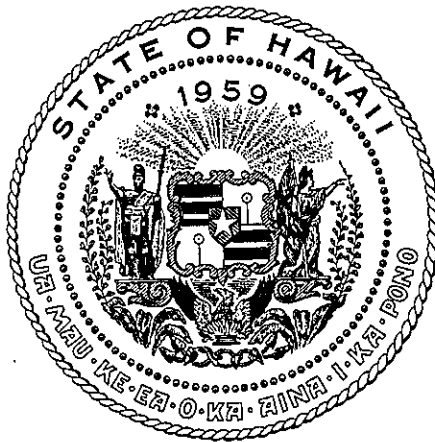


Employees' Retirement System of the State of Hawaii

Request for Proposal
(RFP ERS No. 2013-01)
Pension Benefit Payments



Issued August 2, 2013

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SECTION 1

ADMINISTRATIVE OVERVIEW

1.1 Purpose

The Employees' Retirement System of the State of Hawaii ("ERS") is seeking one or more qualified accounting, auditing and actuarial firm(s) to assist the ERS with processing pension benefit applications and computing pension benefit payments for retirants and prospective retirants of the ERS. A more detailed description of these services is set forth in Paragraph I of the Scope of Work section. When responding to this Request for Proposal ("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 so state where appropriate.

1.2 Background

The ERS is a qualified defined benefit plan under Section 401(a) of the Internal Revenue Code. Since January 1, 1988, employee contributions have been tax deferred under Section 414(h) of the Internal Revenue Code. The ERS provides retirement, disability and survivor benefits for State and county employees, including teachers, professors, police officers, firefighters, judges and elected officials. Chapter 88, Hawaii Revised Statutes, and Hawaii Administrative Rules Chapters 6-20 through 6-29 govern the ERS and the calculation and processing of pension benefit payments. The ERS services more than 113,000 members including over 40,000 retirants. Members are in one of three retirement plans, the Contributory, Noncontributory, and New Contributory (also known as Hybrid).

Each year an estimated 1,600 – 2,200 members retire (retirees are referred to as "retirants") from the State and counties. ("Counties" includes the City and County of Honolulu.)

A retirant receives an estimated retirement benefit that is calculated by the ERS through its legacy and new computer systems known as APPX and V-3, respectively, until the pension benefit calculation is finalized. Information used in the calculation of the pension benefit is received from multiple employers of the State and counties either electronically or manually through the respective personnel and/or payroll offices. There are more than 100 different personnel actions that could occur throughout a member's employment history, including salary increases, leaves of absences (such as professional improvement), promotions, retirement plan changes, transfers, change in full-time equivalency status, return to work after a previous separation from service, and others. The estimated retirement benefit is based on information received by the ERS prior to the members' date of retirement. The estimated retirement benefit payments represent approximately 95 percent of the retirant's final pension. The estimated retirement benefit payments begin within one month of the retirant's date of retirement.

In order to determine final retirement benefits, the ERS may have to obtain correction or clarification of inaccurate information that is provided to the ERS. The ERS may also have to wait for information from the employers or a decision on an issue requiring interpretation of the law, rules, policies, or procedures, before final pension benefit payments can be determined. Current ERS policy is to send 2 request for information notices to the employer. The employer has 30 days to provide the requested information for each notice; otherwise the pension benefit payment will be finalized based on the information that is available to the ERS.

The current process for finalizing benefits includes, but is not limited to the following:

1. Review payroll and personnel records of the retirant from the beginning to the end of the retirant's employment, including unused sick leave hours and vacation payments.
2. Review the retirant's Salary & Contribution History (SACH), and Salary & Contribution (SAC) worksheet, OSCAR type II worksheets, OAR printouts, history ledgers, microfilm/fiche and any documents for accuracy of the salary; retirants accumulated contributions (deficient/excess) and service credit.
3. Review the number and years and months of service credit segregated by group class. Also determine if service was at the applicable full time equivalent (FTE) percentage (%). If additional service credit has been already been included using the appropriate unused sick leave days, then review for accuracy. If the process of using the unused sick leave days has not been completed, then must include the unused sick leave days as months of service credit provided under the law. Upon receipt of the "Application for Transfer of Vacation and Sick Leave Credit (Sick Leave)" the final process is ready to begin. This form provides evidence that the vacation credits were finalized and payment was made. It is normally the last document to be received since payment may occur several months after the retirement date.
4. Review deficiencies and ensure that service credits were provided if they were not due to these deficiencies. Review calculations to ensure that the deficiency is correct. If additional employee contributions were made, then determine whether the total deficiency was paid or whether there is an overpayment of employee contributions that requires repayment to the retirant.
5. Determine whether eligible service time (also known as purchase of service credits) acquired is accurate, and if those services were required to be purchased, that there is proof of purchase and the correct amount was assessed and collected in a timely manner.
6. Identify missing data affecting the calculation of pension benefit payments and obtain this information from the retirant's former employer(s).

7. Verify that the Average Final Compensation was computed correctly and make adjustments when necessary.
8. Verify that the Years of Service is accurate and make adjustments when necessary.
9. Once the final benefit has been computed, an adjustment is paid to apply the final benefit retroactively to the date of retirement (a retro-adjustment).

1.2.1 ERS'S Current Technical Environment

The ERS's Pension Management Information System (PMIS) resides on a Microsoft Windows platform and utilizes Oracle for its databases. The following solutions were also chosen: HP Data Protector, Altiris for deployment, helpdesk and asset management, Trend Micro for antivirus, Kofax / Ascent Capture for imaging. The Oracle Financial production environment is maintained at ICSD (Information Communications Services Division or also known as the State Data Center) while the V3 production UAT and Development environments are maintained at City Financial Tower. ERS maintains two Storage Area Networks (SAN), one at ICSD and one at the ERS. ERS utilizes a HP Virtual Tape Library for backups.

1.2.2 ERS'S Current Applications Environment

The ERS's V3 (pension system) is a unique system that supports all aspects of public pension benefits administration in a single, fully integrated system. It offers enrollment, employer reporting and accounting, pension processing, disbursement, workflow, self-service, imaging and customer service systems in a single, fully integrated solution. The V3 solution also includes capabilities for knowledge-based management, parametric and scripted rules definition, dynamic data and screens definition, system security, system audit, point and click imports/exports, and business process management and control.

The Benefit Computation System processes the accumulation of membership service credit and gross salary data (manual data entry) to provide retirement benefit computation information for both service and disability retirement benefit plans.

1.3 Authority

This Request is issued under the provisions of Chapter 103D, Hawaii Revised Statutes (HRS), and applicable Hawaii Administrative Rules (HAR).

1.4 RFP Organization

This RFP is organized into four sections:

Section 1 Administrative Overview — provides prospective offerors with general information on the objectives of this Request, the procurement schedule and provides a procurement overview.

Section 2 Scope of Work — provides prospective offerors with a general description of the tasks to be performed.

Section 3 Proposal — describes the required format and content for the Proposal.

Section 4 State of Hawaii Contract for Goods and Services — provides offerors the terms and conditions under which the work will be performed.

1.5 Procurement Officer and Contract Administrator

This RFP is issued by the ERS. Wesley Machida, the individual listed below, is the Procurement Officer and Contract Administrator for this procurement. The Procurement Officer is the sole point of contact for this procurement.

Wesley Machida, Executive Director
Employees' Retirement System
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813
Telephone: (808) 586-1700
Facsimile: (808) 586-1677

1.6 Procurement Timetable

Activity	Scheduled Date
RFP Announcement	August 1, 2013
RFP available to prospective offerors	August 2, 2013 @ 3:00 p.m. (HST)
Closing date for submission of questions	August 14, 2013 @ 4:30 p.m. (HST)
ERS response to offeror's questions	August 23, 2013
Closing date for receipt of proposals	September 6, 2013
Contractor selection and award	September 17, 2013
Agreement start date	October 1, 2013

Offerors are notified that these dates are estimated by the ERS and are subject to change at the ERS's discretion. The ERS reserves the right to change any date(s) as deemed necessary and in the best interest of the ERS.

Proposals may be accepted on evaluation without discussion with offerors. The ERS does not plan to hold interviews or discussions with offerors prior to the award of the contract.

The ERS does not plan to request best and final offers. If best and final offers are not requested, evaluations will be conducted on the basis of offerors' original proposals.

1.7 Offeror's Questions

Questions will be accepted and responded to only if submitted in writing up to the specified deadline. Formal responses will be provided in writing. ERS responses to offeror questions will be sent to all persons obtaining a copy of the RFP.

1.8 Submission of Proposals

Offerors must carefully examine the solicitation, amendments or addenda (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 considered or accepted.

One original and (8) copies (including one in an electronic file) and one single-sided unbound original of the proposal must be submitted.

Proposal must be received by the Procurement Officer no later than 4:30 p.m., HST, on Any Statement received after that date and time will be rejected. Proposals must be mailed or delivered to the Procurement Officer at the address shown in Section 1.5 of this Request.

The outside cover of the package containing the Proposal shall be marked:

Employees' Retirement System
RFP No. 2013-01

(Name of Offeror)

NO FAXED OR EMAILED proposals will be considered or accepted.

Evaluation of the proposals and selection of the contractor will be made pursuant to section 103D-303, Hawaii Revised Statutes, and related administrative rules.

1.9 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 as provided in the administrative rules.

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 nonacceptance of the withdrawal.

1.10 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 a mistake, the proposal may be corrected or withdrawn.

If 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.

1.11 Costs for Proposal Preparation

Any costs incurred by an offeror in preparing or submitting a proposal are the offeror's sole responsibility.

1.12 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 or 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 ERS or the State of Hawaii or having defaulted on previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated.

1.13 RFP Amendments

The ERS reserves the right to amend this RFP any time prior to the scheduled deadline for receipt of proposals.

1.14 Cancellation of Request for Proposals/Rejection of Proposals

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, if the Procurement Officer for this procurement determines such cancellation or rejection to be in the best interests of the ERS.

1.15 Uncertainties Beyond Control of the ERS or Contractor

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.

1.16 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.

1.17 Acceptance of Proposal and Execution of Contract

Acceptance of a proposal, if any, will be made within sixty (60) calendar days after the opening of proposals. The offeror must have the ability to perform as called for in the RFP and in the agreement. 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.

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 (10) calendar 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 (10) calendar days after such award or within such further time as may be allowed, the Procurement Officer may call for new proposals, if it is deemed to be in the best interests of the ERS.

1.18 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, or
- 2) Be registered to do business in the State.

Reference Responsibility of Offerors in §3-122-112, HAR. Offerors shall provide documents to the Procurement Officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award and final payment.

Pursuant to §103D-328, HRS, the successful offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the purchasing agency.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev.2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.state.hi.us/tax/alphalist.html>

DOTAX Forms by Fax/Mail: (808) 587-7572

1-800-222-7572

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

DOTAX: (808) 587-1488

IRS: (808) 539-1573

The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the purchasing agency.

Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment" (SPO Form 22), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 393 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.

Pursuant to §103D-310(c), HRS, successful offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of the issue and must be valid on the date it is received by the purchasing agency.

The application for certificate of compliance (Form LIR #27) can be obtained from the DLIR website:

<http://www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf>

or from:

DLIR Administrative Services Office
830 Punchbowl Street, Room 309
Honolulu, HI 96813
Phone: (808) 586-8888
Fax: (808) 586-8899

The DLIR will return the form to the offeror who in turn shall submit it to the purchasing agency. The application for the Certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to the purchasing agency.

Business Registration

Hawaii business. A business entity referred to as a “Hawaii business” is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. An offeror’s status as sole proprietor or other business entity and its business street address indicated on Proposal Letter will be used to confirm that the offeror is a Hawaii business.

Compliant non-Hawaii business. A business entity referred to as a “compliant non-Hawaii business” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, offeror shall submit a CERTIFICATE OF GOOD STANDING.

To obtain a CERTIFICATE OF GOOD STANDING go online to www.businessregistrations.com and follow the instructions. To register or to obtain a “Certificate of Good Standing” by phone, call (808) 586-2727 (M-F 7:45 am to 4:30 pm-HST). The “Certificate of Good Standing” is valid for six (6) months from date of issue and offerors are advised that there are costs associated with registering and obtaining a “Certificate of Good Standing” from the BREG.

The above certificates should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of the contract, an offer otherwise responsive and responsible may not receive the award.

Hawaii Compliance Express

Alternately, instead of separately applying for these paper certificates at the various state agencies, applicants may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a “Certificate of Vendor Compliance.” The HCE provides current compliance status as of the issuance date. The “Certificate of Vendor Compliance” indicating that applicant’s status is compliant with the requirements of HRS Chapter 103D-310(c), shall be accepted for both contracting purposes and final payment. Applicants that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). Applicants choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the prior sections.

Timely Submission of all Certificates

The above certificates should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of the contract, an offer otherwise responsive and responsible may not receive the award.

SECTION 2 SCOPE OF WORK

2.1 Introduction

The Employees' Retirement System of the State of Hawaii ("ERS") is seeking one or more qualified accounting, auditing and actuarial firm(s) to assist the ERS with processing pension benefit applications and computing pension benefit payments for retirants and prospective retirants of the ERS. The number of contracts awarded pursuant to this RFP will be determined by the ERS in its sole discretion. There is currently a backlog of 1,800 cases requiring finalization. The number of cases requiring finalization is expected to increase by the end of the year. A portion of the pending and anticipated cases will be assigned to contractor(s) under contract(s) awarded pursuant to this RFP.

2.2 General Requirements

2.2.1 Agreement Period

The term of the agreement will commence on or around October 1, 2013, and will expire on July 31, 2016. The term of the agreement may be extended, at the ERS's option, for two additional twelve-month periods. The term of an agreement may also be extended at the ERS's option to facilitate the completion of pending cases assigned to a contractor.

2.2.2 Multi-term Solicitation

Funds are only available for the initial term of the contract. The contractual obligations of the parties in each subsequent fiscal period are subject to appropriation and availability of funds.

The fixed fee shall be the same throughout the contract, except to the extent that price adjustment may be provided in this Request 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 that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period. In the event of cancellation, the contractor will be reimbursed unamortized reasonably incurred nonrecurring costs, if applicable.

2.2.3 Liaison and Authorization to Proceed

The Executive Director or the Executive Director's designee will serve as the primary liaison with the contractor during the term of the agreement. The Procurement Officer or a designee 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 approval by the ERS. Any work performed by the contractor prior to approval by the ERS to proceed is done at the contractor's own risk.

2.3 Scope of Work

- A. Each contractor will each be required to complete a minimum of 500 cases during the first year of the contract term; additional cases may be added if mutually agreed upon by a contractor and the ERS.

The process for finalizing benefits includes, but is not limited to the following:

1. Gain an understanding of the applicable sections of the law, administrative rules, ERS policies and procedures, and Attorney General Opinions and advisories affecting the calculation of the pension benefit payments.
2. Process the finalized pension pursuant to the applicable guidelines and standards including and not limited to recent legislative changes to the ERS laws.
3. Review payroll and personnel records of each retirant from the beginning to the end of the retirant's employment including unused sick leave hours and vacation payments.
4. Utilize printouts and various reports to check for accuracy of the salary; retirants' accumulated contributions (deficient/excess) and service credits.
5. Review the number and years and months of service credits segregated by group class. Also determine if service was at the applicable full time equivalent (FTE) percentage (%). If additional service credit has already been included using the appropriate unused sick leave days, then review for accuracy. If the process of using the unused sick leave days has not been completed, then the unused sick leave days must be included as additional months of service credit provided under the law. Upon receipt of the "Application for Transfer of Vacation and Sick Leave Credit" the finalization process is ready to begin. This form provides evidence that the vacation credits were finalized and payment was made. This form is normally the last document to be received because payment may occur several months after the retirement date.
6. Review sufficiency of employee contributions (deficiencies) and ensure that service credits were provided if they were not due to these deficiencies. Review calculations to ensure that the deficiency is correct. If additional employee contributions were made, then determine whether the total

deficiency was paid or whether there is an overpayment of employee contributions that requires distribution to the retiree.

7. Determine whether eligible service time (also known as purchase of service credits) acquired is accurate, and if those service credits were required to be purchased, that there is proof of purchase and the correct amount was assessed and collected in a timely manner.
8. Identify missing data affecting the calculation of pension benefit payments and obtain this information from the retiree's former employer(s).
9. Verify that the average final compensation was computed correctly and make adjustments when necessary.
10. Verify that the years of service are accurate and make adjustments when necessary.

Once the final benefit has been computed, an adjustment is paid to apply the final benefit retroactively to the date of retirement (a retro-adjustment).

Without limitation of the foregoing, CONTRACTOR shall, for each retiree or prospective retiree, complete the items on the Finals Checklist agreed upon by ERS and CONTRACTOR.

B. The contractor will also be required to:

1. Gain a basic understanding of the V3 (computer system) with regards to the Work history (salary data) which updates the Participant Account (retirement contributions and interest) and Pension History.
2. Provide to the ERS a weekly status report of those finalized pension benefit payments completed. For purposes of this report, completed is defined as turned over to the ERS for input into either the V-3 computer system for payment processing. At a minimum, the amount of final pension benefit payments completed for the week and the remaining outstanding including a list of issues pending.
3. Establish and maintain quality control procedures to ensure that contractor accurately calculates the finalized benefits in accordance with applicable sections of the law, administrative rules, ERS policies and procedures, and Attorney General Opinions and advisories affecting the calculation of the pension benefit payments.

All work must be completed in a timely manner.

2.4 Contractor Responsibilities

The contractor will be required to assume responsibility for all contractual activities, products, and deliverables identified in the Request and offered in the applicant's/contractor's proposal whether or not that contractor directly performs or provides them.

Further, the contractor will be considered to be the sole point of contact with regard to contractual matters. If any part of the work is to be subcontracted or provided by a third party, the response to this Request must include, at a minimum, the following information:

List of all subcontractors, manufacturers, and other providers of products or services.

Name and address of all subcontractors, manufacturers, and other providers of products or services.

Complete description of all work to be subcontracted and/or products to be provided by third parties.

Descriptive information concerns the organization of all subcontractors and/or third parties as well as resumes, including two (2) professional references, of subcontractor staff providing and/or services activities.

Descriptive information about the previous relevant experience of all subcontractors and/or third parties and their proposed staffs.

Descriptive information relating to the nature and duration of the previous relationship of all subcontractors and/or third parties with the prime contractor.

Explanation of any existing contractual relationships between the prime and subcontractors, or among subcontractors.

During the course of the project, the ERS reserves the right to require the contractor to replace subcontractors, as well as staff members, found to be unacceptable to ERS for any reason. The contractor is responsible for adherence by all subcontractors to all provisions of the contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the contractor, such that the ERS perceives a single service entity.

For any third party the contractor must arrange for all licenses to be in the ERS' name. Appropriate support must be provided and included in technical and cost proposals and the ensuing contract.

2.5 Facilities Provided by the ERS

ERS will provide space at the ERS office for up to a total of five (5) contractor staff. If there is more than one contractor, the space provided for staff will be allocated among the contractors. The ERS may provide additional space depending on availability of space. Key contractor staff required by this Request and any proposed by the applicant are required to be located at the ERS office.

The contractor may be responsible for equipment and furnishings for the space and any additional space requirements such as phone lines and data connections.

The ERS will provide the selected contractor with PC's and related equipment.

SECTION 3 PROPOSAL

3.1 Introduction

The offeror shall prepare a written proposal in a narrative form fully describes the experience, staffing, cost and approach to be used by the offeror for providing the proposed goods and services. The proposal should describe offeror's plan for providing the required services, including benchmarks and deliverables. The RFP sets forth the format that must be followed by offerors in developing the response to the RFP. Proposals that vary from this prescribed format are subject to being judged non-compliant and withdrawn from consideration by ERS.

The narrative portion of the proposal provided should be concise and meaningful. The content of this narrative should address the requested information directly and fully. Extraneous information should not be included.

Offerors are to submit bound and packaged technical and cost proposals.

The technical proposal and cost proposal should be prepared on standard 8½" x 11" white paper. All proposals are to be page-numbered, including version number, from first page to last, with the permitted exception of attachments to the proposal. A Table of Contents must be included. Foldouts containing charts, spreadsheets, and other necessary supporting documentation are permissible, but must be held to a minimum. The pages must be placed in a binder with tabs separating the major sections outlined below. Manuals, hardware brochures or benchmarks, and other reference documentation may be provided separately if desired. Figures and tables must be numbered and referenced in the text by that number.

The following information must appear on the title page of each copy of each proposal:

Employees' Retirement System

RFP No. 2013-01

Closing date and time for submission of proposals:

4:30 p.m. (HST) on September 6, 2013.

Name, address, and (voice) telephone number of organization submitting the proposal

3.2 Proposal Letter

The proposal cover letter must be (i) signed by an individual or individual(s) authorized to legally bind the offeror, (ii) dated, and (iii) affixed with the corporate seal, if any. 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.

The cover letter must be counter-signed by all subcontractors that the offeror proposes to use.

The fully executed proposal cover letter must be submitted as part of the proposal. The cover letter shall include the following:

3.2.1 Contact Information

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

3.2.2 Terms and Conditions

A statement that the offeror understands and will comply with all terms and conditions in the RFP. The offeror must include written acknowledgement of receipt of any and all amendments or addenda made to this RFP. If an offeror does not plan to comply with all terms and conditions, this must be stated and any exceptions listed. Exceptions requested after the proposal is submitted may be grounds for disqualification from the procurement process and contract award.

3.2.3 Legal Entity

A statement indicating whether the offeror is an individual and, if not, what type of legal entity (e.g., general partnership, limited partnership, limited liability company or corporation) offeror is. If the offeror is not an individual, include a statement indicating the jurisdiction where the offeror is organized.

3.2.4 Federal Tax ID No.

A statement setting forth the offeror's federal tax identification number.

3.2.5 Current Licenses

A statement that the offeror maintains active and current licenses or certifications necessary to provide consultant services, and a statement of the offeror's specialty, if any. A Hawaii General Excise Tax (GET) ID must also be provided, or a representation that a Hawaii GET ID will be obtained prior to commencement of the work.

3.2.6 Nondiscrimination

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

3.2.7 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 State, as determined by the ERS.

3.2.8 Exceptions to Contract Form

A statement of any and all requested changes and modifications to the sample contract included in this RFP or that the offeror has no objections to the provisions of the sample contract. The ERS reserves the right to decline any requested changes or modifications to the sample contract and to not consider any changes or modifications not identified in this section. Exceptions requested after the due date for the proposal may be grounds for disqualification from participation in the proposal evaluations and contract award.

3.2.9 Certification of Minimum Qualifications

Certification that the offeror is an accounting, auditing or actuarial firm (list all that are applicable) and a certification of the dates of the periods within the past five years during which the offeror provided services in computing and processing pension benefit payments. (Offeror must meet the following "Minimum Qualifications": (1) offeror must be an accounting, auditing or actuarial firm; and (2) the offeror must have provided services in computing pension benefit payments and processing pension applications during at least thirty-six of the past sixty months.

3.3 Background and Experience

The offeror should describe:

- Offeror's previous experience in working with pension plans and background in computing pension payments and processing pension applications, including the pension plans for which the work was performed.
- The names and backgrounds of the personnel who would be responsible for the ERS account, including titles, functions, length of experience, any specialty expertise they possess, and the educational degrees and professional designations they have attained.

3.4 Availability

The offeror should describe offeror's availability to perform the required services in the time specified.

3.5 References

The names of at least three (3) references, including the phone number and address of the company or agency, and a person to contact at the reference.

3.6 Fee Proposal

The Fee Proposal should provide for a fixed fee per completed case. The fixed fee shall be the same throughout the original and optional extension terms of the contract.

A case is "completed" when the amount of the final pension benefit payment is computed and turned over to STATE for input into either the APPX or V-3 computer systems for payment processing.

The ERS reserves the right to review all aspects of the cost proposal for reasonableness and to request clarification of any proposal in which cost information shows significant and unsupported deviation from the offeror's proposal, industry norms, or in areas where detailed pricing is required.

All prices quoted must be good for a period of one hundred twenty (120) days after the submission due date to the ERS.

All costs related in any way to the preparation of proposals in response to this request for proposal shall be the responsibility of offerors.

The cost proposal must be certified by signature of an agent of the offeror's company authorized to do so.

In other words, it is the offeror's responsibility, to ascertain that the cost information presented is accurate, complete and all-inclusive

3.7 Confidential or Proprietary Information

The offeror shall designate those portions of the proposal that contain 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 response 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 response CANNOT be considered confidential.

SECTION 4 PROPOSAL EVALUATION

4.1 Introduction

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially.

4.2 Evaluation Organization

A Selection Committee will review and evaluate all proposals submitted by the deadline specified in this RFP.

The evaluation will be conducted in three phases:

- Phase 1 -- Evaluation of Mandatory Requirements
- Phase 2 -- Evaluation of Proposals
- Phase 3 -- Award

4.3 Evaluation Criteria

The evaluation criteria listed below will be used to evaluate and rank offerors' proposals. The evaluation criteria are listed in the order of importance and priority.

Criteria	Points
Background and Experience	30
Personnel and Staffing	30
Availability	20
Fees	10
Proposal	10

4.4 Phase 1 - Evaluation of 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 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 mandatory requirements are:

- Submission of a Proposal Letter satisfying the requirements of section 3.2.
- Provision of references as required by section 3.5.
- Fee Proposal providing for compensation on the basis of a fixed fee per completed case.
- Satisfaction of the Minimum Qualifications.

4.5 Phase 2-- Evaluation of Proposals

During this phase, the ERS shall conduct final evaluations on the offerors' proposals, against requirements specified in this RFP.

4.5.1 Offeror Background and Experience

The ERS will evaluate the experience, performance, and qualifications of the offeror. The ERS may verify and evaluate relevant references to determine:

- Offeror's relevant experience in working with pension plans.
- Offeror's relevant background in computing pension payments and processing pension applications.
- Offeror's responsiveness to clients.
- Offeror's timeliness in meeting contractual obligations.
- Offeror's adherence to contractual requirements.

4.5.2 Personnel

The evaluation of personnel will involve evaluating the offeror's overall staffing approach, qualifications of key personnel, and past performance of the individuals. References for individuals to be assigned to this account may be verified and findings incorporated into the evaluation of this section. Reference checking is not limited to those references supplied by the offeror. Personnel providing services on behalf of contractor must have the ability to analyze salary and service data.

4.5.3 Availability

This part of the evaluation assesses the offeror's availability to respond to the ERS's requirements in a timely manner.

4.5.4 Proposed Fee

The proposed fee will be evaluated on the basis of the total fee for the original and optional extension terms and shall include travel, taxes and all expenses.

4.5.5 Proposal

The proposal will be evaluated for clarity and responsiveness to the RFP requirements.

4.6 Phase 3 – Award

Final selection will be made by October 1, 2013.

**CONTRACT FOR GOODS AND SERVICES
BASED UPON
COMPETITIVE SEALED PROPOSALS**



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 ERS 2013-01 ("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

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(If available)

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 _____

COMPENSATION AND PAYMENT SCHEDULE

For services satisfactorily rendered under this Contract, CONTRACTOR will be paid monthly, in arrears, \$_____ for each completed case.

A case is "completed" when the amount of the final pension benefit payment is computed and turned over to STATE for input into either the APPX or V-3 computer systems for payment processing.

If this Contract is terminated for the convenience of the STATE or for CONTRACTOR's default, CONTRACTOR will be compensated for each case satisfactorily completed. Except as provided in the preceding sentence, CONTRACTOR shall not be entitled to any other compensation by reason of, or upon, the termination of this Contract. CONTRACTOR will not be compensated for any uncompleted cases at the end of the term, or any extended term, of this Contract.

TIME OF PERFORMANCE

Services under this Contract shall commence upon the effective date set forth on the first page the Contract. The term of this Contract shall terminate on June 30, 2016. The STATE shall have the option to extend the term of the Contract for two (2) twelve month periods. The Contract may be extended as necessary to facilitate the completion of pending matters. Any extension of the Contract shall be on the same terms and conditions, including compensation, in effect upon expiration of the original term of the Contract.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, 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, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly 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. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

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)

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

SPECIAL CONDITIONS

1. The Contract Administrator is Wesley Machida, Executive Director.
2. Paragraph 3 of the General Conditions is amended to include the following:
 - c. STATE may, for reasonable cause, require CONTRACTOR to replace staff members performing services for STATE under this Contract.
 - d. The CONTRACTOR acknowledges that one of the basis for selection was the personnel proposed by CONTRACTOR to provide services under this Contract. The STATE reserves the right to terminate this Contract if the CONTRACTOR's personnel assigned to this Contract are reassigned, leave the employ of the CONTRACTOR, or otherwise become unavailable to perform the services or management required by this Contract.
3. Paragraph 7 of the General Conditions is amended to read as follows:
 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 for death, bodily injury, and damage to property, arising out of or resulting from the negligent acts or omissions or willful misconduct 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 the Contract.
4. Paragraph 24 of the General Conditions is amended to include the following:
 - c. In the course of performing under this Contract, the CONTRACTOR will receive, be exposed to or acquire confidential information, which may include, but not be limited to, names, addresses, telephone numbers, birthdates, social security numbers, financial information, medical information, and other employment information, written or oral, fixed in hard copy or contained in any computer data base or computer readable form (hereinafter referred to as "Confidential Information"). The CONTRACTOR, including its employees, agents, representatives, and assigns (i) shall keep all Confidential Information confidential and shall not disclose to any third party any Confidential Information, except as specifically permitted by the STATE, (ii) shall only permit use of such Confidential Information by employees, agents, representatives, and

assigns who have a need to know in connection with performance under this Contract, and (iii) shall advise each of its employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential.

- d. CONTRACTOR, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The CONTRACTOR shall provide the STATE with a list of individuals (by name and position) (hereinafter referred to as "Authorized Handlers") who are authorized to handle the Confidential Information. Confidential Information may not be removed from STATE premises without the express written consent of the Administrator or Assistant Administrator of the Employees' Retirement System of the State of Hawaii. If CONTRACTOR is permitted to remove Confidential Information from STATE premises, CONTRACTOR shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler or an employee of the ERS.
 - e. CONTRACTOR shall not share data received under this Contract with any other entity without the prior written approval of the STATE. CONTRACTOR may not use data received under this Contract for any purpose other than the performance of CONTRACTOR's obligations under this Contract.
 - f. CONTRACTOR shall return all Confidential Information upon completion of the services CONTRACTOR is contracted to provide under this Contract.
 - g. CONTRACTOR shall disclose information related to this Contract to the extent required by law or regulatory agency, such as the Public Company Accounting Oversight Board or State Accountancy Board.
5. CONTRACTOR may not subcontract of CONTRACTOR's duties or obligations under this Contract without STATE's prior written consent, which consent may, without limitation, be conditioned upon CONTRACTOR's compliance with paragraph 6 of the General Conditions and the following:
- a. The CONTRACTOR will be required to assume responsibility for all contractual activities, products, and deliverables identified in the Request and offered in the CONTRACTOR's proposal whether or not that CONTRACTOR directly performs or provides them. Further, the CONTRACTOR will be considered to be the sole point of contact with regard to contractual matters.
 - b. Any request for consent to subcontract must include, at a minimum, the following information:
 - i. Name and address of the subcontractor.

- ii. Complete description of all work to be subcontracted and/or products to be provided by third parties.
 - iii. Descriptive information concerning the organization of the subcontractor and/or third party as well as resumes, including two (2) professional references, of subcontractor staff providing services under the subcontract.
 - iv. Descriptive information about the previous relevant experience of the subcontractor and/or third party and their proposed staffs.
 - v. Descriptive information relating to the nature and duration of the previous relationship of the subcontractor and/or third party with the CONTRACTOR.
 - vi. Explanation of any existing contractual relationships between the CONTRACTOR and subcontractor, or among all subcontractors.
- c. During the term of the Contract, the STATE reserves the right to require the CONTRACTOR to replace subcontractors found to unacceptable to STATE for any reason. The CONTRACTOR is responsible for adherence by all subcontractors to all provisions of the Contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the CONTRACTOR, such that the STATE perceives a single service entity.
- d. For any third party the CONTRACTOR must arrange for all licenses to be in the STATE's name.
6. This Contract may be executed in any number counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
7. The STATE may remove the CONTRACTOR and terminate this Contract at any time and for any reason upon thirty (30) days' prior written notice to the CONTRACTOR and at any time without notice, if for cause determined by the STATE in good faith and in its sole discretion.