

ISSUANCE DATE: February 26, 2021

**INVITATION FOR BIDS (IFB)
NO.: PSD 21-COR/RCO-38**

SEALED BIDS FOR

**DIGITAL SCANNING AND ELECTRONIC CONTENT MANAGEMENT SYSTEM FOR
RE-ENTRY COORDINATION OFFICE,
THE DEPARTMENT OF PUBLIC SAFETY**

Will be received up to and opened at 2:00 pm (HST)

On

March 9, 2021

BID SUBMITTAL INSTRUCTIONS

Due to COVID-19, social distancing policy, bid submittals will only be accepted electronically through psd.bids@hawaii.gov. No fax or hard copy submittals will be accepted.

The date and time the bid offer is received by the State is the official receipt date and time stamp.

Bid shall contain all Offer Forms OF-1 through OF-2, and Wage Certificate, as a PDF attachment to the email. In addition, please attach applicable licenses and/or certifications to perform services.

Questions concerning this solicitation shall be made in writing to psd.bids@hawaii.gov

Max N. Otani
Department of Public Safety

Name of Company

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TO : All interested parties.

SUBJECT: IFB to provide digital scanning services and electronic content management system for Re-entry Coordination Office.

SECTION 1: INTRODUCTION

(Description of RCO)

Re-entry Coordination Office invites all qualified document imaging companies to submit to Re-entry Coordination Office a proposal in accordance with the requirements described in the IFB.

SECTION 2 : PROJECT DESCRIPTION

Re-entry Coordination Office requests the services of a qualified document imaging company to scan inmate classification files and RCO contracts. In addition, The Agency requires appropriate document management software to access and manage the scanned files. The current files are kept onsite.

The priority of imaging will be the oldest record and approximately 135 boxes. The digital scanning will be done based on the Agency budget/availability of funds.

The boxes will be picked up by the contractor and transported to their facility for digital scanning and conversion to pdf format. Boxes of files to be scanned and after scan should be kept in a secure area while in vendor's possession. The vendor will notify RCO of any damages to documents or boxes while in their possession for case by case resolution. Upon completion of scanning, all boxed files will be returned in its original boxes/folders/prongs by section and will be randomly audited by Re-entry Coordination Office (RCO). Scanned files will be returned to the Agency after files are randomly audited on directions by the Agency on box to box basis. The bid price should reflect either shredding or return of the files.

The electronic content management system software will be installed on one central station with access by multiple users with their unique user id and password. The scanned images should be accessible via the electronic content management system software document based on DOB, SSN, known aliases, person's name, SID number, and document type. The electronic content management system software will also provide for security of files, maintain and audit log of viewed files. Any discrepancy discovered in the random audit of the electronically scanned file(s) from the original documents will be rejected. Contractor shall have ten (10) working days to re-scan the rejected batch and shall be subject to another random audit. The re-scanning of any rejected batch shall be done at no additional cost to the state.

The scanned files also to be available via Windows based file folder structure.

SECTION 3: TIMELINE

Following are key dates for this IFB. Re-entry Coordination Office serves the right to make modifications. Changes to the schedule will be posted via Addendum.

- Issue IFBFebruary 26, 2021
- Vendor questions due.....March 2, 2021
- Responses to Vendor questions posted.....March 5, 2021
- Proposals due.....March 9, 2021
- Notice of Award.....March 12, 2021
- Start Date.....March 16, 2021 or Date on
Notice to Proceed

SECTION 4 : CONTRACT PERIOD/TERMS

The initial contract period shall be for a twelve month period starting on March 16, 2021, or the commencement date stated on the Notice to Proceed. Unless terminated, the contract may be extended for not more than (2) additional twelve-month periods or portion(s) thereof without the necessity of rebidding, if mutually agreed in writing. The contract price for the extended period shall remain the same or lower than the initial bid price except for any increase allowed through State initiated contract modification(s).

SECTION 5 : SPECIFICATIONS

Re-entry Coordination Office will require consultant services which include, but are not necessarily limited to the specification requirements listed below. All bidders must provide bids for all the requirements as a whole. There will be no subcontracting. Submit all last name, first name and social security numbers of employees that will be in charge of this project for background check. (See requirement 5.4 II)

Failure to mark either a YES or NO will result in the statement answer shall be considered non-responsive and will disqualify the Offeror from further consideration. It's the Offeror's sole responsibility to submit in their proposals as it relates to each requirement. No additional features or requirements will be accepted.

5.1 SCANNING REQUIREMENT

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
I. Retrieve and transport records identified by The Agency to the Contractor's facility and convert the			

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
records to PDF format to be able to viewed and managed by the electronic content management system.			
II. Maintain strict confidential inventory control from the time of pick up to the time of delivery. Provide receipt to Agency of all the records.			
III. Document preparation to include separation of documents from the file folders. The documents are stapled/paper clipped and in two prongs. Removal of staples, paperclips, sticky notes as needed. Taping of small sheets and other tasks as needed to ensure that the documents are legible when scanned.			
IV. The electronic image to look as close to the original image as possible with color documents to be in color, black and white documents in black and white and mixed color and black as in the original.			
V. Document size varied from postcard size to 11" x 17" and some odd sizes. The size of the scanned image to reflect the original image.			
VI. The documents are mixed single and double-sided.			
VII. The documents must be scanned at a minimum of 300dpi and viewable in PDF format.			
VIII. The documents needs to be indexed based on categories below: <ul style="list-style-type: none"> • Inmate ID • Inmate name • Transfer Date • Date Generated • Date Approved • Location From 			

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
<ul style="list-style-type: none"> Location To 5 Document Types 			
IX. The electronic PDF available to be viewed via the electronic content management system searchable by all different index fields and folder structure.			
X. The electronic documents to be searchable by any of the indexes.			
XI. The original files to be returned to the Agency on directions by the Agency on a box by box basis. The price to include either shredding or return of documents.			
XII. The returned files (all pages back in order) to be placed back in the folder in the same order before scanning.			
XIII. 5+ years experience with State of Hawaii Agency for scanning services (Please name at-least one agency)			
XIV. Will the services be sub-contracted?			

5.2 ELECTRONIC CONTENT MANAGEMENT SYSTEM REQUIREMENTS

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
I. Licensing and Deployment <ul style="list-style-type: none"> a. Concurrent user Licensing b. Unlimited User Access (with unique user id) c. Option for On Premise Deployment 			
II. User Experience <ul style="list-style-type: none"> a. Add Organization Logo b. Customize Color Scheme c. Web Browser Based access d. Customizable End User Dashboard <ul style="list-style-type: none"> i. Add/remove rearrange functions e. Dynamic Foldering – Set Custom Folder Structures f. Auto-Index and Name New Files 			
III. Files Viewing and Functions			

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
<ul style="list-style-type: none"> a. Integrated File Viewer b. View and Change Indexes c. Merge and Split Files d. Add and Remove Pages e. Clone Files f. Print, E-mail, Download g. E-mail as Attachment h. E-mail File Link i. Versioning j. Check-in/Check-Out k. Customizable Digital Stamps l. Digital Signatures m. Searchable Comments/Notes Section n. Search and Highlight Word or Phrase o. Redact p. Annotations 			
<p>IV. Quick and Advanced Search</p> <ul style="list-style-type: none"> a. Index Fields b. Full Text c. Full Text and Index Fields d. File Comments e. File Information <ul style="list-style-type: none"> i. GUID ii. Type iii. Date Created iv. Date Modified f. Emails (To, From, CC, Subject, Date Sent) g. Boolean Search h. Save Search Templates 			
<p>V. Features</p> <ul style="list-style-type: none"> a. Graphical Workflow Designer b. File Retention c. Full Audit d. Integrated OCR <ul style="list-style-type: none"> i. Enable or Disable OCR ii. OCR in English iii. OCR Multiple Languages in the same File iv. Set Multiple Compression Options 			

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
e. Mobile Application f. Office and Office 365 Integration g. MS Outlook (native format and/or convert to pdf) h. Import E-mails, E-mail with Attachments, only Attachments i. Import Scheduler j. Task Inbox k. FULL API			
VI. Security a. AD Integration b. SSO Support -Both LDAP and SAML c. Audit Log d. Role and User Based Right e. AES 256 Bit Encryption f. Function Rights- Cabinet, Folder and File Based g. Access Rights-Cabinet, Folder and File Based h. 5+Years experience with State of Hawaii Agency for Electronic Content Management System (Please name at-least one agency and include contact information)			
VII. Will the services be sub-contracted?			
VIII. Any discrepancy discovered in the random audit of the electronically scanned file(s) from the original documents shall reject the entire "batch". Contractor shall have ten (10) working days to rescan the rejected batch, and shall be subject to another random audit. The rescanning of any rejected batch shall be done at no additional cost to the state.			

5.3 REQUIREMENT FOR SUPPORT/TRAINING/ MAINTENANCE

I.	Files to be available back at the Agency within 4 hours of the request when requested.			
II.	24/7 availability of live person.			
III.	Respond to agency needs within 2 hours.			
IV.	The contractor must provide onsite training and onsite help when needed on an ongoing basis.			
V.	Maintain and provide training for the software.			
VI.	Provide technical support.			

5.4 QUALIFICATION OF STAFF

REQUIREMENT	YES	NO	IF NO, PROVIDE EXPLANATION
I. Re-entry Coordination Office requires that all employees of the awardee needed to fulfill the contract must be HIPAA (The Health Insurance Portability and Accountability Act) certified.			
II. All employees of the awardee needed to fulfill the contract must have a criminal background check with no criminal history or conviction of any felony or any crime related to theft, gambling or involving moral turpitude. Please list full legal names and titles of each employee in the explanation section. The agency has the right to refuse services of any bidder based on the employee's technical competence or criminal background.			1) 2) 3) Etc..
III. Re-entry Coordination Office may further conduct its own criminal background checks on all employees of the awardee needed to fulfill the contract.			
IV. The responding bidder (vendor/company) must specialize exclusively in providing document			

management services. Please explain other services that your company provides if any other.			
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SECTION 6: QUESTIONS

All questions should be submitted in writing no later than March 2, 2021, 4:30 p.m. HST, to psd.bids@hawaii.gov. Any questions received will be responded via an addendum.

SECTION 7: SUBMITTAL REQUIREMENTS

In order to facilitate the analysis of responses to the IFB, vendors are required to prepare their proposals in accordance with the instructions outlined in this IFB. Vendors who deviate from these instructions may be considered non-responsive and may be disqualified at the discretion of the HPA. Proposals must include:

1. Offer Form – OF-1
2. Pricing Form – OF-2
3. Specifications section 5.1 Scanning Requirement, 5.2 Electronic Content Management System Requirements, 5.3 Requirement for Support/Training/Maintenance, 5.4 Qualification of Staff pages 4 to 9.
4. Hawaii Compliance Express compliant certificate, or other acceptable compliance documents.
5. Proof of Liability Insurance in the required coverages.

Due to COVID-19, social distancing policy, bid submittals will only be accepted electronically through psd.bids@hawaii.gov. No fax or hard copy submittals will be accepted.

The date and time the bid offer is received by the State is the official receipt date and time stamp.

Bid shall contain all Offer Forms OF-1 through OF-2, and Wage Certificate, as a PDF attachment to the email.

Questions concerning this solicitation shall be made in writing to psd.bids@hawaii.gov.

Applicants are required to submit the completed bid to psd.bids@hawaii.gov identified with the following information:

Applicant's name, address, and telephone number
 The words, "Invitation for Bids"
 The Invitation for Bids number
 The title of the Invitation for Bids
 The date and time of the due date

SECTION 8: AGENCY RIGHTS

This IFB does not commit Re-entry Coordination Office to select a contractor or enter into a contract with any bidder. The agency reserves the right to: (a) retract or withdraw this IFB prior to executing the contract with the awardee; (b) utilize any ideas from the proposals. All information in the proposal becomes property of Hawaii Paroling Authority. All costs incurred in preparing this IFB is the sole responsibility of the respondent. The Agency reserves the right to accept or reject, in part or in full, any or all of the offers, without assigning any reason.

SECTION 9: SOLICITATION INQUIRIES

All questions regarding this IFB should be submitted in writing to psd.bids@hawaii.gov.

Please submit any questions on or before 3/1/21. Telephone inquiries will not be accepted. The Public Safety Department will post responses to all questions received via written addendum. The identity of the vendor asking the question will not be posted. No inquiries will be accepted after the deadline. Except as provided here, respondents may not ask any questions of the Re-entry Coordination Office personnel. The Agency reserves the right to disclose the response to questions or clarifications to other vendors. Also reserves the right to issue addenda or amendments to this IFB.

SPECIAL PROVISIONS

TERMS AND ACRONYMS USED HEREIN

ASO-PC	=	Department of Public Safety, Administrative Services Office— Purchasing and Contracts, 919 Ala Moana Boulevard, Room 413, Honolulu, Hawaii 96814
Bidder or Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
GC	=	General Conditions Form AG-008 Revised October 17, 2013 by the Department of the Attorney General.
IFB	=	Invitation for Bids
RFP	=	Request for Proposals
GET	=	General Excise Tax

SCOPE OF WORK

The Digital Scanning and Electronic Content Management, all in accordance with these Special Provisions, the attached Specifications, and the General Conditions Form AG-008 Rev. (10/17/13) by reference made a part hereof, and attached as Attachment A.

CONTRACT ADMINISTRATOR (CA)

For the purposes of this contract, Ms. Shaye Kamada , Secretary or her duly appointed representative, telephone (808) 587-1389 , is designated the CA.

TERM OF PERFORMANCE

The initial contract period shall be for a twelve month period starting on March 16, 2021, or the commencement date stated on the Notice to Proceed. Unless terminated, the contract may be extended for not more than (2) additional twelve-month periods or portion(s) thereof without the necessity of rebidding, if mutually agreed in writing. The contract price for the extended period shall remain the same or lower than the initial bid price except for any increase allowed through State initiated contract modification(s).

BIDDER QUALIFICATION

Place of Business. At the time of bidding, Offeror shall have an established place of business in the State of Hawaii.

PROJECT INSPECTION

Prior to submittal of an offer, Offerors may inspect the proposed work site to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed. Offeror inspection is not mandatory; however, submission of an offer shall be evidence that the Offeror understands the scope of the project and shall comply with specifications herein, if awarded the contract. No additional compensation, subsequent to bid opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

Offerors shall arrange for a project inspection with the Contract Administrator.

OFFEROR'S AUTHORITY TO BID

The State will not participate in determinations regarding an offeror's authority to sell a product. If there is question or doubt regarding an offeror's right or ability to obtain and sell a product, the offeror should resolve that question prior to submitting a bid. If an offeror offers a product that meets specifications and is acceptable and the price submitted is the lowest price bid, the contract will be awarded to that offeror.

If after award, it is revealed that the Contractor is not an authorized dealer or cannot, for any reason, obtain the product under contract, then the Contractor will be obliged to deliver as detailed under the paragraph "FAILURE TO DELIVER".

CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of an offer in response to this solicitation, Offeror certifies the following:

1. The costs in response to this solicitation have been arrived at independently, without consultation, communication, or agreement with any other Offeror, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which have been quoted in this solicitation have not been knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of Section 3-122-112, Hawaii Administrative Rules (HAR). Due to the immediacy of the start date, it is recommended that offeror submit the following compliance documents with their offer submittal.

1. Chapter 237, tax clearance
2. Chapter 383, unemployment insurance
3. Chapter 386, workers' compensation
4. Chapter 392, temporary disability insurance
5. Chapter 393, prepaid health care; and
6. One of the following:
 - a. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or
 - b. Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

BID PREPARATION

Offer Form, Page OF-1. Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract. If the Offeror is, for example, a corporation, please do not insert in the space provided for the "Exact Legal Name of Offeror", the name of the person acting on behalf of the corporation.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Bid Price. Bid Prices shall be listed on Offer Form, page OF-2 based on pick up from the Agency Archives to Scanning destination, upon completion and approval of batch audit, delivery to the

Agency or Shred as directed, and shall include all other costs and applicable taxes. Bid shall also include, when applicable, costs for installation of accessories, modifications of unit, and instructional training in use of equipment/software.

Submission of bid shall be evidence that the Offeror understands and will comply with the specifications and special provisions herein; and the GC, included by reference and made a part hereof.

Tax Liability. A vendor doing business in the State of Hawaii, as evidenced by its Hawaii General Excise Tax (GET) license number, is liable for the Hawaii GET, currently 4%. If, however, a Offeror is exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Taxpayer Preference. For evaluation purposes, pursuant to §103D-1008, HRS, the Bidder's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

METHOD OF AWARD

Method of Award. Award, if made, will be to the qualified responsive and responsible Offeror submitting the lowest quoted bid price.

The solicitation may be canceled or the offers may be rejected, in whole or in part, when in the best interest of the Department of Public Safety, as provided in Sections 3-122-95 through 3-122-97, Hawaii Administrative Rules (HAR).

Responsibility of Lowest Responsive Bidder. Reference Chapter 103D-31 O(c), HRS. If compliance documents have not been submitted to the PSD-ASO prior to award, the lowest responsive offeror shall produce documents within the deadline set by the Procurement Officer to demonstrate compliance with this section.

REQUIREMENT FOR AWARD:

Effective July 1, 2011, Pursuant to Act 190, SLH 2011 and Procurement Circular No. 2011-02, verification of vendor's compliance to HRS §103D-310(c) shall be through Hawaii Compliance Express.

Effective October 31, 2013, pursuant to Procurement Circular No. 2011-02, Amendment 1, if the offeror is currently participating in HCE, offeror shall be required to maintain compliance through

HCE. For all other Offerors, registering on HCE is recommended but not mandatory. Valid hardcopies of the tax clearance, LIR #27 and Certificate of Good Standing are acceptable.

To facilitate award, it is recommended that Offerors register with the Hawaii Compliance Express prior to their bid submittal.

Hawaii Compliance Express. The Hawaii Compliance Express (HCE), allows businesses 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 issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of Chapter 103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC).

Alternatively, for Offerors who elect not to register on Hawaii Compliance Express (HCE), verification of compliance shall be submitted by separately applying to paper certificates at the various state agencies as follows:

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

Pursuant to §103D-328, HRS, all awarded Offerors shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the PSD-ASO.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2012) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.hawaii.gov/tax/a11alpha1ist.htm>

DOTAX Forms by Fax/Mail: (808) 587-4242

1-(800) 222-3229

IRS: (808) 566-2748

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488

IRS: (808) 524-5950

The application for the clearance is the responsibility of the Offeror and must be submitted directly to the DOTAX or IRS and not to the PSD-ASO. However, the tax clearance certificate shall be submitted to the PSD-ASO.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.

Pursuant to §103D-31 O(c), HRS, all awarded Offerors shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the PSD-ASO. A photocopy of the certificate is acceptable to the PSD-ASO.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR #27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the PSD-ASO.

The application for the certificate is the responsibility of the Offeror and must be submitted directly to the DLIR and not to the PSD-ASO. However, the certificate shall be submitted to the PSD-ASO.

Compliance with Section 1030-310(c), HRS, for an entity doing business in the State.

All awarded Offerors shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the PSD-ASO. A photocopy of the certificate is acceptable to the PSD-ASO.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements. Contractors registered on the HCE are required to submit a valid "Certificate of Vendor Compliance" for final payment of the contract.

Contractors not electing to register on HCE, are required to submit a valid tax clearance and an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at www.hawaii.gov/spo. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services & Construction - Chapter 103D. HRS, menu.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the PSD-ASO as soon as possible. If a valid certificate is not submitted on a timely basis as required by the Procurement Officer for award of a contract, an offer otherwise responsive and responsible may not receive the award.

CONTRACT EXECUTION

The successful Offeror receiving an award shall be required to enter into a formal written contract. Performance and payment bonds are not required for this contract.

Any agreement arising out of this offer is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

LIABILITY INSURANCE

Liability insurance shall be required of the Contractor and, if applicable, to all of Contractor's subcontractors.

The Contractor shall maintain insurance acceptable to the State in full force and effect throughout the term of this contract. The policy or policies of insurance maintained by the Contractor shall provide the following limit(s) and coverage:

Coverage	Limits	
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence	
	\$2,000,000 aggregate	
Automobile, if applicable	Bodily injury	\$1,000,000/person
		\$1,000,000/occurrence
	Property damage	\$1,000,000/accident

Each insurance policy required by this contract shall contain the following clauses as applicable:

1. "The State of Hawaii, Department of Public Safety, is added as an additional insured as respects to operations performed for the State of Hawaii."

2. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The Service Provider agrees to deposit with the State of Hawaii, on or before the effective date of this contract, certificate(s) of insurance and insurance policy endorsements (for additionally insured, and the Service Provider's insurance policy shall be primary and non-contributory to any insurance maintained by the State of Hawaii) necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract. Upon request by the State, Contractor shall furnish a copy of the policy or policies.

No work is to be undertaken by the Contractor prior to the contract commencement date. The State of Hawaii is not liable for any work, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

DELIVERY

Equipment/Software furnished under these specifications shall be delivered within ten (10) calendar days from the commencement date on the Notice to Proceed. Please contact the agency for the delivery address since they are in the process of moving. It will be to the following location:

Effective Date : 3/16/21

State of Hawaii
Department of Public Safety
Re-entry Coordination Office
919 ALA Moana Blvd., Room # 406 & 401
Honolulu, Hawaii 96814

Effective Date: 5/1/21

State of Hawaii
Department of Public Safety
Re-entry Coordination Office
1177 Alakea Street, 5th Floor
Honolulu, Hawaii 96813

Prior to delivery, the Contractor shall contact the State representative to coordinate delivery arrangements and schedule training and instruction in the maintenance and proper and safe use of the equipment. Representatives of both the Contractor and State shall be present at the delivery site for purposes of visual inspection, acceptance. Training and instruction in the maintenance and proper and safe use of the equipment shall be provided at no additional cost to the State and

completed within ten (10) working days after delivery of equipment unless advised otherwise by the agency.

QUALITY OF EQUIPMENT

The equipment furnished under these provisions and the attached specifications shall be new and of the best quality of its respective kind and shall be completely assembled and free from defects which may render it unfit for use.

Equipment offered shall include any other standard features not listed herein but detailed in manufacturer's brochures or specifications literature and deemed necessary for the proper and safe operation of the equipment. No payment, whether partial or final, shall be construed to be an acceptance of unacceptable supplies.

The State may, at any time, by written order, stop delivery of products not conforming to these specifications. Such stop order shall not relieve the Contractor of his obligation to complete his contract within the contract time limits, nor shall it in any way terminate, cancel or abrogate the contract or any part thereof.

WARRANTY

Any discrepancy discovered in the random audit of the electronically scanned file(s) from the original documents shall reject the entire "batch". Contractor shall have ten (10) working days to rescan the rejected batch and shall be subject to another random audit. The rescanning of any rejected batch shall be done at no additional cost to the state.

LIQUIDATED DAMAGES

Liquidated damages is fixed at the sum of TWENTY FIVE DOLLARS (\$25.00) for each and every day the Contractor delays in the completion of any item of his contract after the required date of said completion.

DELIVERY EXTENSION

Contractor shall complete delivery within the time allowed by the contract. If Contractor fails to deliver within the time allowed, liquidated damages as specified herein shall apply. However, Contractor will not be held responsible for delays due to reasons beyond his control, provided he submits written notification of such delays prior to the delivery deadline. This notification shall be submitted to the Procurement Officer and shall detail the reasons for the delays and shall include appropriate documentation. No delivery extension will be considered without proper documentation.

INVOICING

Contractor shall submit original and three (3) copies of the invoice to the following address:

Effective Date : 3/16/21

State of Hawaii
Department of Public Safety
Re-entry Coordination Office
919 ALA Moana Blvd., Room # 401
Honolulu, Hawaii 96814

Effective Date: 5/1/21

State of Hawaii
Department of Public Safety
Re-entry Coordination Office
1177 Alakea Street, 5th Floor
Honolulu, Hawaii 96813

Invoice should reference both the contract number and the IFB number.

PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by Section 103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or which requires interest payment not in conformance with statute.

RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses, or neglects to perform the services in accordance with the requirements of these Special Provisions, the Specifications, and General Conditions herein, in addition to the recourse stated in Section 13 of the General Conditions, the State reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Contractor, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

RECORDS RETENTION

The Contractor and any subcontractor(s) shall maintain the books and records that relate to the contract and any cost or pricing data for three (3) years from the date of final payment under the contract.

PROTEST

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved persons knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to the bid opening date.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award , if any, resulting from this solicitation shall be posted on the internet at <https://hands.ehawaii.gov/hands/awards>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, PSD-PPB, 919 Ala Moana Boulevard, Room 413, Honolulu, Hawaii 96814.

IFB NO.: PSD 21-COR/RCO-38

DIGITAL SCANNING AND ELECTRONIC CONTENT MANAGEMENT SYSTEM
For DEPARTMENT OF PUBLIC SAFETY
RE-ENTRY COORDINATION OFFICE

Procurement Officer
Department of Public Safety
State of Hawaii
Honolulu, Hawaii 96814

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions Form AG-008 Rev .(10/17/13), by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check ☒ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii ; **OR**
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: _____

Offeror is:

- ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture
☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____

Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

* _____

Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

OFFER FORM

OF-1

PRICING FORM

Please answer all sections. Please indicate \$0.00 if no charge.

SERVICES/PRODUCT	Estimated Quantity	Quoted Unit Bid Price	Estimated Total Bid Price or Annual	Comments, If any.
I. Scanning / Imaging Cost (Please specify per page or per box. The box size is: 12.1/2" x 16 5/16" x 10 1/2").	135			
II. Shredding Cost per box. (optional)	TBD		XXXXXXXX	
III. Electronic Content Management System Cost (Please specify how many user licenses are included in the explanation section based on number of users – full access)	5 users- w/ option to add users .			
IV. Additional users – view only access	2 -w/option to add users			
V. Installation software charges (non-recurring)	Lump Sum			
VI. Maintenance software charges	Monthly/Annual (Indicate)			
VII. Training charges of # of staff (non-recurring)	Lump Sum			
VIII. Ongoing user support	Monthly/Annual (Indicate)			
IX. Ongoing technical support	Monthly/Annual (Indicate)			

Estimated Total Initial Cost : \$ _____

OFFER FORM

OF-2

OFFEROR: _____

Company Name _____

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**

(See Special Provisions)

Subject: IFB No.: PSD 21-COR/RCO-38

Title of IFB: Digital Scanning and Electronic Content Management System

For Re-Entry Coordination Office, the Department of Public Safety

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)

Reference: _____ PSD 21-COR/-RCO-38
(Contract Number) (IFB/RFP Number)
_____ affirms it is in
(Company Name)

compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance
2. Chapter 386, HRS, Worker’s Compensation Law
3. Chapter 392, HRS, Temporary Disability Insurance
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a “Certificate of Good Standing” from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT A

General Conditions

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.