



## Department of Land and Natural Resources

RELEASE DATE: February 1, 2016

### REQUEST FOR PROPOSALS No. RFP-2016-01-O

SEALED OFFERS  
FOR

## Book Scanning and Image Enhancement Services of Official Records

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

WILL BE RECEIVED UP TO 4:30PM (HST) ON

**MARCH 28, 2016**

IN THE BUREAU OF CONVEYANCES LOCATED AT 1151 PUNCHBOWL STREET RM121  
HONOLULU, HAWAII 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO  
KELSI NISHIDA, TELEPHONE (808) 587-0154, FACSIMILE (808) 587-4380 OR E-MAIL AT  
KELSI.K.NISHIDA@hawaii.gov.

SUZANNE D. CASE  
CHAIRPERSON  
Procurement Officer

RFP-2016-01-O

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**SECTION ONE**  
**INTRODUCTION, TERMS AND ACRONYMS, KEY DATES**

**1.1 INTRODUCTION**

The State of Hawaii, Department of Land and Natural Resources, Bureau of Conveyances Division (BOC) is requesting proposals to scan approximately 3 million bound and mechanical book pages into digitized images and enhance existing JPEG images. Any award will result in a contract for services for use by the BOC.

The BOC daily records, indexes and scans Official Records into a land records management system called LandLink. The BOC provides public access to these records and indexes which is linked to the actual image of the record. In addition, the BOC provides copies of all recorded documents and certification of such if requested.

By having these records scanned and available in electronic form, the original books can be better preserved by allowing access to the digital files as opposed to the originals. The information can also be more easily retrieved and available to both the public and BOC's staff.

This Request for Proposal (RFP) describes in detail the specific services, requirements, instructions to contractors, and proposal evaluation methodology. Contractors are required to read this RFP carefully and follow all the instructions set forth herein when submitting their proposal to ensure proper consideration. Proposals that are not in accordance with these instructions may be eliminated from further review.

**1.2 CANCELLATION**

The RFP may be cancelled and any or all proposals rejected in whole or in part, without liability to the BOC, when it is determined to be in the best interest of the BOC.

**1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

CPO	=	Chief Procurement Officer
DLNR	=	Department of Land and Natural Resources
GC	=	General Conditions, issued by the Department of the Attorney General
GET	=	General Excise Tax
GP	=	General Provisions
Procurement Officer	=	The contracting officer for the State of Hawaii, State Procurement Office
State	=	State of Hawaii, including its departments, agencies, and political subdivisions
SOW	=	Statement of Work
BOC	=	Bureau of Conveyances
BAFO	=	Best and Final Offer

RFP	=	Request for Proposal
LRMS	=	Land Records Management System
RS	=	Regular System
LC	=	Land Court

#### 1.4 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents the BOC's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due date/time" is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows:

Release of Request for Proposals	February 1, 2016
Pre-proposal Conference	February 8, 2016
Due date to Submit Questions Submit questions via email to Kelsi.k.nishida@hawaii.gov	February 16, 2016 4:00PM (HST)
State's Response to Questions	March 4, 2016 4:00PM (HST)
Contractor to declare/confirm participation in the solicitation via email to Contract Administrator	March 7, 2016 4:00PM (HST)
<b>Proposals Due date/time</b>	March 28, 2016 4:00PM (HST)
Proposal Evaluations	March 29 – April 5, 2016
Discussion with Priority Listed Offerors (if necessary)	April 6-8, 2016
Best and Final Offer Due (if necessary)	April 15, 2016
Contractor Selection and Award	May 2, 2016
Anticipated Contract Start Date - Notice to Proceed (Contingent upon finalization and approved contractual and fiscal documents)	June 1, 2016

#### 1.5 PRE-PROPOSAL CONFERENCE

The purpose of the pre-proposal conference is to provide Contractors an opportunity to be briefed on this procurement and to ask any questions about this procurement. It is strongly recommended that Contractors interested in participating and submitting a proposal call into the conference to gain a better understanding of the requirements of this RFP.

Contractors are advised that anything discussed at the pre-proposal conference does not change any part of this RFP. All changes and/or clarifications to this RFP shall be done in the form of an addendum.

The pre-proposal conference will be held as follows:

Date: February 8, 2016

Time: 9:00AM (HST)

Location: Teleconference

**Conference Call Information**

Toll-Free Dial-in (US/Canada): 1-800-356-8278

Conference Code: 160467

**1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS**

All questions shall be submitted by the due date specified in Section 1.4, *RFP Schedule and Significant Dates*, as amended.

The State will respond to questions through Addenda/Amendments by the date specified in Section 1.4, *RFP Schedule and Significant Dates*, as amended.

**SECTION TWO**

**BACKGROUND AND SCOPE OF WORK**

**2.1 PROJECT OVERVIEW AND HISTORY**

The State of Hawaii Bureau of Conveyances (BOC) original microfilm and books are overdue for digitization. There are approximately 34 million microfilm images and 3 million book images of recorded documents dating from 1845 through 1991 in need of digitization and indexing and eventual import into the BOC's LRMS. This will need to be accomplished over multiple fiscal years (July – June) contingent upon the annual approvals of budget ceiling increases by the State's Legislature.

During Phase 1, the BOC contracted with a vendor to digitize approximately 34 million microfilm images from 1845-1991 into multi-page JPEG and TIFF images. As the BOC looks to continue this multi-phase project, the following are envisioned as the next phases:

- A. Digitization of all grantor/grantee index books between 1845 and 1975 into JPEG and TIFF images.
- B. Digitization of all book images between 1845 and 1963 into multi-page JPEG and TIFF images. All books are either in bound or mechanical format and consist of:
  1. Handwritten text
  2. Typed text
  3. Photostat copies of originals
- C. Inspection and enhancement to the quality of all the final images.
- D. The flexibility of linking the indexes and images to a third party system that will have the data securely available for searching and viewing; and the potential for interfacing with a web-based application in which the images can be purchased for download and printing.

**For the purposes of this RFP, the BOC is soliciting proposals for the digitization of approximately 3 million book images as well as the enhancement of a selected period of existing TIFF images.**

The digitization of grantor/grantee index books and record books dating from 1845 through 1975 consists of:

- A. 1845 – 1975 Grantor Index Books 13" x 15.5", ~502 books at 600 pages per book, an estimated 301,200 bound pages.
- B. 1845 – 1975 Grantee Index Books 13" x 15.5", ~450 books at 600 pages per book, an estimated 270,000 bound pages.
- C. 1845 – 1962 Record Books, ~4,542 books at 500 pages per book, an estimated 2,271,000 bound pages.
  - a. Original Bound Handwritten Books Pages 10.25" x 15.5" (~274 books)
  - b. Original Bound Typed Books Pages 10.25" x 15.5" (~474 books)
  - c. Original Mechanical Typed Books Pages 10" x 14.75" (~311 books)
  - d. Original Mechanical Photostat Books Pages 10" x 14.75" (~3,378 books)
  - e. Original Mechanical Photostat Books Pages 7" x 11.25" (~105 books)

An estimated 375,000 existing RS and LC TIFF images for the period 1988-1991 will require enhancement to create legible, good quality final images.

In submitting this proposal, it is understood by the contractor that the BOC reserves the right to accept any proposal, to reject any and all proposals and to waive any irregularities or informalities that the BOC deems is in its best interest.

Contractors are encouraged to come to the BOC for an on-site visit prior to the RFP submission date to examine the books. All costs associated with this on-site visit are at the expense of the Contractor. Arrangements should be made with the Contract Administrator prior to arrival.

## **2.2 SCOPE OF WORK**

All services for the BOC shall be in accordance with this RFP, including its attachments and any addenda.

- 1. All material submitted becomes the property of the BOC and will not be returned.
- 2. The BOC shall not be responsible for any costs incurred by Contractors in connection with this RFP. Contractors shall bear all costs associated with proposal preparation, submission and attendance at presentations, or any other activity associated with this RFP or otherwise.
- 3. The contractor must provide details of their methodology that will be used for this project, see Section 3.10 PROPOSAL CONTENTS for further detail.
- 4. The contractor must provide a timeline indicating key points of the service being provided by the contractor as well as payment installments. It should also include the time necessary for BOC staff to proof the images being provided. The project completion target is April 2017.
- 5. Contractor will scan in page # order at 300 dots per inch (dpi) and images will be saved as color JPEG with 80% compression as well as black & white TIFF formats.

6. Group & Index – Contractor must provide single page color JPEG's **and** black and white Group IV TIFFs.
  - a. Abstract System – Directories must be named by Image Type (JPEG, TIFF) and Sequential Book #. Each image must be grouped and saved in directories for each corresponding book number and indexed by zero filled 3 digit page numbers.
  - b. Torrens System – Each image must be grouped and indexed by zero filled 9 digit document numbers.
  - c. Grantor/Grantee Index Books – Directories must be named by the Record Type (Grantor, Grantee), Island(s), Year Range, Letter Range, Image Type (JPEG, TIFF) and Sequential Book #.
7. Once contracted, the contractor will be responsible for returning the final digitized images to the BOC on portable encrypted hard drives.
8. Each digitized image must be portrait format in a right-side up position.
9. Each digitized image must be a 100% white background with 100% black text and markings. All marginal notations and stamps/seals must be legible on the digitized image and appear as black text on the white background.
10. All scanning must be performed on the island of Oahu, no exception will be made for the books to be shipped off-island. The BOC may provide a 12' x 12' space with power outlets, near the public access area with normal business hour access, 7:00AM – 5:00PM Monday – Friday (except holidays) for the duration of the project. The Contractor can opt to rent a space on-island near the BOC, all costs and coordination associated with renting a space will be at the cost and responsibility of the Contractor. [NOTE: Should the Contractor wish to perform the scanning at the BOC 24 hours per day, 7 days a week, the Contractor must add \$21,000, \$28,000 or \$35,000 for 3 weeks, 4 weeks or 5 weeks, respectively, to their FORM OF-2, under 'Miscellaneous Costs', as this represents the cost to open the office during non-business hours. Contractor must also be advised that the A/C will be turned off during non-business hours and on the weekends.]
11. Book Handling – Contractor must remove books from shelves in sequential order. After scanning, pages from mechanical books must be placed back into their removable respective binders in sequential page # order and books must be returned to the shelves in their original order.
12. Bound Book Scanning – Handwritten and Typed bound pages must remain in the binder, pages must not be cut nor removed from the binder and must be scanned on a bound book scanner. Book Scanners must capture 2 pages (left & right) per image, utilize book cradles to hold left and right pages level throughout the entire book & a glass platen must flatten the pages to minimize spine curvature. The left page and right page must be separated as 2 individual page images with 1" of over scan from opposite page so no data is accidentally cut off and attached to the opposite page. Two 13" x 15.5" Folio Index pages must be captured as a single 26" x 15.5" image and must not be separated.
13. Mechanical Book Scanning – Typed and Photostat pages in mechanical binders must be removed from the mechanical binders and fed through a duplex document scanner. Both the front and back of the pages are captured to create 2 individual JPEG images.

14. On-Site Content Inspection – Contractor’s scanning staff must inspect 100% of the images during scanning. Contractor’s inspection staff must inspect 100% of the images prior to leaving the premise to guarantee that 100% of the pages have been captured in their entirety. Any missing, overlapping, obstructed or cut off pages must be rescanned at no charge to the BOC.
15. Image Enhancement – Contractors will be provided images in both JPEG and TIFF formats, from which the Contractor will be required to enhance the TIFF images. Contractor will adjust the contrast of any specific light or dark area on the TIFF image so that the legible data on the JPEG is also legible on the TIFF. Special attention must be given to party names, legal descriptions, signatures, time-date stamps, document #'s and Book-Page #'s; specifically for light signatures, light hand writing, light type writer text, light stamps, light seals and all data within gray shaded boxes. The Contractor must enhance the TIFF image without having to physically rescan the original media. If the BOC is not satisfied with the legibility of any enhanced TIFF image, at any time in the future, the Contractor will re-enhance the TIFF image at no charge.
16. Contractor must be prepared to receive at least 2 books from the BOC to scan, group and index, as well as 100 JPEG and TIFF images to enhance, at no charge. These grouped, indexed and enhanced images must be placed on a hard drive and must be submitted with the Contractor’s proposal. The BOC will utilize these images to carefully compare image quality and naming accuracy as part of the evaluation criteria. The BOC reserves the right to disqualify any proposal that does not include sample images. The books and images will arrive via UPS and must be ready for UPS pick-up the following day. Additional detailed information will be provided to Contractors that confirm participation in this solicitation.
17. The contractor shall provide all the labor, equipment and supplies required to perform the services specified in this SOW.
18. The BOC will review and accept or reject all digitized images. If the BOC determines that the quality of an image is insufficient to meet their needs, the contractor will rework the image to provide it at an acceptable quality at no extra cost to the BOC. The final arbiter for all quality concerns is the BOC.
19. Contractor must describe in detail, the Quality Control procedure to be used by their staff to verify that all of the records provided by the BOC are converted to legible digital images and returned to the BOC in good condition and in accordance to the contractor provided timeline as specified in Section 2.2 SCOPE OF WORK #4 above.
20. Contractor must provide the BOC with an on-line inventory report and input the Record Type, Book#, # of pages per Book and initials of scanning staff and inspection staff.
21. Contractor or its employees shall not provide third parties with any information unless authorized by the BOC.

## **2.3 HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES, BUREAU OF CONVEYANCES DIVISION (BOC) RESPONSIBILITIES**

1. BOC shall appoint a Project Manager (PM) who will be responsible for monitoring Contractor provided services.



2. BOC shall provide access to all of the original 1845-1975 books stored in the public reference room area and make on-site facilities available depending on the selected Contractor's work plan.
3. BOC will provide staffing resources to complete image reviews as part of the quality control process.

## **2.4 TERM OF CONTRACT**

The contract shall be for a period of one (1) year, with the option of annual renewals, contingent upon the availability of funds and appropriate approvals each year. The desired start date for contract services is June 1, 2016.

When interests of the BOC or the Contractor so require, the BOC or the Contractor may terminate the contract for convenience by providing six (6) weeks prior written notice to the other party.

## **2.5 CONTRACT ADMINISTRATOR**

For the purposes of this contract, Kelsi Nishida, Administrative Services Assistant, (808) 587-0154, kelsi.k.nishida@hawaii.gov, or authorized representative, is designated the Contract Administrator.

# **SECTION THREE**

## **PROPOSAL FORMAT AND CONTENT**

### **3.1 CONTRACTOR'S AUTHORITY TO SUBMIT AN OFFER**

The BOC will not participate in determinations regarding a Contractor's authority to sell a product or service. If there is a question or doubt regarding a Contractor's right or ability to obtain and sell a product or service, the Contractor shall resolve that question prior to submitting an offer.

### **3.2 REQUIRED REVIEW**

1. Before submitting a proposal, each Contractor must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Contractor understands the requirements of the RFP. Contractor must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.
2. Should Contractor find defects and questionable or objectionable items in the RFP, Contractor shall notify the BOC in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance of a defective solicitation and exposure of proposal(s) upon which award could not be made.

### **3.3 PROPOSAL PREPARATION COSTS**

Any and all costs incurred by the Contractor in preparing or submitting a proposal shall be the Contractor's sole responsibility whether or not any award results from this RFP. The BOC shall not reimburse such costs.

### **3.4 TAX LIABILITY**

1. Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii GET at the current 4.5% for sales made on Oahu, and at the 4% rate for the islands of Hawaii, Maui, Molokai, and Kauai. If, however, a Contractor is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Contractor shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
2. Federal I.D. Number and Hawaii General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Contractor is doing business in the State and that Contractor will pay such taxes on all sales made to the State.

### **3.5 PROPERTY OF STATE**

All proposals become the property of the State of Hawaii.

### **3.6 CONFIDENTIAL INFORMATION**

1. If a Contractor believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Contractor shall inform the Procurement Officer named on the cover of this RFP in writing and provided with justification to support the Contractor's confidentiality claim. Price is not considered confidential and will not be withheld.
2. A Contractor shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Contractor considers to be confidential. Such requests for nondisclosure 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.

### **3.7 EXCEPTIONS**

Should Contractor take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Contractor shall list such exceptions in this section of the Contractor's proposal. Contractor shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

No exceptions to statutory requirements of the AG General Conditions shall be considered.

### **3.8 PROPOSAL OBJECTIVES**

1. One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Contractors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.
2. Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content.
3. When a Contractor submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Contractor has identified as necessary to successfully complete the obligations outlined in this RFP.
4. The proposal shall describe in detail the Contractor's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.2 SCOPE OF WORK and further detailed in Section 3.10 PROPOSAL CONTENTS.
5. Contractor shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

### **3.9 PROPOSAL FORMS**

1. To be considered responsive, the Contractor's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions providing in the RFP or in any subsequent addendum may be rejected without further consideration.
2. Offer Form, Page OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (SECTION SEVEN, Attachment 1). Failure to do so may delay proper execution of the Contract.

The Contractor's authorized signature on the Offer Form, OF-1 shall be an original signature in blue ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Contractor's intent to be bound.

3. Offer Form, Page OF-2. Pricing shall be submitted in the format displayed on Offer Form OF-2 (SECTION SEVEN, Attachment 2). Additional detailed breakdown of line item costs should be inserted in the submitted pricing schedule. The price shall be the all-inclusive cost, including the GET, to the State. No other costs will be honored. Any unit prices shall be inclusive.

### **3.10 PROPOSAL CONTENTS**

Proposals must:

1. Include a transmittal letter to confirm that the Contractor shall comply with the requirements, provisions, terms, and conditions specified in this RFP.

2. If subcontractor(s) will be used, append a statement to the transmittal letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
  - A. The general scope of work to be performed by the subcontractor;
  - B. The subcontractor's willingness to perform for the indicated.
3. Provide all of the information requested in this RFP in the order specified.
4. Be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.
  - A. Transmittal Letter to confirm that the Contractor shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
  - B. SECTION SEVEN, Attachment 1, Offer Form OF-1. Include a signed Offer Form OF-1 with the complete name and address of Contractor's firm and the name, mailing address, telephone number, and fax number of the person the BOC should contact regarding the Contractor's proposal.
  - C. Pricing. See SECTION SEVEN, Attachment 2, Offer Form OF-2 for a sample.
  - D. Experience and Capabilities.
    - 1) Provide at least three (3) projects involving book scanning and image enhancement, past or present, of similar quantity and size.
    - 2) The number of years Contractor has been in business and the number of years Contractor has performed services specified by this RFP.
    - 3) Qualifications of Staff
      - i. Include a listing of key staff to be assigned to this project to provide the required services and resumes for each describing experiencing, training and education in the required services.
      - ii. Identify staff experience working with governmental entities, specifically recorders offices, and provide a list of those projects.
      - iii. Identify the project manager who is to be in charge of the project for the Contractor from commencement until completion.
    - 4) A list of at least three (3) references from the Contractor's client listing that may be contacted by the BOC as to the Contractor's past and current job performance. Contractor shall provide the following information for each reference:
      - i. Name of company or government agency
      - ii. Company contact information (Name, title, telephone numbers, email and postal addresses)
      - iii. Brief description of the project
      - iv. Total number of bound and mechanical books scanned
      - v. Total number of time to complete the project

- vi. The planned start and finish date compared to the actual start and finish date
  - vii. Description of the indexing process pertaining to recorded documents (If applicable)
  - viii. Description of any problems/issues and how they were resolved.
- 5) A summary listing of judgments or pending lawsuits or actions against; adverse contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state.
- E. Knowledge and proficiency of understanding this project.
- 1) A list of sample projects and/or examples of written plans.
  - 2) Hard drive containing sample scanned book images saved in JPEG and TIFF formats and enhanced TIFF images from raw images provided by the BOC.
- F. Project Proposal
- 1) Methodology – The BOC would like a written description of the steps and procedures that will be used for this project. The BOC is interested in how the Contractor creates a project plan and executes it. The description should include, but is not limited to, the following items:
    - i. Key performance measurements.
    - ii. The Quality Control procedures as requested in Section 2.2 SCOPE OF WORK #19.
    - iii. How the books will be transported between the BOC public access area and the designated scanning location to be used for this project.
    - iv. How the communication will be made to the BOC for questions, problem files and/or documents.
    - v. How the BOC should communicate with the Contractor; and the escalation process and timeframe if required for problem resolution.
    - vi. How changes to procedures, concerns or any other potential problem areas will be identified and reported.
  - 2) Timeline with milestones as requested in Section 2.2 SCOPE OF WORK #4.
  - 3) Other services applicable to this project.

### **3.11 RECEIPT AND REGISTER OF PROPOALS**

Proposals will be received and receipt verified by two or more procurement officials on or after the date and time specified in Section One, or as amended.

The register of proposals and proposals of the Contractor(s) shall be open to public inspection upon posting of award pursuant to section 103D-701, HRS.

### **3.12 BEST AND FINAL OFFER (BAFO)**

If the BOC determines a BAFO is necessary, it shall request one from the Contractor. The Contractor shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

### **3.13 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS**

1. The Contractor may modify or withdraw a proposal before the proposal due date and time.
2. Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.
3. Should Contractor decide to withdraw a submitted proposal prior to the proposal due date, Contractor shall submit a written withdrawal notice prior to the proposal due date.

### **3.14 MISTAKES IN PROPOSALS**

1. Mistakes shall not be corrected after award of contract.
2. When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the contractor to confirm the proposal. If the Contractor alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
3. Once discussions are commenced or after best and final offers are requested, any priority-listed Contractor may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
4. If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
5. If discussions are not held, or if the best and final offers upon which award will be made have been received, a Contractor alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Contractor submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Contractors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow a Contractor to correct them if either is in the best interest of the BOC. Examples include the failure of a Contractor to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Contractor's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Contractor received the amendment and intended to be

bound by its terms; or the amendment involved had no effect on price, quality or quantity.

## **SECTION FOUR**

### **EVALUATION CRITERIA**

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Contractor whose proposal is determined to be the most advantageous to the BOC based on the evaluation criteria listed in this section.

**The total number of points used to score this contract is 100.**

1. Cost of services (20)
2. Previous experience, capability and proficiency in digitizing bound and mechanical book images and enhancement of existing JPEG images (35 – see breakdown)
  - A. Number of years in the business, number of projects completed performing services specified in this RFP, success of project plans, etc. (5)
  - B. Client listings, responses of references, etc. (5)
  - C. Image quality of scanned book images and enhanced images. (25)
3. Knowledge and proficiency of understanding this project. (5)
4. Project Proposal (40 – see breakdown)
  - A. Methodology – Key performance measurements will be the Contractor's ability to ensure the safe, expedient and accountable transfer of the original books to and from the Contractor's designated work site as well as the actual workflow and Quality Control and Quality Assurance procedures used to complete this project. Additional key performance measurements will be the technique(s) used to 'enhance' the existing JPEG images, into legible, good quality final images. (25)
  - B. Timeline – Speed and efficient logistics at which the books can be digitized and returned to the BOC so as not to inconvenience the public and government customers who may need access to these original documents. (10)
  - C. Other services applicable to this project (5)

## **SECTION FIVE**

### **CONTRACTOR SELECTION AND CONTRACT AWARD**

#### **5.1 EVALUATION OF PROPOSALS**

The evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer shall evaluate the proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. However, proposals may be accepted without such discussions.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked, responsible Contractors.

## **5.2 DISCUSSION WITH PRIORITY LISTED CONTRACTORS**

The BOC may invite priority listed Contractors to discuss their proposals to ensure a thorough, mutual understanding of their proposal. The BOC in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. The BOC may also conduct discussions with priority listed Contractors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

## **5.3 AWARD OF CONTRACT**

**Method of Award.** Award will be made to the responsible Contractor whose proposal is determined to be the most advantageous to the BOC based on the evaluation criteria set forth in the RFP.

## **5.4 RESPONSIBILITY OF CONTRACTORS**

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

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

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

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

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



**Timely Registration on HCE.** Contractors are advised to register on HCE soon as possible. If a vendor/contractor/service provider is not compliant on HCE at the time of award, a Contractor will not receive the award.

## **5.5 PROPOSAL AS PART OF THE CONTRACT**

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

## **5.6 PUBLIC EXAMINATION OF PROPOSALS**

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

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

## **5.7 DEBRIEFING**

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

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

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

## **5.8 PROTEST PROCEDURES**

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

Department of Land and Natural Resources  
Bureau of Conveyances  
1151 Punchbowl St #121  
Honolulu, HI 96813  
Attn: Nicki Ann Thompson

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

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

## **5.9 APPROVALS**

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

## **5.10 CONTRACT EXECUTION**

Successful Contractor receiving award shall enter into a formal written contract in the form as in Exhibit A.

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

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

## **5.11 INSURANCE**

1. Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State in full force and effect throughout the term of the Contract. The Contractor shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

### **A. Commercial General Liability Insurance**

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities or contractual liability by the Contractor, its employees and subcontractors during the term of the Contract. This insurance shall include the following coverage and limits specified or required by any applicable law: bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence; personal and advertising injury of \$1,000,000 per occurrence; broadcasters' liability insurance of \$1,000,000 per occurrence; and with an aggregated limit of \$2,000,000. The commercial general liability policy shall be written on an occurrence basis and the policy shall provide legal defense costs and expenses in addition to the limits of liability stated above. The Contractor shall be responsible for payment of any deductible applicable to this policy.

### **B. Automobile Liability Insurance**

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

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

2. The Contractor shall deposit with the BOC, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the BOC that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to the BOC during the entire term of the Contract. Upon request by the BOC, the Contractor shall furnish a copy of the policy or policies.
3. The Contractor will immediately provide written notice to the BOC and contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed up expiration.
4. The certificates of insurance shall contain the following clauses:
  - A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
  - B. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
5. Failure of the Contractor to provide and keep in force such insurance shall constitute a material default under the Contract, entitling the State to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the Contractor's liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Contractor shall be responsible for the full and total amount of any damage, injury, or loss caused by the Contractor's negligence or neglect in the provision of services under the Contract.

#### **5.12 PAYMENT**

Incremental payments shall be made to the awarded Contractor, upon receipt of the digital images. The receipt of images shall be based on the timeline submitted by the Contractor in the proposal, or as mutually agreed upon. Invoices must reflect the number of images being delivered to BOC to validate payment.

#### **5.13 CONTRACT INVALIDATION**

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

### **SECTION SIX**

#### **SPECIAL PROVISIONS**

#### **6.1 OFFER GUARANTY**

A proposal security deposit is NOT required for this RFP.

## **6.2 ACCEPTANCE AND TESTING**

Any Contractor interested in submitting a proposal is welcome to schedule a site visit with the BOC to review the books needing to be digitized. Contact the contract administrator for scheduling.

Any Contractor interested in responding to this request for proposal, wanting to inspect the books, must do so on-site. No books will be allowed off-premises for the purposes of testing and inspection prior to award of this contract.

## **SECTION SEVEN**

### **ATTACHMENTS AND EXHIBITS**

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
- Exhibit A: Sample Contract
- Exhibit B: AG General Conditions
- Exhibit C: Overview of the RFP process

**OFFER FORM  
OF-1**

Book Scanning and Image Enhancement Services of Official Records  
STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
BUREAU OF CONVEYANCES  
RFP-2016-01-O

Procurement Officer  
Department of Land and Natural Resources  
Bureau of Conveyances  
State of Hawaii  
Honolulu, Hawaii 96813

Dear Procurement Officer:

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

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture

☐ Other \_\_\_\_\_

\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No. \_\_\_\_\_

Federal I.D. No. \_\_\_\_\_

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

Business address (street address): \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

Date: \_\_\_\_\_

(x) \_\_\_\_\_  
Authorized (Original) Signature

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Please Type or Print)

E-mail Address: \_\_\_\_\_  
\_\_\_\_\_

\*\* \_\_\_\_\_  
**Exact Legal Name of Company (Offeror)**

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

**OFFER FORM  
OF-2**

Itemize each cost for accomplishing the development and delivery of the services, using the format below as a basis. Add additional line items if proposed service is not listed below.

Item	Price	Description	Quantity		=	Total Item Cost
Bound Books – Handwritten 10.25" x 15.5"		Per page/image to scan 300dpi JPEG & TIFF	137,000	Estimated # of images	=	
Bound Books – Typed 10.25" x 15.5"		Per page/image to scan 300dpi JPEG & TIFF	237,000	Estimated # of images	=	
Bound Index Books – Typed 13" x 15.5"		Per page/image to scan 300dpi JPEG and TIFF	571,200	Estimated # of images	=	
Mechanical Books – Typed 10" x 14.75"		Per page/image to scan 300dpi JPEG & TIFF	155,500	Estimated # of images	=	
Mechanical Books – Photostat 10" x 14.75"		Per page/image to scan 300dpi JPEG & TIFF	1,689,000	Estimated # of images	=	
Mechanical Books – Photostat 7" x 11.25"		Per page/image to scan 300dpi JPEG & TIFF	52,500	Estimated # of images	=	
Group & Index		Per image	2,842,200	Estimated # of images	=	
JPEG Image		Enhancement	375,000	Estimated # of images	=	
Media		Per Storage device		Estimated # of media	=	
Other Services		Related to "Methodology" (include if off-site, on-island leased space cost)		Estimated # of applicable units	=	
2 year use of a Viewing Application (price per seat)		2 year – cost to utilize program and/or software to view, search and print images	25	Estimated # of seats	=	
Travel		Per Trip for Airfare, Lodging, Equipment, etc.		Estimated # of trips	=	
On-Site or near-site scanning (state which)		Per Day (all inclusive of all staff and facilities)		Estimated # of days	=	
Other Miscellaneous Costs		Each additional cost must be itemized and described.				
General Excise Tax					=	
<b>TOTAL COST</b>					=	

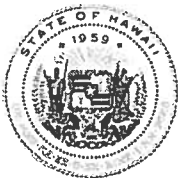
**Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.**

Offeror \_\_\_\_\_  
Name of Company

Please complete the table below for additional costs the BOC will use to evaluate in the "Project Proposal – Other services" section. The costs listed below will not be factored into the "Cost of Services" for this RFP.

Item	Price	Description	Quantity		=	Total Item Cost
1 year use of a Viewing Application (price per seat)		1 year – cost to utilize Contractor's program and/or software to view, search and print images	25	Estimated # of seats	=	
Annual Licensing of a Viewing Application (price per seat)		Annual Licensing, if used by the BOC beyond 2 years. Cost to utilize Contractor's program and/or software to view, search and print images	25	Estimated # of seats	=	

# Exhibit A: Sample Contract



## 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

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

CORPORATE SEAL  
(If available)

#### APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS.  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

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

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION



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

For the purposes of this declaration:

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

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

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

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

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

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

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

**CONTRACTOR**

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_



## STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE****1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\***

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

---

(Signature)

---

(Date)

---

(Print Name)

---

(Print Title)

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

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

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

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

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

---

(Signature)

---

(Date)

---

(Print Name)

---

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

# Exhibit B: AG General Conditions

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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



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

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

### 13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

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

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

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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



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

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

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

## **OVERVIEW OF THE RFP PROCESS**

- C.1 The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS §103D-303.**
- C.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.**
- C.3 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.**

- C.4 The evaluation committee approved by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four.**
- C.5 Proposals may be accepted on evaluation without discussion. However, if 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 may be limited to a minimum 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.**
- C.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.**
- C.7 Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The evaluation committee reserves the right to have additional rounds of discussions with the top three (3) Priority Listed Offerors prior to the submission of the BAFO.**
- C.8 The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.4, RFP Schedule and 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.**
- C.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 price and the evaluation factors set forth in Section Four.**

- C.10** The contents of any proposal shall not be disclosed during the review, evaluation, or discussion. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
- C.11** 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 evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- C.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 of Hawaii.