

REQUEST FOR PROPOSALS

NO. ERS 2024-01

**CHAIRPERSON AND MEMBERS OF
THE MEDICAL BOARD OF
THE EMPLOYEES' RETIREMENT SYSTEM OF THE
STATE OF HAWAII**

**Employees' Retirement System of the
State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813
MARCH 25, 2024**

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SECTION 1

ADMINISTRATIVE OVERVIEW

1.1 BACKGROUND

The Employees' Retirement System of the State of Hawaii (ERS or State) was established by Chapter 88, Hawaii Revised Statutes (HRS), for the purpose of providing retirement allowances and other benefits for State and County government employees. The general administration and operation of the ERS is vested in a Board of Trustees.

Members of the ERS who are physically or mentally incapacitated for the further performance of duty may apply for, and, if all statutory requirements are satisfied, may be granted, ordinary disability retirement allowances. Members of the ERS who have been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no willful act or negligence on the member's part, may apply for, and, if all statutory requirements are satisfied, may be granted service-connected disability retirement benefits. If all statutory requirements are satisfied, benefits are also available in the case of an "accidental death" of an ERS member. An "accidental death" is a death that is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by wilful negligence on the part of the member.

The Board of Trustees is required to designate a medical board (Medical Board) of three physicians to arrange for and pass upon all medical examinations required under Chapter 88, HRS, to investigate all essential statements and certificates by or on behalf of a member in connection with applications for disability retirement, and to report in writing to the Board of Trustees its findings, conclusions and recommendations on all matters referred to it. The Medical Board is also required to determine and certify to the Board of Trustees whether a member's death was an "accidental death."

1.2 PURPOSE

The purpose of this solicitation is to select three physicians, at least one of whom should be a psychiatrist, from different medical disciplines to constitute the Medical Board. The period of the contracts awarded pursuant to this solicitation will be for an initial period of three years, with the option to extend for two (2) additional periods not to exceed one (1) year each, on the same terms and at the same price as the original contract period. One of the three physicians selected will be the Chairperson of the Medical Board. Selection of the Chairperson of the Medical Board will be made first, in order for the Chairperson to assist in the selection of the remaining two Members of the Medical Board.

1.3 AUTHORITY

This Request for Proposals (RFP) is issued under the provisions of Chapter 103D, Hawaii Revised Statutes. All prospective offerors are charged with presumptive knowledge of all

requirements of the cited authorities. Submission of a valid executed proposal by any prospective offeror shall constitute certification of such knowledge on the part of such prospective offeror.

1.4 RFP ORGANIZATION

This RFP is organized into five sections:

- Section 1 Administrative Overview -- Provides offerors with general information on the objectives of this RFP, procurement schedule and procurement overview.
- Section 2 Scope of Work -- Provides offerors with a general description of the tasks to be performed.
- Section 3 Proposal -- Describes the required format and content for the offerors' proposals.
- Section 4 Proposal Evaluation -- Describes how proposals will be evaluated by the State.
- Section 5 State of Hawaii Contract for Goods and Services -- Provides offerors the terms and conditions under which the work will be performed.

1.5 ISSUING OFFICER

This RFP is issued by the Employees' Retirement System of the State of Hawaii. The individual listed below is the sole point of contact from the date of release of this RFP until the selection of the offerors to whom contracts will be awarded:

Mr. Thomas Williams
Employees' Retirement System State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813

Telephone: (808) 586-1700
Facsimile: (808) 586-1677

1.6 PROCUREMENT OFFICER

The Procurement Officer is responsible for overseeing the contracts, including monitoring and assessing contractor performance. The Procurement Officer for the agreement is:

Mr. Thomas Williams
Employees' Retirement System State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813

I.7 PROCUREMENT TIMETABLE

<u>Activity</u>	<u>Scheduled Date</u>	
	<u>Medical Board Chairperson</u>	<u>Medical Board Members</u>
RFP Available to Prospective Offerors	March 25, 2024	March 25, 2024
Closing date for submission of questions	April 8, 2024	April 8, 2024
ERS' Response to Offerors' questions	April 15, 2024	April 15, 2024
Closing date for receipt of proposals	April 26, 2024	April 26, 2024
Interviews (optional ERS)	May 7, 2024	June 10, 2024
Best and final offers due	May 13, 2024	June 17, 2024
Chairperson Agreement start date	June 1, 2024*	August 1, 2024*

*Best estimates at this time.

1.8 OFFERORS' QUESTIONS

Offerors are encouraged to submit written questions if they desire. All questions must be submitted in writing no later than 4:30 p.m. HST on April 8, 2024 in order to generate an official answer. Questions over the telephone will not be accepted. Questions will be accepted and responded to only if submitted in writing. Official responses will be provided in writing. State responses to offeror questions will be sent to all persons obtaining a copy of the RFP.

Offerors are cautioned that changes or revisions to the RFP will be made through the issuance of an Addendum. No responses to questions will, by themselves, change the requirements of the RFP.

1.9 SUBMISSION OF PROPOSALS

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

Each qualified offeror may submit only one (1) proposal. Alternate proposals will not be accepted. In the offeror's proposal, the offeror should state whether the offeror seeks to be considered for Chairperson, Member or for both positions.

Four (4) copies and one single-sided unbound original of the proposal must be submitted. Proposals must be received by the Issuing Officer no later than 4:30 p.m. HST, on April 26, 2024. Any proposal received after that date and time will be rejected. Proposals should be mailed or delivered to:

Mr. Thomas Williams
Employees' Retirement System
State of Hawaii
201 Merchant Street, Suite 1400
Honolulu, Hawaii 96813

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

Employees' Retirement System
State of Hawaii
Proposal Submitted in Response to RFP No. ERS 2024- 01
(Name of Offeror)

1.10 RECEIPT, OPENING AND RECORDING OF PROPOSALS

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

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

After the date established for receipt of proposals, a register of proposals will be prepared which will include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the service offered. The register of proposals may be open to public inspection only after award of the contracts.

1.11 BEST AND FINAL OFFER

The offeror's best and final offer/proposal for the Chairperson position must be received by the Issuing Officer no later than 4:30 p.m. HST, on May 13, 2024. The offeror's best and final offer/proposal for the remaining two Member positions must be received by the Issuing Officer no later than 4:30 p.m. HST, on June 17, 2024.

Best and final offers shall be submitted only once unless it is determined in writing to be in the best interests of the State to conduct additional discussions or change the State's requirements and require another submission of best and final offers.

If a best and final offer/proposal is not submitted, the previous submittal will be construed as the best and final offer/proposal. After best and final proposals are received, final evaluations will be conducted for an award.

1.12 COSTS FOR PROPOSAL PREPARATION

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

1.13 DISQUALIFICATION OF PROPOSALS

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

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

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

- The offeror's being in arrears on existing contracts with the State or having defaulted on previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated.

1.14 RFP AMENDMENTS

The State reserves the right to amend this RFP any time prior to the closing date for best and final offers.

1.15 CANCELLATION OF REQUEST FOR PROPOSALS/REJECTION OF PROPOSALS

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

1.16 UNCERTAINTIES BEYOND CONTROL OF THE STATE OR CONTRACTOR

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

1.17 PROPOSAL BONDS; PERFORMANCE AND/OR PAYMENT BONDS

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

1.18 ACCEPTANCE OF PROPOSAL AND EXECUTION OF CONTRACT

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

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

In submitting a proposal, the offeror will be deemed to have agreed to each provision set forth in the sample contract attached as Section 5, unless the offeror identifies the provision to which objection is made and submits alternative language. The ERS reserves the right to further negotiate the terms and conditions of the contract with the successful offerors. The contract awarded pursuant to this RFP shall consist of the RFP and any amendments thereto, and the specific terms and conditions of the negotiated contract.

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

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

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

1.19 REQUIREMENTS FOR DOING BUSINESS IN THE STATE OF HAWAII

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

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

And one of the following:

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

Proof of compliance with the foregoing requirements can be provided through the Hawaii Compliance Express (HCE), which allows vendors, contractors and service providers doing business with the State to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the date the Certificate of Vendor Compliance is issued. The Certificate of Vendor Compliance indicating that offeror or contractor's status is compliant with the requirements of HRS Chapter 103D-310(c), will be accepted for both contracting purposes and final payment.

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

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

1.20 DEBRIEFING

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

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

SECTION 2 SCOPE OF WORK

2.1 INTRODUCTION

The purpose of the contracts resulting from this RFP is to select three physicians to constitute the Medical Board of the ERS. Three Agreements will be awarded, one for a chairperson and one for each of the two additional members of the Medical Board.

Section 2 presents the scope of work covered by the agreements to be issued under this RFP. Contractor and State responsibilities associated with the contracts are identified.

The successful offerors will each enter into a contract in substantially the form set forth in Section 5.

2.2 GENERAL REQUIREMENTS

2.2.1 Contract Term

The term of the contract for Chairperson will commence on or about June 1, 2024, for a three-year term. The term of the contracts for the two Members will commence on or about August 1, 2024, for a three-year term. The contracts may be extended at the option of the ERS, for two (2) periods not to exceed one year each, on the same terms and at the same price as the original contract.

2.2.2 Scope of Work

The contractors selected will comprise the Medical Board of the ERS. There will be a Chairperson, who will be assisted by two board members. All three must be licensed physicians. One of the three contractors must be a psychiatrist. The contractors will provide professional medical consultation services relating to the arranging for and passing upon all medical examinations required by Chapter 88, HRS, investigation of all essential statements and certificates by or on behalf of a member or beneficiary in connection with applications for disability retirement and accidental death benefits, and reporting in writing to the ERS Board of Trustees findings, conclusions and recommendations on matters referred to the Medical Board by the ERS Board of Trustees. Actions and recommendations of the Medical Board require the concurrence of two members. The contractors will be required to meet certain performance standards as determined by the ERS.

The Chairperson and the Members must be able to represent that they will not engage in the following practices nor perform the following services during the period of the contract with the ERS, which services have been deemed to raise potential conflicts of interest, or the appearance of a conflict of interest:

- Medical examinations or consultations regarding the claims of State and county employees for Workers' Compensation benefits under Chapter 386, HRS.

- If the Chairperson or Member has performed an evaluation/consultation for a workers' compensation claimant prior to appointment to the Medical Board, and the claimant subsequently applies for disability retirement benefits, the Chairperson or Member, as the case may be, shall recuse himself or herself from examining and certifying the claimant.
- Financial interests in organizations that may provide such services must be disclosed.

Compatible outside employment is permitted on a not-to-interfere basis only.

Chairperson of the Medical Board

The Chairperson is the principal medical advisor to the Board of Trustees. The position of Chairperson must take priority over other professional activities, and is to be considered the Chairperson's primary responsibility. The Chairperson must maintain his or her own office accommodations for examinations and interviews, and facilities and staff to prepare the final certifications, findings and recommendations for submission to the ERS. However, the ERS may provide limited space for interviews and file storage. In addition, the Chairperson must be available from time to time to testify in trial-type administrative hearings conducted under the Hawaii Administrative Procedures Act and may be required to testify occasionally in court proceedings when members have appealed adverse decisions of the ERS Board of Trustees. It is expected that approximately four hours per week will be devoted to preparation for testifying at hearings.

The Chairperson shall also do the following:

- Assist in the selection of the other two members of the Medical Board.
- Coordinate all medical examinations in connection with employee applications for disability retirement benefits in compliance with Chapter 103D, HRS.
- At the Medical Board's discretion, perform physical examinations of claimants.
- Together with other members of the Medical Board, interview all claimants for service-connected disability retirement.
- At the Medical Board's discretion, interview claimants for ordinary disability retirement.
- Together with other members of the Medical Board, review and evaluate all claims for accidental death benefits, all medical reports submitted to the Medical Board, the employer's report of the accident as submitted to the Workers' Compensation Division of the Department of Labor and Industrial Relations, and the position description of the claimant.
- Together with the other members of the Medical Board, prepare and timely issue written certifications and findings on a claimant's physical and/or mental condition, pursuant to applicable statutes and rules.
- Serve as a witness on behalf of the Board of Trustees at any court hearing based upon an appeal from the final decision of the Board of Trustees regarding a claimant's right to receive disability benefits.

- Submit written monthly status reports as prescribed by the ERS Board of Trustees.
- Maintain Performance standards.
- Must review disability applications within three (3) months of receiving all member documents and records.
- Must comply with confidentiality requirements relating to ERS member documents and records.

Members of the Medical Board

Members shall perform the following services:

- Assist the chairperson of the Medical Board in the passing upon all medical examinations in connection with employee applications for disability retirement benefits.
- At the Medical Board's discretion, perform physical examinations of claimants.
- Together with other members of the Medical Board, interview all claimants for service-connected disability retirement.
- At the Medical Board's discretion, interview claimants for ordinary disability retirement.
- Together with the other members of the Medical Board, review and evaluate: all claims for accidental death benefits, all medical reports submitted to the Medical Board, the employer's report of the accident as submitted to the Workers' Compensation Division of the Department of Labor and Industrial Relations, and the position description of the claimant.
- Provide input and otherwise assist the Chairperson of the Medical Board in preparing written certifications and findings on claimant's physical and/or mental condition, pursuant to applicable statutes and rules.
- Be available to serve as Chairperson in the event of the Chairperson's unavailability or disqualification.
- Be available to serve as a witness on behalf of the Board of Trustees at any court hearing or administrative hearing or elsewhere in the event of the Chairperson's unavailability or disqualification.
- Must comply with confidentiality requirements relating to ERS member documents and records.

2.2.3 Compensation

The Chairperson and the Members will be compensated for their services. Because the Chairperson is primarily responsible for coordination of the Medical Board's work and for testifying, the Chairperson's compensation will be greater than the Members' compensation. The two Members' compensation will be identical, except that the ERS may consider a travel allowance for Members who reside outside of the City and County of Honolulu. Offerors are required to state a proposed annual fixed fee for services described in this RFP for the entire period described in this RFP. If an offeror wishes to be considered for both

the Chairperson position and Member position, the offeror may submit two fee proposals, one for each position.

2.2.4 Liaison and Authorization to Proceed

The Procurement Officer or the Procurement Officer's designee will serve as the primary liaison with the contractors during the term of the agreements. The Procurement Officer will chair status meetings, assist in scheduling, and monitor and assess the contractors' performance. The Chairperson shall personally attend status meetings.

The ERS will monitor the status of the contractors' work through the status meetings and the review of monthly written status reports to be submitted by the Medical Board Chairperson that will provide information regarding, among other things, the number of applications reviewed and the disposition of each, the number of hours expended in reviewing applications, the number of hearings on appeal attended and the number of hours spent in preparation and attendance at administrative and court hearings.

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

2.3 MULTI-TERM SOLICITATION

As indicated by the terms stated in Section 2.2.1, this solicitation is for a multi-term contract. The fixed fee proposed shall be the same throughout the contract. The multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect the State's rights or the contractor's rights under any termination clause of the contract. The head of the purchasing agency must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period. Offerors must submit fee proposals for the entire time of performance, including any extension options by the State. In the event of cancellation, the contractor will be reimbursed unamortized reasonably incurred nonrecurring costs, if applicable.

SECTION 3 PROPOSAL

3.1 INTRODUCTION

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

- Proposal Letter
- Contractor Background and Experience
- Availability
- References
- Proposed Annual Fee

3.2 PROPOSAL LETTER

The Proposal Letter must be (i) signed by an the offeror, and (ii) dated. The fully executed proposal letter must be submitted along with the proposal.

The Proposal Letter shall include the following:

3.2.1 Terms and Conditions

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

3.2.2 Legal Entity

Offeror must be an individual. However, the State may consider allowing assignment of the proceeds of the contract to the Contractor's professional corporation or other similar business entity.

3.2.3 Federal Tax ID No.

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

3.2.4 Current Licenses

A statement that the offeror maintains an active and current license to practice medicine in the State of Hawaii and a statement of the offeror's speciality and/or primary areas of practice. True and accurate copies of the offeror's license(s) and certificates must be provided. Contractor shall also provide a statement that the work described in the RFP will not be subcontracted or assigned. A Hawaii GET ID must also be provided, or a representation that a Hawaii GET ID will be obtained prior to commencement of the work.

3.2.5 Type of Appointment Sought

A statement whether the offeror wishes to be considered for Chairperson of the Medical Board only, or for Member of the Medical Board only, or wishes to be considered for either of the positions. If there are any special circumstances under which the offeror wishes to be considered for either of these positions, the special circumstances must be clearly set forth. In addition, the proposal must contain a statement indicating whether or not the offeror is able and willing to work with any other individual who may be selected for the Medical Board.

3.2.6 Non-discrimination

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

3.2.7 State Approval of Contractor's Recommendations

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

3.2.8. Terms and Conditions of Contract

A statement that the provisions of the sample contract attached as Section 5 are acceptable or identification of the provisions to which objection is made, with alternative language. ERS reserves the right to decline or classify as "unresponsive" any substantive changes, modifications, or revisions to the provisions of the sample contract.

3.3 OFFEROR BACKGROUND AND EXPERIENCE

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

The Offeror and Background and Experience subsection shall address each of the following items:

3.3.1 Offeror Background

Background information on the offeror shall cover the following:

- Name of offeror
- Address
- Date licensed to practice medicine in Hawaii
- Other licenses, including licenses from other jurisdictions
- Specialty and Board certifications, if any
- Education

3.3.2 Offeror Performance

The offeror shall provide information that will demonstrate the following:

- Responsiveness to previous clients
- Timeliness in meeting schedules
- Adherence to contract requirements of previous clients
- Availability and accessibility to previous clients
- Ability to communicate clearly, both orally and in writing, including ability to communicate medical concepts in language understandable by laypersons

3.3.3 Offeror Experience

The details of offeror's experience relevant to the proposed agreement shall include a detailed description of the offeror's experience in providing medical evaluations and consulting services.

3.4 AVAILABILITY

This section shall describe the offeror's availability and shall include a discussion of any conflict of interest the offeror may have in providing the services described in this RFP and any problems or concerns that the offeror wishes to bring to the State's attention. OFFERORS SHOULD NOTE THAT CONFLICTS OF INTEREST MAY BE GROUNDS FOR DISQUALIFICATION FROM CONSIDERATION.

3.5 REFERENCES

Offerors must be capable of performing the work for which offers are being solicited. Please give at least three references, including the name and address of the company or agency, and a person to contact at the reference.

3.6 PROPOSED ANNUAL FEE

The fee proposal should be an annual fixed fee for the contract term, including any extension options by the State. If the offeror wishes to be considered for both the Chairperson and Member positions, the offeror may include a separate fee proposal for each position.

3.7 CONFIDENTIAL OR PROPRIETARY INFORMATION

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

SECTION 4 PROPOSAL EVALUATION

4.1 INTRODUCTION

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Proposals will be evaluated on strong compliance, moderate compliance, or weak compliance with the requirements of this RFP.

4.2 EVALUATION ORGANIZATION

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

The evaluation will be conducted in six phases:

- Phase 1 - Evaluation of Mandatory Requirements
- Phase 2 - Establishment of Priority List of Offerors
- Phase 3 - Optional Interviews with Priority-listed Offerors
- Phase 4 - Submission of Best and Final Offers
- Phase 5 - Final Evaluation of Proposals
- Phase 6 - Recommendation for Award

4.2.1 Evaluation Categories and Thresholds

EVALUATION CATEGORIES

Mandatory Requirements
Understanding of the Work
Offeror Background and Experience
Availability
Proposed Annual Fee

4.3 PHASE 1 - EVALUATION OF MANDATORY REQUIREMENTS

The evaluation of the mandatory requirements shall be on a "pass/no pass" basis. The purpose of this phase is to determine whether an offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness, including evidence that the offeror maintains an active and current license to practice medicine in the State of Hawaii. Failure to meet the mandatory requirements ("no pass") will be grounds for deeming the proposal nonresponsive to the RFP and rejection of the proposal. Only those proposals meeting the following mandatory requirements ("pass") of Phase 1 will be considered in Phase 2.

4.4 PHASE 2 ESTABLISHMENT OF PRIORITY LIST OF OFFERORS

All offerors who pass Phase 1, Evaluation of Mandatory Requirements, shall be classified as "acceptable." If there are more than five "acceptable" offerors for the Chairperson

position and the Member positions respectively, then the evaluation committee shall rank order all the proposals by issuing preliminary evaluations for each proposal, based on the evaluation criteria described below, excluding the fee proposal. A priority list of all acceptable offerors shall be established and limited to no more than three offerors in the Chairperson category and three offerors in the Member category who received the best preliminary evaluations. Offerors who indicate that they wish to be considered for both categories will not automatically be included in the priority list for both categories.

4.5 PHASE 3 - OPTIONAL INTERVIEWS WITH PRIORITY-LISTED OFFERORS

During the course of this phase, the State may request interviews only with priority-listed offerors. Proposals may be accepted without such interviews. The State may require on-site visits to locations at which the priority-listed offerors provide contractor services.

4.6 PHASE 4 - SUBMISSION OF BEST AND FINAL OFFERS

The priority-listed offerors' best and final offers must be received by the Issuing Officer no later than 4:30 pm. HST, on May 13, 2024 for Chairperson, and June 17, 2024 for the two Members. If a best and final offer is not submitted, the previous submittal will be construed as the best and final offer. After best and final offers are received, final evaluations will be conducted for an award.

4.7 PHASE 5 - FINAL EVALUATION OF PROPOSALS

During this phase, the State shall conduct final evaluations on the offerors' proposals, based on the evaluation criteria described below

4.7.1 Understanding the Work:

The Selection Committee will consider whether the offeror has demonstrated:

- An understanding of the nature and extent of the services the State expects; and
- An understanding of the State's time schedule and that the offeror can meet the time schedule.

4.7.2 Offeror Qualifications and Experience

The Selection Committee will evaluate the education, experience, performance, and qualifications of the offeror relevant to the services required under this RFP. References may be verified and findings incorporated into the evaluation. The evaluation will include past performance of similar services, including responsiveness to clients, timeliness of meeting contractual obligations and adherence to contract requirements.

4.7.3 Availability

This part of the evaluation assesses the offeror's availability to attend meetings of the Medical Board, administrative hearings, review applications and supporting documentation in a timely manner, and prepare recommendations to the Board of Trustees.

4.7.4 Proposed Annual Fee

The Selection Committee will evaluate the offeror's proposed fixed fee. The proposed fee shall include all taxes, secretarial services and other expenses, which shall be identified. Travel allowances for Members who reside outside of the City and County of Honolulu will not be included in the evaluation of the proposed fee.

CRITERIA	POINTS
Understanding the Work	30
Offeror Qualification & Experience	40
Offeror Availability	20
Proposed Annual Fee	<u>10</u>
TOTAL	100

4.8 PHASE 6 - AWARD

The contracts will be awarded as provided in the Procurement Timetable. If the cumulative evaluation scores do not initially include a psychiatrist among the three highest scoring offerors, the Selection Committee will have sole discretion, considering the importance of having a psychiatrist on the medical board and the best interests of the ERS, to select the two highest scoring non-psychiatrists, along with the highest scoring psychiatrist as awardees. The Selection Committee may, in the alternative, in their sole discretion and considering the totality of qualifications of all offerors, select the three highest scoring offerors regardless of whether that includes a psychiatrist or not.

SECTION 5

**CONTRACT FOR
PROFESSIONAL SERVICES**



STATE OF HAWAII

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, executed on the respective dates indicated below, is effective as of
between
State of Hawaii ("STATE"), by its
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is
and
("CONTRACTOR"), a
under the laws of the State of
, whose business address and federal
and state taxpayer identification numbers are as follows:

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the
services described in this Contract and its attachments, and the CONTRACTOR is agreeable to
providing said services.
B. This Contract is for professional services as defined in section 103D-104,
Hawaii Revised Statutes ("HRS").
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
(Legal authority to enter into this Contract), the STATE
is authorized to enter into this Contract.

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 services set forth in Attachment-S1, which is made
a part of this Contract.
2. Term of Contract. This Contract starts on
and ends on
with
option(s) to extend
for
each.
3. Compensation. The CONTRACTOR shall be compensated for services rendered
and costs incurred under this Contract for a total amount not to exceed
DOLLARS

(\$ _____), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

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

5. Standards of Conduct Declaration. The Standards of Conduct Declaration by 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 paragraph 9 of the General Conditions.

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

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

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(if available)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

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

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

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

_____ Date _____



STATE OF HAWAII

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
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.