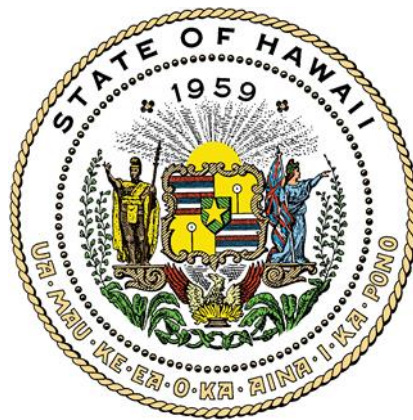


Employees' Retirement System of the State of Hawaii

Request for Proposals for Internal Audit Services

RFP 2019-01



Issued October 31, 2018

All changes to this RFP will be issued by an Addendum to the RFP and posted to the ERS website at ers.ehawaii.gov and procurement notices on the State website at <https://hands.ehawaii.gov>.

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SECTION 1 ADMINISTRATIVE OVERVIEW

1.1 Introduction

The Employees' Retirement System of the State of Hawaii (ERS) administers a defined benefit retirement plan for the State and county government employees of the State of Hawaii. ERS provides retirement, disability and death benefits for its members. ERS is a qualified defined benefit public pension plan under Section 401(a) of the Internal Revenue Code. Administration of the ERS falls under the policy and executive direction of the Board of Trustees with certain areas of administration control vested in the state Department of Budget and Finance.

The ERS is soliciting proposals from firms to assist the ERS in continuing to implement and perform an internal audit function.

1.2 Background

The ERS was established by the Legislature in 1925 to provide retirement, disability and survivor benefits for State and county employees, including teachers, professors, police officers, firefighters, judiciary employees, judges, and elected officials.

The ERS is a qualified defined benefit public pension plan covered under Section 401(a) of the Internal Revenue Code. The ERS' current favorable determination letter from the Internal Revenue Service expires on January 31, 2019. Since January 1, 1988, member contributions have been tax deferred under Section 414(h)(2) of the Internal Revenue Code, and Chapter 88 mandates that employers pick up the employee contributions. Hawaii Revised Statutes Chapter 88 and Hawaii Administrative Rules Title 6, Chapters 20 – 29 contain the language governing the pension trust.

The ERS Pension Trust is comprised of three pension classes for membership purposes and considered to be a single plan for accounting purposes because all assets of the ERS may legally be used to pay the benefits of any of the ERS members or beneficiaries, as defined by the terms of the ERS. The ERS provides retirement, survivor, and disability benefits for three membership classes known as the contributory, hybrid, and noncontributory members. A new benefit structure is effective July 1, 2012 for new contributory and hybrid class members.

Generally, all full-time employees of State and counties of Hawaii are required to be members of the ERS. Some positions of the State and counties of Hawaii are not

eligible for ERS membership and may be covered by another separate retirement program. Membership of the plan and the benefits provided are based on the individual's employment group and ERS membership date. A member may belong to only one class based on their latest employment. A member may change classes in certain situations due to a change in their employment date or job classification. If a member earns service in different classes or benefit structures, the member's retirement benefit is bifurcated based on the applicable membership service earned (such as service credits and benefit multiplier percentage of such service).

The two major employment groups applicable to employer and member contribution rates, vesting requirements, and benefit provisions are (a) Police and Firefighters and (b) All Other Employees. There are four major benefit structures for contributory class members based on employment group and membership date while there are two benefit structures for hybrid class members based on their membership date as discussed below. The noncontributory class has one benefit structure.

Contributory and Hybrid members are required to make contributions to the ERS and may also be covered by Social Security. Employees in the following occupational groups are required to be members of the Contributory Class: police officers, firefighters, judges, elected officials, legislative officers, and certain investigators. The Contributory Class also includes employees hired prior to July 1, 1983, who chose not to become Noncontributory members, and employees who were required to be Contributory members prior to July 1, 2006, but who did not choose to become Hybrid members, even though they were eligible to do so. As of March 31, 2018, there were 5,648 active employees in the Contributory Class.

Noncontributory members do not make contributions to the ERS and must be covered by Social Security. The Noncontributory Class covers employees hired from July 1, 1984, to June 30, 2006, as well as employees hired before July 1, 1984 who elected to become Noncontributory members. As of March 31, 2018, there were 12,841 active employees in the Noncontributory Class.

The Hybrid Class, which became effective on July 1, 2006, applies to all new general employees, teachers, State and county department heads and deputies, water safety officers, sewer workers and emergency medical technicians hired on or after July 1, 2006, as well as employees hired before July 1, 2006 who elected to change to the Hybrid Membership. Hybrid members are required to make contributions to the ERS and may also be covered by Social Security. As of March 31, 2018, there were 47,782 active employees enrolled in the Hybrid Class.

The ERS investment portfolio is valued at about \$16.5 billion (unaudited) as of June 30, 2018 and is managed by over 50 investment firms in a combination of separate and commingled accounts. The ERS invests in 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. Effective October 2014, the Board of Trustees adopted a risk-based, functional framework for allocating capital within the total portfolio. This framework shifted the portfolio asset allocation from a return-based process to a risk-based process that makes use of strategic/functional classes that in-turn utilize underlying asset classes and strategies. Following a formal asset-liability study that was completed in fiscal year 2016, the Board adopted a new long-term strategic allocation policy, that ERS anticipates achieving by 2020, as follows: Broad Growth 63%; Principal Protection 7%; Real Return 10%; and Crisis Risk Offset 20%.

Additional information regarding the ERS is available on the ERS website at: <http://ers.ehawaii.gov>.

- **ERS Investment Policy Guidelines and Procedures Manual** is available under the Investments link <http://ers.ehawaii.gov/investments/program>.
- **Comprehensive Annual Financial Report (CAFR), Actuarial Valuations and other financial reports** for ERS (FY 2001 to FY 2016) are available under the <http://ers.ehawaii.gov/resources/financials> link.

1.3 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.

1.4 RFP Organization

This RFP is organized into four sections including attachments:

Section 1 Administrative Overview – provides offerors with general information on the objectives of this Request for Proposal (RFP), the procurement schedule and a procurement overview.

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

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

Section 4 Proposal Evaluation – describes how proposals will be evaluated.

1.5 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

1.6 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 1.13 of this section.

Activity	Date
RFP Announcement	October 31, 2018
RFP Available to Prospective Offerors	Starting at 12:00 pm October 31, 2018
Closing Date for Submission of Questions	November 14, 2018
ERS's Response to Offerors' Question	November 30, 2018
Closing Date for Receipt of Proposals	December 14, 2018 at 4:00 pm, HST
Contractor Selection and Award (approximately)	January 18, 2019
Agreement Start Date	February 1, 2019

1.7 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 as discussed below. The Procurement Officer, listed in Paragraph 1.5 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) November 14, 2018.

Questions shall be submitted in writing (fax and email are acceptable) to the attention of the Procurement Officer:

by fax to (808)586-1677, or

by email to DBF.ERS.PROCURE@HAWAWII.GOV

(with a copy to kanoemargol@hawaii.gov and larry.wolfe@hawaii.gov).

A written response to any questions will be provided by ERS via the addendum process described in Paragraph 1.13 of this section.

1.8 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 considered or accepted and offerors may not be a party in more than one proposal.

One original and (8) copies and one single-sided unbound original of the proposal must be submitted.

Proposals must be received by the Procurement Officer no later than 4:00 p.m. HST, on December 14, 2018. Any proposal received after that date and time will be rejected. Proposals must be mailed or delivered to the Procurement Officer at the address shown in Section 1.5 of this Request.

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

Employees' Retirement System of the State of Hawaii
Proposal Submitted in Response to
RFP for Internal Audit Services
RFP 2019-01
(Name of Offeror)

NO FAXED OR E-MAILED proposals will be considered or accepted.

1.9 Receipt, Opening and Recording of Proposals; Late Proposals

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

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

- Modifications: A written notice shall be sent by the offeror and received by the Procurement Officer stating that a modification to a submitted proposal is being

provided by the offeror. The written notice must accompany the actual modification securely sealed in a separate envelope or container.

- **Withdrawal:** A written notice shall be sent by the offeror and received by the Procurement Officer. The withdrawal shall state that the offeror wishes to withdraw a proposal that has already been received by the Procurement Officer.

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

After the date established for receipt of proposals, a register of proposals shall be prepared which shall include the following for all proposals: the name of each offeror, and the number of modifications received. The register of proposals shall be open to public inspection only after award of the contract.

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.

1.10 Mistakes in Proposals

Mistakes shall not be corrected after award of the contract.

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

Once discussions are commenced or after best and final offers are requested, any 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, upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal unresponsive 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.

1.11 Costs for Proposal Preparation

Any costs incurred by an offeror in preparing or submitting a proposal are the offeror's sole responsibility. Travel and expenses to and from the State of Hawaii are also the sole responsibility of the organization submitting the response.

1.12 Disqualification of Proposals

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

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

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

1.13 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.

1.14 Cancellation of Request for Proposals/Rejection of Proposals

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

1.15 Uncertainties Beyond 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.

1.16 Proposal Bonds; Performance and/or Payment Bonds

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

1.17 Acceptance of Proposal and Execution of Contract

Acceptance of a proposal, if any, will be made 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.

1.18 Debriefing

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

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

1.19 Requirements for Doing Business in the State of Hawaii

Section 3-122-112, Hawaii Administrative Rules (HAR), requires that, before award of the 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, tax clearance
- 2) Chapter 383, unemployment insurance
- 3) Chapter 386, workers' compensation
- 4) Chapter 392, temporary disability insurance
- 5) Chapter 393, prepaid health care

And one of the following:

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

Proof of compliance with the foregoing requirements may 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.

1.20 Commencement of Work after Contract Execution

The successful offeror must begin substantive actions on the project immediately upon receipt of notice to proceed, which will be given upon the execution of the contract. The contractor will be in default if delays occur in the commencement of substantive work. If default occurs, ERS reserves the right to cancel the contract, and award the contract to another contractor.

SECTION 2 SCOPE OF WORK

2.1 INTRODUCTION

Prior to 2012, the ERS did not have an internal audit function. In 2012, ERS contracted with a consultant to help the ERS establish and implement an internal audit function. The previous contract for ERS's Internal Audit Function finished on July 31, 2017. Attached in Exhibit A is the most recent Internal Audit Plan for two (2) years, that has been accepted by the ERS Board of Trustees ("Board") and its Audit Committee.

Under this RFP, the ERS seeks a qualified consultant to assist the ERS in continuing to implement and perform an internal audit function, including the Two Year Internal Audit Plan. The scope of services for the qualified consultant will include operational, compliance and information system reviews to help the Board and its Audit Committee assess the adequacy and effectiveness of the ERS's internal control systems.

2.2 GENERAL REQUIREMENTS

2.2.1 CONTRACT PERIOD

It is anticipated that the term of the Contract awarded under this RFP will commence on or around February 1, 2019, and expire on January 31, 2022. The term of the Contract may be extended, at the ERS's option, until January 31, 2023.

Funds are not presently available for performance under the Contract beyond the current fiscal year. The ERS's 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.

2.2.2 SCOPE OF WORK

As noted in Section 2.1, the Board and Audit Committee have accepted the two-year Internal Audit Plan listed in Exhibit A. For purposes of quoting fees under this RFP, the fees quoted should be based on the scope of work as set forth in the Internal Audit Plan. However, it is anticipated that the CONTRACTOR's work under the Contract resulting from this RFP may vary from the Internal Audit Plan as a result of either modifications proposed by the CONTRACTOR and accepted by the Board and Audit Committee, or requests or directions from the Board and Audit Committee. Offerors shall quote an hourly rate for any additional work due to such modifications, but that hourly rate will not be used to score the offeror's fees under this RFP.

The CONTRACTOR shall provide the following services:

1. Objectives. The CONTRACTOR understands that the objectives of the work to be performed under this Contract are:
 - A. To determine whether the ERS's internal controls over financial and operating data and information are adequate and effective to provide reasonable assurance that such data and information is accurate, reliable, and secure.
 - B. To determine whether the ERS's internal controls over compliance with laws, regulations, contracts, policies, and procedures are adequate and effective to ensure that proper compliance actually occurs.
 - C. To determine whether the ERS's internal controls over assets provide ERS reasonable assurance that assets exist and are properly safeguarded against loss or theft.
 - D. To determine whether controls over ERS operations provide reasonable assurance that ERS resources are used efficiently and economically.
 - E. To determine whether controls over ERS operations and programs are effective to provide reasonable assurance that the operations and programs are being carried out as planned and that the results of operations are consistent with the ERS's goals and objectives.
 - F. To identify where controls over ERS operations and programs are non-existent or lacking and to assist the ERS to develop and document such controls.

2. Scope of Work. The CONTRACTOR shall:
- A. Review the Internal Audit Plan and propose any needed modifications to the Audit Committee and Board for their approval. Without limitation, proposed modifications may relate to the auditable areas in the Internal Audit Plan, the processes or procedures reviewed, and the timing and number of hours involved in the reviews.
 - B. Perform the operational, compliance and other reviews set forth in the Internal Audit Plan, as modified with the approval of the Audit Committee and Board. The reviews shall: (1) make findings that identify areas where ERS policies, procedures, or controls are deficient, weak, or non-existent; (2) identify the potential impact of such findings; and (3) make recommendations to address the deficiencies and weaknesses found.
 - C. Provide recommendations based on “best practices” in instances where ERS policies, procedures, processes, or controls do not exist and/or could be improved on.
 - D. Present oral and written reports on the reviews to the Audit Committee and Board, and follow-up on ERS actions to address identified deficiencies and weaknesses.
 - E. From time to time, identify and propose reviews of other additional auditable areas based on risks identified by the CONTRACTOR or the Audit Committee and Board during the term of the Contract.
 - F. Based on the work performed, provide the Audit Committee and Board with oral and written reports that identify and outline procedures, processes, and policies that the ERS’s internal audit function should possess, including without limitation, goals and objectives of the internal audit function, a risk assessment framework, and responsibilities with respect to annual planning and administrative activities.
 - G. Prior to completion of the existing internal audit plan, perform an internal risk assessment for the ERS, and based on the results, propose an internal audit plan for the next period.

In the past internal audit cycle, the Audit Committee has undertaken review of approximately 4-6 review projects annually.

SECTION 3 PROPOSAL FORMAT

3.1 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
- Internal Audit Practice - Qualifications and Expertise
- Project Team
- Internal Audit Methodology
- Proposed Timeline
- Tools and Technology
- References
- Proposed Fee

3.2 Confidential or Proprietary Information

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

3.3 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:

Offeror's Vital Information

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

Include the name and contact information responsible for this solicitation.

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.

Legal Entity

A statement indicating that the offeror is an individual, a partnership, a limited liability company or a corporation. 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.

Authorized Signature

The cover letter must be signed by an individual or individuals authorized to legally bind the offeror. 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.

Federal Tax ID No.

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

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.

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. True and accurate copies of the offeror's license(s) and certificates must be provided.

Subcontracting of Services

A statement by the offeror indicating that the work described in the RFP will not be subcontracted or assigned without the prior written approval of the ERS.

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.

Minimum Qualifications

Affirm that the offeror meets each of the minimum qualifications and state where supporting evidence is in your proposal.

ERS Approval of Offeror's Recommendations

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

Terms and Conditions of Contract

Briefly 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.

In addition to the Cover Letter described above, the Proposal should be responsive to the questions provided below.

3.4 Internal Audit Practice - Qualifications and Expertise

1. Provide an overview of your internal audit practice, capabilities, experience and range of services provided.
2. Provide a description of how your firm would bring value to our business.
3. Describe how your firm's internal audit approach leverages leading practices, proven approaches and tools.
4. Describe how your firm identifies and evaluates risk and the process used to address such risk while reducing the overall cost of compliance.
5. Describe similar projects completed by your firm within the past three (3) years.

3.5 Project Team

Describe the team assigned to work on this project. Include the resumes of each team member, describing their education, training, and qualifications. Identify each individual's proposed responsibilities on the account and unique skills they bring to the engagement.

3.6 Internal Audit Methodology

1. Describe your internal audit methodology and differentiating factors that provide enhanced value to clients.
2. Describe the policies and practices your firm maintains in order to ensure accuracy, consistency and confidentiality in the work performed.
3. Describe your policies and practices with respect to ownership and retention of audit work papers and other material related to client work.

3.7 Proposed Timeline

Provide a proposed timeline to implement ERS's Internal Audit Work Plan and provide the proposed number of audit hours to complete each project in the work plan. The timeline must provide for completion of all projects within the contract term. The completion date may be extended if the term of the contract is extended, at ERS' option, for an additional one (1) year.

3.8 Tools and Technology

1. Provide an overview of the technology platform and tools that you provide to your internal audit teams.
2. Provide an overview of any software tools and technologies you will use to perform an internal audit risk assessment process, develop and manage the audit plan, implement audit programs and document results, and track and report open audit issues. Would ERS audit resources have access to those tools?

3.9 References

Provide the names of at least three (3) references, including the phone and address of the company or agency, and the name of the key contact.

3.10 Proposed Fees

1. Provide a detailed fee proposal, including rate per hour by staff level. An estimate of out-of-pocket and administrative costs (excluding travel costs) should also be provided.
2. Describe internal audit services that are considered out of scope and the fee treatment for those services.

The fee proposal should include the optional extension term.

SECTION 4 PROPOSAL EVALUATION

4.1 Introduction

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

4.2 Evaluation Organization

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

4.3. Phases

The evaluation will be conducted in three phases:

Phase 1 -- Evaluation of Mandatory Requirements: During this phase, each proposal will be evaluated to determine whether it is sufficiently responsive to the mandatory requirements described in Section 3 to permit a complete evaluation. To meet the mandatory requirements, the offeror must submit a proposal that includes all of the items described in Section 3, including responses to all of the questions in subsections 3.4 through 3.9. Only those proposals that meet the minimum mandatory requirements will be classified as “potentially acceptable or acceptable” and shall be considered in Phase 2.

The minimum requirements are:

1. Offeror must be a certified public accountant firm.
2. Offeror must have been in business for a minimum of five (5) years.
3. Offeror must provide internal audit services to at least one large complex organization, preferably to include public pension plans
4. Offeror must have an office in Hawaii, and be able to meet with ERS Board and staff during ERS’s normal working hours; M-F 7:45 a.m. – 4:30 p.m. (HST).
5. The primary consultant assigned to the ERS account shall have a minimum of seven (7) years of experience providing auditing services to large complex organizations, preferably to include public pension plans.

Phase 2 – Evaluation of Proposals: All offerors who pass Phase 1 are eligible for evaluation in Phase 2. The Selection Committee will evaluate the proposals and rank the proposals based on the highest total number of points received from the criteria in Paragraph 4.4.

4.4. Evaluation Criteria

The order, priority and points to be applied to each evaluation criteria are:

Criteria	Points
Professional qualifications and expertise	30
Stability and relevant experience of the firm and the team proposed for the ERS	25
Methodology, process, soundness of approach and understanding the needs of the ERS	25
Fees	15
Client references	5
Total	100

*Formula for determining allocation of points for fee:

allocated points = (\$ amount of the lowest fee proposal x 15.0) ÷ \$ amount of the fee proposal being evaluated

Phase 3 – Award: The Award is expected to be made by January 18, 2019.

EXHIBIT A

ERS INTERNAL AUDIT WORK PLAN

INFORMATION SYSTEMS

1. IT Governance Content Development Assistance

Assist ERS to develop and document content, topics and hierarchy for IT governance documents. Review life cycle, review and approval of documents; analyze existing policies and procedures; and identify gaps and assist in updating policies that align with objectives of framework created for the management, configuration and protection/security of IT resources.

2. Business Continuity & Disaster Recovery Plan Training

Provide training to better prepare ERS to effectively maintain and enhance the BCP in the future, and to improve the organization's preparedness to respond to disasters, with brief of the BCP and the basic recovery process; specialized training for designated recovery team leaders and alternate team leaders of groups across the different branches; conduct walkthrough exercises to familiarize the respective individuals with their portion of the overall BCP, and their defined role in the recovery process.

3. Backup, Data Recovery, and Data Retention Assessment

Evaluate ERS' current backup solutions for both internal and external facing systems, validate the backup capabilities in accordance with the Recovery Point Objectives ("RPOs") and Recovery Time Objectives ("RTOs") defined in the BCP and regulatory data retention requirements, and identify gaps in the system backup solutions, data retention and purge process.

4. Business Continuity & Disaster Recovery Plan Testing

Testing the effectiveness of the BCP, to include verifying that the procedures and resources designated for recovery and restoration within the BCP are adequate, educating personnel on the strategies and procedures included in the document, and providing personnel the opportunity to identify refinements that would improve the BCP's effectiveness. Revise the BCP and assist management plan and assist management in publishing an updated version of the BCP.

5. Go-Live Readiness Assessment - Oracle Financials

Monitor the development and implementation of Oracle Financials upgrade (and provide an evaluation of the progress, quality and attainment of project objectives at defined milestones within the project. Monitoring to include documentation review, communications with the project team and Audit Committee, and additional consulting as needed.

ACCOUNTING

1. Benefit Claims & Refund Review

Evaluate processes and procedures to ensure that benefit claims and refunds are processed accurately, uniformly, and timely in compliance with Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules ("HAR"), Internal Revenue Service ("IRS") requirements, and Administrative Directives.

2. Budgeting Process Review

Evaluate the ERS' budgeting process and the general framework and practices in developing and implementing a budget, including tools in place, monitoring of budget to control spending and allocation of resources, predict cash flow progress of its strategic goals.

ADMINISTRATION

1. Communications & Community Relations Review

Review processes and procedures related to the communication and dissemination of information to the community, including members, employers, labor groups, and the legislature that may impact members or the perception of the ERS.

2. Human Resources - Personnel Development & Retention Review

Assess the effectiveness of Personnel Development and Retention for Human Resources. Evaluate the scope of the human resource development initiatives within the organization to determine whether essential staffing levels are maintained, training and development is provided, policies and procedures communicate prospective roles and responsibilities and illustrate expected levels of performance and behaviors, and that ERS has a realistic and comprehensive succession plan.

INVESTMENT OFFICE

1. Investment Consultant Selection & Evaluation Review

Assess the design and operating effectiveness of internal controls over the selection and evaluation of investment consultants, Investment Office's compliance with due diligence procedures, and where appropriate, review investment consultants' compliance with the contract restrictions and requirements.

RETIREMENTS BENEFIT BRANCH **(PREVIOUSLY ENROLLMENT, CLAIMS & BENEFITS BRANCH)**

1. Employer Communication & Reporting Review

Review and evaluate the design and operating effectiveness of ERS's processes to the communication and transfer of information between the ERS and employers including, but not limited to, the accuracy, timeliness and completeness of member information, member and employer contributions, and compliance of retirement benefits reported to the ERS as provided in its Policies, in addition to the HRS.

2. Benefit Estimates & Final Benefit Calculation Processing Review

Review and evaluate the design and operating effectiveness of internal controls related to the benefit estimate and final benefit calculation process to ensure accurate and timely calculation. On a test basis, evaluate final calculation compliance with applicable HAR, HRS, and Administrative Directives.

ORGANIZATION WIDE

1. Follow-Up Review (of Previously Completed Reviews)

Assess the progress that responsible managers made in implementing the recommendations; confirm design of newly implemented internal controls and evaluate the controls' operating effectiveness of the following previously completed reviews: Records Management & Retention, Data Collection & Maintenance, Unclaimed Member Benefits & Accounts, and Benefit Disbursement Review.

2. Policy Development Assistance & Monitoring

Monitor the ERS' progress in its policy development and implementation process. Facilitate organizational effectiveness in policy development and provide consultation on policy research, analysis, and documentation.

3. Audit Tool Development

Design a continuous control monitoring tool utilizing ACL, or equivalent software, to analyze and query financial and investment-related transactions, and member and retiree data to assess the effectiveness of the respective functions.

4. Function Administration

Reporting, Communication, and other Administration

a. Risk Assessment Re-evaluation & Audit Plan for Year 1 (of contract) & Year 2 (update)

b. Risk Assessment & Audit Plan for Year 3 & Year 4

ATTACHMENT A

CONTRACT FOR GOODS AND SERVICES



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 _____, _____, *(Legal authority to enter into this Contract)* the STATE is authorized to enter into this Contract.
 - F. Money is available to fund this Contract pursuant to:
 - (1) _____, _____, *(Identify state sources)*
 - or (2) _____, _____, *(Identify federal sources)*
- or both, in the following amounts: State \$ _____
 Federal \$ _____

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

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

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

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

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

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

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

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

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

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

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

(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 - S1

**STATE OF HAWAII
SCOPE OF SERVICES**



STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE



STATE OF HAWAII
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)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

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

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

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

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

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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