.

The ERS does not encourage, and will not in any way be bound by, work performed on behalf of the ERS without written approval by the ERS Administrator or his designee. Any work performed by the contractor prior to written approval by the ERS to proceed is done at the contractor's own expense.

VI. Scope of Services

The contractor shall not bind or purport to bind the ERS for any contractual commitment in excess of the contract period. Contractor shall comply with all applicable ERS policies and procedures, and familiarize themselves and be conversant with the Board of Trustees' Investment Policy, Guidelines and Procedures manual.

For the purposes of this RFP, the term "public market manager" refers to any firm that manages the following types of assets: domestic equity, international equity, global equity, domestic fixed income, international fixed income and global fixed income whose securities normally trade on public exchanges under a traditional long, buy-and-hold strategy; and where the ERS investment size is of sufficient capacity, managed under a separate account.

The term "alternative investments" refers to any firm that manages the following types of assets: real estate, private equity (buyout, venture capital, special situations and distressed debt), timberland, hedge funds, covered calls, global inflation linked securities, energy, infrastructure, commodities and currency. Alternative investments may include publicly traded or unlisted securities that are offered in a private investment legal structure (e.g., limited partnership or limited liability corporation).

The general investment consultant will provide the following services:

A. Investment Policies and Procedures

Upon selection, on an annual basis, and when requested by ERS on an ad hoc basis, review and update the Board of Trustees' Investment Policy, Guidelines, and Procedures manual ("Manual"), and if necessary, make reasoned recommendations for amendment. The contractor will maintain and update the master copy of the Manual, and furnish a master soft copy to the ERS as requested.

Assist in developing individual public markets manager investment guidelines for inclusion in the Manual or in the managers' contracts.

B. Asset Allocation Plan

Upon selection prepare and present to the ERS a written strategic plan establishing investment objectives and the target asset mix for the entire ERS portfolio (i.e. the Asset Allocation Plan). The Asset Allocation Plan shall at a minimum include the following:

- i. A report on asset allocation modeling (including methodology and specifics) linked to funding and liability management.
- ii. An analysis of the investment characteristics of available asset alternatives (e.g., hedge funds, commodities, infrastructure, frontier markets).
- iii. Appropriate engagement with the Board of Trustees and ERS staff prior to making recommendations for an optimum asset allocation for ERS.

C. Annual Asset Allocation Optimization

By March 31 of each year, prepare and present a written report containing an evaluation and optimization analysis of the asset allocation plan, manager structure, and proposals to achieve the goals of that analysis during the next fiscal year beginning on July 1 for all asset classes in the ERS portfolio.

D. Policy Analysis

Review and analyze investment initiatives proposed by the Board of Trustees, Investment Committee or Chief Investment Officer to ensure overall consistency with ERS investment policies.

E. Portfolio Analysis

On an annual basis, prepare and present a report containing (1) an evaluation of the effectiveness of the current portfolios and investment manager structure; and (2) a review of ERS's needs for particular investment styles, capitalization ranges or strategies within the public market portfolios (e.g., passive/active; growth/value; small/mid/large capitalization; government/corporate/mortgage, etc.) as well as any additional asset classes or strategies that should be considered for the overall portfolio. The current portfolio is classified into functional risk classes, including growth, principal protection, real return, crisis risk offset, opportunities, and other.

F. Performance Analysis

Provide quarterly written performance analysis for each ERS liquid market portfolio (e.g., equities, credit, principal protection, options-writing, equity low-volatility, commodities, etc.), the ERS private markets investments portfolio, as well as the aggregate of all of the ERS portfolios. The quarterly performance analysis should include return attribution characteristics, style analysis, risk analysis, peer universe comparison and holdings analysis relative to the benchmarks for all public market managers and, to the extent possible, alternative investment managers.

G. Manager Oversight

Provide investment manager oversight and maintain on-going intelligence of both quantitative and qualitative attributes of all public markets and alternative investment managers including (but not restricted to) changes in manager philosophy, process, key staff, and material events that may include regulatory investigations and litigation.

Notify the ERS in writing when such changes or material events occur with appropriate recommendations. Apply the Watch status criteria as necessary.

Review investment strategies, policies and annual tactical plans of ERS alternative investment managers; assist with the coordination of annual meeting of alternative investment managers and staff; and presentation of multi-year strategic plans and annual tactical plans for the Board of Trustees.

Provide analysis and advice on questions or issues that arise in the course of overseeing the investment managers. For example, advise ERS on appropriate benchmarks, investment guidelines, performance-based fees, risk metrics, etc.

Perform investment manager due diligence desk reviews per the Investment Meeting Policy. At the contractor's own expense, conduct on-site due diligence site inspections as requested by the ERS. Ten (10) routine manager oversight due diligence site inspections per year are anticipated (but some site visits may be grouped together due to geographic proximity), and may require international travel. For each investment manager due diligence review conducted, the contractor will provide the ERS with a written report of the findings within a reasonable time period.

Provide advice and recommendations concerning investment manager probation or "Watch Status" and termination against criteria established by the ERS.

Provide annual analysis on public market manager's trading costs, including comparison of each equity manager's commission costs to peers and the marketplace; the relationship of each equity manager's commission costs to the quality of "execution" obtained; and the utilization of ERS trading dollars for purposes other than "execution" such as the direct or indirect purchase of services or research. The contractor will work with the ERS's bank custodian to obtain reports containing trading costs paid by the ERS's public market managers to facilitate this analysis.

H. Manager Search and Selection

Maintain or otherwise provide ERS with access to a broad database of public market investment managers including their philosophies, process, styles, fee structure, organizational

structures, firm characteristics, performance, assets under management, and client base. Manager information should be available for a wide range of investment managers including active and passive domestic, international, and global equity managers; active and passive domestic, international and global fixed income managers; real estate managers; alternative investment managers including those who specialize in core private equity; managers with specialized strategies, including currency overlay, option and futures managers; as well as small and emerging managers.

For each ERS liquid market portfolio (currently, traditional growth, stabilized growth, principal protection, crisis risk offset, real return, and opportunities), real estate portfolio and alternative investments portfolio, assist the ERS in conducting searches for investment managers as directed by the Board of Trustees. These services include:

- i. Development of requests for proposals, including evaluation factors and methods.
- ii. Development of search-related advertisements and, at contractor's own expense, placement of these advertisements in widely-read investment industry publications.
- iii. Screening of prospective managers and recommendation of finalists.
- iv. Preparation of all necessary background material for ERS including rating and evaluation documentation necessary to meet ERS procurement requirements.
- v. Conduct due diligence desk reviews and onsite inspections of finalist candidate's primary (or investment) offices at contractor's own expense. The contractor will provide the ERS with a written report of the findings prior to candidate interviews.
- vi. Assist in the interview of finalists.
- vii. Providing seasoned analysis and recommendation concerning manager selection.

Two (2) to four (4) investment manager searches are anticipated during each year of the contract term.

I. Custodian Bank Search and Selection

Maintain or otherwise provide ERS with access to a broad database of custodian banks including their services, fee structure, organizations, firm characteristics, performance, client base, and other relevant attributes. Assist the ERS in conducting searches for a custodian bank to provide custodial, performance, risk analysis, compliance and securities lending services. Services relating to the custodian bank search and selection process include:

- i. Development of requests for proposals, including evaluation factors and methods.
- ii. Development of search-related advertisements and, at contractor's own expense, placement of these advertisements in widely-read investment industry publications.
- iii. Screening of prospective custodian banks and recommendation of finalists.
- iv. Preparation of all necessary background material for ERS including rating and evaluation documentation necessary to meet ERS procurement requirements.
- v. Conduct due diligence desk reviews and onsite inspections of finalist candidates at contractor's own expense. A written summary of these due diligence findings must be developed and presented to the Board of Trustees prior to finalist candidate selection.
- vi. Assist in the interview of finalists.
- vii. Providing seasoned analysis and recommendation concerning custodian bank selection.

One custodian bank search is anticipated during the contract term, for which the ERS may expect advice from the general consultant.

J. Attendance at Board and Investment Committee Meetings

Attend meetings of the ERS Board of Trustees and Investment Committee in Hawaii, at the contractor's own expense. The meetings will take place on approximately fifteen (15) days per year and will require approximately thirteen (13) trips to Hawaii by one or more members of the consultant's key staff. Note: some meetings are held on consecutive days.

K. Trustee and Staff Workshops

Conduct one (1) trustee and staff full-day, educational workshops annually at contractor's own expense on specific issues designated by ERS and/or recommended by the consultant.

Work with staff to coordinate investment manager meetings and asset class roundtable discussions.

L. General Research and Analysis

Provide ongoing research, analysis and advice on specific matters related to portfolio management, specific investments, pension issues, or on any related topic that ERS requests.

In addition, the consultant will be asked to perform such other duties or activities as may be required provided they are consistent with the foregoing.

Employees' Retirement System of the State of Hawaii
Investment Consulting Services
Request for Proposal

QUESTIONNAIRE

Your answers should be numbered consecutively as listed below, including the restatement of the questions followed by your firm's responses.

A. Organization

1. Provide your company's headquarters name and address, and the primary RFP contact's name, phone number, address (if different), fax number, and e-mail address. Provide the address of the office that will service this account.
2. Provide the legal entity name that will be represented on the contract should your organization be awarded this consulting mandate.
3. How many offices does the firm currently have? Where are the offices located? Please provide the address and phone number? What Specified Services are provided by each office?
4. List all owners of the firm and describe the ownership structure by percentage. In addition, please state the name or entity of any one owner who controls more than 50% of the firm. Indicate any owners who are not involved with the ongoing management or daily affairs of the firm. Include an organizational chart with names, titles, and reporting relationships in Exhibit A.
5. Provide a brief history of your firm's involvement in the general consulting business, including the year of organization, current ownership structure, affiliations and any recent changes. Are ownership changes planned or anticipated at this time?
6. Does your firm also provide real estate consulting and private equity consulting services?
7. Was the firm founded primarily by principals and/or staff from another general consulting equity organization(s)? If "yes," provide the name of the organization(s) from which these individuals came and the names of individuals from each organization(s). How many employees were there when the firm was founded? How many of the employees are still actively employed by the firm today and what are their roles or functions?
8. How many years has the firm provided general consulting services to public pension plans?
9. What do you consider to be your firm's consulting specialties, strengths, and limitations? What services, if any, does your firm (or any subsidiary) offer in addition to general consulting services? Describe the services of your organization that distinguish your firm from other general consultants, and discuss how your firm's strengths would add value to our Fund.

10. What percentage of your total firm (i.e., the contracting entity and parent, if applicable) revenues come from outside your general consulting services?
11. Describe your present and future business plan/strategy as it relates to ownership structure and general consulting services.
12. Is your firm a registered investment advisor with the SEC under the Investment Advisers Act of 1940? If not, what is your fiduciary classification?
13. Does your firm act as a fiduciary when serving as a pension fund general consultant? Please elaborate if your firm does not and why.
14. Does your firm or affiliates provide investment management, brokerage or other services for clients?
15. Do you subcontract or outsource any parts of your investment consulting business? If "yes," please describe in detail which parts are performed externally and the reason for doing so. Please provide the name(s) of the providers, their office location, how long they have been in business, and the qualifications of the specific people who will be working on our account.
16. Describe the levels of coverage for errors and omissions insurance or bonding and any other fiduciary or professional liability insurance the firm carries. List your insurance carriers.
17. If your firm maintains errors and omissions insurance coverage, or any fiduciary or professional liability coverage, have any claims been filed in the last five years? If so, provide an explanation and indicate the current status.
18. Provide (1) an organizational chart diagramming the relationship between the professional staff and if applicable (2) the parent-subsidary, affiliate, joint venture entities, or sub-advisory relationships. Attach as Exhibit B.
19. Provide a copy of your most recent Form ADV (Part I & II). Attach as Exhibit C.

B. Firm Experience

1. Are there any investment asset classes or strategies currently used in the ERS portfolio or those we may be contemplating that your firm is not advising other clients? (Contemplated assets classes and strategies may include hedge funds, master limited partnerships, energy, infrastructure, commodities, dedicated non-US country funds, frontier markets, futures, synthetic exposure, non-US currency overlay). Please describe any strategies used by your other clients that are not currently being used by ERS.
2. What is your approach to client servicing and what distinguishes this approach from other investment consulting service providers?
3. Describe your firm's overall business strengths, weaknesses and competitive advantages.
4. Explain how your firm controls the quality of service and implements quality control of reports and

other written documents provided to your clients.

5. How are consultant's recommendations to clients reviewed and monitored by your firm? Does your firm adhere to a level of consistency in consultant recommendations? Describe any benchmarks the firm has developed to evaluate the firm's performance and the performance of the proposed primary consultant.
6. How is a servicing team structured around clients?
7. What is the typical workload of your client servicing/relationship manager? Is there a limit on the number of accounts that a consultant may handle?
8. Do any of the client-servicing personnel proposed for the ERS have responsibilities other than providing consulting services? If awarded this contract will they continue to maintain those responsibilities? If not, which ones will be relinquished or what new role may be added?
9. What is the last three (3) years' turnover rate of the client servicing staff?
10. Provide the names and bios of the proposed client servicing team members for ERS. Provide the percentage of the time each of those people listed spend traveling and how many other clients each of them are assigned to.
11. How will this team be structured to best serve the needs of ERS?
12. Who has ultimate oversight for the investment consulting, back-office operations, and administrative support activities within your organization? What percentage of the time does this person spend traveling? Who is the back-up for this person (i.e., second in command)? What percentage of the time does this person spend traveling?
13. Does your organization subcontract any of the services (or key staff) required by ERS? If so, list the contract vendor and subcontracted service functions as well as how long you had the subcontract relationship with the named vendor. Also describe the skills and qualifications of the subcontractor and its employees who will be providing services for ERS.
14. Describe your firm's back-up procedures in the event the key personnel assigned to this account should leave the firm or become disabled for an extended period of time.
15. Provide a brief description of your firm's compensation arrangements. What incentives are in place to encourage key professionals to remain at the firm?

16. Complete the table below for the proposed client servicing team.

Name	Location	Responsibility	Number of Client Relationships	Years with Organization	Years Experience and Credentials

17. Personnel turnover in the past 5 years - Complete the table below, include any staff additions or losses throughout the consulting department of the organization. Place an asterisk next to the name of any staff member who has left the firm.

Name/Position	Joined/Left the Firm	Years with Firm	Replacement	Reason for leaving

18. Do any of the client servicing personnel proposed for ERS service other Public Fund clients? If yes, specify the client names, contacts and telephone numbers.
19. Provide an estimate of the percentage of the Primary Consultant's time, as well as the time of other dedicated consultants, to the ERS account.
20. List the Primary Consultant's current clients and engagements by asset size, type of client and type of engagement.
21. Describe the work environment and corporate culture that your firm promotes. Do any of your employees work from remote locations?
22. Will the Primary Consultant who is responsible for the ERS account be available by phone and email during the ERS's normal operating hours from 7:30 am to 5:30 pm (Hawaii Standard Time)?

C. Clients

1. Provide the number of your organization's clients as categorized in the following matrix. Report aggregate values of their total asset market value in US\$ millions for periods specified. Additionally, provide a list of current clients and attach as [Exhibit D](#).

Total Tax Exempt Investment Consulting Clients Only

	Total Number of Clients	Asset Value (US\$ millions)
2012		
2013		
2014		
2015		
2016		
2017 YTD		

2. Provide the number of your organization's clients as categorized in the following matrix. Report aggregate values of their total asset market value in US\$ millions for periods specified.

Public Fund Investment Consulting Clients Only

	Total Number of Clients	Asset Value (US\$ millions)
2012		
2013		
2014		
2015		
2016		
2017 YTD		

3. Provide the number of **investment consulting accounts** gained and/or lost for the periods listed in the following matrix. For clients lost, please indicate why. Report corresponding market values in US\$ millions as of initiation date for clients gained and termination date for clients lost. (YTD: June 30, 2016)

Total Tax Exempt Investment Consulting Clients Only

	Clients Gained (Number)	Clients Gained (US\$ millions)	Clients Lost (Number)	Clients Lost (US\$ millions)
2012				
2013				
2014				
2015				
2016				
2017 YTD				

Public Fund Investment Consulting Clients Only

	Clients Gained (Number)	Clients Gained (US\$ millions)	Clients Lost (Number)	Clients Lost (US\$ millions)
2012				
2013				
2014				
2015				
2016				
2017 YTD				

4. Provide your organization's client distribution as specified in the following table. Report aggregate market values of total assets in US\$ million as of June 30, 2016.

Tax-Exempt Client Asset Size Distribution

Distribution	Number of Clients	Number of Plans/Pool of Assets	Aggregate Market Value (US\$ millions)
<i>Taft Hartley-Union</i>			
Below \$500 million			
\$500 million to \$1 billion			
\$1 billion to \$5 billion			

\$5 billion and Up			
<i>Corporate</i>			
Below \$500 million			
\$500 million to \$1 billion			
\$1 billion to \$5 billion			
\$5 billion and Up			
<i>Public Fund</i>			
Below \$500 million			
\$500 million to \$1 billion			
\$1 billion to \$5 billion			
\$5 billion and Up			
<i>Endowments & Foundations</i>			
Below \$500 million			
\$500 million to \$1 billion			
\$1 billion to \$5 billion			
\$5 billion and Up			
TOTAL			

5. Provide a list of at least three public fund client references. The list, attached as Exhibit E, should include the following information:

- a. Fund Name
- b. Contact Name
- c. Contact Title
- d. Address
- e. Telephone Number(s)
- f. E-mail Address

D. Personnel

1. State the total number of professionals assigned to providing professional-level general consulting services within your organization and how many of those professionals who would have direct responsibility for the ERS account. Please define your definition of "professional" in terms of functions and responsibilities. Please complete the table below for all professionals within your organization providing general consulting services.

Team Experience

Name	Title	Job Function	Education, Credentials, Professional Designations	Years in General Consulting	Years in General Consulting

2. Provide biographies of your key professional personnel. (Exhibit E)
3. List the name and location of primary individual(s) and the names and locations of personnel who directly support the primary individual(s) and backup personnel who would be responsible for our account and provide brief biographies including titles, functions, academic credentials, relevant experience and number of years in their current position on job functions and in private equity consulting, how many other accounts for which they currently have responsibility, and a profile of their current clients. Identify and explain the role of back-up personnel. (Exhibit E)
4. List the office location (primary and secondary) from which the work is to be delivered. Will any of the key staff or support staff working on the ERS account work from a location other than an office (e.g., from home, remote facilities)
5. List the personnel who share an equity stake in the organization, and describe any other provided incentives to retain your most talented staff.
6. Explain how junior level staff are trained or developed to assume more senior level positions in your firm and cite the criteria used to promote them.
7. List and describe how many support staff including (but not limited to) research analysts and other technical personnel that the primary consultant has access to in servicing ERS account.
8. What policies are in effect to control the workload as it relates to the number of clients serviced by each consultant? Is there a limit on the number of accounts that a consultant may handle?
9. Describe the turnover in key professional personnel in each of the last five (5) years. Indicate the number of people gained/lost in the following categories:
 - a. Client consultants
 - b. Key technical personnel

Name/Position	Joined/Left the Firm	Years with Firm	Replacement	Reason for leaving

E. Standard Consultant Services

1. List all standard services provided in a typical general consulting and performance monitoring relationship. List the special services that you have provided to meet other needs of your clients including any service mentioned or referenced in this RFP and Questionnaire (and which of those mentioned or referenced in this RFP and Questionnaire that you will not do). Which of those services are in addition to (or not mentioned in) the Scope of Services described in this RFP?
2. Please elaborate on the approach, delivery frequency, and staffing assigned to the following *Specified Services* offerings (a portion or all) for a non-discretionary general consultant engagement.
 - a. Asset/Liability Studies and portfolio optimization.

- b. Asset allocation and investment portfolio structure.
- c. Policy development and updates of client manual.
- d. Manager search and selection process.
- e. Benchmarking and analysis.
- f. Manager monitoring and style analysis.
- g. Performance measurement and attribution of portfolio and investment managers.
- h. Research and education.
- i. Cash flow modeling.
- j. Strategic and tactical planning.
- k. Special education.

F. General Consulting Services

PHILOSOPHY AND APPROACH

1. Please describe your investment consulting philosophy. Please address the decision-making process and the titles and responsibilities of the various individuals involved at each stage of the process.
2. How does your firm implement this philosophy? How would you implement this philosophy with respect to ERS?
3. What approaches does your firm use to communicate with your clients? What should a client expect from you in terms of client service? What is your availability to meet with the Investment Committee and staff for investment policy review, manager searches, review of individually managed account-related matters, and other issues that may arise?
4. Discuss the firm's views on active vs. passive management and when it is appropriate to use each and how to determine the optimal mix.
5. Discuss the firm's views on performance-based fees, flat fees with or without performance bonuses, or any other fee structures the firm may recommend. Provide recommendations on other methods for appropriately aligning investment managers' economic interests and for lowering investment management costs.

POLICY

6. Describe how benchmarks are chosen or developed and how performance is compared to similar portfolios. Can the firm provide custom benchmarks? Style benchmarks? Indicate whether the firm has ever developed benchmarks and, if so, provide a description of the benchmarks developed.
7. Discuss the firm's views on appropriate benchmarks for both domestic and international equity and fixed income portfolios. Please include examples using market indices, style-related benchmarks and custom blended indices.
8. Discuss the firm's experience and capability for providing advice on establishing investment guidelines.
9. Does the firm have pension fund clients with international stock portfolios? International fixed

income portfolios? Global Inflation Linked Bonds portfolios? Covered Calls portfolios? Currency overlay programs? Discuss in detail the firm's overall experience and expertise in international investments, including emerging markets, hedging, derivatives and trading.

10. Describe the firm's experience and capabilities in analyzing and monitoring international managers, including currency effects, the use of hedging, authorized countries, emerging markets and appropriate benchmarks.
11. Discuss your experience in working with the client's actuary and how the findings of their study are integrated into the asset allocation policy.

PERFORMANCE

12. Discuss in detail the firm's performance attribution analysis. How does it handle international stock and bond portfolios containing derivative instruments such as futures and options?
13. Describe the firm's methodology and sources of data for analyzing and evaluating your client's portfolio performance, including the incorporation of illiquid assets such as real estate and alternative investments.
14. Describe the firm's process for monitoring investment managers that will be utilized during the proposed relationship with ERS. Relate the process to a client's goals, objectives and investment policy. Specifically, describe the monitoring of performance, risk, style integrity, contract compliance, account restrictions, activities creating potential conflicts of interest, reporting requirements, and trading costs (including foreign exchange).
15. Describe the firm's internal system for monitoring manager compliance with the client's Investment Policy Statement and specific manager guidelines, as well as style consistency.
16. Provide one sample each of the following reports that your firm will generate for the ERS as Exhibit F:
 - a. Performance Attribution (Quarterly)
 - b. Risk Analysis (Quarterly)
 - c. Style Analysis (Quarterly)
 - d. Trading Cost Analysis (Annually)

RISK

17. Discuss any other systems or mechanisms you provide that helps monitor or control manager risk.
18. Describe the firm's criteria for recommending an investment manager to be placed on probation, removed from probation, or replaced. How do these criteria differ depending on US equity versus non-US equity, fixed income, etc.
19. Discuss any experience of the firm in helping the client manage and control its cash flow and liquidity over long periods of time (i.e., 10 years horizon or longer).

OPERATIONS AND ADMINISTRATION

20. Describe your firm's experience in evaluating and making changes to a client's policy and procedure manual. What experience do you have in drafting and formalizing individual manager guideline documents?
21. Describe how the firm would advise a client regarding minimizing trading costs (including foreign exchange) both on an ongoing basis and during a manager transition. Include a discussion on crossing and aggregating trades among internal and external accounts. What is the firm's position on the use of a client's commission dollars to purchase research or services for the use of the money manager?
22. Does your firm offer training of plan fiduciaries and staff as it relates to their investment responsibilities? If so, describe the type of training available and the qualifications of individuals assigned to conduct the training. Is this training included in the proposed fee?
23. Describe the firm's technology capabilities and relate them to the consulting services or products. Does the firm provide any customized computer-based analytical tools to your clients? If so, include in the description the computer language in which the programs are written. Describe the services the firm provides over the internet that are accessible by clients on-line. Include a description of client account analysis and performance reporting that is available on-line.
24. Do you conduct period due diligence site visits of the investment managers of your clients? If not, will you participate at a specific client's request and will there be an additional charge for this service?
25. Discuss your experience in advising clients on transition management.
26. Discuss your experience in advising clients on commission recapture programs.
27. Discuss your experience in analyzing and evaluating securities lending programs. Have you recommended to your clients that they reduce their risk exposure with this type of program?
28. Discuss your philosophy on proxy voting as it pertains to allowing the investment managers vote proxy ballots versus uses a proxy voting agent? What experience do you have drafting proxy voting policy customized for the client? Comment on other forms of corporate governance activism that you believe add value to plan assets.
29. Discuss the kinds of education and training you provide to clients. What five educational topics do you believe are relevant for Boards and staff over the next five years?
30. Does your firm utilize, or otherwise interact, with placement agents? What value is derived from these relationships?

G. Asset Allocation

1. Describe your firm's asset allocation and liability modeling process. Is this modeling function included in the proposed fee? Do you conduct this modeling or do you sub-contract this service out? If sub-contracted, please name that vendor and related organizational information.

2. Discuss in detail the theory and methodology of the asset allocation models the firm employs. How does the firm develop input data for the models employed? At a minimum, discuss for domestic and international equity and fixed income, the derivation of expected returns, risks, correlations, use of constraints, or scenario forecasting. How are the liability structure, funding level, and changes in the contribution level incorporated? Discuss your capabilities for analyzing liabilities.
3. Please present your current capital market assumptions, including the expected return for major asset classes, anticipated correlations between asset classes, expected asset class standard deviations, inflation and any associated commentary as [Exhibit G](#).
4. Describe the portfolio level risk management, or risk budgeting, analysis that your firm conducts for its clients. Describe how frequently this analysis is conducted and the various factors that are considered as part of the analysis. Attach a sample risk management or risk budgeting report that your firm would provide to ERS as [Exhibit H](#).
5. Does your firm assist clients with creating Fund level cash flow models to assess their overall liquidity? How is cash flow analysis integrated into the asset allocation model?

H. Performance Measurement Reports

1. How frequently are client reports generated?
2. How soon after each reporting period are the reports distributed?
3. Describe the qualitative factors, if any, that are included in your reports?
4. Discuss the differences you see in performance measurement using market indexes versus peer rankings.
5. How flexible is the format of your client reports? Do you have the ability to deliver electronic versions of your client reports?
6. Are there additional costs associated with customizing the client report format? If so, how are these customizations priced?
7. Please provide the following and attach as [Exhibit I](#):
 - a. Sample performance reports that your firm will generate for ERS.
 - b. Material describing the rate of return calculation methodology used for individual and composite accounts.
 - c. Glossary or terminology definitions used by the consultant (if not already in your provided sample performance report).

I. Manager Search Process

1. Describe your manager search process from sourcing until manager is hired and contracted by the client

2. Does the firm maintain a database of investment managers and advisors? If your firm does not maintain an in-house database, what vendor do you purchase the database from? How many managers and advisors are contained in the database? What fields are tracked (e.g., name, style, AUM, capitalization, benchmark, etc.)? How often is the database updated?
3. Describe how the firm gathers, verifies, updates, maintains and analyzes the data collected on managers for the database. Describe the screening variables and capabilities of the database. Describe the capability of providing custom client reports. Describe the peer groups included in the database.
4. Is a fee charged, or other valuable consideration requested, to investment managers to be included in the database?
5. What expenses in the manager search process are not included in the proposed consultant fee? (e.g., travel expenses to conduct due diligence, RFI investment manager advertisements)
6. Describe the firm's process for the evaluation and selection of public market investment managers for a client. Include how the firm evaluates a manager's personnel and organization, investment philosophy, investment style(s) and products, research and/or modeling capabilities, financial condition, assets under management, type of clients, client service, and fees. Relate the process to a client's goals, objectives, investment policy and fiduciary responsibility. Include a sample copy of your firm's Manager Due Diligence Checklist or template as Exhibit J.
7. Describe your firm's methodology and sources of data for analyzing and evaluating a potential manager's performance. Discuss how the firm verifies the accuracy and appropriateness of a manager's performance history submitted by a manager in response to a request for proposal.
8. Discuss the firm's knowledge of and expertise in applying GIPS/AIMR performance presentation standards. Does the firm act as a third party vendor to independently verify that manager's performance returns are accurate and were calculated according to GIPS/AIMR standards?
9. What do you believe sets your manager search services apart from other consultants?

J. Research

1. Describe the internal structure and organization of your firm's research department. If no separate department exists, describe how this function is structured or addressed. What percent of the firm's revenues are annually reinvested in the firm's research function?
2. Describe the manner in which internal and external resources and sources of information are used in the research process. How does the firm integrate internal and external research?
3. Describe in detail the type and frequency of research that would be provided to ERS. Through what media is it provided? Does the firm provide research reports other than those specifically requested by the client? If so, please describe. What research and analytical resources (including databases) does the firm possess that will be provided to ERS?
4. Attach as Exhibit K two samples of the firm's recent research reports. Provide a list of research generated during 2015 and 2016. For each report, include the title of the research, date of issue, author

and single line description of the subject.

5. Does your firm perform topical research on investment trends, inflation, geo-political events, products, strategies, etc.?
6. Outline the process for monitoring and reporting on market trends. Describe the capabilities for reporting and tracking international trends and influences.

K. Custodian Bank Search Process

1. Describe the firm's expertise and experience in advising clients in custodial services and securities lending programs.
2. Describe your custodian bank search process. Please include details such as criteria used for selecting and evaluating a custodian.
3. Does your firm maintain an in-house database of custodian banks? If not, from what vendor do you purchase the database? How many banks are contained in the database?
4. Do you charge direct or indirect fees for custodian banks to be included in your firm's database? If so, describe the fees.
5. If you have an in-house database, do you sell it to third parties? How do you receive compensation for selling it?
6. How often are custodian banks in your database reviewed? Under what circumstances are custodian banks added to your database? Deleted?
7. Describe any advantages that you perceive your custodian bank database has over your competitors.

L. Litigation and Investigations

1. Is there any current or pending litigation or investigations by regulatory agencies against the firm or any of its officers? If "yes," please describe the nature of this litigation, current status and when it is expected to be resolved. Also, list any such litigations or investigations that have been filed or initiated against the firm since January 1, 2012 and how it was resolved.
2. Has any senior management or principal level employee or staff member been convicted of a misdemeanor or felony in the past five years? Please describe.

M. Compliance and Conflicts of Interest

1. Does the firm, or parent company, currently engage in any other business activities other than general consulting? If "yes," describe the nature of the other business activities, what percentage of the general consulting business makes up the total revenue of the overall firm, and how you mitigate conflicts of interest among various parts of the business where such conflict exists or is *perceived* to exist.

2. Does your firm have a dedicated, full-time compliance officer? If not, who manages conflicts?
3. State whether or not the employees comply with the Code of Ethics and Standards of Professional Conduct of the Association of Investment Management and Research (AIMR).
4. Does your firm maintain a code of ethics? If so, attach as Exhibit L.
5. Does the firm currently manage, or plan to offer, any investment management or Fund of Funds products? If "yes," describe how the firm avoids any conflicts of interest with these offerings.
6. Describe any financial relationships that exist with other organizations such as brokerage firms, insurance companies, commercial banks, investment banking firms, investment management firms, etc.
7. Describe your firm's gift acceptance policy.
8. Please disclose the nature of any business relationship that the firm has now, or has had, in the past ten years with any current or past ERS Board member, consultant, or staff.
9. What is your firm's position on third-party placement agents and do you currently engage or do business with such service providers? Where do they add value (if any)?

N. Miscellaneous

1. Based on what you know about the ERS, please write a one page general consultant advisement plan briefly describing what recommendations or areas you would like to address with the Board of Trustees during the first year of an engagement. Include this recommendation write-up in Exhibit M.
2. What impact has FASB 157 had on your business and its ability to report performance back to the client on a timely basis? Please describe some of the issues that your firm has addressed with complying with FASB 157 especially as it relates to your US public pension plan clients. What issues have your clients raised with your organization on this matter?
3. Describe the firm's policy or position regarding FOIA (Freedom of Information Act) requests and other public disclosure laws. What are some of the issues that have been confronted by your other public pension clients?
4. Does the firm provide clients with an online web site or client portal? How long has this site been in use? Describe in detail the information that is available on this website.
5. The ERS is currently a member of NASRA, NASIO, and the ILPA. What other investment organizations would you recommend we join and why?
6. Describe the nature of your written Business Recovery Plan.

**Employees' Retirement System of the State of Hawaii
Investment Consulting Services
Request for Proposal**

MINIMUM QUALIFICATIONS CERTIFICATION

The undersigned Offeror hereby represents and warrants to the Employees' Retirement System as follows:

1. Offeror is an investment advisor registered under the Investment Advisors Act of 1940.
2. Offeror has been in business as an investment consultant for a minimum of seven years.

Date business commenced (please provide commencement date for each of the areas covered by the proposal): _____

3. Offeror provides investment consulting services to at least one public retirement system defined benefit client with assets greater than \$5 billion.

Name(s) of client(s): _____

4. The primary consultant assigned to the ERS account has a minimum of seven years of experience providing domestic and international investment consulting services to public pension plans.

Name of the primary consultant: _____

Number of years of experience: _____

5. The Offeror's principal place of business is in the United States. Offeror is subject to service of process in the United States.

Location of Offeror's principal place of business: _____

6. If awarded the contract, the Offeror will serve as a "fiduciary" with respect to the ERS.

OFFEROR'S NAME: _____

Signed: _____ **Date:** _____

FEE PROPOSAL

If an offeror is submitting a proposal covering more than one type of consulting services, the offeror should submit a separate fee proposal for each type consulting service, as well as an aggregate fee proposal for all services covered by the proposal.

As the term of the contract is expected to be three (3) years with a two (2) year extension issued at the discretion of the ERS, the Fee Proposal should be guaranteed for a period of not less than five (5) years from the effective date of the contract. The services detailed under Paragraph VI of the Scope of Work Section of this RFP should form the basis for the proposed fees and should be referred to for a detailed description of the services required of the successful offeror. Proposed fees must include travel, taxes and all expenses.

Offerors should submit an all-inclusive annual fee for all services as follows:

All-inclusive flat fee – year 1	\$ _____
All-inclusive flat fee – year 2	\$ _____
All-inclusive flat fee – year 3	\$ _____
Sub Total (Years 1-3)	\$ _____
All-inclusive flat fee – year 4 (if extension is issued)	\$ _____
All-inclusive flat fee – year 5 (if extension is issued)	\$ _____
All-inclusive flat fee – year 6 (if extension is issued)	\$ _____
Total Fees (Years 1-6)	\$ _____

The method of payment is described in Paragraph III of the Scope of Work section.

The final contract fee should represent the only compensation received by the consultant for services provided to ERS. There should not be any other benefit, monetary or otherwise, that results from this relationship between the consultant and ERS.

Attachment A
Sample Contract

(Refer to the Attached File)



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS

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

RECITALS

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

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

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

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

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

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

(1) _____
(Identify state sources)

or (2) _____
(Identify federal sources)

or both, in the following amounts: State \$ _____
Federal \$ _____

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

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

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

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

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

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

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

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

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

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

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

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*** Reminder to Agency:** If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____

SCOPE OF SERVICES

COMPENSATION AND PAYMENT SCHEDULE

TIME OF PERFORMANCE

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE**1. By Heads of Departments or Agencies as Delegated by the Director of Human Resources Development¹.**

Pursuant to the delegation of the authority by the Director of Human Resources Development, I certify that the services provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, Hawai'i Revised Statutes ("HRS").

(Signature)_____
(Date)_____
(Print Name)_____
(Print Title)

¹ This part of the form may be used by all department heads and others to whom the Director of Human Resources Development (DHRD) has delegated authority to certify §76-16, HRS, civil service exemptions. The specific paragraph(s) of §76-16, HRS, upon which an exemption is based should be noted in the contract file. **NOTE:** Authority to certify exemptions under §§ 76-16(2), 76-16(12), and 76-16(15), HRS, has not been delegated; only the Director of DHRD may certify §§76-16(2), 76-16(12), and 76-16(15) exemptions.

2. By the Director of Human Resources Development, State of Hawai'i.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)_____
(Date)_____
(Print Name)_____
(Print Title, if designee of the Director of DHRD)

SPECIAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

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

21. Price Adjustment.

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

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

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

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

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. **Audit of Books and Records of the CONTRACTOR.** The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. **Cost or Pricing Data.** Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. **Audit of Cost or Pricing Data.** When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. **Records Retention.**
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. **Antitrust Claims.** The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. **Patented Articles.** The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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