

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS

PUBLIC UTILITIES COMMISSION

LEGAL AD DATE: January 19, 2016


REQUEST FOR PROPOSALS

NO. RFP-PUC-16-01

SEALED PROPOSALS AND PRICING FOR A
PROVIDER FOR THE
HAWAII ONE CALL CENTER (HOCC)
HAWAII REVISED STATUTES (HRS) CHAPTER 269E

MUST BE POSTMARKED BY MARCH 1, 2016

AND WILL BE OPENED AT 12:00 NOON (H.S.T.) ON MARCH 4, 2016, IN THE
PUBLIC UTILITIES COMMISSION, KEKUANAOA BUILDING, 465 SOUTH KING
STREET, ROOM 103, HONOLULU, HAWAII 96813.


DELMOND J.H. WON
PROCUREMENT OFFICER

NOTICE TO INTERESTED PARTIES

This solicitation is provided to you for information purposes. If interested in responding to this solicitation, you may choose to submit your offer **provided** you register your company by fax or e-mail for this specified solicitation. If you do not register your company, you will not receive addenda, if any, and your offer will be automatically rejected and not considered for award.

Registration or Request for Copy of Solicitation

Submit E-MAIL to: gary.m.kobayashi@hawaii.gov

Provide the following information:

- Name of Company
- Mailing Address
- Telephone Number
- Facsimile Number
- Name of Contact Person
- E-Mail Address
- RFP Number
- FedEx (or equivalent) account number (documents will be sent by United States Postal Service mail if this is not provided)

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SECTION ONE **INTRODUCTION**

1.1 TERMS AND ACRONYMS USED HEREIN

"Center" means the One Call Center, as defined under HRS § 269E-2.

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

"Confirmation Number" is a unique number assigned to a Request for Markout or an Electronic Request for Markout that shall be sequential in nature and allow for the identification of when the RFM or ERM was processed.

"Contract Administrator" means the Commission staff designated by the State of Hawaii Public Utilities Commission Chair, to administer the contract contemplated by this RFP.

"Customer Service Representative," "Customer Rep," or "CSR" means an attendant at the Center.

"Database" means, but is not limited to, all information necessary for the operation of the Center. Specifically included in the database are a GPS mapping database, a facility operator database overlay, and a facility operator USGS map grid overlay, and excavator and facility operator data.

"Electronic Requests for Markouts" or "ERMs" are either faxed requests or computer generated, i.e., internet, e-mail, etc., requests for markout by excavators to the Center.

"Emergency" means a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services, as defined under HRS § 269E-2.

"Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. "Excavation" shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of: 1) Improving an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or

occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families, or 2) any pest control activity regulated under HRS chapter 460J, as defined under HRS § 269E-2.

"Excavator" means any person, including an operator, who performs any excavation, other than an operator whose employees are performing maintenance work on the operator's subsurface installations, as defined under HRS § 269E-2.

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

"GET" means General Excise Tax.

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"HAR" means the Hawaii Administrative Rules.

"HCE" means Hawaii Compliance Express.

"HRS" means the Hawaii Revised Statutes.

"H.S.T." means Hawaii Standard Time.

"Inquiry Identification Number" or "Inquiry Number" means the number issued by the Center to every excavator who contacts the Center for the purpose notification of intent to excavate, as defined under HRS § 269E-2.

"Markout Request Form" or "MRF" means the summary of the questions asked of the caller (excavator) as required by HRS Chapter 269E or the Commission.

"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.

"One Call Center Advisory Committee" means the Hawaii One Call Center Advisory Committee, as defined under HRS § 269E-4.

"Operator" or "Facility Operator" means any person who owns, operates, or maintains a subsurface facility or installation in the State of Hawaii, as defined under HRS § 269E-2.

"Person" means any individual, firm, joint venture, partnership, corporation, association, agency, cooperative or joint stock association, contractor, subcontractor, operator, or other entity, as defined under HRS § 269E-2.

"Procurement Officer" means the Executive Officer of the Commission.

"Provider" or "Successful Offeror" means the offeror awarded the contract to operate the Center.

"Request for Markout," "Request," or "RFM" means a notice of intent to excavate from excavators to the Center by telephone.

"RFP" means Request for Proposal.

"Short-Notice Report" means a summary listing of excavators who fail on at least one occasion to provide at least five (5) days notice of intent to excavate for non-emergency excavations.

"Site" means the specific place where excavation work is performed or contemplated and shall be identified by street address referenced to the nearest intersecting street and subdivision name, if applicable, as well as by lot and block number, if available, and by kilometer or mile marker for railways or highways.

"Speed to answer" means how long the caller (excavator) had to wait for answer by a customer service representative of the Center.

"State" means State of Hawaii.

"Subsurface Installation" or "Subsurface Facility" means any pipeline, conduit, cable, duct, wire, sewer line, storm drain, vault, or other structure that is located underground, as defined under HRS § 269E-2.

"System" means the Center operation, including but not limited to: the process whereby the Center's customer service representatives answer incoming calls from prospective excavators seeking information on subsurface facilities that may be located at or near the prospective excavation site, and the outgoing call from the Center to facility operators who have or may probably have subsurface facilities at or in close proximity to the proposed excavation site.

"Tickets" or "Messages" means RFM or ERM information transmitted from the Center to facility operators. Ticket types include:

1. Routine or Regular – notifications where the excavation work start date and time is at least five (5) business days, but not more than 28 calendar days, from the day following the day the Center actually receives the notice of intent to excavate.

2. Short-Notice – notifications where the beginning work date and time is fewer than five (5) business days from the day following the day the Center receives the notice of intent to excavate in non-emergency excavations.
3. Update – notifications that provide further information and refer to previously processed notifications.
4. Emergency – notifications needing immediate action, as defined in HRS Chapter 269E and the applicable Hawaii Administrative Rules.
5. Daily Notification Log – This report contains a daily history of all notifications (tickets) transmitted by the Center to an operator on a particular day.

"USGS" means United States Geological Survey.

"Working day" means every day from 7:00 a.m. to 5:00 p.m., Hawaii Standard Time, except Saturday, Sunday, and any federal or State of Hawaii holiday.

1.2 INTRODUCTION

The Public Utilities Commission, a state agency administratively attached to the Department of Commerce and Consumer Affairs, is responsible for regulating public utilities, motor carriers, water carriers and other regulated companies. Pursuant to HRS Chapter 269E, the Commission was required to establish and begin administration of the Center by January 1, 2006. The Commission contracted with the Center's current operator in July 1, 2012. The Commission's contract with the Center's current operator expires on June 30, 2016.

This RFP provides estimated dates for the various events in the submission process, selection process, and performance of work. While these dates are subject to change, prospective 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 State refusing to consider the proposal of the Offeror.

1.3 OBJECTIVE

The objective of this RFP is to select the Provider to transition and operate the Center for the period beginning July 1, 2016 and ending June 30, 2019, with options to extend, by mutual agreement, for two (2) twelve-month periods. The Center will provide a system to protect, during excavations, all subsurface facilities, which include facilities for the conveyance of water, drainage, sewer, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, and for the transportation of hazardous liquids subject to the federal "Hazardous Liquid Pipeline Safety Act of 1979, as amended," which was recodified as 49 U.S.C. Chapter 601. The System will be a single statewide notification system that receives notice from excavators

intending to excavate in a certain area and transmits those notices to operators of underground facilities in the area of the proposed excavation or demolition activity. Facility operators shall pay to the Commission, pursuant to HRS § 269E-6, a fee to be determined by the Commission, to fund the establishment and operation of the Center and administrative costs of the Commission. All facility operators in the State shall share in the operational and administrative costs of the Center as provided under HRS § 269E-6.

1.4 BACKGROUND

Act 141, 2004 Session Laws of Hawaii, having been codified as HRS Chapter 269E, creates the Center to disseminate information to excavators on the location of subsurface utility, cable service, and pipeline facilities. The Center will operate throughout the State to significantly reduce the risk of utility and facility service disruption and resulting direct and indirect costs, damages and injuries. HRS § 269E-5 requires the Commission to award the administration and operation of the Center to the provider the Commission determines to be the best qualified. The Commission instituted, through Docket No. 05-0079 and Order No. 21710 issued on April 1, 2005, an investigation into the availability of experienced Center providers, and issued an RFP to solicit proposals from experienced call center providers. Effective July 1, 2011, the Commission contracted with One Call Concepts, Inc. to operate the Center through June 30, 2016. At this time, the Commission seeks to select a Provider to operate the Center beginning July 1, 2016.

1.5 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 or mail. All communications and inquiries concerning this RFP should be directed to:

Hawaii Public Utilities Commission
Attention: Contract Administrator
465 South King Street, Room 103
Honolulu, Hawaii 96813

Telephone: (808) 586-2104
E-mail: gary.m.kobayashi@hawaii.gov

Written inquiries must be received by the Contract Administrator at the address identified above 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 specified in **Section 1.7**.

Replies to Offerors' questions will be considered official only if (1) the PUC receives the questions in writing via e-mail or mail by the date specified herein; (2) the PUC provides a written reply; and (3) such questions and answers are made a part of the RFP by addendum.

Registered Offerors shall receive a written response via email or mail. The PUC shall not be responsible for notifying those potential Offerors who have failed to provide their necessary contact information. All written responses shall be issued as an addendum to the RFP and become, thereby, part of the RFP.

1.6 ISSUING OFFICE

This RFP is issued by the PUC. The PUC is the sole point of contact concerning this RFP.

1.7 RFP SCHEDULE – 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* is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Activity	Scheduled Dates
Advertisement of RFP	January 19, 2016
Registration Deadline and Deadline to receive written inquiries	February 1, 2016 (by 12:00 noon H.S.T.)
Issuance of responses to written inquiries and of RFP addendums (if applicable)	February 15, 2016
Closing date – proposal postmark deadline	March 1, 2016
Proposal review period	Through March 15, 2016
Optional discussions w/priority-listed Offerors	March 16 - 21, 2016
If required, Best and Final Offers due	March 29, 2016 (by 12:00 noon H.S.T.)
Contractor selection and award	April 5, 2016
Contract negotiation	Through April 22, 2016
Contract start date (Transition work begins, as applicable)	As soon as May 1, 2016, but no later than July 1, 2016
Transition completed; Awarded Contractor begins operating the Center	July 1, 2016

Prospective Offerors should be aware of the specified time that an item is due, in addition to the date that it is due.

1.8 REGISTRATION REQUIREMENT

You MUST REGISTER your company by the date specified in **Section 1.7**, to ensure receiving any addenda that are issued. Registration shall include Company Name, Company Contact Person, Address, Telephone Number, Facsimile Number, and E-mail Address and shall be submitted either by facsimile to the Commission to the attention of the Contract Administrator, at (808) 586-2104 or by e-mail to gary.m.kobayashi@hawaii.gov. Telephone calls **WILL NOT BE HONORED**. Failure to register with the PUC will result in an automatic rejection of your offer. It is the Offeror's responsibility to confirm that the Commission has received the faxed or e-mailed registration submittal.

Potential bidders who wish to have their contact information distributed to other potential bidders for purposes of establishing teaming arrangements must indicate this preference together with their registration. This contact information will be distributed with the issuance of responses to written inquiries, see **Section 1.7**.

1.9 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 prospective Offerors are charged with the presumptive knowledge of all legal authorities. These and other pertinent materials are available on the State of Hawaii 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.

1.10 GENERAL INSTRUCTIONS FOR PROPOSAL

The PUC wants clear and concise Proposals in response to this RFP. However, Offerors should take care to completely answer questions and meet this RFP's stated requirements.

Each Offeror may submit only one (1) proposal. Alternate proposal(s) will not be accepted.

Each Proposal must be organized in an indexed binder ordered in the same manner as identified in **SECTION THREE** of this RFP. The detailed requirements for the Proposal's contents and formatting are contained within this RFP.

Offeror shall submit one (1) unbound, indexed, original proposal marked "ORIGINAL," six (6) bound, indexed copies of the original marked "COPY," and

two (2) copies on compact discs or digital video discs containing the proposal in electronic format. It is imperative to note that the Offeror submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

Offers shall be typewritten. Handwritten offers will be rejected.

Offers shall be submitted in a sealed envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall be made to the attention of the Contract Administrator.

Offers shall be postmarked no later than the date and time stated on the cover page of the RFP. Offers received after the deadline shall be destroyed by the Commission.

1.11 PURPOSE OF THIS RFP

1.11.1 Mandatory Requirements

Mandatory Requirements are explicitly stated within this RFP. Offerors should consider the following general mandatory requirements prior to deciding to respond to this RFP:

Offeror must be an organization independent of any Hawaii gas or electric utility, or any agency of the State.

Offeror must be prepared to act in an independent capacity and not as officers or employees of the State. Offeror 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 Successful Offeror's acts and/or omissions in the performance of its duties.

Offeror must agree to multi-year contract with the State beginning on July 1, 2016 through June 30, 2019, with options to extend, by mutual agreement, for two (2) additional twelve-month periods.

Offeror must possess extensive experience in all facets of one call center management and operations, strong oral and written communication skills and analytic skills, knowledge of current and evolving trends in one call center programs and technologies and a thorough understanding of the expected duties.

Offeror must propose a lead staff member who will coordinate the services associated with the Center and serve as a single point of contact for all such services.

Offeror shall NOT replace or alter the duties of key staff during the contract period without express written authorization, in advance, from the Commission.

Offeror must provide its own equipment, office space, and materials for the Center.

Offeror must be familiar with Windows operating systems and the capability to store financial records pertaining to the Center and all related services using Windows-based software or other tools or platforms as specified by the Commission. A secure backup system for the Center is also required.

1.11.2 Relationship of the Successful Offeror to the Commission

The relationship between the Successful Offeror and the Commission shall be governed by the contract entered into by and between the Successful Offeror and the Commission.

In order to preserve the Commission's quasi-judicial role, applicable rules, including the rule against ex parte communications under HAR § 6-61-29, shall apply as and when appropriate. Copies of any reports or other communications from the Successful Offeror to the Commission or vice versa (other than administrative matters concerning the Successful Offeror'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.

1.11.3 Appearance of Successful Offeror in Commission Proceedings

The Successful Offeror may be required by the Commission (on its own initiative, or at the request of a party) to provide expert testimony in Commission proceedings, although such testimony is expected to be required infrequently, if at all.

1.11.4 Legislative Testimony by the Successful Offeror

Successful Offeror may be asked to provide legislative testimony as the Provider for the Center or in its capacity as a company separate from the Center. Offerors should expect that the Commission's contract with the Successful Offeror will include guidelines regarding the provision of legislative testimony to prevent confusion regarding whether legislative testimony is being presented on behalf of the Center or the Provider as an independent company.

1.12 PROPOSAL MODIFICATIONS AND WITHDRAWALS

Proposals may be modified or withdrawn prior to the deadline for submission of proposals by the following:

Modifications: A written notice shall be sent by the Offeror and received by the Procurement Officer stating that a modification to a submitted proposal is being provided by the Offeror. The written notice must accompany the actual modification securely sealed in a separate envelope or container.

Withdrawal: A written notice shall be sent by the Offeror and received by the Procurement Officer. The withdrawal shall state that the Offeror wishes to withdraw a proposal that has already been received by the Procurement Officer.

Modifications and withdrawals shall be submitted in an envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall also be made to the attention of the Contract Administrator.

Modifications and withdrawals shall be postmarked no later than the date and time stated on the cover page of the RFP. Modifications and requests for withdrawal received after the applicable deadline (closing date or best and final offer deadline, if applicable), shall be destroyed by the Commission.

1.13 SUBMISSION OF PROPOSAL

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:

- Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments and any other relevant documentation.
- 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.

1.14 COST OF RFP

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

The State will not be liable for any costs, including discussions, incurred by any Offeror in responding to this RFP, even if the State does not award a contract through this process or an Offeror(s) proposal is disqualified and subsequently destroyed by the Commission. 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.

1.15 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.

SECTION TWO **SCOPE OF SERVICES**

2.1 INTRODUCTION

The primary services provided by the Provider shall be the operation of the Center which will be a statewide notification center, pursuant to HRS Chapter 269E. The Offeror selected pursuant to HRS Chapter 269E, and through this RFP, will assist the Commission in transitioning the System from its current operator, as applicable, and fully operating the Center on July 1, 2016. System personnel shall be the responsibility of the Provider and be assigned as necessary to accomplish the performance requirements as set forth herein.

As part of the operation of the Center, the Successful Offeror shall provide full service, staffed operations on all Working days. The Successful Offeror shall provide for telephone, computer, and facsimile access to the Center during the time periods the Center is not staffed. In particular, the Successful Offeror shall provide excavators access and the ability to submit information concerning a planned excavation via telephone message, facsimile, or computer e-tickets at any time the Center is not staffed, and will provide for confirmation of receipt of excavator submissions on the next Working day. An after-hours telephone message for the Center should provide callers (excavators) information on where to obtain operators' contact information for emergency notifications.

The Successful Offeror shall operate the Center to meet, or exceed, the requirements and standards set forth below:

1. Establish performance standards for the operation of the Center for the purpose of promoting accuracy, cost effectiveness, and efficiency, and include but not be limited to the following key measurements:

- a. **Average Speed to Answer**

Process – The Center shall have the capability of identifying, on the average, how long a caller has to wait before their call is answered by a CSR. Average Speed to Answer should be captured on a half-hour basis and accumulated for the day. Any half-hour period with zero calls shall be excluded from the daily average.

Service Level – Calls should be answered within 30 seconds or less.

b. Abandoned Calls

Process – The Center shall identify the number of calls abandoned after waiting for over 30 seconds and how long callers waited for an answer before hanging up.

Service Level – An objective service level shall be set based on percentage of calls that are abandoned. An abandonment rate of less than 5% by callers that waited in excess of 30 seconds should be the objective.

c. Customer Satisfaction

Process – Annual customer satisfaction surveys shall be conducted through varied media.

Service Level – An objective service level shall be based on percentage of caller's responses. The objective should be 90% customer satisfaction with service.

2. On each Working day that the Center transmits at least one notification of proposed excavation to a facility operator, the Center shall forward to those operators a log indicating the time each notification was transmitted and the name of the proposed excavator. The Center should establish the following minimum criteria for quality of locate request delivery:
 - a. Average emergency ticket transmission time (<15 minutes).
 - b. Average short-notice ticket transmission time (<30 minutes).
 - c. Average regular/routine ticket transmission time (<30 minutes).
 - d. The ticket information should be transmitted in an electronic data format that allows the receiving equipment to separate/extract the data.
3. Monitor the incoming locate requests to outgoing ticket transmissions and calculate the ratio thereof.
4. Create, maintain, and continually update an information database of areas containing underground facilities. The Provider shall ensure that the database is maintained in an electronic format with import and export capabilities to standard mapping and database formats, is able to interface between the facility operator's GIS files and the facility operator's portion of the System's database, and is able to access ticket and excavator data. The type of mapping system the offeror plans to use shall be stated in the proposal. The successful offeror shall bear the costs of transferring the database to future Providers. The database and mapping system shall remain the property of the Commission.

5. Create, maintain, and continually update an information database of excavators operating within the service area of the Center. This electronic database shall be in an exportable format and remain the property of the Commission. The Provider shall actively identify excavators operating within the service area of the Center in order to: 1) carry out the educational programs of the System; and 2) identify excavators who fail to use the System as designed.
6. Assign a liaison to report to the Commission, attend meetings as scheduled by the Commission, and provide quarterly and other reports as required by the Commission

Once the Provider is selected, an initial task will be to prepare a workplan, which will include a detailed plan to transition the Center from the current Center's operator. In addition, the Provider shall include, but not be limited to a schedule of 1) training programs for CSRs, management and staff; 2) education and public relations programs; and 3) disaster and contingency plans. The workplan shall be updated annually or as required by the PUC, applicable State laws and federal requirements.

2.2 COMPENSATION

Payment will be made to the Provider according to a mutually agreed upon payment schedule. The PUC or the State of Hawaii shall not be liable or responsible for any compensation to the Provider for the services provided under its proposal or in this project that is greater than the total contract amount. Provider shall be paid in accordance with the State of Hawaii's General Conditions ("GCs") #17, to the extent modified and superseded by the PUC's Billing Requirements and Travel Guidelines. See Appendix 1 for GCs and Appendix 2 for Billing Requirements and Travel Guidelines in the Goods and Services Contract and Attachments.

Consistent with Hawaii Administrative Rules § 3-122-149 on multi-term contracts, the following terms apply:

1. Funds are available for only the initial term of the contract, and the contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds.
2. The contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of the Center's operations in any fiscal period succeeding the initial term of the contract; however, this does not affect either the State's rights or the Provider's rights under any termination clause of the contract.

3. The Contract Administrator shall notify the Provider on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.
4. In the event of cancellation as provided in 2. above, the Provider will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

2.3 GENERAL REQUIREMENTS

2.3.1 Provider Tasks and Responsibilities

Operation of the Center

The Center shall have in place a process whereby any excavator in the State who has a locate request at any time of day or night, 365 days of the year, can contact the Center and have that request processed on that, or on the following, Working day. In addition, the Center shall be capable of accommodating calls via telephone message, facsimile, or computer e-tickets at any time the Center is, or is not, staffed. The Center shall capture, at a minimum, the following information on each Markout Request Form:

1. Caller's name and phone number;
2. Excavator's/company's name, address, and phone numbers;
3. Specific location of the intended excavation;
4. Start date and time of excavation; and
5. Description of excavation activity (e.g., boring, blasting, trenching, etc.).

In addition to the required minimum information in the above paragraph, the locate request form should include any information, if available, that will help to establish more specific information on the location of the proposed excavation site. This additional information could include, for example, but is not limited to:

1. County;
2. Excavation permit number assigned by County or state governments;
3. State;
4. Street Address;
5. Street Name;
6. Length and direction of the excavation and the nearest adjacent cross street (needed to bound area of excavation or extended excavation);
7. Subdivision and lot number (for new development);
8. Latitude/Longitude: Latitude-longitude coordinate(s) or specific address of the excavation site may be done automatically by the GIS subsystem or determined by computer-assisted customer service representative. The excavation site can point to an area, box, or a polygon. For a spatial rectangle (maximum/minimum latitude/longitude), the excavation site may be wholly within the included area;

9. Highway mile markers;
10. Railroad mileposts;
11. General directions/instructions;
12. Map grids;
13. Distance to nearest cross street; and any other pertinent reference to help establish the location of the dig site;
14. The intended start date and time of the excavation (i.e., the date excavation is actually expected to begin, which may be later than when excavation can legally begin based on the ticket date);
15. Identify who the excavation work is being done for;
16. The purpose of the work (i.e., what is to be installed or built); and
17. Additional remarks.

The Successful Offeror shall install and maintain, at its expense, a call management system capable of making the measurements needed for generating all required reports.

The Provider shall make available to excavators a means of direct, electronic entry of locate requests, and:

1. Maintain comparable ticket quality to that of an operator-assisted entry.
2. Enable excavators to completely fill out a form (ticket), with all the required, mandatory data, using a computer.
3. Provide excavators a ticket number after they engage the 'send' or 'submit button'.
4. Make available to excavators the option of receiving ticket information on-line as an e-mail or as an e-mail attachment.

Outbound Provider Notification Transmissions shall be completed within the following time periods:

1. Using Electronic media
 - a. Emergency – queued for immediate transmission, but not more than 15 minutes.
 - b. Regular/Routine and Short-Notice – within 30 minutes on Working days, or next business day in case of non-Working day, or after-hours receipt.
2. Using Manual (direct phone-ups and manual facsimile)
 - a. Emergency – within 15 minutes.

- b. Regular/Routine and Short-Notice – within 30 minutes on Working days during business hours, or next business day in case of non-Working day, or after-hours receipt.

Provider agrees to use a standardized computer readable ticket format and shall identify the Center on each outgoing ticket and end-of-day reports.

Mapping System

The Offeror shall clearly and accurately describe the mapping system proposed, including, but not limited to, information as to:

1. How the area of excavation and the area of notification will be defined, such as whether irregular shapes, polygon, rectangle or circle areas will/can be used;
2. The minimum size of excavation site and minimum size of notification area that can be used;
3. Procedures facility operators are to use to update maps of their facilities;
4. How and when updates of new features (streets, etc.) will be incorporated into the Center database, and how often facility operators having facilities in that area will provide updates;
5. How variations in accuracy between facility operators' data and the Center database will be reconciled and accounted for;
6. In the instance of receiving a RFM via telephone, if all mapping is done while the caller (excavator) is on the line, or whether some, or all, of the mapping is done after the call terminates;
7. Under what conditions, and to what extent, the Center will be able to import/export electronic map data to/from operators; and
8. How soon requests by the facility operators for updates of operator facility maps will be included in the Center's mapping system. Federal and State laws, Commission policy and administrative rules will dictate the level of unreasonable facility operator requests for updates.
9. At least annually request that all operators provide updated information to the Center on their current underground facilities. After any update, the Provider shall send the respective facility operator the updated changes so that the operator can verify the accuracy of the update.

The mapping system shall also:

1. Have a maximum grid size of 1/4 square mile, or utilize any other system that isolates operators needing to be notified.
2. Have the ability to automatically determine if a proposed excavation will be within the 1/4 square mile grid or other notification area used. The mapping system shall also be capable of determining whether facilities are located either exclusively on, or exclusively off, the premises of certain designated large operators, such that said excavation will definitely affect only the underground facilities on those premises, or in the alternative, only the underground facilities that are entirely off those premises. The system must be able to "filter" excavations meeting either of these criteria.
3. When a proposed excavation site has been identified with a specific street address or Tax Map Key ("TMK"), the mapping system shall have the ability to match that location to any corresponding street address provided by underground facility operators for each underground facility. If the street address or TMK of a proposed excavation site does not match an address provided by an operator, the mapping system shall remove that operator from the list of facility operators to be notified, regardless of whether the facility falls within the 1/4 square mile grid or within whatever other notification system is being utilized. The mapping system shall also have the ability, when a site is identified by the excavator as being located exclusively within the roadway, inside the curb-to-curb area, to remove any operator from the list of "facility operators to be notified" who has identified its underground facilities by a specific street address or TMK and whose underground facilities do not extend beyond the boundaries of that address. The mapping system shall remove such facility operators regardless of whether the facilities in question fall within the 1/4 square mile grid or within whatever other notification system is being utilized. In the event that some of the operator's facilities within the notification area are identified by a specific street address or TMK and some are not, the facility operator shall receive a Request for Markout.

EXAMPLE 1:

An operator has registered with the Center an underground facility that is located entirely within the roadway, such as Main Street, inside the curb-to-curb area. If an excavator called for a markout for a specific address or TMK, such as 5 Main Street, with a dig site of the 'entire property,' or any portion of the entire property marked in white paint, that utility would not receive a Request for Markout message. If there is any variation from the above, such as a Request for Markout for "entire property and ten feet into the street," the operator will receive an RFM.

EXAMPLE 2:

An operator has registered with the Center for a specific address, such as 5 Main Street. If an excavator calls for a markout for a different address, such as 4 Main Street, or for a markout exclusively within the roadway, in the curb-to-curb area, the operator would not receive an RFM.

EXAMPLE 3:

An operator has registered with the Center for a specific street address, such as 5 Main Street. If an excavator calls for a markout exclusively within the roadway, in the curb-to-curb area, the operator would not receive an RFM.

Computer System

The Provider's computer system to be used by the Center's Customer Service Representatives ("CSR") shall at a minimum:

1. Provide the CSR the capability to retain the excavator information from one RFM or ERM screen to the next screen;
2. Give the CSR the capability of retrieving any notice previously entered into the system in the past thirty (30) days; and
3. Alert the CSR as to which RFMs or ERMs need to be called to the facility operators. The Center shall keep a log of those notices awaiting voice notification.

The computer system shall have the capability of sending or electronically transmitting a copy of the approved message (including the ticket number) to excavators by utilizing the facsimile number or e-mail in the database. A copy of the approved message shall be forwarded by the U.S. mail to those excavators who do not have facsimile numbers.

The Successful Offeror shall assure that hardware and software necessary to provide the Commission with real-time, read-only database query capabilities and local printing capability are made available to the Commission. The query capabilities will include, but not be limited to a twelve (12) month search by:

1. Ticket type (Routine, Short-notice, or Emergency);
2. Confirmation number;
3. Excavator;
4. County;
5. Street name;
6. TMK; and

7. Facility operator.

Processing Calls from Excavators

All telephone calls from excavators shall be processed by the Center as follows:

1. The Provider shall secure from the excavator the information required in the MRF and such other information as the Commission may reasonably require. If the excavator calls the Center during non-working hours and fails to provide all the mandated information necessary to generate a complete ticket, the Center will, on the following Working day, call the excavator and note that the ticket will not be further processed until the deficient information is supplied.
2. The Provider shall accurately establish the location of the proposed excavation in the mapping system and then verify that location with the excavator.
3. The Provider shall determine from the mapping and facility operator database which operators have underground facilities in the excavation area based on the information furnished to the Center by the excavator.
4. The Provider shall notify the excavator of the names of all facility operators who have notified the Center that they have underground facilities located within the excavation area.
5. The Center shall then send a locate request message electronically, by facsimile, or by telephone call to each facility operator who has notified the Center that it has underground facilities located within the proposed excavation or demolition area. The Provider shall be required to verify facility operator's receipt of locate request by including daily reference log of calls received and messages transmitted.
6. In addition to the electronic notice sent for emergency notifications, the appropriate facility operators shall be immediately telephoned by the Center. This telephone call shall be designated as a confirmation of the previous notification, and shall be logged by the Center.
7. If the Provider receives a short-notice, non-emergency call or electronic notice of a proposed excavation which does not provide at least five (5) business day's notice to facility operators:
 - a. Center shall advise the excavator that the notice does not comply with state law and that they may be subject to penalties; and
 - b. Center shall advise the excavator that the notice will be transmitted to applicable facility operators, but that Provider cannot commit to

the excavator that such facility operators will be able to respond any sooner than the legally required five (5) business days notice.

8. If the Center receives a call for proposed excavation that does not contain the information required by State law or HAR, Provider shall notify the excavator that the notice cannot be processed further until the excavator supplies the needed information.
9. "Design locate" is a request by a design professional to the Center for a list of facility operators with their contact information that have facilities in the area where the design professional is developing plans for a future project. The Center in processing a design locate request will **not** issue a ticket to operators but will provide the design locate requestor a list of operators with their contact information that may be impacted by the project that is being designed. The Center may charge for design locates requests if approved by the Commission.

Training Program

The Provider shall institute a training program for CSRs, management and staff, including written procedure manuals, that meet or exceed the requirements of HRS Chapter 269E and the applicable rules of the Commission. The Provider shall provide documentation that each employee has successfully completed the training course prior to starting work for the Center. The Provider shall also provide a methodology for periodically retraining experienced CSRs. The training shall include a component on recognizing and appropriately responding to possible security threats.

After Hours/Back-up Site Requests

The Provider shall maintain as part of its facility operator database, the time periods in which, and the contact points to which, the facility operator wants after hours Emergency notification requests to be sent. The operators shall supply the Center with regular and back-up telephone numbers for each contact location and the name and telephone numbers of a primary and secondary liaison representative.

The Offeror will supply an alternate center to which notifications can be sent in case the primary Center site is out of service or to handle overflow notification request call volume.

The alternate call center site operation will function identically to the primary Center site. The alternate call center site shall have complete electronic access to the primary Center's mapping system, facility operator, and excavator databases, or have duplicate, redundant back-up mapping system and databases.

Reports

The Provider shall provide required quarterly reports and annual trend & comparison summaries for the past two (2) years along with its monthly billing statements, enabling the Commission to monitor whether the Center is meeting each of the Center's performance standards.

1. The following reports are required to be produced and submitted to the Commission on a quarterly basis no more than thirty (30) days after the close of each quarter. If there has been a failure on the part of the Center to meet performance standards, the required report must include a narrative explanation of the failure and a proposed action plan to correct the performance problem. The reports shall be available in electronic (e.g., spreadsheet or database file) and hardcopy written form:
 - a. "Call Volume Overview," a one-page executive summary by Month, and Year to Date, of:
 - Incoming ticket requests;
 - Outgoing tickets transmitted;
 - Out/In ticket ratio;
 - Corrections to tickets and retransmissions; and
 - Total number of facility operator members.
 - b. "Daily Averages Statistical Report," a summary by Month of:
 - Calls received;
 - Average Speed to Answer (seconds);
 - Calls abandoned;
 - Average abandoned time (seconds); Optional in addition; Calls abandoned in <5 seconds;
 - New tickets issued;
 - Transmissions to operators by station terminal code;
 - Out/In ticket ratio;
 - Average "talk" time (minutes); and
 - A list of each 30-minute period in which 100% of incoming lines were in use.
2. The following reports must be made available by the Provider when requested by the Commission:
 - a. "Daily Activity Report," a summary by hour of:
 - Calls received;
 - Average Speed to Answer;

- Number of calls abandoned;
 - Average abandoned time;
 - Average talk time;
 - Percent of calls answered in time intervals such as: <30, 60, 90 seconds, and 2, 4, and 10 minutes; and
 - Number of calls forwarded to other call centers (overflow).
- b. "Lines in Use Report," a summary showing the number of lines that are in use by day and hour of day and the total number available for the time period.
- c. "Monthly Activity Report," a summary by day of:
- Hour of day; and
 - Total calls.
- d. "Excavators by Classification," by:
- Number/percent Operators;
 - Number/percent Subcontractor of Operator;
 - Number/percent Contractor;
 - Number/percent Other;
 - Number/percent Routine;
 - Number/percent Emergencies/Short Notice;
 - Number/percent Appointments; and
 - Number/percent Non-excavation/Design Locate Requests.
- e. "Monthly Operator Information," by month of:
- New Operators;
 - Total Operators; and
 - Operator Receiving Station Type (PC/Printer/Fax/Voice).
- f. "Monthly report of all administrative expenses related to the operation of the Center."
- g. "Monthly Messages to Operators," a summary of messages transmitted by day (and hour of the day) and total messages from the Center to:
- Each operator; and
 - All operators.

- h. "Short Notice Report," a summary of excavators who fail to provide at least five days notice for non-emergency excavations by:
 - Excavator name;
 - Excavator I.D. Number; and
 - Amount of time between Notice and start of excavation (Immediate, <4 hours, 24 hours, etc.).
 - i. "Daily list of unacknowledged messages" transmitted to each operator, if it has an automated terminal.
 - j. List of excavators who engage in excavation activities in the area in which the operator's facilities are located" for pipeline operators subject to requirements of 49 Code of Federal Regulations, Parts 192 and 195, to assist them with meeting their required excavator education programs.
 - k. "Excavator I.D. Profile Report" which should be able to give a list of all tickets called in by an excavator in a given time period. This report could be a Read Only access for enforcement agencies.
 - l. "Duplicate Locates Report," a summary of excavators who ask for relocation markings for areas that were previously located by:
 - Excavator name; and
 - Excavator I.D. Number.
3. Special reports requested by facility operators, or others, which require significant time or other cost to prepare and generate, may be done at a price negotiated by the Provider and the requesting party.

After receiving authorization from the Commission, the Provider may request designation of certain written reports as confidential and proprietary, subject to protective order and consistent with HAR § 6-61-50.

Education and Public Relations Programs

Provider shall design and conduct Education and Public Relations Programs at least twice a year in each county of the State, subject to the advice of the advisory committee and approval of the Commission. Topics covered shall include, but are not limited to:

- 1. Educating excavators about the Center so that they are aware of the Center and will comply with and effectively participate in the System;
- 2. Training of excavators in proper, thorough ticket preparation;

3. Training of facility operators in proper specification of the areas for which the facility operator wishes to be notified of planned excavations;
4. Training of facility operators in proper handling and screening of tickets;
5. Training of independent underground facility locators operating in the jurisdiction of the Center of the Center's operations and procedures;
6. Designing and completing a quarterly mailing on the Center to all excavators in the System's database, licensed excavation contractors in the State of Hawaii, and all businesses that have excavation related advertising in Hawaii phone books. This list shall be updated at least annually;
7. Developing a mandatory education program for violators of HRS Chapter 269E and Commission rules;
8. Developing a list of all facility operators for reference by excavators; and
9. The most recent version of the Common Ground Alliance Best Practices will be used in evaluating Education and Public Relations proposals.

Additional Provider Responsibilities

The Provider shall also:

1. Identify excavators working within Hawaii and maintain and continually update the excavator information in the Center's database. The Provider shall obtain as much information as is available regarding the pager, cell-phone, facsimile number, e-mail address, and other numbers for primary contacts in the excavator database. Information in this portion of the database shall also be in a standard import/export electronic format and shall remain the property of the Commission.
2. Provide excavator and operator search capabilities for data such as monthly calls, year-to-date calls and excavation by county or sector.
3. Generate and process necessary correspondence relative to the operation of the System.
4. Execute billing agreements with operators as approved by the Commission. The Provider shall conduct all invoicing of the facility operators.

5. Voice record all calls and keep an index and copies of all electronic communications for a period of three (3) years from the date of the notice of intent to excavate.
6. Provide communications services from common carriers including nationwide access to the 811 abbreviated dialing one call number pursuant to Federal Communications Commission Order No. 05-59 adopted March 10, 2005. The communications equipment shall have provisions for receipt of calls from the disabled. All communications methods for the receipt of RFMs and ERMs shall be through the nationwide 811 abbreviated dialing number in accordance with Federal Communications Commission mandates.
7. Retain and index all records and voice recordings at the System consistent with the retention period set forth in HRS Chapter 94 and the Department of Accounting and General Services' applicable rules, procedures and policies. All Hawaii-related records and voice recordings will be Commission property and must be accessible to the Commission at its request. At the expiration or cancellation of the contract, all records and voice recordings must be released to the Commission, upon request.
8. Obtain from all operators their normal business hours of operation. In addition, the Provider shall obtain from each operator the method the Center shall use to deliver after hours emergency notifications, if different from the method used during normal hours of operation. For example, a small facility operator may want a page sent to an on-call employee after normal business hours.

Location, Equipment, and Capabilities of the Center

The Offeror must demonstrate its ability to put into place a fully functioning Center meeting the operational, technical, and functional standards described in this RFP. If the Offeror proposes building a new Center, or expanding the capability of an existing Center, in or out of state, it must provide documentation demonstrating that it will be able to secure the needed building space, communications and other necessary equipment and trained personnel to operate the Center.

The Offeror shall document its ability to provide building space for a Center to handle the State's volume of calls, perform all necessary site preparation work, provide all office furniture and office supplies and furnish all recurring and non-recurring physical plant needs. Building and office space shall demonstrate expansion capability to handle any increased call volume as it may arise. An Offeror already operating one or more Centers should provide details of its existing facilities and document how it would accomplish necessary or needed building expansion to handle the State's calls and its ability to further expand in

response to increased call volumes system-wide. The Offeror shall furnish all necessary communications equipment and provide and arrange for all communications service into and out of the Center.

Disaster and Contingency Plans

The Offeror shall demonstrate an adequate back-up system, which may include timely rerouting the Center calls to another one call center with sufficient capacity to handle the additional load in the event of a power outage, fire, cut trunk line or other disaster making the primary Hawaii Center inoperable for any period of time. The disaster plan shall include, at minimum, emergency contact phone numbers, alternate site start-up instructions, and alternate employee assignments. The disaster plan shall also address and identify any contingent actions that may need to be taken at any time during the day or night that the primary Center is inoperable in order for the System to continue operations. This disaster plan should provide for complete, uninterrupted continuity of all business functions.

If the Offeror has experienced a Center going off-line in the past, the Offeror should furnish in its response to this RFP information on how that contingency was handled, and the extent of the disruption in service that was experienced by excavators attempting to contact the off-line Center. If the Offeror does not own or operate a backup Center, then proof of a contractual agreement with a proposed back-up Center should be provided. The Offeror shall also demonstrate how it will maintain an auxiliary source of power which is functionally equivalent to normal control office auxiliary sources of power, so that the Center will continue to function effectively during power outages.

Account Representative

The Successful Offeror shall assign an account representative for the Center with good communication skills, who may also be the representative from other states served by the Offeror. The Offeror shall describe the full duties and qualifications of the account representative, including a job description, what other states besides Hawaii will be assigned to the representative, where the individual will maintain his primary office, what portion of the time the account representative will actually be in Hawaii, the community and business group meetings that will be attended by that individual, and the respective roles of the account representative and others who will be handling excavator and operator comments, concerns and ideas. Duties should include: liaison to Commission, operators, and excavators; oversee the update of new streets; education/outreach; advertising; training; monitoring the CSR; billing (invoicing) and any other functions as needed. The Provider should fund all activities for the account representative from their primary source of income from the State reimbursements based on their price for the Center.

Advertising and Community Outreach

Offerors should generally describe in the RFP proposal the advertising and additional community outreach program to be implemented as Provider of the Center.

The Provider shall provide advertising for the Center, including informational brochures and promotional items, production and airing of Public Service Announcements and other effective methods of making citizens throughout the State of Hawaii familiar with the Center. The Offeror shall include examples of advertising materials and programs that have proven effective in other states and which could be modified for use in Hawaii.

Authorizations

Unless otherwise provided in this RFP, the Provider 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.

2.3.2 PUC Management

Administration

The Contract Administrator will serve as the PUC's primary liaison with the Provider during the term of the agreement. The Contract Administrator, or designee, will provide overall direction during the agreement term and monitor and assess the Provider's performance. The Contract Administrator will monitor the status of the Provider's work through review of reports to be submitted by the Provider.

Authorization to Proceed

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

2.4 PROGRAM TRANSITION RESPONSIBILITIES

2.4.1 Transition from Current Contractor to Successful Offeror

The Commission expects the Successful Offeror to work with the current contractor, as applicable, to accomplish as smooth a transition as possible and to be fully operational on July 1, 2016. During the transition period, the current contractor shall operate the Center until June 30, 2016. It is critical that the Offeror provide a detailed plan to manage the transition of the Center from the

current contractor that will minimize confusion among the excavators and facility operators.

If an Offeror proposes significant changes from the Center's current operations, the proposal must contain a general description of how it intends to transition from the current operations to the proposed operations.

2.4.2 Contractor Termination Transition

If the Successful Offeror's contract is terminated or transferred to another entity on any future date, the Successful Offeror shall cooperate with and assist any such transition process, with minimum disruption to the Center, so as best to effectuate the purpose of HRS Chapter 269-E.

This obligation shall include without limitation, the sharing and transfer of data and management information systems. The Successful Offeror shall be allowed to recover reasonable costs incurred to date, if terminated for convenience.

2.5 PROVIDER'S USE OF SUBCONTRACTORS

Provider may support the requirements of this RFP, including but not limited to the operations the Center, directly or through subcontractors. Given the Provider will not be a State entity or agency, Offerors should be aware that the Provider will not be required to adhere to State procurement procedures when engaging subcontractors. Nevertheless, contract agreements with subcontractors must be consistent with prudent business practices, employ fair employment practices, and include adequate insurance coverage for all subcontractors, and shall comply with any and all applicable laws, rules, and ordinances.

2.6 GENERAL RESPONSIBILITY TO COMPLY 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.

2.7 LEGISLATIVE AND REGULATORY CHANGES

The Commission reserves the right to amend the requirements of the HOCC Contractor in response to legislative changes and regulatory changes imposed by the Commission that affect this RFP.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.1 INTRODUCTION

Offerors are required to present their proposals in accordance with 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.

It is important that proposals be complete. 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 its reason for the omission of a response. In addition, Offerors should address any and all anticipated difficulties and problem areas along with potential approaches to their resolution.

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

Offerors should provide one (1) original and six (6) copies of their proposals, and two (2) compact discs or digital video discs, in a format that conforms to the following outline:

The following sections are also incorporated in the evaluation criteria set out in **SECTION FOUR**. Please refer to that section for further guidance in developing a proposal.

If any additional information is required by the State regarding any aspect of the Offeror's proposal, it shall be provided within two (2) business days of notice.

The proposal 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 specified and pages must be numbered.

- Transmittal Letter
- Table of Contents
- Executive Summary
- Offeror Background, Organization and Staff Experience
- Technical Response
- Management and Control
- Budget and Fees
- Assumptions and Expectations

The proposal submission shall comply with **SECTION ONE** above.

3.2 TRANSMITTAL LETTER

The transmittal letter must be included as part of the Offeror's technical proposal. 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.

The transmittal letter must be **counter-signed by all subcontractors** that the Offeror proposes to use for the Center's operations.

The Transmittal Letter shall include the following:

3.2.1 Terms and Conditions

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

3.2.2 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.

3.2.3 Federal Tax ID No.

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

3.2.4 Provider

A statement that the Offeror maintains an active and current certificate of registration as required by HRS § 103D-310. A true and certified copy of its certificate of registration must be provided and a State GET I.D. must also be provided. See **Section 5.12.4** for additional information and instructions.

The Successful Offeror will be required to 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.

Further, the Successful Offeror will be considered to be the sole point of contact with regard to contractual matters. If it is known that a part of the work is to be subcontracted or provided by a third party, the Successful Offeror's proposal shall include, at a minimum, the following information:

1. List of all known subcontractors, manufacturers, and other providers of products or services;
2. Names and addresses of all subcontractors, manufacturers, and other providers of products or services;
3. Description of work to be subcontracted and products to be provided by third parties;
4. Descriptive information concerning the organization of all subcontractors and third parties as well as resumes, including two (2) professional references, of subcontractor staff;
5. Descriptive information about the previous relevant experience of all subcontractors and third parties and their proposed staffs;
6. Descriptive information relating to the nature and duration of the previous relationship of all subcontractors and third parties with the Offeror; and
7. Explanation of any existing contractual relationships between the Offeror and subcontractors, or among subcontractors.

3.2.5 Subcontractor

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

1. The general scope of work to be performed by the subcontractor; and
2. The subcontractor's willingness to perform the work indicated.

In addition, each subcontractor shall submit to the PUC, a tax clearance certificate 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, against the subcontractor have been paid.

If the Offeror chooses to subcontract any work required by this RFP within its proposal, the Offeror is responsible for including appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Offeror 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 Offeror. The Offeror 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 Offeror 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 Successful Offeror, such that the PUC perceives a single service entity.

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

3.2.6 Non-discrimination

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.

3.2.7 Approval of Offeror's Recommendations

A statement that the Offeror agrees that the PUC reserves the right to disapprove Offeror recommendations without penalty, when they conflict with the policy or fiscal interests of the PUC, as determined by the PUC.

3.2.8 Contact Person

Include the name and telephone number of a person who may be contacted during the evaluation process to discuss the Offeror's proposal.

3.2.9 Availability

This section shall describe the Offeror's availability in order to provide the services described in this RFP.

3.3 TABLE OF CONTENTS

Include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections listed in **Section 3.1**.

3.4 EXECUTIVE SUMMARY

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal to provide the PUC with a clear and broad

understanding of the entire proposal. The executive summary shall include all of the items below:

3.4.1 Benefits to the State

A brief synopsis of the overall benefits of the proposal to the State. This synopsis should not exceed three (3) pages in length and should be easily understandable.

3.4.2 Offer Form - OF-1

Refer to **SECTION SIX** of this RFP for the Offer form.

3.4.3 Wage Certificate

Offeror shall complete and submit the attached Wage Certificate by which the Offeror certifies that the services required will be performed pursuant to HRS § 103-55. Refer to **SECTION SIX** of this RFP for the Wage Certificate form.

3.4.4 Evidence of Insurance

Certificate of insurance evidencing Commercial General Liability Insurance (occurrence form) and Professional Liability. Refer to **SECTION FIVE** of this RFP for information on Insurance Requirements.

3.5 OFFEROR BACKGROUND, ORGANIZATION AND STAFFING

3.5.1 The Offeror Background and Staff Experience subsection shall address each item as follows:

3.5.1.1 Offeror Background

A separate section must be completed in the proposal for the Offeror. Background information on the Offeror and its size and resources shall cover the following:

1. Legal name of Offeror;
2. Physical address of principal place of business and all other offices including the location of the office which will perform work on behalf of the Commission;
3. Mailing address (if 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; and
10. Location where incorporated or otherwise legally established.

3.5.1.2 Financial Stability and Financial Commitment

The Offeror 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 that the financial information provided be kept confidential. If requested, the Offeror must include a written statement requesting that portions of the unpriced proposal contain trade secrets or other proprietary data are to remain confidential, pursuant to HAR § 3-133-46. Otherwise contents of all proposals shall be made public as provided in HAR § 3-122-58, upon posting of award.

3.5.1.3 Offeror Performance

The Offeror shall provide information that will demonstrate the following:

1. Responsiveness to previous clients.
2. Timeliness of meeting schedules.
3. Adherence to contract requirements of previous clients.
4. Availability and accessibility to previous clients.

The Offeror 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 evaluation 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.

3.5.1.4 Offeror Experience

The Offeror shall provide details of Offeror's, and each subcontractor's, relevant experience working with other Centers or businesses that provide similar services as listed in this RFP. The proposal shall include a listing of the Offeror's experience working with State regulatory commissions or government entities in areas relative to the required work described in this RFP. Include a listing of experience obtained by senior management employees or officers, who will be primarily assigned to perform or oversee the work described in the Offeror's proposal.

The Offeror must also include references for which the Offeror and each subcontractor has successfully provided services on projects that were similar in their nature, size, and scope of work. Offerors, at minimum, must include a brief analysis of the degree of similarity in the nature, size, and scope of the services provided.

Refer to **SECTION SIX** 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.

3.5.2 Organization and Staffing

The organization and staffing subsection shall include organizational charts of proposed personnel and their job titles and responsibilities. The chart must describe the management approach and a detailed narrative describing who the key personnel are and how the key personnel's experience and educational background will enable them to successfully complete their assigned tasks. The Commission reserves the right to disqualify any potential Provider that changes key personnel assigned to the center, prior to the execution of the contract.

Resumes of all key personnel assigned to the Center must be included and should include information relating to each person's experience, education, and skills (including, but not limited to, specific degrees, dates, names of employers, and educational institutions). Each resume shall be no more than three (3) pages in length. The Offeror should also indicate whether any or all of the key personnel have worked together on one call centers in the past.

The Offeror must also include references for which the Offeror's proposed key personnel has successfully provided management services on projects that were similar in their nature, size and scope of work.

Refer to **SECTION SIX** 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, Offeror's proposed key personnel grant the State authorization to contact these client references to assess the Offeror's proposed project manager(s) and key personnel(s) quality of work performed.

3.6 TECHNICAL RESPONSE

The technical response section shall include a detailed discussion of the Offeror's approach to accomplishing the required work described in this RFP, including a work schedule for the transition from the current administrator of the Center by July 1, 2016. It shall also describe the processes and procedures that the Offeror's proposed organization will follow to carry out the required work.

The Offeror must provide a detailed work schedule for all Center milestones and deliverables. The work schedule should be delivered in a chart format, preferably in a format similar to a Gantt chart, showing all major tasks and events, estimated hours required to perform the tasks and events, and personnel proposed to perform each task and event on a weekly schedule to serve as the basis for managing the transition of the Center's operations and the system of

operation. The schedule should clearly demonstrate how the Center will become fully operational by the transition date, July 1, 2016. The Offeror must give dates for when the deliverables and milestones toward transition of the Center will be completed. The Offeror will also identify and describe all risk factors associated with the forecasted milestone schedule. The project work schedule is crucial to allow the PUC to gauge the Offeror's relative understanding of the tasks at hand.

3.7 MANAGEMENT AND CONTROL

The management and control section shall include details of the method to be used in managing the establishment and operations of the Center and controlling Center activities, including details about the Offeror's approach to interface with the Commission, excavators and operators, and the Offeror's approach to ensuring quality, timeliness of activities and completion of tasks, and fulfillment of responsibilities, while ensuring security and documentation to fulfill requirements of the Commission.

This section shall also include a discussion of any conflict of interest the Offeror may have in providing the services described in its proposal and any problems or concerns that the Offeror wishes to bring to the PUC's attention. OFFERORS SHOULD NOTE THAT CONFLICTS OF INTEREST MAY BE GROUNDS FOR DISQUALIFICATION FROM CONSIDERATION.

3.8 BUDGET AND FEES

This section of the proposal must contain the Offeror's **Firm, Fixed Total Price** required to transition and operate the Center for the duration of the services specified in this RFP. Estimated proposal prices are not acceptable. Payments will be based on contracted services actually performed and deemed acceptable by the Commission in accordance with the fixed price determined through this RFP. The State will reimburse the Provider in equal monthly payments based on the fixed price for the total effort to implement and operate the proposed services. Total reimbursement shall not exceed the total fixed contract price. It is anticipated that each Offeror will carefully evaluate numerous factors in arriving at its proposed price. Effectiveness of outreach efforts and increased advertising will have a direct bearing on future call volumes. An Offeror's response to this RFP should take into consideration the anticipated continued increases in call volumes and resulting economies of scale. Offerors must submit a firm price quotation. In order to help Offerors project the fixed price for the contract, historical data is provided in Appendix 3.

Estimated prices or incomplete prices may be used as a basis for rejection of a proposal. The price contained in the Successful Offeror's proposal shall be binding for the initial contract period (July 1, 2016, through June 30, 2019). If necessary, the contract period may be extended for an additional two (2) years as set forth in section 5.2 below, provided that the price cannot be increased by

more than five percent (5%) each year, unless the State determines that a five percent (5%) cap is unrealistic or unfair. No deviations, qualifications or counter offers will be accepted. The State reserves the right to reject all proposals. The prices shall be inclusive of all federal, state and local taxes. Proposals that request compensation on the basis of cost-plus or open-ended rate schedules shall not be considered.

The Offeror's proposal shall include a certification that:

- The prices and cost data were arrived at independently, without consultation, communication, or agreement with any other Offeror or competitor;
- Unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the offeror, directly or indirectly, to any other Offeror or competitor prior to the award of the contract;
- No attempt was made or shall be made by the Offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition; and
- The price shall remain in effect for ninety (90) days following the date that proposals are due.

Offerors are cautioned that, should their proposal be selected and the proposal cost fails to account for all specified in this RFP, Offerors will be required to provide them at no additional cost to the PUC. In other words, **it is the Offeror's responsibility** to ascertain that the cost information presented is accurate, complete and all-inclusive.

3.9 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 RFP section where assumption(s) is made or exception(s) is 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.**

SECTION FOUR **PROPOSAL EVALUATION**

4.1 INTRODUCTION

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.

4.2 EVALUATION ORGANIZATION

A committee selected by the PUC will review and evaluate all proposals submitted by the deadline specified in the RFP. The evaluation committee will include individuals with experience in and knowledge of the PUC's duties, powers, objectives and requirements and the specific requirements set forth under HRS Chapter 269E.

The evaluation committee may have the proposals or portions of them reviewed and evaluated by other State personnel, independent third parties or Commission consultants with technical or professional experience that relates to the Program or to a criterion in the evaluation process.

All proposals will be initially reviewed for timeliness of submission, format, and completeness. The proposals that meet the initial requirements of the RFP shall then be fully evaluated according to the criteria listed below. Proposals that only meet a portion or none of the initial requirements shall be rejected and 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 to not 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 work plan, and must illustrate an aggressive, competitive approach to maximizing the State's limited resources. The evaluation will be conducted in six (6) phases:

- 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 PUC)
- Phase 6 – Recommendation for Award

4.2.1 Evaluation Categories and Thresholds – (Total Points – 100)

<u>EVALUATION CATEGORIES</u>	<u>POSSIBLE POINTS</u>
General Requirements	Pass/No Pass
Proposal	
Understanding of the Center's Role and the State's Needs	10 points
Offeror Background, Organization and Staff Experience	35 points
Technical Response	20 points
Management and Control	20 points
Budget and Fees	15 points
TOTAL POSSIBLE POINTS	100 POINTS

4.3 PHASE 1 – EVALUATION OF GENERAL REQUIREMENTS – (Pass/No Pass)

The evaluation of the 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 proposal 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. Offeror shall include, without limitation, all of the information requested in this RFP in the order specified and pages must be numbered:

GENERAL REQUIREMENTS FOR THE PROPOSAL

- Transmittal Letter
- Table of Contents
- Executive Summary
- Offeror Background, Organization and Staff Experience
- Technical Response
- Management and Control
- Budget and Fees

4.4 PHASE 2 – EVALUATION OF PROPOSALS – (100 TOTAL POSSIBLE POINTS)

During this phase, the evaluation committee shall conduct evaluations on 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 award.**

4.4.1 Understanding of the Center's Role and the State's Needs – 10 Points

Proposals will be evaluated against the following criteria:

- Has the Offeror demonstrated a thorough understanding of the purpose and scope of the Center's responsibilities?
- How well has the Offeror identified pertinent issues and potential problems?
- Has the Offeror demonstrated that it understands the importance of timeliness and has the ability to meet the reporting deadlines to the Commission?

4.4.2 Offeror Background, Organization and Staff Experience – 35 Points

The evaluation committee 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.

4.4.2.1 Offeror Background

Background information provided about the Offeror and its size and resources will be evaluated by the evaluation committee, including whether or not the Offeror has provided sufficient general background information to make such an evaluation.

4.4.2.2 Financial Stability and Financial Commitment

The evaluation committee will evaluate the financial condition of the Offeror to determine whether, in its opinion, the Offeror has sufficient financial resources to meet all terms of the contract.

Specifically, the proposal will be evaluated against the following criteria:

1. Has the Offeror submitted financial statements that provide sufficient reliable information to determine the financial condition of the Offeror?
2. Does the Offeror possess sufficient resources to perform the agreement on the "reimbursement fee" arrangement?

4.4.2.3 Offeror Performance

As part of the evaluation of the Offeror's experience, the evaluation committee will evaluate relevant performance references to determine:

1. Has the Offeror been responsive to previous clients?
2. Has the Offeror been timely in meeting deliverables?
3. Does the Offeror adhere to contract requirements of previous clients?
4. Availability and accessibility of resources to previous clients.

4.4.2.4 Offeror's Experience

The evaluation committee will evaluate the Offeror's experience in acting as an operator of the one call centers in other jurisdictions.

4.4.2.5 Organization and Staffing

The evaluation of organization and staffing will involve detailed criteria to evaluate the Offeror's overall staffing for the Center, qualifications of key personnel, and the past performance of the organization and the individuals. 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 Center's management and operations.

The evaluation committee will evaluate the key management personnel and other key personnel proposed for the Center, based on experiences listed under the individual resumes.

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

4.4.3 Technical Response – 20 Points

Evaluation criteria for this section will assess the Offeror's approach to the Center's responsibilities. Specifically, proposals will be evaluated against the following criteria:

- Understanding of State and federal laws, regulations, policies and procedures; and
- Adequacy of approach to meeting the requirements specified in scope of work.

4.4.3.1 Understanding of State and Federal Laws, Regulations, Policies and Procedures.

Proposals will be evaluated for the adequacy of the Offeror's understanding of State and federal laws, regulations, policies and procedures relating to the Center's responsibilities. Such requirement may affect the ability of the timeliness of the tasks of the contract. The evaluation committee must be assured that the Offeror is capable of dealing with the requirements of State and federal laws.

4.4.3.2 Adequacy of Approach to Meeting the Requirements Specified in Scope of Work.

The evaluation committee will evaluate the adequacy of the approach proposed to satisfy the requirements specified in the scope of work.

This area of evaluation includes an assessment of the detailed work plan, including the logic of the work plan, the interfacing with the Commission, the One Call Center Advisory Committee, excavators and operators and the realism of the tasks and schedules.

4.4.4 Management and Control – 20 Points

This part of the evaluation assesses the Offeror's approach to management and control methods and tools to successfully transition, as applicable, and operate the Center as described in its proposal.

The Offeror shall address, and proposals will be evaluated against, the following criteria:

- Management approach;
- Authority of the manager (if any);
- Project control approach (including demonstrated previous use of control methods and tools to successfully provide service);
- Approach to interfaces with the Commission the One Call Center Advisory Committee, excavators and operators;
- Approach to ensuring completion of tasks and fulfillment of responsibilities;
- Ensuring security; and
- Clarity of work assignments and organizational roles, responsibilities, and authorities.
- Emergency procedures in the event of a natural disaster in the call center's area and emergency procedures in the event of a natural disaster in the State of Hawaii.

4.4.5 Budget and Fees – 15 Points

The evaluation committee will analyze the Offeror's proposed budget utilizing a numerical rating system. Of the qualifying proposals, the one with the lowest fixed price will be awarded the maximum possible points for this component. Other proposals will be awarded points for this component equal to the lowest proposed price multiplied by the maximum possible points for this component, divided by the higher proposed price.

In addition, the budget proposal must address any non-required scope of work, in which the Offeror chooses to provide within its proposal, as separate budget line items.

4.5 PHASE 3 – ESTABLISHMENT OF PRIORITY LIST OF 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. No more than three (3) acceptable or potentially acceptable proposals with the highest average ranking will be designated as the priority list of Offerors, as set forth under HAR § 3-122-53.

4.6 PHASE 4 – OPTIONAL DISCUSSIONS WITH PRIORITY-LISTED OFFERORS

During the course of this phase, the PUC 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 will 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, and questionable technical or management approaches. 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 correct proposal deficiencies.

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.

The evaluation committee may request other State personnel, independent third parties or Commission consultants, with technical or professional experience that relates to Center to participate in this process.

4.7 PHASE 5 – SUBMISSION OF BEST AND FINAL OFFERS (if deemed necessary by the Commission)

The priority-listed Offerors' best and final offers ("BAFO"), if required, must be postmarked no later than the date and time specified in the RFP Schedule. If a best and final offer is not submitted, the previous submittal will be construed as the best and final offer. Six (6) bound, indexed copies and one single-sided unbound, indexed original of the best and final offer must be submitted. In addition, two (2) copies on compact discs or digital video discs containing the best and final offer in electronic format must be submitted. After best and final offers are received, final evaluations will be conducted for an award.

4.8 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.

SECTION FIVE **SPECIAL PROVISIONS**

5.1 SCOPE

The Offeror's proposal shall be in accordance with the RFP in its entirety; including these Special Provisions and the General Conditions (Appendix 1) included by reference in **SECTION SEVEN** of this RFP.

5.2 TERM OF CONTRACT

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

The term of contract shall begin on the agreement start date specified in **Section 1.7**, and extend through June 30, 2019. The contract may be extended for up to two (2) additional twelve-month periods, if mutually agreed upon in writing prior to contract expiration. The PUC may terminate the extended contract period at any time, if it is in the best interest of the State.

5.3 OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS § 103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by addendum.
3. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

4. A committee of at least three (3) State employees selected by the PUC shall evaluate the proposals in accordance with the evaluation criteria in **SECTION FOUR**. The committee may have the proposals or portions of them reviewed and evaluated by independent third parties or other State personnel with technical or professional experience that relates to the Center or to a criterion in the evaluation process. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. This review will be a pass/no pass determination with no points assigned.

5. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list shall be limited to a maximum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
6. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
7. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or the evaluation committee reserves the right to have additional rounds of discussions with the priority-listed Offerors prior to the submission of the BAFO.
8. The date and time for Offerors to submit their BAFO, if any, is indicated in **Section 1.7, RFP SCHEDULE - SIGNIFICANT DATES**. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in **SECTION FOUR**, the evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in **SECTION FOUR**.
10. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the Commission agree are confidential and proprietary should be identified by the Offerors and shall be excluded from access.
11. The Procurement Officer or the evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer and the evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.

12. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State.

5.4 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of § 103D-310(c), HRS:

- Chapter 237, tax clearance;
- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and
- Chapter 103D-310(c), Certificate of Good Standing ("COGS") for entities doing business in the State.

Refer to **SECTION 5.12** for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

Although proof of compliance with these requirements is required prior to entering into a contract with the Commission, due to the compressed timeline of this RFP, it is highly recommended that Offerors furnish this proof of compliance with their proposal.

5.5 PROPOSAL PREPARATION

5.5.1 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 SIX** 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.

5.5.2 Offer Guaranty

An offer guaranty is NOT required for this RFP.

5.5.3 Tax Liability

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. If, however, an Offeror is a 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.

5.5.4 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 Attachment 2 of **SECTION SIX** of this RFP for the Wage Certificate form.

5.6 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 PUC by the due date specified in **Section 1.7**. 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.

5.7 CONFIDENTIAL INFORMATION

If a person 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 § 3-122-46(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).

5.8 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.

5.9 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:

- Proof of collusion among Offerors, in which case all proposals and Offerors involved in the collusive action will be rejected.
- The proposal demonstrates noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation.
- The delivery of the proposal after the deadline specified in the timetable.

- The Offerors being in arrears on existing contracts with the State or having defaulted on previous contracts.

5.10 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.

5.11 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.

5.12 AWARD OF CONTRACT

5.12.1 Method of Award

The award, if any, shall be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in this RFP.

5.12.2 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.

5.12.3 Timely Submission of all Certificates.

The required certificates should be applied for and submitted to the Commission as soon as possible. If a valid certificate is not submitted on a timely basis for an award of contract, an Offeror otherwise responsive and responsible may not receive the award.

5.12.4 Hawaii Compliance Express.

In lieu of requesting individual compliance documents, Offerors may expedite the process by utilizing the Hawaii Compliance Express ("HCE"), which can provide a "Certificate of Vendor Compliance" for your business entity. Businesses register online through a simple wizard interface at <http://vendors.ehawaii.gov>. 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 HRS § 103D-310(c) shall be accepted for both contracting purposes and final payment. Vendors that elect to use HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). HCE can be accessed online at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.

It is strongly recommended that vendors utilize HCE. Vendors choosing not to participate in the HCE program will be required to provide each of the paper certificates as instructed below.

5.12.5 HRS Chapter 237 Tax Clearance Requirement for Award.

Instructions are as follows:

Pursuant to HRS §103D-328, the Successful Offeror shall be required to submit an **original** tax clearance certificate issued by the Hawaii State Department of Taxation ("DOTAX") and the Internal Revenue Service ("IRS"). **Offerors are urged to submit a valid tax clearance certificate together with their proposals.** If this is not feasible, the certificate should be applied for at DOTAX or the IRS and submitted to the Commission as soon as possible. If a valid certificate is not submitted on a timely basis prior to award of the contract, an offer otherwise responsive and responsible may be rejected and not considered for award.

The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the Commission.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms): http://tax.hawaii.gov/forms/a1_1alphalist/

DOTAX Forms by Fax/Mail: (808) 587-7572
1-800-222-7572

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

DOTAX: (808) 587-1488
IRS: (808) 539-1573

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

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

Instructions are as follows:

Pursuant to HRS §103D-310(c), the Successful Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations ("DLIR"). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the Commission. A photocopy of the certificate is acceptable to the Commission.

The certificate of compliance shall be obtained on the State of Hawaii, *DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, Form LIR#27 which is available at <http://labor.hawaii.gov/ui/files/2012/12/LIR27.pdf>. The DLIR will return the form to the Offeror who in turn shall submit it to the Commission.

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

5.12.7 Compliance with HRS § 103D-310(c) for an Entity Doing Business in the State.

Pursuant to HAR § 3-122-112, the Offeror shall be required to submit a CERTIFICATE OF GOOD STANDING ("CoGS") issued by the BREG. The CoGS is valid for six (6) months from date of issue and must be valid on the date it is received by the PUC. A photocopy of the CoGS is acceptable to the PUC.

To obtain the CoGS, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the CoGS. On-line business registration and the CoGS are available at <http://cca.hawaii.gov/breg/online/>. To register or obtain the CoGS by phone, call (808) 586-2727 (M-F 7:45 a.m. to 4:30 p.m. HST). Offerors

are advised that there are costs associated with registering and obtaining the CoGS.

5.12.8 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.

5.13 NON-APPROPRIATION OF FUNDS

Execution of any agreement between the State and the Provider is contingent upon the availability of funds. Non-availability of funds shall cause any agreement to become void and unenforceable and no damages shall accrue to the State as a result.

5.14 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 PUC shall forward the Contract to the Successful Offeror for execution. The Contract shall be signed by the Successful Offeror and returned within ten (10) calendar days after receipt by the Successful Offeror, or within such further time as may be allowed by the Procurement Officer. If the Successful Offeror to whom a contract is awarded fails or neglects to enter into the Contract within ten (10) calendar days after issuance of the notice of award or within such further time as may be allowed by the PUC, 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 PUC.

No contract shall be considered binding upon the PUC until the contract has been fully and properly executed by all parties thereto. A performance bond in an amount not to exceed fifty (50) per cent of the amount of the contract price is required for this Contract pursuant to HAR § 3-122-224.

Any work undertaken or paid for by the Successful Offeror prior to the official contract commencement date specified on the Contract shall be the responsibility of the Successful Offeror.

5.15 PROPOSAL AS PART OF THE CONTRACT

All of this RFP and the successful proposal shall be incorporated into the Contract.

5.16 CONTRACT ADMINISTRATOR

For the purposes of the Contract, Gary M. Kobayashi, (808) 586-2104, is designated as the Contract Administrator.

5.17 INSURANCE REQUIREMENTS

Prior to awarding the contract, the State will require verification of the following insurance coverage:

- Worker's Compensation
- Temporary Disability
- Unemployment Insurance
- Prepaid Health Insurance

Upon the Successful Offeror's execution of the Contract or earlier, the Successful Offeror agrees to deposit, with the State, certificate(s) of insurance necessary to satisfy the State with assurances that the following insurance provisions of the Contract have been complied with and that such insurance will be kept in effect and the certificate(s) therefore on deposit with the State during the entire term of the Contract, including those of its subcontractor(s), where appropriate. Upon request by the State, the Successful Offeror shall be responsible for furnishing a copy of the policy or policies.

The Successful Offeror shall maintain in full force and effect, during the life of the Contract, liability and property damage insurance to protect the Successful Offeror and its subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under the Contract, whether such operations be by itself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Successful Offeror providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, the Successful Offeror may require subcontractor to provide its own insurance that meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Successful Offeror's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Successful Offeror, including its subcontractor(s) where appropriate:

Coverage	Limits
Commercial General Liability (CGL)	\$5,000,000 per occurrence \$2,000,000 aggregate
Installation Floater	Minimum cost of equipment(s) installed
Automobile Liability	\$1,000,000 combined single limit per occurrence for personal injury, bodily injury, and property damage

(If non-owned vehicles are used, the policy must provide evidence of coverage.)

Each insurance policy to be required by the Contract, including a subcontractor's policy, shall contain the following clauses:

- "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Commerce and Consumer Affairs, Public Utilities Commission, 465 S. King Street, Room 103, Honolulu, Hawaii 96813."
- "The State of Hawaii is added as an additional insured as respect to operations performed for the State of Hawaii."
- "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements.

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

The procuring of such required insurance shall not be construed to limit the Successful Offeror's liability hereunder or to fulfill the indemnification provisions and requirements of the Contract. Notwithstanding said policy or policies of

insurance, the Successful Offeror shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with the Contract.

5.18 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 Center.

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.

5.19 CONTRACT MODIFICATION – UNANTICIPATED AMENDMENTS

During the course of the Contract, the Successful Offeror 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 Successful Offeror a written description of the additional work and request the Successful Offeror 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 (contract modification) signed by the Contract Administrator and Successful Offeror personnel authorized to sign contracts on behalf of the Successful Offeror.

The Successful Offeror will not commence additional work until a signed contract modification has been issued.

5.20 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.

5.21 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. 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.

The notice of award letter, if any, resulting from this solicitation shall be posted in the reception area of the Public Utilities Commission, 465 South King Street, Room 103, Honolulu, Hawaii 96813.

Any protest pursuant to HRS § 103D-701 and HAR § 3-126-3, shall be submitted in writing to the Procurement Officer, Public Utilities Commission, 465 South King Street, Room 103, Honolulu, Hawaii 96813.

5.22 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. 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 Successful Offeror in connection with this Contract, the Successful Offeror shall pay all costs and expenses incurred by or imposed on the State, including attorneys' fees.

5.23 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.

5.24 CONTRACT INVALIDATION

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

5.25 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 Contract Administrator. The State may employ all reasonable means to ensure that the work is being performed in compliance with the Contract.

Should the Contract Administrator determine that corrections or modifications are necessary in order to accomplish its intent, the Contract Administrator 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.

5.26 NON-DISCRIMINATION

The Successful Offeror 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 Successful Offeror or in participation in the benefits of any program or activity funded in whole or in part by the State.

5.27 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.

5.28 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.

5.29 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.

5.30 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) calendar 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 SIX
ATTACHMENTS

Attachment 1	Offer Form
Attachment 2	Wage Certificate
Attachment 3	Vendor Reference Form

Attachment 1

OFFER FORM - OF-1
SEALED PROPOSALS AND PRICING FOR A PROVIDER FOR THE HAWAII ONE
CALL CENTER (HOCC).
RFP-PUC-16-01

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

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, 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. _____

Payment address (other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____
Authorized (Original) Signature

Telephone No.: _____

Fax No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____

** _____
Exact Legal Name of Company (Offeror)

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

Attachment 2

Wage Certificate

WAGE CERTIFICATE FOR SERVICE CONTRACTS (See Special Provisions)

Subject: RFP No.: RFP-PUC-16-01

Title of RFP: SEALED PROPOSALS AND PRICING FOR A PROVIDER FOR THE HAWAII ONE CALL CENTER (HOCC).

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-16-01

Title of RFP: SEALED PROPOSALS AND PRICING FOR A PROVIDER FOR THE HAWAII ONE CALL CENTER (HOCC).

Company:

Contact:

Address:

Phone & Fax No.:

E-mail:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

Company:

Contact:

Address:

Phone & Fax No.:

E-mail:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

SECTION SEVEN

APPENDICES

Appendix 1	General Conditions
Appendix 2	Sample State Goods and Services Contract and Attachments
Appendix 3	Historical Data

Appendix 1

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

28. **Audit of Books and Records of the CONTRACTOR.** The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. **Cost or Pricing Data.** Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. **Audit of Cost or Pricing Data.** When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. **Records Retention.**
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. **Antitrust Claims.** The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. **Patented Articles.** The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

Appendix 2



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 _____, the STATE
(Legal authority to enter into this Contract)
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 _____)

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 _____



Attachment - S1

STATE OF HAWAII
SCOPE OF SERVICES

[Language to be inserted based on the required scope of services in Request for Proposals No. RFP-PUC-16-01 and Successful Offeror's proposal]



Attachment – S2

STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

[Language to be inserted based on the compensation and payment schedule in
Request for Proposals No. RFP-PUC-16-01 and Successful Offeror's proposal]



STATE OF HAWAII
TIME OF PERFORMANCE

This CONTRACT, which commences on the Effective date, shall be a multi-year contract ending on June 30, 2019. The CONTRACT may be extended for two (2) additional twelve-month periods, if mutually agreed upon in writing prior to contract expiration. The State may terminate the extended contract period at any time, if in the best interest of the State.



STATE OF HAWAII
SPECIAL CONDITIONS

1. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.
2. Paragraph 17 of the General Conditions is superseded by Section 2.3 of the Request for Proposals No. RFP-PUC-16-01.
3. Paragraph 37 of the General Conditions is supplemented by stating that the entire contract consists of:
 - a. The Contract for Goods and Services;
 - b. General Conditions;
 - c. Contractor's Acknowledgement;
 - d. Contractor's Standards of Conduct Declaration;
 - e. Scope of Services (Attachment S1);
 - f. Compensation and Payment Schedule (Attachment S2);
 - g. Time of Performance (Attachment S3);
 - h. Special Conditions (Attachment S5);
 - i. Supplemental Special Conditions (Attachment S6)
 - j. Request for Proposals No. RFP-PUC-16-01;
 - k. CONTRACTOR's Proposal; and
 - l. CONTRACTOR Workplan, which upon mutual agreement and execution by CONTRACTOR and the STATE, will be binding on CONTRACTOR as if fully executed concurrently with this Contract.



STATE OF HAWAII
SUPPLEMENTAL SPECIAL CONDITIONS

**Billing Requirements and
Travel Guidelines**

I. Billing Requirements

As set forth in the Compensation and Payment Schedule, all expenses must be pre-approved by the Hawaii Public Utilities Commission ("Commission"), to the extent reasonably possible.

- Request for Compensation and/or Reimbursement:

All requests for compensation and/or reimbursement shall be submitted on official company letterhead/invoice and supported by the following:

1. Timesheets of each personnel assigned to the project that includes, but not limited to, the following:
 - Name of the project
 - Name of person, title, and company incurring cost
 - Description of task compensation represents
 - Hourly rate of each compensated personnel
 - Number of hours (per task) for which compensation is requested (in .1 hour increments)
 - Subtotal for each task
 - Total compensation hours per each timesheet
2. Receipt or invoice that includes, but is not limited to, the following:
 - Date of receipt or invoice
 - Name of company and address, if feasible, where goods or services rendered
 - Description of business related expense item(s)

All payments for compensation and/or reimbursement must be supported by original or certified copies of original timesheets, receipts and invoices. Reimbursement will be made for personnel work time and business related expenses that are authorized as reasonable and acceptable by the Commission.

- Request for Authorization of Expenses:

All requests for authorization to expend funds must be forwarded through the Procurement Officer, or designee, either via e-mail or letter.

For travel related expenses, authorized business start dates and times must be agreed upon by the Commission prior to making travel arrangements. Adherence to the Travel Guidelines, or prior approval from the Commission for any alternate travel arrangements, is required in order to receive reimbursement for travel expenses.



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

- **Billing Periods:**

Please submit an original plus two (2) copies of reimbursement invoices with supporting documentation to the following:

Public Utilities Commission
ATTN: Procurement Officer
465 South King Street, Room #103
Honolulu, HI 96813

All requests for payments will be reviewed for accuracy, completeness, and authorized expenses. Payment requests will be processed upon completion of agreed upon milestones, to the satisfaction of the Commission.

II. Travel Guidelines

Authorized travel will be reimbursable by the Commission for arrival and departure no more than twelve hours prior to and after the agreed upon work schedule.

- **Hotel Arrangements:**

The following recommended hotel is authorized by the Commission for business-related travel. Any charges that are not applicable to Commission business or any costs in excess of what the Commission deems to be authorized and reasonable expenses (e.g., selecting another hotel, extending the length of stay for personal reasons) shall be the responsibility of the traveler. If rooms are not available at the Executive Centre Hotel during required travel dates, prior approval must be obtained before making alternate reservations at other State-approved hotels or comparably priced hotels on the island.

1) Executive Centre Hotel—

When making hotel arrangements at the following hotel, mention that you are making reservations under the Hawaii Public Utilities Commission Aston Corporate Travel Club membership:

Executive Centre Hotel (www.astonexecutivecentre.com)
1088 Bishop Street
Honolulu, HI 96813

Phone: 1-800-949-3932/(808) 539-3000 (Main Reservation Desk)

All reimbursements for hotel accommodations must be supported by original hotel bill showing a \$0.00 balance due (original receipt acceptable if reservation and payment is being made through the internet) to ensure that payment was made. Reimbursement will not be made on recreational expenses and other non-business related items.



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

- **Car Rental:**

If reservations are made at the Executive Centre Hotel, pre-approval must be obtained for car rentals.

If transportation to and from the airport upon arrival and departure is via taxi, no reimbursement for tips will be made and all reimbursements must be supported by an original taxi receipt.

If transportation is via car rental, reasonably priced rental reservations should be made under the following conditions:

1. No car insurance shall be reimbursable by the Commission.
2. Types of car rentals will be permissible under the following guidelines—
 - Compact car for 1-2 passengers
 - Midsize car for 3-4 passengers
3. Reimbursement will be made only for the following, unless otherwise pre-approved by the Commission —
 - Time and mileage
 - Vehicle licensing fee
 - State and airport taxes
 - Airport concession fee
 - Additional driver fee for Commission authorized travelers only
4. Original car rental agreement and receipt of payment is required to receive reimbursement of car rental related expenses.

- **Airfare:**

All airfare arrangements must be made utilizing the most direct and cost efficient route. Please go to www.hawaiicorporatetravel.com in order to receive a comparison quote which will be considered the Commission authorized route of travel (most direct and cost efficient route of travel). Any charges that are not applicable to Commission business or any costs in excess of the quotation provided (e.g., stopovers, special or short-run trips, backtracking, using an airline other than the one with the lowest fare, personal side trips or any other routing impacting the lowest possible fare) through www.hawaiicorporatetravel.com shall be the responsibility of the traveler.

In the event a cheaper fare, in comparison to the Hawaii Corporate Travel (Panda Travel) fare, can be obtained, the difference in costs may not be applied as credit towards other expenses (i.e., hotel costs). Prior approval from the Commission must be obtained before booking the cheaper fare and the authorized Panda Travel quotation must still be furnished as documentation to support reimbursement claim.

Please follow the instructions below to obtain an authorized price quotation:

- 1) Go to www.hawaiicorporatetravel.com
- 2) Select "State of Hawaii"



STATE OF HAWAII

SUPPLEMENTAL SPECIAL CONDITIONS

- 3) On the upper left hand corner, select "Air Fare Quote"
- 4) Fill in all applicable information as shown in attached sample (Note: Please leave the estimated departure and arrival time and airline preference box under the "Flight Information" section and the "Out-of-State Transportation" section blank). You must insert the "Department of Budget and Finance/Public Utilities Commission" as the Department/Division/Office description so that the quote can be linked to the PUC for authorized State travel.
- 5) Click "Send" on the bottom of the form
- 6) Confirm the information you entered by clicking "Send" on the bottom of the form
- 7) You should receive a confirmation note indicating, "Your request for a quotation has been successfully submitted. An agent will work on your request and send a response promptly."
- 8) Please use the quotation from Panda Travel as your authorization and supporting documentation to justify the most direct and cost efficient route. After receiving your quotation, you may book your flight directly with the airlines. [Note: If you choose to book your flight through Panda Travel, you must make reservations through their retail office by calling (808) 734-1961.]

All reimbursements for airline accommodations must be supported by the following originals:

- 1) Hawaii Corporate Travel (Panda Travel) quotation;
- 2) itinerary of travel; and
- 3) receipt of payment of airline ticket.

Please note that e-tickets should be requested for airlines that charge a mandatory processing/surcharge fee to obtain a paper ticket. Reimbursement will not be made on other than "coach" seats, unless prior approval is received from the Commission.

• Meal Claims:

Meal expenses incurred during authorized Commission related business travel are reimbursable up to a maximum of \$60.00/day.

All reimbursements for meals should be identified separately and included in the original bill for reimbursement on an official company letterhead/invoice ("invoice").

Reimbursement will not be made for alcoholic beverages and tips related to meal expenses.

- Travel Reimbursement Claims:

Please submit your bill for reimbursement on an official company invoice with the address listed on the contract and supported by all applicable original receipts as listed above underlined in red.

Please submit an original plus three copies of reimbursement invoice with supporting documentation to the address stated above under Billing Requirements.

PUC Rev (3/10/09)