

State of Hawaii
Department of Education
Office of Curriculum, Instruction and Student Support
Special Education Section

Request for Proposals

RFP F14-041

To Provide Speech and Language Services for the Hawai`i Department of Education

Date Issued: December 3, 2013

Proposal Submittal Deadline: December 31, 2013

Orientation Session: December 9, 2013, 1:30 PM
475 22nd Avenue (Room 264 PC)
Honolulu, HI 96816

Note: *It is the applicant's responsibility to check the public procurement notice website, the request for proposals website, or to contact the RFP point-of-contact identified in the RFP for any addenda issued to this RFP. The State shall not be responsible for any incomplete proposal submitted as a result of missing addenda, attachments or other information regarding the RFP.*

December 3, 2013

REQUEST FOR PROPOSALS

To Provide Speech Language Services for the Hawai'i Department of Education

RFP F14-041

NOTICE

The Department of Education, Office of Curriculum, Instruction and Student Support (OCISS), Special Education Section (SPED) is requesting proposals from qualified applicants to provide educationally related speech language therapy services to students certified as eligible under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the American with Disabilities Act.

SUBMITTAL DEADLINE

All proposals mailed by the United States Postal Service (USPS) shall be postmarked by December 31, 2013 to the mail-in address and received no later than ten days from the submittal deadline. Hand delivered proposals shall be received no later than December 31, 2013 by 2 P.M. Hawaii Standard Time (HST) at the drop-off sites.

Proposals postmarked or hand delivered after the designated deadline shall be considered late and rejected. Deliveries by private mail services such as FEDEX shall be considered hand deliveries and shall be rejected if received after the submittal deadline.

MAIL-INS: DOE Procurement & Contracts Branch, Waipahu Civic Center
94-275 Mokuola Street, Room 200
Waipahu, HI 96797

HAND DELIVERIES (DROP-OFF SITES):

Oahu only

DOE Procurement & Contracts Branch, Waipahu Civic Center
94-275 Mokuola Street, Room 200
Waipahu, HI 96797

Applicants are encouraged to attend the Orientation Meeting. (See Section 1)

INQUIRIES

Any inquiries regarding this RFP should be directed to following RFP contact person:

Marie Neilson
DOE Procurement & Contracts Branch, Waipahu Civic Center
94-275 Mokuola Street, Room 200
Waipahu, HI 96797
Phone: 808-675-0130
e-mail: marie_neilson@notes.k12.hi.us

RFP Table of Contents

Notice

Section 1 - Administrative Overview

1.1	Procurement Timetable.....	1-1
1.2	Website Reference	1-1
1.3	Authority	1-2
1.4	RFP Organization.....	1-2
1.5	Contracting Office	1-2
1.6	RFP Contact Person	1-2
1.7	Orientation	1-3
1.8	Submission of Questions	1-3
1.9	Discussions with Applicants	1-3
1.10	Multiple or Alternate Proposals.....	1-3
1.11	Confidential Information	1-3
1.12	Opening of Proposals.....	1-4
1.13	Additional Materials and Documentation.....	1-4
1.14	Public Inspection.....	1-4
1.15	RFP Addenda.....	1-4
1.16	Final Revised Proposals.....	1-4
1.17	Cancellation of Request for Proposals.....	1-4
1.18	Costs for Proposal Preparation.....	1-4
1.19	Provider Participation in Planning.....	1-4
1.20	Rejection of Proposals	1-5
1.21	Notice of Award.....	1-5
1.22	Protests.....	1-5
1.23	Availability of Funds	1-6
1.24	Hawaii Compliance Express	1-6
1.25	Wages Law Compliance	1-7
1.26	Campaign Contributions by State and County Contractors.....	1-7
1.27	General and Special Conditions of Contract.....	1-7

Section 2 - Service Specifications

2.1	Overview, Purpose or Need, and Goals of Service.....	2-1
2.2	Planning Activities.....	2-1
2.3	Demographics and Funding	2-1
2.4	Contract Award and Term	2-1
2.5	Secondary Purchases Participation	2-2
2.6	Service Activities	2-2
2.7	Qualifications	2-2
2.8	Pricing Structure	2-2
2.9	Other	2-2
2.10	Reporting Requirements for Program and Fiscal Data.....	2-3

2.11 Contract Monitoring and Evaluation 2-3

Section 3 - Proposal Application

3.1 General Proposal Submission Instructions 3-1
3.2 Specific Proposal Submission Instructions 3-1

Section 4 - Proposal Evaluation

4.0 Evaluation Process 4-1
4.1 Evaluation Criteria 4-1

Section 5 - Attachments

- A. Contract Minimum and Special Conditions
- B. DOE Sign-in Sheet
- C. Attendance Log
- D. Final Contractor Report
- E. Rate Proposal Worksheet
- F. Wage Certificate
- G. Federal Certifications

Section 1

Administrative Overview

1.1 Procurement Timetable

Note that the procurement timetable represents the State’s best estimated schedule. If an activity on this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days. Contract start dates may be subject to the issuance of a notice to proceed.

Activity	Scheduled Date
Public notice announcing RFP	12/3/13
RFP orientation session	12/9/13
Due date for written questions	12/13/13 at 4 p.m. HST
State purchasing agency's response to written questions	12/17/13
Proposal submittal deadline	12/31/13
Proposal evaluation period	1/13/14 – 1/24/14
Final revised proposals (optional)	1/20/14
Provider selection	1/27/14 - 1/31/14
Notice of statement of findings and decision	2/1/14
Contract start date	JULY 1, 2014

1.2 Website Reference

The State Procurement Office (SPO) website is <http://hawaii.gov/spo>

For **Click on “Doing Business with the State” tab or**

1	Procurement of Health and Human Services	http://hawaii.gov/spo/health-human-svcs/doing-business-with-the-state-to-provide-health-and-human-services
2	RFP website	http://hawaii.gov/spo/general/procurement-notice-for-solicitations
3	Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR) for Purchases of Health and Human Services	http://hawaii.gov/spo/general/statutes-and-rules/procurement-statutes-and-administrative-rules
4	Forms	http://hawaii.gov/spo/statutes-and-rules/general/spo-forms
5	Cost Principles	http://hawaii.gov/spo/health-human-svcs/cost-principles-for-procurement-of-health-and-human-services
6	Standard Contract -General Conditions, AG103F13	http://hawaii.gov/spo/general/gen-cond/general-conditions-for-contracts
7	Protest Forms/Procedures	http://hawaii.gov/spo/health-human-svcs/protestsreqforreconsideration/protests-requests-for-reconsideration-for-private-providers

Non-SPO websites

(Please note: website addresses may change from time to time. If a link is not active, try the State of Hawaii website at <http://hawaii.gov>)

	For	Go to
8	Hawaii Compliance Express (HCE)	https://vendors.ehawaii.gov/hce/splash/welcome.html
9	Department of Taxation	http://hawaii.gov/tax/
10	Wages and Labor Law Compliance, HRS §103-055	http://capitol.hawaii.gov/hrscurrent
11	Department of Commerce and Consumer Affairs, Business Registration	http://hawaii.gov/dcca click "Business Registration"
12	Campaign Spending Commission	http://hawaii.gov/campaign

1.3 Authority

This RFP is issued under the provisions of the Hawaii Revised Statutes (HRS), Chapter 103F and its administrative rules. All prospective applicants are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal application by a prospective applicant shall constitute admission of such knowledge on the part of such prospective applicant.

1.4 RFP Organization

This RFP is organized into 5 sections:

Section 1, Administrative Overview - The procurement process; requirements for awardees.

Section 2, Service Specifications - Services to be delivered, applicant responsibilities, requirements for the proposal application.

Section 3, Proposal Application – General and specific instructions for proposal application submission.

Section 4, Evaluation - The method by which proposal applications will be evaluated.

Section 5, Attachments - Information and forms necessary to complete the application.

1.5 Contracting Office

The Contracting Office is responsible for overseeing the contract(s) resulting from this RFP, including system operations, fiscal agent operations, and monitoring and assessing provider performance. The Contracting Office is:

Department of	Education
Office of Curriculum, Instruction and Student Support (OCISS)	
Special Education Section (SPED)	
475 22 nd Avenue, Building 302, Room 103	
Honolulu, Hawaii 96816	
Phone	(808) 203-5560
Fax:	(808) 733-4475

1.6 RFP Contact Person

From the release date of this RFP until the selection of the successful provider(s), any inquiries and requests shall be directed to the sole point-of-contact identified below.

Name: Marie Neilson
 Phone number: (808) 675-0130
 Email: Marie_Neilson@notes.k12.hi.us

1.7 Orientation

An orientation for applicants in reference to the request for proposals will be held as follows:

Date: December 9, 2013 **Time:** 1:30 PM – 3:30 PM
Location: 475 22nd Avenue (Room 264 PC) Honolulu, HI 96816

Applicants are encouraged to submit written questions prior to the orientation. Impromptu questions will be permitted at the orientation and spontaneous answers provided at the state purchasing agency's discretion. However, answers provided at the orientation are only intended as general direction and may not represent the state purchasing agency's position. Formal official responses will be provided in writing. To ensure a written response, any oral questions should be submitted in writing following the close of the orientation, but no later than the submittal deadline for written questions indicated in the subsection 1.8, Submission of Questions.

1.8 Submission of Questions

Applicants may submit written questions to the RFP Contact Person identified in subsection 1.6. Written question should be received by the date and time specified in the procurement schedule in subsection 1.1. The purchasing agency will respond to written questions by way of an addendum to the RFP.

1.9 Discussions with Applicants

Discussions may be conducted with potential applicants to promote understanding of the purchasing agency's requirements prior to the submittal deadline. Discussions may also be conducted with applicants whose proposals are determined to be reasonably susceptible of being selected for award, but proposals may be accepted without discussions, in accordance HAR §3-143-403.

1.10 Multiple or Alternate Proposals

Multiple/alternate proposals are not applicable to this RFP.

1.11 Confidential Information

If an applicant believes any portion of a proposal contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of

designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections of the proposal. Note that price is not considered confidential and will not be withheld.

1.12 Opening of Proposals

Upon the state purchasing agency's receipt of a proposal at the designated location(s), proposals, modifications to proposals, and withdrawals of proposals shall be date-stamped, and when possible, time-stamped, held in a secure place and not examined for evaluation purposes until the submittal deadline.

1.13 Additional Materials and Documentation

Upon request from the state purchasing agency, each applicant shall submit additional materials and documentation reasonably required by the state purchasing agency in its evaluation of the proposals.

1.14 Public Inspection

Procurement files shall be open to public inspection after contracts have been awarded and executed by all parties.

1.15 RFP Addenda

The State reserves the right to amend this RFP at any time prior to the-closing date for final revised proposals.

1.16 Final Revised Proposals

If requested, final revised proposals shall be submitted in the manner, and by the date and time specified by the state purchasing agency. If a final revised proposal is not submitted, the previous submittal shall be construed as the best and final revised proposal.

1.17 Cancellation of Request for Proposals

The request for proposals may be canceled when it is determined to be in the best interests of the State in accordance with HAR §3-143-613.

1.18 Costs for Proposal Preparation

Any costs incurred by applicants in preparing or submitting a proposal are the applicants' sole responsibility.

1.19 Provider Participation in Planning

Provider(s), awarded a contract resulting from this RFP,

are required

are not required

to participate in the purchasing agency's future development of a service delivery plan pursuant to HRS §103F-203.

Provider participation in a state purchasing agency's efforts to plan for or to purchase health and human services prior to the release of a request for proposals, shall not disqualify providers from submitting proposals if conducted in accordance with HAR §§3-142-202, 3-142-203.

1.20 Rejection of Proposals

A proposal offering a set of terms and conditions contradictory to those included in this RFP may be rejected. A proposal may be rejected for any of the following reasons:

- 1) Failure to cooperate or deal in good faith (HAR §3-141-201);
- 2) Inadequate accounting system (HAR §3-141-202);
- 3) Late proposals (HAR§3-143-603);
- 4) Inadequate response to request for proposals (HAR §3-143-609);
- 5) Proposal not responsive (HAR §3-143-610(a)(1));
- 6) Applicant not responsible (HAR §3-143-610(a)(2)).

1.21 Notice of Award

A statement of findings and decision shall be provided to each responsive and responsible applicant by mail upon completion of the evaluation of competitive purchase of service proposals.

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

No work is to be undertaken by the provider(s) awarded a contract prior to the contract commencement date. The State of Hawaii is not liable for any costs incurred prior to the official starting date.

1.22 Protests

Pursuant to HRS §103F-501 and HAR Chapter 148, an applicant aggrieved by an award of a contract may file a protest. The Notice of Protest form, SPOH-801, and related forms are available on the SPO website. (See subsection 1.1, Website Reference for website address.) Only the following matters may be protested:

- 1) A state purchasing agency's failure to follow procedures established by Chapter 103F of the Hawaii Revised Statutes;
- 2) A state purchasing agency's failure to follow any rule established by Chapter 103F of the Hawaii Revised Statutes; and
- 3) A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The Notice of Protest shall be postmarked by USPS or hand delivered to 1) the head of the state purchasing agency conducting the protested procurement and 2) the procurement officer who is conducting the procurement (as indicated below) within five working days of the postmark of the Notice of Findings and Decision sent to the protestor. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the state purchasing agency.

Head of State Purchasing Agency	Procurement Officer
Name: Andrell Beppu-Aoki	Name: Debra Farmer
Title: Director, OFS/PCB	Title: SPED Administrator
Mailing Address: 94-275 Mokuola St., Rm. 200, Waipahu, HI 96797	Mailing Address: 475 22nd Avenue, Building C, Room 115, Honolulu, HI 96816
Business Address: same as above	Business Address: same as above

1.23 Availability of Funds

The award of a contract and any allowed renewal or extension thereof, is subject to allotments made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, HRS, and subject to the availability of State and/or Federal funds.

1.24 Hawaii Compliance Express (HCE)

All providers shall comply with all laws governing entities doing business in the State. Providers shall register with HCE for online compliance verification from the Hawaii State Department of Taxation (DOTAX), Internal Revenue Service (IRS), Department of Labor and Industrial Relations (DLIR), and Department of Commerce and Consumer Affairs (DCCA). There is a nominal annual registration fee (currently \$12) for the service. The HCE's online "Certificate of Vendor Compliance" provides the registered provider's current compliance status as of the issuance date, and is accepted for both contracting and final payment purposes. Refer to **subsection 1.2, Website Reference**, for HCE's website address.

- A. **Tax Clearance.** Pursuant to HRS §103-53, as a prerequisite to entering into contracts of \$25,000 or more, providers are required to have a tax clearance from DOTAX and the IRS. (See subsection 1.2, Website Reference for DOTAX and IRS website address.)
- B. **Labor Law Compliance.** Pursuant to HRS §103-55, providers shall be in compliance with all applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety. (See subsection 1.2, Website Reference for DLIR website address.)
- C. **DCCA Business Registration.** Prior to contracting, owners of all forms of business doing business in the state except sole proprietorships, charitable organizations, unincorporated associations and foreign insurance companies shall be registered and in good standing with the DCCA, Business Registration Division. Foreign insurance companies must register with DCCA, Insurance Division. More information is on the DCCA website. (See subsection 1.2, Website Reference for DCCA website address.)

1.25 Wages Law Compliance

If applicable, by submitting a proposal, the applicant certifies that the applicant is in compliance with HRS §103-55, Wages, hours, and working conditions of employees of contractors performing services. Refer to HRS §103-55, at the Hawaii State Legislature website. (See subsection 1.2, Website Reference for DLIR website address.)

1.26 Campaign Contributions by State and County Contractors

HRS §11-355 prohibits campaign contributions from certain State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Refer to HRS §11-355. (See subsection 1.2, Website Reference for Campaign Spending Commission website address.)

1.27 General and Special Conditions of Contract

The general conditions that will be imposed contractually are on the SPO website. Special conditions may also be imposed contractually by the state purchasing agency, as deemed necessary.

Section 2

Service Specifications

2.1 Overview, Purpose or Need, and Goals of Service

The Hawai'i Department of Education (HIDOE) administers the statewide system of public schools. The scope of educational programs and services of the public schools encompasses grades kindergarten through twelve, and such pre-school programs and community/adult education curricula as may be authorized. In addition to regular programs of instruction and support services, the HIDOE offers special programs and services for students who are disabled. Applicable Federal and State statutes and regulations govern the provision of services, such as but not limited to, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA); Section 504, Hawaii Administrative Rules Chapters 8-60, the Provision of a Free Appropriate Public Education for a Student with a Disability, 8-61 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.

The HIDOE has a shortage of speech-language pathologists. The purpose of this RFP is to solicit providers interested in supplementing the HIDOE staff in the provision of speech-language services. These service providers work collaboratively with school personnel and parents to increase communication skills of students who are in need of assistance as it pertains to progressing academically and accessing education. In other words, services provided under the speech-language pathology program ranges from general education support to the provision of mandated specially designed instruction to eligible students with disabilities enrolled in the HIDOE.

The goal of this RFP is to provide schools statewide with sufficient speech-language pathologists who have school based experience and can supplement the HIDOE employee base. Services must be:

- Provided by qualified educational speech-language pathologists.
- Responsive to the needs of HIDOE in the specific geographic area determined by HIDOE.
- Provided for one school year (10 months) and/or short-term coverage of less than 10 months.

2.2 Planning Activities

In preparation for the drafting of this RFP, a request for information (RFI) was issued and posted on the State of Hawaii, State Procurement Office website on November 15, 2013.

2.3 Demographics and Funding

Target population to be served:

The type of students eligible for the services described in this contract must meet at least one of the following criteria:

- Those in need of a timely speech-language assessment to support the consideration of eligibility for IDEA or 504 services.
- Those who are eligible under IDEA or Section 504 Subpart D, and who are in need of speech-language services in order to benefit from their free and appropriate public education.
- Those in need of preventive or early intervening services prior to a referral for special education.

Educational certifications of students served include: autism spectrum disorder, deaf, deaf - blindness, developmental delay, emotional disability, hard of hearing, intellectual disability, multiple disabilities, orthopedic disability, other health disability, specific learning disability, speech or language disability, traumatic brain injury, visual disability including blindness, and 504 eligible students. General education students requiring support through the Comprehensive Student Support System may also receive speech-language services as a means to intervene prior to problems becoming larger academic and/or behavioral issues.

Geographic coverage of service:

Statewide

Probable funding amounts, source, and period of availability:

It is expected that state and federal funds will be used to support the services. An estimated amount not to exceed \$1.5 million per year may be available, contingent upon appropriation of funds and need of services. The appropriation may be extended provided availability of said funds.

A decrease in funding may occur depending upon the need for services. It is expected that funding at least at this current level would be allocated for this contract period.

2.4 Contract Award and Term

Single or multiple contracts to be awarded (HAR §3-143-206):

Single Multiple Single & Multiple

Criteria for multiple awards:

Applicants who meet all requirements based on the criteria listed in Section 4 – Proposal Evaluation shall be qualified to enter into a contract with the HIDOE. Qualified applicants who obtain a score of eighty five (85) or higher in Section 4 – Proposal Evaluation will be placed on the Treatment Procurement list for SLP service providers and will be eligible to enter into a contract with the HIDOE under this RFP. All qualified proposals will be ranked from highest to lowest score. Selection for contracts will be given to the highest ranking provider until capacity of the provider is met and will proceed in a descending manner until the needs of the HIDOE are met (i.e., HIDOE will select provider #1 until their proposed capacity is met, followed by provider #2 until proposed capacity is met). The State will evaluate all proposals, select, and award contracts determined to be the most advantageous as delineated further in Section 4 Proposal Evaluation.

Term of Contract(s)	One (1) year
Initial term:	One (1) year
Length of each extension:	One (1) year
Number of possible extensions	Five (5) extensions
Maximum length of contract:	Six years

Conditions for Extension:

Contracts may be extended provided that the HIDOE has obtained the appropriate civil service exemption certification, the agreement to extend is in writing, is based upon the need of the HIDOE and availability of funding, and is executed prior to expiration.

2.5 Secondary Purchaser Participation

(Refer to HAR §3-143-608)

After-the-fact secondary purchases will be allowed.

Planned secondary purchases, the secondary purchaser will execute a separate contract.

2.6 Service Activities

The following is a description of the skills and knowledge, professional tasks, and/or responsibilities required of the provider’s personnel. Applicants for the RFP must be able to describe how they will ensure that their personnel have the skills and knowledge to meet the required responsibilities. All services are to be provided in person (face to face) with students and school personnel.

1) Knowledge and Skills:

- Knowledge, skills and training that support school based therapy practice and access to the general education curriculum.
- Understand the Individuals with Disabilities Education Improvement Act (IDEA, 2004), and Section 504.
- Understand the importance of confidentiality as mandated under all applicable laws and regulations and
- Have knowledge and understanding of professional ethics.

2) Screenings and Assessments:

Proficiency in test administration, interpretation and analysis of data as it relates to the student's ability to benefit from special education and access the general education curriculum.

3) Provision of Services:

Possess the ability to collaborate in the development of measurable student goals that are directly related to and support student outcomes in the least restrictive environment.

These activities include but are not limited to:

- Ability to determine and develop appropriate educationally relevant services and service frequency
- Competency in providing a variety of integrated therapy models including direct service, consultation and collaboration.
- Ability to monitor and document student progress and relate this to the student's educational goals.

4) Workload Management:

Personnel must have the organizational skills to schedule and manage school based services (i.e. incorporating within a work day attendance at meetings, provision of services, collaboration and consultation, documentation, planning time, travel etc.).

5) Communication Skills:

Personnel must have the ability to communicate effectively and explain technical information (oral and written) in a manner that is clear, concise and understandable to school personnel, parents, students, and other professionals.

6) Documentation:

- Demonstrate appropriate computer literacy skills to complete documentation/paperwork in an electronic data-based system.
- Demonstrate the ability to report findings, integrate and summarize information in a concise, educationally relevant manner.
- Demonstrate the ability to document progress in a concise and educationally relevant manner.

7) Equipment:

Demonstrate knowledge and skills in the use and maintenance of specialized equipment (i.e. computer equipment, assessment tools, therapy materials or supplies, and or adaptive equipment provided by HIDOE.)

2.7 Qualifications**A. Experience**

Provider's personnel must possess the knowledge, skills and experience to support school based therapy practice.

Understand the Individuals with Disabilities Education Improvement Act (IDEA, 2004), and Section 504.

B. Organization

The provider assumes all responsibility for quality of work provided by employees and subcontracted providers. The provider is responsible for monitoring the work of all subcontractors and ensures that expectations and responsibilities of the contractor and its employees are equally placed on subcontracted providers. Each contractor must identify how their organizational structure provides services that are consistent with an educational model and with empirically validated interventions for populations as addressed in the proposal.

The provider must address supervision and monitoring of the quality of services of all employees and contracted personnel. Providers must specify how they will ensure work performance with regard to:

1) Services

- Services are educationally relevant and aligned with the student's ability to benefit from special education and to access the general education curriculum
- Quality of oral and written communication
- Services are provided in an efficient manner.
- Adherence to HIDOE policies and procedures

2) Equipment

- Maintained and utilized solely for HIDOE purposes.
- Replacement plans must be clearly spelled out should HIDOE therapy materials, supplies, or adaptive equipment be damaged or stolen while in their personnel's possession.

3) Documentation

- Completed within timelines set forth by the HIDOE

C. Personnel

All personnel are required to have the following documents in order to perform services within the HIDOE. Documentation must be provided prior to any employee of the applicant being assigned to any work site.

- 1) Resume:
A current copy of the employed SLPs professional resume, including documentation of (at minimum) a Master's level degree in speech-language pathology or communication sciences and disorders.
- 2) National Certification of Clinical Competency:
A current copy of the employed SLP's Certificate of Clinical Competence (CCC) from the American Speech-Language Hearing Association. (Clinical Fellowship Year applicants will NOT be accepted).
- 3) Hawaii State Licensure:
A current copy of the employed SLP's state of Hawaii license to practice speech-language pathology.
- 4) Mandatory Criminal Background Checks:
The Applicant shall perform fingerprint and criminal background checks at applicant's expense, for all of its employees and subcontracted providers. A copy shall be provided to the HIDOE. Fingerprinting required under this section shall be completed before any employee of the applicant is assigned to any work site. (See Attachment A – Contract Minimum and Special Conditions)
- 5) Verification of Mandatory Criminal Background Checks:
The Applicant shall maintain a record of the mandatory criminal background check performed on each of its employees in compliance with the above. A local criminal records check is required every three years. Additionally, the Applicant shall maintain and update a list of all new employees that documents the status and completion dates of the mandatory background checks. (See Attachment A – Contract Minimum and Special Conditions)
- 6) Health and Safety:
The Applicant shall provide documentation on all employees and/or subcontracted providers of tuberculosis clearance before any employee of the Applicant is assigned to a work site.

HIDOE reserves the right to review and inspect all required records of employees and/or subcontractors without notice.

2.8 Pricing Structure

A. Hourly Rate

HIDOE shall pay providers for hours worked, not to exceed an eight (8) hour workday, or up to forty (40) hour work week. No overtime pay in excess of these maximum hours shall be allowed. HIDOE shall not reimburse for mileage and travel expenses. HIDOE will not pay for school closures due to weather, holidays or teacher work days/waiver days.

Work activities on non-instructional days may be authorized by the District Educational Specialist for, but are not limited to the following:

- Conferring with other team members outside the IEP/MP setting in order to fulfill a HIDOE request beyond those inherent to direct service provision,
- Participate in a due process hearing at the request of the HIDOE,
- Completion of supplemental reports upon the request of the HIDOE,
- Participation in training required by and under the direction of HIDOE.

B. Units of Service

In proposing unit rate (up to \$60.00 per hour), include all direct and administrative costs. Administrative costs may include but are not limited to: meetings, travel, phone communication, report writing and documentation of services.

- If mutually agreed upon by the contract provider and the HIDOE, individual SLP contracts may be purchased (by the HIDOE) upon the completion of one year of satisfactory contract service for the proposed rate (up to \$5,000).

2.9 Other

Litigation

The applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain.

Statements regarding litigation will not carry any point value but are required.

2.10 Reporting Requirements for Program and Fiscal Data

Program Requirements

The HIDOE utilizes an electronic data system (eCSSS) to maintain all confidential educational records of students. HIDOE will train all provider employees on the eCSSS data system. Access to this system will be given to employees of the provider NOT the company. It is the Provider's responsibility to ensure that personnel have the computer and time management skills to input documentation and all student data into the HIDOE electronic data system (eCSSS data system). HIDOE will randomly check documentation and providers will be notified when employees are not documenting appropriately or in a timely fashion.

1) **Assessment reports:**

All written assessment reports must be entered into the students' official HIDEOE school record within the time frames set forth at the Student Support Team (SST) meeting. Failure to submit the report on time will incur a fine of \$25.00 per week which will accrue on the first day of each week from the date the report was due. This deadline may be tolled for extenuating circumstances by written notice from the SST administrator. The notice shall designate the next date the report is due. No additional time may be billed for corrections.

2) **Individualized Education Programs (IEP)/Modification Plans (MP)**

All IEPs/MPs must be entered into the eCSSS module within 48 hours of completion of the IEP/MP meeting. Failure to submit the report on time will incur a fine of \$25.00 per week which will accrue on the first day of each week from the date the report was due. This deadline may be tolled for extenuating circumstances by written notice from the IEP/MP team administrator. The notice shall designate the next date the report is due. No additional time may be billed for corrections.

3) **Quarterly progress reports**

Quarterly progress reports must be entered into eCSSS at the end of each quarter. Summary reports shall be entered within 10 calendar days after the end of each quarter. Failure to submit the report on time will incur a fine of \$25.00 per week which will accrue on the first day of each week from the date the report was due. This deadline may be tolled for extenuating circumstances by written notice from the IEP/MP team administrator. The notice shall designate the next date the report is due. No additional time may be billed for corrections.

4) **Documentation of Services:**

Documentation of services must be entered into eCSSS within one week of its occurrence. In the event this is not possible due to technical difficulties, the therapy session will be documented in a paper format and entered into eCSSS by personnel at a later time. Failure to submit the report on time will incur a fine of \$25.00 per week which will accrue on the first day of each week from the date the service logs were due. This deadline may be tolled for extenuating circumstances by written notice from the District Educational Specialist. The notice shall designate the next date the report is due. No additional time may be billed for corrections.

5) **Fiscal Data:**

Monthly reports and statistics are required for billing purposes. (See Attachment B - DOE Sign In Sheet and Attachment C - DOE Attendance Log.)

Invoices

Original invoices, DOE Sign In Sheets (Attachment B) and Attendance Logs (Attachment C) must be submitted within five (5) calendar days after the last day of each calendar

month to the State SLP Coordinator. All appeals and corrections for reporting/invoice rejections must be resolved within the next 60 calendar days and late claims will not be accepted. Any appeals and corrections for reporting/invoice rejections shall constitute the end of HIDOE's requirement to pay within 30 days upon receipt of the original invoice. HIDOE's requirement to pay within 30 days starts on the day the corrected invoice is re-submitted and accepted by HIDOE.

The contract provider shall, at the completion of the contract period, submit a final written report summarizing contract performance to include work outcomes, difficulties encountered, etc. to the HIDOE in a format to be prescribed by the HIDOE.

2.11 Monitoring and Evaluation

The criteria by which the performance of the contract will be monitored and evaluated are:

- 1) Provision of educationally relevant school based services
- 2) Availability of service providers statewide
- 3) Regular and timely attendance by personnel
- 4) Satisfactory site observations by the District Educational Specialist and/or Contract Manager
- 5) Timeliness and accuracy of documentation
- 6) Satisfaction survey by District Educational Specialists
- 7) Timesheets, attendance logs, sign in sheets and invoices

Section 3 Proposal Application

3.1 Instructions for Completing and Submitting Proposal Application

- *Proposal Applications shall be submitted to the state purchasing agency using the prescribed format outlined in this section and section 2.*
- *A written response is required for **each** item unless indicated otherwise. Failure to answer any of the items will impact upon an applicant's score.*
- *Applicants are **strongly** encouraged to review evaluation criteria when completing the proposal.*
- *The proposal application documents shall be submitted in the following order:*

Proposal Application Identification Form (SPO-H-200)

Table of Contents- Include a listing of all documents included in the application.

Proposal Application Short-Form 1

Amend the items below, as applicable. Be sure it matches with headings in Section 3.2.

- 1.0 Qualification
 - A. Experience
 - B. Organization
 - C. Personnel
- 2.0 Pricing
- 3.0 Other
 - A. Litigation
- 4.0 Attachments *If no attachments required, enter 'No attachments required' and delete bullets*

3.2 Specific Proposal Application Instructions

3.2.1 Qualifications

A. Experience

“The applicant’s proposal shall provide a description of experience/projects/contracts pertinent to the school based services required. Applicant shall include points of contact, addresses, e-mail/phone numbers of school districts where contracted services have been provided. The State reserves the right to contact references to verify experience.”

B. Organization

An organization chart must be included which clearly defines the provider's lines of authority and organizational functions as it relates to educationally based services.

The applicants must also submit curriculum vitae for the organization's officers. Vitae updates must be submitted to HIDOE when there are any changes of officers and direct service personnel.

*The Applicant shall provide for the continuity of speech-language services as outlined in this RFP without any additional cost to the State of Hawaii. **A detailed plan of action shall be provided detailing how services will continue whenever there is a change in personnel.***

The applicant must identify procedures to maintain personnel/provider files of training, supervision, appropriate credentialing and re-credentialing, and ongoing monitoring of all SLPs. This policy and adherence to the set standards shall be subject to inspection by HIDOE.

The applicant must identify how they would provide the necessary infrastructure to support the provision of services.

The applicant shall meet (may be by phone or teleconference) quarterly with the HIDOE representative to assure compliance with the scope of services.

C. Personnel

The applicants must maintain a written policy and procedure that will identify the applicant's process for primary source verification of all personnel. Applicants must outline the process of providing the HIDOE with the required documents for personnel: Resume, ASHA CCC, Hawaii State License, Fingerprinting and Criminal Background Check, and TB clearance.

The applicant is prohibited from recruiting SLP employees of the State of Hawaii, graduate students from the University of Hawaii John A. Burns School of Medicine (JABSOM) Communication Sciences and Disorders program, or students completing an externship with the HIDOE with the intention of working for the HIDOE. Violation will incur a penalty.

This policy and adherence to the set standards shall be subject to inspection by HIDOE.

3.2.2 Pricing

Applicant shall submit a cost proposal utilizing the pricing structure designated by the state purchasing agency. The cost proposal shall be attached to the Proposal Application.

HIDOE will establish a unit rate not to exceed \$60.00 per hour. Since overall costs and cost effectiveness is one criterion by which proposals will be evaluated, proposals reflecting a lower unit rate are welcome.

Applicants shall submit a cost proposal utilizing the pricing structure designated by the state-purchasing agency by completing

The cost proposal shall be attached to the POS Proposal Application.

Applicants must provide a narrative with supporting monetary figures of how the unit cost is constructed. Such components, including but not limited to: compensation to providers; housing allowance; cost or reimbursement for travel; administrative expenses and what they comprise of; training and supervision of professionals, quality assurance; and any other factors that contribute to the final proposed rate for a unit of service should be identified.

Applicants shall furnish a reasonable estimate of the maximum number of service units it can provide for which there is sufficient operating capacity and must submit, as an attachment a flow chart to show the staffing process to be used when HIDOE requests personnel or a replacement plan when personnel unexpectedly leaves. HIDOE reserves the right to ask for additional information (i.e., information supporting or justifying service delivery) from each applicant. Additional information must be available for review during the proposal evaluation period.

3.2.3 Other

A. Litigation

The applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain. *(Statements regarding litigation will not carry any point value but are required.)*

Section 4

Proposal Evaluation

4.1 Evaluation Process

The evaluation of proposals received in response to the RFP will be conducted comprehensively, fairly and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation. The procurement officer or an evaluation committee of designated reviewers selected by the head of the state purchasing agency or procurement officer shall review and evaluate proposals. When an evaluation committee is utilized, the committee will be comprised of individuals with experience in, knowledge of, and program responsibility for program service and financing. Each applicant shall receive a notice of award/non-award, which shall contain a statement of findings and decision for the award or non-award of the contract to each applicant

Evaluation and scoring of proposals shall be conducted according to the attached score sheet.

4.2 Evaluation Criteria (Total Possible Points: 100)

Following is a sample of the evaluation sheet that will be used to evaluate proposal applications. Applicants will receive a report similar to the attached upon completion of the evaluation process

4.1.1 Qualifications - Evaluation Criteria (90 total points)

- A. Experience (45 points)**
 - Demonstrated skills, abilities, knowledge of school based practices. Clearly defined the IDEA requirements placed on personnel and the need to adhere to federal and state regulations as it pertains to the delivery of services (20)
 - Has school experience. Response should specifically address the experience and capacity of its supervisors or those overseeing the delivery of services and their knowledge or expertise in the educational model of services versus traditional/hospital based services. (15)
 - Demonstration of the respondents specific operational plan to manage delivery of services (10)

- B. Organization (35 points)**

- Demonstrated the ability to ensure the quality of services of all employees. Has the necessary infrastructure to support the provision of school based services statewide. Demonstrated how this system will avoid service delays and how the applicant will keep the HIDOE apprised of service gaps. (15)
 - Demonstrated the knowledge and skills to supervise personnel statewide – as it pertains to school based services (10)
 - Provided a clear plan to ensure continuity of services (10)
- C. Personnel (10 points)
- Has qualified and experienced personnel with school based experiences to meet the needs statewide.

4.1.2 **Pricing - Evaluation Criteria (10 points)**

- Applicant's proposal is reasonable given the program's resources and operational capacity.

Section 5

Attachments

- A. Contract Minimum and Special Conditions
- B. DOE Sign-in Sheet
- C. Attendance Log
- D. Final Contractor Report
- E. Rate Proposal Worksheet
- F. Wage Certificate
- G. Federal Certifications

Attachment A Contract Minimum and Special Conditions

1. CONTRACT ADMINISTRATOR

For purposes of this contract, the person named below or her duly authorized representative or successor in office is designated Contract Administrator (CA). The CA may be contacted as follows:

Contract Administrator:	Debra Farmer
Telephone Number:	(808) 203-5560
e-mail Address:	Debra_Farmer@notes.k12.hi.us

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the PROVIDER's work, documenting that PROVIDER maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the PROVIDER, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- notifying Procurement & Contracts Branch in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 3.1, entitled "Coordination of Services by the STATE.").

2. POINT OF CONTACT

The CA has designated the following person as Point-of-Contact (POC) for this contract. As such, the POC should be the initial contact on all matters related to this contract. The POC can be contacted as follows:

POC:	Verna Chinen
Telephone Number:	(808) 203-5560
e-mail Address:	Verna_Chinen@notes.k12.hi.us

3. PROVIDER'S POINT OF CONTACT

The PROVIDER's primary point of contact shall be identified upon award of contract.

PROVIDER shall notify the STATE, verbally within twenty-four (24) hours, upon the occurrence of any of the events indicated below:

- 3.1. Change in the PROVIDER's business address or phone number;
- 3.2. Change in the PROVIDER's tax identification number; or
- 3.3. Any other situation that could reasonably be expected to affect the PROVIDER's ability to carry out its obligation under this contract.

4. CONDUCT

PROVIDER's employees or agents must sign in at the school office when entering a school campus, and sign out when leaving a school campus.

In addition, all PROVIDER's employees or agents must wear a picture identification badge listing agency name, employee name, and position at all times while on school premises.

PROVIDER's employees or agents must maintain a professional attitude, work ethic, and appearance. PROVIDER's employee or agents must be accessible to observations without notice by designated DOE personnel and provide services, as specified in the IEP or Section 504 Plan.

PROVIDER's employees or agents must also adhere to the following provisions:

- Provide services as specified in the IEP, MP, or services plan.
- Provide services at the school or other sites determined by the classroom teacher.
- Communicate to families through school/district personnel and not directly.

5. CREDENTIALING

PROVIDER shall maintain records providing proof that staff is fully and currently qualified. Documentation of qualifications must include: licensure, certification, experience, and/or training; TB check; criminal background check, including state and federal (FBI) criminal history records search; fingerprinting; as required by this Contract, as well as by applicable laws, rules, regulations, and codes. The PROVIDER must maintain personnel files that include documentation of the training, licensure, supervision, appropriate credentialing or certification, and ongoing performance of all its employees, agents, and volunteers. The PROVIDER must make records available upon request by the DOE within two (2) working days of the request.

The DOE reserves the right to refuse the services of any employee, agent, volunteer or prospective employee of the PROVIDER for any reason or for no reason.

6. CRIMINAL HISTORY RECORD CHECK REQUIREMENTS

The PROVIDER shall conduct all reasonable investigations which, at a minimum, includes: a criminal background check, including state and federal (FBI) criminal history records search; and fingerprinting; to determine whether an employee, agent, volunteer, or prospective employee including but not limited to administrative and direct service staff members who work in close proximity to children (“Worker”), has been convicted of any criminal offense pursuant to any law enforcement or military authority which would make the Worker unsuited for working in close proximity to children.

All PROVIDER employees shall meet credentialing requirements prior to any assignment, which includes fingerprinting. The required fingerprint checks shall be completed and a determination of suitability made before any Worker is assigned to any work site. Furthermore, the PROVIDER shall inform the STATE if any Worker providing services under this Agreement has been convicted of a criminal offense.

The STATE reserves the right to refuse the services of any Worker of the PROVIDER for any reason or for no reason.

The PROVIDER shall maintain a record of the mandatory criminal history checks performed on each of its Workers in compliance with this section. Additionally, the PROVIDER shall at all times maintain a current list of all new Workers documenting the status and completion dates of the mandatory criminal history checks and other primary source verification.

The STATE reserves the right to monitor the PROVIDER’s compliance with this section through either, or both, an on-site evaluation or a documents review.

All costs associated with conducting and processing criminal history checks of the PROVIDER’s Workers shall be borne by the PROVIDER.

7. TB CLEARANCE REQUIREMENTS

The PROVIDER shall require and maintain certification of TB examination for all employees, agents, and volunteers issued within the twelve (12) month period preceding the start of employment of service under this Agreement. Certificate must state that the person is free of communicable tuberculosis.

The PROVIDER shall adopt and implement a policy requiring all personnel providing services under this contract to obtain current tuberculosis clearance from a licensed medical provider and PROVIDER shall maintain records of such clearance.

8. EXCLUSION OF SPECIFIC WORKERS

The STATE reserves the right to require the PROVIDER to remove an employee, agent, subcontractor or volunteer (Worker) from performing work under this contract. The Contract Administrator shall notify the PROVIDER in writing and this exclusion of a

specific Worker(s) shall take effect as indicated on the notice. The PROVIDER may appeal this decision to the Contract Administrator, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, subcontractor or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the PROVIDER to employ the removed individual, but shall apply to any work requiring interaction with the DOE, its employees or students.

9. COMPENSATION

The contract price shall include all services, materials, overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred by PROVIDER in the performance of its obligations hereunder. The contract price shall be the all-inclusive cost to the STATE and no other charges shall be honored.

Total Compensation stated herein is estimated for the contract period specified. Actual compensation shall be contingent on the needs of the STATE, the service rates stated in the following section, and funding availability. No guarantee to purchase services in the exact amount stated is intended or implied. In the event service requirements do not materialize and the STATE purchases less than the total compensation stated, such failure shall not constitute grounds for equitable adjustment under this Contract.

Additionally, unless explicitly stated in this Contract, no additional fees or charges may be assessed to the STATE, the parties that the services are provided to, or their parents, guardians, insurance, or any other party associated with the provision of these specific services.

10. COMPENSATION RATES

Total compensation is based on the Contract unit measures and rates. These rates are paid in accordance with the work described herein, and includes all labor, services, travel, materials and equipment (as applicable), overhead, profit, all applicable taxes, and any other incidental and operational expenses incurred by the PROVIDER in the performance of its obligations hereunder. The rates established shall be all-inclusive to the STATE and no other charges shall be honored.

11. INVOICING AND PAYMENT SCHEDULE

11.1. Monthly Claim Submissions

Payments shall be made in monthly installments upon the monthly claim/invoice submissions by the PROVIDER for the services provided.

The PROVIDER shall submit one (1) original and two (2) invoice copies utilizing the STATE-prescribed invoice form for monthly claim submission.

Monthly claims shall be reviewed by the STATE and shall be subject to the STATE's preliminary determination of appropriateness and allowability of claim.

The STATE reserves the right to withhold payment from the PROVIDER for any non-compliance with the Contract.

Once properly submitted, the STATE shall have thirty (30) days to pay unless the claim/invoice is called into question (e.g. appeals, corrections, etc.). If at any time the claim/invoice is called into question, then the STATE's requirement to pay within thirty (30) days shall end. After that, the STATE's thirty-day requirement to pay shall start anew on the day the corrected claim/invoices are properly resubmitted by the PROVIDER. Any errors or omissions may cause a significant delay in payment to the PROVIDER. The STATE shall not consider any late claims.

All appeals and corrections for reporting/claims/invoice rejections must be resolved within sixty (60) calendar days from the day that the claim(s)/invoice(s) was first submitted. After that sixty-day period, the STATE may reject those claim(s)/invoice(s) for any reason and for no reason.

11.2. Audit, Reimbursement and Reconciliation

The STATE's preliminary determination of appropriateness and allowability of the claim shall be subject to later verification and subsequent audit. The STATE reserves the right to seek reimbursement from the PROVIDER upon an audit of all claims for any errors made in payment and/or for services not delivered. Final settlement of this Contract shall include submission and acceptance of all claims (or reports) and other materials to be submitted by the PROVIDER to the STATE, resolution of all discrepancies in performance of services monthly claims (or reports), and completion of all outstanding matters under this Contract.

The STATE reserves the right to audit the PROVIDER's financial records and billing documentation on an annual basis, at a minimum, through either an on-site evaluation or a documentation review.

11.3. Payment for Services not Requested by the STATE

The STATE reserves the right to deny any claims for payment for the testimony or participation of individual providers that was not requested by the STATE. Unauthorized services include but are not limited to, the PROVIDER pursuing litigation on behalf of itself. The PROVIDER is not authorized to claim payment for, among other things, services relating to testimony, depositions, or other litigation matters in pursuit of its own interests.

11.4. Final Settlement

The STATE shall withhold fifty percent (50%) of the accepted amount for the final month of this Contract until final settlement of all claims (or reports) of this Contract.

12. FINAL PAYMENT

In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

- 12.1. An original tax clearance certificate, not over two months old and with an original green “certified copy” stamp, must accompany the invoice for final payment. In lieu of the tax clearance certificate, PROVIDER may instead submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system referred to as “Hawaii Compliance Express”. Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.
- 12.2. “Certification of Compliance for Final Payment” (DOE Form-22) with an original signature shall be required for final payment.

13. AVAILABILITY OF FUNDS

This Contract is subject to the availability of funds. No contract entered into between the STATE and the PROVIDER shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract.

If the Contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the STATE’s obligations for payments in the current fiscal year. In that event, the STATE shall not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The STATE agrees to notify the PROVIDER of such non-allocation at the earliest possible time. The STATE shall not be penalized in the event this provision is exercised. This provision is not meant to permit the STATE to terminate the Contract in order to acquire similar equipment or services from a third party.

14. TIME OF PERFORMANCE

14.1. CONTRACT TERM

Contract shall commence upon full execution of the contract by the Superintendent and shall end twelve (12) months from the date of execution.

14.2. CONTRACT RENEWAL

This Contract may be extended for not more than five (5) additional twelve-month periods, i) provided that the DOE has obtained the appropriate civil service exemption certification, ii) upon mutual written agreement of the parties, iii) prior to expiration and

iv) under the same terms and conditions of the original Contract or as negotiated between the STATE and the PROVIDER. Contract extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the PROVIDER shall be required to execute a supplement to the Contract for each additional period.

14.3. PERFORMANCE PERIOD

The PROVIDER shall complete the work within the time limits specified herein. The time specified herein is the maximum time allowed.

15. CONTRACT EXECUTION

The PROVIDER shall be required to enter into a formal written contract, and no work is to be undertaken by the PROVIDER prior to the commencement date of the Contract. The STATE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the PROVIDER prior to official starting date.

16. These Special Conditions shall serve to supplement and not replace the General Conditions; both documents remain part of this Contract with full force and effect. In the case of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control to the extent necessary to resolve the conflict.

17. CONFIDENTIALITY OBLIGATIONS

The following serves to supplement provision 8.2 of the General Conditions, entitled "Confidentiality of Material" and provision 8, entitled "Confidentiality of Personal Information":

While performing under this Contract, the PROVIDER may receive, be exposed to or acquire confidential information. Such information may include names, addresses, telephone numbers, birthdates, social security numbers, medical information, and other educational, student, or personal employment information. The information may be in written or oral form, fixed in hard copy or contained in a computer database or computer readable form. Hereinafter, such language shall be collectively referred to as "Confidential Information."

The PROVIDER, including its employees, agents, representatives, and assigns shall abide by the following with regards to Confidential Information: (i) They shall not disclose to any unauthorized party any Confidential Information, except as specifically permitted by the STATE and subject to the STATE's limitations on confidentiality of information and relevant legal requirements of the State to include, but not limited to the Family Educational Rights and Privacy Act ("FERPA"); Permission will be granted through a formal written agreement concerning the disclosure of personally identifiable information (PII) from student education records, signed by HIDOE and the PROVIDER, and must be provided as an attachment to this contract; (ii) They shall only permit access to

Confidential Information to employees, agents, representatives, and assigns having a specific need to know in connection with performance under this Contract; and (iii) They shall advise each of their employees, agents, representatives, and assigns of their obligations to keep such Confidential Information confidential.

The PROVIDER, its employees, agents, representatives, or assigns shall ensure the security of the Confidential Information. The PROVIDER shall provide the STATE with a list of individuals (by name and position) who are authorized to handle the Confidential Information (hereinafter referred to as “Authorized Handlers”). Authorized Handlers shall ensure the security of the Confidential Information. Only Authorized Handlers shall have access to the Confidential Information, which shall be kept on password protected computers with the hard copy documents kept in a locked file cabinet. The PROVIDER shall ensure that procedures exist to prohibit access to the Confidential Information by anyone other than an Authorized Handler.

The PROVIDER shall be responsible for safeguarding the confidentiality of all Confidential Information it receives from the STATE and shall safeguard and protect such documents from unauthorized use, handling, or viewing. The PROVIDER shall be liable to the STATE and to any person whose records the PROVIDER receives custody of under this Contract for records protection for any unpermitted release, viewing, or loss of such records. The PROVIDER shall assume liability responsibility for records protection and for the inappropriate or unlawful release of Confidential Information. The PROVIDER shall return all documents containing Confidential Information upon completion of the services PROVIDER is contracted to provide under this Contract.

17.1. Prior Written Approval: PROVIDER may not i) share Confidential Information or any other data received under this Contract, ii) publish, or iii) distribute such information without the prior written approval of the STATE.

17.2. In the event of termination of this Contract, PROVIDER shall return to STATE all student information received under this Contract and further agrees to destroy any and all copies of, or references to, any student information shared by STATE as a result of this Contract.

18. RELIEF AVAILABLE TO STATE

In addition to all rights and remedies available to the STATE provided in this Contract or otherwise provided under law, if the PROVIDER is in non-compliance with contract requirements, the STATE may:

18.1. Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the PROVIDER;

18.2. Suspend Referrals – Suspend referrals to the PROVIDER should the PROVIDER fail to comply with any of the requirements or other term(s) or condition(s) of this Contract and, further, the STATE may maintain the suspension of referrals until

such time as the deficiency or non-compliance is corrected and the PROVIDER's corrective actions are determined to be acceptable by the STATE; and

- 18.3. Seek Reimbursement – Seek reimbursement from the PROVIDER or withhold future payments for any funds paid to the PROVIDER subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- 18.4. Seek Market Value – In the event the PROVIDER fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the STATE reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the PROVIDER, the difference between the price named in the Contract and the actual cost to the STATE. In case any money due the PROVIDER is insufficient for said purpose, the PROVIDER shall pay the difference upon demand from the STATE. The STATE may also utilize all other remedies provided by law.

19. LIABILITY INSURANCE

General Conditions, section 1.4, entitled “Insurance Requirements”, is deleted entirely and replaced with the following (revisions to the original text are noted in redline where deletions bold strikethrough text indicates deletions, and additions are in bold italics):

Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai‘i commercial general liability insurance (“liability insurance”) in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER’s performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER’s work under the Contract has been completed satisfactorily.

The insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.

A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds.

The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by mail.

Should the insurance coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.

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

In addition, the following minimum insurance coverage(s) and limit(s) shall be provided by the PROVIDER (including its subcontractor(s) where appropriate):

<u>Coverage</u>	<u>Limits</u>
<i>Automobile Liability, Comprehensive Bodily Injury:</i>	<i>\$1,000,000 per accident</i>
<i>Property Damage:</i>	<i>\$ 50,000 per occurrence</i>

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements. Each insurance policy shall be written by 1) an insurance company licensed to do business in the State of Hawaii, or 2) if not licensed by the State of Hawaii, an insurance company which meets §431:8-301, Hawaii Revised Statutes.

Upon execution of the Contract, the PROVIDER agrees to deposit with the STATE certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract, including those of its subcontractor(s), where appropriate. Upon request by the STATE, PROVIDER shall be responsible for furnishing a copy of the policy(ies).

Failure of the PROVIDER to provide and keep in force such insurance shall be regarded as material default under this Contract, entitling the STATE to exercise any or all of the remedies provided herein.

The PROVIDER will provide written notice within twenty-four (24) hours to the Contract Administrator should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

20. APPROVALS

This Contract is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

ATTACHMENT C

Instructions for completing the Attendance Log | 2013

Saving the file

1. After receiving the attendance 2013 file save it with your name (e.g. vchinen.xls) on to your computer or flash drive.
2. Open the excel spread sheet.

Explanation of the file

1. The file is a worksheet that has tabs at the bottom. There are ten tabs one for each month of the school year. Each month is similar to a calendar. It has non-school days grayed out. When completing this worksheet always click on the correct month. Do not use the same tab for every month, as the non-school days do not remain the same.
2. Click on the "August" tab (located at the bottom of the screen)
3. Fill in your name in the cell entitled "Provider Name"
4. List the names of the students on your caseload. If you are servicing **multiple schools**, begin the list with the name of the school. Do NOT create a separate attendance log for students at each school.
5. Cell "A" – Last name
6. Cell "B" – First name
7. Cell "C" – Service Time
8. When you have completed your list, place your cursor in the corner of the first cell (name of school) and drag it down to encompass the entire list of names. The list should gray out.
9. Click on Ctrl + C (copy)
10. Click on the tab for the next month
11. Place your cursor in the first cell and paste (Ctrl + V) the list into the next month
12. Do this for each subsequent month. You now have your list for the entire school year. Add or delete students throughout the year.

Completion of the file

1. Using the codes (provided to the right)document your services to students in the grid under the appropriate date
of direct service minutes provided
C = consult
0 = student absent
S = provider absent
X = student in school activity
W = waiver day
H = Holiday
A = Assessment
List the names of the students assessed

Sending the worksheet

1. Five working days after the end of each month, send the electronic file to attendancelog@mtxtherapy.com

ATTACHMENT D
FINAL CONTRACTOR REPORT

Number of professionals recruited for each location

Location	Number of Candidates Recruited	Accepted	Declined
Oahu			
Maui			
Kauai			
Hawaii			

Number of professionals referred to the DOE

Location	Number of Candidates referred	Accepted by DOE	Declined by DOE & reason
Oahu			
Maui			
Kauai			
Hawaii			
Total			

Retention of personnel and timeliness in personnel replacement:

Name of provider who left prior to completion of the contract	Geographic Area	Reason for leaving	Date left	Date replacement provided to HDOE (If no replacement provided cite reason why)
	Oahu			
	Maui			
	Kauai			
	Hawaii			

List any challenges related to fulfilling this contract.

List suggested changes that would make it easier to implementation of this contract

ATTACHMENT E
RATE PROPOSAL WORKSHEET
PHYSICAL THERAPIST/OCCUPATIONAL THERAPIST/SPEECH-LANGUAGE PATHOLOGIST

- ✓ If item will not be provided or is not applicable, please indicate so in the “Amount” column.
- ✓ To determine allowable expenses, refer to “Cost Principles on Purchases of Health and Human Services” document available on the SPO website:
http://www2.hawaii.gov/spoh/Forms_Instructions/forms_instructionsprov.htm.

Service/ Expense	\$ Amount per Hour
Personnel costs (please itemize): Professional Development/Training _____ Housing, etc. _____ Travel/Mileage, etc. _____ _____ _____ _____	_____ _____ _____ _____ _____
Administrative/Managerial Costs (please itemize): _____ _____ _____	
Subcontracted Services (please itemize): _____ _____ _____ _____	
Operating Expenses: _____ _____	
Profit:	
Other (please specify): _____ _____ _____ _____ _____ _____	
TOTAL HOURLY RATE (not to exceed \$60.00): (This rate represents the Applicant’s hourly proposal rate for this RFP)	

**ATTACHMENT F
WAGE CERTIFICATE**

Subject: Project No. RFP F14-041

Description of Project: To Provide Speech and Language Services for the HIDEOE

Pursuant to §103-55, HRS, I hereby certify that, if awarded a contract of \$25,000.00 or more, and that either:

- I. Services to be performed will be performed in accordance with the following conditions:
 - a. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector, and
 - b. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

PROVIDER shall be obliged to notify its employees performing work under this contract of the provisions of §103-55, HRS, and the current wage rate for public employees performing similar work. The PROVIDER may meet this obligation by posting a notice to this effect in the PROVIDER's place of business accessible to all employees, or the PROVIDER may include such notice with each paycheck or pay envelope furnished to the employee

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

OR

- II. I am exempt from these requirements as provided for under to §103-55(c), HRS.

PROVIDER: _____

By Its (signature): _____

Title: _____

Date: _____

CERTIFICATIONS

1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the applicant not be able to provide this certification, an explanation as to why should be placed after the assurances page in the application package.

The applicant agrees by submitting this proposal that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the applicant organization) certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above;
- (d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the grant, the employee will--
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central

point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices:

Office of Grants and Acquisition Management
 Office of Grants Management
 Office of the Assistant Secretary for Management and Budget
 Department of Health and Human Services
 200 Independence Avenue, S.W., Room 517-D
 Washington, D.C. 20201

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the under-

signed, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.)
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the applicant organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the applicant organization will comply with the Public Health Service terms and conditions of award if a grant is awarded as a result of this application.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the applicant organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The applicant organization agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

The Public Health Services strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements	3
4. Nondiscrimination	3
5. Conflicts of Interest	3
6. Subcontracts and Assignments	3
7. Indemnification and Defense	4
8. Cost of Litigation.....	4
9. Liquidated Damages	4
10. STATE'S Right of Offset.....	4
11. Disputes	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses	8
17. Payment Procedures; Final Payment; Tax Clearance	9
18. Federal Funds	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment	11
22. Variation in Quantity for Definite Quantity Contracts	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material	12
25. Publicity.....	12
26. Ownership Rights and Copyright	12
27. Liens and Warranties	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data	13
30. Audit of Cost or Pricing Data	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law	14
35. Compliance with Laws	14
36. Conflict between General Conditions and Procurement Rules	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver	14
40. Pollution Control	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

31. Records Retention.

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

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

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

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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