



PUBLIC UTILITIES COMMISSION

RELEASE DATE: Friday, February 9, 2018

REQUEST FOR PROPOSALS No. RFP-PUC-18-01

SEALED OFFERS FOR

INDEPENDENT EVALUATION, MEASUREMENT, AND VERIFICATION CONTRACTOR

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

WILL BE RECEIVED UP TO 4:30PM HST ON

FRIDAY, MARCH 9, 2018

IN PUBLIC UTILITIES COMMISSION, KEKUANAOA BUILDING, 465 SOUTH KING STREET, ROOM 103, HONOLULU, HAWAII 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO: JACKIE YOUNG, CONTRACT SPECIALIST VIA E-MAIL AT Jaclyn.N.Young@hawaii.gov.

Delmond J. H. Won
Procurement Officer
Hawaii State Public Utilities Commission

RFP-PUC-18-01

NOTICE TO INTERESTED PARTIES

THIS SOLICITATION DOCUMENT IS PROVIDED TO POTENTIAL OFFERORS FOR INFORMATIONAL PURPOSES.

OFFERORS MUST REGISTER
VIA EMAIL BY 4:30PM (HST) FRIDAY FEBRUARY 23RD
IF INTERESTED IN RESPONDING TO THIS SOLICITATION.

REGISTER via E-MAIL to: Jaclyn.N.Young@hawaii.gov

Provide the following information:

Company Name
Company Contact Person
Mailing Address
Contact Telephone
Contact Email

**PLEASE SEE SECTION 1.4 OF THIS DOCUMENT
FOR ADDITIONAL INFORMATION**

TABLE OF CONTENTS

	<u>Page</u>
SECTION ONE: INTRODUCTION, KEY DATES, AND GENERAL INFORMATION.....	3
SECTION TWO: BACKGROUND AND SCOPE OF WORK	12
SECTION THREE: PROPOSAL FORMAT AND CONTENT.....	31
SECTION FOUR: EVALUATION PROCESS AND CRITERIA.....	46
SECTION FIVE: CONTRACTOR SELECTION AND CONTRACT AWARD.....	51
SECTION SIX: SPECIAL PROVISIONS.....	56
SECTION SEVEN: ATTACHMENTS AND APPENDICES	60

SECTION ONE
INTRODUCTION, KEY DATES, & GENERAL INFORMATION

1.1 INTRODUCTION

Hawaii has the most aggressive clean energy policies in the nation and was the first to establish goals for 100 percent renewable generation for electricity, and an energy efficiency portfolio standard of 4,300 GWh of electricity use reductions statewide by 2030. Contributions from energy efficiency and other demand-side resources are integral to achieving the State’s overarching commitment to energy independence based on clean, local and cost-effective renewable sources.

The State of Hawaii Public Utilities Commission (“PUC” or “Commission”) invites qualified teams of experts to assist in the pursuit of these goals through the provision of high-quality Evaluation, Measurement and Verification (“EM&V”) services. The Commission is issuing this Request for Proposals (“RFP”) to select an EM&V Contractor to provide EM&V and assessment services for Public Benefits Fee Administrator (“PBFA”) programs, the State’s energy efficiency portfolio standard and related policies and programs.

This RFP presents the Commission’s objectives, terms and conditions, expected and possible key tasks and deliverables, and information regarding a range of services that may be requested in fulfillment of the contract. This RFP also provides submission requirements for EM&V Contractor proposals and estimated dates for the various events in the submission process, selection process, and performance of work. While these dates are subject to change, potential Offerors must be prepared to meet them as they currently appear in this RFP.

Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance in the work phase may result in the Commission refusing to consider the proposal of the Offeror. Potential Offerors should read this entire RFP carefully, along with its appendices, attachments and referenced documents, to gain a clear understanding of the requirements for submission.

1.2 SUMMARY OF RFP

1.2.1 Scope Summary

The purpose of this RFP is to support selection of an EM&V Contractor that will be responsible for managing and providing some or all of the following services:

- (a) Impact evaluation of Hawaii Energy program performance for Program Years 2017 and 2018, and to identify improvements that can increase Hawaii Energy program effectiveness.
- (b) Review and update of Technical Reference Manuals (“TRMs”).
- (c) Research and analysis in support of preparing:
 - i. Hawaii’s Energy Efficiency Portfolio Standard (“EEPS”) Report to the Legislature and
 - ii. Possible revisions to the EEPS goals and/or the EEPS Framework.

- (d) Baseline studies which are similar to studies often referred to as residential appliance saturation surveys (“RASS”) and commercial end use saturation studies (“CEUS”).
- (e) An energy efficiency potential study.
- (f) Additional evaluation-related services, if directed to do so by the Commission.

To provide the requested services, the EM&V Contractor team is expected to be structured as follows:

- One prime contractor overseeing and responsible for the overall scope, managing the work and contributing to a number of evaluation-related activities.
- One or more subcontractors included as part of the Successful Offeror’s proposal in response to this RFP. Such subcontractors may be referenced in the Successful Offeror’s proposal and share an integral role as part of Offeror’s proposed approach to key activities described in the proposal and/or the subcontractor(s) may be included as part of the team without specific assignments

Subcontractors will contribute to, and in some cases solely oversee and conduct evaluation and assessment activities, as determined by the Commission in consultation with the prime contractor.

1.2.2 Contract Term

The expected contract start date is on or around May 1, 2018 and shall end on June 30, 2020 with options for contract term extensions.

Unless terminated, the Contractor and the State may extend the term of the contract for up to two additional 12-month periods, or portions thereof, without the necessity of re-soliciting, upon mutual agreement in writing.

1.2.3 Budget

For this multi-year EM&V contract, the budget will be structured on a time and materials basis not-to-exceed budget. The contract budget amount will be determined by the Commission.

In issuing this RFP, the Commission has a maximum contract budget (for May 2018 through June 2020) of up to approximately \$3,000,000. This budget amount is neither guaranteed nor necessarily the budget that will be assigned to the executed Contract. It is only provided to indicate to Offerors a sense of the scale of this opportunity.

Payment will be made to the EM&V Contractor on the basis of documented time and materials expenditures, not-to-exceed the total amount of approved work plans and the contract. Proposals submitted in response to this RFP shall include hourly rates, non-labor rates, costs for fixed-cost materials or outside services (e.g., surveys and a variety of data collection modalities). The Commission or the State shall not be liable or responsible for any compensation to the EM&V Contractor for the services provided under its proposal or in this project that exceeds the total contract amount. The EM&V

Contractor shall be paid in accordance with the State's General Conditions ("GCs"), Billing Requirements, and Travel Guidelines.

No work shall be conducted under the auspices of any contract resulting from this RFP unless and until a work plan for a specific activity has been submitted, reviewed and approved in writing by the Commission or the Commission's Energy Efficiency Manager (EEM).

1.3 CANCELLATION

The Request for Proposals (RFP) may be cancelled and any or all proposals rejected in whole or in part, without liability to the State, when it is determined to be in the best interest of the State.

1.4 RFP COMMUNICATIONS, SCHEDULE, AND SIGNIFICANT DATES

1.4.1 Official Means of Communication

During the solicitation process for this RFP, all official communications with Offerors must be submitted in writing and directed to the Commission by e-mail (via Contract and Procurement Specialist Jaclyn Young: Jaclyn.N.Young@hawaii.gov).

Final proposals shall be submitted in the following formats, and received by the Public Utilities Commission **no later than 4:30pm (HST) Friday, March 9, 2018.**

1. Paper: One (1) unbound, indexed, original proposal marked "ORIGINAL", AND five (5) bound, indexed copies of the original marked "COPY." DO NOT SUBMIT MORE THAN ONE ORIGINAL.

In the event of any discrepancies between versions, the paper copy marked "ORIGINAL" shall be considered the official submittal.

2. Electronic Disc (e.g., CD, DVD)
 - a. A version of the proposal in Microsoft Word format, with Microsoft Excel spreadsheet for the budgets, using the budget template included with this RFP – See Attachment 4. (PDF forms supplied for adding information and/or signature(s) to the proposal may be submitted in PDF format as appropriate).
 - b. A complete PDF version of the proposal and budget.

All communications, inquiries, and materials concerning this RFP shall be addressed to:

Hawaii Public Utilities Commission
Attention: Jaclyn Young, Contract and Procurement Specialist
465 South King Street, Room 103
Honolulu, Hawaii 96813
Telephone: (808) 586-2020
E-mail: Jaclyn.N.Young@hawaii.gov

1.4.2 Registration Requirement

Potential Offerors must register **by Friday, February 23rd, 4:30pm (HST)** to ensure receiving any addenda that are issued. Registration shall include:

Company Name
Company Contact Person
Mailing Address
Contact Telephone
Contact Email

Registration shall be submitted via email to the Commission to the attention of Jaclyn Young, Contract & Procurement Specialist, at Jaclyn.N.Young@hawaii.gov. Telephone calls **WILL NOT BE ACCEPTED**. Failure to register according to the instructions in this RFP will result in automatic rejection of Offeror's proposal.

It is the Offeror's responsibility to confirm that the Commission has received the registration submittal.

1.4.3 Inquiries Regarding this RFP

Written inquiries must be received by Jaclyn Young, Contract & Procurement Specialist at the email address provided for that purpose and shall state the page, paragraph, and line or sentence to which the question relates, when applicable. All written inquiries must be received by the deadline as described.

Informal questions and responses over the telephone shall not be construed as an addendum to the RFP. Replies to Offerors' questions will be considered official only if (1) the Commission receives the questions in writing via e-mail by the date specified herein; (2) the Commission provides a written reply; and (3) such questions and answers are made a part of the RFP by addendum. All written responses issued as an addendum to the RFP become, thereby, part of the RFP.

Offerors shall receive written response(s) that will be emailed to registered Offerors, provided that the Offeror's email address, contact telephone, and contact email address have been given to the Commission. The Commission shall not be responsible for notifying those potential Offerors who have failed to provide the necessary contact information by the registration deadline.

Offerors who wish to have their contact information distributed to other potential Offerors for purposes of establishing teaming arrangements must indicate this preference together with their registration. If desired, Offeror contact information will be distributed with the issuance of responses to written inquiries.

1.4.4 Issuing Office

This RFP is issued by the State of Hawaii Public Utilities Commission. The Commission is the sole point of contact concerning this RFP.

1.4.5 Schedule and Significant Dates

The schedule for the work set out herein represents the State's best estimate of the schedule that will be followed. If a component of this schedule, such as *Closing Date – RFP due* is delayed, the rest of the schedule will likely be shifted by the same number of days. The schedule and significant dates are as follows:

Table 1: RFP Schedule and Significant Dates

Activity	Scheduled Dates*
Advertisement of RFP	Friday, February 9, 2018
Registration Deadline and Deadline to submit written inquiries	Friday, February 23, 2018
Issuance of responses to written inquiries and of RFP addenda (if applicable)	Wednesday, February 28, 2018
Closing Date – RFP due	Friday, March 9, 2018
Proposal Review Period	March 12 to March 20, 2018
Optional discussions with priority-listed Offerors	March 21 to 23, 2018
If required, Best and Final Offers due	Wednesday, March 28, 2018
EM&V Contractor selection and award	On or around April 2, 2018
Contract Start Date	On or around May 1, 2018 (work day after contract is signed)

*(note: all deadlines are **4:30pm HST**)

Potential Offerors must adhere to the specified time that an item is due.

Key Deadlines:

- *Registration and Written Questions must be received by Hawaii PUC no later than **February 23, 2018** (via email)*
- *All RFP materials due to Hawaii PUC office no later than **Friday, March 9, 2018** (all materials must be **received in office by PUC on or before this date**)*

1.5 **AUTHORITY**

This RFP is issued pursuant to the provisions of the Hawaii State Procurement Code (HRS Chapter 103D), and the State Procurement Office's applicable Directives, Circulars, and administrative rules. All potential Offerors are charged with the presumptive knowledge of all legal authorities. These and other pertinent materials are available on the State of Hawaii Procurement Office web site at www.spo.hawaii.gov. Submission of a valid executed offer by any Offeror shall constitute admission of such knowledge on the part of such Offeror.

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

1.6 PROPOSAL COST

The Offeror shall be responsible for all costs incurred in preparing or responding to this RFP.

The Commission will not be liable for any costs incurred by any Offeror in responding to this RFP, regardless of whether or not the State awards a contract through this process. The State may decide not to award a contract for the work. It may also cancel this RFP and contract for the work through some other process or by issuing another RFP.

1.7 PROPERTY OF THE STATE

All materials and documents submitted in response to this RFP shall become the property of the State and will not be returned.

1.8 LEGISLATIVE AND REGULATORY CHANGES

The Commission reserves the right to amend the requirements of this contract in response to legislative changes and/or regulatory changes imposed by the Commission and/or other developments that affect this RFP and/or any resulting contract.

1.9 MANDATORY CONTRACTOR REQUIREMENTS

This section describes mandatory requirements for the EM&V Contractor. Offerors should consider the following mandatory requirements prior to responding to this RFP:

1. In order to provide the Commission with independent EM&V services and expertise, the EM&V Contractor and proposed subcontractors must be an individual(s) or firm(s) not affiliated with the Public Benefits Fee Administrator, Hawaii electric or gas utilities, or with another agency of the State of Hawaii. If the Offeror or proposed subcontractors have or may have a real or perceived conflict, disclosure of the potential real or perceived conflict must be described with registration and, if a proposal is submitted, within the cover letter of the proposal. The Commission may assess the degree of the real or perceived conflict, and whether the real or perceived conflict is sufficient to disqualify the proposal;
2. EM&V Contractor is responsible for complying with state requirements. Unless otherwise provided in this RFP, the Successful Offeror will be responsible for obtaining all official licenses, approvals, clearances and similar authorizations required by any local, state, or federal agency for the work required in this RFP;
3. The EM&V Contractor shall be prepared to act in an independent capacity and not as officers or employees of the State. The EM&V Contractor must indemnify, defend and hold harmless the State and its officers and employees from liability and any claim, suit, judgment, and damages arising as a result of the EM&V Contractor's acts and/or omissions in the performance of its duties;
4. The EM&V Contractor shall agree to multi-year contract with the State beginning on or around May 1, 2018 through June 30, 2020;
5. In this RFP and any resulting contract, requirements for a prime contractor shall also pass to any subcontractor(s) unless otherwise specified herein. The term "EM&V

Contractor” in this RFP and any resulting contract shall refer to the team composed of the prime contractor and any subcontractors.

6. The EM&V Contractor shall possess strong oral and written communication and analytic skills, knowledge of current and evolving trends in implementation and evaluation of demand-modifying programs and a thorough understanding of the expected duties;
7. The EM&V Contractor shall propose a lead staff member who will coordinate the services of the EM&V Contractor and serve as the Project Manager and a single point of contact for all such services except as requested by the EEM and approved by the Commission, although the Commission and EEM may also work directly with subcontractors if and when such activity is desired by the Commission;
8. The EM&V Contractor shall **NOT** remove, replace or alter the duties of identified key personnel as indicated in their proposal and assigned to this contract, with respect to services performed under this contract, during the contract period without express written authorization, in advance, from the Commission. Key personnel shall include but not necessarily be limited to persons identified in the proposal for prime contractor’s and subcontractors’ senior firm representative(s) (e.g., Principal in Charge), Senior Advisor(s), Project or Deputy Project Manager(s), and Task Leaders. The Commission also reserves the right to require the EM&V Contractor to replace subcontractors, as well as identified individual personnel, from assignments made to this contract, found to be unacceptable to the Commission for any reason;
9. The EM&V Contractor (including Project Manager, key staff, key subcontractor staff and occasionally support staff) shall be available by telephone, voicemail and email using technologies/software/hardware compatible with the Commission’s systems and preferences.

The EM&V Contractor (including all pertinent staff per above) shall be accessible to the Commission, EEM, and other entities as designated by the EEM or Commission via telephone, email or with prior notice, in person during the hours: **Monday through Friday, 7:45 a.m. through 4:30 p.m. HST** and at other times to be determined by the Commission.

The EM&V Contractor shall respond to telephone calls, e-mail messages (with associated ongoing discussions) and other communications promptly, preferably within one business day (HST) or less, allowing minimal, reasonable exceptions. While allowances will be made to accommodate individual schedules and occasional variations, as is customary in the industry, the EM&V Contractor project manager and key staff (including subcontractors and others per above) shall be routinely available for regularly scheduled and/or ad hoc meetings during the HST work hours described above, notwithstanding the EM&V Contractor’s preferred time zone, workdays and/or hours.

At the EM&V Contractor’s discretion and/or occasionally at the request of the EEM, EM&V Contractor may need to work outside regular HST working hours, including evenings and weekends, to produce deliverables and/or meet project needs. The EM&V Contractor shall charge regular hourly rates for such time.

The EM&V Contractor shall not bill for time engaged in traveling to meetings.

10. The EM&V Contractor shall provide its own equipment, office space, and materials for this project.
11. During the contract term, invoices and cost and level-of-effort work plans (proposals) for requested services shall be submitted in the format provided in **Attachment 4**, (or other format specified by the Commission or Energy Efficiency Manager) itemizing costs and, summed to present an overall budget with rates, staffing, non-labor expenses, etc. by firm, weighted hourly labor costs, etc. in a summary table
12. The EM&V Contractor shall be proficient with Microsoft Office and have the capability to create, distribute and store documents and records pertaining to all evaluation services using Microsoft-based software and other software, tools or platforms as specified by the Commission.
13. The EM&V Contractor, including the prime contractor and all subcontractors, must operate a secure backup system for all computerized project files and continuously implement data security and privacy systems.
14. The EM&V Contractor must agree that the Commission may elect to amend or modify the EM&V Contractor's contract. Such a modification may entail revisions to work scope(s), the budget, or both.
15. The Commission may elect to retain one or more additional EM&V Contractors working on similar or related projects,
16. The EM&V Contractor shall not publish, use, distribute, incorporate or in any fashion make use of information, data, materials, documents, reports, analyses, text or any other items, broadly construed, developed under or associated with this contract and or evaluation and assessment services rendered under this contract without prior written approval by the Commission.

This requirement pertains to, but is not limited to, conference papers, publications, posters and reports. The EM&V Contractor may develop and present such material only with prior written approval by the Commission. Authorship and other credits must include appropriate individuals or entities, as determined by the Commission.

17. All products of the EM&V Contractor's work under this contract, including outlines, reports, charts, sketches, drawings, art work, plans, photographs, specifications, estimates, computer programs, models, databases, e-mails, documents and records, will be the sole property of the State and may not be copyrighted, distributed or resold by the EM&V Contractor. Any equipment purchased by or furnished to the EM&V Contractor by the State under this contract is provided on a loan basis only and remains the property of the State.
18. It is possible that some of the information used by the EM&V Contractor may be customer-specific or could provide an unfair competitive advantage to an entity or entities delivering electricity or services in Hawaii. The EM&V Contractor must safeguard any such confidential information using systems that provide appropriate protection in the collection, processing, storage and retrieval of such information.

The EM&V Contractor, including all relevant staff including subcontractors, shall sign and adhere to non-disclosure agreements, as directed by the Commission.

19. At the end of this contract term, upon cancellation of the contract, or if the Commission contracts with one or more additional Contractors during this contract term, this EM&V Contractor must provide acceptable transition assistance to the Commission and cooperation with one or more Contractors at reasonable rates of compensation. Under no circumstances shall the EM&V Contractor have any right to compensation for investments or other expenditures that were undertaken pursuant to, or in anticipation of, the extension of the contract.

20. With regards to subcontractors:

The entity serving as prime contractor shall be responsible for including appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the EM&V Contractor and the State and to ensure that the State is indemnified against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State and the EM&V Contractor.

The EM&V Contractor shall expressly understand and agree that it shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The EM&V Contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve it of the responsibility for providing the products/services as described and set forth herein, and in the contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the EM&V Contractor, such that the EEM and Commission perceive a single EM&V Contractor service entity albeit with access to subcontractors as requested by the Commission.

The EM&V Contractor must provide the State with notice prior to establishing any new subcontracting arrangements and before changing any subcontractors. The Commission reserves the right to require the EM&V Contractor to replace subcontractors, as well as staff members, found to be unacceptable to the Commission for any reason.

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.1 PROJECT OVERVIEW AND HISTORY

2.1.1 Hawaii's PBF Program and EEPS Overview

Public Benefits Fee

The Public Benefits Fee is a surcharge established by the Commission, pursuant to HRS § 269-121¹, and collected by the Hawaiian Electric Companies² (“HECO Companies”) from ratepayers. The PBF funds are used to support clean energy technology, demand response technology, energy use reduction, and demand-side management infrastructure, programs, and other services, subject to Commission review and approval.

Public Benefits Fee Administrator (PBFA) Programs – Hawaii Energy

The Public Benefits Fee (PBF) Programs are administered in the HECO Companies service territories by a third-party energy efficiency provider, the Public Benefits Fee Administrator (“PBFA”). The PBFA was selected by the Commission in a competitive process under HRS Chapter 269, Part VII. Hawaii Energy refers to the brand for these third-party administered energy efficiency programs operating under the guidance of the Commission, supported by the PBF. Hawaii Energy has been in operation since 2009 and the terms PBFA programs and Hawaii Energy programs are interchangeable.³

Hawaii Energy is the ratepayer-funded conservation and energy efficiency program for Hawaii, Honolulu and Maui counties. Hawaii Energy offerings include cash rebates and other incentives to residential and business electric utility customers to help offset the cost of energy-efficiency equipment and certain solar water heating applications. Hawaii Energy also has education and training opportunities to encourage the adoption of energy conservation behaviors and efficiency measures. Hawaii Energy forms the foundation of the State’s energy efficiency programs and services contributing to achievement of the Energy Efficiency Portfolio Standard (“EEPS”).

The Hawaii Energy program cycle currently runs from July 1st to June 30th of each year. The Hawaii Energy Program Year (“Program Year”) is named for the year in which it starts. Hawaii Energy began operating on July 1, 2009 (i.e. Program Year 2009) and is currently in its ninth year.

Hawaii Energy Annual Plans, EM&V Reports and other materials are available at: <https://hawaiienergy.com/about/information-reports>. Potential Offerors should review these documents to respond appropriately to this RFP.

¹Act 162, Session Laws of Hawaii 2006 (as amended by Act 118, Session Laws of Hawaii 2008, and codified as HRS Chapter 269 Part VII), authorizes the Commission, by order or rule, to redirect all or a portion of the moneys collected by Hawaii’s electric utilities from ratepayers, through a surcharge, to a third-party administrator contracted by the Commission.

² Hawaiian Electric Companies include: Hawaiian Electric Company (“HECO”), Hawaiian Electric Light company (“HELCO”), and Maui Electric Company (“MECO”). Collectively the companies are often referred to as “HECO.”

³ Please see additional information on these terms in the Terms and Acronyms List, Appendix 1.

Energy Efficiency Portfolio Standard (EEPS)

EEPS refers to the standard set forth by Act 155, Session Laws of Hawaii 2009, and promulgated as HRS § 269-96. Hawaii's EEPS requires electricity use reductions totaling at least 4,300 gigawatt-hours (GWh) statewide by 2030. To understand prior EEPS activity, Offerors should review materials in the Commission's EEPS Docket No. 2010-0037.

The Commission is charged with establishing interim EEPS goals and periodically reviewing the standard, and may also adjust the standard or goals based on its own research and studies. An EEPS Framework was published in 2012⁴.

The EEPS law and Framework require the Commission to report on progress periodically throughout the 22-year EEPS horizon, 2009-2030, and to revise the Framework and goals, if needed. The reports are due to the Legislature several years following the close of each implementation cycle, allowing time for analysis and evaluation. While Hawaii Energy programs are considered to be the major source of energy savings counted towards EEPS compliance, other activities and thus sources of savings can include KIUC programs (see below), appliance and equipment standards, building energy codes, utility system transmission and distribution efficiency improvements, and rate designs. Note that EEPS interacts with renewable portfolio standards (RPS) and other activities, programs and policies in the state. EM&V activities and assessments for PBFA programs and EEPS must properly consider and reflect these interactions as directed by the Commission.

The first EEPS evaluation report was submitted to the legislature in January 2014.⁵ This report described start-up of the PBFA programs, development of the EEPS Framework and results from the Commission's 2014 energy efficiency potential study.⁶ The potential study incorporated information on current electricity in use by buildings, appliances and equipment throughout the state; electricity costs and rates; demographics, etc., and projected these forward through 2030 to estimate the potential for cost-effective electricity savings. The results suggested the goal of achieving 4,300 GWh by 2030 was within reach but capturing those savings would require contributions from PBFA and Kauai Island Utility Cooperative (KIUC) programs, codes and standards (local, state and federal), and other activities.

The next EEPS evaluation report is due to the legislature in December 2018.

2.1.2 Institutional Overview

Offerors will need to understand the roles and responsibilities of a number of important stakeholders in the State regulatory system, and in particular, their relationship to the PBF Programs and EEPS. A discussion of the roles of a number of key parties follows.

⁴ State of Hawaii Public Utilities Commission Decision & Order 50089 Docket 2010-0037 on January 3, 2012.

⁵State of Hawaii Public Utilities Commission. Report to the 2014 Legislature on Hawaii's Energy Efficiency Portfolio Standard issues pursuant to HRS § 269-96, December 2013.

⁶State of Hawaii Energy Efficiency Potential Study, prepared by Enernoc, Inc. for the State of Hawaii Public Utilities Commission, 2014.

The **State of Hawaii Public Utilities Commission** is a quasi-judicial body responsible for guiding the development of state utility policies that best serve the long-term interest of Hawaii utility ratepayers, with the goal of the provision of high quality public utility service in Hawaii at reasonable costs. The Commission is responsible for regulating all chartered, franchised, certificated, and registered public utility companies that provide electricity, gas, telecommunications, private water and sewage, and motor and water carrier transportation services in the State. The Commission is also responsible for supervising the rates, quality of service and overall financial management of all Hawaii electric utilities and the third-party program administrator(s). The relationship between the EM&V Contractor and the Commission shall be governed by the contract entered into by and between the EM&V Contractor and the Commission.

In order to preserve the Commission's quasi-judicial role, applicable rules, including the rule against ex parte communications under HAR § 6-62-29, shall apply when appropriate. Copies of any reports or other communications from the EM&V Contractor to the Commission or vice versa (other than administrative matters concerning the EM&V Contractor's own contract with the Commission) shall be available to the public upon request, unless deemed confidential pursuant to a protective order issued by the Commission under HAR § 6-61-50.

The Commission is ultimately responsible for the work of the EM&V Contractor and thus will be the single client for the work of the EM&V Contractor.

The **Commission Program Manager** is the Commission staff member designated to oversee the contract between the Commission and the EM&V Contractor. In general, the Commission Program Manager (i) delegates day-to-day project management responsibilities to the Energy Efficiency Manager (EEM) and (ii) conveys requests, decisions, feedback and other communication through the EEM rather than engaging directly with the EM&V Contractor. There may be more than one Commission Program Managers at any time.

The **Consumer Advocate** is a division of the State Department of Commerce and Consumer Affairs, and is statutorily required to represent, protect and advance the interests of all consumers of utility services in the state. As part of its responsibilities, the Consumer Advocate provides review and comment on the PBF Programs.

The **Energy Efficiency Manager team (EEM)** is an independent contractor team that assists the Commission with the administration of contracts with the Program Administrator and the EM&V Contractor. The EEM may be, and is generally, delegated to manage the work and communication between the EM&V Contractor and the Commission. Plans, work products and deliverables will be reviewed by the EEM, must be completed to the satisfaction of the EEM, and, for key deliverables approved in writing by the EEM in order to be considered complete. The EEM shall have the ability to access all data, information and analyses used by and developed by the EM&V Contractor. Within the context of this RFP and any contract that may result from the solicitation, language describing activities that shall be conducted "at the request of the EEM and/or Commission," or completed "to the satisfaction of the EEM and/or Commission" shall be interpreted to mean that the Commission is solely responsible for all decisions but generally chooses to delegate responsibilities for day-to-day project management, review and oversight to the EEM. The EEM reports to the Commission Program Manager(s).

The **EM&V Contractor** is entity designated by the Commission to provide independent evaluation, measurement, and verification services for the PBF Programs, EEPS and other programs and/or activities as directed by the Commission. The EM&V Contractor reports to the EEM. While the term “EM&V Contractor” in this RFP and any resulting contract refers to the EM&V Contractor selected to conduct the work described in this RFP, the Commission may retain one or more EM&V Contractors to perform similar or related services at any time.

The **Hawaiian Electric Companies** include Hawaiian Electric Company (“HECO”), Hawaii Electric Light Company (“HELCO”), and Maui Electric Company (“MECO”). Collectively the companies are often referred to as “HECO.”

Kauai Island Utility Cooperative (KIUC) is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. KIUC customers do not contribute to the PBF and KIUC is not directly involved with the PBFA, although the impacts of the KIUC programs are counted with respect to EEPS compliance.

The **Public Benefits Fee Administrator** is the third-party administrator of the Hawaii Energy Efficiency Program. The Commission selected the PBFA contractor through a competitive bidding process, and the PBFA began administering the Hawaii Energy Efficiency Program in 2009.

Technical Advisory Group (TAG) and Technical Working Group (TWG) are stakeholder working groups convened to provide review and input for the PBFA programs (TAG) and EEPS implementation (TWG).

2.2 SCOPE OF WORK

The Commission is committed to a thorough and independent evaluation of the Hawaii Energy programs and other EEPS related programs and activities, to document the impacts of each program and/or activity, to understand why those effects occurred, and to identify ways to improve future programs and activities. The Commission is also committed to ensuring that evaluation research is prepared and presented to maximize its usefulness for a variety of purposes and stakeholders.

This section describes the Commission’s general objectives for EM&V, the expected and possible tasks and activities included in the scope of services associated with this RFP including requirements for developing work plans and providing project management services.

The Commission retains the explicit right to alter its objectives and tasks at any time throughout the contract period.

2.2.1 Overview

The EM&V Contractor will interact with a number of parties involved in the implementation and evaluation of the Hawaii Energy programs and other activities, including activities that affect EEPS. These parties include but are not limited to the: Commission, Consumer Advocate, EEM, Program Administrator, and utilities as well as other governmental agencies, working groups, the general public, and other

stakeholders. The Commission considers constructive interaction with all of the stakeholders to be a critical element of the success of the Hawaii Energy programs, EEPS, and other activities as directed by the Commission. The EM&V Contractor must be a productive part of this interaction while maintaining its independence, while working under the direction of the Commission and EEM.

The Commission and EEM will primarily interact with the prime contractor staff, especially the EM&V Contractor project manager, deputy project manager or task leads. The Commission and EEM may also interact with subcontractors through the prime contractor and/or directly with subcontractors. As noted above, the Commission and EEM may request that the prime contractor and/or subcontractors interact directly with entities including but not limited to Hawaii Energy and other stakeholders. In the event that such activity is requested, the Commission and/or EEM must be engaged and informed regarding such interactions to the degree requested by the Commission and/or EEM.

2.2.2 Objectives

The Commission's EM&V and assessment objectives guide the work to be completed by the EM&V Contractor. The Commission's current objectives for the EM&V, research and assessment work are as follows:

1. Developing independent and thoroughly and transparently documented evaluations and assessments.
2. Supporting successful, cost-effective implementation of the EEPS. This includes supporting the PBF Administrator in assessing, and as appropriate, improving the design and implementation of existing and future Hawaii Energy programs and also supporting other entities with design and/or implementation of programs and activities that contribute to EEPS. This also includes providing timely information and research that will most effectively enable the PBF Administrator and/or other entities to recognize areas for improvement.
3. Encouraging stakeholder collaboration. This includes providing evaluation research, assessments and results in formats and structures that maximize the usefulness of such information for a variety of stakeholders; while recognizing that the Commission is responsible for all services provided by the EM&V Contractor and that the Commission's needs, requirements and objectives shall govern all such activities.
4. Contributing information and analyses that enable the Commission and resource planners to establish program and evaluation priorities for future PBF Program cycles and for EEPS-related activities, including activities conducted by any entity, at the request of the Commission.
5. Having an EM&V Contractor that manages its team so that the Commission is consistently and diligently offered and receives optimal, timely and cost-effective services from the prime contractor, subcontractors and/or any blend thereof that cover the potential tasks as defined in this section. These services include:
 - Successfully managing all facets of the work. The EM&V Contractor team may include a number of subcontractors as a means of ensuring that the Commission has access to and may employ the services of a

variety of expert individuals, teams and firms with experience relevant to work contemplated and/or conducted under this contract.

- Providing options and recommendations for the conduct of EM&V activities
- Determining, without bias for the prime contractor or any subcontractor, which firms, teams and/or individuals are best suited to conduct specific activities to achieve optimal results for the State.
- Agreeing to subcontract with individuals, firms and/or entities as requested by the Commission, whether or not those entities are included as part of the EM&V Contractor's proposal or the executed contract with the Commission
- Having all activities performed by all subcontractors integrated with the operations and performance of the EM&V Contractor, such that the EEM and Commission perceive a single EM&V Contractor service entity as requested by the Commission and/or EEM.

2.2.3 Work Scope Tasks

The following key tasks are designed to facilitate completion and satisfaction of the Commission's EM&V objectives:

1. Develop overarching and specific EM&V work plans
2. Conduct impact evaluations of the Hawaii Energy Program for Years 2017 and 2018
 - a. Develop annual Hawaii Energy programs' impact evaluation/verification plan
 - b. Determine, document and report the net and gross energy and demand savings for each Program Year associated with the Hawaii Energy Programs
 - c. Provide verification and due diligence of program accomplishments and benefits, including co-benefits, project savings, and other milestones reported by the Program Administrator.
3. Review and update of the PBFA Technical Reference Manual (TRM)
 - a. Major review and update of the PBFA PY17 TRM Framework
 - b. Developing a recommended TRM Framework
4. EEPS evaluation research and analysis support for the EEPS Report to the Legislature
 - a. EEPS and general EM&V research activities
 - b. EEPS evaluation
5. Baseline studies, which would be similar to residential appliance saturation surveys (RASS) and commercial end use surveys (CEUS)
6. An energy efficiency potential study
7. Additional evaluation related services
8. Project management support

These tasks are outlined below with schedules and deliverables as applicable. The Commission may alter or change these key tasks at any time.

TASK 1: Develop Work Plans

Work plans describe the evaluation and assessment services, methodologies (e.g., EM&V methods, data collection, privacy provisions), budgets, schedules, staffing and deliverables associated with specific projects to be implemented by the EM&V Contractor. The EM&V Contractor shall produce work plans, at any time throughout the

contract term at the request of EEM or the Commission. The work plans may convey high-level, overarching project plans, specific detail-oriented activity plans, or anything in between. An initial work plan would also cover generic project management services.

Other than the development of these work plans, which would be covered under the generic project management series work plan, no other work shall be conducted without a specific work plan approved by the Commission and/or EEM (including approval of assigned staff and levels of effort).

The EM&V Contractor will prepare work plans, taking into account priorities determined in consultation with the Commission and EEM, options for conducting the subject services, identified constraints, budget and allocation trade-offs, and communications with the EEM and Commission staff.

If requested to do so the EM&V Contractor shall develop provisional work plans that offer different approaches in terms of staffing, data collection/analysis, timeline, budgets, etc. and shall assist the Commission and EEM to select among options and develop an optimal approach.

Work plans will provide detailed information, as requested by the Commission or EEM, potentially including, but not necessarily limited to:

- A list and description of the evaluation and assessment activities that will be undertaken with detailed step-by-step action plans including data collection approaches;
- A description of work plan objectives and evaluation rigor level anticipated;
- Description of the EM&V Contractor's project management approach, including how the work plan supports high quality, independent, and thoroughly and transparently documented evaluations and assessments;
- Qualifications and process/criteria for selecting team members (or other individuals and/or firms not yet retained as subcontractors) to implement the work plan;
- Schedules, budgets, and staffing plans for each activity, provided in a format in the Budget Templates provided in **Attachment 4**.
- Detailed description of interim and final deliverables, including content outlines and formats;
- Description of all coordination plans for interacting with other entities included but not limited to subcontractors, EEM, the Commission, the Program Administrator, the electric utilities, and other entities that conduct activity that affect or may affect PBF and EEPs programs;
- Description of any support services required and risks to successful completion of the work plan; and
- Description of the tradeoffs in allocating limited budget dollars to specific tasks, programs, research and assessment topics and why those tradeoffs were selected.

The EM&V Contractor shall be compensated for reasonable costs associated with developing and submitting requested work plans **provided that** the EM&V Contractor has received written approval for such compensation prior to initiating the work and completes the planning exercise cost-effectively, in good faith, and with the level of detail requested by the Commission. In some instances, the EM&V Contractor may be granted approval, as part of the generic project management services work plan, to expend a

certain amount of limited resources to investigate a research question and then propose options for next steps.

- *Work Plan Deliverables (Task 1): Draft and final work plans or other deliverables as requested in writing*
- *Work Plan Schedules (Task 1): As requested*

TASK 2: Conduct Impact Evaluations of Hawaii Energy Programs for Program Years 2017 and 2018

Each program year the Hawaii Energy programs' claimed impacts and performance are assessed to develop third-party, objectively evaluated impacts and performance verifications. Specific metrics to be evaluated include, but are not necessarily limited to:

- **Annual energy savings (MWh) and average demand reductions** for each program, the residential and non-residential portfolio of programs, and all the Hawaii Energy programs for that Program Year.
- **Total Resource Benefits⁷ (TRB)** achieved.
- The extent to which Hawaii Energy funds were equitably distributed across Islands (i.e., **Island Equity**).
- **Verification** that Hawaii Energy executed all contractually agreed upon **Market Transformation and Customer Satisfaction** activities.
- Additional analyses at the request of the Commission.

These important outcomes, as listed in the bullets above, currently determine the performance award earned by the PBFA.

Hawaii Energy publishes an annual report that highlights program accomplishments with a focus on first-year and lifecycle net energy savings. These accomplishments are considered “claimed” because they were not—prior to publication— “verified” (evaluated) by a third-party EM&V contractor. That verification⁸ is the focus of the task described in this work scope section and the difference between claimed and verified savings is a realization rate.

Note that all energy and demand savings values presented are at both the “gross” and “net” levels, and net savings are the values tracked and claimed by Hawaii Energy for goals and performance awards, with consideration of free riders and system loss factors (transmission and distribution losses). Historically, spillover and market effects have not been included in the assessment of energy and demand impacts, but that may change in the future.

The impact evaluation (verification) of Hawaii Energy annual accomplishments may include, but are not necessarily limited to the following activities:

⁷ TRB accounts for utility avoided costs per reduced kWh and kW at the individual measure level over the lifetime of each measure. Utility avoided costs, the associated discount rate, and the lifetime (EUL) of each measure come from the PBFA TRM.

⁸ Verification and impact evaluation are terms used interchangeably for the Hawaii Energy and EEPS programs

A. Develop Annual Hawaii Energy Programs' Impact Evaluation/Verification Plan.
Such a plan should include the efforts to be completed, deliverables, budget and schedule with at least the following:

- Brief descriptions of the programs and/or activities to be evaluated and the Program and/or activity logic/theory.
- Approach to reviewing and providing expertise in order to:
 - Provide feedback on programs and/or activity implementation, including, but not limited to: data tracking, logic models, quality control and assurance procedures, targeting, savings estimating and implementation.
 - Use best-practice approaches appropriate to each evaluation and assessment activity, with the EM&V methods to be used informed by standard technical references such as the *International Performance Measurement and Verification Protocol*, *The Uniform Methods Project*, and the *National Action Plan Model Energy Efficiency Program Impact Evaluation Guide*.
- Description of the data collection sources, methodologies, procedures and data tracking systems to be used by the EM&V Contractor to conduct evaluations and assessments including but not limited to process, load impacts, market evaluations and project verifications for each program including data gathering, sampling and analysis methods.
- Descriptions of metrics and milestones (including but not limited to energy and demand savings metrics, milestone metrics, benefit cost tests, co-benefits and resource benefits) for the portfolio as a whole and as appropriate each program.
- Description of how realization rates, net-to-gross ratios, transmission and distribution affects, avoided costs, market effects, spillover and other effects will be determined, including the possible use of values that are stipulated (e.g., from PBFA TRM), measured, compiled from secondary materials and/or a blend of these. Include description of information required from others.
- Description of field/site data collection activities.
- Descriptions of budget with staffing plan (that includes included names, rates and qualifications, and assigned work for each assigned prime and subcontractor), schedules (including key milestones), and deliverables (e.g., report outlines).

B. Determine, document and report the net and gross energy and demand savings for each Program Year associated with the Hawaii Energy Programs.
The level of effort for annual savings verification may vary year-to-year. Please see historic verification reports and summary document of all EM&V activities for each prior program year at: <https://hawaiienergy.com/about/information-reports> for examples of different approaches that have been taken. The Commission and EEM will determine the level, depth and overall approach to savings verification, in consultation with the TAG and EM&V Contractor. Savings verification for a given year may include any or all of the following activities:

- Reviewing Hawaii Energy tracking database. Such a review can include assessing completeness of data, checking for duplicates, assessing records with zero and negative quantities for accuracy, and identifying any parameters that are outside of expected ranges. An important element of such a review can also include reviewing the population of records within the database to ensure that the deemed savings values, factors, variables and equations are correctly applied from the current version of the PBFA TRM.

- Conducting desk reviews of project implementation and savings documents, typically of a sample of custom projects. Such reviews can include verifying accuracy of the measure quantities in the tracking database based on project documentation (e.g., invoices, post-inspection forms, etc.), assessing project savings documentation (e.g., reviewing or redoing calculations), and reviewing specification sheets and inspection forms, etc. supplied by Hawaii Energy to confirm accuracy and appropriateness of savings assumptions and methodologies and to calculate verified savings. Additionally, some facility-level electric consumption analyses may be conducted as part of the desk reviews for some projects for comparison to the claimed savings, using monthly utility bill energy consumption data.
 - Developing data collection instruments and performing data collection and analysis including but not limited to telephone, mail or in-person data collection, field inspections, metering and monitoring, statistical and economic analysis using appropriately trained, experienced (with energy efficiency M&V) and certified personnel. Field inspections shall be documented with standard, comprehensive reports.
 - Preparing project and program level calculations of energy and demand savings using PBFA TRM savings values, factors and assumptions, measurement and verification approaches, billing analyses, control group based methods or other techniques, or a combination of such methods. All calculations shall be documented with standard, comprehensive reporting to a level necessary for duplication of results, including certainty estimates (e.g., confidence and precision) of EM&V Contractor's reported evaluation results and discussion of the threats to validity and sources of bias and the approaches used to reduce threats, reduce bias and increase the reliability of the findings.
 - Other activities as required to determine and document evaluated/verified energy and demand savings.
 - Other activities at the request of the Commission.
- C. **Provide verification and due diligence of program accomplishments and benefits, including co-benefits, project savings and other milestones reported by the Program Administrator.** This shall include but not necessarily be limited to evaluating:
- Total Resource Benefits (TRB) achieved. TRB accounts for utility avoided costs per reduced kWh and kW at the individual measure level over the lifetime of each measure.
 - The extent to which Hawaii Energy funds were equitably distributed across Islands (i.e., Island Equity)
 - Extent to which other related program goals were met. An additional factor in the overall PBFA performance award is the verification that Hawaii Energy executed all contractually agreed upon Market Transformation and Customer Satisfaction activities.
 - Other items at the request of the Commission.
- *Deliverables for Impact Evaluation for Hawaii Energy Programs (Task 2): Draft and final program year verification plan(s) and memorandum documenting programs evaluated, impact evaluation activities conducted, verification results (including program-by-program and portfolio impacts and realization rates), and calculation of verified PBFA performance award, conclusions and recommendations.*

- *Schedule for Impact Evaluation for Hawaii Energy Programs (Task 2):* Initiation prior to end of each program year and completion with final verification memorandum in early December of each year.

TASK 3: Review and Update of the PBFA Technical Reference Manual(s)

The PBFA TRM serves as a basis for energy savings claims for the PBFA and potentially other programs. Currently, the PBFA maintains the TRM and coordinates any changes to the TRM with input from the TWG and the EM&V Contractor. In the future, the responsibility for document control and maintaining the TRM may be switched to the EM&V Contractor.

The PBFA TRM should be reviewed and updated according to best practices as for example those documented in the SEE Action TRM Guide⁹. Parameters or values in the TRM may be updated using primary or secondary research or a combination thereof, as required.

The last major review of the PBFA TRM was conducted during the 2012 Program Year. Subsequently, there have been some changes to the TRM. However, the TRM is likely due for a major review and update because of post-2012 program designs changes incorporating new and different measures, changes to market baselines, codes and standards, and new and more applicable data that have become or will become available. Thus, the EM&V Contractor will likely be asked to undertake:

A. **Major review and update of the PBFA PY17 TRM**, by experienced and technically qualified personal, to include:

- Identifying a prioritized list of measures and other elements (e.g., net to gross ratios) for review and possible updating, with input from Hawaii Energy and the EEM,
- Reviewing such measures and information, as approved for review by the Commission or EEM, for use of best available data and assumptions for determining deemed savings values, factors, variables and calculations
- Updating of TRM information, as approved for updating by the Commission or EEM, using primary or secondary data (preferably Hawaii-based and applicable), and industry standard calculations and protocols such as those from the Uniform Methods Project.

B. **Developing a recommended TRM framework** (guidance document with content criteria, updating schedules and criteria, etc.) for maintaining and updating the PBFA TRM. Future tasks may include implementing such a framework after review with the TAG and approval by the EEM or Commission.

- *PBFA TRM Deliverables (Task 3):* Draft and final
 - *Prioritized list of TRM information to be reviewed or generated*
 - *Draft and final work plan*
 - *Draft and final reviews of existed or new TRM information*
 - *Updated TRM(s)*

1 ⁹ Guide For States: Guidance On Establishing and Maintaining Technical Reference Manuals for Energy Efficiency Measures <https://www4.eere.energy.gov/seeaction/publication/see-action-guide-states-guidance-establishing-and-maintaining-technical-reference>

- TRM framework(s)
 - Other items at the request of the Commission.
- PBFA TRM Schedule (Task 3): Initiation in 2018 with completion by late 2018 or early 2019 for implementation as the PBFA PY19 TRM. Planning and/or implementation of PY20 TRM in 2019, as needed.

TASK 4: EEPS Evaluation Research and Analysis Support

The primary objective of this task is to prepare a required “EEPS Report to the Legislature” that is due at the beginning of January 2019. In addition, this task includes ongoing analyses and documentation that supports the EEPS process beyond the 2019 reporting deadline. Ongoing analyses and documentation may go through at least 2020. This ongoing analyses and documentation process supports a continuous improvement in EEPS and related energy resource delivery as Hawaii approaches its end goals of a 100% clean energy supply.

HRS § 269-96 requires the Commission to evaluate progress, revise the EEPS Framework and/or goals if needed, and report its findings to the legislature:

The public utilities commission shall evaluate the energy-efficiency portfolio standard every five years, beginning in 2013, and may revise the standard, based on the best information available at the time, to determine if the energy-efficiency portfolio standard established by this section remains effective and achievable. The commission shall report its findings and revisions to the energy-efficiency portfolio standard, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

The EM&V consultant will conduct secondary (or primary and secondary) research, analyze data, prepare full-scale EM&V reports and provide analyses, research, and support other activities throughout the process as needed. The EEPS review activity will occur during 2018, 2019, and 2020 with the highest level of activity expected to occur in 2018 and 2019. Toward the end of the period, the goal is to focus on leveraging EEPS-related analyses (and EM&V conducted for the Hawaii Energy programs and other information) to enhance programs and policies in support of EEPS goals and to maintain the EEPS tracking system. The scope of work, budget and schedule for this EEPS evaluation research and analysis support task will be developed by the EM&V Contractor, via one or more work plans, in consultation with the TWG, the EEM and the Commission (with final approval by the Commission). Initial guidance on the scope of work can be found in the EEPS Framework contained in Decision & Order 50089 Docket 2010-0037 on January 3, 2012.

The EEPS review schedule is driven in part by the time required to conduct sufficient EM&V to assess progress toward EEPS goals and lay the foundation for estimating the remaining savings potential. EEPS EM&V will assess progress toward goals in light of multiple factors including Hawaii Energy and KIUC programs, changes to codes and standards, military, other public sector and private sector activity not included in other programs, utility system transmission and distribution efficiency improvements, and other activities or programs identified during the review as having contributed EEPS savings

during the first performance period.¹⁰ EEPS EM&V will also seek to determine EEPS progress in light of demand-modifying activities that change electricity use patterns whether or not they are specifically designed to contribute to EEPS energy use reduction goals. These demand-modifying activities include distributed energy resource (DER) programs, which contribute to Hawaii's 100% renewable goals. These effects must be understood in order to assess EEPS progress and ensure that EEPS goals and approaches are designed from a holistic perspective taking these developments into account.

The types of activities that may be included in approved work plans include but are not necessarily limited to the following:

A. EEPS and General EM&V Research Activities

- Locate reports, data sources and/or contacts, synthesize and provide information in formats useful for performing an evaluation and documenting the evaluation process.
- Conduct literature reviews, secondary and primary research, including assessment, evaluation and/or synthesis of relevant literature and research.
- Provide expertise regarding development of evaluation materials and procedures, policies and protocols.
- Establish and possibly maintain an evaluation document and data management tracking system for EEPS programs and activities.

Topics covered can include energy efficiency and conservation, as well as demand response, electric vehicle, advanced metering, storage and/or any other type of distributed energy resource (DER) programs or activities conducted by PBFA or contemplated by the Commission and that may affect EEPS.

B. EEPS Evaluation (EM&V)¹¹

- Provide impact evaluations including review of reported EEPS program accomplishments, review and provision of recommendations related to the operation and implementation of the EEPS programs. This will likely include determining how Hawaii Energy program load impact results and load impact results from other EEPS programs/activities will be combined to report EEPS overall portfolio impacts, addressing the need for adjustments such as accounting for program overlap or other factors and adjusting for local, state and federal codes and standards.
- Develop and report historic energy savings estimates "in a manner that is defensible in regulatory and legislative proceedings" with consideration of or inclusion of:
 - Savings measured against a baseline established in 2008 (i.e., relative to expected annual demand forecast in 2008 for the forecast horizon

For more information see the EEPS Framework in State of Hawaii Public Utilities Commission, Docket 2010-0037, initiated May 1, 2010.

http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A12A04A85123J8418718+A12A04A85123J841871+14+1960

¹¹ Contributing entities (both regulated and non-regulated entities) are responsible for submitting estimates of expected and (*ex ante*) and achieved (*ex post*) accomplishments. However, the Commission may assist regulated and/or non-regulated contributing entities with EM&V via the EEPS EM&V Contractor.

- o beginning on January 1, 2009 and ending December 31, 2030).
 - o Savings in the form of gross kWh at the system level, shown annually and in summary – first year, lifecycle and cumulative savings, costs and benefits.
 - o Savings from the utilities, PBFA and other contributing entities including local, state and federal codes and standards, other programs and interventions.
 - o Utility and Hawaii Energy accomplishments reported annually.
 - o Accomplishments from other entities and from a variety of program types.
 - o Savings from grid-connected, customer-sited solar systems prior to January 1, 2015 (HRS 269-91).
 - o Impacts including consideration of persistence, expected measure life, spillover, market effects, takeback/rebound, and free-ridership.
 - o Bill impacts by customer class and for program participants vs. non-participants.
 - o Information for resource planning.
 - o Development of “lessons learned” to support future program implementation.
 - Develop EEPS-related savings estimates for energy efficiency measures that affect EEPS, using an EEPS appropriate baseline.
 - Prepare cost-effectiveness analyses of EEPS related activities with consideration of costs and benefits including implementation/administration costs and non-energy benefits using a Total Resource Cost (TRC) test and other tests at the request of the Commission.
 - Track energy-savings attributable to market-transformation and/or spillover from programs.
 - Track and evaluate other activities that affect EEPS including local, state and federal codes & standards and activity from a variety of entities that affect EEPS.
 - Gather updated avoided costs of transmission, generation, distribution and utility capital costs.
 - Provide information and technical support for production of the EEPS Report to the Legislature
- EEPS Evaluation Research and Analysis Support Deliverables (Task 4):
- o Support documents for preparation of EEPS Report to the Legislature
 - o Additional research, analyses and reporting on EEPS progress as required
- EEPS Evaluation Research and Analysis Support Schedules (Task 4):
- o EEPS Report to the Legislature to be completed by November 2018
 - o Other schedules to be determined

TASK 5: Baseline Studies

Conduct a study (or studies) to determine how, where and when electricity is used in Hawaii. The objective of such studies is to cost-effectively assess key characteristics of buildings, appliances and equipment that use electricity in the HECO service territories and providing a “baseline” from which to assess changes in the buildings, equipment, appliance, and use patterns over time. Study results will or may inform:

- Planning of future energy efficiency policies and programs,
- Preparing the statewide energy efficiency potential study,
- Updating the PBFA TRM (e.g., baseline assumptions)
- Serving as a reference point to monitor the effectiveness of program efforts or track progress toward energy efficiency and related goals, and
- Electricity load and resource planning.

The research is expected to include assessing (a) customer demographics (b) building, appliance and equipment characteristics and (c) service and (d) physical suitability for energy efficiency and other DERs. The research is expected to be based on a combination of activities likely to include: onsite, telephone, mail and online surveys in addition to secondary research.

Markets sectors and segments addressed in the research include but are not limited to: the residential, business, military and infrastructure (wastewater, street lighting, etc.) customer classes.¹² These studies are sometimes referred to as residential appliance saturation surveys (RASS) and commercial end use saturation studies (CEUS).

The prior baseline study was conducted in 2013 and completed in 2014. The study is available on the Hawaii Energy website: <https://hawaiienergy.com/about/information-reports>

- *Baseline Deliverables (Task 5): Baseline study(ies) and presentations*
- *Baseline Schedules (Task 5): Baseline study(ies) and presentations to be completed in 2019*

TASK 6: Energy Efficiency Potential Study

The energy efficiency potential study provides important information for program planning, tracking progress toward EEPS goals and resource planning.¹³ Specifically, the potential study is intended to indicate the electricity savings that can be achieved by contributing entities toward achieving the goals outlined in the state's EEPS. The energy efficiency potential study is expected to produce information including but not limited to:

- A forecasting horizon from 2020 through 2040.
- Forecasts of energy efficiency impacts, including codes and standards and naturally occurring impacts, in an environment increasingly characterized by DERs, as an annual savings percentage (as a proportion of electricity sales).
- Analyses based on current data including avoided cost of electricity, data developed in the baseline study(ies) and related information.
- Analyses reflecting a wide range of currently available and cost-effective measures as well as ones that are reasonably expected to be cost-effective over the study period.
- Assessment of the potential for energy efficiency in a market increasingly characterized by DERs. The forecasts of energy efficiency potential shall be characterized in terms of technical, economic and market (achievable) potential.

Such a study may or may not include electric vehicles

¹³ The EEPS Framework requires an updated study of energy efficiency potential. Potential studies should involve compiling and interpreting the best and most current data available on a variety of topics -- customer demographics; buildings and equipment; utility avoided costs, rates, etc.

- Cost and value of conserved electricity by sector, segment, measure-type, time period, location and other factors as appropriate, and by production source if appropriate (utility supply, distributed supply, etc.)
- Analyses that support program planning, utility system resource planning, and assessment of progress toward EEPS goals (and refinement of the goals if needed) including technical, economic and market potential.

The prior potential study was conducted in 2013. The study is available on the Hawaii Energy website: <https://hawaiienergy.com/about/information-reports>

- *Potential Study Deliverables (Task 6): Work Plan and potential study and presentations*
- *Potential Study Schedules (Task 6): Potential study and presentations to be completed in 2019*

TASK 7: Additional Evaluation Related Services

In addition to other services described in this Section, the Commission may also direct the EM&V Contractor to conduct EM&V activities for other programs and/or provide other evaluation-related services relating to one or more special issues. The Commission's priorities and requirements for tasks may evolve over the course of the contract period. The Commission retains the explicit right to alter its priorities and tasks at any time throughout the contract period.

Examples of other potential requested evaluation-related activities include but are not limited to:

- Study and present any special issues in Hawaii that should be addressed by EM&V, including recommendations for how these issues may be addressed.
- Participate and/or develop a trainings/showcases for energy efficiency and/or other activities, in particular but not limited to activities that affect EEPS, for an audience that may have limited expertise in energy efficiency, EEPS and related activities.
- Develop and design materials needed for workshops, press conferences, reports, and case studies for distribution to general and technical audiences.
- Provide process evaluations.
- Provide additional market studies (in addition to those described above).
- Contribute recommendations, information and analyses that enable the Commission to establish evaluation priorities for future cycles and/or other timelines. Such activities may include load impact evaluation, forecasting, market assessment, process evaluations and/or other evaluation and assessment activities.
- Provide technical writing and editing as needed for a wide range of materials including presentation materials, reports, brochures, fact sheets, and newsletter articles.
- Prepare analyses, findings, and recommendations in response to inquiries from other entities, as well as support and presentation materials as needed, as directed by the Commission.
- Provide technical experts for hearings, workshops and other meetings, and preparing technical information for possible inclusion in meetings and reports.

- Deliverables (Task 7): To be determined
- Schedule (Task 7): To be determined

TASK 8: Project Management

The EM&V Contractor is responsible for all project management required to execute, track and record the tasks described in the approved work plans. This includes, but is not limited to, the following project management activities:

- Designating an EM&V Contractor Project Manager who shall serve as the single point of contact for all evaluation services, with limited exceptions only at the request of the Commission. A Deputy Project Manager may also be designated.
- Ensuring that all the evaluation services and activities are implemented as documented in an approved work plan and that project activities, deliverables and reporting are completed according to the specifications and schedule documented or referenced herein, unless modified in a work plan and approved by the Commission.
- Ensuring that the EM&V Contractor's contract management obligations are carried out in a professional and timely manner.
- Managing subcontractors.
- Managing the solicitation and contracting of additional or substitute subcontractors as requested by the Commission.
- Assisting the Commission to maximize the value of EM&V by providing several options for certain EM&V activities, if requested to do so by the Commission, so that the Commission may choose a preferred approach.
- Maintaining regular and direct communication with key stakeholders as directed by the EEM or Commission.
- Maintaining and archiving any and all electronic and paper files and data, databases or information collected or developed during the conduct of the evaluation work, including all final and interim deliverables and programming code. These materials shall be maintained on a timely, ongoing basis, on an FTP or similar website, accessible to the Commission and EEM. These materials are the property of the Commission and shall be delivered to the Commission annually at timeframes designated by the EEM. The archived files must be consistently named, organized and well-documented. The archive must be in a form and structure that supports a chain of evidence for all evaluation findings, and would enable and/or facilitate the Commission or a designated entity to conduct review and/or supplemental EM&V and assessment using these materials. The archive must include (but is not limited to) reports, memoranda, and/or other written materials provided in both Microsoft Word and pdf formats, with a MS Excel workbook containing data and analyses presented in the document(s). (The Commission may change its preferred software over time and if so the EM&V Contractor shall deliver the archive in a format requested by the Commission). ***The EM&V Contractor shall focus specific resources on this task rather than assume that it will occur as a by-product of other activities.***
- Attending and occasionally facilitating in-person, telephone, or web-based meetings, regular and ad-hoc project meetings, and other meetings as requested by the EEM or Commission. At the request of the EEM or Commission, the EM&V Contractor shall be responsible for preparing agendas, meeting materials, and meeting notes in a timely manner, allowing sufficient time for review by the EEM and Commission.

- Managing Invoices - monthly invoices shall be provided in a timely manner. Invoices must be submitted with the monthly progress reports. Formats for invoices and progress reports will be reviewed by the EEM and will be processed only if and when they have been approved by the EEM and subsequently by the Commission.
- Project reporting, which shall include, but will not necessarily be limited to, the following items, unless otherwise requested by the EEM or Commission:
 - Scheduled calls and/or meetings (at a minimum), to discuss all project activities with the Contract Manager. Calls or meetings scheduled to discuss presentation(s) to team members and/or Commission, and/or *ad hoc* calls or meetings shall also be required. The EEM shall designate a time and day for calls and meetings. Meetings or calls shall be of any length, as determined by the EEM.
 - Annual updating of the report “**Hawaii Energy: Annual EM&V-Related Research – impact/cost-effectiveness, market, potential, process and related evaluations.**” This document will be published as an appendix to the Annual EM&V Report.
 - Annual preparation and presentation of the **Annual EM&V Report**, which includes summaries of all the EM&V activities and reports conducted during the year and summary conclusions and recommendations developed as a result of those activities and reports, particularly any associated with the annual program year verification memorandum.
 - Reporting as needed – to document problems, resolution and issues as they arise. These reports may also need to be linked to changes in work efforts.

General Requirements for Reporting:

- Interim reports and/or memoranda may be required and requested by the Commission or EEM.
- The EM&V Contractor must incorporate all comments on drafts provided by the Commission and/or EEM and entities designated by the EEM (and/or shall supply in writing documentation describing the reason or reasons the comments could not or should not be incorporated). The EM&V Contractor shall also produce revisions in a timely fashion.
- Deliverables shall be provided in multiple electronic and/or paper formats, or other formats, including but not limited to Microsoft Word, Excel, and Adobe PDF. Documents are expected to be well-written and professionally formatted.
- The EM&V Contractor shall include ownership and disclaimer language in all reports. The Commission will provide the language to be used.

Key Project Management deliverables and dates (Task 8) are shown in the following table. Additional deliverables may be defined by the EEM or Commission.

DELIVERABLES (Schedule)	DESCRIPTION
Status Reports and Invoices (Monthly)	Status reports shall highlight issues with each evaluation and assessment activity and problems (successes or difficulties in getting the job done, with recommended or agreed solutions). Monthly invoices shall track individual activities, project hours, rates and expenditures only a daily basis that uses a spreadsheet format approved by the Commission or EEM.
Additional EM&V Services (As requested)	Specific evaluation and assessment activities will have work plans, schedules, etc. identified within the approved work plans.
Annual EM&V activity ‘index’ report update (December of each year)	Annual updating of the report “Hawaii Energy: History of Annual EM&V-Related Research – impact/cost-effectiveness, market, potential, process and related evaluations”
Annual EM&V Report (each January following the end of the respective program year)	Annual preparation and then presentation to stakeholders of EM&V Report, which includes summaries of all the EM&V activities and reports conducted during the year and summary conclusions and recommendations developed as a result of those activities and reports, particularly any associated with the annual program year verification report.
FTP or similar website , accessible to the Commission and EEM.	Maintaining and archiving any and all electronic and paper files and data, databases or information collected or developed during the conduct of the evaluation work, including all final and interim deliverables and programming code. These materials shall be maintained on a timely, ongoing basis.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 APPROACH TO BID PREPARATION

The Commission seeks an EM&V Contractor to provide all necessary evaluation services to accomplish the objectives described in this solicitation. The Commission seeks to maximize value for ratepayers and for the State by engaging the EM&V Contractor in performing a variety of duties related to evaluation of the PBF Programs and other activities, for example, programs and policies that affect EEPS. The EM&V Contractor is expected to maximize return on spent funds by proposing a blend of evaluation and assessment activities, recognizing that tradeoffs are necessary among competing EM&V activities given limited evaluation and assessment resources.

Offeror's teams are expected to include team members qualified to support all the tasks described in Section 2, or to be ready to quickly and efficiently solicit and subcontract to such firms or individuals.

The Commission is seeking clear, concise proposals demonstrating creativity, expertise and experience on the part of specific team members proposed and in how Offeror approaches the work scope and requested services – not necessarily a final approach or approaches. The Commission retains the right to modify any activities proposed by the EM&V Contractor and/or request other activities.

The Commission is interested in understanding how each Offeror would use resources creatively to accomplish multiple objectives for evaluation and assessment services; ensure robust, useful and cost-effective evaluations and assessments; develop best-in class, transparent, well-documented evaluation and assessments; and provide information and analysis in a manner that is most useful for a variety of stakeholders in an evolving environment.

In their proposals, Offerors are asked to propose their own approach to evaluation, assessment and project management giving careful consideration of the Commission's objectives and priorities, available budget, scope of work, and timelines (to the extent the information is available to the Offeror and/or based on Offeror's best judgment).

Submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of the performance of the work. Before submitting a proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any appendices and attachments, and any other relevant documentation such as Hawaii Energy Program documents, and prior EM&V reports; and
2. Become familiar with State, local, and Federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work specified herein.

Offerors are required to present their proposals in accordance with this section including formatting proposals in a structure that conforms to the outline provided in this section. Proposals should be prepared simply and economically to provide a concise description of the Offeror's approach and capabilities for satisfying the required services outlined in this RFP.

Proposals must be complete, and the proposal submission shall comply with Registration Requirements indicated in Section 1 of this RFP. In the event an Offeror chooses not to respond to any section of the response format, the Offeror should then, in place of the appropriate section, indicate the Offeror's reason(s) for the omission of a response. In addition, Offerors should address any and all anticipated difficulties and problem areas as well as potential approaches to their resolution. If any additional information is required by the State regarding any aspect of the Offeror's proposal, the Offeror shall provide the information within two (2) business days of request.

Offerors may make certain assumptions or use simplifying conditions in their proposals. However, those assumptions or conditions must be clearly identified and the relevant rationale fully explained.

3.2 PROPOSAL CONTENTS

Proposals shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. The proposal shall include, without limitation, all of the information requested in this RFP in the order listed below, and pages must be numbered.

- Transmittal Letters
- Table of Contents
- 1. Executive Summary
- 2. Administrative Requirements
- 3. Offeror Background, Staffing and Organization (including prime contractor and subcontractors)
- 4. Technical Response
- 5. Managing Customer-Specific and Competitively Sensitive Information
- 6. Cost Proposal
- 7. Assumptions and Exceptions
- 8. Appendix - Resumes

3.2.1 Transmittal Letters

Transmittal letters must be included as part of the Offeror's technical proposal.

3.2.1.a. Prime Contractor Transmittal Letter

The transmittal letter must be on the Offeror's official business letterhead and must be in the form of a standard business letter that is signed by an individual or individuals authorized to legally bind the Offeror. Include the name, email, and telephone number of a person who may be contacted during the evaluation process to discuss the Offeror's proposal.

The Transmittal Letter shall include statements indicating:

- That the Offeror understands and will comply with all terms and conditions in the RFP.
- If successful, the Offeror will assume responsibility for the life of the contract for all contractual activities, products, and deliverables identified in the RFP and offered in the Successful Offeror's accepted proposal whether or not the Successful Offeror directly performs or provides them.
- If successful, the Offeror will be the sole point of contact with regard to contractual matters.
- A statement of affirmative action that the Offeror does not discriminate in its employment and collection practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap, or disability.
- That the Offeror agrees that the Commission reserves the right to disapprove Offeror recommendations without penalty, when they conflict with the policy, preferences or fiscal interests of the Commission, as determined by the Commission.

3.2.1.b. Subcontractor Transmittal Letters

If one or more subcontractors will be used, a letter shall be submitted by each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

- The general scope of work to be (or may be) performed by the subcontractor.
- The subcontractor's willingness to perform the work indicated.
- That the subcontractor understands and will comply with all terms and conditions in the RFP.
- A statement of affirmative action that the subcontractor does not discriminate in its employment and collection practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap, or disability.
- That the subcontractor agrees that the Commission reserves the right to disapprove Offerors recommendations without penalty, when they conflict with the policy, preferences or fiscal interests of the Commission, as determined by the Commission.

3.2.2 Table of Contents

The Table of Contents must reference the section numbers of this RFP proposal and the corresponding page numbers in Offeror's proposal. Tabs should separate each of the individual sections in printed documents.

3.2.3 Proposal Section 1: Executive Summary

The Executive Summary shall clearly and concisely summarize and highlight the contents of the proposal to provide the Commission with a clear and broad understanding of the entire proposal. The Executive Summary shall include at least all of the items below:

3.2.3.a Team Information

This subsection must include a description of proposed EM&V Contractor team summarizing, preferably in table format, the following information concerning the prime contractor and all proposed subcontractors:

- Firm name(s)
- Summary of each firm's role
- Key personnel of each firm assigned and committed to this project and very brief summary indication of their role

3.2.3.b Benefits to the State

Please provide a brief synopsis of the proposal describing the overall benefits of the proposal to the State.

3.2.3.c Approach to Scope of Work

Please provide a brief summary of Offeror's approach to providing services called for in the scope of work, managing the subcontractors and cost-effectively providing the best possible services.

3.2.3.d Key Attributes

Please include a summary of key attributes of this proposal with respect to selection criteria described in (see **RFP Section 4.3: Evaluation and Scoring Criteria**)

3.2.4 Proposal Section 2: Administrative Requirements

The Administrative Requirements subsection must contain information requested below.

3.2.4.a Basic Information

Legal Entity: A statement indicating that the Offeror is a corporation or other legal entity (which must be specified, i.e., corporation, partnership, joint venture, etc.), and indicating the jurisdiction where the Offeror is organized.

Federal Tax ID Number: A statement setting forth the Offeror's Federal tax identification number ("I.D.").

3.2.4.b Offer Form OF – 1

Proposals shall be submitted 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 spaces on Offer Form OF-1. Failure to do so may delay proper execution of the contract. See **Attachment 1 of Section 7** of this RFP for the Offer Form.

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.

3.2.4.c Tax Clearance Forms

Prime contractors and all proposed subcontractors must submit to the Commission, tax clearance certificates from the DOTAX and the IRS showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended have been paid.

3.2.4.d Certificates of Registration

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and vendors are advised that they are liable for the GET. A true and certified copy of prime and subcontractor certificates of registration must be provided and a State General Excise Tax I.D. must also be provided as attachment to the Transmittal Letter.

If, however, an Offeror is a firm and/or person 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.

3.2.4.e Wage Certificate

The Successful Offeror shall complete and submit the attached Wage Certificate by which Successful Offeror certifies that the services required will be performed pursuant to HRS § 103-55. See **Section 7: Attachment 2** of this RFP for the Wage Certificate form.

3.2.4.f Offeror Guaranty

An Offeror guaranty is NOT required for this RFP.

3.2.5 Proposal Section 3: Offeror Background, Staffing and Organization (Prime Contractor and Subcontractors)

The Offeror background, staffing and organization response section should be no longer than about 40 pages. The Offeror Background section shall include the following information for prime contractor and each proposed subcontractor:

1. Legal name of Offeror
2. Physical address of principal place of business and all other offices including the location of the office(s) which will perform work on behalf of the Commission, i.e. the location of identified key staff and support staff
3. Contact email address and mailing address (if the mailing address is different from above)
4. Date established
5. Ownership (public or private company, partnership, subsidiary, etc.)
6. Offeror's primary line of business;
7. Number of employees

8. Number of employees engaged in tasks directly related to the requirements listed in this RFP
9. History of company name changes and dates associated with each name
10. Location where incorporated or otherwise legally established.

3.2.5.a Financial Stability and Financial Commitment

This subsection applies to the prime contractor only. The Offeror (prime contractor) shall provide information on the Offeror's financial stability, including the following: annual revenues over the last five (5) years (or the number of years the Offeror has been in business, whichever is less), number of employees for each of the last five (5) years, years in business, evidence of business insurance for professional liability, and financial references (which may include audited financial statements, compiled financial statements, and references from banking relationships).

The Offeror shall submit the Offeror's audited financial statements and annual reports, if any, for the last two (2) years. If unaudited financial statements are submitted, copies of filed tax returns shall be provided to support the statements.

As with trade secrets or other proprietary data, an Offeror may request in writing and in accordance with Section 6.2 that the financial information provided be kept confidential. Otherwise contents of all proposals shall be made public as provided in HAR § 3-122-58, upon posting of award.

3.2.5.b Offeror Performance

The Offeror shall provide information that will demonstrate the following:

- Responsiveness to previous clients including reference to such attributes as timeliness, adherence to consulting contract requirements, and availability and accessibility to clients - for prime contractor and each proposed subcontractor
- Ability to manage and successful experience managing subcontractors - for prime contractor only).

The Offeror – for prime contractor and each proposed subcontractor - must provide the following information relative to the past seven (7) years (or the number of years the Offeror has been in business, whichever is less):

1. Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number;
2. Where the Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental agency). If so, the Offeror must provide complete details, including the name of the organization, the reason for the penalty, and the penalty amount for each incident;
3. Whether the Offeror was the subject of any governmental action limiting the right of the Offeror to do business with that entity or any other governmental entity;

4. Whether trading in the stock of the company has ever been suspended with the date(s) and explanation(s);
5. Whether the Offeror, any officer of the bidder, or any owner of a 20% or greater interest in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding;
6. Whether the Offeror, any officer of the bidder, or any owner of a 20% or greater interest in the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of the evaluation committee such an answer and a review of the background details may result in a rejection of the Offeror's proposal. The committee will make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance of the work, and the best interests of the State.

3.2.5.c Organization

This subsection shall include organizational charts of proposed key personnel assigned to this project and their job titles and responsibilities (including subcontractors).

Provide in a table, with indicative check marks in the appropriate cells, which team members (firms and key personnel) will lead and which will support the following task areas (as defined in the Scope of Work Section of this RFP):

1. Develop work plans
2. Conduct impact evaluations of the Hawaii Energy Program
3. Review and update of the PBFA Technical Reference Manual (TRM)
4. EEPS evaluation research and analysis support
5. Baseline studies
6. Energy efficiency potential study
7. Additional evaluation related services
8. Project management support

The table may include sub-categories within the eight above listed tasks.

This section should also include:

- Description of general scope of work to be performed (or likely to be performed) by the prime contractor and each subcontractor (if appropriate).
- Descriptive information relating to the nature and duration of the previous relationship of all subcontractors with the prime contractor and with one another.
- Explanation of any existing contractual relationships among or between the firms (prime contractor and subcontractors).
- Any actual or potential conflicts of interest that exist or may arise between the prime contractor, subcontractors or any of the entities identified in **Section 1.9.1** of this RFP.

3.2.5.d Offeror Experience and Expertise

A critical element of the selection process is the experience and capabilities of proposed team members associated with completing the variety of evaluation and assessment activities associated with the scope of work described in this RFP.

The Offeror's team is expected to demonstrate skills and experience with a variety of activities.

While firm experience is important, this subsection of the proposal must include a listing of directly related experience/expertise obtained by senior management employees or officers, project managers, deputy project managers, task leaders, senior analysts, senior field staff and other key personnel who will be primarily assigned to perform or oversee the work described in the Offeror's proposal.

The Offeror must describe examples of projects for which the Offeror (and each subcontractor if appropriate) has successfully provided services on projects that were similar in their nature, size and scope of work described in this RFP. Presenting experience and expertise with reference to the eight task areas defined in the Scope of Work Section is preferred.

Some specific areas that should be addressed independently or with reference to the eight task areas are:

- Working with State regulatory commissions or government entities in areas relative to the required work described in this RFP
- Experience with the types of programs offered by Hawaii Energy and activities that contribute to EEPS.
- Experience in Hawaii or similar jurisdictions
- Developing EM&V work plans
- Conducting impact evaluations
 - Analyses using range of EM&V methods as described in industry standard guides
 - Field verification and M&V activities
 - Net savings analyses
 - Reporting
- Reviewing and updating of Technical Reference Manuals (TRMs) including detailed analyses of efficiency measures
- Preparing energy efficiency (and distributed energy resource) potential studies
- Preparing baseline studies (often called RASS and CEUS in other jurisdictions), including experience with leveraging secondary material and/or primary data and using data collection methods including onsite, telephone, mail, email, web and any emerging modalities
- Tracking energy-savings attributable to market-transformation and/or spillover from the EEPS programs
- Assessing effects of demand-modifying activities including energy efficiency on long-term electricity demand
- Loadshape analyses
- Additional evaluation related services, such as:

- Trainings/showcases for energy efficiency and/or other DERs
- Workshops, press conferences, reports, and case studies for distribution to general and technical audiences
- Process evaluations
- Contributing recommendations, information and analyses to establish evaluation priorities for future cycles and/or other timelines
- Technical writing and editing
- Technical experts for hearings, workshops and other meetings
- Project Management Support
 - Managing major (evaluation) consulting assignments
 - Hiring and managing subcontractors and working on teams of experts
 - Optimizing overarching work plans
 - Developing and providing several options for conducting EM&V activities for Commission review, if requested to do so by the Commission
 - Preparing major evaluation reports and presentations

When describing experience, Offerors, at a minimum must include a brief analysis of the degree of similarity in the nature, size, and scope of the services provided and the dates of performance for the examples and which key personnel assigned to this project were involved in the experience and what their role is or was.

Describe Offeror's Hawaii-specific expertise (if any) and how that expertise will provide value to the Commission and the State. Please describe expertise (if any) with energy efficiency programs and/or DER programs in Hawaii or similar jurisdictions/climates.

3.2.5.e Staffing

The section should indicate the prime contractor and all subcontractor staff that may be or are assigned if the Offeror is successful. In addition, key personnel that are committed to this project should also be indicated, preferably in a table format with names in rows and columns indicating their role(s) (summary of and consistent with what is in the table in the organization section), education, experience and expertise. Personnel should be indicated by their actual titles, but for key personnel that are committed to this project, they should also be indicated in one of the following general labor categories, for both prime and subcontractor staff (these categories are also requested for the budget sheets – see **RFP Section 7: Attachment 4** -- and used in proposal evaluation):

- Prime Contractor and Subcontractor Senior Firm Representative(s) – for example, Firm Principals
- Prime Contractor Project Manager for this contract
- Prime Contractor Deputy Project Manager for this contract (if assigned)
- Subcontractor Project Managers for this contract
- Prime Contractor and Subcontractor Task Leaders for specific scopes of work identified in this proposal

- Prime Contractor and Subcontractor Senior Advisors – for example technical experts that will support design of work plans or task implementation

It is up to the Offeror to decide if key personnel in each of the above general labor categories are to be identified in their proposal. For example, while it is expected that certain categories will be identified (such as project managers), the Offeror may not wish to identify Senior Analysts as key personnel. In addition, if Offeror has other key staff proposed that do not fit into these categories, indicate the other categories and how they are distinct from the above.

Other general labor categories that Offerors may wish to use to indicate staff (and billing rates in RFP Section 6) are:

- Senior Analysts
- Senior Engineers
- Analysts
- Engineers
- Senior field staff
- Field staff
- Administrative staff

The Commission reserves the right to disqualify any potential Offeror that changes key personnel assigned to perform the EM&V Contractor's responsibilities, prior to the execution of the contract.

For key personnel, information should be provided indicating how the key personnel's experience, expertise and educational background will enable them to successfully complete their assigned tasks. The Offeror should also indicate whether and how any or all of the key personnel have worked together in the past.

Resumes of all key personnel assigned to the project must be included in the appendix and should include information relating to each person's directly related experience, education, and skills (including, but not limited to, specific degrees, dates, names of employers, and education institutions). Each resume shall be no more than three (3) pages in length. Offerors shall agree to provide additional information if requested to do so.

3.2.5.f References

Provide references with name, title, organization, phone number and e-mail with brief description of services performed for three (3) references for prime contractor and each proposed subcontractor for work performed by each currently or within last two years. References should be for activities on which individuals identified in this proposal as key personnel have or have had a substantive role.

Refer to **Section 7: Attachment 3** of this RFP for the Vendor Reference form. The Offeror must use this form and fill it out completely for each reference. The forms may be recreated electronically, but all fields and formats must be

retained. Failure to recreate the forms accurately may lead to the rejection of the Offeror's proposal. By listing the references, Offerors and their subcontractors grant the State authorization to contact these client references to assess the Offeror's quality of work performed and other attributes.

The Commission or its representatives may also contact other past or current clients indicated in the Offeror's proposal, even if such clients are not specifically identified in the references section of the proposal.

3.2.6 Proposal Section 4: Technical Response

The Technical Response section should include two parts: (a) a summary of the Offeror's overall approach to providing EM&V services as defined in this RFP and (b) response to essay questions that are intended to provide specifics with respect to certain tasks. The technical response section should be no longer than 40 pages.

3.2.6.a Overall Approach to Priority EM&V Activities

This section should include a description of the Offeror's overall strategy, recommendations and proposed approach(es) to the scope of work described in this RFP. This can be a brief section that demonstrates the Offeror's understanding of the scope of work, experience and expertise as demonstrated by how they would approach the various tasks in the scope of work, and key elements of how the Offeror would deliver the services. The provided information should aid the Commission in evaluating the Offeror's capabilities, per the evaluation criteria indicated in **RFP Section 4.3**.

While the final proposal of the Successful Offeror will be included as an attachment to an executed contract, these proposal sections' scopes of work and budgets are illustrative not determinant of the contract scope, which will be defined in approved work plans.

3.2.6.b Offeror Essay Questions

Please respond to the following questions. Answers should generally be one to two pages for questions 1, 2 and 7 and four to five pages for questions 3, 4, 5 and 6. Responses will be evaluated on the quality of ideas and recommendations relative to the Commission's needs and the benefit to the State.

➤ Offeror Question 1: Project Management and Optimization
How will the EM&V Contractor assist the Commission with (i) optimizing the efficient delivery of the requested EM&V services (ii) proposing plans and options for specific activities that enable the Commission to obtain the best service at the best value and (iii) conducting and managing multiple distinct EM&V activities to successful completion.

➤ Offeror Question 2: Contract Structure

How will the Offeror (prime contractor and subcontractors, if any) assist the Commission in identifying the optimal, best qualified and most cost-effective team and approach for a given task or activity? Describe some key challenges and issues in managing this type of services contract with multiple team members. What suggestions would you offer to the Commission to ensure that a contract of this type works smoothly? (Include suggestions for features or approach(es) to use and approach(es) to avoid.) Do the prime contractor and the subcontractors have an expectation regarding the amount and/or type of work the prime expects or plans to retain versus work that will be allotted to, or available to subcontractors? Please explain any internal team agreements on this subject, as well as the proposed approach and why this approach is best for Hawaii.

➤ Offeror Question 3: Verification Studies

Provide an outline scope of work, budget, and proposed prime and subcontractor key personnel assignments for conducting a PY2017 verification study for Hawaii Energy programs. Scope of work outlines should take into general consideration the verification scope of work description in RFP Section 2.2.3 and specifically for preparing a memo equivalent to the published PY15 verification memo - https://hawaiienergy.com/files/resources/PY15_HawaiiEnergyVerificationMemo.pdf. The budget should be what the Offeror would propose to complete the PY17 verification if the programs, reporting metrics and other information, as well as the approaches described in the PY15 verification memo, were the same for PY17. Budget and scope should cover:

- Developing the annual Hawaii Energy Programs' impact evaluation/verification plan.
- Determining, documenting and reporting the net and gross energy and demand savings for each Program Year associated with the Hawaii Energy Programs.
- Providing verification and due diligence of program accomplishments and benefits, including co-benefits, project savings and other milestones reported by the Program Administrator.
- All associated analyses including field work and surveys.
- Draft and final reports, including documentation (datasets, spreadsheets containing analyses, etc.)
- Presentation of the results via a webinar.

In considering budgets and scope, Offerors should assume a May 15, 2018 start for this work with final report and presentation by December 15, 2018. **Offerors should also be aware that past verifications have had budgets on the order of \$200,000 to \$300,000 per year.**

➤ Offeror Question 4: TRM Update

Provide an outline scope of work, budget, schedule and proposed prime and subcontractor key personnel assignments for updating a Hawaii TRM. Scope of work outlines should take into general consideration the verification scope of work description in RFP Section 2.2.3 and specifically for a TRM update based on:

- Using the PY16 TRM as published at: <https://hawaiienergy.com/about/information-reports> ¹⁴
- Identifying a prioritized list of measures and other elements (e.g., net to gross ratios) for review and possible updating
- Reviewing and updating, using secondary data, deemed savings values, factors and variables and calculations for:
 - Residential and commercial LEDs (include NTG and baseline assumptions)
 - 5 commercial kitchen measures
 - Commercial chiller calculations (with conversion to UMP protocol and use of select deemed factors/variables)
 - Commercial VFD calculations (with conversion to UMP protocol and use of select deemed factors/variables)
 - Commercial occupancy sensor controls
 - Cx and RCx (measure lives)
 - Hotel Room Energy Management System (EMS) Controls
 - Residential whole house and ceiling fans
 - Residential solar water heating
 - Residential heat pump water heating
 - Residential window AC & VRF AC
 - Residential clothes washers, clothes dryers and refrigerators
 - Multi-family direct install kits
 - Hawaii system loss factors (T&D losses)
- Preparing draft, for review by TAG, EEM and Commission, and final TRM updates

➤ Offeror Question 5: Potential Studies

Describe Offeror's thoughts and consideration for conducting an energy efficiency potential study for Hawaii under two different budget scenarios: (i) \$400,000 and (2) \$600,000. ^[SEP] Include outline scopes of work for each with indication of which key EM&V contractor team members (individuals) would be assigned to this work. Describe key differences between the lower versus the higher budget scenario. What are Offerors' thoughts on the advantages and disadvantages of these studies under the two different approaches, in the context of the objectives for such a Hawaii study (see potential study objectives indicated in RFP Section 2.2.3 of the RFP)? Please describe thoughts about conducting an energy efficiency potential study that acknowledges market and grid changes due to DERs and unique aspects of Hawaii and its markets/policies.

➤ Offeror Question 6: Baseline studies

Describe Offeror's thoughts and consideration for conducting a baseline study for Hawaii under two different budget scenarios: (i) \$800,000 and (2) \$1,200,000. Include outline scopes of work for each with indication of which key EM&V contractor team members (individuals) would be assigned to this work. Describe

Note that there is currently a review of certain information in the PY16 TRM for the purpose of creating a PY17 TRM. As part of that review it was discovered that inadvertently there are missing sections in the PY2016 TRM that previously appeared in the PY2015 TRM, and which will be included in the PY17 TRM when published. Any update will include review of these sections, which include Gross Customer to Net Program Savings, Interactive Effects, Persistence, Glossary, Load Shapes and Demand Coincidence factors, and Total Resource Benefits.

key differences between the lower versus the higher budget scenario. What are Offerors' thoughts on the advantages and disadvantages of these studies under the two different approaches, in the context of the objectives for such a Hawaii baseline study (see baseline study objectives indicated in RFP Section 2.2.3 of the RFP)? Please discuss the role of such a study or alternatives for updating the TRM and tracking energy-savings attributable to savings from PBFA type programs, with consideration of market-transformation and/or spillover from the EEPS Programs.

➤ Offeror Question 7: Additional Suggestions

Provide any suggestions for crafting the EM&V services, and/or priorities that may differ from what is proposed in this RFP. Thoughtful suggestions will be viewed favorably whether or not the Commission determines that Offeror's idea(s) might be implemented.

3.2.7 Proposal Section 5: Managing Customer-Specific and Competitively Sensitive Information

The Offeror shall include a proposal for managing customer-specific and competitively sensitive information, which includes at a minimum:

- Ensures that customer-specific and competitively sensitive information is provided only to those entities that require the information as approved by the Commission;
- Requires each entity and individual receiving the information under (1), immediately above, to first sign a protective agreement prohibiting disclosure to unauthorized entities or personnel;
- Applies such standards and safeguards to all customer-specific information; and
- Includes criteria and a process for identifying and applying such standards and safeguards.

3.2.8 Proposal Section 6: Cost Proposal

3.2.8.a Description and assumptions for labor and fixed unit costs

Offerors shall provide information describing the overall assumptions and crafting of labor costs and any fixed direct costs, such as escalation rates. If the prime contractor is planning to charge a mark-up on subcontractor labor and/or material/direct costs, explain the proposed approach and why this approach is best for Hawaii. Such mark-ups are discouraged.

3.2.8.b Budget tables

Offerors are to provide one or two budget information tables as tables in Section 6 of their proposal and as electronic submittal in Microsoft Excel. Offerors must provide labor rates and mark up budget information per the indicated template (Budget Table 1) included in **Section 7: Attachment 4** and as an Microsoft Excel file. It is recommended, but optional, for Offerors to include unit costs for non-labor items (e.g., data collection, by type) in Budget Table 2.

Budget Table 1: Billing rates and fixed cost products/services

- Hourly rates for services (labor), by firm, by personnel category for prime contractor and subcontractors with rates all labor categories, specifically including rates for identified key personnel. Rates should be listed as either indicating total all-inclusive labor rates OR presenting a separate line item for General Excise Tax (GET) for calendar years: 2018, 2019 and 2020
- Indicate any prime contractor (and subcontractor as proposed) mark ups for subcontractor labor costs and direct/material costs. Such marks up are discouraged.
- See instructions on the budget forms and the information in **RFP Section 3.2.5.e** on identified staffing. The staffing information in Proposal Section 3 should be consistent with the information in this Proposal Section 6 (e.g., names and titles).

Budget Table 2: Fixed cost products/services

- See instructions on the budget table forms
- Offerors shall submit unit costs as “all-in” amounts. That is the proposal for a unit of data collection shall be inclusive of planning, travel, data collection, materials, data cleaning, etc., such that a unit of cost yields a unit of clean data suitable for analysis.

3.2.9 Proposal Section 7: Assumptions and Exceptions

The Offeror shall list any assumptions made and exceptions taken to the terms, conditions, specifications, or other requirements listed here. The Offeror shall reference the relevant section of the RFP where assumptions are made or exceptions are taken, a description of the assumption made or exception taken, and the proposed alternative, if any. Any revision or exception to the work or work products requested shall also be supported by a description of the proposed benefit to the State, if considered.

Further, the Offeror must state that there are no further assumptions or exceptions related to meeting requirements of the RFP other than those enumerated in this section of the proposal. Offeror is advised that any assumptions made or exceptions taken may adversely affect Offeror’s evaluation score.

3.2.10 Proposal Section 8: Appendix – Resumes

Include resumes for key personnel and others as necessary. Resumes should indicate credentials, experience and expertise related to individuals’ expected role(s). Each resume should be limited three pages or less.

SECTION FOUR

EVALUATION PROCESS & CRITERIA

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation.

4.1 EVALUATION COMMITTEE

A committee of at least three (3) State employees selected by the Commission will review and evaluate all proposals submitted by the deadline specified in this RFP. The evaluation committee will include individuals with experience in and knowledge of the Commission's duties, powers, objectives and requirements and the specific requirements set forth under HRS Chapter 269.

The evaluation committee may have the proposals (or portions of proposals) reviewed by the EEM (providing advice only), other State personnel, or Commission consultants with technical or professional experience that relates to EM&V assessment, or to a criterion or phase in the evaluation process.

All proposals will be initially reviewed for timeliness of submission, format, and completeness ("General Requirements"). The proposals that satisfy General Requirements of the RFP shall then be fully evaluated according to the proposal criteria listed in **Table 2** below. Proposals that do not meet all of the General Requirements shall be disqualified from further review or consideration unless the Procurement Officer deems that initial requirement deficiencies are minor or may be clarified and corrected without resulting in an unfair advantage to the Offeror, and it is in the best interest of the State not to reject or disallow the proposal.

Overall, the proposal shall demonstrate that the Offeror understands the issues and has the ability to meet and satisfactorily produce all contractual requirements listed in the RFP, including all contractual services. The price must be realistic given the scopes of work, and must illustrate an aggressive, competitive approach to maximizing the State's limited resources.

4.2 PHASES OF EVALUATION

The evaluation will be conducted in six (6) phases shown in the following Table:

Table 2: Phases of Evaluation of Proposals

Phase	Task
Phase 1	Evaluation of General Requirements
Phase 2	Evaluation of Proposals
Phase 3	Establishment of Priority List of Offerors
Phase 4	Optional Discussions/Presentations with Priority-listed Offerors
Phase 5	Submission of Best and Final Offers (if deemed necessary by the Commission)
Phase 6	Recommendation for Award

4.2.1 Phase 1: Evaluation of General Requirements

The evaluation of General Requirements as specified herein shall be on a “pass/no pass” basis; no points shall be assigned for these requirements.

The purpose of this phase is to determine whether an Offeror’s proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the General Requirements (no pass) will be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the General Requirements (pass) of Phase 1 will be considered in Phase 2. The General Requirements for proposal responsiveness are listed in **Section 4.3, Proposal Evaluation Criteria and Scoring**.

4.2.2 Phase 2: Evaluation of Proposals

During this phase, the evaluation committee shall conduct evaluations of the Offeror’s proposal against requirements specified in this RFP. Based on a 100-point scale, proposals must score a minimum of 70 points for further award consideration. Proposals scoring less than 70 points shall not be considered for project awards. Evaluation criteria are described below.

4.2.3 Phase 3: Establishment of Priority Listed Offerors

The evaluation committee scores for each proposal, as determined in Phase 2 – Evaluation of Proposals, shall be ranked and averaged to determine if the proposal is acceptable, potentially acceptable or unacceptable. It is anticipated that no more than three (3) acceptable or potentially acceptable proposals with the highest average ranking will be designated as the priority-listed Offerors, as set forth under HAR § 3-122-53.

4.2.4 Phase 4: Optional Discussion with Priority Listed Offerors

During the course of this phase, the Evaluation Committee may conduct discussions only with priority-listed Offerors. Proposals may be accepted without such discussions. These discussions are intended to answer any questions the evaluation committee may have regarding a priority-listed Offeror’s proposal. The content and extent of each discussion will be determined by the committee’s evaluation of the deficiencies in each proposal. The evaluation committee will not indicate to a priority-listed Offeror a price that it must meet in order to obtain further consideration nor will it advise a priority-listed Offeror of its price standing relative to another priority-listed Offeror. However, the evaluation committee may inform a priority-listed Offeror that its price is considered too high or unrealistic.

The Evaluation Committee may attempt to disclose all deficiencies noted in the priority-listed Offerors’ proposals. These deficiencies may include: proposed personnel considered to be unqualified, unrealistically low or high pricing, unrealistically low or high estimated efforts, questionable technical or management approaches, and compliance with submission format and content requests described above. The intent of the discussions is NOT to initiate a pricing or service auction, but rather to give the Offeror the opportunity to clarify or learn from proposal deficiencies as perceived by the evaluation committee.

If during the discussions there is a need for any substantial clarification or change of the RFP, the RFP shall be amended by an addendum. Such addenda to the RFP shall be distributed only to the priority-listed Offerors. The priority-listed Offerors shall be permitted to submit new proposals or amend those submitted.

4.2.5 Phase 5: Submission of Best and Final Offers

If deemed necessary by the Commission, the priority-listed Offerors’ Best and Final Offers, if required, must be emailed to the Commission by the priority-listed Offeror no later than the date and time specified in the RFP Schedule in **Section 1: Schedule and Significant Dates**. If a Best and Final Offer is not submitted, the previous submittal will be construed as the Best and Final Offer.

4.2.6 Phase 6: Recommendation for Award

The evaluation committee will prepare and submit a recommendation on which Offeror should be awarded the contract for the Procurement Officer’s review and approval.

4.3 PROPOSAL EVALUATION CRITERIA AND SCORING

The evaluation committee will evaluate the adequacy of the approach proposed to complete the tasks described in **Section 2.2, Scope of Work**. This area of evaluation includes an assessment of the detailed proposal, including the logic of the technical approach plan, the interfacing with the Commission and the EEM, and realism of the tasks and schedules. In addition, this part of the evaluation assesses the Offeror’s approach to management and control methods and tools to successfully operate as the EM&V Contractor described in its proposal.

Proposals will also be evaluated for the adequacy of the Offeror’s understanding of state and federal laws, regulations, policies and procedures relating to the EM&V Contractor’s responsibilities. The proposals are scored according to evaluation criteria listed in **Table 3**. The section following the table further describes each of the evaluation criteria.

Table 3: Evaluation Criteria and Scoring

Evaluation Criteria	Scoring
General Requirements	Pass/No Pass
Understanding the EM&V Contractor’s Role and the needs of the State	10 points
Offeror Background, Organization and Staff Experience including Subcontractors	30 points
Technical Response (including overall proposed approach(es) and responses to essay questions)	30 points
Local Participation	10 points
Cost and Value	20 points
Total points possible	100 points

4.3.1 General Requirements (pass / no pass)

The evaluation of general requirements as specified herein shall be on a “pass/no pass” basis; no points shall be assigned for these requirements. Each proposal will be reviewed to determine if the proposal is sufficiently responsive to permit a complete evaluation. To satisfy general requirements, the proposal shall include, without limitation, all of the information requested in this RFP in the order specified. Failure to meet the general requirements will be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the general requirements (pass) of Phase 1 will be considered in Phase 2.

4.3.2 Understanding the EM&V Contractor’s Role and the Commission’s Needs

The Offeror’s proposal will be evaluated against the following criteria:

1. Has the Offeror demonstrated a thorough understanding of the purpose and scope of the EM&V Contractor’s responsibilities?
2. How well has the Offeror identified pertinent issues, potential problems, and proposed approaches?
3. Has the Offeror demonstrated that it understands the importance of timeliness and has the ability to meet the reporting deadlines to the Commission?

4.3.3 Offeror Background, Organization and Staff Experience

The Commission will evaluate the experience, performance, resources, and qualifications of the Offeror and subcontractors (if any). References will be verified and findings incorporated into the evaluation.

4.3.4 Organization and Staffing (including Subcontractors)

The Offeror’s proposed organization and staffing resources will be evaluated to assess the Offeror’s capability to carry out the duties and responsibilities of the EM&V Contractor.

The evaluation committee will evaluate the key management personnel and other key personnel proposed for the EM&V Contractor’s responsibilities, based on experiences listed under the individual resumes.

References for the proposed firms and individual(s) assigned to this contract will be checked and included in the evaluation of this section. Reference checking is not limited to only those references supplied by the Offeror.

4.3.5 Technical Response

Evaluation criteria for this section will assess the Offeror’s approach to the EM&V Contractor’s responsibilities. Specifically, proposals will be evaluated against the following criteria:

1. Adequacy of approach to meeting the requirements specified in scope of work;
2. Innovative approaches or ideas where appropriate; and
3. Response to essay questions;

4.3.6 Local Participation

Offerors that engage Hawaii-based firms to participate on the team are viewed favorably, based on the percentage of work allotted to Hawaii-based firm(s) in addition to the Hawaii-based firm(s)' expertise, value and contribution to the overall team.

4.3.7 Cost and Value Proposal

Cost and value shall be based on proposed rates for labor and fixed cost activities (e.g., data collection), markups (which are discouraged), and budget related information provided in response to essay questions. Labor rates will be evaluated based on expertise and value for key personnel and other personnel rates, and evidence that the Offeror can deploy personnel resources to achieve an optimal balance of cost, expertise, oversight, analyses, record-keeping and other activities.

SECTION FIVE

CONTRACTOR SELECTION AND CONTRACT AWARD

5.1 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within ninety (90) calendar days after the opening of proposals. Offeror's proposal shall remain firm for the ninety (90) day period.

5.2 SCOPE

The Offeror's proposal shall be in accordance with the RFP in its entirety; including these Special Provisions and the General Conditions included by reference in Section 7 of this RFP.

5.3 TERM OF CONTRACT

The Successful Offeror shall be required to enter into a formal written State contract to commence work on this project.

The term of contract shall begin on the agreement start date on or around May 1, 2018, and will continue through June 30, 2020, with an option to extend, by mutual agreement, for a period of time determined by the Commission, for a term of up to one year. The Commission may terminate the contract period at any time for any reason, if in the best interest of the State

5.4 AWARD OF CONTRACT

Award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP.

The notice of award, if any, resulting from this solicitation shall be posted on the Hawaii Awards and Notices Data System (HANDS), which is available on the SPO website: <https://hands.ehawaii.gov/hands/compliance>.

5.5 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.6 RESPONSIBILITY OF OFFERORS

5.6.1 Compliance

Offeror is advised that in order to be awarded a contract under this solicitation, Offeror will be required, to be compliant with all laws governing entities doing business in the State including the following chapters and pursuant to HRS §103D-310(c):

1. Chapter 237, General Excise Tax Law (tax clearance);
2. Chapter 383, Hawaii Employment Security Law (unemployment insurance);
3. Chapter 386, Worker's Compensation Law (workers' compensation);
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

The State will verify compliance on Hawaii Compliance Express (HCE).

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

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov/hce/splash/welcome.html>. The annual registration fee is \$12.00 and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

Timely Registration on HCE. Vendors/contractors/service providers are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, an Offeror will not receive the award.

5.6.2 Responsibility of Successful Offeror – Reference to HRS § 103D-310(c)

If compliance documents have not been submitted to the Commission prior to award, the Successful Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

The Successful Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein prior to commencing work under this contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

5.6.3 Evidence of Insurance

Offerors must provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract.

Prior to Contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The type of insurance coverage is listed as follows:

1. Commercial General Liability Insurance. Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities, or contractual liability by the Contractor, its employees and

subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law:

- a. Mandatory coverage per State Comptroller's Memoranda 2010-06, 2009-04, and 2007-24
 - b. Bodily Injury and Property Damage – Per Occurrence Limit
 - i. \$1 million per occurrence
 - ii. \$5 million aggregate
2. Automobile
- a. Mandatory coverage per State Comptroller's Memoranda 2010-06, 2009-04, and 2007-24
 - b. No less than \$1 million per accident; OR
 - i. Bodily Injury
 - a. \$1 million per person;
 - b. \$1 million per accident; AND
 - ii. Property Damage
 - a. \$1 million per accident
 - c. Coverage is required for automobile liability arising out of the operation, maintenance, or use of a motor vehicle, owned or rented, while conducting State contracted business.
3. Professional Liability (Errors and Omissions)
- a. \$1 million per claim;
 - b. \$2 million annual aggregate;
 - c. Professional Liability coverage will be required of all consultants providing expert services to the State. Retroactive date of coverage must be prior to start of professional service.
4. Workers' Compensation, Temporary Disability, and Prepaid Health Care
- a. Mandatory coverages detailed in and per Chapters 383, 386, 392, and 393, HRS
 - b. Coverages required of business entities employing an individual(s) whose services are localized in the State and/or an individual(s) whose residence is in the State per Sections 383-2 and 383-3, HRS.
5. Additionally, Certificates of Insurance shall:
- a. Be completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form;
 - b. Be kept current for the entire term of the Contract and written notice shall be provided immediately to the State should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration; failure to secure and maintain the required insurance shall be considered a breach of contract; should the State be forced to expend funds that would have been covered under the specified insurance, the Successful Offeror shall reimburse the State for such funds;
 - c. Reflect the State as an additional insured;
 - d. Reflect subcontractor(s) as additional insureds or shall be required of subcontractor(s) by the Successful Offeror in addition to the Successful Offeror's own policy(s), if appropriate; and
 - e. Be in compliance with State Comptroller's Memorandum 2010-06.

6. The certificates of insurance shall include the following clauses:
 - a. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
 - b. "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."

Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

5.7 APPROVALS

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

5.8 CONTRACT EXECUTION

The Successful Offeror receiving an award will be notified by letter and shall be required to enter into a formal written contract ("Contract"). The Commission shall forward the Contract to the Successful Offeror for execution. If the Successful Offeror to whom a contract is awarded fails or neglects to enter into the Contract within the specified time period specified in the award notification or within such further time as may be allowed by the Commission, the Procurement Officer may award the Contract to the Offeror who is next in line, or call for new offers if it is deemed to be in the best interest of the Commission.

Successful Offeror receiving award shall enter into a formal written contract in the form as in **Appendix 3**. No performance or payment bond is required for this contract. No contract shall be considered binding upon the Commission until the contract has been fully and properly executed by all parties thereto.

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

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

5.9 PUBLIC EXAMINATION OF PROPOSALS

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award pursuant to HRS §103D-701.

If a person is denied access to a State procurement record, the person may appeal the denial to the office of information practices in accordance with HRS §92F-42(12).

5.10 DEBRIEFING

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing, shall be filed within five (5) working days, as specified in HAR §103D-303(h).

5.11 PROTEST PROCEDURES

Pursuant to HRS §103D-701 and HAR §3-126-3, an actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the Procurement Officer at:

Delmond J. Won, Procurement Officer
Delmond.j.won@hawaii.gov

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the PO's debriefing was completed.

SECTION SIX: SPECIAL PROVISIONS

6.1 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Commission at least one week prior to the proposals due date. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made.

6.2 CONFIDENTIAL INFORMATION

If the Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer should be so advised in writing and provided with justification to support the confidentiality claim. Compensation methodology is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, pursuant to HAR § 122-46(9). Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

If a person requests to inspect the portions of an Offeror's proposal designated as confidential, pursuant to HAR § 3-122-46(9), the inspection shall be subject to written determination by Attorney General for confidentiality in accordance with HRS Chapter 92F consistent with HAR § 3-122-58. If the request for confidentiality is denied by the Attorney General, such information shall be disclosed as public information, unless the person requesting that such information be determined confidential appeals the denial to the Office of Information Practices in accordance with HRS § 92F-42(1).

6.3 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and seek to perform the proposed scope of work through a new RFP or other means when it is determined to be in the best interest of the State, pursuant to HAR § 3-122-96.

The State also reserves the right to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, including that the State believes the proposal is excessive in price.

The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

6.4 DISQUALIFICATION OF PROPOSALS

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

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

1. Proof of collusion among Offerors, in which case all proposals and Offerors involved in the collusive action will be rejected;
2. The proposal demonstrates noncompliance with applicable law;
3. The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning;
4. The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation;
5. The delivery of the proposal after the deadline specified in the timetable;
6. The Offerors being in arrears on existing contracts with the State or having defaulted on previous contracts.

6.5 RIGHT TO WAIVE MINOR IRREGULARITIES

The evaluation committee reserves the right to waive minor irregularities. The evaluation committee also reserves the right to waive general requirements provided that all the otherwise responsive proposals failed to meet the general requirements and the failure to do so does not materially affect the procurement. This right is at the sole discretion of the evaluation committee

6.6 FINAL PAYMENT REQUIREMENTS

The Successful Offeror is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22) will be required for final payment. A copy of this form is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the menu.

6.7 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 Successful Offeror pursuant to the Contract, and all such material shall be considered "works made for hire." The State shall also have complete ownership of all software that is purchased under the Contract in order to support a fully operational Program.

All such material and software shall be delivered to the State upon expiration or termination of the 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 Successful Offeror pursuant to the Contract.

6.8 CONTRACT MODIFICATION-UNANTICIPATED AMENDMENTS

During the course of the Contract, the Contractor may be required to perform additional work that will be within the general scope of the Contract. When additional work is required, the Contract Administrator will provide the EM&V Contractor a written

description of the additional work and request the EM&V Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (supplemental contract or contract modification) signed by the Contracting Officer and EM&V Contractor personnel authorized to sign contracts on behalf of the EM&V Contractor. The EM&V Contractor will not commence additional work until a signed contract modification has been issued.

6.9 SUBCONTRACTING

No work or services shall be subcontracted without the prior written approval of the Procurement Officer. No subcontract shall under any circumstances relieve the Successful Offeror of its obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Successful Offeror.

6.10 GOVERNING LAW-COST OF LITIGATION

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of the Contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part to any litigation commenced by or against the EM&V Contractor in connection with this Contract, the EM&V Contractor shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

6.11 ADDITIONAL CONTRACT TERMS AND CONDITIONS

The Commission reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

6.12 CONTRACT INVALIDATION

If any provision of the Contract is found to be invalid, such invalidity will not be construed to invalidate the entire Contract.

6.13 INSPECTION & MODIFICATIONS – REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The Successful Offeror is responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and approval by the Procurement Officer. The State may employ all reasonable means to ensure that the work is being performed in compliance with the Contract.

Should the Procurement Officer determine that corrections or modifications are necessary in order to accomplish its intent; the Procurement Officer may direct the Successful Offeror to make such changes.

Substantial failure of the Successful Offeror to perform the contract requirements may cause the State to terminate the Contract. In this event, the State may require the

Successful Offeror to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

6.14 NON-DISCRIMINATION

The EM&V Contractor shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the EM&V Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

6.15 WAIVER

The failure of the Commission to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Commission's right to enforce the same in accordance with the Contract.

6.16 SEVERABILITY

In the event that any provision of the 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 the Contract.

6.17 TERMINATION

The Commission reserves and has the right, at any time during the term of the Contract, in its sole discretion, to terminate and cancel the Contract in the public interest or for the convenience of the State. The Successful Offeror's obligation under the Contract shall continue until the specified termination date.

6.18 DEFAULT

Pursuant to HAR § 3-125-17, if the Successful Offeror refuses or fails to perform any of the provisions of the Contract with such diligence to ensure that contract provisions are met, within any time requirements specified in the Contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the Contract, the Procurement Officer may notify the Successful Offeror in writing of the delay or non-performance. If the delay or non-performance is not cured in ten (10) days, or any longer time specified in writing by the Procurement Officer, the Contract may be terminated in whole or in part, as applicable.

SECTION SEVEN

ATTACHMENTS AND APPENDICES

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: WAGE CERTIFICATE
- Attachment 3: VENDOR REFERENCE FORM
- Attachment 4: BUDGET TABLES

- Appendix 1: TERMS AND ACRONYMS
- Appendix 2: GENERAL CONDITIONS (as part of Contract)
- Appendix 3: SAMPLE CONTRACT FORM AND SUPPLEMENTALS

**Attachment 1:
OFFER FORM
OF-1**

INDEPENDENT EVALUATION, MEASUREMENT, AND VERIFICATION CONTRACTOR
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
RFP-PUC-18-01

Procurement Officer
Public Utilities Commission
State of Hawaii
Honolulu, Hawaii 96813

Dear Procurement Officer:

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, 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.

Offeror is:

- Sole Proprietor Partnership *Corporation Joint Venture
 Other _____
*State of incorporation: _____

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

Federal 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.: _____

Name and Title (Please Type or Print)

Fax No.: _____

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:

**Attachment 2:
WAGE CERTIFICATE**

WAGE CERTIFICATE
FOR SERVICE CONTRACTS
(See Section 3.2.4.e)

Subject: IFB/RFP No.: RFP-PUC-18-01
Title of IFB/RFP: SEALED OFFERS FOR INDEPENDENT EVALUATION,
MEASUREMENT, AND VERIFICATION CONTRACTOR

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

**Attachment 3:
VENDOR REFERENCE FORM**

Vendor (Subcontractor/Partner) Name(s):

Subject: RFP No.: RFP-PUC-18-01

Title of RFP: **SEALED OFFERS FOR INDEPENDENT EVALUATION,
MEASUREMENT, AND VERIFICATION CONTRACTOR**

Company:

Contact:

Address:

Phone No.:

E-mail:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

Attachment 4b: BUDGET TABLE 1-- LABOR RATES & MARKUPS (EXAMPLE)

REQUEST FOR PROPOSALS No. RFP-PUC-18-01 SEALED OFFERS FOR

Offeror Name:	
Date Prepared:	

Offeror provides input in shaded cells

Budget Table 1: Staffing and Rates

RFP Labor Categories (1)	Staff			Prime or Sub-Contractor	Rate, \$/hour			3-year Billing Rates Averages 2018-2020
	Prime or Subcontractor Job Title (2)	Employee Name(s)	Firm Name		Calendar Year 2018	Calendar Year 2019	Calendar Year 2019	
Senior Firm Representative	President	Bruce Wilson	EM&V Experts, Inc.	Prime	\$ 175.00	\$ 176.00	\$ 177.00	\$ 176.00
Senior Firm Representative	Vice President	Adam Miller, Beth Orange	EM&V Experts, Inc.	Prime	\$ 165.00	\$ 166.00	\$ 167.00	\$ 166.00
Senior Firm Representative	Vice President	Barbara Jones, Charles Apple	M&V Pros, Inc.	Sub	\$ 190.00	\$ 190.00	\$ 190.00	\$ 190.00
Senior Advisor	Senior Consultant	Mary Smith, Alice Brown	EM&V Experts, Inc.	Prime	\$ 155.00	\$ 156.00	\$ 157.00	\$ 156.00
Senior Advisor	Vice President	John Smith, Dave Brown	M&V Pros, Inc.	Sub	\$ 180.00	\$ 180.00	\$ 180.00	\$ 180.00
Project Manager	Senior Manager	Janice Williams	EM&V Experts, Inc.	Prime	\$ 160.00	\$ 161.00	\$ 162.00	\$ 161.00
Project Manager	Manager	Grace Smith	M&V Pros, Inc.	Sub	\$ 170.00	\$ 171.00	\$ 172.00	\$ 171.00
Deputy Project Manager	Manager	Emily Williams	EM&V Experts, Inc.	Prime	\$ 140.00	\$ 141.00	\$ 142.00	\$ 141.00
Task Leader	Junior Manager	Chris Jones	EM&V Experts, Inc.	Prime	\$ 140.00	\$ 141.00	\$ 142.00	\$ 141.00
NA	Senior Analyst	Sarah Smith, Kate Smith, Laura Smith	EM&V Experts, Inc.	Prime	\$ 130.00	\$ 131.00	\$ 132.00	\$ 131.00
NA	Senior Analyst	Harry Wilson	M&V Pros, Inc.	Sub	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
NA	Analyst	Fred Jones, Brad Jones, Ann Jones	EM&V Experts, Inc.	Prime	\$ 120.00	\$ 121.00	\$ 122.00	\$ 121.00
NA	Senior Engineer	Brad Smith, Fred Smith, Ann Smith	EM&V Experts, Inc.	Prime	\$ 140.00	\$ 141.00	\$ 142.00	\$ 141.00
NA	Engineer	TBD	EM&V Experts, Inc.	Prime	\$ 120.00	\$ 121.00	\$ 122.00	\$ 121.00
NA	Administrative Analyst	TBD	EM&V Experts, Inc.	Prime	\$ 75.00	\$ 76.00	\$ 77.00	\$ 76.00

Markup (percent) on subcontractor labor and materials/directs (if any):	0%
Markup (percent) on prime contractor materials/directs (if any):	0%

Note 1:

Personnel should be indicated by their actual titles, but for key personnel that are committed to this project, they should also be indicated in one of the following general labor categories, for both prime and subcontractor staff :

- Prime Contractor and Subcontractor Senior Firm Representative(s) – for example, Firm Principals
- Prime Contractor Project Manager for this contract
- Prime Contractor Deputy Project Manager for this contract (if assigned)
- Subcontractor Project Managers for this contract
- Prime Contractor and Subcontractor Task Leaders for specific scopes of work identified in this proposal
- Prime Contractor and Subcontractor Senior Advisors – for example technical experts that will support design of work plans or task implementation

It is up to the Offeror to decide if key personnel in each of the above general labor categories are to be identified in their proposal. For example, while it is expected that certain categories will certainly be identified, such as project managers, the Offeror may not wish to identify Senior Analysts as key personnel. In addition, if Offeror has other key staff proposed that do not fit into these categories, indicate the other categories and how they are distinct from the above.

Other generic labor categories that Offerors may wish to use to indicate staff (and billing rates in Proposal Section 6) are:

- Senior Analysts
- Senior Engineers
- Analysts
- Engineers
- Senior field staff
- Field staff
- Administrative staff

Note 2:

Indicate prime contractors and subcontractor internal job titles as will be used for billing purposes

Appendix 1: Terms & Acronyms

TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

“BAFO” means Best and Final Offer.

“BREG” means the State of Hawaii Department of Commerce and Consumer Affairs, Business Registration Division.

"Commission" or "PUC" means the State of Hawaii Public Utilities Commission, as defined under HRS § 269-2.

"Commission Program Manager" or "Program Manager" means the Commission staff member designated by the State of Hawaii Public Utilities Commission to administer the contract between the Commission and the EM&V Contractor.

"Energy Efficiency Manager" means the entity designated by the State of Hawaii Public Utilities Commission to administer contracts between the Commission and Program Administrator(s) and/or EM&V Contractor(s).

“Consumer Advocate” means the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, as defined under HRS § 269-52.

“Distributed Energy Resources” (DER) Distributed energy resources include distributed generation, energy efficiency, demand response, electric vehicles, and distributed energy storage.

“DLIR” means State Department of Labor & Industrial Relations.

“DOE” means U.S. Department of Energy.

“DOTAX” means State of Hawaii Department of Taxation.

“DSM” means demand-side management.

“Energy Efficiency” is using less energy to provide the same service. A system that is more energy efficient is able to deliver more, or superior services for the same energy input, or the same services for less energy input.

“Energy Efficiency Docket” means State of Hawaii Public Utilities Commission Docket No. 2007-0323.

"Energy Efficiency Portfolio Standard" or "EEPS" generally refers to a law that sets a standard of electricity use reduction to be achieved in incremental stages. For Hawaii, EEPS refers to the standard set forth by Act 155, Session Laws of Hawaii 2009, and promulgated as HRS § 269-96. Hawaii's EEPS requires electricity use reductions totaling at least 4,300 gigawatt-hours (GWh) statewide by 2030.

“Energy Efficiency Portfolio Standard Docket” or “EEPS Docket” means Hawaii Public Utilities Commission Docket No. 2010-0037.

“Energy Efficiency Portfolio Standard Framework” or “EEPS Framework” means the *Framework for Energy Efficiency Portfolio Standards* approved by the State of Hawaii Public Utilities Commission in Decision and Order No. 30089, filed January 3, 2012.

“EM&V” means evaluation, measurement and verification.

“EM&V Contractor” means an entity designated by the Commission to provide independent evaluation services in support of the Energy Efficiency Portfolio Standard, the Public Benefits Fee Program and/or other programs pursuant to HRS § 269, Part VII, and/or for related programs and activities. In the context of this RFP and/or any Contract resulting from this RFP the term “EM&V Contractor” shall be understood to mean the Successful Offeror selected for the work described herein.

“Ex Ante” means initial energy savings and/or other assumptions and parameters used to calculate Program accomplishments prior to any *ex post* evaluation.

“Ex Post” means evaluation conducted to assess program accomplishments or parameters after the installation of efficient measures and/or implementation of efficient practices, and/or other Program practices.

“Finance Program Administrator” or “FPA” means the entity providing certain financing services for the Bill Saver Program and/or other programs.

“GC” means General Conditions, issued by the State of Hawaii Department of the Attorney General.

“GEMS” means “Green Energy Market Securitization” a financing model designed to make clean energy improvements, such as photovoltaic panels, affordable and accessible to underserved community members using a rate-reduction bond structure. See Act 211, Session Laws of Hawaii 2013.

“GET” means General Excise Tax.

“HAR” means State of Hawaii Administrative Rules.

“HCE” means State of Hawaii Compliance Express.

“Hawaii Clean Energy Initiative” or “HCEI” refers to a partnership between the State of Hawaii and the U.S. Department of Energy (DOE) that aims to have at least 70 percent of Hawaii’s energy come from clean energy by 2030. <http://www.hawaiicleanenergyinitiative.org/>

“Hawaii Energy” is the brand for the Hawaii Energy Efficiency Program.

“Hawaii Energy Efficiency Program” or “HEEP” or “PBFA Program” is the conservation and energy efficiency program for Hawaii, Honolulu and Maui counties, operating under the auspices of the Hawaii Public Utilities Commission. The Hawaii Energy Efficiency Program began operations in 2009. While Hawaii Energy is primarily focused on energy efficiency, the Hawaii Energy Program has offered some DSM activities other than energy efficiency, and may continue to do so.

“HECO” means Hawaiian Electric Company, Inc. HECO is a Hawaii corporation initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. HECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawai‘i and is a public utility as defined by HRS § 269-1.

“HECO Companies” or “HECO Utilities” means Hawaiian Electric Company (HECO) and its subsidiaries Hawaii Electric Light Company (HELCO), and Maui Electric Company (MECO).

“HECO Companies’ service territory” means the islands of Oahu, Hawaii, Maui, Molokai and Lanai, which are serviced by the HECO Companies.

“HELCO” means Hawaii Electric Light Company, Inc. HELCO is a Hawaii corporation initially organized under the laws of the Republic of Hawaii on or about December 5, 1895. HELCO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii and is a public utility as defined by HRS § 269-1.

“HRS” means State of Hawaii Revised Statutes.

“HST” means Hawaii Standard Time.

“HVAC” means heating, ventilation and air conditioning.

“IRP” means integrated resource planning or integrated resource plan.

“IRS” means Internal Revenue Service.

“IT” means information technology.

“KIUC” means Kauai Island Utility Cooperative. KIUC is a not-for-profit generation, transmission and distribution cooperative owned and controlled by the members it serves. The cooperative currently serves more than 32,000 electric accounts and operates its own energy efficiency programs.

“MECO” means Maui Electric Company, Ltd. MECO is a Hawaii corporation initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity on the island of Molokai, and the production, distribution, and sale of electricity on the island of Lanai.

“Offeror” means any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the goods, service, or construction contemplated in this RFP.

“PBF” means the public benefits fee established by the Commission, pursuant to HRS § 269-121, that includes money collected by the HECO Companies from ratepayers to support clean energy technology, demand response technology, energy use reduction,

and demand-side management infrastructure, programs, and services, subject to Commission review and approval.

“PBFA” or “Public Benefits Fee Administrator” means the third-party administrator of the programs funded by the PBF in the HECO Companies’ service territories selected by the Commission under HRS Chapter 269, Part VII and under contract to the Commission to implement the PBF programs. “Hawaii Energy” is the brand name for the PBFA Programs. The terms “PBF Program” (or “programs”) “PBFA Programs or programs” and “Hawaii Energy Programs (or “programs”) may be used interchangeably throughout this RFP and any resulting Contract. Generally, terms such as “the PBFA Program” or “PBFA program(s)” refer to the overarching portfolio of activity undertaken by the PBFA at a given time. In some contexts, references to a specific subset of activities within that portfolio may be called out, e.g., a “residential lighting program.”

“Program Administrator or PBFA” means the entity implementing the PBF Program(s).

“Procurement Officer” means the State of Hawaii Public Utilities Commission Administrative Director or other personnel so-authorized.

“Program Year” or “PY” means a one-year implementation cycle for the PBF Programs. Currently, the PBF Programs are implemented from July 1 through June 30 of the following year.

“PV” means photovoltaic.

“RFP” means Request for Proposals.

“State” means State of Hawaii.

“Public Utilities Commission” or “Commission” or “PUC” means the State of Hawaii Public Utilities Commission that regulates all franchised or certificated public service companies operating in the State. The PBF Programs discussed within this RFP are operated under the auspices of the Commission.

“Successful Offeror” means the Offeror awarded a contract for EM&V Services as described in this RFP.

“Technical Reference Manual” or “TRM” means a resource that contains energy efficiency measure information used in program planning, implementation, tracking, reporting and evaluation of impacts associated with the subject measures, programs or activities. The PBFA programs are operated in accordance with a TRM designed specifically to characterize the programs. The PBFA TRM is updated on an ongoing basis.

“TAG” or “Technical Advisory Group” – A group of stakeholders selected by PUC to provide advice regarding the PBF programs.

“TWG” or “Technical Working Group” -- A working group convened by the Commission to provide advice for the development of an EEPS Framework for planning, monitoring and achieving EEPS goals.

"Working day" means Commission office hours, every day from 7:45 a.m. to 4:30 p.m., Hawaii Standard Time, except Saturday, Sunday, and any Federal or State of Hawaii holiday.

"Work plan" means a detailed plan prepared by the EM&V Contractor describing services to be provided during the proposed timeframe including scope, budget, timeline, staffing and deliverables.

Appendix 2: General Conditions (of contract)

GENERAL CONDITIONS

Table of Contents

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

GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

Appendix 3: Sample Contract Forms



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

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

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.
- B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
- C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.
- E. Pursuant to _____,
(Legal authority to enter into this Contract)
 the STATE is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:
 (1) _____
(Identify state sources)
 or (2) _____
(Identify federal sources)
 or both, in the following amounts: State \$ _____
 Federal \$ _____

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

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

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

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

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

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

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

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

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

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

STATE

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

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

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

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



STATE OF HAWAII
**CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

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

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

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

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

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

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

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

CONTRACTOR

By _____
(Signature)
Print Name _____
Print Title _____
Name of Contractor _____
Date _____



STATE OF HAWAII
TIME OF PERFORMANCE



STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE



STATE OF HAWAII
SCOPE OF SERVICES



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

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

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

(Signature)

(Date)

(Print Name)

(Print Title)

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

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

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

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

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

(Signature)

(Date)

(Print Name)

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



STATE OF HAWAII
SPECIAL CONDITIONS