PROPOSAL SUBMITTAL CHECKLIST

RFP No. DPM 2020-39

VIDEO PRODUCTION SERVICES

The following checklist is provided as a reference for proposal submittal. The offeror shall be responsible for complying with all aspects of proposal submission requirements. See the RFP for more information regarding each item. The OHA shall not be responsible for other pertinent RFP information not listed below:

☐ 1. Cover Letter – Signed by authorized signatory. (Attachment 3 – Sample Cover Letter)

☐ 2. Proposal

☐ 3. Offer Form OF-1 and OF-2 (Attachment 6)

☐ 4. Finance Related Requirements

☐ 5. Qualifications and Requirements pertaining to the Scope of Services, if any

☐ 6. Acknowledgement of Addendum (Attachment 4)

☐ 7. Wage Certificate (Attachment 5)

☐ 8. RFP Registration Form (Attachment 2)

☐ 9. Hawaii Compliance Express Certificate of Vendor Compliance OR

- ☐ a. Department of Labor and Industrial Relations, Certificate of Compliance with section 3-122-112, HAR, Form LIR #27; AND
- ☐ b. Department of Consumer and Commerce Affairs Certificate of Good Standing; AND
- ☐ c. State and Federal Tax Clearance Certificates.

☐ 10. Corporate Resolution indicating authorized signer for proposal and contractual document

RFP REGISTRATION FORM

RFP DPM 2020-39	Video Production Services

INSTRUCTIONS: If you are interested in submitting a proposal, please complete this Registration Form and e-mail this form to the RFP Coordinator: [email address].

Registration Forms Due	**Due by Wednesday, September 23, 2020, 2:00 p.m. HST**
Proposal Submittals Due	**Due by Monday, October 19, 2020, 2:00 p.m. HST** Proposals shall be submitted via email to charmainem@oha.org. The official time will be that which the email is received by OHA.
Notice of Award	November 2020
Contract Start Date	November 2020

Date: _____

Company: _____

Address: _____

Phone: _____ E-mail: _____

Contact Person: _____

YOUR BUSINESS LETTERHEAD
Aloha Company • 123 Aloha ‘Oe Drive • Honolulu, HI 96819

TO: Head of Purchasing Agency
Sylvia M. Hussey, Ed.D
Ka Pouhana, Chief Executive Officer
Office of Hawaiian Affairs
560 North Nimitz Highway Suite 200
Honolulu, Hawai‘i 96817

Dear Ms. Hussey:

The undersigned has carefully read and understands the terms and conditions specified in the RFP DPM 2020-39 and in the General Conditions, and hereby submits the following Proposal 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 competitive sealed Proposal, 1) he/she is declaring that his/her Proposal is not in violation of Chapter 84, Hawai‘i Revised Statutes, as amended, concerning prohibited State Contracts, 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion, and 3) he/she hereby authorizes the Office of Hawaiian Affairs to verify information provided in this Proposal.

Furthermore, Aloha Company is a Domestic Profit Corporation registered to do business in the State of Hawai‘i. Please see the Federal taxpayer identification number and State General Excise Tax License Identification number indicated below.

Date: _____

Phone: _____

Remittance Address, if different from Business Address

_____

_____

Hawai‘i General Excise Tax License I.D. No: _____

Federal Tax I.D./Social Security No:

_____

Respectfully submitted,

_____
Exact Legal Name of Company (Offeror)

_____
Authorized Signature (Original)

Print Name: _____

Title: _____

Business Address: _____

_____

E-mail: _____

SAMPLE

ACKNOWLEDGEMENT OF ADDENDA

RFP DPM 2020-39

Video Production Services

The offeror has received the following Addenda, receipt of which is hereby acknowledged:

		Check box if Addendum not received
Addendum Number: _____	Date Received: _____	☐
Addendum Number: _____	Date Received: _____	☐
Addendum Number: _____	Date Received: _____	☐
Addendum Number: _____	Date Received: _____	☐
Addendum Number: _____	Date Received: _____	☐

_____
Offeror's Name

_____
Authorized Signature (Original)

_____
Print Authorized Signature Name

WAGE CERTIFICATE

DESCRIPTION OF PROJECT

Video Production Services

Pursuant to Section 103-55, Hawai‘i Revised Statutes (HRS), I hereby certify that if awarded the contract and it is in excess of $25,000.00 the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work; and

2. All applicable laws of the Federal and State governments relating to worker’s compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

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

BY: _____
Signature of Person Authorized to Signer

Please Print

NAME: _____

TITLE: _____

VENDOR: _____

DATE: _____

ATTACHMENT 1
OFFER FORM, OF-1

FROM: _____

TO: OHA Procurement Officer:
Sylvia M. Hussey, Ed. D
Ka Pouhana, Chief Executive Officer
Office of Hawaiian Affairs, State of Hawai‘i
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

RE: OFFICE OF HAWAIIAN AFFAIRS, STATE OF HAWAI‘I
RFP NO. DPM 2020-39
Video Production Services

Dear Ms. Hussey,

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, Hawai‘i 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

*State of incorporation: _____

☐ Other _____

Hawai‘i General Excise Tax License I.D. No. _____

Federal I.D. No. _____

ATTACHMENT 1:
OFFER FORM, OF-1
(CONTINUED)

Payment address (other than street address below):

_____

_____

Business address (street address):

_____

_____

Respectfully submitted:

_____
Exact Legal Name of Company (Offeror)**

_____
Authorized (Original) Signature

Name & Title: _____

Date: _____

Telephone No.: _____

Fax No.: _____

E-mail Address: _____

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

ATTACHMENT 1
OFFER FORM, OF-2

Total Contract cost for accomplishing the scope of services.	$_____

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

The Contract for the proposed services may be extended without the necessity of re-soliciting or solicitation, subject to appropriation and availability of funds to OHA, continued need for the services, and OHA's determination of satisfactory performance of the contracted organization, or unless this Contract is terminated. The option to extend the service shall be offered in writing by OHA prior to the expiration of the Contract. No Contract or amendment to a Contract shall be binding upon OHA until the Contract has been fully and properly executed by all parties thereto prior to the start date of the Contract. The contracted organization shall not provide any services until the Contract is fully and properly executed.

Offeror

_____
Name of Company

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT FOR GOODS AND SERVICES
BASED UPON COMPETITIVE SEALED PROPOSALS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between the Office of Hawaiian Affairs ("OHA"), a body corporate under the Constitution of the State of Hawai'i, by its Ka Pouhana, Chief Executive Officer ("CEO") and Head of Purchasing Agency ("HOPA"), whose address is 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817, and _____ ("CONTRACTOR"), a _____,
(Insert corporation, limited liability company, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal tax identification numbers are as follows: _____
_____.

RECITALS

A. The OHA 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 OHA 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, Hawai'i Revised Statutes ("HRS"), Hawai'i 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 OHA, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to _____,
(Legal authority to enter into this Contract)
the OHA is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) _____
(Identify OHA source)

(2) _____
(Identify state source)

or (3) _____
(Identify federal source)

or all, in the following amounts: OHA $ _____
State $ _____
Federal $ _____.

SAMPLE

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the OHA, 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. **See** Attachment – S1, which is 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. **See** Attachment – S2, which is made part of this Contract.

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 part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made 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 any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the OHA 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 OHA in writing of any change of address.

SAMPLE

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.

OHA

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

CONTRACTOR

_____
(Name of Contractor)

_____
(Signature)

_____
(Print Name)

_____*
(Print Title)

_____
(Date)

APPROVED AS TO CONTENT:

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

APPROVED AS TO FORM:

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

_____
(Date)

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

SAMPLE

OFFICE OF HAWAIIAN AFFAIRS

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 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 _____

SAMPLE

Attachment – S1

OFFICE OF HAWAIIAN AFFAIRS
SCOPE OF SERVICES

Project: Video Production Services
Description: Create Inspirational Informational Videos Regarding OHA's New Strategic Plan

The CONTRACTOR shall provide and perform the services set forth below in a satisfactory and proper manner as determined by the OHA, and in accordance with the terms and conditions of this Contract. The services shall include, but may not be limited to, the following:

A. The following documents, and any amendments or addenda thereto, comprise the Contract between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR for the Legislative Public Policy Services: (1) CONTRACTOR's accepted proposal dated [Date of Proposal Submitted]; (2) Request for Proposal No. DPM 2020-39; and (3) OHA -2018 103D General Conditions Revised April 21, 2020; and (4) this Contract. These documents collectively comprise the "Contract".

B. The CONTRACTOR shall provide and perform the services required in a satisfactory and proper manner as determined by the OHA. The services shall include, but may not be limited to, the following:

[Scope of Services]

C. The Administrator will act as the contract monitor and principal liaison between the CONTRACTOR and the OHA. The OHA Contract Administrator shall assist in resolving policy questions expediting decisions and the review of the work performed. See Attachment – S4 General Conditions.

SAMPLE

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Attachment – S2

OFFICE OF HAWAIIAN AFFAIRS COMPENSATION

Project: Video Production Services
Description: Create Inspirational Informational Videos Regarding OHA's New Strategic Plan

A. The OHA agrees to pay the CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] ($[AMOUNT]) inclusive of all actual reasonable ordinary necessary costs and expenses, including general excise tax currently at the rate of 4.712% for services satisfactorily rendered under this Contract.

B. Compensation shall be paid pursuant to the schedule set forth below and upon presentment of invoice and satisfactory performance of the work described in ATTACHMENT – S1 SCOPE OF SERVICES and shall be approved by the OHA's Contract Administrator. The OHA's Contract Administrator's written approval shall be required before incurring any exceptional cost and/or expenses. Compensation shall be paid in the following manner:

Payment Number	Period Due	Amount
1	[Date] to [Date]	$[AMOUNT]
2	[Date] to [Date]	$[AMOUNT]
3	[Date] to [Date]	$[AMOUNT]
Final Payment		$[AMOUNT]
Total		$[AMOUNT]

C. The OHA shall withhold TEN PERCENT (10%) equal to [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] ($[AMOUNT]), including general excise tax currently at the rate of 4.712% of the total Contract amount as the final payment under this Contract. Payment of the retained amount shall be made upon the completion and approval by the OHA of deliverables as stated in the payment.

D. For final payment, the CONTRACTOR must submit a valid tax clearance certificate and a "Certification of Compliance for Final Payment". An original tax clearance certificate not over two (2) months old with an original green certified copy stamp or a valid HCE Certificate of Vendor Compliance, in lieu of the tax clearance certificate, is acceptable.

E. The CONTRACTOR shall submit original invoices for services to:

Office of Hawaiian Affairs
Attn: Financial Services
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

SAMPLE

Attachment – S2

OFFICE OF HAWAIIAN AFFAIRS COMPENSATION

F. All invoices shall reference the Contract number assigned to this Contract. Payment shall be made upon certification by the OHA's Contract Administrator that the CONTRACTOR has satisfactorily performed the services specified, payment will be made.

G. Said withheld amount shall be subject to the CONTRACTOR's satisfactory reconciliation and submittal of all reports and tax clearances from the Director of Taxation and the Internal Revenue Service. Any debt owed to the State Department of Taxation shall be offset first. The CONTRACTOR shall still be required to submit copies of valid tax clearances to the OHA within THIRTY (30) days of the termination date of this Agreement. A Certificate of Vendor Compliance issued by the Hawai'i Compliance Express may be submitted in lieu of the tax clearance certificate.

SAMPLE

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Attachment – S3

OFFICE OF HAWAIIAN AFFAIRS
TIME OF PERFORMANCE

Project: Video Production Services
Description: Create Inspirational Informational Videos Regarding OHA's New Strategic Plan

A. The CONTRACTOR shall perform the services required under this Contract from [Date] through and including [Date] unless this Contract is sooner terminated.

B. The manner in which the services are to be performed and the specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited, however, to the maximum amount payable as specified in this Contract.

C. Option to Extend: The Time of Performance of this Contract may be extended at negotiated fees, subject to the availability of funds, upon mutual agreement in writing prior to the end of the current Contract. It is understood that a Supplemental Contract (Amendment) will be executed by both the CONTRACTOR and the OHA to exercise any and all extensions.

Initial term of Contract:	TWELVE (12) months
Length of each extension:	Up to TWELVE (12) months, may be less than TWELVE (12) months when it is in the best interest of the OHA
Maximum length of Contract:	Not to exceed SIXTY (60) months

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SAMPLE

ATTACHMENT – S4

GENERAL CONDITIONS

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SAMPLE

ATTACHMENT – S4

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SAMPLE

ATTACHMENT – S4

General Conditions

1. Coordination of Services by the OHA. 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 the Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, Hawai'i Revised Statutes ("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 OHA shall have a general right to inspect work in progress to determine whether, in the OHA'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 OHA 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 OHA.

   b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the OHA for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the OHA any vacation, sick leave, retirement, workers compensation, unemployment insurance, or other benefits provided to OHA 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 owed 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 is also responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

SAMPLE

ATTACHMENT – S4

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawai‘i, 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 Hawai‘i, 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 OHA 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 Hawai‘i, in accordance with section 103D-310, HRS, and section 3-122-112, Hawai‘i Administrative Rules ("HAR"), that is current within six (6) 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 Hawai‘i, 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. <u>Personnel Requirements.</u>

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.

SAMPLE

ATTACHMENT – S4

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 laws.

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 OHA, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the OHA a tax clearance certificate from the Director of Taxation, State of Hawai'i, 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 Hawai'i, as provided in section 40-58, HRS.

   a. Recognition of a successor in interest. When in the best interest of the OHA, a successor in interest may be recognized in an assignment contract in which the OHA, 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 OHA; 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 OHA, 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.

SAMPLE

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or innovations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty (30) 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 OHA CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawai'i and the OHA, 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 OHA 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 OHA, 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 OHA the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the OHA 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. OHA'S Right of Offset. The OHA may offset against any monies or other obligations the OHA owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawai'i by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawai'i by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The OHA 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 Hawai'i shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered

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by an installment payment or other settlement plan approved by the State of Hawai‘i, 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 Hawai‘i under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, HAR, as the same may be amended from time to time.

12. Suspension of Contract. The OHA 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 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 subcontractors; 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 the 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

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(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provide 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 endure 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 OHA has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the OHA 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 OHA may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the OHA against loss

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because of outstanding liens or claims and to reimburse the OHA for the excess costs expected to be incurred by the OHA 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 the 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 OHA 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 OHA so require, terminate this Contract in whole or in part, for the convenience of the OHA. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination become effective.

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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 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 OHA'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontractors to the OHA. 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 OHA 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 OHA 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 OHA 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 (1) 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 and pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments

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previously made by the OHA, 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 and 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) Cost 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), HAR.

15. <u>Claims Based on the Agency Procurement Officer's Actions or Omissions.</u>

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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 OHA, 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 of the OHA 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.

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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 the OHA officers and employees 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 Hawai‘i, and the Internal Revenue Service, U.S. Department of Treasury, showing

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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 OHA to receive anticipated federal funds shall not be considered a breach by the OHA 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 OHA, 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 the 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.

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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 percent (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 Hawai'i, 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 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 OHA, 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 OHA 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.

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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 a 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 OHA 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 percent (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

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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

        (2) Time of performance (i.e., hours of the day, days of the week, etc.);

        (3) Place of performance services;

        (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the OHA 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

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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 OHA.

    b. All information, data, or other material provided by the CONTRACTOR to the OHA shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the OHA, or any office, agency, or officer thereof, or any OHA 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 contracts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The OHA 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 OHA upon expiration or termination of this Contract. The OHA, 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 OHA 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. An OHA 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.

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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 OHA 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 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 OHA may require an audit of cost or pricing data.

31. Records Retention.

    a. 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 OHA.

    b. 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 OHA, 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) years, 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 OHA at the request of the OHA.

32. Antitrust Claims. The OHA 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 OHA 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 OHA under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the OHA, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's 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 OHA any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the OHA a substitute article, process, or appliance acceptable to the OHA, (b)

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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 Hawai‘i. 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, Hawai‘i.

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 OHA 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 OHA and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the OHA 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 OHA’S right to enforce the same in accordance with this Contract. The fact that the OHA specifically refers to one provision of the procurement rules or one section of the Hawai‘i Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the OHA’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 OHA 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

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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 OHA 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 the 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 Hawai'i 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 OHA 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 OHA.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

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(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the OHA to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the OHA 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 OHA.

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 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 OHA learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the OHA 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.

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In either instance, the CONTRACTOR and the OHA 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 OHA.

(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 OHA, 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) years, 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 OHA at the request of the OHA.

43. Insurance Requirements

a. The CONTRACTOR shall maintain, acceptable to the OHA in full force and effect throughout the term of this Contract, the Policies of insurance maintained by the CONTRACTOR and shall provide the following coverages:

Coverage	Limit
Commercial General Liability	$2,000,000 single limits per occurrence for bodily injury and personal property damage.
Personal Injury Liability	$1,000,000 single limits per occurrence $2,000,000 for general aggregate
Automobile Insurance covering All owned, non-owned and hired automobiles	Bodily injury liability limits of $1,000,000 each person and $1,000,000 per accident and property damage liability limits of $1,000,000 per accident OR $2,000,000 combined single limit
Workers Compensation as required bylaws of the State of Hawai‘i	Insurance to include Employer’s Liability. Both such coverages shall apply to all employees of the CONTRACTOR and (in case any sub-contractor fails to provide adequate similar protection for all its employees) to all employees of sub-contractors
Professional Liability (Errors and Omissions)	$1,000,000 per claim $2,000,000 annual aggregate

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b. The State of Hawai‘i, the OHA, its elected and appointed officials, employees, and volunteers are added as additional insured with respect to operation performed under this Contract. The CONTRACTOR agrees to provide the OHA before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the OHA that the insurance provision of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the OHA during the entire term of this Contract. The minimum insurance required shall be in full compliance with the Hawai‘i Insurance Code throughout the entire term of the Contract, including supplemental contracts. Upon request by the OHA, the CONTRACTOR shall furnish a copy of the policy or policies.

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

d. The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR’S liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be obliged for the full and total amount of damage, injury, or loss cause by negligence or neglect connected with this Contract.

e. To satisfy the minimum coverage limits required by this Contract, the Successful Offeror may use an umbrella policy in addition to the mandatory insurance policies (i.e., General Liability insurance, Automobile Insurance, and Workers’ Compensation) provided that the OHA approves, and the umbrella policy follows the underlying coverage forms.

f. The CONTRACTOR shall notify the OHA in writing of any cancellation or change in provision thirty calendar days prior to the effective date of such cancellation or change.

g. The OHA is a self-insured semi-autonomous STATE agency. The CONTRACTOR’S insurance shall be primary. Any insurance maintained by the State of Hawai‘i and OHA shall apply in excess of, and shall not contribute with, insurance provided by the CONTRACTOR.

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Attachment – S5

OFFICE OF HAWAIIAN AFFAIRS
SPECIAL CONDITIONS

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Years 2020 and 2021 Holidays to be observed by the HAWAII STATE GOVERNMENT

www.dhrd.hawaii.gov

Website where State Holiday Schedule posted

Year 2020 HAWAII STATE HOLIDAYS

(Hawaii Rev. Statutes, Sec. 8-1)	Day Observed in 2020	Official Date Designated in Statute/Constitution
New Year's Day	Jan. 1 Wednesday	The first day in January
Dr. Martin Luther King, Jr. Day	Jan. 20 Monday	The third Monday in January
Presidents' Day	Feb. 17 Monday	The third Monday in February
Prince Jonah Kuhio Kalanianaole Day	Mar. 26 Thursday	The twenty-sixth day in March
Good Friday	April 10 Friday	The Friday preceding Easter Sunday
Memorial Day	May 25 Monday	The last Monday in May
King Kamehameha I Day	June 11 Thursday	The eleventh day in June
Independence Day	July 3 Friday	The fourth day in July
Statehood Day	Aug. 21 Friday	The third Friday in August
Labor Day	Sept. 7 Monday	The first Monday in September
General Election Day	Nov. 3 Tuesday	The first Tuesday in Nov. following the first Monday of even numbered years. *(Hawaii State Constitution, Article 2 – Section)*
Veterans' Day	Nov. 11 Wednesday	The eleventh day in November
Thanksgiving	Nov. 26 Thursday	The fourth Thursday in November
Christmas	Dec. 25 Friday	The twenty-fifth day in December

Year 2021 HAWAII STATE HOLIDAYS

(Hawaii Rev. Statutes, Sec. 8-1)	Day Observed in 2020	Official Date Designated in Statute/Constitution
New Year's Day	Jan. 1, Friday	The first day in January
Dr. Martin Luther King, Jr. Day	Jan. 18 Monday	The third Monday in January
Presidents' Day	Feb. 15 Monday	The third Monday in February
Prince Jonah Kuhio Kalanianaole Day	Mar. 26 Friday	The twenty-sixth day in March
Good Friday	April 2 Friday	The Friday preceding Easter Sunday
Memorial Day	May 31 Monday	The last Monday in May
King Kamehameha I Day	June 11 Friday	The eleventh day in June
Independence Day	July 5 Monday	The fourth day in July
Statehood Day	Aug. 20 Friday	The third Friday in August
Labor Day	Sept. 6 Monday	The first Monday in September
Veterans' Day	Nov 11 Thursday	The eleventh day in November
Thanksgiving	Nov. 25 Thursday	The fourth Thursday in November
Christmas	Dec. 24 Friday	The twenty-fifth day in December

FOOTNOTES: For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 2/28/2018 subject to change.