

NOTICE TO BIDDERS

Pursuant to Chapter 103D, Hawaii Revised Statutes

The Hawaii Department of Agriculture (HDOA), Pesticides Branch is seeking proposals in response to a Request for Proposals (PB-20-01).

HDOA announces the availability of up to \$90,000.00 in funds provided by the Supplemental Appropriations Act of 2019 (Act 5, SLH 2019) which provides funds of various means of financing to accomplish the purposes and programs specified to the expending agencies designated for the fiscal year beginning July 1, 2019 and ending June 30, 2020.

The HDOA requests proposals for a qualified offeror to develop an Infor Public Sector Technical and Support Services contract (project).

To achieve this goal, HDOA announces the availability of up to \$90,000.00 in program funds for one project to develop an Infor Public Sector Technical and Support Services contract. The system will be employed to record Education, Pesticide Registration and Enforcement Sections activities of certification accounting and recordkeeping.

Applicants must submit their proposals electronically in MS Word format with all attachments via email to Jose.T.Balignasay@hawaii.gov and/or send or deliver a completed proposal with all attachments in hardcopy to the Department of Agriculture, Pesticides Branch/Program Compliance, located at 1428 S. King Street, Honolulu, HI 96814-2512. All proposals must be received no later than **2:30 p.m. Hawaii Standard Time on Thursday, October 24, 2019**. Timely receipt of proposals shall be evidenced by the date and time registered by the HDOA computer and time clock. Proposals received after the deadline of 2:30 p.m. HST shall not be processed by staff or reviewed by the evaluation committee. Offerors are strongly encouraged to submit completed and signed proposals using overnight mail or delivery service to ensure timely receipt by HDOA. Any proposals received by the United States Postal Service (USPS) or any other carrier service **AFTER** the 2:30 p.m. deadline results in automatic rejection of the submittal.

For further information, interested parties are encouraged to contact the Pesticides Branch, attention: Jose Balignasay, telephone: (808) 973-9413, facsimile: (808) 973-9418; email: Jose.T.Balignasay@hawaii.gov

Procurement Notice posted on Tuesday, October 8, 2019.



Title: Infor Public Sector Software Technical and Support Services 2019

Agency: Hawaii Department of Agriculture (HDOA)
Pesticides Branch

Action: Announcement of Request for Proposals to provide professional software and hardware maintenance services to maintain the HDOA Infor Public Sector (PS) web-applications. The professional support service shall include user support; server hardware and software maintenance; and system and browser upgrades.

Description:

The current build version of HDOA Infor PS web-applications is Infor IPA-V8.4. The latest Infor PS version is V11. Due to the gap in operating software versions, the HDOA wishes to upgrade and enhance its Infor PS web-applications capability and performance and to create benefit to the end-user's use-competence and experience leveraged to the latest Infor PS version, V11. To satisfy the requirement, the HDOA announces the availability of up to \$90,000.00 in program funds for one project to provide professional software and hardware maintenance services to maintain the HDOA Infor Public Sector (PS) web-applications. The professional support service shall include user support (e.g., including training on the use of the software, quick guide manual to assist with navigating the Infor PS system); server hardware and software maintenance; and system and browser upgrades. The successful proposal shall include a plan that outlines:

- Scope and purpose
- Specific goals and objectives
- Discovery (interviewing the use-requirements of end-users for Infor PS V11)
- Defined design for incorporation of Infor PS V11 to the current web-applications version (IPA-V8.4)
- Defined build plans for incorporating Infor PS V11 to the current web-applications version.
- Defined launch plan and schedule to release a fully functional Infor PS V11 web-applications that will satisfy the operational requirements of HDOA's daily operations

The closing date and time for receipt of proposals under this RFP is 2:30 p.m. on October 23, 2019. Proposals received after this deadline will be returned to the

offeror unopened and will not be processed by staff or reviewed by the evaluation committee.

Contact Information:

The contact person for this solicitation is Jose Balignasay, Pesticides Branch/Program Compliance, (808) 973-9413 or Jose.T.Balignasay@hawaii.gov.

Offerors may submit an electronic proposal with all attachments in MS Word format via email to Jose.T.Balignasay@hawaii.gov and/or send or deliver a proposal with all attachments in hardcopy to the address below*. The proposal (electronic or hardcopy) must be received by **2:30 p.m. on October 23, 2019**, as evidenced by the HDOA computer and time clock.

*Hawaii Department of Agriculture (HDOA)
Pesticides Branch (Infor Public Sector Software Technical and Support Services 2019)
Program Compliance
1428 S. King Street, 2nd Flr.
Honolulu, HI 96814-2512

Receipt of proposals will be acknowledged by email, whenever practical.

Bid security is NOT required for this Request for Proposals (RFP).

Eligible Offerors:

Proposal submittals are encouraged from eligible computer technology firms, including those with the following qualifications:

1. Has proficient knowledge of Infor PS, DecisionMaker Billing System, Agricultural Import Registry architectures; or comparable systems
2. Is experienced with installation and configuration of Infor, DecisionMaker Billing System, Agricultural Import Registry, or comparable systems
3. Is experienced at configuring IIS and SQL to existing specifications for system recovery
4. Is experienced in Hypervisor technologies
5. Is a Microsoft Gold Certified Partner
6. Is able to provide training to end-users in all the above systems listed in 1 and 2
7. Application Developers shall be proficient in ASP.NET, C#, Crystal Reports, SSRS, SSIS, SSMS, XML, COBOL, IIS, Apple iOS mobile platform, angular/node web application platform, cloud application platform as a services (PaaS) --- (e.g., Salesforce, AWS, IBM, etc.).

Responsibility of Offerors:

Offerors are advised that in order to be awarded a contract under this solicitation, offerors 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;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
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.

Offerors may apply for a certification of compliance that consolidates all six items to a single document. This single document can be obtained from Hawaii Compliance Express (HCE) by registering for an account with HCE.

Hawaii Compliance Express (HCE). HCE is an electronic system that allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. The annual registration fee paid to the Hawaii Information Consortium (HIC), LLC is currently \$12.00.

Timely Registration on HCE --- Vendors/contractors/service providers are encouraged to register on HCE as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offeror will not receive the award.

Final Payment Requirements. Contractors are required to submit a tax clearance certificate for Final Payment on the contract. A Certificate of Vendor Compliance, not over two months old, will be acceptable for Final Payment on the contract.

Eligible Project Overview:

Eligible proposals shall describe the process to provide professional software and hardware maintenance services to maintain the HDOA Infor PS web-applications. The support will include covering user support, server hardware and software maintenance; and system and browser upgrades and enhancements to the latest version Infor PS at V11 or the more current version of Infor PS.

The project shall be completed within 12 months of execution of the awarded contract. Monthly billings (submitted on the first week of the subsequent month for which work was performed), at standardized hourly rate, shall be delivered to HDOA for payment processing. HDOA reserves the right to extend the contract in accordance with AG-008 103D General Conditions, Paragraph 19, Modifications of

Contract, or other applicable provision, provided that both parties agree to the project period of performance extension. Conversely, HDOA reserves the option to end the contract prior to the end of the twelve (12) months period (or period of performance). Proposals shall include a plan that addresses quantifiable/measurable outcomes that demonstrate measures and action steps under the following broad categories: Discovery, Design, Build and Launch the web-applications for upgrade and enhancement with Infor PS V11 or later.

Project Categories:

Project proposals and goals shall consider and give focus to the following categories and sub-categories:

- 1) Develop a secured-access web-applications website
- 2) The computer technology firm shall provide the following maintenance and support for Infor PS server database and all integrated systems, where tasks include but are not limited to the following:
 - a) Providing hardware and software help desk support to HDOA during HDOA hours of operation for statewide implementation with a base of 10 users via telephone or email;
 - b) Resolve critical bug fixes, Internet Explorer (IE) incompatibility issues, and system regression testing;
 - c) Be sure to include end-user experience input. Therefore, interview users of the web-application prior to any design initiative.
 - d) Provide correction remediation due to record corruption, inclusion of null data and similar types of anomalies;
 - e) Provide answers to HDOA regarding questions on the use and functionality of the web-applications (including furnishing an unabridged User's Manual and an abridged Quick Reference Guide for the Infor PS build at V11 to HDOA)
 - f) Maintain a local mirror system for release testing;
 - g) Provide support to HDOA on a weekly and daily schedule of differential backups, antivirus updates, window server updates, disk space cleanup
- 3) The computer technology firm shall provide Infor PS and linked integrated system upgrades and enhancements, including, but not limited to:
 - a) Upgrade Infor PS to support the current version of the Internet Explorer browser or equivalent alternate browser
 - b) Upgrade Infor PS to support Safari cross-browser compatibility
- 4) Preference will be given to entities that are doing business in Hawaii and have a physical presence in Hawaii

The "Infor Public Sector Software Technical and Support Services 2019" funds will be awarded to **one project**, not to exceed \$90,000.00. The 'one project' will be completed within twelve months of the date that the contract is signed.

Project Oversight:

HDOA's Pesticides Branch, Program Compliance and HDOA's Information Technology (IT) Office will partner with the successful entity to oversee the planning and implementation of the project. Program Compliance and IT will monitor the performance of all project activities to ensure that work is completed within the required time schedule proposed for completion of work. All proposed specification for the final project work shall, also, be met by the winning Contractor.

Proposal Guidelines:

Proposals must describe successful sequential phases of processes that result in the upgrade and enhancement of the Infor PS web-applications at version IPA-V8.4 to Infor PS V11 or later. Proposals must include provisions for training end-users to a level of competent performance on the new web-applications to be created, keeping in mind to satisfy considerations specified in this project scope of work and specifications for the desired web-application build. The contractor will conduct user-performance testing prior to launch of the final web-application build. The launched web-application product shall be a turnkey web-application system. The contractor shall schedule provisions for end-user training on the use of the system. The contractor will, also, furnish to HDOA a User Manual (unabridged document) and Quick Reference Guide (abridged document).

1. Proposals should be typed, single spaced, 12 pitch, black Calibri font, and with one-inch margins
2. Each page should be numbered, with offeror's name on the header
3. An electronic version of the proposal, including all attachments (in MS Word format) may be submitted to Jose.T.Balignasay@hawaii.gov and/or a proposal including all attachments, may be sent or delivered to:

Hawaii Department of Agriculture
Pesticides Branch (Infor PS Project)
Program Compliance
1428 S. King St., 2nd Flr.
Honolulu, HI 96814-2512

The electronic or hardcopy proposal must be received by the HDOA by 2:30 p.m. on October 23, 2019. Its receipt will be evidenced by the HDOA computer and time clock.

4. The proposal packet can include documentation showing that the offeror is compliant with HCE at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.
5. Include the Contract and Title page (see page 15 of 15) and signed Endorsement Statement (on page 14 of 15).

All costs incurred by an offeror in preparing or submitting a proposal shall be the offeror's sole responsibility in the view of the prospect of winning or not winning an award from participating in this RFP work opportunity. The State will not reimburse

costs incurred by the offeror for preparing its work proposal for the project advertised.

Proposal Format

The proposal shall include the following:

1. Contact information

Primary contact - Name and title
 Company (exact legal name as registered with the Hawaii
 Department of Commerce and Consumer Affairs):
 Address
 Phone
 Email
 Web address

Alternate contact - Name and title
 Company (same details as specified with primary contact)
 Address
 Phone
 Email
 Web address

2. Project title and abstract

Title of project

Start and completion dates

3. Project purpose, potential user-performance impact, innovation and improvement over older versions of Infor PS, proposed build advantage

4. Expected quantifiable (measurable) outcomes

Quantifiable or measurable outcomes must show how the proposed project will develop an *Infor Public Sector Technical and Support Services 2019* which has the capacity to deliver on professional services to maintain the existing HDOA Infor Public Sector (PS) web-applications, and to include end-user training to result in competent and efficient use of the web-applications upgrade from Infor IPA-V8.4 to V11. In other words, end-users shall have ease-of-use experience and command performance of use of the to-be newly created version of Infor PS V11 for the old web-applications. Quantification processes will address measurable steps in the milestones of incremental 'Discovery,' 'Design,' 'Build,' and 'Launch' scopes of work. Each milestone is tested and successfully completed prior to progressing to the next scope of work.

5. Work Plan

Identify the activities necessary to accomplish the project objectives.

Indicate who will do the work for each activity and include a brief summary of the person's experience and/or qualifications.

Include timelines for accomplishing each activity [e.g., Gantt/Ghant or similar chart in an MS Word Table, Excel, Microsoft Project, ProjectLibre – Project Management (open-source), etc., to include narrative attachments for the timeline to describe important details of the time-synchronized work].

6. Budget narrative of cost and pricing

Provide sufficient information in paragraph text about the budget categories listed for each activity to demonstrate that funds will be expended on eligible activities that meet the purpose of the project.

Should these items be included in the budget, the narratives should describe:

Personnel

Provide name and service being provided'

Include whether this cost is based on a flat fee or an hourly rate

Travel

Destination, purpose of trip, number of people traveling, number of days traveling, estimated airfare costs, estimated ground transportation costs, estimated lodging and meal costs, estimated mileage costs, total.

Equipment

Provide an itemized list of rentals or purchases;

Provide a brief narrative on the intended use;

Provide the cost.

Supplies

Provide an itemized list;

Estimate the dollar amount for each item.

Contractual

Project manager fee can be shown in this category stated as a flat fee or an hourly rate;

Provide a short description of the services each contract covers;

When possible, break out the specific costs associated with the contract;

Include the flat rate fee or the total hourly rate fee for each contract;

No work shall be subcontracted or assigned without prior written approval of the HDOA. If subcontractor(s) will be used, include a statement from each subcontractor, signed by an individual authorized to legally bind the subcontractor, stating the description of services to be performed by the subcontractor and the subcontractor's willingness to perform for the offeror for this project.

Other --- provide description and costs.

Total

Cost and Price Table

Item/Activity	Infor PS Project --- Funds	Comments
Personnel		
Travel		
Equipment		
Supplies		
Contractual		
Other – specify		
Total		

Items included in the Budget should be included in the Work Plan to show where the targeted and planned expense will be utilized.

7. Project oversight

Who will oversee the project activities?

How will oversight be performed? Include performance-critical and work delivery timelines.

Include channel of communication and communication strategy with HDOA.

8. Project commitment

Describe how all partners will commit to and how they will work toward the goals and specific objectives to arrive at intentionally planned outcome that can be measured for the proposed activities of the project requirements.

9. References

A list of references that may be contacted by the HDOA as to offeror’s past and current job performance. Include names, titles, organizations, telephone numbers, email and postal addresses.

10. Endorsement Statement (page 14 of 15)

Include a signed *Endorsement Statement* with your company’s proposal-response submittal for this project.

11. Adverse actions

Supply a summary listing of judgments or pending lawsuits or actions against the offeror, adverse contract actions, including terminations, suspensions, imposition of penalties or other actions relating to failure to perform, including deficiencies in fulfilling contractual obligations.

If none, then so state.

Evaluation review process

Each proposal will be evaluated by an *evaluation committee* to determine that the proposal satisfies the requirements specified by the Request for Proposals (RFP). The proposals will be evaluated strictly on a merit basis according to the following criteria:

Ratings Criteria¹ ---

Work Proposal Details for the Project	Points
1. Quantifiable or Measurable Outcomes	20
2. Work Plan	20
3. Project purpose, innovation, ease-of-use benefits by the end-user, the performance value of published user manual(s) usability	20
4. Project oversight, lead-personnel professional work experience and qualifications	25
5. Budget	15
Total	100

¹The maximum point-rating that can be earned from the appraisal of a submitted proposal is 100 points.

Proposals will be evaluated by members of the *evaluation committee*. A standard numerical score sheet shall be used for all proposals by each member of the *evaluation committee*. For each proposal, *evaluation committee* members will assign a rating-point and after all *evaluation committee* members have evaluated and rated each of the proposals, then the scores for the entire *evaluation committee* will be averaged to determine a proposal's final score. Award will be made by the Board of Agriculture Chairperson. The award will be given to the responsive and responsible offeror and whose proposal is determined to be the most advantageous to the State.

Contractual Terms and Conditions

The successful offeror will enter into a contract with the Hawaii Department of Agriculture (HDOA) as an independent contractor and shall agree to comply with all terms and conditions set forth in policy document *AG-008, 103D General Conditions*. This standard policy is issued by the Department of the Attorney General. The General Conditions can be accessed by internet via the following web link: <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>

The RFP and the successful offeror's proposal may become part of the contract. All proposals shall become the property of the State.

No work is to be undertaken by an offeror, that is awarded a contract, prior to the official commencement date specified in the contract. A "Notice to Proceed" letter, from HDOA to the winning contractor, is required to begin Project work. The State shall not be liable for any work, contract, costs, expenses, loss of profits, or any

damages whatsoever incurred by the offeror when work is done without State authorization and prior to the official contract commencement date, which includes the requirement of a supporting start-work-authorization issued in the form of "Notice to Proceed" letter.

Insurance Endorsements

Prior to the contract start date and issuance of a "Notice to Proceed" letter, the winning offeror shall procure and maintain, at its sole expense, insurance coverage acceptable to the State throughout the term of the Contract. The winning offeror shall provide proof of insurance for the following minimum insurance coverage and limit, for each applicable and respective category of insurance coverage, in order to be awarded the Contract for the Project. The types of insurance coverages are listed according to the following respective specifications:

Commercial general liability insurance coverage against claims for bodily injury and property damage arising from 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 corresponding limit specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000.00 per occurrence; with an aggregated limit of \$2,000,000.00.

The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000.00 for bodily injury for each person, \$1,000,000.00 for bodily injury for each accident, and \$1,000,000.00 for property damage for each accident.

Appropriate levels of per occurrence insurance coverage for workers' compensation and any other insurance coverage required by Federal or State law.

The Contractor shall deposit with the State, on or before the contract start date, insurance endorsements necessary to satisfy the State that these provisions have been complied with, and to keep such insurance in effect and provide the insurance endorsements to the State during the entire term of the Contract. Upon request by the State, the Contractor shall furnish a copy of the policy or policies.

The State shall retain the right at any time to review the coverage, form and amount of the insurance required hereby. If, in the opinion of the State, the insurance provisions in the Contract do not provide adequate protection, then the State may request for the Contractor to obtain additional insurance to clearly satisfy coverage,

form and amount in order to provide the protection required. The request shall be reasonable but shall be designed to assure protection from and against the type and extent of the risks involved. If the Contractor is unable to provide the additional coverage as requested, then the State reserves the right to terminate the Contract with prejudice by prior written notice.

The insurance policy required by the Contract shall contain the following clauses:

(1) "This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Agriculture, 1428 S. King St., Honolulu, HI 96814."

(2) "The State of Hawaii, its departments, attached agencies, officers, employees, and agents are added as additional insured with respect to operations performed for the State of Hawaii."

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

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under the Contract, entitling the State to exercise any or all remedies provided in the Contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with the Contract.

Contract Reports

The successful offeror (Contractor) will be required to credit the HDOA in any presentation, materials, or property rights resulting from this funding. Additionally, the Contractor must submit progress and financial reports periodically upon request and to submit a final (project-completion) deliverables (User's Manual & Quick Guide User's Manual, milestones-completion progress reports) and financial report (e.g., cash flow) no later than 30 days from the completion of the project. The HDOA will withhold a five percent (5%) retainer of the total amount of the awarded funds until the deliverables, cash flow report and final product (turnkey, upgraded and enhanced Infor PS web-applications for end-user ease-of-use plus training of personnel on the use of the new Infor PS version of web-applications) are submitted by the Contractor to the State, and reviewed and approved by the State.

Contract Term

The term of the contract shall be from the effective date of the contract to the end of the project period, unless an extension is granted in accordance with the standard

policy AG-008, 103D General Conditions, paragraph 19, Modifications of Contract, or other applicable provision.

Pre-Proposal Conferences

No pre-proposal conference is scheduled for this RFP.

Priority-listed Offerors

In accordance with Hawaii Administrative Rules (HAR) §3-122-53, discussions may be conducted with “priority listed offerors.” However, the HDOA may accept proposals without discussion.

Acknowledgement of Proposals

Receipt of proposals will be acknowledged to the respective offeror by email whenever practical. Therefore, offerors shall provide an email address in the proposal. There will be no acknowledgment of late, incomplete and unqualified proposals.

Confidentiality

The names of offerors, the names of individuals identified in the proposals, the content of the proposals, and the committee evaluations of proposals will be kept confidential during the evaluation process, except to those involved in the evaluation and award process. Upon posting of award, all proposals both successful and unsuccessful, the contract, and the contract file shall be available for public inspection. Offerors shall designate, in writing, any portion of their proposal that contains trade secrets or any other proprietary data that are to remain confidential and why. In accordance with HAR §3-122-58, such information shall be marked and readily separable from the rest of the proposal, in order to facilitate public access to the non-confidential portion of the proposal.

Right to a Debriefing

Pursuant to HAR §3-122-60, non-selected offerors may request a debriefing to inform them of the basis for the contract 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 (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor, submitted pursuant to HRS §103D-303(h) following a debriefing, shall be filed within five (5) working days.

Protest

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; and further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract if no request for debriefing has been made.

The "Notice of Award," if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website:

<https://hands.ehawaii.gov/hands/awards>

Any protest pursuant to HRS §103D-701 and HAR §3-126-3 shall be submitted in writing to:

Hawaii Department of Agriculture
Pesticides Branch, Program Compliance
1428 S. King St., 2nd Flr.
Honolulu, HI 96814

The HDOA reserves the right to cancel this solicitation and reject any or all proposals received in whole or in part; request additional information on project proposals; recommend partial funding for proposals and link the release of project funds to completion of necessary, timely progress reports. All awards and contracts are subject to the availability and receipt of funds for the Project (Infor PS Project: PB-20-1).

Endorsement Statement

Please include the following language below in your proposal and sign:

I agree to all the terms, conditions and provisions of this Request for Proposals (RFP). I certify that the information provided is true and correct to the best of my knowledge. If awarded a contract under this solicitation, I agree the organization will assume sole responsibility of any and all debts or liabilities that may be incurred from this project; and will provide the required documentation to Hawaii Department of Agriculture (HDOA) upon request. I understand that if this proposal is funded, I will be required to sign a contract agreement and other necessary documentation containing terms and conditions upon which Infor PS Project: PB-20-1 funds will be released.

Signature

Date

Title

CONTRACT AND TITLE PAGE
Infor PS Project: PB-20-1

Title of Project

Amount Requested: _____

Time of Performance (i.e., number of months): _____

Applicant and Alternate Contact Information

Primary contact:
Name and Title

Alternate contact:
Name and Title:

Business Entity:

Business Entity:

Address:

Address:

Phone:

Phone:

Email:

Email:

Web address:

Web address:

State tax ID _____

Federal Tax ID _____

Project partners (name and title):

<p>Name – MUST be as shown on the Hawaii Compliance Express certificate or as recorded for legal purposes such as tax identification, DCCA, DLIR Title – indicate if title authorizes signing on behalf of the Business Entity Business Entity – i.e., corporation, partnership, joint venture, sole proprietorship or other legal form as shown on legal documents Address – official address of the business entity as shown on legal documents; nine-digit zip code</p>
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GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided 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.