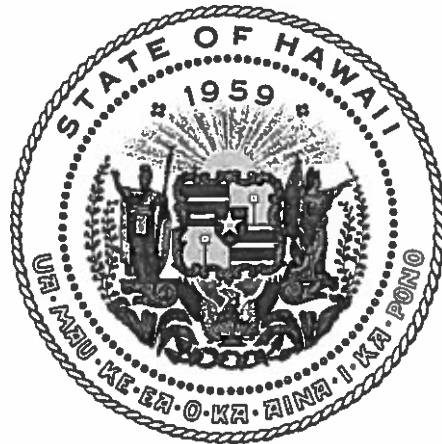


Employees' Retirement System of the State of Hawaii
Request for Proposals
Private Equity Consultant Services
RFP 2017-03



Issued October 3, 2017

FIRMS WHO WISH TO RECEIVE ADDENDA TO THIS RFP MUST REGISTER WITH THE ERS AS POTENTIAL OFFERORS.

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Employees' Retirement System of the State of Hawaii
Private Equity Consulting Services
Request for Proposals

ADMINISTRATIVE OVERVIEW

I. Background

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

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

ERS investment portfolio is valued at over \$15.0 billion as of December 31, 2016 and is managed by over 54 investment firms in a combination of separate and commingled accounts. Current asset classes include domestic equity, international equity, domestic fixed income, international fixed income, real estate, mortgage loans, alternative investments (including private placements, buyouts venture capital and restructuring loans) and timber farming. The Board of Trustees adopted a functional risk allocation framework in 2014 updated the current strategic targets in 2016 as follows: Broad Growth 63%; Principal Protection 7%; Real Return 10%; Crisis Risk Offset 20%; Opportunities 0%; and Other 0%. The strategic allocations are expected to be achieved by 2020.

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

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

II. Purpose

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

III. Authority

This RFP is issued under the provisions of Chapters 88 and 103D, Hawaii Revised Statutes, and the implementing Administrative Rules. All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any prospective offeror shall constitute a representation of such knowledge on the part of such prospective offeror.

IV. Procurement Officer and Contract Administrator

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

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

V. Procurement Timetable

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

<u>Proposed Actions</u>	<u>Date</u>
RFP Available to Prospective Offerors	Starting at 9:a.m. (H.S.T) October 3, 2017
Closing Date for Submission of Questions	October 26, 2017 by 4:30 p.m. (H.S.T.)
ERS' response to questions	November 7, 2017
Deadline to submit proposals	November 27, 2017 by 4:30 p.m. (H.S.T.)
Determination of Priority-Listed Offerors	December 8, 2017
Site Inspection of Priority-Listed Offers	December 11-19, 2017
Interviews with Priority-Listed Offerors	January 9, 10 or 11, 2018
Best and final offers	January 19, 2018 by 4:30 p.m. (H.S.T.)
Final selection	February 12, 2018
Service initiation	April 1, 2018

Priority-listed offerors selected in accordance with Paragraph V of the Proposal Evaluation section of this RFP will be required to make a presentation during the period of January 9-11, 2018 in Honolulu, Hawaii. Priority-listed offerors will be contacted by the ERS staff to arrange a specific time and location for the presentation.

VI. Communications and Questions

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

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

Questions will be accepted until **4:30 p.m. (Hawaii Standard Time) October 26, 2017**. A written response to any questions will be provided by ERS via the addendum process described in Paragraph XIII of this section.

VII. Submission of Proposals

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

Each qualified offeror may submit only one (1) proposal. Alternate proposals will not be accepted, except that an offeror may submit separate fee proposals for each mandate covered by the offeror's proposal.

The proposal should be labeled "Employees' Retirement System of the State of Hawaii Private Equity Consultant Services RFP2017-003." A master (so marked), twenty (20) copies, in a three ring binder with the title RFP2017-03 and the firm's name on the spiral of the binder (one copy must be unbound and ready to photocopy), and one (1) electronic copy (MS Word or Adobe Acrobat format and one completed excel pre-formatted spreadsheet on a 650MB/74 minute format CD) of the response must be received no later than **4:30 p.m. (Hawaii Standard Time) November 27, 2017**. The sealed package should be addressed to the Procurement Officer listed in Paragraph IV of this section.

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

Employees' Retirement System
State of Hawaii
Private Equity Consultant Services Proposal
RFP 2017-03
(Name of Firm)

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

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

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

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

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

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

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

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

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

IX. Best and Final Offer

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

X. Mistakes in Proposals

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

withdrawn.

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

If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evidenced on the face of the proposal, in which event, the proposal may not be withdrawn.

If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

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

XI. Costs for Proposal Preparation

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

XII. Disqualification of Proposals

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

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

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

- previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated.
- The offeror's conflicts of interest or lack of independence in judgment.

XIII. RFP Amendments and Addendum

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

XIV. Cancellation of Request for Proposals/Rejections of Proposals

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

XV. Uncertainties Beyond the Control of the ERS

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

XVI. Proposal Bonds; Performance and/or Payment Bonds

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

XVII. Acceptance of Proposal and Execution of Contract

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

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

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

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

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

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract within ten days after such award or within such further time as may be allowed, the Procurement Officer will consider the next highest ranked offeror or may call for new proposals, if it is deemed to be in the best interests of the ERS.

XVIII. Debriefing

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

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

XIX. Requirements for Doing Business in the State of Hawaii

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

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

And one of the following:

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

Proof of compliance with the foregoing requirements can be provided through the Hawaii Compliance Express (HCE), which allows vendors, contractors and service providers doing business with the State to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the date the Certificate of Vendor Compliance is issued. The Certificate of Vendor Compliance indicating that

offeror or contractor's status is compliant with the requirements of HRS Chapter 103D-310(c), will be accepted for both contracting purposes and final payment.

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

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

Employees' Retirement System of the State of Hawaii
Private Equity Consultant Services
Request for Proposals
PROPOSAL

I. Introduction

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

- Cover Letter
- Questionnaire Answers (Please complete a separate questionnaire for each mandate covered by your offer.)
- Form ADV (Parts I and II)
- Code of Ethics
- References
- Fee Proposal
- Sample Reports (performance, research, manager search, asset/liability modeling, etc.)
- Financial Statement
- Mandatory Requirements Certification

II. Cover Letter

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

i. Contact Information

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

ii. Terms and Conditions of RFP

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

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

iii. Legal Entity

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

include a statement indicating the jurisdiction where the offeror is organized.

iv. Authorized Signature

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

v. Federal Tax ID No.

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

vi. Hawaii General Excise Tax ID No.

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

vii. Current Licenses and Registration

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

viii. Subcontracting of Services

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

ix. Non-discrimination

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

x. ERS Approval of Contractor's Recommendations

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

xi. Terms and Conditions of Contract

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

III. Confidential or Proprietary Information

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

Employees' Retirement System of the State of Hawaii
Private Equity Consultant Services
Request for Proposals

PROPOSAL EVALUATION

I. Introduction

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

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

II. Evaluation Process

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

The evaluation process will be conducted in six phases:

- Phase 1 - Evaluation of Minimum Qualifications and Mandatory Requirements
- Phase 2 - Establishment of Priority List of Offerors;
- Phase 3 - Facilities Inspections by ERS (done at the discretion of the ERS);
- Phase 4 - Interviews with Priority-Listed Offerors
- Phase 5 - Final Evaluation of Proposals
- Phase 6 - Award

III. Evaluation Criteria

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

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

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

The minimum qualifications are:

- Offeror must be an investment advisor registered under the Investment Advisors Act of 1940.
- Offeror must have three (3) years of experience in real estate investment consulting.
- Offeror must provide real estate investment consulting services to at least one public retirement system defined benefit client with assets greater than \$5 billion.
- Offeror must be based in the United States. “Based in the United States” means that offeror’s principal place of business is in the United States and that offeror is subject to service of process in the United States.
- The primary consultant assigned to the ERS account shall have a minimum of seven (7) years experience providing domestic and international real estate consulting services to public pension plans.

The mandatory requirements are submission of:

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

V. Phase 2 – Establishment of Priority List of Offerors

All offerors who pass Phase 1, Evaluation of Minimum Qualifications and Mandatory Requirements, shall be classified as "acceptable" or "potentially acceptable". If there are more than three "acceptable" or "potentially acceptable" offerors, the Evaluation Committee will evaluate all proposals and establish a priority list of three (3) offerors who received the best preliminary evaluations. The order, priority and points to be applied to each evaluation criteria as follows:

CRITERIA	POINTS
Ability, including resources, knowledge, and independence of judgment, and avoidance of conflicts of interest, to perform the services referred to in the RFP	40
Philosophy, process, soundness of approach and understanding of the needs of the ERS	30
Stability and relevant history and experience of the firm and the individual consultants proposed for the ERS	20
Fees	5
Client references	5

ERS reserves the right to modify the evaluation criteria, or any other part of this RFP, prior to the date for final submission of responses.

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

The ERS may conduct inspection of priority-listed offerors' facilities December 11-19, 2017 or as can be conveniently scheduled.

During the course of this phase, the ERS Board of Trustees may conduct interviews with the priority-listed offerors in Honolulu during the week of January 8-12, 2018.

VII. Phase 4 – Best and Final Offers

The priority-listed offerors' best and final offer must be received by the Procurement Officer no later than 4:30 p.m. HST on January 19, 2018. If the Procurement Officer does not receive a best and final offer from a priority-listed offeror, the immediate previous offer will be construed as the priority-listed offeror's best and final offer.

VIII. Phase 5 – Final Evaluation of Proposals

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

CRITERIA	POINTS
Ability, including resources, knowledge, and independence of judgment and avoidance of conflicts of interest, to perform the services referred to in the RFP	30
Fees	20
Philosophy, process, soundness of approach and understanding of the needs of the ERS	30
Stability and relevant history and experience of the firm and the individual consultants proposed for the ERS	15
Client References	5
Total	100

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

allocated points = (\$ amount of the lowest fee proposal x 12) + \$ amount of the fee proposal being evaluated

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

allocated points = (\$ amount of the lowest fee proposal x 8) + \$ amount of the fee proposal being evaluated

IX. Phase 6 – Award

The ERS Board of Trustees and the Procurement Officer will make the final selection.

Employees' Retirement System of the State of Hawaii
Private Equity Consulting Services
Request for Proposal
SCOPE OF WORK

I. Introduction

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

The contractor must be an investment advisor registered under the Investment Advisors Act of 1940 at the time of RFP proposal submission, as amended and shall provide investment advisory and consulting services as described in this RFP. One or more contractor(s) may be selected to provide investment consulting services.

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

II. Agreement Period

The term of the agreement is three years with a two year extension at the option of the ERS. The term of the agreement will commence on or around April 1, 2018. The ERS will determine in 2021 whether to extend the term of the contract. If the contract extension is not granted, the contract will expire in 2021. If the extension is granted, the contract will expire in, 2023.

The last payment due to the contractor will be issued after the quarterly performance report and other contracted materials, for December 31 of the expiring year, have been received.

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

III. Compensation

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

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

The statements shall include the work performed by the contractor in sufficient detail to justify

payment. The ERS shall process the claim for payment in accordance with the standard operating procedures of the ERS.

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

IV. Multi-Term Solicitation

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

V. Liaison and Authorization to Proceed

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

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

VI. Scope of Services

By entering into a contract with the ERS pursuant to this RFP, the contractor will be agreeing to perform all of the services described in the scope of services for the applicable mandate.

The contractor(s) shall not bind or purport to bind the ERS for any contractual commitment in excess of the contract period, except with respect to discretionary investments authorized below. Contractor(s) shall comply with all applicable ERS policies and procedures, and familiarize themselves and be conversant with the Board of Trustees' Investment Guidelines, Policy & Procedures Manual.

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

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

Under a discretionary service model, the service provider is responsible for the full monitoring & reporting of the legacy portfolio along with all related decisions that are required to be made, such as fund amendments and secondary selling decisions. The service provider is also responsible for the portfolio construction, manager & fund selection and securing allocation for the current portfolio, along with all decisions that are required to be made including reviewing & negotiating legal documents. Often under a Discretionary service model, the Investor's Staff (CIO and/or Investment Officers) are responsible for oversight of the Discretionary service provider to ensure they are adhering to the governing rules and acting in accordance with their delegated authority. They may be involved in overall strategy, but are not involved in individual investment decisions. Discretionary service model is an outsourced turn-key approach to private equity portfolio construction.

Under an non-discretionary/advisory mandate, the service provider typically is providing their professional opinion on overall investment strategy & investment approach, providing research/due diligence reports on specific managers and structures, providing market intelligence and may help facilitate manager introductions. They may recommend specific investments, but the ultimate investment decision along with ability to obtain allocation under this type of mandate lies directly with the Investor. In some cases, the Investment Office/Staff is making these final investment decisions, in other cases their Governing Board (or a sub-set of the Board) is making final investment decisions. In Advisory service models, legal review and negotiations is almost always handled by the Investor's attorney and/or their outside counsel. In either of these servicing models, the reporting and monitoring function could work and look similar with cash flow management and custodial

reconciliation. Below are the three main components to private equity portfolio where #1 & 3 can be both discretionary and non-discretionary service model types and #2 is more typical of a Discretionary service model. 1) Strategic Planning & Research – works with both discretionary & advisory

- Annual strategic plan
- Assess portfolio progress
- Recommendation on portfolio construction
- Cash flow forecasting
- Market intel & forward calendar
- Special projects

2) Investment Sourcing, Due Diligence & Legal – discretionary

- Tactical selection based on strategic plan
- Investment diligence across the private equity landscape
- Final investment recommendations
- Review and negotiate terms for investments
- Ensure compliance with rules and regulations
- Provide ongoing oversight of partnership documents
- Annual meetings/advisory board attendance

3) Cash Flow Administration/Portfolio Monitoring – both discretionary & advisory

- Data transition and reconciliation
- Provide oversight on legacy & current portfolio
- Monitor/advise on fund developments
- Cash flow administration and account reconciliation
- Verify legitimacy and accuracy of capital calls and distributions
- Quarterly reporting - portfolio performance, analytics and diversification

General consulting services would fall into a special projects area designed for specific portfolio enhancements. This is where ERS would engage the consulting services for advice/recommendations and guidance in very specific areas. Any of these areas could also be outsourced in a Discretionary mandate. Staff may have interest in creating specific programs around various areas, such as:

- Strategic partnerships
- Targeted Venture capital program
- Targeted Private Debt program
- Direct Co-investing
- Targeted Secondary exposure (already covered)
- Infrastructure & Natural Resources (may already be covered)

Discretionary Private Equity Investment Services. The contractor will provide the following discretionary investment management services.

- A. The contractor, in a manner satisfactory to the ERS, shall provide investment services with respect to the assets in the ERS's core private equity program, other than assets managed by

Specialty Managers (as defined in the Investment Policy (defined below)), (the “Assets”) in collective private equity investment funds (the “Investment Funds”) with discretion and authority to buy, sell or otherwise effect investment transactions involving the Assets in the name and on behalf of the ERS consistent with the annual strategic plan agreed to between the contractor and the ERS (the “Strategic Plan”). The Strategic Plan may be amended or supplemented from time to time by mutual agreement of the contractor and the ERS. The “Assets” include securities and Investment Funds in which the ERS held an interest prior to the contractor receiving authority to make investment decisions with respect to the Assets pursuant to the contract.

- B. The contractor shall have discretion as to all investment decisions regarding the Assets, without limitation, (i) voting of, or granting or withholding consent with respect to, any securities; (ii) entering into, amending or terminating any contract; (iii) commencing, settling or discontinuing any claim or action on behalf of the ERS; (iv) exercising any option, conversion or subscription rights relating to any securities or other property constituting a part of the Assets, or selling any such rights; (v) joining in, dissenting from, or opposing the reorganization, consolidation, recapitalization, liquidation, merger, sale, mortgage, pledge or lease of any securities or other property constituting a part of the Assets; (vi) depositing any Assets with any protective, reorganization or similar committee, and paying or agreeing to pay out of the Assets part of the expenses and compensation of any such committee and any assessments levied with respect to any securities or other property so deposited; and (vii) generally taking or refraining from taking any other action relating to the investment or reinvestment of the Assets.

- C. The contractor shall exercise the discretion and authority granted to contractor by the contract in accordance with: (i) the Strategic Plan; (ii) the investment guidelines set forth in the Private Equity Portfolio Policies and Procedures of the Board of Trustees Policy, Guidelines and Procedures manual (“Investment Policies Manual”) as they exist on the date of the contract and as they may be amended by the Board, from time to time, (ii) the laws of the State of Hawaii, and (iii) prudent investment practice. Contractor acknowledges receipt of a copy of the Investment Policies Manual which is currently in effect. The Board shall as soon as reasonably practical notify the contractor in writing of any changes to the Investment Policies Manual. The contractor agrees that all actions taken by contractor under the contract shall be taken with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in like capacity and familiar with such matters would use in like situations. The ERS acknowledges that the contractor does not guarantee any rate of return on, or market value of, any investments of the Assets.

Nondiscretionary Private Equity Consultant Services. The consultant will provide the following nondiscretionary consultant services:

- A. Strategic Private Equity Consulting
 - 1. Assist the Board of Trustees, Investment Committee, and ERS staff in the development of an appropriately structured private equity program, including establishment of goals, strategy, objectives, and performance standards in light of the long-term 13.5% Private Equity Policy

target effective July 1, 2015. (The previous private equity program target was 7%.) Policy and program oversight would include all ERS private equity advisors and privately-structured fund investments (currently consisting of primary, secondary, co-investment and fund-of-fund managers). It also includes various types of privately placed investments (currently consisting of buyouts, growth, venture capital, debt, opportunistic and other strategies and a discretionary in-state venture capital program manager (the Hawaii Targeted Investment Program (“HiTIP”) manager). Services to exclude real estate investments.

2. Prepare quarterly and annual “program level” performance reports for the entire ERS private equity program. Also conduct special analyses and provide research as requested to better define program goals and objectives, monitor portfolio risk, develop performance and peer benchmarks and model program cash flows/commitment pacing, or for other purposes relating to the private equity program.
3. Develop and produce written investment policy and manager guidelines for the private equity program.
4. Appear as requested at the contractor’s expense (up to 6 times per year in the State of Hawai’i) at Investment Committee and/or Board of Trustees meetings or other meetings to (a) present performance, program updates, research, analyses, written reports, and recommendations or (b) respond to questions relating to the private equity program.
5. Conduct and prepare comprehensive written research, analysis, and advice on specific private equity investment issues; conduct special projects or other activities as requested.
6. Attend telephonic meetings with ERS staff in order to provide advice and counsel on matters relating to the private equity program, as requested.
7. Coordinate and communicate with the broader ERS organization, other ERS investment consultants, any incumbent discretionary- or non-discretionary private equity manager or consultant, the incumbent in-state venture capital manager, any other private equity managers hired by ERS during the duration of the engagement, and other asset class managers as appropriate to ensure effective and successful administration of the private equity program.

B. Deal Sourcing and Due Diligence

1. Develop a structured process that will analyze the full universe of available private equity investments and efficiently identify those most appropriate for investment for ERS. The process should include, but shall not be limited to, development of search criteria, review of qualifications, conduct of due diligence of investment candidates, and preparation of background materials for evaluation and decision making by the Board of Trustees or in compliance with established Investment Policy and State of Hawaii statutes.
2. Develop a proactive program to identify new investment opportunities using a global approach (i.e., US and non-US investments) including limited partnership funds, co-investments, secondaries, fund of funds, strategic partnerships and other appropriate investment vehicles suitable for a public pension plan.

3. Conduct initial screening and due diligence on prospective investments, which may be sourced by the other ERS contractors or ERS investment staff. If appropriate, engage in comprehensive due diligence that may include general partner site visits and appropriate reference checking, and development of a written investment analysis with appropriate investment recommendations.
4. Present written recommendations to the Investment Committee and Board of Trustees, which will include, but shall not be limited to, full results of the comprehensive due diligence, strategic considerations, partnership reviews, commitment amounts, and how the investments compliments the overall portfolio.
5. Work with ERS staff and legal counsel to negotiate the appropriate legal documentation and contracts including (but not limited to) limited partnership agreements (LPA), side letters, and subscription agreements.

C. Monitoring of the Private Equity Portfolio

1. Provide on-going investment monitoring that may include attending annual meetings, serving on advisory boards, analyzing policy and peer benchmarks, and conducting manager meetings.
2. Provide regular updates/assessments of relevant operational and/or strategic changes with investment managers, including, though not limited to, performance, organization, ownership, investment products, and disclosure issues. The updates/assessments include all aspects of the private equity program, including but not limited to strategies such as primary, secondary, buyout, distressed, debt, venture, growth, and strategic relationships.
3. Ensure compliance by the managers with the terms of their contracts.
4. Review and recommend course of action on all fund document amendments, consents, and extensions; and capital calls, distributions, waterfalls, promote/carried interest, other fees and expenses, and other movements of cash.5. Assist and advise ERS staff with work-out situations, breaches or violations of LPA provision and side letter provisions, and fund dissolutions as may arise.

D. Database Management

1. Maintain historical information on all cash flows, net asset values, unfunded commitments by ERS, fee payments, cost basis, and returns on each investment.
2. Calculate performance metrics including IRR and multiple calculations measured against performance benchmarks.
3. Ability to review cash flows and performance data by individual investment, sector, asset class, and the total portfolio over quarterly periods.

E. Reporting for Private Equity Program

1. Quarterly performance report to include at a minimum:
 - i. Allocation breakdown by geography, sector and industry
 - ii. Updates on each fund
 - iii. Listing of each fund by sector
 - iv. Date of commitment to each fund
 - v. Commitment amount to each fund
 - vi. Drawdown amounts by fund
 - vii. Outstanding commitment by fund
 - viii. Distribution amounts by fund
 - ix. Fund NAVs
 - x. Multiples by fund
 - xi. IRR of each fund (1- 3- 12-months, 1- 3- 5- 10-years, and since inception)
 - xii. Items iii. – v. aggregated for the total private equity program

2. Monthly Report to include:
 - i. Meeting Agenda
 - a. Summary list of commitments closed to date
 - b. Forward calendar of investments expected to close
 - ii. L.P. Annual Meeting Calendar for our investments
 - iii. Deal Log
 - a. Ongoing list of funds reviewed by contractor during the year
 - b. Include the status (e.g., screening, in process, questionnaire sent, site visit, approved, declined etc.)

3. Reconcile the quarterly and monthly reports with the records of ERS custodian bank for accuracy and provide any other reporting required by the ERS Accounting Division.

4. Provide assistance with the appropriate information to ERS staff in meeting and satisfying Comprehensive Annual Financial Report (CAFR) requirements, and other public information requests.

- F. Education
 1. Provide educational and/or training sessions to the Board and ERS staff regarding private equity investing as requested or needed.
 2. Provide ERS staff with access to investment research and publications used by contractor.

- G. External Relations
 1. Support the Investment Committee, Board of Trustees, and ERS staff through written and/or oral presentations at their meetings with legislative and executive branch staff as necessary.

2. Support the Investment Committee, Board of Trustees, and ERS staff through written and/or oral presentations at their meetings with the media and general public.

H. Other

1. Meet at least quarterly to review contract issues, update ERS staff on new services/technology, and to plan improvements in services.
2. Provide access to ERS or its representatives, the State auditor, or other third parties identified by ERS for the purpose of performing any audits or reviews that are deemed necessary by ERS.
3. Recommend and possibly implement optimal distribution management program for in-kind distributions.
4. Assist in sourcing, researching, recommending, monitoring, and managing possible strategic relationships and partnerships with private market asset managers with the ERS staff.

**Employees' Retirement System of the State of Hawaii
Private Equity Consultant Services
Request for Proposal**

MINIMUM REQUIREMENTS CERTIFICATION

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

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

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

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

Name(s) of client(s): _____

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

Name of the primary consultant: _____

Number of years of experience: _____

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

Location of Offeror's principal place of business: _____

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

OFFEROR'S NAME: _____

Signed: _____ **Date:** _____

FEE PROPOSAL

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

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

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

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

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

QUESTIONNAIRE

(Please complete the excel questionnaire.)

Employees' Retirement System of the State of Hawaii
Request for Proposals
Investment Consultant Services
RFP 2017-03

PRIVATE EQUITY CONSULTING SERVICES
QUESTIONNAIRE

Employees' Retirement System of the State of Hawaii
RFP 2017-03
Private Equity Consulting Services
QUESTIONNAIRE

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

Private equity is broadly defined for the purposes of this RFP to include (but is not limited to) buyouts, venture capital, special situations which may be multi-stage opportunities and growth equity, secondaries, and co-investments; other specialized investments that include timber, global TIPS, TALF, targeted in-state venture capital; and could include infrastructure, commodities, and hedge funds in the future.

A. Organization

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

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

B. Firm Experience

1. What do you consider to be your firm's consulting specialties, strengths, and limitations? What services, if any, does your firm (or any subsidiary) offer in addition to pension fund private equity consulting services?
2. How many years has the firm provided private equity consulting services both on a discretionary and non-discretionary basis; and to public pension plans both on a discretionary and a non-discretionary basis? How has this service arrangement between discretionary and non-discretionary evolved and grown since the firm's founding? What is your firm's percentage of total committed capital in terms of its discretionary relationships vs. non-discretionary relationships? Has your firm moved away from

non-discretionary (or discretionary) engagements within the last 10 years, and if “yes,” why?

C. Clients

1. Complete the Table 1 below for no less than three of your largest institutional clients (and please list those clients that you are using to meet the RFP Minimum Qualifications and so noted with a “*”).

Table 1 – PE Client Relationships – please note if FMS or AS:

Name of Client	AUM \$(000,000)	Years with Client	Discretionary or Non-Discretionary	FMS Or AS

2. Complete Table 2 below for PE Structure Type. Indicate the total amount of assets under your pension fund private equity consulting management at the end of December 31, 2011 to December 31, 2016 by commitments. Separate the commitment amount as follows using the format provided:

Table 2 – AUM by Structure Type (State in \$000,000 as of December 31)

Period	Direct	Commingled	Co-Investments	Secondary	Other (specify)	Total
2016						
2015						
2014						
2013						
2012						
2011						

3. References: (Please get advanced permission from each reference provided).

List three current three public pension funds (or three other clients if public pension funds are unavailable) with assets equal to or over \$3 billion for whom you have provided primary private equity consulting services on a retainer basis.

For each reference listed include client name, address, telephone number, email address and whether they are a full-retainer client or project and whether they are discretionary or non-discretionary with name of contact person.

4. Provide a list of pension fund clients to whom your firm has provided specific project consulting (no long-term retainer) in the last three years and briefly describe the type of assignment (e.g. investment policy, staffing study, market study, specialized/non-traditional private equity investments, etc.) using

the format below:

Name of Project-Based client	Year service provided	Type of Assignment

5. Provide a list of clients that have terminated your services within the last five (5) years, the dollar amount of assets under management at time of termination, and the reasons for termination of each client.
6. Describe your plans for managing the future growth of your firm in terms of staff, maximum assets, number of clients per senior consultant given current staffing resources, etc.
7. Provide information in Table 3a and 3b below for the firm’s five largest US Private Equity tax exempt clients for both discretionary and non-discretionary accounts between January 1, 2011 and December 31, 2016. Terminated relationships should be noted along with the year by footnote.

Table 3a and Table 3b – Other Clients (as of 12/31/2016* or as of date of termination)

Discretionary Clients (Table 3a)

Client Name	Client Total Plan Size	Total PE AUM US \$(000,000)	Market Value US \$(000,000)	Committed US \$(000,000)

Non-Discretionary Clients (Table 3b)

Client Name	Client Total Plan Size	Total PE AUM US \$(000,000)	Market Value US \$(000,000)	Committed US \$(000,000)

D. Personnel

1. State the total number of professionals assigned to providing professional-level private equity consulting services within your organization and how many of those professionals who would have direct responsibility for the ERS account (place a “*” after their name). Please complete the table below for all professionals within your organization providing private equity consulting services.

Table 4 - Team Experience

Name	Title	Job Function	Education, Credentials, Professional Designations	Years Managing PE at the Firm	Years Managing PE

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

Table 5

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

E. Services

1. List all standard services provided in a typical private equity full service consulting and performance monitoring relationship. List the special services that you have provided to meet other needs of your clients including any service mentioned or referenced in this RFP and Questionnaire (and which of those mentioned or referenced in this RFP and Questionnaire that you will not do). Which of those services are in addition to (or not mentioned in) the Scope of Services described in this RFP?
2. Describe your process for reviewing and approving capital calls and distribution notices from general partners representing traditional private equity, timber, TALF, infrastructure, commodities, etc. What is your turnaround time for such approvals?
3. Briefly summarize your philosophy relating to the consultant's relationship with Boards; Investment or private equity committees, staff; and private equity managers.
4. What approaches does your firm use to communicate with your clients? What should a client expect from you in terms of client service? What is your availability to meet with the Investment Committee and staff for investment policy review, manager searches, review of individually managed account-related matters, and other issues that may arise?
5. Do you attend annual manager or partnership meetings on behalf of your clients? If not, will you participate at a specific client's request and will there be an additional charge for this service?
6. Describe the services of your organization that distinguish your firm from other private equity consultants, and discuss how your firm's strengths would add value to our Fund.
7. Please elaborate on the approach, delivery frequency, and staffing assigned to the following *Specified Services* offerings (a portion or all) for a non-discretionary private equity engagement.
 - a. Partnership or fund sourcing
 - b. Desk review and on-site due diligence; preparation of comprehensive due diligence reports
 - c. On-going fund and GP monitoring.
 - d. Strategic and tactical planning and pacing studies.
 - e. Asset allocation/risk management advisory for private equity programs.
 - f. Legal (partnership document) review.
 - g. Terms and conditions negotiation.
 - h. Work-out situations.
 - i. Performance reporting
 - j. Annual GP meetings attendance.
 - k. Private equity program policy development and program structuring assistance.
 - l. Cash flow modeling.
 - m. Capital call and distribution notice review and checks & balances in process
 - n. Other services (please elaborate) Tax withholding and any other filings
8. Please mark each service that the firm and its own employees provide with an "X". Please indicate any services that are outsourced to 3rd parties outside of the organization by an "OS". Please complete Table 6.

Table 6 –Private Equity Services	
<xx> Fiduciary Fund Management Services (subject to Investment Advisors Act of 1940)	<xx> Reporting
<xx> Non Fiduciary Fund Management	<xx> Annual meetings
<xx> Fiduciary Advisory Services (non-discretion)	<xx> Legal work
<xx> Non-Fiduciary Advisory Services (non-discretion)	<xx> Work out
<xx> PE Program structure and policy advising	<xx> Transition
<xx> PE Strategic allocation advising	<xx> Co-investment
<xx> Fund of Funds management for PE assets	<xx> Secondaries
<xx> Separate accounts management for PE assets	<xx> Capital call & distribution review

9. Does your firm retain full-time internal legal counsel for limited partnership and related legal document reviews? Does your firm utilize outside legal counsel and for what purpose or assignments? What services would be provided to a client within the proposed fee structure? In what instances or circumstances would you recommend that the client retain its own outside legal counsel and for what purpose?

F. Assets Under Management

1. Complete Tables 7a and 7b below for the amount of funds that the firm managed or provided consultant oversight as of December 31, 2016. Please footnote the table to provide information if the private equity assets were managed in a fiduciary capacity.

Table 7a – AUM for all accounts – December 31, 2016

	\$(000,000)	% of Total Firm's AUM	No. of Clients
PE – US Public Pension			
PE – Endowments and Family Offices			
PE – Corporate			
PE – Other Clients			
Total PE Assets – Separate Accounts			
Total PE Assets – Fund of Funds			
Total US Public Pension Assets			
Total Firm AUM			

Table 7b – AUM for discretionary accounts – December 31, 2016

	\$(000,000)	% of Total Firm's AUM	No. of Clients

PE – US Public Pension			
PE – Endowments and Family Offices			
PE – Corporate			
PE – Other Clients			
Total PE Assets – Partnership Funds (LP) Accounts			
Total PE Assets – Fund of Funds			
Total Firm AUM			

2. Please state the firm’s committed dollars by year and percentages of that amount for buyout, venture capital, and other PE investments for all commitments. State percentages in the last three columns using this format: “XX%”. Please complete Table 8.

Table 8 – All Client and Non-Discretionary Committed Dollars

Year Ending December 31	All Committed USD \$(000,000)	Discretionary USD \$(000,000)	Buyout Percentage	Venture Capital Percentage	Other Percentage
2016					
2015					
2014					
2013					
2012					
2011					
2010					
2009					
2008					
2007					
2006					

G. Philosophy and Approach

1. Please describe your firm’s current consulting philosophy and approach to non-discretionary private equity consulting services.
2. How has this philosophy and approach changed in light of the Great Recession and concerns about PE liquidity and changes in fund valuations?
3. Does your firm favor or specialize in mega-buyouts, large buyouts, middle market buyouts, smaller end buyouts; seed and early stage venture, mid-stage venture, late stage venture, growth equity, etc.; distressed debt, mezzanine, infrastructure, real assets, etc. Please elaborate on the pros and cons of these various stages and segments, and how you might position ERS’s PE portfolio to gain

diversification.

4. How does your firm ensure that it is obtaining broad coverage of the best (i.e., top quartile) general partners?
5. What consideration does liquidity play in structuring a client's portfolio?

H. Firm Capabilities & Investment Process

1. Indicate the types of investment strategies and vehicles that the firm has experience with for US Public fund clients and describe the optimal situation for using one vehicle type versus the others:
 - a. *Limited Partnership interests*
 - b. *LLC*
 - c. *Fund of Funds*
 - d. *Co-Investments*
 - e. *Secondaries*
 - f. *Targeted or Specialized Investment Programs*
2. Briefly explain the firm's overall investment process. How does the firm bring the client's investment staff into the investment process?
3. How would your firm manage and provide oversight (including the presentation of performance) for the entire private equity program (discretionary and non-discretionary programs)?
4. How does the firm source and develop new relationships with GPs prior to making an actual commitment? Does your firm prefer to strengthen existing relationships and do follow-on funds or seek new general partners to find added value?
5. How many general partners have you met with annually in each of the last three years in your offices (ending December 31, 2016)? At the GP's offices?
6. Describe the benchmark or process that the firm uses to determine which general partners are "top quartile."
7. List a sample (if allowable or conceal names as appropriate) of the "top quartile" funds (or projected to be top quartile) that your firm has made commitments to for vintage years 2011 thru 2016 for US Public Pension Plan clients. Indicate funds size (e.g., Mega, Large, Mid or Small) and type (e.g., Buyout, VC, Growth Equity, Distressed Debt or Special Situation funds) along with the individual funds' gross IRR as of December 31, 2016.
8. Indicate the firm's geographic investment coverage by describing the firm's investment activities in the following markets (and address only instances where actual investment commitments have been made). If you do not invest in any of the categories below, please briefly state why you do not invest in those regional markets. Which regional categories below do you plan to make new investments (or overweight, underweight, or make no investment) in the next three to five years and why you plan to follow that strategy (e.g., growing industry sector, changes in GDP, political climate, changes in national law, degree of investment transparency, changing demographics, changes in consumer or business demand)? In addition, if you were awarded the private equity consulting engagement, what

would you project the committed capital weights of the ERS PE portfolio to be by percentage (totaling 100%) for the regions below in the year 2021?

- a. United States
- b. Canada
- c. Western Europe
- d. Central, Eastern Europe, Russia
- e. Japan
- f. China
- g. India
- h. Southeast Asia
- i. Australia
- j. Israel / Middle East
- k. Latin America
- l. Africa

Explain how the firm determines its PE strategic allocation policy for US Public fund clients like ERS (e.g. allocation between Buyout, VC, Growth Equity, Distressed Debt, Special Situation and Secondary funds). Is that allocation policy similar or the same for all of your U.S. Public Pension Plan clients or customized to meet specific client's needs? Please explain.

9. Describe how the firm's PE strategic allocation policy for US Public fund clients has changed over the past 5 years and how it might evolve over the next 5 years?
10. Assume the ERS existing private equity portfolio and holdings (see attached ERS Private Equity holdings report dated 12/31/2016 is 6.0%. Assume the incumbent discretionary core private equity manager commits \$450- to \$600-million annually. Describe the appropriate fund commitment "bite size" for Buyout, VC, Growth Equity, Distressed Debt and Special Situation funds that will allow the client to reach a 13.5% Private Equity target on a *funded* basis. How long will it take for the client to reach the 13.5% net asset value target? Would your firm have any challenges providing adequate commitments each year without sacrificing quality of fund investments? Has your firm ever been unable to meet the desired commitment size for any of your clients, and if "yes," how did your firm address this issue?
11. Briefly describe the firm's due diligence process. Please attach a copy of a recent due diligence report recommending a commitment AND a report where the investment was declined. (Redacted is acceptable). Include this in **Exhibit E**.
12. What is your approach to allow the client to source its own partnership funds for referral to the private equity consultant? Please describe any experience your firm may have in this arrangement.
13. Describe the firm's experience for managing and monitoring existing client-sourced private equity fund investments. Is the firm able to report performance information for the client's overall private equity program while separating out the performance of between the PE consultant investments versus those of the existing private equity core manager?
14. Briefly describe the firm's approach to non-US, non-Western European Private Equity investments and how it differs from the firm's process for evaluating US and Western European funds.

15. Briefly describe the firm's experience with opportunistic alternative investments, e.g., PPIP, Mezzanine, and Distressed Debt.
16. On a forward looking basis, under what circumstances would your firm recommend a fund-of-funds PE vehicle versus making investments directly in limited partnership funds? What would be an optimal percentage between the two for a client like ERS? Does your firm manage its own PE fund-of-funds alongside separate accounts? If so, describe the strategy and return expectation of those fund-of-funds. Would your firm ever recommend a fund-of-funds managed by another investment manager rather than your own firm's fund-of-funds?

I. Database

1. Outline the overall capabilities of your database system.
2. How many of the following are tracked on your performance database?
 - a. managers/advisors
 - b. direct investments
 - c. commingled funds
 - d. specialized, non-traditional funds
3. Discuss the number of individuals assigned to monitoring investment products and frequency of both their internal and external manager visits.
4. How frequently is the private equity investment manager information updated? What are the sources of data and how do you ensure that your data is an unbiased and fair representation of the private equity investment manager universe? How is the investment strategy (core, enhanced, high return, etc.) determined for an investment manager or product? (i.e., what are the specific criteria used.)
5. What level of detail is included in your database to be used for screening (e.g., assets under management, client information, staffing information, research capabilities, ownership fees, organizational changes, etc.)? How is this information verified?
6. Do you receive a fee or other consideration from managers who wish to be maintained on your database? Do you sell investment manager database information? Do you receive compensation directly or indirectly from the sale of this information? What percentage of your revenue do you derive from sales to or subscriptions from money managers on your database?

J. General Partners Searches

1. Please list the firm's top 5 existing GP relationships where your firm has made a commitment to at least two or more of their funds, and the fund's strategy. For confidentiality reasons, you may list them as "Fund 1, Fund 2, etc." Also describe what has made these funds a top 5 relationship for your firm (e.g., performance, team stability, proprietary deal flow)
2. Briefly describe the due diligence process on managers during searches. How does on-site due diligence fit into the search process? Who or what internal governance body approves commitments and amounts to funds? Are such commitment decisions approved for all similar clients or for specific clients?

3. What percentage of the time would each of key staff assigned to the ERS account spend meeting with general partners as part of its due diligence process? How many due diligence site visits are conducted each year by each of these key staff?

K. Investment Policy/Asset Allocation

1. Describe your pension fund experience (preferably public fund) and approach in developing investment policy and objectives for a diversified pension fund especially within the context of a comprehensive strategic plan. Comment on your process for analyzing a client's portfolio structure and for recommending modifications. Describe the manner in which you assist the Board and the Investment Committee in monitoring investment policy, strategy and asset mix.
2. Please provide an example of an investment policy focused or specific to private equity. Briefly address in the policy/strategy any economic/market assumptions and how the strategy achieves its objectives given current and future market volatility changes in interest rates, changes in inflation, and supply and demand constraints. Please attach this policy as **Exhibit F**.
3. What is the most appropriate way to categorize and discuss private equity investments to help the client best understand the levels of risk being assumed?
4. What is your internal policy for allocating private equity investment opportunities across several of your clients? Please attach this policy as **Exhibit G**.
5. What is your outlook on some of the key global events in the US, Europe, Asia, Africa, and the Middle East, and how does that influence your views on private equity program and policy, if any? How does inflation figure into your views? What are the specific investment strategies and crafting of policy that you believe will help public pension plan clients achieve high levels of risk-adjusted returns.
6. Describe any comprehensive *program-level* risk management tools or systems you use to understand and evaluate various kinds of risks associated with a client's private equity program. Do these tools/systems allow for look through to portfolio companies for risk management analyses?
7. Based on your knowledge of the ERS and its Investment Policy Statement, please write a maximum one page document on what approach you would take and some general changes you would initiate in making a revision to the Private Equity Policy in terms of direction, performance, and risk of the total program. For this exercise, assume oversight over all private and private-structured assets (not including real estate) to include the current private equity core program, the HiTIP (in-state venture capital program which has its own unique policy statement), Timber (with its own unique policy statement).

L. Performance Measurement

1. Is your performance measurement system proprietary/developed internally or an "off shelf" product? Do you plan to make any changes to the current system?
2. What private equity categories (to include BO, VC, etc) are tracked in your performance measurement system?

3. How many years of useable performance data are on your database?
4. Do you certify that client reporting is GIPS® compliant or complies with any other organizational or regulatory standard?
5. Briefly describe your methodology in computing partnership returns including the actual formula utilized, the frequency of calculation, the treatment of cash flow, the treatment of stock distributions and the treatment of fees.
6. What benchmark(s) do you recommend for evaluating the performance of a public pension plan private equity program?
7. How do you verify and reconcile the managers' returns?
8. What is used to independently verify the reasonableness of GP marks ?
9. What return expectations would you recommend to ERS on a going-forward basis both in terms of IRR and capital multiple.
10. Describe the flexibility available to customize reports.
11. Please provide as **Exhibit H** a sample of your firm's performance and other standard reports.
12. Describe how your organization identifies problems with general partner activities and performance. Include the process by which steps are taken to rectify the problems.
13. Describe steps you have taken on behalf of your clients who have partnership investments that are performing poorly, legal issues, or where there is a "zombie" or non-performing GP.

M. Litigation and Investigations

1. Is there any current or pending litigation or investigations by regulatory agencies against the firm or any of its officers? If "yes," please describe the nature of this litigation, current status and when it is expected to be resolved. Also, list any such litigations or investigations that have been filed or initiated against the firm since January 1, 2011 and how it was resolved.
2. Has any senior management or principal level employee or staff member been convicted of a misdemeanor or felony in the past five years?

N. Compliance and Conflicts of Interest

1. Does the firm, or parent company, currently engage in any other business activities other than non-discretionary private equity consulting? If "yes," describe the nature of the other business activities, what percentage of the non-discretionary private equity consulting business makes up the total revenue of the overall firm, and how you mitigate conflicts of interest among various parts of the business where such conflict exists or is *perceived* to exist.
2. Does your firm have a dedicated, full-time compliance officer? If not, who manages conflicts?

3. State whether or not the employees comply with the Code of Ethics and Standards of Professional Conduct of the Association of Investment Management and Research (AIMR).
4. Does your firm maintain a code of ethics? If so, attach as **Exhibit I**.
5. Does the firm currently manage, or plan to offer, any Fund of Funds products? If “yes,” describe how the firm avoids any conflicts of interest between its Fund of Funds product and other private equity offerings available to clients. Describe how the firm allocates over-subscribed investment opportunities among clients.
6. Describe any financial relationships that exist with other organizations such as brokerage firms, insurance companies, commercial banks, investment banking firms, investment management firms, etc.
7. Describe your firm’s gift acceptance policy.
8. Please disclose the nature of any business relationship that the firm has now, or has had, in the past ten years with any current or past ERS Board member, consultant, or staff.
9. What is your firm’s position on third-party placement agents and do you currently engage or do business with such service providers? What is the policy for disclosure of placement agents? When and who is responsible for paying the placement agent fees? Is there a one-for-one reduction in management fee for the fund for the placement agent fee?

O. Miscellaneous

1. Please write a one page Private Equity investment plan briefly describing what recommendations you would make to restructure the ERS portfolio if you were awarded a contract to consult on the private equity program on a discretionary basis. Include this recommendation write-up in **Exhibit J**.
2. Please include no more than three samples of white papers or other short research communications provided to your clients on private equity. Include these samples in **Exhibit K**.
3. What impact has FASB 157 had on your business and its ability to report valuations back to the client on a timely basis? Please describe some of the issues that your firm has addressed with complying with FASB 157 especially as it relates to your US public pension plan clients. What issues have your clients raised with your organization on this matter?
4. Describe the firm’s policy or position regarding FOIA (Freedom of Information Act) requests and other public disclosure laws and how your firm assists clients in complying with such requests.
5. Does the firm provide clients with an online web portal? How long has this site been in use? Describe in detail the information that is available on this website. e.g., partnership names, commitments, aggregate IRR by investment type, fund level IRR, etc.) and what format the data is available in (downloadable excel file, pdf, etc.)
6. List the major bank custodians that the firm works with.
7. What are your views and commentary of the Institutional Limited Partnership Association’s “ILPA

Principles”? Are there any provisions of the Principles that you support or disagree with?

8. Is your organization a member of the ILPA? Has your organization ever been asked to provide research support for their policy development? Has your organization ever participated at the annual ILPA Summit?
9. Describe the nature of your written Business Recovery Plan.

**Attachment A
Sample Contract**

(Refer to the Attached File)



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

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

RECITALS

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

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

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

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

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

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

(1) _____
(Identify state source)

or (2) _____
(Identify federal source)

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 2017-01 ("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 N/A 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 n/a 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 _____

Attachment-52

COMPENSATION AND PAYMENT SCHEDULE



TIME OF PERFORMANCE



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 fields

* 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 fields

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

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

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

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

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

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

14. **Termination for Convenience.**

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

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

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

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

- d. **Compensation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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