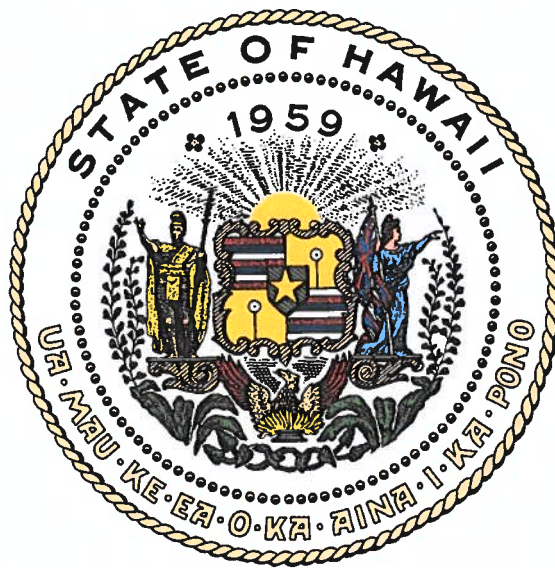


**Employees' Retirement System**  
**of the State of Hawaii**

**REQUEST FOR EXPRESSION OF INTEREST**

**Banking Services - 2024**



## **REQUEST FOR EXPRESSION OF INTEREST TO PROVIDE BANKING SERVICES**

### **Introduction**

The Employees' Retirement System of the State of Hawaii (ERS) is seeking proposals from banks, located within the City & County of Honolulu, to provide banking services. The ERS encourages banks that will offer the highest quality of service and various technological advances that may improve the ERS' banking, cash management and customer service capabilities, to submit a comprehensive response to this request.

The ERS administers a defined benefit retirement plan for State and County government employees of the State of Hawaii. As of March 31, 2023, the ERS' total membership of approximately 155,027 was comprised of 64,244 active members, 54,851 retirees and beneficiaries, 9,006 inactive vested members and 26,926 inactive non-vested members. The number of retirees and beneficiaries that receive ERS pension payments is expected to increase from 1,000 to 2,000 annually. Please refer to the ERS Consolidated Banking Fees Pro forma (Attachment 1) for the ERS' estimated transaction information.

The Annual Comprehensive Financial Report for the ERS is located on the ERS website at: <https://ers.hawaii.gov/resources/financials>.

### **Significant dates**

The significant dates below represent the ERS' best estimate of the anticipated schedule of events. If a component of this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days.

The schedule below sets forth the significant dates and deadlines applicable to this request. The dates are merely estimates and are not binding on the State of Hawaii (State). Nevertheless, by submitting its proposal, each Offeror: a) agrees to complete its proposal in compliance with the dates and deadlines set forth in the schedule below, unless the ERS expressly agrees to modify such schedule; and b) represents and warrants to the ERS that the Offeror has the ability to comply with the schedule below.

Request release date	September 8, 2023
Due date to submit written questions	October 25, 2023
ERS responses to Offeror's questions	November 9, 2023
Closing date for Receipt of Proposals	November 30, 2023 4:30 PM, HST
Oral presentations (optional)	January 24-26, 2024
Best and Final offers due	February 1, 2024
Notice of award	April 1, 2024

### Issuing Office and Contact Person

The ERS contact person for this request is as follows:

Gerri Konishi  
201 Merchant Street, Suite 1400  
Honolulu, HI 96813  
Telephone: 808-586-1705  
Fax: 808-587-5766

Submit all questions via email, with the subject line "EOI Banking Services 2024" to:  
[dbf.ers.investmentprocure@hawaii.gov](mailto:dbf.ers.investmentprocure@hawaii.gov).

### Submission of Proposal

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

Each qualified Offeror may submit only one (1) proposal. Any alternate proposal will not be considered or accepted. The proposal should be labeled "**EOI Banking Services 2024.**"

The proposals should be sent to the ERS contact person listed above. All proposals must be received by 4:30 p.m. (H.S.T.) on November 30, 2023.

Also, each Offeror is required to submit the following items:

- (a) One (1) unbound original hardcopy proposal (marked "Original") with correlated sectional dividers.
- (b) Six (6) bound hardcopies of the proposal with correlated sectional dividers; and
- (c) One (1) electronic copy of the proposal, unencrypted, on a USB drive.

### Contract Term

The ERS intends to execute a three (3) year contract, with the option to renew for two (2) periods not to exceed two (2) years each, on the same terms and at the same price as the original contract.

### Questions and Answers Prior to Opening of Proposal

An Offeror must submit all questions concerning this request in writing, via email only, to the ERS contact person listed above by October 25, 2023, 4:30 p.m., HST. No telephone calls will be accepted. To facilitate a meaningful response, written questions shall reference the page(s), paragraph(s), and line(s) or sentence(s) to which the question relates. The ERS will respond to an Offeror's timely submitted written question no later than November 9, 2023, by issuing an addendum to this request.

### Cancellation of Request and Proposal Rejection

The ERS reserves the right to cancel this request and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the ERS. The ERS shall not be liable for any costs, expenses, loss of profits or damages whatsoever incurred by an Offeror in the event this request is cancelled, or a proposal is rejected. The ERS is in no way obligated to award a contract in connection with this request.

### Responsibility of Offeror

An Offeror is advised that upon award of a contract under this request, the Offeror will be required to be compliant with the following chapters of HRS pursuant to HRS § 103D-310(c):

- Chapter 237, General Excise Tax Law;
- Chapter 383, Hawaii Employment Security Law;
- Chapter 386, Workers' Compensation Law;
- Chapter 392, Temporary Disability Insurance;
- Chapter 393, Prepaid Health Care Act; and
- HRS § 103D-310(c), Certificate of Good Standing for entities doing business in the State.

If the Offeror is not compliant with the above HRS chapters at the time of award, the Offeror will not receive the award. To demonstrate compliance, an Offeror is encouraged to subscribe to Hawaii Compliance Express (HCE). An Offeror who does not participate in HCE may submit paper compliance certificates to the ERS contact listed above.

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the State Department of Taxation, State Department of Labor and Industrial Relations, State Department of Commerce and Consumer Affairs, and Federal Internal Revenue Service.

An Offeror interested in registering with HCE may do so at <https://vendors.ehawaii.gov>, prior to submitting a proposal. The 'Certificate of Vendor Compliance' will be accepted for the execution of contract and final payment.

### Proposal Preparation Costs

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility, whether or not any award results from this request. The ERS and State shall not reimburse such costs.

### Insurance Requirements

The selected Offeror (Contractor) shall maintain in full force and effect during the life of the entire selection term, including all extended periods, if exercised, as described in this request, the following types of insurance: (a) commercial general liability; (b) automobile liability; and (c) commercial crime with the limits specified in the table below. Further the Contractor shall maintain any additional insurance offered to the ERS as part of the Contractor's response to this request.

The minimum insurance required shall be in full compliance with the State of Hawaii Insurance Code throughout the entire selection term, including all extended periods, if exercised, as described in this request. The Contractor agrees to deposit with the ERS certificate(s) of insurance that the ERS has deemed necessary to demonstrate the Contractor has: (i) complied with all the insurance provisions listed in this request; and (ii) kept in force the required level of insurance for the entire selection term, including all extended periods, if exercised, as described in this request, including those of its subcontractor(s), where appropriate. Upon request by the ERS, the Contractor shall be responsible for furnishing a copy of the policy or policies. Failure of the Contractor to provide and keep in force such insurance shall be regarded as a material default under the terms of the awarded contract and this request, entitling the State and/or the ERS to exercise any or all of the default remedies against the Contractor, as provided in the awarded contract and this request.

The procuring of such required insurance shall not be construed to limit Contractor liability hereunder nor to fulfill the indemnification provisions and requirements of this request and awarded contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect conduct connected with this request and awarded contract.

Coverage	Limits
Commercial General Liability	\$1,000,000.00 per occurrence for bodily injury and property damage; \$1,000,000.00 per occurrence for personal and advertising injury; and policy includes products completed/operations with an aggregated limit of \$2,000,000.00.
Automobile Liability	\$1,000,000.00 for bodily injury for each person; \$1,000,000.00 for bodily injury for each accident; and \$1,000,000.00 for property damage for each accident.
Commercial Crime	\$1,000,000.00 for third party liability coverage.
Other types of insurance coverage, if provided	Per Contractor's response – listed in <i>Exhibit XII - Insurance</i> .

The Commercial General Liability and Automobile Liability insurance policies required of the selected Contractor, including any subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days written notice has been delivered to the Employees' Retirement System of the State of Hawaii, 201 Merchant Street, Suite 1400, Honolulu, Hawaii 96813."
2. "The State of Hawaii, the Employees' Retirement System of the State of Hawaii (ERS), and the Employees' Retirement System of the State of Hawaii Board of Trustees are added as additional insured with respect to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii and/or the ERS will apply in excess of, and not contribute with, insurance provided by this policy."

#### Award of Contract

If an award is made, the Contractor will be required to enter into a formal written contract with the ERS. See sample contract in Attachment 3, Contract Form and General Conditions.

## **SCOPE OF WORK**

The ERS deposits and disburses over \$2.3 billion annually through various ERS demand accounts. A majority of these transactions are completed to finance the issuance of pensions. Monthly expenditures are currently in excess of \$150 million and made to over 55,000 retirees and beneficiaries. Monthly benefit payments are expected to increase an average of \$7-\$9 million during each year, such that monthly benefit payments will be in excess of \$200 million each month in approximately seven (7) years. As discussed above, the number of retirees and beneficiaries is expected to increase 1,000 to 2,000 per year.

The ERS operations are expected to require the following demand accounts:

Consolidated in account analysis:

1. Operations Account
2. Pension Receipts Account
3. Pension Disbursements Account

The ERS Operations Account is used for deposit, investment, disbursement and money transfer activities. The ERS Pension Receipts Account is used for deposits and money transfer activities only. The ERS Pension Disbursements Account is used to disburse pension payments, death benefits, refunds to members, tax payments to the federal government, and for transfer activities.

Additional demand accounts may be requested in the future, depending on the ERS' future operational needs. A money market or Investment account may also be requested in the future, depending on the future interest rate environment and the possible need to invest excess short-term funds to earn a higher interest rate than the demand deposit accounts.

## **FORMAT OF RESPONSE**

The ERS is seeking responses to this request for banking services to improve the ERS' operating efficiencies and cost effectiveness. While the format of an Offeror's response must be consistent with the requirements of this request for expression of interest, if an Offeror believes there is additional information that would be beneficial to the ERS, it invites the Offeror to include it in the Offeror's response.

A proposal submitted to the ERS shall include a response to each of the categories noted below.

**Corporate Overview:** Provide a corporate overview of your bank. Identify the number of branches within the City & County of Honolulu, and the nearest full service branch that can assist the ERS with its immediate banking needs. Your bank must have a full service branch in the central business district/downtown area of the City & County of Honolulu.

Identify the number of branches on the islands of Hawaii, Kauai and Maui and provide the address of the branch that is located closest to the county government fiscal office on the respective island listed below:

County of Kauai  
4444 Rice Street, Suite 280  
Lihue, HI 96766

County of Maui  
200 South High Street  
Wailuku, HI 96793

County of Hawaii  
25 Aupuni Street  
Hilo, HI 96720

**Experience:** Describe your bank's experience in providing services to the public sector. Discuss scandals, investigations or charges involving your banking operations, if any.

**Information Technology and Security.** Describe your bank's information technology, systems security, and related operations. Discuss any features or services that are beneficial to the ERS. Complete *Exhibit VII – Information Technology and Security*.

**Financial Strength and Capitalization:** Provide a summary of financial issues and capitalization requirements that have affected your bank since January 1, 2013. Include information on any federal or state subsidies, loans or investments received by your organization during this time and the current status, if applicable.

**Relationship Management:** Describe the relationship team who will be assigned to service the ERS accounts. Describe individual roles and responsibilities and briefly detail credentials and related banking experience. Identify a primary relationship manager who will serve as a central



point of contact, understands the needs of the ERS and will be able to offer recommendations for service improvements.

**FDIC Charges and Floats:** Provide information on applicable Federal Deposit Insurance Corporation (FDIC) charges from January 1, 2013 to date and your bank's availability schedule. Also present any float advantages being offered to the ERS that will cover the ERS' relationship with your bank.

## **1. DISBURSEMENT SERVICES**

- a. **Disbursement Processing:** Your bank must have the capability to process physical checks. Describe your bank's disbursement processing services, and the process or procedures available to help detect and prevent fraud from occurring against ERS bank accounts (*i.e.*, fraudulent checks being mass processed against an account). Include your bank's positive pay services including payee positive pay service (which is payee matching). Also discuss your bank's stop payment services and requirements, and how it relates to the reconciliation process.
- b. **Tax Payment Services:** Your bank must participate in the Electronic Federal Tax Payment System (EFTPS) provided by U.S. Department of Treasury. Describe your bank's services for federal tax payment processing including procedures, deadlines, reporting and reconciliation functions.
- c. **Electronic Payment/Direct Deposit:** Your bank must have the capability to accommodate a wide range of electronic payment and deposit services. Direct deposit and international wire payment services are utilized for the ERS' semi-monthly and monthly pension payrolls, and payment of administrative expenses. Almost all 55,000+ ERS pensioners take advantage of the direct deposit payment mechanism. Only a few pensioners receive payments via international wire transfers. Describe your bank's direct deposit services, and the process or procedures for returned deposits and debit adjustments (*i.e.*, timeliness of adjustments). Describe your bank's international wire payment services and the process or procedures for tracing funds.

The ERS currently does not originate international Automated Clearing House transactions (IAT Transactions) and does not intend to originate IAT Transactions in the near future.

- d. **Daylight Overdraft Protection:** Describe any issues, concerns and charges associated with the use of a daylight overdraft facility. In addition, discuss your bank's overdraft protection or credit facility to buffer the ERS, as a preferred client, from excessive per item charges incurred on overdrafts.

- e. Other Services: Describe your bank's death benefit restitution for overpayments, your bank's restitution for checks that clear the account after their void date, your bank's restitution for forged or altered checks, and your bank's stop payment process and restitution for checks that clear after the issuance of a stop payment request.

## 2. CASH MANAGEMENT

- a. Deposit Processing: Describe how your bank would accommodate the volume associated with ERS accounts. Include information on processes for large deposits: what is considered a large deposit, additional approval processes and expected time-frame from time of deposit to actual reflection in the bank account via your bank portal. Also, include information on your bank's processing of returned and re-cleared items in this section.
- b. Electronic Money Transfers: Describe your bank's incoming and outgoing electronic money transfer services. Include safeguards and security measures offered by your bank, such as Automated Clearing House (ACH) blocking/filtering services.
- c. Collected Balances and Earnings Allowance: Describe your bank's earnings calculations on collected balances and calculation of charges for funds advanced. Provide the rates used for the calculations, by month, from July 2022 to June 2023.
- d. Overnight Sweep Account Facility: The ERS is limited to investments authorized by § 88-119 of the Hawaii Revised Statutes, as amended (HRS). Describe the Overnight Sweep Account offered by your bank. Also include other overnight investment options available to maximize the ERS' earnings potential. Please affirm that the investment options offered by your bank are authorized by and in compliance with HRS § 88-119. If proposing a pooled investment fund, please provide the investment prospectus for the pooled fund, including the monthly earnings rate, by month, from July 2022 to June 2023, and affirm that the individual securities in the pooled fund are in compliance with HRS § 88-119.

- Note: The ERS is governed by HRS Chapter 88. Authorized investments are generally included in HRS § 88-119. This may be viewed on the Hawai'i State Legislature's website at

[http://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0088/HRS\\_0088-0119.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0088/HRS_0088-0119.htm)

- Investments are further subject to the ERS Investment Policy, Guidelines and Procedures Manual, as amended, located at:

- <https://ers.ehawaii.gov/investments/program>

- e. Investment Services: Describe investment services offered by your bank. Exclude duplicate description of Overnight Sweep Account capabilities in this section. Also elaborate if such investments are managed directly by employees of your bank, a subsidiary, or contracted with a third-party sub-adviser, and whether the investment managing entity is a registered advisor subject to the Investment Advisors Act of 1940.
- f. Custody Services: Describe custody services offered by your bank to address State Treasury collateral requirements for securities invested, including system capabilities and standard reporting packages.
- g. Deposit and Insurance Coverage: Describe how the ERS deposits are protected, including balances in excess of FDIC coverage and compliance with HRS Chapter 38 – Deposit of Public Funds. If applicable, this should include tri-party depository contracts that require the custodian comply with collateral requirements.
- h. Service Enhancements: Based upon information presented in your response and your bank's knowledge of the public sector, describe any enhancements, technological or otherwise that the ERS should consider to improve its operational or cash management efficiencies.

### **3. REPORTING AND OTHER**

- a. Account Reconciliation: Your bank, at a minimum, must provide monthly account reconciliation reports, bank statements, account analysis statements, confirmations and other report related features. Your bank should be able to provide various reports and statements, standard and specialized, in a computer media, via the internet if possible. Describe the account reconciliation service(s) offered by your bank, including how services may be differentiated between the accounts. Also describe your bank's check truncation services, including estimated savings if used.
- b. Balance and Transaction Reporting: Your bank must have an electronic communication and file transmission system to allow the ERS to receive, no later than 5:30 a.m. Pacific Standard Time, previous day or preferably real time balance and transaction information for each designated account. The ERS will use an internet product or a personal computer and modem to obtain a balance report each morning. Your bank also must provide real time access for deposits, electronic payments, and transactions processed through the ACH. Describe the balance reporting system offered by your bank, highlighting its features and ease of use.
- c. Document Storage/Imaging: Describe your bank's services for document storage, imaging and retrieval of paper documents related to the ERS accounts (*i.e.*,

cancelled checks, deposit slips, credit memos, debit memos, statements, etc.). Include your bank's on-line capabilities and record retention periods.

- d. Online Services and Electronic Banking: Describe your bank's online banking product including services available online via the internet or modem, security features, set-up and maintenance of user accounts and user training. Describe how the ERS will conduct its banking business in case the internet product is not available.
- e. File Transfers: Describe file transfers between the ERS and your bank, including services available, security features, set-up and maintenance of these services.
- f. Account Analysis: Describe your bank's services for account analysis processing, if applicable, and how it will impact the service and transaction fees paid on ERS accounts.
- g. Pricing Schedule: Provide, using the attached ERS Consolidated Banking Fees Pro forma (Attachment 1), the pricing for services proposed by your bank. Include detailed breakdowns as support of the fee calculation and assumptions used for a specific line item, if applicable (*i.e.*, ACH services or account analysis). The pro forma pricing should correspond to your bank's pricing schedule and include all fees related to the pro forma pricing line item. Disclose any other costs that may be incurred by the ERS.

The daily balances in ERS accounts will fluctuate based on the actual cash requirements for the accounts. Excess funds are transferred to the ERS' custodial bank The Bank of New York Mellon. Cash balances will generally peak at the end of the month as member and employer contributions are received and month-end pension benefits are paid.

The ERS currently has over 55,000+ pensioners and beneficiaries, of which approximately 500+ are paid on the 15th of the month and 55,000+ are paid at the end of the month. Almost all pensioners and beneficiaries use direct deposit via the ACH services. A few receive international wire payments. Additional payments are processed 4 to 8 times per month (generally consisting of less than 50 payments) for refunds to terminated members, reissue of payments and for the payment of administrative expenses. The ERS issues approximately 315 checks each month or about 3,780 per year for all the bank accounts.

For the Pension Disbursements Account, fluctuation in the daily cash balance will mainly occur in conjunction with the ERS pension payroll and refund cycle. Pension payments are paid on the 15th and end of each calendar month, while refund payments may be processed weekly. Federal income taxes withheld from all payments are paid the next business day.

The current recurring monthly pension payments paid by ACH debits on the last business day of the month/first business day of following month are in excess of \$150 million and will continue to increase in correlation to the increase in the number of retirees. Currently about 88%-90% of this is paid by ACH on the last business day of the month and the remaining is for federal income taxes withheld (paid the next business day) and third-party deductions issued as checks. In addition, the ERS processes one-time payments that range from \$1-\$25 million depending on the number of new retirees. The semi-monthly pension payroll and refund payments processed during the month are usually less than \$1 million per payment date as a combination of ACH and checks.

Funding for payment of pension payroll will occur via ACH deposits, incoming wires, and physical check deposits from various State and County departments and/or ERS externally managed cash investments.

The Pension Receipts Account receives the majority of its funds on the State and County pay dates. Excess funds are transferred to the ERS' custodial bank The Bank of New York Mellon as it becomes available. All are semi-repetitive; same receiving bank same beneficiary with a different dollar amount.

Checks payable to the ERS are not processed through the bank's lockbox services. The ERS is requesting information on the type of lockbox service available. The ERS has not implemented use of a lockbox in its current operations. This section is intended for information gathering and fact finding should future implementation be needed during the contract term.

- h. Conversion Plan: Describe the overall plan your bank would coordinate to ensure a smooth transition from the current provider. Your bank must also provide on-site training to ERS personnel for the operation and use of your bank's services and automated system for all areas of service.
- i. Lockbox Service for Payment Receipts: Describe your bank's services for receiving payments by mail on behalf of the ERS including, but not limited to, the procedures and processes for receiving the check, depositing the check, resolving discrepancies, accounting for and reporting of the transaction. Include any limitations regarding your bank's services.
- j. Back Up Recovery: Describe your bank's services for continued pension payment processing should the ERS' computer system be inoperable for an extended period of time.
- k. Transition Services: Your bank shall allow for a transition period to transition to a new banking services provider, if necessary, at the end of the contract term.

## **EXHIBITS TO BE INCLUDED**

Offeror shall append the following exhibits to its proposal:

Exhibit I – Authorization to Contract. Provide pages as necessary. Provide either an excerpt from your Corporate Resolution, Certificate of Secretary, or correspondence from the Chief Executive Officer or chairperson attesting that the individual signing the response has the authority to make binding representations on behalf of your bank.

Exhibit II – Authorization to Do Business in Hawaii. Provide pages as necessary. Provide evidence that your bank is authorized to do business in the State of Hawaii.

Exhibit III – Financial Statements and Ratings. Provide pages as necessary. Provide the most recent audited financial statements, or annual report for your bank. Also include your bank's most current Standard & Poor's and Moody's credit ratings.

Exhibit IV– Account Analysis. Provide pages as necessary. Provide a sample of your bank's account analysis and a user guide for the account analysis.

Exhibit V – Disaster Awareness Recovery Program. Provide details of your bank's disaster procedures for recovery of ERS records and information.

Exhibit VI – Identity Protection. Provide details of your bank's safeguard methods in the handling of ERS records and social security numbers.

Exhibit VII – Information Technology and Security. Provide details of your bank's information technology, systems, cybersecurity and related operations including, but not limited to:

1. Has your bank experienced a security breach and/or incident in the last 3 years? If so, please specify the impact to the organization. Is it ongoing or has it been settled?
2. What Information Technology Standards does your organization follow? *i.e.* National Institute of Standards and Technology (NIST), International Organization for Standardization (ISO), Sarbanes Oxley Act of 2002 (SOX), Gramm-Leach-Bliley Act (GLBA), etc.
3. Does your bank have cyber liability insurance? If so, is the policy with an independent firm, self-insured, or is it a hybrid policy? What does the cyber liability insurance policy cover?
4. Does your bank have its own security team, outsource its security, or utilize some form of hybrid security? If your bank has its own security team, how large is it and does it provide coverage 24-hours a day, seven days a week? If your bank's security team is outsourced or is a hybrid team, at its highest level of security, what does your security team cover, how long has your bank used this particular security team, and when does the current contract for your bank's security team expire?
5. Does your bank's security team currently provide live, non-automated support for information technology systems and operations, Monday through Friday from 7:45 a.m. to 5 p.m. HST?

6. What is the recommended internet browser for your banking system?
7. Does your bank use multifactor authentication for access?
8. Other information?

Exhibit VIII – Closing Agreement. Detail the process and timeline for the transition period upon termination of the contract. For illustration purposes, please use a transition date of June 30, 2023.

Exhibit IX – Pro forma Pricing. Please complete the ERS Consolidated Banking Fees Pro forma (Attachment 1).

Exhibit X –Fee Schedule. Include all the fees that are applicable to the ERS during the proposed contract term for banking services described in this request. For example, while the ERS does not presently use positive pay for ERS checks issued, the ERS is planning to implement this service during the contract term.

Exhibit XI – ERS Contract. Provide any exception(s) to the standard State of Hawaii contract (Attachment 3) that your bank would want considered if it were to be awarded the banking services contract for the ERS.

Exhibit XII – Insurance. Provide insurance coverage that your bank, and any subcontractors, will provide the ERS. Include a description of insurance coverage in addition to the minimum requirements.

Exhibit XIII – Minimum Qualifications Certification (Attachment 3). Confirm that your bank meets each of the minimum qualifications as noted in Attachment 3.

## **EVALUATION CRITERIA AND SELECTION OF CONTRACTOR**

Evaluation, review, and ranking of proposals submitted to the ERS shall be within the sole judgment and discretion of the ERS selection committee. The ERS selection committee will utilize the minimum qualifications criteria noted below.

The ERS reserves the right to: 1) not award a contract at all; 2) award a contract to different banking services providers; and/or 3) award a contract to the same banking services provider.

If an award is made, a contract will be issued by the ERS.

### **Minimum Qualifications**

To be considered for selection by the ERS selection committee, all proposals shall meet the following qualifications:

1. Be a State of Hawaii chartered or federally chartered financial institution.
2. Be a qualified depository for public funds.
3. Be a full service commercial bank in good standing among other comparable banks.
4. Be capable of providing the services sought by the ERS.
5. Have established offices within downtown Honolulu.
6. Have branches able to accept physical deposits on the islands of Hawaii, Kauai and Maui.
7. Agree to maintain a consistent service team throughout the term of the contract and assign experienced and dedicated staff members who are committed and capable of servicing ERS accounts.
8. Be sufficiently capitalized to accommodate the ERS cash and investment management needs.
9. Be insured by FDIC.

In evaluating a proposal, the ERS selection committee shall score each proposal according to the following criteria/categories:

### **Evaluation Criteria/Categories**

1. Services offered – Assessment of each Offeror’s ability to provide the services relevant to the scope of work in the Request for Expression of Interest Banking Services – 2024 (EOI) – 45 points
2. Qualifications and Experience – Experience and professional qualification relevant to the scope of work in the EOI – 40 points
3. Fees – 15 points



## **LIST OF ATTACHMENTS**

Attachment 1: ERS Consolidated Banking Fees Pro forma

Attachment 2: Mandatory Requirements Certification

Attachment 3: Contract Form and General Conditions

<b>ATTACHMENT 1</b> <b>Employees' Retirement System of the State of Hawaii</b> <b>Expression of Interest to Provide Banking Services 2024</b> <b>ERS Consolidated Banking Fees Pro forma</b> <b>ERS Services only</b>					
Annual Checking Account Balance Summary	Monthly	Annual Volume	Unit Cost		Annual Cost
Average Ledger Balance - Average Daily		\$22,000,000			
Less Average Uncollected Balance		\$1,500,000			
Average Collected Balance		\$20,500,000			
Annual Earnings Credit and Profitability Calculation					
Annual Service Charges					
Account Maintenance	3 accounts	36			
Additional Checking Statements	2 per month	24			
FDIC Assessment					
Deposit Services					
Customer Deposits Received	30 per month	360			
Cash Deposited (\$1,000s)	1	12			
Currency Ordered (\$1,000s)	0	0			
Checks Deposited on ERS Bank	20	1,200			
Checks Deposited - Local Banks	40	720			
Checks Deposited - Other Banks	20	120			
Return Items Charged Back	2	24			
Incoming Wire Transfers	10	120			
Incoming Wire Transfers - email notification	10	120			
Incoming ACH payment	20	240			
Incoming ACH payment - email notification	20	240			
Account to Account Transfers	5	60			
Outgoing Wires	5	60			
ACH Services					
Debit Blocking	3 accounts	36			
Files transmitted	15	180			
ACH Transactions (Total for all files)	57,000	684,000			
Transaction Recall	10	120			
ACH Notification of Change	20	240			
ACH Returned Items	30	360			

<b>ATTACHMENT 1 (continued)</b> <b>Employees' Retirement System of the State of Hawaii</b> <b>Expression of Interest to Provide Banking Services 2024</b> <b>ERS Consolidated Banking Fees Pro forma</b> <b>ERS Services only</b>					
Annual Checking Account Balance Summary	Monthly	Annual Volume	Unit Cost		Annual Cost
<u>Check Services</u>					
Stop Payment Service	5	60			
Checks Paid	315	3,780			
<u>Account Reconciliation Service</u>					
Provide estimate for each level of service					
- Partial Reconciliation	None				
- Full Reconciliation	None				
- Positive Pay on checks	315	3,780			
- Accounts on Positive Pay	2	24			
<u>Online Banking Service Fees</u>	Daily use	12			
Provide detailed calculation					
<u>Tax Payment Service</u>	6	72			
<u>Imaging Services based on above transactions</u> (315 checks, 200 other items, 3 statements)	monthly				
<b>Total</b>					
<u>Online Cash Management Services</u>					
Balance and Transaction Items Loaded					
<u>Software License</u>		10 users			
Each Additional License					
Installation/Training					
Service Calls					
Base Fee (Per PC Site)					
Minimum Monthly Fee					
Check Management (module fee, stop payments, photocopies, check inquiries)					
Setup New Users		2			
Reset Passwords		2			
Audit Confirmation Request Fee	2 per account	6			
<b>Total</b>					

## **ATTACHMENT 2**

### **Mandatory Requirements Certification**

#### **Request for Expression of Interest: Banking Services 2024**

The undersigned Offeror hereby represents and warrants to the Employees' Retirement System of the State of Hawaii (ERS) as follows:

1. Offeror is a State of Hawaii chartered or federally chartered financial institution.
2. Offeror is a qualified depository for public funds.
3. Offeror is a full service commercial bank in good standing among other comparable banks.
4. Offeror is capable of providing the services sought by the ERS.
5. Offeror has established offices within downtown Honolulu.
6. Offeror has branches able to accept physical deposits on the islands of Hawaii, Kauai and Maui.
7. Offeror agrees to maintain a consistent service team throughout the term of the contract and assign experienced and dedicated staff members who are committed and capable of servicing the ERS accounts.
8. Offeror is sufficiently capitalized to accommodate ERS cash and investment management needs.
9. Offeror is insured by Federal Deposit Insurance Corporation.

Offeror's Name: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT 3**

**CONTRACT FORM**



**STATE OF HAWAII**  
**CONTRACT FOR GOODS AND SERVICES**  
(IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;  
SOLE SOURCE; OR EMERGENCY)

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 is in need of the goods and services, or both, described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services, or both, as the case may be.

B. This Contract is for (check one box):

☐ (1) A procurement expenditure of public funds for goods or services, or both, that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes ("HRS"), and chapter 3-120, Hawaii Administrative Rules ("HAR"); or  
\_\_\_\_\_ ; or

☐ (2) A small purchase procurement of goods or services, or both, as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

☐ (3) A sole source procurement of goods or services, or both, as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

☐ (4) An emergency procurement of goods or services, or both, as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. 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 \$ \_\_\_\_\_

D. Pursuant to \_\_\_\_\_, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

E. The agency's Chief Procurement Officer is \_\_\_\_\_  
who ☐ has approved this procurement or ☐ is not required to approve this procurement.

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 Attachment1, which is 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, according to the Compensation and Payment Schedule set forth in Attachment2, which is made a part of this Contract.

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 Attachment3, 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.

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

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

**STATE**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

**CONTRACTOR**

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

**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 Signature \_\_\_\_\_ Date \_\_\_\_\_

NOTARY CERTIFICATION





# STATE OF HAWAII

## CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

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

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

### CONTRACTOR

By \_\_\_\_\_

(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_



**Attachment - S1**

# **STATE OF HAWAII**

## **SCOPE OF SERVICES**



**STATE OF HAWAII**

**COMPENSATION AND PAYMENT SCHEDULE**



**STATE OF HAWAII**  
**TIME OF PERFORMANCE**



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE**

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

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

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

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

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

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

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

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

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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



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

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

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

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

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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



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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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