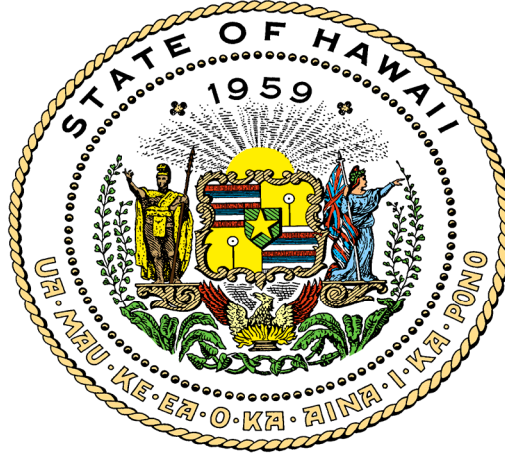


**REQUEST FOR PROPOSALS
(RFP) # ERSP-105,
ACTUARIAL SERVICES,
TERM 2021 – 2026 for**



**Employees' Retirement System
of the State of Hawai'i
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813**

Release Date: March 11, 2021

This Request for Proposal (RFP), is governed under the authority of State of Hawaii Chapters 88 and 103-D, HRS and implementing administrative rules. All changes to this RFP will be issued via an addendum to the RFP and posted to the Employees' Retirement System website (ers.ehawaii.gov/) and Hawaii Awards & Notices Data System State website, (hands.ehawaii.gov). For offers to be considered, require to be hardcopy received at 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813 by 4:00 PM HST on 04/01/2021.

All Offerors are to be duly registered to do business in the State of Hawaii via Hawaii State DCCA (cca.hawaii.gov/resources) and to be compliant in Hawaii Compliance Express (vendors.ehawaii.gov/hce) by the date and time of award. All offerors are required to register in advance with the above authorities in order to be considered eligible for award.

The point of contact for this solicitation is SJ Melendrez, PMO at 808-586-1776, email to: dbf.ers.procure@hawaii.gov (with copies to Steven.Melendrez@hawaii.gov and Larry.Wolfe@hawaii.gov).

Thomas Williams, Procurement Officer
Executive Director

TABLE OF CONTENTS

SECTION 1 ADMINISTRATIVE OVERVIEW		Page
1.1	Background	1
1.2	Purpose	2
1.3	Authority	3
1.3.1	Procurement Officer and Contract Administrator	3
1.4	RFP Organization	4
1.5	Procurement Timetable	5
1.6	Communication with ERS, Prebid & Offeror's Questions	6
1.7	Submission of Proposals	6
1.8	Receipt, Opening and Recording of Proposals.	
	Late Proposals	7
1.9	Best and Final Offer	7
1.10	Mistakes in Proposals	8
1.11	Costs for Proposal Preparation	8
1.12	Disqualification of Proposals	8
1.13	RFP Amendments	9
1.14	Cancellation of Request for	
	Proposals/Rejection of Proposals	9
1.15	Uncertainties Beyond Control of the State	
	or Contractor	9
1.16	Bonds and Insurance Requirements.	9
1.17	Acceptance of Proposal and Contract Execution	10
1.18	Requirements for Doing Business with the State of Hawaii	10
1.19	Debriefing	10
SECTION 2 SCOPE OF SERVICES		
2.1	Introduction	11
2.2	General Requirements	11
2.2.1	Contract Period	11
2.2.2	Scope of Work	11
2.2.3	Compensation	14
2.2.4	Liaison and Authorization to Proceed	15
2.3	Multi-Term Solicitation	15
SECTION 3 PROPOSAL		
3.1	Introduction	16
3.2	Proposal Cover Memo/Corporate Resolution	16
3.2.1	Terms and Conditions	17
3.2.2	Legal Entity	17
3.2.3	Federal Tax ID No.	17
3.2.4	Current Licenses	17
3.2.5	Non-discrimination	17
3.2.6	ERS Approval of Contractor's Recommendations	17
3.2.7	Exceptions to Contract Form	17
3.3	Offeror Background and Experience	19
3.3.1	Offeror Background	19
3.3.2	Offeror Personnel	21

3.4	Availability	21
3.5	References	21
3.6	Confidential or Proprietary Information	22
SECTION 4 PROPOSAL EVALUATION		
4.1	Introduction	23
4.2	Evaluation Organization	22
4.2.1	Evaluation Categories and Thresholds	23
4.3	Phase 1 - Evaluation of Mandatory Requirements (Pass/No pass)	24
4.4	Phase 2 - Establishment of Priority List of Offerors	25
4.5	Phase 3 - Discussions with Priority-listed Offerors	25
4.6	Phase 4 - Submission of Best and Final Offers	25
4.7	Phase 5 - Final Evaluation of Proposals	25
4.8	Phase 6 - Recommendation for Award	25
SECTION 5 CONTRACT FOR GOODS AND SERVICES BASED ON COMPETITIVE SEALED PROPOSALS		26
SECTION 6 EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII EXPECTED CALENDAR OF SERVICES OF ACTUARY CONTRACT		27
SECTION 7 EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII FINANCIAL AND ACTUARY REPORTS		28
ATTACHMENT A, OF-1	OFFEROR'S IDENTIFICATION	OF-1
ATTACHMENT B;	PROPOSAL EVALUATION SHEET	B-1
ATTACHMENT C;	OFFEROR'S MINIMUM QUALIFICATIONS	C-1
ATTACHMENT D;	FEE SCHEDULE	D-1

SECTION 1 ADMINISTRATIVE OVERVIEW

1.1 BACKGROUND

The Employees' Retirement System of the State of Hawaii 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. Since January 1, 1988, member contributions are tax deferred under Section 414(h)(2) of the Internal Revenue Code, and Hawaii Revised Statutes Chapter 88, Pension and Retirement Systems which requires employers to pay for 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.

Full-time employees of State and Counties of Hawaii are extended 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, 1984, 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.

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.

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, 2020, ERS's membership is approximately 148,000 members including approximately 66,750 active members, 9,145 inactive vested members, and 51,153 retirees, beneficiaries and approximately 20,985 terminated non-vested members. There are five employers for the State and county employees, teachers, police officers, firefighters, judges, and elected officials. Net assets totaled approximately \$17 billion.

Effective July 1, 2020, the ERS implemented the Hawaii Domestic Relations Order to make payments to alternate payees. While this requirement impacts, ERS operationally, this requirement is not expected to significantly affect actuarial services covered by this procurement.

The general administration and operation of the ERS is vested in the Board of Trustees. The Board administers the ERS on behalf of public employees of both the State and county governments. Except for limited administrative functions, the State does not have the authority to govern the Board of Trustees in exercise of its functions, duties, and powers. The Board consists of eight members. The State Director of Finance is a statutory member of the Board. Four members of the Board are elected by members and retirants of the ERS and the other three members of the Board are appointed by the Governor. The ERS is not part of the State's financial reporting because it is a separate legal entity that is fiscally independent of the State.

The ERS implemented Governmental Accounting Standards Board (GASB) Statement No. 67, *Financial Reporting for Pension Plans-an amendment of GASB Statement No. 25*. ERS's participating employers implemented GASB Statement No. 68, *Accounting and Financial Reporting for Pensions, an amendment of GASB Statement No. 27*.

The current ERS actuary assisted the ERS in providing certain information for the related GASB 68 reporting requirements for the component units of the participating employers, and the actuary awarded services under this procurement will continue to assist the ERS in providing such information for participating employer units. Although the ERS is facilitating the actuary related services for employers to help meet their reporting requirements (such as GASB 68), the participating employers are required to make payment to the ERS for these services, before ERS pays the actuary for individual employer related services.

Information about the ERS is available on the ERS's website at <http://ers.ehawaii.gov>. Refer to Section 7, *Financial and Actuary Reports* for more information on required reports issued.

1.2 PURPOSE

The ERS is soliciting proposals for qualified firms to provide actuarial services. ERS will be providing a single, multi-year award to one (1) firm. In order for the Offeror firm to be considered for award, the actuarial consulting firm is required to be in business for a minimum of five (5) years and have a minimum of three (3) statewide, multi-employer public pension fund clients of similar size, scale, and complexity of the ERS or larger. Offeror is required to have a minimum of three (3) clients which has assets totaling \$10 billion with a membership greater than 100,000.

The ERS will award a contract for a full range of actuarial services, for term from July 1, 2021 to June 30, 2026, including the following:

- a. Annual actuarial valuations and related required reporting for GASB Statement No 67. *Financial Reporting for Pension Plans, an amendment of GASB Statement No. 25* for five (5) years, for fiscal years ending June 30, 2021 to June 30, 2025.
- b. An annual stress test of the pension trust fund.
- c. Provide various cost studies as part of the annual services. (Note: Ten (10) cost estimate studies per year are to be included in the annual service fee.)
- d. Provide advice and recommendations of proposed State and Federal enactments.
- e. Provide additional assistance to the ERS as may be required for the effective administration thereof.
- f. Two (2) experience studies, that are required every three (3) years, as of June 30, 2021 and June 20, 2024.

At ERS's option, services may also include preparing reports for the participating employers/component units to assist the units to meet the requirements of GASB Statement No. 68, *Accounting and Financial Reporting for Pensions, an amendment of GASB Statement No. 27*, that are based on ERS's annual actuarial valuations for the fiscal year ending June 30, 2021 to June 20, 2025

This procurement include three (3), one (1) year option periods, as follows.

- The first option period is from July 1, 2026 to June 30, 2027, to include required reporting for ERS's fiscal year ended June 30, 2026, as discussed above in items (a) to (e).
- The second option period is from July 1, 2027 to June 30, 2028, to include required reporting for ERS's fiscal year ended June 30, 2027, as discussed above in items (a) to (e) and item (f) the experience study required as of June 30, 2027.
- The third option period is from July 1, 2028 to June 30, 2029, to include required reporting for ERS's fiscal year ended June 30, 2028, as discussed above in items (a) to (e).

The requisite services are described in Specification Section 2.

1.3 AUTHORITY

This Request for Proposals (RFP) is issued under the provisions of Chapters 88 and 103-D, HRS, and implementing administrative rules (Administrative Rules or “HAR”). 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.

1.3.1 Procurement Officer and Contract Administrator:

This RFP is issued by the Employees’ Retirement System of the State of Hawai’i. 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 Hawai’i
City Financial Tower
201 Merchant Street, Suite 1400
Honolulu, HI 96813
Telephone: (808) 586-1776, Fax: (808) 586-1677

1.4 RFP ORGANIZATION

The RFP is organized into the following sections:

Section 1	Administrative Overview -- Provides offerors with general information on the objectives of this RFP, procurement schedule and 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 offeror’s proposal.
Section 4	Proposal Evaluation -- Provides the proposals evaluation process.
Section 5	State of Hawaii, Contract Agreement for Goods, and Services Based on Competitive Sealed Proposals, identifies the terms and conditions under which the requisite services will be performed.
Section 6	Expected Calendar of Services
Section 7	ERS Financial and Actuary Reports

1.5 PROCUREMENT TIMETABLE:

Offerors are notified the dates below are estimated by the State for this project and are subject to change at the State's discretion (all times are Hawaii Standard Time (HST)). Schedule revisions will be issued via an addendum to this RFP and posted in ERS website, (<https://ers.ehawaii.gov>) and State website, Hawaii Awards & Notices Data System, (HANDS), (<https://hands.ehawaii.gov/hands/>).

Activity	Scheduled Date
RFP Release	March 11, 2021
Pre-Bid Offeror Virtual Conference (TEAMS)*	March 18, 2021
Offeror questions due via email *	March 23, 2021
ERS response to vendor questions*	March 29, 2021
Solicitation Closing, Proposals & Offers Received by**:	April 12, 2021 by 4:00
Proposal judging	April 12 – April 18, 2021
Discussion/presentations of priority offerors	April 19 – April 22, 2021
Best and final offers due, ***.	April 29, 2021 by 4:00
Notice of Award.	June 01, 2021
Contract start date	July 01, 2021
Contract end date	June 30, 2026

Priority listed offerors selected in accordance with Section 4 of this RFP may be asked to make a virtual presentation via TEAMS per Procurement Timetable and to provide question and answer session(s). Selected priority listed offerors will be contacted by ERS Procurement via email to schedule a specific time for the presentation and Question & Answer sessions.

ERS Procurement may exercise the Best and Final (B&F) option to make final determination of an Awardee of the RFP. But offerors are advised that their first offer may be considered their “Best and Final” due to a Best and Final option may not be exercised by the State.

If an Offeror is asked to provide a Best and Final Offer concerning this RFP, Offeror is to provide their Best and Final Offer per Section 1.9

*: See Section 1.6 for information on Pre-Bid Conference and Offeror's questions.

** : See Section 1.7 for information on Submission of Proposals

***: See Section 1.9 for information on Best and Final Offers.

1.6 COMMUNICATION WITH ERS, PRE-BID and OFFEROR'S QUESTIONS:

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

a. Prebid and Offeror's Questions

Interested Offeror's are to email to the below their company name and their contact information in order for their firm to be placed on the ERS Prebid virtual TEAMS conference list. A TEAMS link to the virtual meeting will be emailed to the requester's email address one (1) day prior to the day of the meeting. Requester's are to click the link or copy/paste the link information in any standard internet browser to join the meeting. Offeror's are not required to have TEAMS application on their computer, the TEAMS meeting invite, access, and participation is thru a standard internet browser.

Prebid Meeting schedule and Question/Answer schedule are listed in RFP Section 1.5, Procurement Timetable. All emails are to be sent to db.ers.procure@hawaii.gov with cc to steven.melendrez@hawaii.gov and larry.wolfe@hawaii.gov, whom are the sole points of contact for this RFP. The State's responses to Offeror's questions to be posted via an addendum in RFP posted to ERS website (<https://ers.hawaii.gov>) and to the Hawaii Awards & Notices Data System website, (hands.hawaii.gov/hands).

1.7 SUBMISSION OF PROPOSALS

Offerors shall carefully examine the solicitation, amendments (if any), contract forms, ancillary documents, pertinent laws, and rules, before submitting a proposal. The submission of a proposal constitutes a warranty and representation that the offeror has made a careful examination of the RFP, terms, conditions of the specification and agrees with same. If any information in the Offeror's proposal is deemed by the Offeror to be confidential, proprietary, or restricted, the pages thereof shall be clearly identified as such and placed in an area of the proposal which permits easy extraction from the remainder of the proposal, (note: pricing information is not confidential per State requirements). Qualified Offeror's may submit one (1) proposal only, alternate proposals will not be accepted.

a. Proposal Documents Assembly:

One (1) unbound master proposal (so marked) with single sided print, and fourteen (14) double sided printed copies in three ring binder with sectional dividers. The first page in the binder shall be the Cover Memo/Corporate Resolution with notary attachment. Followed by Attachments A, C and D, followed by the Offeror's company Profile and other proposal items as requested in this RFP.

**Request for Proposals, (RFP) # ERSP-105 for
Actuarial Services, Term 2021 – 2026**

**Employees' Retirement System of the State of Hawai'i
201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813**

The Offeror's Company Name, Address and Contact person information is to be located on the outside end of each binder

b. Proposals Shipping Assembly:

Offeror is to clearly identify on the outside of their sealed Proposal shipping package the following:

**Request for Proposals, (RFP) # ERSP-105 for
Actuarial Services, Term 2021 – 2026,
Offer due April 12, 2021 by 4:00 pm HST.**

Proposals are to be delivered to:

**Employees' Retirement System of the State of Hawai'i
201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813**

A copy of the proposal is to be submitted on CD or usb drive in PDF format with bookmarks correlated to the sectional dividers in the hardcopy binders.

1.8 RECEIPT, OPENING AND RECORDING OF PROPOSALS; LATE PROPOSALS

Proposals may be evaluated by a Committee of Procurement designated professionals who will evaluate the Offeror proposals per the requirements of this RFP?

Proposals and modifications will be time-stamped upon receipt at ERS and held in a secure place by the Procurement Officer until the established opening date, then shall be opened and accounted for.

Proposals may be modified or withdrawn prior to the deadline for submission of proposals by the following and submitted via same method as proposal hardcopy submittals.

- **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 and recorded thereof per State procedures. Upon proposals receipt a register shall be generated, prepared by procurement officials which shall include: Officials names, Date/Time of proposal received, Offeror company name, address of the Offeror, Offeror's point of contact, number of modifications received and if shipping package was sealed or open.

Any notice of withdrawal, notice of modification of a proposal with the actual modification, or any proposal received by the Procurement Officer after the date and time set for solicitation closing shall be considered late and is ineligible for consideration.

An offeror may withdraw and resubmit a proposal prior to the final submission date. No withdrawals or re-submissions will be allowed after the RFP closing due date and time, per Procurement Timetable.

1.9 BEST AND FINAL OFFER

If the State elects to pursue a Best and Final Offer from priority listed offerors, the Offeror company shall be notified by email to prepare and provide a Best and Final offer which is to be emailed to dbf.ers.procure@hawaii.gov, copied to Steven.Melendrez@hawaii.gov and Larry.Wolfe@hawaii.gov, and received by the State per the Procurement Timetable in Section 1.5. If an Offeror does not submit a Best and Final offer, their initial proposal shall be considered their Best and Final Offer.

1.10 MISTAKES IN PROPOSALS

Mistakes shall only be corrected up to award of contract per HAR 3-122. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer will request the offeror to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn per HAR 3-122.

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

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

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

1.11 COSTS FOR PROPOSAL PREPARATION

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

1.12 DISQUALIFICATION OF PROPOSALS

The ERS reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and when the Offeror demonstrates an understanding and acceptance of the scope of work, terms, and conditions. Proposal offering which introduce any other set of terms and conditions, not specified in this RFP, may be disqualified without further notice.

An offeror will be disqualified from consideration 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 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 a contract pursuant to an award, or provisions contrary to those specified in this solicitation.
- The delivery of the proposal after the deadline specified in the timetable.
- The offeror being in arrears on existing contracts with the State or having defaulted on previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated or references thereof.

1.13 RFP AMENDMENTS

The State reserves the right to amend this RFP any time prior to the due date and time. Amendments shall be posted in this on ERS website, (<https://ers.ehawaii.gov>) and on Hawaii Awards & Notices Data System (HANDS)., (<https://hands.ehawaii.gov/hands>).

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 State.

1.15 UNCERTAINTIES BEYOND CONTROL OF THE STATE OR CONTRACTOR

The State recognizes that circumstances beyond the control of the State or contractor 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 State reserves the right to modify the requirements of the RFP to address such circumstances if the contractor clearly identifies the circumstances and provides amiable solution.

1.16 BONDS AND INSURANCE REQUIREMENTS:

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

Offeror's shall carry a general liability insurance of \$2 M per State requirements. Awardee shall also carry Errors and Omission insurance and list the Employees' Retirement System of the State of Hawaii, located at Employees' Retirement System of the State of Hawaii, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813 as additional insured. Awardee shall submit the additional insured binder to ERS upon notice of award.

1.17 ACCEPTANCE OF PROPOSAL AND EXECUTION OF CONTRACT

Acceptance of a proposal, if any, will be made within sixty (60) calendar days after the opening of proposals. The Offeror's proposal quote shall be firm and fixed for minimum of (60) calendar days after the proposals receipt date by ERS. The offeror is to place in their proposal package a Cover Memo / Corporate Resolution which states the Offeror has read, understood, and agrees with the RFP terms and conditions and has the authority to bind the company resources to provide and perform per the requirements of the specifications. The ERS shall be the sole judge of Offeror's capability. The successful offeror will be notified by letter that its proposal has been accepted and that the offeror is being awarded the contract.

The ERS shall forward a contract to the successful offeror for signature execution and notarization. The contract shall be signed by the successful offeror, notarized and originals returned with original signatures to the ERS within ten (10) calendar days after receipt, or within such further time as may be allowed, with the additional insured binder.

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

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract within ten (10) calendar days after notice of award, the Procurement Officer may elect to award to the next highest ranked offeror or may reissue the solicitation, if it is determined to be in the best interest of the State.

1.18 REQUIREMENTS FOR DOING BUSINESS WITH THE STATE OF HAWAII

Section 3-122-112, Hawaii Administrative Rules (HAR), requires that, before award of contract may be made, the successful offeror must provide proof of compliance with the requirements of the following chapters of the Hawaii Revised Statutes (HRS), via Hawaii Compliance Express (HCE), (<https://vendors.ehawaii.gov/hce>).

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

The Offerors are to be duly registered to do business in the State of Hawaii, registered through <https://cca.hawaii.gov/resources> and to be Compliant in Hawaii Compliance Express <https://vendors.ehawaii.gov/hce/buyer/search.html> by the date and time of award.

Proof of compliance with the foregoing requirements can be provided through the Hawaii Compliance Express (HCE), (<https://vendors.ehawaii.gov/hce>). HCE provides online instructions in the HCE process. In order for the State to issue an award a company is required to have an HCE Compliance certification. The contractor must maintain such compliance during the term of the contract and for final payment.

1.19 DEBRIEFING:

Non-selected offerors may submit a written request for debriefing to the Procurement Officer within five business days after the posting of the award of the contract. The debriefing will be held, within seven business days after receipt of the request for debriefing by the Procurement Officer. The debriefing will be held virtual via TEAMS. The Offeror is not required to have the TEAMS application, TEAMS can execute with standard internet browsers on Mac's or PC's.

SECTION 2 SCOPE OF SERVICES

2.1 INTRODUCTION

The purpose of the contract resulting from this RFP is to obtain actuarial services relating to the valuation of assets and liabilities of the ERS.

The successful offeror will enter into an contract in substantially the form set forth in Section 5 which will obligate the offeror to provide actuarial services.

2.2 GENERAL REQUIREMENTS

2.2.1 Contract Period

The term of the contract will commence on July 01, 2021, and expire on June 30, 2026.

This procurement includes the option to extend the contract to the Awardee for three one-year periods to continue with work as specified herein per the following options:

- The first option period is from July 1, 2026 to June 30, 2027, to include required reporting for ERS's fiscal year ended June 30, 2026.
- The second option period is from July 1, 2027 to June 30, 2028, to include required reporting for ERS's fiscal year ended June 30, 2027 and experience study then.
- The third option period is from July 1, 2028 to June 30, 2029, to include required reporting for ERS's fiscal year ended June 30, 2028.

The last payment due to the contractor will be issued after the presentation and acceptance of the actuarial valuation for the then ending respective fiscal year, after the contracted materials have been received.

2.2.2 Scope of Work

The contractor shall not bind or purport to bind the ERS for any contractual commitment in excess of the original contract period. Contractor shall comply with all RFQ requirements, applicable State laws and ERS specific policies and procedures.

The contractor will research and use existing information provided by or through the ERS. Existing legal requirements and limitations will be considered in the research, analysis and recommendations provided by the contractor.

The contractor shall:

1. Each year, perform actuarial valuations of the assets, liabilities, and reserves of the ERS commencing with the fiscal year ending June 30, 2021, and determine the contributions required to discharge the liabilities and administrative costs as established by Hawaii's statutes. The valuation report shall evaluate the actual performance of the ERS compared to actuarial assumptions. Actuarial valuations are prepared on a fiscal year basis. The ERS will provide, the required source data in an electronic file. The contractor will review and verify that the information meets the data requirements within fifteen (15) calendar days after receiving the electronic file.

Submit to the Board a report on each actuarial valuation which includes the results of the valuation, and comments on the actuarial condition and progress of the retirement plan. The actuarial valuation must include and be based upon the applicable provisions of Hawaii law, the characteristics and fund experience with respect to covered active members, inactive vested participants, pensioners, beneficiaries, and the assets of the fund. It must include the actuarial assumptions regarding future salary increases and investment earnings, the actuarial methodology, current reporting requirements and disclosure statements as required by the Governmental Accounting Standards Board (GASB). The valuation to provide the anticipated effect of any new legislation bills.

The results of the actuarial valuation are to be presented to the Board of Trustees yearly by December 1. Twenty (20) copies of the report delivered to the ERS before the meeting.

2. Prepare and provide a camera-ready summary report of the annual actuarial valuation for the ERS Comprehensive Annual Financial Report by December 6.
3. Provide actuarial consultation and advisory services on any technical, policy, or administrative problems arising during the course of operations, by meetings, routine telephone calls and written correspondence.
4. On a timely basis, review, provide consultation, and perform certain work in pricing proposed state and federal legislation, and advise on other implications of enacting proposed changes. The contractor to provide approximately ten (10) such cost estimate requests per year.

Review Hawaii Revised Statutes and Administrative Rules as they apply to the ERS and determine required changes needed to comply with actuarial standards.

5. Propose changes to existing Hawaii laws which govern the ERS and assist staff in drafting and reviewing legislation. In addition, assist ERS in developing strategies for resolving any policy or administrative problems associated with implementing new legislation.
6. Complete annual Actuarial Asset and Liability Stress Test reports to the legislature in accordance with Section 93-16, Hawaii Revised Statutes, submitted a minimum of 20 days prior to the state's legislative session which begins on the third Wednesday of each January.

7. Investigate and analyze the actuarial experience of the ERS every three years and include appropriate recommendations with respect to basic actuarial assumptions for use in (a) the annual actuarial valuations and (b) the determination of actuarial factors in the administration of the retirement system. Use of economic and noneconomic assumptions in the Experience Investigation and Analysis (generally are for the recent five-year period) shall include but not be limited to the following: investment yield rates, salary increases, rates of terminations, service retirement rates, mortality before and after retirement, and disability retirement rates.

The actuarial valuation and related data for the five (5) fiscal years ending June 30, 2020, performed by the ERS's current actuary will be made available to the contractor for the actuarial experience study.

- 7.1 For the periods ending June 30, 2021 and June 30, 2024, submit a report to the Board by March 15, 2022, and March 15, 2025, respectively. If the contract term is extended to include the experience study for the period ending June 30, 2027, submit a report to the Board of Trustees by March 15, 2028.
8. Review ERS plan for compliance with applicable Internal Revenue Service qualification requirements. Recommend and assist in implementing changes as required.
9. Provide ERS advice on federal legislation and regulations regarding financing, benefits, vesting, fiduciary responsibility, disclosure, and similar categories. This advice to include, but not be limited to: Internal Revenue Code sections 415, 401(a)(4), 401(a)(9), 401(a)(17), 401(a)(31). And other qualified plan requirements; federal taxation of benefits, withdrawals; GASB standards; and other relevant regulations and standards.
10. Make recommendations to improve the financial and benefit structure of the system and keep the ERS apprised of current trends and progress within the actuarial profession and public sector pension plans and large tax-exempt defined benefit plans.
11. Develop, provide, and maintain assumptions, tables, rates, and factors required by ERS. These include, but are not limited to, actuarial assumptions, mortality tables, present value factors and survivor benefit factors; asset valuation method; amortization schedule for unfunded actuarial accrued liabilities; and the required annual contributions from employers.
12. Consultants personal appearance, at Board meetings, legislative hearings where the contractor's attendance is necessary for discussion of actuarial standards, principles used in determining funding requirements, pricing of legislation, or effective administration of the ERS. The lead consultant on the account should anticipate spending approximately minimum of eight (8) days per year in Hawaii, meeting with the Board of Trustees and ERS staff, or testifying before legislative committees. (Note: This requirement may be altered to virtual attendance as approved by ERS, for requests such as travel restrictions.)
13. Provide an annual comparison of ERS's funded ratio on June 30, of current year with the funded ratios of public employees retirement systems of other jurisdictions.

14. Respond to Requests for Information (RFI's) from ERS's auditors and from State and County governments.
15. Serve on an ongoing basis in an advisory and review capacity and present findings with recommendations as requested. This includes requests for actuarial information for annual reports and bond prospectus.
16. At the request of ERS or upon court order or other valid process, to testify in administrative or judicial proceedings on issues relating to the Actuary's service and valuations.
17. All records relating to the transactions held by the contractor shall be made available to the State or authorized representatives of the State upon request. The computer data maintained on the contractor's computer system on all members of ERS are the property of ERS.

At the request of ERS or on termination or expiration of the contract, the contractor shall destroy any hardcopies or computer copies of the data which it may have and certify to ERS that any such copies have been destroyed. This requirement shall survive the expiration or termination of the contract.

All computer and otherwise data ERS provided to the Awardee are restricted, data is not to be released to outside sources without explicit written consent of the ERS.

18. Provide information and schedules required to meet the Actuarial and Statistical Sections of the ERS's Comprehensive Annual Financial Report.
19. Provide Section 415 limit testing.
20. Make available actuarial and related data for the period covered under this engagement, beginning with the fiscal year ending June 30, 2021, for the ERS's next actuarial experience study.
21. At ERS's request, provide information, schedules, and reports to assist ERS in helping participating employers/component units meet the GASB reporting requirements (such as GASB Statement No. 68), and other financial reporting requirements based on the annual valuations beginning with the fiscal year ending on June 30, 2021. There are currently ten participating employer/component units, the participating employer companies quantities may change based on the participating employers' requirements.

2.2.3 Compensation

Subject to availability of funds, the fixed annual fee shall be paid in equal monthly installments, except for payment for the Experience Investigation and Analysis Report(s) (or Experience Study). The fee for Experience Study shall be included only in the year performed and shall be payable upon completion and acceptance. The contractor shall submit to the State a monthly statement. The

statement shall include the work performed by the contractor in sufficient detail to justify payment. The ERS shall process the invoice for payment in accordance with State requirements, net 30 days after ERS receipt and validation of an acceptable invoice.

Fees for administrative and judicial proceedings will be billed on a monthly basis as incurred. Fees for cost studies in excess of fifty during the contract term will be billed on a monthly basis as incurred. If the contract term is extended, each option year will include ten (10) cost studies or legislative studies as part of the annual fixed fee. Any unused cost studies or legislative studies that are part of the annual fixed fee will carry over to following year and/or contract extension period.

Fees for the employer reporting requirements (such as GASB Statement No. 68) will be billed after completion and acceptance of the work. Although the ERS may facilitate the actuary related services for employers' reporting requirements, the participating employers are required to make payment to the ERS for these services, before ERS pays the actuary for these employer reporting services.

Funds may not be 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.

2.2.4 Liaison and Authorization to Proceed

The ERS Executive Director will serve as the primary liaison with the contractor during the term of the contract. The Executive Director or designee will chair meetings, assist in scheduling, and monitor and assess the contractor's performance. The contractor will send the lead consultant to attend the meetings.

The State does not encourage, and will not in any way be bound by, work performed on behalf of the State without approval by the State. Any work performed by the contractor prior to approval by the State to proceed is done at the contractor's own risk.

2.3 MULTI-TERM SOLICITATION

As indicated by the terms stated in section 2.2.1, this solicitation is for a multi-term contract. The proposed annual firm, fixed fee shall be the same throughout the contract, except to the extent that price adjustment may be provided in this RFP and the resulting contract. The multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect the State's rights or the contractor's rights under any termination clause of the contract. The head of the purchasing agency (HOPA) shall notify the contractor on a timely basis identifying the funds availability or not for the continuation of the contract for each succeeding fiscal period. In the event of cancellation, the contractor will be reimbursed unamortized reasonably incurred nonrecurring costs.

SECTION 3

PROPOSAL

3.1 INTRODUCTION

The offeror shall prepare a written proposal, in a project report, narrative format. 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, the following but not be limited to:

- Proposal Cover Memo/Corporate Resolution.
- Attachments A, C and D of this RFP.
- Background and Experience
- Availability
- Resumes of key personnel assigned to this contract.
- References
- Proposed Fees (Please itemize: (1) annual fee for each year of the contract term; (2) two (2) experience studies for the fiscal year ended June 30, 2021 and June 30, 2024; and (3) other applicable fees. (Itemize amounts for the option periods separately.)
- Sample annual valuation reports, experience study, annual stress tests and reports on GASB Statement Nos. 67 and 68.

3.2 PROPOSAL COVER MEMO / CORPORATE RESOLUTION

The Proposal Cover Memo / Corporate Resolution is to (i) signed by an individual or individuals authorized to legally bind the offeror, (ii) dated, and (iii) affixed with the corporate seal, if any. If the offeror is a corporation, evidence in the form of a certified copy of a corporate resolution or certified copy of articles of incorporation or bylaws shall be submitted showing the individual's authority to bind the corporation. 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. Include attached to the Cover Memo / Corporate Resolution a notary Notarization verification document attesting to the signature on the cover memo/corporate resolution document. The fully executed Proposal Letter is to be submitted along with the proposal.

3.2.1 Terms and Conditions

A statement that the offeror had read, understood, and agrees with the terms, conditions and specifications of the RFP and will comply with the items specified therein. The offeror to include written acknowledgement of receipt of any and all amendments or addenda made to this RFP.

3.2.2 Proposal Cover Memo / Corporate Resolution:

A statement indicating that the offeror is an individual, partnership, limited liability company or a corporation and, if a corporation, partnership, limited liability company or other legal entity, indicating the jurisdiction where the offeror is organized. That the person signing the resolution has read, understood, and agreed to the terms and conditions of the RFP specification and will comply with the items specified therein. The person signing the corporate resolution has the authority to bind and act for the entity submitting a response to the RFP. Include attached to the Cover Memo / Corporate Resolution a Notarization verification document attesting to the original signature on the cover memo/corporate resolution document. The fully executed Proposal Cover Memo with notarization shall be submitted on the cover of the Offeror's proposal.

3.2.3 Federal Tax ID No.

The Offeror shall provide their Federal tax identification number on form OF-1.

3.2.4 Compliance

3.2.4.1. Licenses

The offeror shall maintain all active and current licenses or registrations necessary to provide the services and a statement of the offeror's specialty areas. Offeror shall provide copies of credentials, licenses, and certifications in the Offeror's proposal.

3.2.4.2. State Compliance:

In order to be considered for award the offeror shall be duly registered to do business in the State of Hawaii via Hawaii Department of Commerce and Consumer Affairs website:

<https://cca.hawaii.gov/resources/>. And shall have a Certificate of Compliance from Hawaii Compliance Express (HCE), stating company is compliant <https://vendors.ehawaii.gov/hce>. **Non-compliance in any category of HCE certificate constitutes Offeror ineligible for award.**

3.2.4.3. No Sub-Contracting or Assignment:

Offeror shall provide a statement the specified work in the RFP will not be subcontracted or assigned.

3.2.4.4 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.

3.2.4.5 ERS Approval of Offeror's Recommendations

A statement that the offeror understands that the ERS reserves the right to disapprove Offerors policies without penalty when they conflict with the interest of the ERS.

3.2.4.6 Exceptions to Contract Form

Offeror may request a statement of any requested changes or modifications to the RFP sample contract prior to RFP due date. The ERS reserves the right to decline any requested changes or modifications to the sample contract and to not consider any changes or modifications not requested in writing. Exceptions requested after the RFP due date for Offeror's proposal may be grounds for disqualification from participation in the proposal evaluations and contract award.

3.3 OFFEROR BACKGROUND AND EXPERIENCE

The ERS intends to retain a firm which it determines to possess the qualifications, resources, and commitment necessary to engage in a productive relationship with the ERS. The firm shall meet all of the following minimum qualifications, as of the date of the proposal and maintain same throughout the contract term:

- (a) The firm shall have a minimum of three (3) statewide, multi-employer public pension fund clients and have been in business for a minimum of five (5) years.
- (b) The primary consultant assigned to the ERS account shall have a minimum of ten (10) years' experience providing actuarial consulting services to public and/or private pension plans and shall be a member of the American Academy of Actuaries. This experience must include general consulting, experience analysis, and valuation assignments for such funds. This person must also have experience in testifying before legislative and administrative bodies in support of actuarial positions and the principles used in valuing a public retirement system or pricing legislation, and an ability to discuss in terms the following: actuarial theory; basis for assumptions; and other actuarial matters.
- (c) The firm's experience to include providing actuarial consulting services to a minimum of one defined benefit client, other than the ERS, with assets totaling a minimum of \$ 10 billion and with a membership of a minimum of 100,000 persons.
- (d) Professional staff assigned to the ERS account shall have a minimum of five (5) years' experience in the field of actuarial science and will include persons with appropriate professional credentials such as Fellow or Associate of Society of Actuaries, and/or Fellow of the Conference of Actuaries in Public Practice, and/or Member of the American Academy of Actuaries, and/or meet standards of a qualified actuary under the provisions of the Employee Retirement Income Security Act of 1974, as amended. Copies of said credentials Offeror shall provide a copy in their proposal submittal.
- (e) All services to be provided with respect to the ERS account shall be in accordance with generally accepted actuarial principles, and best practices.
- (f) The firm shall carry and maintain a General Liability Insurance Policy of \$ 2 M minimum per State of Hawaii standards, naming Employees' Retirement System as an additional insured on its binder and shall have, maintain Errors and Omissions insurance.

The Offeror Background and Experience subsection shall include details on the background of the offeror, and explicit details of offeror's experience relevant to the proposed contract, including a list of recent clients and transactions.

3.3.1 Offeror's Background:

The Offeror's Background and Experience subsection in offeror's proposal to include but not be limited to:

- Name of offeror with entity business type.
- Address of headquarters and all branch offices.
- Ownership structure, including any parent, affiliated companies, and joint ventures.
- A copy of the offeror's most current audited financial statements and tax return.
- Year of formation and consulting services rendered.
- Number of accounts and total assets for offeror's clients according to public, corporate, Taft-Hartley, endowment, and other as of June 30, 2020. Identify how many accounts and clients are tax-exempt clients and public pension funds.
- The number of clients and related assets gained and lost over the last five (5) years. Include explanation of accounts lost.
- Organizational chart of the pension actuarial department and how offeror is organized to provide services to the ERS.
- The number of accounts handled by each actuarial employee.
- Sources of revenue generated and percentage of total revenues.
- Description of offeror's actuarial philosophy.
- Offeror's specialties, strengths, and limitations.
- What sets offeror's services apart from other public pension fund actuaries?
- Has the offeror or any officer or principal of offeror been a defendant in litigation or regulatory action relating to consulting and/or actuarial activities in the last five (5) years? If so, describe and explain the circumstances and current status.
- Within the past five (5) years, have there been any significant developments in offeror such as changes in ownership, restructuring, or personnel reorganizations? Does offeror anticipate future significant changes in offeror business structure?
- What services, if any, does offeror or any affiliate(s) provide in addition to actuarial services? What is the total revenue generated for offeror by actuarial services? What percentage does this represent of offeror's total revenues?

- What bonding and liability insurance does offeror maintain? Describe levels of coverage for errors and omissions and fiduciary or professional liability insurance. Provide insurance carriers listing with account number, carrier, insurance type and amount.
- Detail any financial relationships which exist with affiliated or other organizations. Does offeror provide any services for which it is compensated by these organizations? If so, describe in detail, including the managers, products and services provided.
- Are there any potential conflict of interest issues offeror would have in providing services to the ERS? If so, describe them.
- Describe offeror's policies and procedures to prevent possible conflicts of interest:
 - a) With other client interests.
 - b) Which may result from other actuarial products or services provided by offeror or affiliate organizations.

3.3.2 Offeror's Personnel

- Offeror to provide a detailed organizational chart.
- Identify all principals of offeror that are active in offeror's actuarial consulting activities. Include the length of their experience in advising pension funds, any specialty or expertise, attach professional certifications to the resume of the individual and list highest educational degree/professional designation attained.
- List the names and locations of personnel who would be responsible for the ERS account (include the Primary Consultant and the Secondary Consultant). Include their biographies, including their titles, functions, length of experience in pension actuarial services, other clients for whom such individuals provide services, any specialty expertise they possess, and the educational degrees and professional designations they have attained.
- Identify and explain the role of other professional personnel in offeror's functions. Include biographies on those who would provide services to ERS.
- Please explain how the team dedicated to the ERS account would function and how they would allocate their time to other clients.
- Describe offeror's back-up procedures in the event that key personnel assigned to this account should leave the firm.
- What policies are in effect to control workload? Is there a limit on the number of accounts that an individual may handle? What is the average number of clients per consultant within the consultant unit(s) of the firm?
- Provide turnover rates for professional staff in the last five (5) calendar years'

3.4 AVAILABILITY

Describe the offeror's availability and include a discussion of any conflict of interest the offeror may have in providing the services described in this RFP and any problems or concerns that the offeror wishes to bring to the State's attention. OFFERORS SHOULD NOTE THAT CONFLICTS OF INTEREST MAY REQUIRE OFFEROR TO BE INELIGIBLE FOR AWARD CONSIDERATION..

3.5 REFERENCES

Offerors shall have the experience, credentials, and resources to perform the work contained in this RFP of which the Offeror is applying for award candidacy consideration. Offeror to provide at a minimum of three (3) references, including the name, phone number and address of the company or agency, and a person to contact at the reference.

List references for defined benefit pension fund clients with assets of a minimum of \$ 10 billion and a membership of 100,000 for whom the Offeror serves as the primary actuary.

The ERS may verify and evaluate relevant references to determine the following:

- Has the offeror been responsive to clients?
- Has the offeror been timely in meeting contractual obligations?
- Has the offeror adhered to contractual requirements?

3.6 CONFIDENTIAL OR PROPRIETARY INFORMATION

The offeror shall clearly identify and designate those portions of the proposal that may contain, restricted, confidential, trade secrets or other proprietary data that the offeror requests to remain confidential. The material designated as confidential shall be identified as such and available to be readily separable from other proposal response documents in order to facilitate removal of the confidential section so that the document may be made available for public inspection of the nonconfidential portions of the proposal. The entire proposal under Hawaii law cannot be considered confidential. The fee proposal is not considered confidential.

SECTION 4 PROPOSAL EVALUATION

4.1 INTRODUCTION

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

4.2 EVALUATION ORGANIZATION

An Actuary Selection Committee shall review and evaluate the proposals submitted by the schedule specified in this RFP Procurement Timetable.

The evaluation will be conducted in six phases:

- Phase 1 - Evaluation of Mandatory Requirements
- Phase 2 - Establishment of Priority List of Offerors
- Phase 3 - Discussions with Priority-listed Offerors
- Phase 4 - Submission of Best and Final Offers, (if/as required)
- Phase 5 - Final Evaluation of Proposals
- Phase 6 - Award

4.2.1 Evaluation Criteria

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

- Background and experience - Similar work performed with other public pension funds including credentials, references, organizational strengths, and independence.
- Key Personnel - Education and experience. The evaluation of the organization and staffing will involve evaluating the offeror's overall staffing approach, qualifications of key personnel, and past performance of the organization and the individuals. References for individuals to be assigned to this account may be verified and findings incorporated into the evaluation of this section. Reference checking is not limited to those references supplied by the offeror.
- Communication - Reporting format and clear client servicing.

- Fees * -- Evaluations will be based on the offeror's proposed annual fixed fee and fees for two actuarial experience studies. The proposed annual fee shall include travel, taxes, and all expenses. Rates and charges for administrative and judicial proceedings must be provided but will not be included in the evaluation. Rates and charges for the optional GASB 68 employer reporting requirements must be provided but will not be included in the evaluation.

Rates and charges for the option years shall be provided by Offeror in Section D, Fee Schedule but will not be included in the cost portion of the award consideration evaluation.

*Formula for determining allocation of points for fee includes Total Fees for five (5) years services from July 1, 2021 to June 30, 2026 plus two (2) experience studies:
allocated points =

$$\frac{(\$ \text{ amount of the lowest fee proposal} \times \text{number of points for scoring phase})}{\$ \text{ amount of the fee proposal being evaluated}}$$

- Proposal - Clarity and responsiveness to RFP requirements. Has the offeror demonstrated an understanding of the nature and extent of the services the ERS expects? Has the offeror demonstrated an understanding of ERS's time schedule and expected on time completion?
- Financial Stability -- The ERS will evaluate the financial condition of the offeror to determine whether, in its opinion, the offeror has sufficient financial resources to meet all terms of the contract. Specifically, the proposal will be evaluated against the following criteria:

Has the offeror submitted audited financial statements and the contents and opinions in these financial statements?

Does the offeror possess sufficient financial resources to complete the contract?

4.3 PHASE 1 – EVALUATION OF MANDATORY REQUIREMENTS

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

The mandatory requirements, in addition to the minimum qualifications listed in Attachment B, are:

Proposal

- Proposal Cover Memo/Corporate Resolutions.
- Offeror's Background and Experience (including work with similar public agency of size, scope, and complexity of ERS.
- Availability
- Resumes of key personnel who will be assigned to the contract.
- References
- Schedule of Services, and proposed Fees
- Attachments A, C and D.

4.4 PHASE 2 - ESTABLISHMENT OF PRIORITY LIST OF OFFERORS

All offerors who pass Phase 1, Evaluation of Mandatory Requirements, shall be classified as "acceptable." "Acceptable" offers will be evaluated on the criteria in section 4.2.1. If there are more than three "acceptable" offerors, then an Actuary Selection Committee may evaluate proposals. A priority list of acceptable offerors shall be established and limited to no more than three (3) offerors who received the best preliminary evaluations.

4.5 PHASE 3 - DISCUSSIONS WITH PRIORITY-LISTED OFFERORS

During the course of this phase, the Actuary Selection Committee may conduct discussions with the priority-listed offerors via TEAMS virtual meetings per Section 1.5. However, ERS may accept proposals without discussions.

4.6 PHASE 4 - SUBMISSION OF BEST AND FINAL OFFERS

The priority-listed offeror's best and final offer must be received by the Procurement Officer per Procurement Timetable, Section 1.5. If a best and final offer is not requested by ERS, the Offeror's previous submittal will be deemed to be the best and final offer. After best and final offers are received, final evaluations will be conducted for an award.

4.7 PHASE 5 - FINAL EVALUATION OF PROPOSALS

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

4.8 PHASE 6 – RECOMMENDATION FOR AWARD

Final selection schedule is stated in Procurement Timetable. Section 1.5.

SECTION 5

CONTRACT EXAMPLE FOR GOODS OR SERVICES BASED ON COMPETITIVE SEALED PROPOSALS



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

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

RECITALS

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

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

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

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

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

F. Money is available to fund this Contract pursuant to:
(1) _____
(Identify state sources)
or (2) _____
(Identify federal sources)
or both, in the following amounts: State \$ _____
Federal \$ _____

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number _____ ("RFP") 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.
Employees' Retirement System of the State of Hawaii

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

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

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION



STATE OF HAWAII

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

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

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

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



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

Table of Contents

Page(s)

1.	Coordination of Services by the STATE	2
2.	Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3.	Personnel Requirements	3
4.	Nondiscrimination	3
5.	Conflicts of Interest	3
6.	Subcontracts and Assignments	3
7.	Indemnification and Defense	4
8.	Cost of Litigation.....	4
9.	Liquidated Damages	4
10.	STATE'S Right of Offset.....	4
11.	Disputes	4
12.	Suspension of Contract.....	4
13.	Termination for Default.....	5
14.	Termination for Convenience	6
15.	Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16.	Costs and Expenses	8
17.	Payment Procedures; Final Payment; Tax Clearance	9
18.	Federal Funds	9
19.	Modifications of Contract.....	9
20.	Change Order.....	10
21.	Price Adjustment	11
22.	Variation in Quantity for Definite Quantity Contracts	11
23.	Changes in Cost-Reimbursement Contract.....	11
24.	Confidentiality of Material	12
25.	Publicity.....	12
26.	Ownership Rights and Copyright	12
27.	Liens and Warranties	12
28.	Audit of Books and Records of the CONTRACTOR.....	13
29.	Cost or Pricing Data	13
30.	Audit of Cost or Pricing Data	13
31.	Records Retention.....	13
32.	Antitrust Claims.....	13
33.	Patented Articles.....	13
34.	Governing Law	14
35.	Compliance with Laws	14
36.	Conflict between General Conditions and Procurement Rules	14
37.	Entire Contract.....	14
38.	Severability	14
39.	Waiver	14
40.	Pollution Control	14
41.	Campaign Contributions.....	14
42.	Confidentiality of Personal Information.....	14

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.

SECTION 6

EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII EXPECTED CALENDAR OF SERVICES UNDER ACTUARY CONTRACT

The timeframe for processing the 2021 experience study is:

- *Upon Contract Signing (start date July 1, 2021): ERS provides member information files.*
- *March 2022 Final Experience Study presented to ERS Board of Trustees*

The general timeframe for processing the annual actuarial valuation report is:

- *Late-June: ERS provides member information files.*
- *End of August: Draft ERS Financial Data provided by ERS.*
- *Mid-late September: Draft Actuarial valuation tables based on data received presented to ERS staff.*
- *Early October: Final financial data provided by ERS.*
- *Early November: Draft Actuarial valuation report presented to ERS Staff.*
- *December 1: Final Actuarial valuation report presented to Board of Trustees.*

SECTION 7

EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII

FINANCIAL AND ACTUARY REPORTS

Information about the ERS are available on ERS's website at <https://ers.ehawaii.gov/>.

The following are located at "Financials" <https://ers.ehawaii.gov/resources/financials>.

1. Comprehensive Annual Financial Reports.
2. Annual Actuarial Valuations.
3. Actuarial Experience Study.
4. GASB Statement Nos. 67 and 68 Reports.

The following are located at "Reports to Legislature" <https://ers.ehawaii.gov/resources/reports-to-legislature>.

5. Actuarial Stress Test

ATTACHMENT A, OF-1
OFFEROR'S IDENTIFICATION

Procurement Officer
Employees' Retirement System
201 Merchant Street, Suite 1400
Honolulu, HI 96813

Dear Procurement Officer:

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

Offeror is:

☐ Limited Liability ☐ Corporation ☐ Limited Partnership ☐ Non-profit Org.

☐ Other: _____

State of Incorporation: _____

Federal Employer ID No.: _____ Hawaii G.E. Tax No.: _____

Payment Address (if different from business address): _____

City: _____ State: _____ Zip Code: _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

Respectfully submitted,

Date: _____

Signature of Authorized Official *

Telephone #: _____

Fax # (if available): _____

Name and Title of Authorized Official

E-mail Address: _____

*Legal Name of Offerer Company

* Furnish the exact legal name of the entity under which the awarded contract will be executed and include a ** Notary's Notarization verification page attesting to the authenticity of the signature placed on this document. .

ATTACHMENT B

PROPOSAL EVALUATION SHEET

Evaluator:

The proposal evaluation process shall be conducted as follows:

The proposals will be evaluated based on the categories below. The information provided in response to the RFP will form the basis for the award.

Phase 1, Minimum Requirements, Establishment of Priority listed offerors:

		Points
A.	Background and Experience	20
B.	Key Personnel	25
C.	Communication	20
D.	Fees	5
E.	Proposal	5
F.	Financial Stability	15

Phase 2, Evaluation of Proposals:

		Points
A.	Background and Experience	20
B.	Key Personnel	25
C.	Communication	20
D.	Fees	30
E.	Proposal	5
F.	Financial Stability	5

Phase 3. Best and Final Offer (BAF) Proposals:

(State may elect to utilize a BAFO process but Is not obligated to).

Offeror's are advised their first offer may be their best and final offer.

		Points
A.	Background and Experience	20
B.	Key Personnel	25
C.	Communication	20
D.	Fees	30
E.	Proposal	5
F.	Financial Stability	5

Signature of Evaluator

Date

ATTACHMENT C

OFFEROR'S MINIMUM QUALIFICATION EXPERIENCE CERTIFICATION

All Offerors are required to complete this Attachment.

The undersigned hereby certifies that the firm identified below (the "Actuarial firm") meets all of the following minimum compliance experience qualifications. Please elaborate and provide in the Offeror's Proposal detailed experience, including describing the work Offeror provided to the below noted clients. Noting scope, scale, complexity cost, time of contract and names of Offeror's key contacts involved in contract support to the below noted clients, (attach additional documents).

1. The Offeror's firm has a minimum of five of (5) years' experience in providing actuarial services. Has three (3) statewide, multi-employer public pension fund clients of similar scope, scale, and complexity as Employees' Retirement System or larger.

Yes _____ No _____

1.1 Identify Clients referenced above that the ERS may contact to verify experience.

Company Name	Point of Contact	Address	Telephone # Email address
--------------	------------------	---------	---------------------------

a. _____

b. _____

c. _____

2. The Offeror's firm lead consultant assigned to the ERS account shall be an Actuary Subject Matter Expert (SME) with a minimum of ten (10) years of professional experience in providing actuarial consulting services to government, multi-employer public pension funds of similar scope, scale, and complexity of the Employee's Retirement System, or larger and is a member of the American Academy of Actuaries. This experience includes general consulting, experience analysis, and valuation assignments for such funds. This person shall also have proven experience in successful testifying before legislative and administrative bodies in support of actuarial positions and the principles thereof in valuing a public retirement system or pricing legislation and the ability to discuss details of the following: actuarial theory; basis for assumptions and other actuarial matters. Offeror to provide in their submittal proposal a full description of the Lead Consultant's capabilities, credentials, and copies of certifications.

Yes _____ No _____

3. The firm's experience to include providing actuarial consulting services to a minimum of one defined benefit client, other than the ERS, with assets totaling a minimum of \$ 10 billion and with a membership of a minimum of 100,000 persons.

Yes _____ No _____

4. Professional staff assigned to the ERS account have a minimum of five (5) years' experience in the field of actuarial science and are persons with appropriate professional credentials such as Fellow or Associate of Society of Actuaries, and/or Fellow of the Conference of Actuaries in Public Practice, and/or Member of the American Academy of Actuaries, and/or meeting standards of a qualified actuary under the provisions of the Employee Retirement Income Security Act of 1974, as amended. Offeror to provide in their submittal proposal a full description of their Professional Staff's capabilities, credentials, and copies of certifications.

Yes _____ No _____

5. All services to be provided with respect to the ERS account shall be in accordance with generally accepted actuarial principles, processes, procedures, and best practices.

Yes _____ No _____

6. Does the Offeror's firm carry general liability insurance, in the value of \$ 2 M and Errors and Omissions insurance, as such it is required to be in full force for the duration of its contract with the ERS. Awardee shall include the Employees' Retirement System as Additional insured on their General Liability insurance policy. Offeror shall include a copy of their Insurance binder in the Offeror's proposal submittals.

Yes _____ No _____

Authorized Signature

Date

Title

Name of Firm

ATTACHMENT D
FEE SCHEDULE

Offeror shall submit its fees annontate below according to the following:

Term:

July 1, 2021, through June 30, 2026.

Condition:

This fee quotation is all-inclusive of all labor, travel, material costs, taxes and fees, firm and fixed as quoted for the below noted contract period.

D.1. Fees for July 1, 2021 to June 30, 2026

Services July 1, 2021 to June 30, 2026

Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____
A Subtotal Services Year 1 to 5	\$ _____

Experience Studies

Experience Study - Investigation and Analysis for period ending June 30, 2021	\$ _____
Experience Study - Investigation and Analysis for period ending June 30, 2024.	\$ _____
B Subtotal – Two (2) Experience Studies	\$ _____
C GRAND Total Fees for (A) July 1, 2021 to June 30, 2026 plus (B) Two (2) Experience Studies (c = a + b)	\$ _____ =====

In scoring, fees are allocated on the Grand Total Fees in table above in accordance with section 4.2.1 Evaluation Criteria.

Other Services for July 1, 2021 to June 30, 2026

Fees for GASB 68 employer reporting requirements \$ _____

Hourly rate for judicial proceedings. Identify costs included in hourly rate and costs that would be billed in addition to hourly rate. \$ _____

Rate for each cost estimate request which exceeds 50 reports during the term of the contract. \$ _____

D.2. Fees for Option Years July 1, 2026 to June 30, 2029

Services for Option Years

Option Year 1 - from July 1, 2026 to June 30, 2027 \$ _____

Option Year 2 - from July 1, 2027 to June 30, 2028 \$ _____

Option Year 3 - from July 1, 2028 to June 30, 2029 \$ _____

D Subtotal Services Option Year 1 to 3 \$ _____

Experience Studies

E Option Year 2 Experience Study - Investigation and Analysis for period ending June 30, 2027 \$ _____

F Total for (D) Services Option Years 1 to 3 plus (E) One (1) Experience Studies (f = d + e) \$ _____
=====

Other Services for Option Years July 1, 2026 to June 30, 2029

Fees for GASB 68 employer
reporting requirements

\$ _____

Hourly rate for judicial proceedings.
Identify costs included in hourly rate
and costs that would be billed in
addition to hourly rate.

\$ _____

Rate for each cost estimate request
which exceeds 10 additional reports for
each Option Year during the
term of the contract.

\$ _____

Authorized Signature

Date

Title

Name of Firm