



State of Hawai‘i

REQUEST FOR PROPOSALS

OHA RFP NO. WKOP 2015-09

FOR

**WAO KELE O PUNA
COMPREHENSIVE MANAGEMENT PLAN**

ISSUED DATE: April 24, 2015

DUE DATE: May 26, 2015, 3:00 HST

The Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

Notice to Interested Parties: Offerors interested in submitting a proposal are encouraged to register your company by completing the Interest Form and submitting it to OHA’s Issuing Officer via email, mail and/or hand delivery. If you do not register your company, you will not receive an addenda, if any, and your offer may be rejected and not considered for award.

TABLE OF CONTENTS

Notice to Offerors..... Page 3

Section 1 - Administration Overview Page 4

Section 2 - General Requirements Page 10

Section 3 – Background and Scope of Work Page 20

Section 4 - Proposal Format and Content..... Page 32

Section 5 - Evaluation Criteria Page 40

Section 6 - Contractor Selection and Contract Award..... Page 46

Section 7 - Attachments and Exhibits Page 48

Attachment 1: Offer Forms OF-1

Attachment 2: Offer Form OF-2

Exhibit A Sample Contract

Exhibit B General Conditions

END OF SECTION

Notice to Offerors
(Chapter 103D, Hawai‘i Revised Statutes)

REQUEST FOR PROPOSALS (RFP), NO. WKOP 2015-09
FOR
WAO KELE O PUNA
COMPREHENSIVE MANAGEMENT PLAN

Notice is hereby given that pursuant to Chapter 103D, Hawai‘i Revised Statutes (HRS), as amended, the Office of Hawaiian Affairs (“OHA”), will be accepting sealed proposals for the **Wao Kele O Puna Comprehensive Management Plan**.

This Request for Proposal (“RFP”) is provided to you for information purposes. If you are interested in responding to this solicitation, you may download the RFP from the OHA website at www.oha.org/solicitation, SPO website <http://spo3.hawaii.gov/notices/notices> and/or pick up a copy at the OHA’s Procurement Unit on O‘ahu, located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817, beginning **April 24, 2015**.

The OHA’s Procurement Unit will conduct a Pre-Proposal Conference from 10:00 a.m. to 11:30 a.m. Hawai‘i Standard Time (“HST”) on **Monday, May 4, 2015**. The OHA strongly recommends that all interested Offerors attend. For those interested in attending via web conferencing, please contact the Issuing Officer listed below no later than **3:00 p.m. HST, Monday, April 27, 2015**.

Sealed proposal will be received at the OHA’s Reception Desk at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i, 96817, until 3:00 p.m. HST on **Tuesday, May 26, 2015**.

Electronic mail and facsimile transmission **shall not** be accepted. The official time for hand-delivered proposals shall be that which is recorded on the time stamp clock of the OHA. Deliveries by private mail services, such as Federal Express, shall be considered hand deliveries. All mail-in proposals delivered/postmarked by the United States Postal Service must be received by the OHA Reception Desk on or before 3:00 p.m. HST the day of the deadline.

The OHA reserves the right to reject any and all proposals and accept the proposals in whole or part in the best interest of the OHA. Questions relating to this solicitation shall be directed to the RFP Coordinator, Phyllis Ono-Evangelista at (808) 594-1833.

OFFICE OF HAWAIIAN AFFAIRS

Kamana‘opono M. Crabbe, Ph. D.
Ka Pouhana/CEO

SECTION 1

Administrative Overview

1.1 Introduction

Wao Kele o Puna (“WKOP”) Forest Reserve Tax Map Key (“TMK”) (3)1-2-010:002 & 003) is located in the upper Puna area of the Hawai‘i County. At 25,856 acres (nearly forty (40) square miles) WKOP is the largest tropical lowland rainforest in the United States of America (“USA”). Owned by the Office of Hawaiian Affairs (“OHA”), WKOP is co-managed by OHA and the Department of Land and Natural Resources (“DLNR”). OHA acquired the WKOP to protect its natural and cultural resources as well as the traditional and customary rights of Native Hawaiians accessing the property.

OHA will take management control of WKOP, independent of DLNR on June 27, 2016. As a steward of WKOP, OHA has the kuleana to protect, persevere, and perpetuate the cultural and natural resources of WKOP for current and future generations. As such, it is prudent for OHA to develop a Comprehensive Manage Plan (“CMP”) to inform how OHA may steward and manage WKOP in the most appropriate and efficient manner.

The Office of Hawaiian Affairs (“OHA”) is requesting proposals for the development of a Comprehensive Management Plan (CMP) that will inform OHA on how to best manage Wao Kele o Puna (WKOP) and protect, preserve, enhance and perpetuate, its cultural and natural resources for current and future generations. The CMP shall exhibit cultural acumen and competency while embracing and exemplifying contemporary science, theory, technology and best forest management and conservation practices.

1.2 Authority

This Request for Proposal (“RFP”) is issued under the provision of §103D, Hawai‘i Revised Statutes (“HRS”), as amended, and its companion Hawai‘i Administrative Rules (“HAR”). All Offerors are charged with presumptive knowledge of all requirements of these cited authorities. Submission of a proposal shall constitute affirmation of such knowledge on the part of the Offeror.

1.3 RFP Organization

This RFP is organized into seven (7) sections:

- Section 1: Administrative Overview – Provides Offeror’s with an overview of the procurement and contracting process.
- Section 2: General Requirements – Provides the Offeror’s responsibilities as applicable.
- Section 3: Scope of Work – Provides the Offeror’s with a general description of the tasks to be performed and defines the deliverables (as applicable).
- Section 4: Proposal Format and Content – Describes the required format and content for the proposal application.

Section 5: Evaluation Criteria – Describes how proposals will be evaluated.

Section 6: Contractor Selection and Award – Describes how contract will be awarded.

Section 7: Attachments and Exhibits – Provides the information and form necessary to complete the application.

1.4 Terms and Acronyms

AIS	Archaeological Inventory Survey
BAFO	Best and Final Offer
BTP	Burial Treatment Plan
CPO	OHA Chief Procurement Officer
DLNR	Department of Land and Natural Resources
FRD	Forest Reserve Designation
GET	General Excise Tax
GC	OHA General Contract Conditions
GPS	Global Positioning Systems
HAR	Hawai‘i Administrative Rules
HOPA	Head of the Purchasing Agency
HRS	Hawai‘i Revised Statutes
Kuleana	Responsibility, Stewardship, and Privilege
OHA	Office of Hawaiian Affairs
Nā iwi kūpuna	Human Burials
PO	Procurement Officer
RFP	Request for Proposals
State	State of Hawai‘i, including its department, agencies, and political subdivisions
SHPD.	State Historic Preservation Division
WKOP	Wao Kele O Puna

1.5 Contracting Office

The Contracting Office is responsible for overseeing the procurement and issuing the contract resulting from this RFP. The Contracting Office is listed below:

Office of Hawaiian Affairs	Telephone: (808) 594-1833
Procurement Unit	
560 North Nimitz Highway, Suite 200	
Honolulu, Hawai‘i 96817	

The Issuing Officer or his/her designated representative is listed below:

Phyllis Ono-Evangelista	Telephone: (808) 594-1833
Office of Hawaiian Affairs	Fax: (808) 594-1878
Procurement Unit	
560 North Nimitz Highway, Suite 200	Email: phylliso@oha.org
Honolulu, Hawai‘i 96817	

The Contract Administrator his/her designated representative shall be is responsible for overseeing the contract(s) resulting from this RFP.

Pua Ishibashi
Hawai'i Island
Land Management Coordinator

Telephone: (808) 594-1767
Fax: (808) 594-0267
Email: puai@oha.org

OHA Hawai'i Island Location
Office of Hawaiian Affairs
162-A Baker Avenue
Hilo, Hawai'i 96720-4869

OHA Main Office Location
Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

1.6 Website References

The State Procurement Office (SPO) website is www.spo.hawaii.gov. (Note: Website addresses may change from time to time. If a link is not active, try the State of Hawai'i website at www.hawaii.gov).

For	Go to
1 Tax Clearance Forms (Department of Taxation Website)	http://www.hawaii.gov/tax/ click "Forms"
2 Wages and Labor Law Compliance, Section 103-055, HRS (Hawai'i State Legislature website)	http://www.capitol.hawaii.gov/ click "Bill Status and Documents" and "Browse the HRS Sections"
3 Department of Commerce and Consumer Affairs, Business Registration	http://www.hawaii.gov/dcca click "Business Registration"
4 Campaign Spending Commission	www.hawaii.gov/campaign
5 Hawai'i Compliance Express	http://vendors.ehawaii.gov/hce/splash/welcom.html
6 SPO Forms	http://spo.hawaii.gov

1.7 RFP Schedule and Significant Dates

The schedule below represents the OHA's best estimate of the schedule that will be followed. All times indicated are Hawai'i 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 OHA reserves the right to cancel any activity or modify the timetable at any time. The approximate schedule is as follows:

Release of Request for Proposals	April 24, 2015
Pre-Proposal Conference	May 4, 2015 – 10:00-11:30 a.m. HST
Due Date to Submit Questions	May 8, 2015 – 9:00 a.m. HST
OHA's Response to Questions	May 12, 2015
Proposals Due Date/Time	May 26, 2015 – 3:00 p.m. HST
Proposal Evaluations	May 27, 2015 – June 4, 2015
Offerors' Presentation/Discussion (if necessary)	TBD
Best and Final Offer (if necessary)	TBD
Notice of Award	June 2015
Contract Start Date	June 2015

1.8 Pre-Proposal Conference

The purpose of the Pre-Proposal Conference is to provide Offerors an opportunity to be briefed on this procurement and to ask any questions about this procurement. The Pre-Proposal Conference is not mandatory; however, Offerors are encouraged to attend to gain a better understanding of the requirements of this RFP.

Offerors 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 on:

Date: Monday, May 4, 2015
Time: 10:00 a.m.
Location: Mauli Ola Conference Room
Office of Hawaiian Affairs
560 North Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817

To attend or participate in the web and teleconference conference, please contact the Issuing Officer or his/her designee by 3:00 p.m., Monday, April 27, 2015.

1.9 Submission of Questions

Offerors are encouraged to submit written questions pertaining to the RFP. Questions must be submitted in writing to the Issuing Officer no later than the "Due Date to Submit Questions", identified in paragraph 1.7 above, in order to generate an official answer.

All written questions will be responded to in addenda to the RFP. The only official position of the OHA is that which is stated in writing and issued in the RFP as addenda thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

1.10 RFP Amendments

The OHA reserves the right to amend the RFP at any time prior to the proposal submission deadline. Interested Offerors will be notified of the availability of amendments through verbal or written communications. All amendments to the RFP will be posted to both the OHA website www.oaha.org/solicitations, and SPO website: <http://spo3.hawaii.gov/notices/notices>.

1.11 Cancellation of RFP

The RFP may be canceled when it is determined to be in the best interest of OHA.

1.12 Submission of Sealed Proposals

Sealed proposals must be received via hand delivery or the United States Postal Service (USPS) by the date and time designated in the procurement timeline. Any procurement packet received after the designated date and time shall be rejected. All proposals must be in OHA's possession by the submittal time deadline to be considered responsive.

Electronic mail and facsimile transmissions of the proposal shall not be accepted.

The proposal packet must be submitted in a sealed envelope and properly identified as a sealed proposal in response to this RFP. Any RFP proposal packet **not properly sealed or submitted via email or facsimile shall be automatically rejected**. Each qualified Offeror may submit only one (1) sealed proposal in response to this solicitation. More than one (1) sealed proposal will not be accepted from any Offeror. There shall be no exceptions to these requirements.

1.13 Rejection of Proposals

The OHA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and comply with the service specifications. Any proposal offering and any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice.

A proposal may be automatically rejected for any one or more of the following reasons:

- 1) Cancellation of solicitation (HAR §3-122-95, HAR §3-122-96);
- 2) Rejection of an offer (HAR §3-122-97);
- 3) Reporting of anti-competitive practices (HAR §3-122-191, HAR §3-122-193, HAR §3-122-194, HAR §3-122-195);
- 4) Rejection for inadequate accounting system (HRS §103D-314(2));
- 5) Late proposals (HAR §3-122-16(08));
- 6) Inadequate response to request for proposals (HAR §3-122-95, HAR §3-122-96);
- 7) Proposal not responsive (HAR §3-122-97(1) and HAR §3-122-97(2)); and,

8) Applicant not responsible (HAR §3-122-97(2)).

1.14 Notice of Award

The award of a contract and allowed renewal or extension thereof, is subject to the approval by the OHA's Ka Pouhana, CEO and /or Board of Trustees, and subject to the availability of funding.

1.15 Debriefing

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

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

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

1.16 Protest Procedures

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

Head of Purchasing Agency	Procurement Manager
Name: Kamana'opono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana, Ka Pouhana, CEO	Title: Procurement Manager
Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai'i 96817	Address: Office of Hawaiian Affairs 560 North Nimitz Highway, Suite 200 Honolulu, Hawai'i 96817

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/>.

END OF SECTION

SECTION 2

General Requirements

2.1 General Requirements

A. Furnishing Proof of Compliance

The Successful Offeror(s) are advised that if awarded a contract, the Successful Offeror must furnish proof of compliance with the requirements of Section 3-122-112, HAR:

- 1) Chapter 103-53 and 103D-328, HRS, tax clearance;
- 2) Chapter 383, HRS, unemployment insurance;
- 3) Chapter 386, HRS, workers' compensation;
- 4) Chapter 392, HRS, temporary disability insurance; and
- 5) Chapter 393, HRS, prepaid health care.

B. Hawai'i Business or Compliant Non-Hawai'i Business

The Successful Offeror(s) shall be one of the following:

1. Be registered and incorporated or organized under the laws of the State of Hawai'i (hereinafter referred to as a "Hawai'i business").

Hawai'i business: A business entity referred to as a "Hawai'i business" is registered and incorporated or organized under the laws of the State of Hawai'i. As evidence of compliance the Offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawai'i business doing business as a sole proprietorship is not required to register with the BREG, and therefore not required to submit the certificate. A Successful Offeror's status as sole proprietor or other business entity and its business street address will be used to confirm that the Successful Offeror is a Hawai'i business.

2. Be registered to do business in the State of Hawai'i (hereinafter referred to as a "compliant non-Hawai'i business").

Compliant non-Hawai'i business: A business entity referred to as a "compliant non-Hawai'i business," is not incorporated or organized under the laws of the State of Hawai'i, but is registered to do business in the State. As evidence of compliance, the Offeror shall submit a CERTIFICATE OF GOOD STANDING.

C. Certificate of Vendor Compliance

The Successful Offeror(s) shall demonstrate compliance with the following:

- 1) Tax Clearance, Form A-6
- 2) Department of Labor and Industrial Relations, Application for Certificate of Compliance, Form LIR#27; and
- 3) Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The Successful Offeror(s) may demonstrate compliance of the above by using the Hawai'i Compliance Express (HCE). The HCE services allow business to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov/hce/splash/welcome.html>.

The HCE provides the Successful Offeror(s) with a "Certificate of Vendor Compliance" with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Businesses that elect to use the HCE services will be required to pay an annual fee of \$12.00 to the Hawai'i Information Consortium, LLC ("HIC").

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

D. Bid Security

No bid security is required to be submitted for this RFP, and no performance or payment security shall be required for the resulting Contract.

E. Funding Sources and Period of Availability

The sources of funding include OHA Trust Funds. The award of this contract is subject to the availability of these funds. Any and all supplemental agreement for additional funds shall be subject to the availability of funds.

F. Multiple or Alternate Proposals (Refer to HAR §3-122-4)

☐ Allowed ☒ Not allowed

G. Type of Contract

Single or Multiple Contracts to be Awarded (Refer to HAR §103D-322)

☒ Single ☐ Multiple ☐ Single & Multiple

- H. Single or Multi-Term Contracts to be Awarded (Refer to HRS §103D-315)
☐ Single term (2 years or less) ☒ Multi-term (more than 2 years)

I. Contract Terms

Single or Multiple Contracts to be Awarded

Initial term of contract:	Eighteen (18) 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 OHA]
Number of possible extensions:	One (1) extension
Maximum length of contract:	Not to exceed thirty (30) months

J. Conditions for Contract Extensions

The contract for the proposed services may be extended without the necessity of re-procuring, subject to appropriation and availability of the OHA funds, continued need for the services, and the OHA's determination of satisfactory performance of the contracted organization, or unless the contract is terminated.

The option to extend the service will be offered in writing by the OHA prior to the expiration of the contract. No supplementary agreement shall be binding upon the OHA until the supplemental agreement has been fully and properly executed by all parties thereto prior to the start date of the supplemental agreement. The contracted organization shall not provide any services until the supplemental agreement is fully and properly executed.

When interest of the State or the Contractor so require, the State or the Contractor may terminate the contract for convenience by providing forty-five (45) prior written notice to the other party.

K. Additional Services and Fees

For services not described in the Contract, the Successful Offeror and the OHA shall negotiate for additional needed services and fees which may arise during the course of the Contract. Any agreement shall be in writing, executed by all parties, and shall be attached to the Contract as an amendment to expire at the same time as the original Contract or subsequent extension period.

L. Other Financial Related Materials - Accounting System

In order to determine the adequacy of the interested Offeror's accounting system as described under the administrative rules, the Offerors shall submit a copy of the most recent financials audit as part of the proposal application.

M. Laws, Rules, Ordinances and Regulations

Reference to Federal, State, City and County laws, ordinances, rules and regulations and standard specifications shall include any amendments thereto effective as of the date of the RFP.

2.2 Monitoring and Evaluation

The Successful Offeror(s) performance under the contract will be monitored and evaluated by the Contract Administrator or his/her designated representative, the OHA's auditors, and/or other designated representatives.

Failure to comply with all material terms of the contract may be cause for suspension or termination, as provided in the General Conditions included as Exhibit "B" in this RFP. The Successful Offeror(s) may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the OHA. These additional reports shall not be considered a change to the scope of work and shall continue for the duration of time as deemed necessary by the OHA.

When interest of the OHA or the successful contractor so require, the OHA or the successful Contractor may terminate the contract for convenience by providing forty-five (45) calendar days prior written notice to the other party.

2.3 Insurance

Prior to the contract start date, the Successful Offeror shall procure at its sole expense and maintain insurance coverage acceptable to the OHA in full force and effect throughout the term of the contract. The Successful Offeror shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) prior to 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:

- 1) Bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence;
- 2) Personal and advertising injury of \$1,000,000 per occurrence;
- 3) Broadcasters' liability insurance of \$1,000,000 per occurrence; and
- 4) 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 Per Occurrence

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

The Contractor shall deposit with the Procurement Unit, on or before the effective date of the contract, certificate(s) of insurance necessary to satisfy the Procurement Unit, 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 OHA during the entire term of the contract. Upon request by the Procurement Unit, the Contractor shall furnish a copy of the policy or policies.

The Contractor shall immediately provide written notice to the Procurement Unit, and contracting department or the OHA, should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The certificates of insurance shall contain the following clauses:

- 1) "OHA is added as an additional insured with respect to operations performed for OHA."
- 2) "It is agreed that any insurance maintained by OHA shall apply in excess of, and not contribute with, insurance provided by this policy."

Failure of the contractor to provide and keep in force such insurance shall constitute a material default under the contract, entitling the OHA 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.

2.4 HRS §97: Limitations of Lobbying Activities

Per HRS § 97-1(7): Lobbying means communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence county councils, legislative or administrative action or a ballot issue.

Per HRS § 97-5: "No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action."

Therefore, any time the Contractor whose time is spent researching data or information specific to the testimony to be provided, drafting and providing testimony or participates in discussions with legislators or government employees or officials in support or opposition of any pending legislation, is not allocable to State contracts and cannot be charged to the OHA for the purposes of the contracted services. The time spent in such lobbying activities must be cost-allocated and cannot be paid for by State funds and such activities are clearly not within the scope of the contract, nor are they allowed to be within the scope.

2.5 Wages, Hours and Working Conditions

All Offerors for service contracts shall comply with Section 103-55, HRS, which provides as follows:

Wages, hours, and working conditions of employees of the Contractor supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed shall be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work. Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected. It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, HRS.
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

2.6 Specific Qualifications and Requirements

A. Biological Resource Assessment

Biological Resource Assessment (“BRA”) must be developed by or under the direct supervision of an experienced and qualified Biologist.

1. Biologist must possess an undergraduate or graduate degree in biology or related field (botany, wildlife biology, natural resources, ecology, conservation biology, or environmental biology) and/or substitute a minimum of four (4) years relevant work and/or field experience. The interested offeror shall submit a Curriculum Vitae (CV) which demonstrates their level of competency to include, but not limited to educational, academic backgrounds as well as teaching and research experience, publication, presentations, awards, honors, affiliations and other details evidencing their expertise.
2. Biologist must possess at least three (3) years of professional experience in environmental analysis, and or resource project management, and or writing/ directing the development of Biological Resource Assessments.
3. Biologist must provide his/her signature on completed Biological Resource Assessment (BRA) to signify assurance in the quality of the BRA. **Note:** Document must meet or exceed applicable federal and state standards and requirements for such documents.

B. Natural Resource Assessment

Natural Resource Assessment must be developed by or under the direct supervision of an experienced and qualified Natural Resource Expert (“NRE”).

1. NRE must possess an undergraduate or graduate degree in relevant areas of study including, but not limited to, Natural Resources Management and Biological Sciences and/or substitute a minimum of four (4) years relevant work and/or field experience. The interested offeror shall submit a CV which demonstrates their level of competency to include, but not limited to educational, academic backgrounds as well as teaching and research experience, publication, presentations, awards, honors, affiliations and other details evidencing their expertise. It may be determined, on a case by-case basis, that other degrees may meet the intent of this condition.
2. NRE must possess at least three (3) years of professional experience in natural resource analysis and management, including writing/directing the development of Natural Resource Assessments.
3. NRE must provide his/her signature on completed Natural Resource Assessment to signify assurance in the quality of the Natural Resource Assessment. **Note:** Document must meet or exceed applicable federal and state standards and requirements for such documents.

C. Archeological Resource Assessment and Burial Treatment Plan

Archeological Resource Assessment and Burial Treatment Plan must be developed by or under the direct supervision of an experienced and qualified Archeologist.

1. Archeologist must possess an undergraduate or graduate degree in archaeology and/or substitute a minimum of four (4) years relevant work and/or field experience. The interested offeror shall submit a CV which demonstrates their level of competency to include, but not limited to educational, academic backgrounds as well as teaching and research experience, publication, presentations, awards, honors, affiliations and other details evidencing their expertise.
2. Archeologist must possess at least three (3) years of professional experience in archaeology, including writing/directing the development of Archeological Resource Assessments and Burial Treatment Plans.
3. Archeologist must provide his/her signature on completed Archeological Resource Assessment and completed Burial Treatment Plan, to signify assurance in the quality of these documents. **Note:** Document must meet or exceed applicable federal and state standards and requirements for such documents.

D. Economic Resource Assessment

Economic Resource Assessment must be developed by or under the direct supervision of an experienced and qualified Business Expert (“BE”).

1. BE must possess an undergraduate or graduate degree in relevant areas of study including, but not limited to, Business, Economics, Marketing, and Finance and/or substitute a minimum of four (4) years relevant work and/or field experience. The interested offeror shall submit a CV which demonstrates their level of competency to include, but not limited to educational, academic backgrounds as well as teaching and research experience, publication, presentations, awards, honors, affiliations and other details evidencing their expertise.
2. BE must possess at least three (3) years of professional experience in Business, Marketing, and Management, and in writing/directing the development of Economic Resource Assessments. The interested offeror must also show knowledge in promoting healthy and productive forests and a sustainable forest industry through forest management, education, planning, information exchange and advocacy especially in Hawaiian forestry.
3. BE must provide his/her signature on completed Economic Resource Assessment to signify assurance in the quality of the Economic Resource Assessment. **Note:** Document must meet or exceed professional standards and requirements for such documents.

E. Fire/Lava Management Plan

Fire/Lava Management Plan (“PLAN”) must be developed by or under the direct supervision of an experienced and qualified Fire/Lava Management Expert (“FLME”).

1. FLME must possess an undergraduate or graduate degree in relevant areas of study including, but not limited to, Fire Science, Fire Management, Fire Ecology, and Emergency/Crisis Management and/or substitute a minimum of four (4) years relevant work and/or field experience. The interested offeror shall submit a CV which demonstrates their level of competency to include, but not limited to educational, academic backgrounds as well as teaching and research experience, publication, presentations, awards, honors, affiliations and other details evidencing their expertise.
2. FLME must possess at least three (3) years of professional experience in writing/directing the development of PLAN especially in the area of live lava flow. The interested offeror must also show knowledge regarding hazard risk perceptions and protective behaviors for wildfires, earthquakes and volcanic activity.

3. FLME must provide his/her signature on completed PLAN to signify assurance in the quality of the Plan. **Note:** Document must meet or exceed professional standards and requirements for such documents.

END OF SECTION

SECTION 3

Background and Scope of Work

3.1 Background

Wao Kele O Puna (WKOP) Forest Reserve (TMK (3)1-2-010:002 & 003) is located in the upper Puna area of Hawai'i County. At 25,856 acres (nearly forty square miles) WKOP is the largest tropical lowland rainforest in the U.S. Owned by the Office of Hawaiian Affairs (OHA), WKOP is co-managed by OHA and the Department of Land and Natural Resources (DLNR). OHA acquired the WKOP to protect its natural and cultural resources as well as the traditional and customary rights of Native Hawaiians accessing the property.

OHA will take management control of WKOP, independent of DLNR on June 27, 2016. As a steward of WKOP, OHA has the kuleana to protect, persevere, and perpetuate the cultural and natural resources of WKOP for current and future generations. As such, it is prudent for OHA to develop a Comprehensive Manage Plan (CMP) to inform how OHA may steward and manage WKOP in the most appropriate and efficient manner.

3.2 Purpose, Overview and Need

To contract the development of a CMP that will inform OHA on how it may best manage WKOP and protect, preserve, enhance, and perpetuate, its cultural and natural resources for future generations. The CMP shall exhibit cultural acumen and competency while embracing and exemplifying contemporary science, theory, technology and best forest management and conservation practices. The CMP shall provide OHA with the information needed to begin immediate implementation of the plan to include, but not be limited to the following:

- A. Historical and Baseline Resource Assessments Inclusive of Community Input.
- B. Analysis and summary of the Baseline Resource Assessments Inclusive of Historic/Current Land Uses and Related Access Issues, and how the baseline and analysis are relevant to Recommendations for how OHA is to Manage the Site and its natural and cultural resources.
- C. Potential and Feasible Land Uses for the Site Including an Economic Potential Analysis (with and without relevant existing restrictions/parameters).
- D. Implementation Construct, Plans, Guidelines, and Best Management Practices incorporated to include an Overall Conservation and Management Plan.

3.3 Timeframe

Vendor shall have eighteen (18) months from execution to complete contract.

3.4 Description of Goals and Objectives

Contractor shall generate a ten (10) year CMP for WKOP. The CMP will inform how OHA will manage the property to protect, preserve, and perpetuate the cultural and natural resources of WKOP for current and future generations. The CMP will be culturally competent and embrace contemporary science, technology, best forest management and conservation practices that can remain adaptive while considering the ecological processes specifically associated with WKOP and its surrounding areas. Contractor shall complete identified components (resource assessments, management plans, services, etc.) needed to develop the CMP to include, but not be limited to the following:

Note 1: Contractor to work with OHA Contract Coordinator regarding cultural competency throughout the development of the CMP.

Note 2: A list of known resources (past, current, and anticipated documents) that may assist Contractor in development of CMP is provided in Exhibit B.

Note 3: Contractor shall provide a cost for CMP development with and without Archaeological Inventory Survey and Burial Treatment Plan, i.e., two (2) CMP prices, one (1) including all identified resources, and one (1) without the Archaeological Inventory Survey and Burial Treatment Plan.

A. Historical and Baseline Resource Assessments Inclusive of Community Input.

1. Work with OHA Contract Coordinator as appropriate to understand how the Project fits within OHA's Vision, Mission, and Strategic Plan and Results in order to understand the overall conceptual and philosophical direction of the Project.
2. Provide locative information and mapping that contain a comprehensive summary of the Project site, its historical and current land uses and access related issues.
3. Provide comprehensive baseline assessments of the properties resources inclusive of historical and current conditions that will inform the plan including, but not limited to:
 - a. Comprehensive Biological Resource Assessment; (See 3.5.B);
 - b. Archaeological Inventory Survey and Burial Treatment Plan for known Archaeological Sites; (See Exhibit 3.5.C); and
 - c. Comprehensive Natural Resource Assessment; (See Exhibit 3.5.D).

Note: Contractor shall provide a cost for CMP development with and without Archaeological Inventory Survey and Burial Treatment Plan, i.e., two (2) CMP prices,

one (1) including all identified resources, and one (1) without the Archaeological Inventory Survey and Burial Treatment Plan.

- a. Comprehensive Economic Resource Assessment (See Exhibit 3.5.D);
 - b. New and Recent Lava Flow Documentation and Ecological Assessment (See Exhibit 3.5.E); and
 - c. Facilitation services to engage/solicit; community, relevant stakeholders, and consult with the AHA KUKA's (OHA's Selected community-based advisory body) to gather their input. (See Exhibit 3.5.F.)
- B. Analysis of the Aforementioned Assessments Inclusive of Historic and Current Land Uses and Related Access Issues with Recommendations for how to Manage the Site.
 1. Provide an over-arching and integrated analysis for a WKOP Forest Risk/Threat Assessment including but not limited to:
 - a. Identify all known existing internal and external WKOP social, political and environmental risks/threat with explanation;
 - b. Rank risks for each category with mitigation recommendations;
 - c. Identify Forests Management Units with Justification;
 - d. Required Infrastructure and Circulation; and
 - e. Other Contractor Recommendations.
 2. Provide a compilation and summary of all previous studies related to WKOP with a synopsis of their recommendations.
 3. Provide an overall analysis of 1 and 2 above with overall recommendations.
- C. Potential and Feasible Land Uses for the Site Including an Economic Potential Analysis (with and without relevant existing restrictions and parameters). Shall include, but not be limited to:
 1. Identify and describe potential land/forest uses within WKOP. Include relative impacts and recommended mitigation actions for each use.
 2. Necessary and Relevant Compliance, Permitting and Entitlements to Enable the Aforementioned Land Uses.
 3. Assessment and Analysis of WKOP Economic and Revenue Generation Potential.
 - a. With current parameters including, but not limited to the State laws and rules and the conservation easements (Contractor to reference and integrate information from the OHA's existing reports).

- b. With the removal of the State Forest Reserve Designation (“FRD”). This shall include, but not be limited to:
 - 1) The Pros and Cons relative to the removal of the FRD.
 - 2) Recommendations of how to handle issues that are currently covered in the applicable Forest Reserve Designation to include, but not be limited to its:
 - a) General Provisions
 - b) Public Use
 - c) Permits
 - c. To include feasibility of each option and activity with probability of success and potential consequences.
- D. Implementation Construct, Plans, Schedule and Phasing, Guidelines, and Best Management Practices incorporated to inform an Overall Conservation and Management Plan shall include, but not be limited to:
 - 1. Identify and Recommend Overall Forest Management Strategic Options for WKOP with explanation and justification. For example:
 - a. Forest Level Management (Large Scale);
 - b. Most Ideal/Pristine Native Forest (Special Ecological Area); and
 - c. Hybrid of 1 and 2.
 - 2. Invasive Species Control Plan (Contractor to reference and incorporate the existing Invasive Species Management Plan and the historic and existing work completed by the previous Invasive Species Management Contractors.)
 - 3. Endangered Species, Native Hawaiian and Polynesian Species Critical Habitat Restoration Plan.
 - 4. Access and Risk Management Plan.
 - a. Public Access;
 - b. Cultural and Traditional and Cultural Practitioner Access;
 - c. Recommended Signage; and
 - d. Fire/Lava Treatment Plan; and Meeting Facilitator Services.
 - 5. Strategic and Programmatic Network and Partnering Plan
 - a. Funding;
 - b. Intellectual and Human Resources; and
 - c. Community.

6. Prioritized Management Phasing and Implementation Schedule and Budget inclusive of recommended actions and best management practices shall include, but not limited to:
 - a. Necessary and Relevant Compliance, Permitting and Entitlements.
 - b. Management Units;
 - c. Recommendations for maintenance and management of the existing improvements (i.e. Roads, gates, etc.);
 - d. Recommended Staffing and/or Contracting Needs for Implementation:
 - 1) Include necessary skillsets, experience and desirable capacity
 - 2) Expected duties, responsibilities, and recommended training;
 - e. Identification of Pertinent and Feasible Funding, Programmatic and Strategic Partnerships to include the roles of each and a schedule of relative interaction and collaboration opportunities with value added analysis of each;
 - f. Monitoring and Reporting Schedule;
 - g. Schedule for CMP Update; and
 - h. Provide an overall summary that would communicate the overall plan in a clear and concise manner with appropriate references to the appropriate resources and elements of the CMP and its relevant scope of work.

3.5 Scope of Work

The following section reflects OHA substantive expectations relative to specific areas of the CMP. The OHA Contract Coordinator will meet/communicate with CONTRACTOR to clarify any part of this section as requested by Contractor.

- A. Biological Resource Assessment – shall include but not limited to:
 1. Review of available data and reports.
 2. Biological Integrity Analysis (Assess forest structure and health).
 3. Field surveys, data aggregation, and mapping.
 4. Divide WKOP into Forest Management Units (FMU), see Invasive Species Management Plan (ISMP) when completed.
 5. Habitats
 6. Endangered Hawaiian Forest Birds.
 7. Other Native Hawaiian Forest Birds.
 8. Native Hawaiian Invertebrates.

9. Endangered and Threatened Plants.

10. Other Native Plants.

11. Threats to Plants and Animals

- a. Introduced Forest Birds;
- b. Introduced Game Birds;
- c. Introduced Mammals;
- d. Introduced Reptiles and Amphibians;
- e. Introduced Arthropods;
- f. Introduced Plants;
- g. Introduced Mollusks; and
- h. Special Designation Areas.

12. Define the boundaries of plant communities.

13. Interpolate spatial distributions of principal species of concern.

- a. Native Plants and Animals; and
- b. Invasive Plant and Animals.

14. Map sightings and count of mammals, birds, reptiles, amphibians, and invertebrates.

15. Identify habitat boundaries for each main fauna category.

B. Natural Resource Assessment - to include but not limited to:

1. Review of existing available data and reports.

2. Acquisition of data layers related to:

- a. Climate;
- b. Global climate change;
- c. Geology and Soils;
- d. Hydrology;
- e. Topography; and
- f. Land use:
 - 1) Current land use designations and restrictions;
 - 2) Forest Legacy Expectations, Restrictions, and Potential Penalties; and
 - 3) Applicable Case Law (PDF vs. Campbell Estate).

3. Environmental contaminants.

4. Improve mapping of new and existing layers.

5. Produce large-format digital maps for key resources and areas.

C. Archaeological Inventory Survey and Burial Treatment Plan – shall include, but not be limited to:

1. After review of existing available data and reports, Contractor shall conduct an Archaeological Inventory Survey (“AIS”) of known cultural sites and burial caves within WKOP.
2. Contractor shall also develop a Burial Treatment Plan (“BTP”) for WKOP.
3. The AIS shall include the identification and documentation of known archaeological historic properties and nā iwi kūpuna (human burials) within WKOP.
4. The AIS shall identify known surface archaeological features, including known and or rediscovered burial lava tube entrances.
5. Background research will be conducted to target areas where archaeological features exist and where lava tube entrances are likely to exist. For the surface survey, archaeologists will walk the targeted areas looking for archaeological features and lava tube entrances.
6. Each surface feature, including lava tube entrances, will be measured, digitally photographed, described, and mapped with Global Positioning Systems (“GPS”). The context of each feature will be discussed in terms of its position on the landscape, relationship to other features, and association with surface artifacts. Non-permanent, unobtrusive, non-destructive labels shall be attached to each archaeological feature/location. Plan view maps will be drawn for surface architecture as appropriate.
7. Lava Tube Documentation

Since GPS technology will not be functional underground, standard mapping methods using disto-lasers, tape, and compass may be employed. When available (sky lights, cave openings) GPS points will also be taken and integrated with non GPS information. Nā iwi kūpuna and other archaeological features will be mapped to scale, documented with detailed notes, and their locations plotted within known burial lava tubes/caves. Nā iwi kūpuna, artifacts, and other cultural material will be digitally photographed, documented, and left in place. However, items of significant value may be collected for preservation and safe keeping with notice to and the express permission of the OHA Contract Coordinator. Nā iwi kūpuna will be treated in a culturally appropriate manner and with the utmost respect. No foreign material will be left in the lava tubes/caves, and work will be

conducted in a way that will minimize impact to archaeological and natural features. Handling of nā iwi kūpuna will be kept to a minimum and no excavation will be conducted at this time. Non-permanent, unobtrusive, non-destructive labels shall be situated near archaeological features including nā iwi kūpuna. The Contractor shall dedicate up to fifteen (15) days to survey the three (3) known burial lava tubes/caves. It is hoped that this will be sufficient time to survey the archeological resources in these lava tubs/caves. If after this time the Contractor believes there is justification to continue the survey, Contractor may submit a proposal to the OHA Contract Coordinator. The OHA will have the discretion to approve continued work in this area for additional funds or not.

8. Important Note: Confidential information such as burial lava tube entrances, artifacts, numbers and locations of nā iwi kūpuna, and digital photographs of nā iwi kūpuna, **shall not be made public and shall not be a part of the general CMP**. Such information will be kept in a separate “Confidential” file. This file will only be shared with the OHA and the OHA will have the discretion to share this information with others on a “as need to know” basis.

9. AIS Report

The AIS report shall meet all Hawai‘i State and Federal standards. It is expected that this report will be a state-of-the-art document, following current theoretical and applied trends in the field of cultural resource management. The report will include maps and descriptions of all archaeological resources, high resolution photographs, significance determinations for each archaeological site, assessments of condition for each site, as well as recommendations for preservation.

10. Burial Treatment Plan

Contractor will develop a Burial Treatment Plan (“BTP”) conforming to the standards set forth in §13-300-33 HAR. Contractor will be available to assist the OHA in consultation with State Historic Preservation Division (“SHPD”), the Hawai‘i Island Burial Council, and the community, as needed. The BTP shall include, but not be limited to:

- a. ‘Aha Kūkā and community input regarding protection and mālama nā iwi kūpuna;
- b. Evidence of a search for lineal and cultural descendants;
- c. Names of any recognized descendants and their position on burial treatment;
- d. A description of the proposed treatment for all burial sites, including a statement of preservation in place or relocation;
- e. Maps showing the number and locations for all burial sites with GPS;

- f. A description of the current condition of all burial sites with determination if items have been moved or may have been removed; and
- g. Recommendations for preservation.

Note: OHA reserves the right to review and comment on all reports and request edits as necessary before any report is submitted to SHPD.

D. Economic Resource Assessment – shall include, but not limited to:

- 1. Review and assessment of prior economic assessment by Townscape, Inc. in 2011.
- 2. Assessment of current land designations and restrictions (Forest Reserve and Conservation District with review of an analysis provided to the OHA by Anden Consulting).
- 3. Assessment and determination of land designations that would provide optimum economic benefit, i.e., optimum designation.
- 4. Determination of process, cost, and time, to change current land designation to optimum designation.
- 5. Assessment and determination regarding what events and conditions may trigger Forest Legacy Program term requiring the OHA to repay funding to purchase WKOP and whether it would be at purchase price or fair market value.
- 6. Potential sustainable income and/or revenue opportunities under optimum designation.
- 7. Feasibility analysis of “Top Ten” economic opportunities under optimum designation.
- 8. Costs benefit analysis relative to current designation and opportunities vs. optimum designation and opportunities.
- 9. Comparative summary of opportunity costs & feasibility.
- 10. Implementation Needs and Recommendations.

E. Fire and Lava Management Plan – shall include, but not limited to:

- 1. Contractor shall develop a Wildfire and Lava Mitigation and Preparedness Plan for WKOP.

2. The Plan will consist of a property profile, fire and lava risk assessment, fire and lava prevention recommendations, fire/lava mitigation action plan, emergency operations and suppression procedures, and a monitoring plan and a fire and lava resources map.
3. The plan shall be supported by field reconnaissance, Geographic Information Systems (GIS) data, and research into pertinent fire issues for the area and in Hawai'i.
4. All components of the Plan will have a clear set of objectives to complete during the ten (10)-year term of the CMP.
5. Property profile: The plan will begin with a review of the WKOP Forest and its association with fires and lava. This will include property location, zoning and other relevant regulations, resource values, and adjacent land ownership and uses.
6. Fire and Lava Risk Assessment: A risk assessment of the property to fires and lava includes an overview of the fire and lava history within the property and surrounding areas. The risk is further detailed by considering the geography, weather, and vegetation (fuels) and the roles they play in influencing fire starts and fire/lava behavior. The protection capabilities and infrastructure of the property and agency will also be assessed, including water sources, roads, utilities, and structures. All infrastructure locational information will be collected with a GPS unit and put into a GIS database for further planning and cartography. All raw-form (shape files) GIS data will be made available to OHA.
7. Fire and lava prevention: This section will include all relevant recommendations to prevent a fire and lava on the property as a result of the analysis of the fire risk and lava assessment. All prevention actions which may incur a cost will be detailed and stage for implementation over the five (5)-year planning period. For example, a recommendation may be to display signs in strategic locations which make visitors aware of the current fire hazard level to prevent them from starting a fire. The cost of these signs would be given a budget. This is an example of a one (1)-time cost. However there are many prevention measures which may occur regularly over the five (5)-years that incur little or no cost.
8. Fire and lava mitigation action plan: The fire and lava mitigation action plan is also a product of the risk assessment and comprise of objectives to mitigate the impacts if and/or when fire and lava were one to occur. These include fuels management and infrastructure improvement projects and land use planning. These types of actions are considered pre-suppression work as they always take place prior to the occurrence and suppression of a fire. These

projects will incur a cost and this will be given a budget and implementation period per the five (5)-year planning period.

9. Emergency operations and suppression procedures: Emergency operations are always better left to emergency professionals like the Fire Department, Division of Forestry and Wildlife, or Civil Defense, however if there is an incident within the forest it is best to be prepared to offer help where necessary. In this section of the plan, the Offeror will work with the OHA and other emergency response agencies to develop the best way to report, respond, and take action in the event of a fire. During the suppression of a fire it is important to have clear protocols on collaboration, communication, and available resources.
10. Monitoring and evaluation plan: This section will explain the monitoring procedures necessary to maintain the property and agencies readiness to fire and lava. Additionally, it will provide techniques for evaluating the seasonal changes and land used changes which may occur on the property and affect the fire and lava risk level.
11. Fire and lava resources map: A large format fire and lava response map will be produced for the OHA using GIS software. This map shall include, but not limited to the following elements:
 - a. Property boundaries;
 - b. Vegetation cover;
 - c. Infrastructure – structures, roads, gates, utilities, water sources;
 - d. Elevation and terrain map;
 - e. Government fire response zones;
 - f. Landowner information; and
 - g. U.S. Geological Survey (USGS) topographic map.

F. Meeting Facilitator Services

1. Planning in collaboration with the OHA staff, up to twelve (12) pre-Major Meetings as needed and determined by the OHA, to include, but not limited to:
 - a. Location, day, time, format, agenda, meeting protocols, and cultural protocols, in consultation with the OHA;
 - b. Radio and newspaper announcements and press releases, in consultation with the OHA. Note, all expenses related to marketing of meetings will be taken care of by the OHA; and
 - c. Meet with the OHA as needed to ensure adequate understanding and communications.

2. Facilitation of up to twelve (12) Major Meetings, as needed and determined by the OHA, shall include, but not be limited to:

- a. Advisory Council (AC) and or Community Meetings;
- b. Meetings are anticipated to last up to three (3) hours; and
- c. The majority of the meetings are anticipated take place in Hilo and or Puna, however meetings may also take place in other areas on Hawai'i Island as necessary;

3. Meeting Summaries

Contractor shall provide the OHA with full and comprehensive reports for each Major Meeting, shall include, but not be limited to:

- a. Documentation of any and all pre and post meetings, when such take place; and
- b. Reports are to be submitted to the OHA within two weeks of any meeting. In addition, reports are to be typed and include relevant edited notes, agenda, goals, task, results, summary, recommendations, and mana'o.

G. Final Planning Document

Considering all elements of Section 3 Scope of Work, the contractor shall, submit a culminating document that clearly ties all of the elements of the goals, objectives and scope together. This document shall contain and executive summary and be coordinated to make sense of all pertinent information to justify the contractor's final recommendations for the CMP. This document is to serve as the final plan submittal, shall contain all elements of the scope and is subject to OHA's final approval.

END OF SECTION

SECTION 4

Proposal Format and Content

4.1 General Instructions for Completing Applications

A. Submission

When an offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks identified in this RFP. The offeror's proposal must demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP.

The submission of a proposal shall constitute the offeror's indisputable representation of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work to the offeror.

An offeror shall submit one (1) original proposal, marked "ORIGINAL" four (4) copies of the original marked "COPY", and one cd and/or flash drive containing the submitted proposal in a portable document form ("pdf"). It is imperative that an offeror submit only one (1) original and the required number of copies. The outer envelope or packaging of the proposals shall be **sealed and clearly marked with the RFP number** and title, the offeror's name, address, email address and telephone number.

Any and all corrections to a proposal shall be initialed in ink by the person signing the proposal for the offeror. Any illegible or otherwise unrecognizable corrections or initials may cause the rejection of the proposal.

Before submitting a proposal, each offeror must:

1. Thoroughly examine the solicitation documents. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documentation.
2. Be familiar with Federal, State and County laws, ordinance, rules and regulations that may in any manner affect cost, progress or performance of the work.

Proposals shall be submitted to the OHA in the prescribed format outlined in this RFP. A written response is required for each item, unless indicated otherwise. No supplemental literature, brochures or other unsolicited information should be included in the proposal packet.

B. Trade Secrets/Confidential Information

If an offeror believes that any portion of their proposal contains information that should be withheld as confidential, the offerors shall provide a written request for nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, shall be clearly marked, and shall be readily separable from the proposal packet to facilitate eventual public inspection of the non-confidential sections of the proposal packet. Note that price is not considered confidential and will not be withheld.

C. Intellectual Property Rights

The OHA reserves the right to unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the work product, and to transfer the intellectual property to third parties for the OHA's purposes.

The Contractor understands that the information obtained from these efforts is the sole property of the OHA and any use of the information must be approved by OHA.

D. Offeror Optional Services

Offeror Optional Services are defined as services and/or goods proposed (by Offeror(s)) that are not included in the "Scope of Work" of the RFP and would be considered enhancements, thereof. Costs for the Offeror Optional Services, selected by the OHA, will be added to the total amount of Contract or be included in the Contract as an optional services item to be exercised by the OHA if and when elected.

4.2 The Proposal Application Sections

- A. The proposal forms must be completed and submitted to OHA by the required due date and time, and in the form prescribed by the OHA. Electronic mail and facsimile transmissions shall not be accepted.
- B. Offerors shall submit their proposals under the offeror's exact legal name that is registered with the State of Hawai'i Department of Commerce and Consumer Affairs and shall indicate this exact legal name. Failure to do so may delay proper execution of the contract.
- C. Offeror's authorized signature shall be an original signature in ink. If the proposal is unsigned or the affixed signature is a facsimile or a photocopy, the proposal shall be automatically rejected. If the proposal is not signed by an

authorized representative as submitted on the corporate resolution, the proposal shall be automatically rejected.

- D. A proposal security deposit is not required for this RFP.
- E. Proposal must be typed on plain, white, letter-size paper with one-inch margins on all sides in 12 point font. Printed on one (1) side only.
- F. Documents that require submission on an 11x17 to be legible is allowable.
- G. The numerical outline for the application, the titles/subtitles, and the offeror name and RFP identification information on the top right hand of the corner of each page should be included.
- H. Consecutive page numbering of the proposal application should begin with page one and end with the last numbered page of the complete proposal.
- I. Proposals must be submitted on white, 8 ½" x 11" paper and shall be bound by either a three ring binder or spiral binding. Tabbing of sections is required.
- J. Other supporting documents may be submitted in an Appendix, including visual aids to further explain specific points in the proposal; if used, they should be referenced.

4.3 Economy of Presentation

Proposals shall be prepared in a straightforward and concise manner, and describe the offering(s) and capabilities in a format that is reasonably consistent and appropriate to the purpose. Emphasis shall be on completeness and clarity of content. If any additional information is required by the OHA regarding any aspect of the Offeror's proposal, it shall be provided within seven (7) business days after request.

4.4 Oral Presentation

Respondents to this RFP may be required to make an oral presentation of their proposal to ensure a thorough and mutual understanding. The OHA shall schedule the time and location for these presentations (if required); normally within ten (10) days following the Proposals Due date.

Failure to provide an oral presentation of their proposal to the OHA will result in the Offeror's proposal being rejected without further consideration.

4.5 Offeror's Authority to Submit an Offer

The OHA will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right or ability

to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

4.6 Required Review

Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, Federal, and County laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify the OHA's Procurement Unit 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.

4.7 Proposal Preparation Costs

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

4.8 Tax Liability

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 Hawai'i GET at the current 4.712% for sales made on O'ahu, and at the 4.167% rate for the islands of Hawai'i, Maui, Moloka'i, and Kaua'i. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Federal I.D. Number and Hawai'i General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawai'i General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the OHA.

4.9 Property of OHA

All proposals become the property of the OHA.

4.10 Proposal Objectives

One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.

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.

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 3, Scope of Work.

Offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.

4.11 Proposal Forms

To be considered responsive, the Offeror'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.

- A. 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 7, Attachment 1). Failure to do so may delay proper execution of the Contract.

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

- B. Offer Form, Page OF-2. Pricing shall be submitted on Offer Form OF-2 (Section 7, Attachment 2). 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.

4.12 Proposal Contents

Proposals must:

- A. Include a cover letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP.
- B. Include a signed Offer Form OF-1 with the complete name and address of Offeror's firm and the name, mailing address, telephone number, and fax number of the person the State should contact regarding the Offeror's proposal. See Section 7, Attachment 1, Offer Form OF-1, for a copy of the form.

Include a completed Offer Form OF-2. See Section 7, Attachment 2, Offer Form OF-2, for a copy of the form
- C. If subcontractor(s) will be used, append a statement to the cover letter from each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:
 - 1. The general scope of work to be performed by the subcontractor;
 - 2. The subcontractor's willingness to perform for the indicated.
- D. Provide all of the information requested in this RFP in the order specified.
- E. 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.

4.13 Proposal Requirements

- A. Minimal Administrative Requirements
 - 1. Cover Letter- in the form of a standard a business letter and submitted on official business letterhead and shall be signed by an authorized representative;
 - 2. Table of Contents;
 - 3. Tabbing of Sections;
 - 4. Offer Forms OF-1;
 - 5. Offer Form OF-2; and
 - 6. Executive Summary – provides a program overview.
- B. Proposal Application Requirements
 - 1. Section 1 – Overall Timeline and Cost Breakdown for each work phase;

2. Section 2 – Action Plan – Include schedule of work phase, of cost breakdown of each work phase, methodology, deliverables, personnel, identifying lead for work phase;
3. Section 3 – Organization/Staffing Chart with name of personnel who will be actually be working on this project;
4. Section 4 – Project Staffing Qualifications and Organization;
5. Section 5 – Staff Resumes of Personnel who will be actually be working on this project;
6. Past projects;
7. Letters of Recommendations (two (2) minimal for lead and each subcontractor);
8. Most Recent Financial Statement of all firms in Offeror’s team; and
9. HCE Certificate of Vendor Compliance for all firms in Offeror’s team (as per Section 2.1)

4.14 Receipt and Register of Proposals

Proposals will be received and receipt verified by two (2) or more procurement officials on or after the date and time specified in Section 1, or as amended.

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

4.15 Best and Final Offer

If the OHA determines a Best and Final Offer (“BAFO”) is necessary, it shall request one (1) from the Offeror. The Offeror shall submit its BAFO and any BAFO received after the deadline or not received shall not be considered.

4.16 Modification Prior to Submittal Deadline or Withdrawal of Offers

The Offeror may modify or withdraw a proposal before the proposal due date and time.

Any change, addition, deletion of attachment(s) or data entry of an Offer may be made prior to the deadline for submittal of offers.

4.17 Mistakes in Proposals

Mistakes shall not be corrected after award of contract.

When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

Once discussions are commenced or after best and final offers are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

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.

If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror 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 Offeror 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 Offerors; 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 an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror 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 Offeror'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 Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

END OF SECTION

SECTION 5

Evaluation Criteria

5.1 Evaluation of Proposals

An evaluation committee approved by the OHA's Ka Pouhana, CEO or designee will evaluate all responsive and responsible proposals. The evaluation of such proposals will be based solely on the evaluation criteria set out in this RFP. The evaluation committee will be composed of individuals with experience in, knowledge of and program responsibility for the requirements identified in 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 Offerors.

5.2 Minimum Administrative Requirements Check

Sealed proposals must be received by 3:00 p.m. HST of the day of the deadline. Each sealed proposal shall be opened and inspected by two (2) procurement staff to ensure that all the minimum administrative requirements below, such as necessary forms, information and signatures have been met. Those proposals that do not meet minimum administrative requirements will be immediately disqualified and the offerors of the disqualified proposals shall be informed in writing.

A. Minimum Administrative Requirements for this RFP:

1. Cover Letter- in the form of a standard a business letter and submitted on official business letterhead and shall be signed by an authorized representative;
2. Table of Contents;
3. Tabbing of Sections;
4. Offer Forms OF-1;
5. Offer Form OF-2; and
6. Executive Summary.

B. Verification each section submitted

1. Section 1 – Overall Timeline and Cost Breakdown;
2. Section 2 – Action Plan – Section 3 – Organization/Staffing Chart with name of personnel who will be actually be working on this project;
3. Section 4 – Project Staffing Qualifications and Organization;
4. Section 5 – Staff Resumes of Personnel;

5. Past projects;
6. Letters of Recommendations (two (2) minimal for lead and each subcontractor);
7. Most Recent Financial Statement of all firms in Offeror's team; and
8. HCE Certificate of Vendor Compliance for all firms in Offeror's team (as per Section 2.1).

5.3 Initial Evaluation

The proposals that do meet the minimum requirements will be evaluated and scored in accordance with the criteria in Section 5.5 below by members of an EC. Upon scoring all proposals, the EC will prioritize and list proposals according to the three (3) highest scores on a Priority List.

5.4 Kūkākūkā (Discussion Priority Listed Offerors)

The OHA invites priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The OHA 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 purpose of the Kūkākūkā is to ensure mutual understanding of expectations and services relative to the RFP. Each Offeror will be given time (up to sixty (60) minutes) to present their proposals. This will be followed by a Question and Answer session (up to sixty (60) minutes) allowing the OHA to ask questions.

5.5 Best and Final Offers

Subsequent to the Kūkākūkā, each Offeror will be given the opportunity to provide the EC with their Best and Final Offers ("BAFO"). BAFOs shall be in the form of an amendment to the original Proposal clearly identifying additional and or replacement language. Offeror will have seven (7) days, subsequent to meeting with EC, to submit a BAFO to EC.

5.6 Final Evaluation and Award

The Evaluation Committee shall re-evaluate and re-score Priority List considering original proposal, Kūkākūkā, and any subsequent BAFO, if any. The final evaluation will be based on the same criteria as the initial evaluation (below). The Offeror with the highest score, and represents the greatest value and benefit to OHA and its beneficiaries, will be selected to receive the award. The Issuing Officer will notify all other Offerors in writing that a different Offeror has been selected.

5.7 Evaluation Criteria

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

Evaluation Categories and Thresholds

EVALUATION CATEGORIES	MAXIMUM POINTS
Section 1- Background and Summary: The section shall clearly and concisely summarize and highlight the contents of the proposal in such a way to provide the OHA with a board understanding of the entire proposal. Include a summary of the plan how the interested offerors' will meet the goals and objectives related to the scope of work, and how the proposed service is designed to meet the problem/need identified in the service specifications.	15
Section 2 - Experience and Capability: Experience successfully developing, or assisting in the development of, Comprehensive Management Plans (CMP) for 'āina in Hawai'i.	20
Section 3 – Project Organization and Staffing: The interested offeror shall provide the minimal qualification (including experience) for staff assigned to the proposed project. Attach resumes and relevant professional background/experience of each staff. Include the organizational chart. The interested offeror shall have the qualifications and experience of organization and staff to successfully complete this project.	15
Section 4 - Service Delivery: The interested offeror shall clearly demonstrate the best value based on scope for work, deliverables, and expectations and needs relative to associated cost.	30
Section 5 – Cultural Competence: Understand the connection and interrelationship between kanaka and 'āina. Understand OHA's strategic plan as it relates to 'āina. Ability to develop a CMP that will be culturally focused and driven.	20
TOTAL POSSIBLE POINTS	100

5.8 Evaluation Work Sheet (Used by Evaluation Committee)

Category

Section 1- Background and Summary	Possible Points	15 Maximum Points
<ul style="list-style-type: none"> The interested Offeror demonstrated a thorough understanding of the purpose and scope of the RFP, including but not limited to deliverables for specific resource assessments, management plans, and services such as Meeting Facilitator. 	4	
<ul style="list-style-type: none"> The interested Offeror demonstrated an understanding of the importance of working with the ‘Aha Kūkā; and the need to interact with the community in developing the CMP. 	4	
<ul style="list-style-type: none"> The interested Offeror provided a summary and timeline including a cost proposal for associated with the schedule of work provided. The interested Offeror’s summary plan demonstrated appropriateness to the project, is efficient, practical, thoughtful and innovative. 	7	
Section 2 - Experience and Capability	Possible Points	20 Maximum Points
<ul style="list-style-type: none"> The interested Offeror demonstrates a keen understanding and awareness of Native Hawaiian culture, the OHA, the history of WKOP, the stakeholders, the general Native Hawaiian Community. 	5	
<ul style="list-style-type: none"> The interested Offeror demonstrated prior experience related to developing a Comprehensive Management Plans (CMP) for land and organizations here in Hawai‘i. 	3	
<ul style="list-style-type: none"> The interested Offeror demonstrated prior experience related to developing other programs and plans that are similar in nature and complexity to developing a CMP. 	3	

<ul style="list-style-type: none"> The interested Offeror demonstrated prior experience related to organizing, networking, and collaborating with other entities, indicative of the type and level of work required to develop a CMP. 	3	
<ul style="list-style-type: none"> The interested Offeror's understanding of the project, experience in doing this kind of work, and capacity to successfully complete this project, relative to cost, constituted a sound investment for OHA and represented the best value in terms of satisfying this RFP. 	3	
<ul style="list-style-type: none"> The interested Offeror demonstrated the ability to deliver this project on time and within budget. 	3	

Section 3 - Project Organization and Staffing**Possible
Points****15 Maximum
Points**

<ul style="list-style-type: none"> The interested Offeror demonstrated the skills, abilities and knowledge necessary to develop a CMP including community relations. 	4	
<ul style="list-style-type: none"> The interested Offeror demonstrated the ability to effectively manage and coordinate a large project, develop teams and collaborations, innovatively solve problems and issues, and enhance community relations. 	4	
<ul style="list-style-type: none"> The interested Offeror demonstrated a professional, clear, and concise methodology and schedule for the scope of work that is appropriate, efficient, practical, thoughtful and innovative. 	4	
<ul style="list-style-type: none"> The interested Offeror provided the qualification (including experience) for staff assigned to the program. Has the resumes and relevant professional background/experience of each staff and including staff to manage the day-to-day operations been attached. Including the organization chart. 	3	

Section 4 - Service Delivery	Possible Points	30 Maximum Points
<ul style="list-style-type: none"> The interested Offeror shall include at a minimal all elements of Section 3 Scope of Work, and shall, submit a culminating document that clearly ties all of the elements of the scope together. This document shall contain and executive summary and be coordinated to make sense of all pertinent information to justify the contractor's final recommendations for the CMP. This document is to serve as the final plan submittal, shall contain all elements of the scope and is subject to OHA's final approval. 	30	
Section 5 - Cultural Knowledge and Understanding	Possible Points	20 Maximum Points
<ul style="list-style-type: none"> The interested Offeror demonstrated an understanding of the Office of Hawaiian Affairs, its mission, purpose, and vision, and its strategic plan and priorities relative to 'āina. 	5	
<ul style="list-style-type: none"> The interested Offeror demonstrated an understanding of the history of Wao Kele O Puna (WKOP) and surrounding community and an understanding of the issues and concerns of OHA, beneficiaries, and community relative to WKOP including, but not limited to: use, geothermal, access, hunting, commercial tours, and lava activity. 	8	
<ul style="list-style-type: none"> The interested Offeror demonstrated an understanding of the Hawaiian Culture, the connection and interrelationship between kanaka and 'āina, and an ability to develop a CMP that will be culturally focused and driven. 	7	

END OF SECTION

SECTION 6

Contractor Selection and Contract Award

6.1 Award of Contract

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

6.2 Proposal as Part of the Contract

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

6.3 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).

6.4 Debriefing

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

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

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

6.5 Approvals

Any Contract 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.

6.6 Contract Execution

CONTRACTOR receiving award shall enter into a formal written contract in the form as in Exhibit A. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the effective date of contract. The OHA 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.

6.7 Payment

Incremental payments shall be made to the awarded Contractor on a quarterly basis, upon receipt of reports that meet the expectations of the RFP. The receipt of quarterly reports shall be due based on the timeline submitted by the Contractor in the proposal, or as amended.

6.8 Contract Invalidation

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

END OF SECTION

SECTION 7

Attachments and Exhibits

- Attachment 1: OFFER FORM, OF-1
- Attachment 2: OFFER FORM, OF-2
- Exhibit A: SAMPLE CONTRACT FORM
- Exhibit B GENERAL CONDITIONS

**ATTACHMENT 1:
OFFER FORM, OF-1**

FROM: _____

TO: OHA Procurement Officer:
Kamana‘opono Crabbe, Ph. D
Ka Pouhana, CEO
Office of Hawaiian Affairs, State of Hawai‘i
560 North Nimitz Highway Suite 200
Honolulu, Hawai‘i 96817

RE: Office of Hawaiian Affairs, State of Hawai‘i
OHA RFP NO. WKOP 2015-09
Wao Kele O Puna Comprehensive Management Plan

Dear Dr. Crabbe:

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 2:
OFFER FORM, OF-2**

Total contract cost for accomplishing the development and delivery of the services	\$ _____
Contract period:	_____ to _____

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

SAMPLE CONTRACT

OFFICE OF HAWAIIAN AFFAIRS

CONTRACT NUMBER _____

REQUEST FOR PROPOSALS

PURCHASE OF GOODS AND SERVICES

CONTRACT BETWEEN

OFFICE OF HAWAIIAN AFFAIRS

AND

XXXXXXXXXXXX

This Agreement, executed as of this _____ day of _____, 2015, by and between, the Office of Hawaiian Affairs (“OHA”), a body corporate under the Constitution of State of Hawai‘i, by its Ka Pouhana, CEO , acting by and on behalf of the Board of Trustees, whose principal place of business and mailing address is 560 North Nimitz Highway, Suite 200, Honolulu, Hawai‘i 96817, and **[NAME OF CONTRACTOR]** (“CONTRACTOR”), a Hawaii corporation, by its President, whose principal place of business and mailing address is **[XXXXXX], Honolulu, Hawai‘i 96[XXX], Federal Tax ID No. [99 – XXXXXX]**

W I T N E S S E T H:

WHEREAS, OHA was established to better the conditions of native Hawaiians and Hawaiians as defined Hawai‘i Revised Statutes (“HRS”) sections 10-2, 10-4(4), 10-4(6) and 10-4(8), and other applicable law(s), as amended; and

WHEREAS, OHA is in need of services for “Comprehensive Manage Plan” as described in this Agreement and its attachments; and

WHEREAS, OHA has awarded this Agreement through competitive sealed proposals submitted for RFP No. WKOP 2015-09 pursuant to Hawaii Revised Statutes as amended and its companion Hawai‘i Administrative Rules; and

WHEREAS, the CONTRACTOR has been evaluated as a responsible and responsive offeror whose proposal is advantageous for OHA, such evaluation factors as capacity, qualifications, and resources to perform the terms and conditions agreed to under this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by OHA, provide all the goods and services set forth in Attachment – S 1, which is hereby made a part of this Agreement.

2. Time of Performance. The performance required of the CONTRACTOR under this Agreement shall be completed in accordance with the Time Schedule set forth in Attachment – S 2, which is hereby made a part of this Agreement.

3. Compensation. The CONTRACTOR shall be compensated according to the Compensation provision set forth in Attachment – S 3, which is hereby made a part of this Agreement.

4. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement.

5. CONTRACTOR's Acknowledgment Statement. The CONTRACTOR's Acknowledgment Statement is attached and is made a part of this Agreement.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached hereto as and made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Notices. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the Ka Pouhana, CEO shall be sent to the Ka Pouhana, CEO's business and mailing address as set forth in the first paragraph of this Agreement. Notice to the CONTRACTOR shall be sent to the CONTRACTOR's business and mailing address as set forth in the first paragraph of this Agreement. 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 OHA in writing of any change of address.

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

OFFICE OF HAWAIIAN AFFAIRS

Date: _____, 2015

By _____
KAMANA'OPONO CRABBE, Ph.D.
Its Ka Pouhana, CEO

"OHA"

[NAME OF CONTRACTOR]

Date: _____, 2015

By _____
[NAME]
Its [TITLE]

"CONTRACTOR"

APPROVED AS TO FORM:

By _____
ERNEST M. KIMOTO
Its Ka Paepae, Corporate Counsel

Date: _____, 2015

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF HAWAI'I)
) SS.
CITY AND COUNTY OF HONOLULU)
)
)
)

On this _____ day of _____, 20____, before me personally appeared [**NAME OF SIGNING AUTHORITY**], to me personally known, who, being by me duly sworn, did say that such person is the [**POSITION**] of [**NAME OF CONTRACTOR**], 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 signature)

(print name) Notary Public, State of Hawai'i

(Official Stamp or Seal)

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:

☐ Doc. Date: _____ OR ☐ Undated at time of notarization

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notary act is performed)

Signature of Notary

Date of notarization

Printed Name of Notary

(Official Stamp or Seal)

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“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 percent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State or OHA, 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.

On behalf of CONTRACTOR’S NAME, CONTRACTOR, the undersigned does declare, under penalty of perjury, 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.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or OHA employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or OHA within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or OHA employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or OHA employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or OHA if this Agreement 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 or OHA.

CONTRACTOR

By: _____

Title: _____

Date: _____

SCOPE OF SERVICES

The CONTRACTOR agrees to satisfactorily provide the services hereinafter set forth which includes, but may not be necessarily limited to, the following:

1. 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.

[SCOPE FROM RFP, SEC. 3 TO BE INCLUDED DURING CONTRACTING PHASE]

For questions please contact:

(Name)

(Position Title)

Telephone: (808) XXX-XXXX

Fax: (808) XXX-XXXX

E-mail: XXXXX@oha.org

THIS SPACE INTENTIONALLY LEFT BLANK

TIME OF PERFORMANCE

The CONTRACTOR shall render the services required under this Agreement from the effective date of _____, 2015 through and including _____, 2016, unless this Agreement is sooner terminated as provided hereafter in this Agreement, commencing upon execution of this Agreement.

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 Agreement.

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

THIS SPACE INTENTIONALLY LEFT BLANK

COMPENSATION

OHA agrees to compensate CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed [ZERO THOUSAND AND/100 DOLLARS (\$XXX,000.00)] inclusive of all actual reasonable ordinary necessary costs and expenses for services, including tax currently at the rate of 4.712%, satisfactorily rendered under this Agreement.

OHA agrees to pay CONTRACTOR in the following manner:

1. [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] upon invoice submitted by CONTRACTOR;
2. [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] upon invoice submitted by CONTRACTOR;
3. Upon satisfactory completion of all work, a final payment of [ZERO AND NO/100 DOLLARS (\$XXX,000.00)] representing FIVE PERCENT (5%) of total contract cost upon invoice submitted by CONTRACTOR;
4. OHA's Coordinator, who is identified in Section Four of this Agreement, that the services rendered have been satisfactorily performed in conformance with this Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

SPECIAL CONDITIONS

(CONTRACT BETWEEN OHA AND [CONTRACTOR'S NAME])

OHA and the CONTRACTOR mutually agree to.... (If Applicable)

THIS SPACE INTENTIONALLY LEFT BLANK

Office of Hawaiian Affairs
GENERAL CONDITIONS
(NON-GRANT GOODS AND SERVICES)
--- Table of Contents ---

	<u>PAGE(S)</u>
1. COORDINATION AND REPORTS	II
2. RECORDS MAINTENANCE, RETENTION, AND ACCESS	II
3. ADDITIONAL COMPENSATION AND PAYMENT TERMS	III
4. OTHER CONDITIONS OF USE OF FUNDS	IV
5. RESPONSIBILITY FOR ACCURACY, COMPLETENESS, AND ADEQUACY	IV
6. INDEPENDENT CONTRACTOR.....	IV
7. SUBCONTRACTS AND ASSIGNMENTS.....	VI
8. INDEMNIFICATION AND INJURIES	VI
9. INSURANCE.....	VI
10. CONFIDENTIALITY OF MATERIAL.....	VIII
11. CONFLICT OF INTEREST AND DISCLOSURE	VIII
12. RETURN OF RECORDS PROPERTY OF OHA.....	IX
13. DISPUTES	IX
14. TERMINATION OF AGREEMENT	X
15. WAIVER OF VIOLATIONS	XI
16. SEVERABILITY	XI
17. WAIVER OF CONTRACTUAL RIGHT	XI
18. AMENDMENT	XI
19. ENTIRE AGREEMENT	XI
20. APPLICABLE LAW	XI

1. COORDINATION AND REPORTS

The work performed under this Agreement shall be coordinated with OHA's "head of purchasing agency" or Designee as listed in the Scope of Services (Attachment S 1) hereinafter referred to as "Coordinator", who will act as the contract monitor and principal liaison between the CONTRACTOR and OHA and who will assist in resolving policy questions, expediting decisions, and the review of the work performed.

It shall be the responsibility of the CONTRACTOR to maintain close and frequent communication with the Coordinator at all stages of the work required under this Agreement. The CONTRACTOR shall inform the Coordinator of all scheduled contacts made by the CONTRACTOR with public agencies or individuals on matters relating to work performed under this Agreement.

The CONTRACTOR shall submit to the Coordinator upon request written progress reports on the performance of services, expenditure reports, and/or any other information required by Coordinator. The CONTRACTOR shall submit these reports in the appropriate formats and within the deadlines specified by the Coordinator.

The CONTRACTOR may be requested to discuss any work or reports with OHA's Board of Trustees or Chief Executive Officer.

2. RECORDS MAINTENANCE, RETENTION, AND ACCESS

The CONTRACTOR shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the CONTRACTOR's performance of services under this Agreement. OHA, the comptroller of the State of Hawai'i, and any of its authorized representatives, the committees (and their staff) of the Legislature of the State of Hawai'i, and the Legislative Auditor of the State of Hawai'i shall have the right of access to any book, document, paper, file or other record of the CONTRACTOR (and of any of its subcontractors) that is related to the performance of services under this Agreement in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's program, management and fiscal practices to assure the proper and effective expenditure of funds under this Agreement.

The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services under this Agreement at least THREE (3) years after the date of submission of the CONTRACTOR's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the THREE (3) year period, the CONTRACTOR shall retain the

records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

3. ADDITIONAL COMPENSATION AND PAYMENT TERMS

All costs and expenses shall be actual reasonable ordinary necessary costs and/or expenses incurred in conjunction with the services provided under SCOPE OF SERVICES herein and shall be approved by the Coordinator. The Coordinator's approval shall also be required prior to the CONTRACTOR incurring any exceptional costs and/or expenses.

Should inter-island or out-of-state travel be required, the CONTRACTOR shall obtain advance written approval from the Coordinator for such travel. Travel shall be by the most economical means consistent with time available and the urgency of the trip. Travel accommodations (airfare, subsistence and lodging) shall be reasonable considering all relevant circumstances. The CONTRACTOR shall be entitled to reimbursement for air fare and stipend for meals and lodging at a rate not to exceed the current per diem rates afforded State employees for similar type travel and shall be uniform and equitable for all travelers in all cases. Subject to the approval of the Coordinator, other necessary reasonable expenses which meet certain stipulated conditions which OHA shall make known to the CONTRACTOR and are supported by receipts issued in the normal course of business may be allowed in addition to airfare and stipend. The CONTRACTOR shall submit a written reimbursement request, certified by the CONTRACTOR to be the actual travel costs and expenses incurred in conjunction with the Scope of Services herein, to the Coordinator for Coordinator's review and approval. Each reimbursement request shall be accompanied by original receipts/invoices evidencing the actual expenditures incurred for which reimbursement is being claimed. Photocopies or faxed copies of receipts or invoices may be acceptable in exceptional circumstances when properly justified in writing. Credit card receipts are unacceptable for purposes of reimbursement herein.

Fees shall be payable as described in this section with incremental payments and final payment to be made upon presentment of original invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Scope of Services (Attachment S 1) of this Agreement, the amount due and owing and certifying that the services requested under the Agreement have been satisfactorily performed in conformance with this Agreement. Each invoice shall include a detailed breakdown of the CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Original receipts evidencing actual costs and expenditures shall accompany each monthly invoice⁸ presented for payment whenever possible. Expenditure details and related original receipts for any travel shall be for actual travel expenses incurred and shall also accompany monthly invoices presented for payment.

All payments shall be made in accordance with and subject to Chapter 40, HRS, which specifies the accounting procedures and controls applicable to payments out of the Treasury of

the State of Hawai'i. Final payment in final settlement of this Agreement shall be subject to §103-53 and 103D-328, Hawai'i Revised Statutes (HRS), as amended, respectively which requires a tax clearance from the Director of Taxation, State of Hawai'i, stating that all delinquent taxes, if any levied or accrued under state statutes against the CONTRACTOR has been paid.

Upon termination of this Agreement, payments under this section shall cease, provided however, that the CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which the CONTRACTOR has not yet been paid.

4. OTHER CONDITIONS OF USE OF FUNDS

The CONTRACTOR shall not use any funds involved in this Agreement for purposes of entertainment or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Agreement, including those conditions made applicable by provisions of appropriation acts of the Legislature or by administrative rules adopted pursuant to law.

5. RESPONSIBILITY FOR ACCURACY, COMPLETENESS, AND ADEQUACY

The CONTRACTOR shall be responsible and accountable for accuracy, completeness, clarity, and adequacy of the work performed including work performed by agents and employees and any subcontractors the CONTRACTOR may retain with OHA's approval. The CONTRACTOR agrees to perform the work in a professional manner with a professional attitude that shall involve a personal desire to place the OHA's interest above other considerations and to accept the professional responsibility for the services to be rendered.

6. INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

In the performance of the services required under this Agreement, the CONTRACTOR shall be an "independent contractor" with the authority to control and direct the performance and details of the work and services required under this Agreement; however, OHA shall have a general right to inspect the work in progress to determine whether, in OHA's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement. The CONTRACTOR shall insure that all person(s) hired or used by the CONTRACTOR as agents and employees are experienced and fully qualified to engage in the activity and services in which they participate. The CONTRACTOR's agents and employees shall also be bound by the provisions of this Agreement. At the request of OHA, the CONTRACTOR shall provide adequate evidence that such persons are the CONTRACTOR's agents or employees.

Any work under this Agreement shall not be construed as employment with OHA and shall not entitle the CONTRACTOR or the CONTRACTOR's agents and employees to vacation, sick leave, retirement, or other benefits afforded OHA employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal, City and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business activities are complied with and satisfactorily met.

The CONTRACTOR shall also be responsible for payment of all applicable federal, state, city and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, 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 Agreement.

The CONTRACTOR shall also be 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.

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 OHA prior to commencing any performance under this Agreement. 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 3 of these General Conditions.

The CONTRACTOR shall also obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawai'i and a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawai'i, in accordance with section 103D-31O, HRS, and section 3-122-112, Hawai'i Administrative Rules (HAR), respectively, that is current within six months (two months for final payment) of the date of issuance.

In lieu of the above certificates from the Department of Taxation, the Department of Labor and Industrial Relations, and the Department of Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process, Hawaii Compliance Express.

7. SUBCONTRACTS AND ASSIGNMENTS

The CONTRACTOR shall not subcontract, assign, or transfer any right, title, interest, duties or obligations or any services to be performed under this Agreement, in whole or in part, without prior written consent and approval of OHA. OHA may condition any consent and approval upon such terms and provisions that OHA may deem necessary. Furthermore, no assignment of claims for money due or to become due to the CONTRACTOR under this Agreement shall be effective unless such assignment is first approved by OHA.

8. INDEMNIFICATION AND INJURIES

The CONTRACTOR shall defend, indemnify and hold harmless OHA, its Trustees, officers, employees and agents, from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, demands and judgments arising, either directly or indirectly, out of or resulting from the errors, omissions or acts of CONTRACTOR or CONTRACTOR's officers, employees, agents or subcontractors occurring during or in connection with the performance of CONTRACTOR's services under this Agreement. Furthermore, nothing herein contained shall excuse the CONTRACTOR from compliance with any State, Federal or County law, rule, regulation, or ordinance. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

The CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third parties for all loss, cost, damage, or injury caused, either directly or indirectly, by CONTRACTOR or CONTRACTOR's agents and employees in the course of their employment.

The CONTRACTOR waives any rights to recovery from OHA for any injuries that the CONTRACTOR or CONTRACTOR's employees or agents may sustain while performing services under this Agreement and that are a result of the negligence of CONTRACTOR or CONTRACTOR's employees or agents.

Should OHA, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR, the CONTRACTOR shall, in connection with this Agreement, pay all costs and expenses incurred by or imposed on OHA, including attorneys' fees.

9. INSURANCE

A. **INSURANCE REQUIREMENT:** At all times during the term of this Agreement, CONTRACTOR shall obtain and maintain in full force and effect, any and all insurance to cover CONTRACTOR's operations under this Agreement that may be required under all applicable federal, state, and city laws and ordinances including, but not limited to, worker's compensation coverage, commercial general liability insurance, and automobile liability insurance coverage.

Prior to commencing work pursuant to this Agreement, the CONTRACTOR shall provide evidence that the CONTRACTOR has in full force and effect the following policies:

1. Commercial Liability Insurance: The CONTRACTOR shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000.00 per occurrence and \$ 2,000,000.00 general aggregate. OHA shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. Policy shall be an "Occurrence" form of policy, unless otherwise specifically approved by OHA.

2. Automobile Liability Insurance: Automobile Liability Policy shall have a combined single limit of \$1,000,000.00 for each accident or equivalent and shall cover owned, hired, and non-owned vehicles.

3. Workmen's Compensation Coverage: Policy shall include coverage required by State of Hawai'i and include Part B coverage as follows: Employers Liability with limits of \$100,000.00 for each accident, \$500,000.00 disease policy limit, and \$100,000.00 disease policy limit per employee.

4. Professional Liability Insurance: CONTRACTOR shall maintain professional liability insurance (PU) with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate which shall provide coverage for losses as a result of the CONTRACTOR's negligent acts, errors or omissions.

5. Other insurance as required by OHA.

B. OTHER TERMS. All policies of insurance described above shall:

1. Name the State of Hawai'i, OHA and its Trustees, OHA's employees, representatives and agents as Additional Insureds, by endorsement.

2. Provide that the insurance is Primary with respect to all insureds for claims arising out of the CONTRACTOR's negligent acts and/or omissions or misconduct, and that any insurance (or self-insurance) carried by OHA or the State of Hawai'i shall be excess and non-contributing.

3. Be provided by insurers authorized to do business in the State of Hawai'i, and with a current Best's rating of not less than A-VII, or otherwise as approved by OHA.

C. EVIDENCE OF INSURANCE: The CONTRACTOR shall provide to OHA and maintain current certificates of insurance, prepared by a duly authorized agent, and copies of the policies, evidencing the insurance in effect at all times during the term of this Agreement. OHA shall be listed as the Certificate Holder on all such certificates.

D. NOTICE OF CANCELLATION: The CONTRACTOR, through its insurance broker, will provide OHA with THIRTY (30) days written notice prior to cancellation, termination, lapse, non-renewal or material change to the insurance policy.

E. Should any of the insurance required above be cancelled before the CONTRACTOR's work under this Agreement is complete as determined by OHA, the CONTRACTOR shall immediately procure replacement insurance that complies in all respects to the requirements of this section.

F. Nothing in the insurance requirements of this Agreement shall be construed as limiting the extent of CONTRACTOR's responsibility for payment of damages resulting from its operations under this Agreement including the CONTRACTOR's separate and independent duty to defend, indemnify, and hold OHA, its Trustees, officers, employees and agents harmless pursuant to other provisions of this Agreement.

10. CONFIDENTIALITY OF MATERIAL

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Agreement shall be confidential and shall not be made available to any individual or organization by CONTRACTOR without prior written approval of OHA. This shall also include requests tendered to CONTRACTOR by individuals and organizations pursuant to Chapter 92F, Uniform Information Practices Act, Hawai'i Revised Statutes, as amended; provided however, that such documents that are otherwise by law made public, shall not be subject to this provision. In addition, no information data, report, record or material given to or prepared or assembled by CONTRACTOR shall be used by the CONTRACTOR for his or her personal gain and/or for any other purposes, except those purposes explicitly stated in this Agreement. A violation of this Section shall be a material violation of this Agreement.

If it appears that CONTRACTOR has disclosed (or has threatened to disclose) information and or has used such information for purposes in violation of this Agreement, OHA shall be entitled to an injunction to restrain CONTRACTOR from disclosing and/or using, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. OHA shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

The confidentiality provisions of this Agreement shall remain in full force and effect after termination of this Agreement.

11. CONFLICT OF INTEREST AND DISCLOSURE

The CONTRACTOR represents that the CONTRACTOR or any employee or agent of the CONTRACTOR presently has no interest and/or has no interest in another company, corporation, partnership, joint venture, organization, or entity of similar type and nature, direct or indirect, that would conflict in any manner or degree with the performance of the services under

this Agreement. The CONTRACTOR promises that he/she shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services under this Agreement.

The CONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in any activity that conflict or may conflict with the best interest of OHA. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any activity that the CONTRACTOR may be involved with on behalf of OHA.

The conflict of interest/disclosure provisions of this Agreement shall remain in full force and effect for the entire duration of this Agreement and/or extensions under this Agreement.

12. RETURN OF RECORDS PROPERTY OF OHA

Upon expiration or termination of this Agreement, as provided hereinafter, the CONTRACTOR shall deliver and/or surrender all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, records, notes, data, memorandum, photographs, photographic negatives, videos, or other materials prepared by the CONTRACTOR and any discoveries, inventions or developments produced in whole or in part under this Agreement (which shall become OHA's property) together with all information, data, reports, records, maps, and other materials provided to the CONTRACTOR by OHA, to OHA on or before the expiration date or date of sooner termination. OHA shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." 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 Agreement. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

13. DISPUTES

Disputes shall be resolved in accordance with section I03D-703, HRS, and chapter 3126, HAR, as the same may be amended from time to time. To the extent not inconsistent with the above, the CONTRACTOR and OHA also agree to the following.

NEGOTIATION. In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach, termination, or validity thereof, OHA and the CONTRACTOR agree to use their best efforts to settle such dispute, claim, question, or disagreement. To this effect, upon notice of the dispute, claim, question or disagreement, OHA and the CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

MEDIATION. If OHA and the CONTRACTOR do not reach a negotiated solution within TWENTY -ONE (21) days of written notice of the dispute, claim, question or disagreement, OHA and the CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by a mediator mutually agreed upon by OHA and the CONTRACTOR in accordance with the Dispute Prevention and Resolution, Inc., Mediation Rules and Guidelines.

ARBITRATION. Thereafter, any unresolved dispute, claim, question or disagreement arising out of or relating to this Agreement (including whether such dispute, claim, question or disagreement is arbitral), or breach, termination or validity thereof, shall be settled by binding arbitration before one arbitrator, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be administered and conducted in accordance with the Dispute Prevention and Resolution, Inc., Arbitration Rules and Guidelines in effect at the time a request for arbitration of the dispute is made. A decision and award of the arbitration made under the said rules shall be exclusive, final, and binding upon all parties, their agents, employees, successors, and assigns. The costs and expenses of the arbitration shall be borne equally by the parties. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of services under this Agreement. The selection of the arbitrator shall be mutually agreed to by OHA and the CONTRACTOR. OHA and the CONTRACTOR understand that by choosing arbitration for its dispute, OHA and CONTRACTOR are waiving its right to trial by jury.

The negotiation, mediation, or arbitration shall be conducted in Honolulu, Hawai'i.

14. TERMINATION OF AGREEMENT

If, for cause, the CONTRACTOR fails to satisfactorily fulfill in a timely and proper manner the CONTRACTOR's obligation under this Agreement or breaches any promises, terms or conditions of this Agreement and having been given reasonable notice of an opportunity to cure any such default and not having taken satisfactory corrective action with the time specified by OHA, OHA shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination at least SEVEN (7) calendar days before the effective date of such termination. The particular acts which shall constitute cause and justify termination include but are not limited to poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of similar kind and nature. Furthermore, OHA may terminate this Agreement in whole or in part, for the convenience of OHA without statement of cause at any time by giving written notice to the CONTRACTOR of such termination and the effective date of the termination.

In the final settlement of this Agreement, OHA shall determine the amount of unexpended and unobligated funds to be refunded to OHA by the CONTRACTOR. If the termination is for cause, any other provision to the contrary notwithstanding, the

CONTRACTOR shall not be relieved of liability to OHA for damages sustained because of any breach of this Agreement by the CONTRACTOR.

15. WAIVER OF VIOLATIONS

It is expressly understood and agreed that no waiver granted by OHA on account of any violation of any promise, term, or condition of this Agreement shall constitute or be construed in any manner as a waiver of the promise, term, or condition or of the right to enforce the same as to any other or further violation.

16. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

17. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce, or the granting of a waiver of, any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

18. AMENDMENT

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This Agreement may be extended on condition of satisfactory performance by the CONTRACTOR as determined by the Coordinator and shall be contingent upon the availability of funds for compensation payable for services performed and for cost and expenses incurred beyond the initial term of this Agreement.

19. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written relative to this Agreement. This Agreement supersedes any prior written or oral agreements, conditions, understandings, promises, warranties or representations whether express or implied between parties.

20. APPLICABLE LAW

This Agreement 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 Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.