

State of Hawaii
 Department of Education
 Procurement and Contracts Branch
 94-275 Mokuola Street, #200
 Waipahu, HI 96797
 T: (808) 675-0130 F: (808) 675-0133

Registration Form For Online Solicitations

- The Procurement and Contracts Branch (PCB) is not notified when a particular solicitation is viewed or downloaded. Therefore, Offerors interested in responding to this solicitation must first register their participation by completing and submitting this Registration Form.
- The completed Registration Form must be e-mailed or faxed to the PCB Solicitation Contact Person listed below as soon as possible after downloading this solicitation, but in any case, prior to the deadline for offers.
- Only Offerors who are registered will be forwarded addenda and/or other notices related to this solicitation when issued, if any. Failure to register may result in the Offeror not receiving addenda and/or other solicitation related notices, and such offers may therefore be rejected, and not considered for award.
- Failure of the Offeror to receive any such addenda shall not relieve the Offeror of any obligation under this solicitation. It remains the responsibility of the Offeror to complete and submit its offer in accordance with the instructions contained in this solicitation, as well as subsequent interpretations and addenda, if any.

Solicitation Information:

Number:	RFP No. F13-078
Title:	To Provide Surrogate Parent Services for Eligible Students of the Hawai'i Department of Education
Deadline:	2:00 p.m. Hawaii Standard Time, April 8, 2013
Contact Person:	Marie Neilson
Contact's e-mail Address:	Marie_Neilson@notes.k12.hi.us

Offeror Information:

Name of Company Registering:	
Mailing Address:	
Name of Contact Person:	
Contact's e-mail Address:	
Contact's Telephone/ Facsimile No.:	

State of Hawaii
Department of Education
Special Education Section

Request for Proposals

RFP No. RFP F13-078 To Provide Surrogate Parent Services for Eligible Students of the Hawai`i Department of Education

February 22, 2013

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.*

February 22, 2013

REQUEST FOR PROPOSALS

**TO PROVIDE SURROGATE PARENT SERVICES
FOR ELIGIBLE STUDENTS OF THE HAWAII
DEPARTMENT OF EDUCATION
RFP No. RFP F13-078**

The Hawaii Department of Education (HIDOE), Office of Curriculum, Instruction and Student Support (OCISS), Special Education Section (SES), is requesting proposals from qualified Providers to furnish surrogate parent services to students certified as eligible by the HIDOE. The contract term will be from **July 1, 2013 through June 30, 2014.**

Copies of this RFP may be obtained at the Department of Education, Procurement and Contracts Branch, Waipahu Civic Center, 94-275 Mokuola St, Room 200, Waipahu, Hawaii 96797 or from the SPO website:
<http://hawaii.gov/spo2/health/rfp103f/>

The deadline for submission of written questions is **March 8, 2013** at 2:00 p.m. H.S.T. All written questions will receive a written response from the State on or before **March 17, 2013.**

Proposals shall be mailed and postmarked by the United State Postal Service on or before **April 8, 2013**, or hand delivered no later than 2:00 p.m., H.S.T., **April 8, 2013**, at the drop-off sites designated on the Proposal Mail-in and Delivery Information Sheet. Proposals postmarked or hand delivered after the submittal deadline shall be considered late and rejected. There are no exceptions to this requirement.

Inquiries regarding this RFP should be directed to the RFP Contact Person, Ms. Marilyn Jakeway at 475 22nd Avenue, Honolulu, Hawaii 96816, or by phone to (808) 203-5560.

Administrative inquiries regarding this should be directed to the Procurement and Contracts Branch at 94-275 Mokuola St, Room 200, Waipahu, Hawaii 96797, telephone: (808) 675-0130, email: Marie_Neilson@notes.k12.hi.us.

PROPOSAL MAIL-IN AND DELIVERY INFORMATION SHEET

**NUMBER OF COPIES TO BE SUBMITTED:
ONE (1) ORIGINAL AND THREE (3) COPIES**

ALL MAIL-INS SHALL BE POSTMARKED BY THE UNITED STATES POSTAL SERVICE (USPS) NO LATER THAN *April 8, 2013* and received by the state purchasing agency no later than 10 days from the submittal deadline.

All Mail-ins

Department of Education
Procurement and Contracts Branch
Waipahu Civic Center
94-275 Mokuola Street, Room 200
Waipahu, HI 96797

DOE RFP COORDINATOR

Marie Neilson, HIDOE Procurement
Office
For further info. or inquiries
Phone: (808) 675-0130
Fax: (808) 675-0133
email:
marie_neilson@notes.k12.hi.us
(interest forms, written questions,
etc.)

ALL HAND DELIVERIES SHALL BE ACCEPTED AT THE FOLLOWING SITE UNTIL **2:00 P.M., Hawaii Standard Time (HST), April 8, 2013.** Deliveries by private mail services such as FEDEX shall be considered hand deliveries. Hand deliveries shall not be accepted if received after 2:00 p.m., April 8, 2013.

Drop-off Site

Oahu:

Department of Education
Procurement and Contracts Branch
Waipahu Civic Center
94-275 Mokuola Street, Room 200
Waipahu, Hawai'i 96797

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Section 1

Administrative Overview

Section 1

Administrative Overview

Applicants are encouraged to read each section of the RFP thoroughly. While sections such as the administrative overview may appear similar among RFPs, state purchasing agencies may add additional information as applicable. It is the responsibility of the applicant to understand the requirements of *each* RFP.

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.

<u>Activity</u>	<u>Scheduled Date</u>
Public notice announcing Request for Proposals (RFP)	February 13, 2013
Distribution of RFP	February 13, 2013
RFP orientation session	March 4, 2013
Closing date for submission of written questions for written responses, <i>2:00 p.m. HST</i>	March 8, 2013
State purchasing agency's response to applicants' written questions	March 17, 2013
Discussions with applicant prior to proposal submittal deadline (optional)	<i>Not applicable</i>
Proposal submittal deadline	April 8, 2013
Discussions with applicant after proposal submittal deadline (optional)	<i>Not applicable</i>
Final revised proposals (optional)	<i>Not applicable</i>
Proposal evaluation period	April 19 through April 30, 2013
Provider selection	May 3, 2013
Notice of statement of findings and decision	May 8, 2013
Contract start date	July 1, 2013

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 by any prospective applicant shall constitute admission of such knowledge on the part of such prospective applicant.

1.4 RFP Organization

This RFP is organized into five sections:

Section 1, Administrative Overview: Provides applicants with an overview of the procurement process.

Section 2, Service Specifications: Provides applicants with a general description of the tasks to be performed, delineates provider responsibilities, and defines deliverables (as applicable).

Section 3, Proposal Application Instructions: Describes the required format and content for the proposal application.

Section 4, Proposal Evaluation: Describes how proposals will be evaluated by the state purchasing agency.

Section 5, Attachments: Provides applicants with 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
OCISS/CIB/SES
475 22nd Avenue
Honolulu, HI 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.

Marie Neilson
HIDOE 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

1.7 Orientation

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

Date: March 4, 2013 **Time:** 1:00 pm to 3:00 pm
Location: OCISS Annex Rm 264-A, 475 22nd Ave, 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 questions to the RFP Contact Person identified in Section 1.6. Written questions should be received by the date and time specified in Section 1.1 Procurement Timetable. The purchasing agency will respond to written questions by way of an addendum to the RFP.

Deadline for submission of written questions:

Date: March 8, 2013 **Time:** 2:00 p.m. HST

State agency responses to applicant written questions will be provided by:

Date: March 17, 2013

1.9 Submission of Proposals

- A. **Forms/Formats** - Forms, with the exception of program specific requirements, may be found on the State Procurement Office website referred to in subsection 1.2, Website Reference. Refer to the Section 5, Proposal Application Checklist for the location of program specific forms.
1. **Proposal Application Identification (Form SPOH-200)**. Provides applicant proposal identification.
 2. **Proposal Application Checklist**. The checklist provides applicants specific program requirements, reference and location of required RFP proposal forms, and the order in which all proposal components should be collated and submitted to the state purchasing agency.
 3. **Table of Contents**. A sample table of contents for proposals is located in Section 5, Attachments. This is a sample and meant as a guide. The table of contents may vary depending on the RFP.
 4. **Proposal Application (Form SPOH-200A)**. Applicant shall submit comprehensive narratives that address all proposal requirements specified in Section 3, Proposal Application Instructions, including a cost proposal/budget, if required.
- B. **Program Specific Requirements**. Program specific requirements are included in Sections 2 and 3, as applicable. Required Federal and/or State certifications are listed on the Proposal Application Checklist in Section 5.
- C. **Multiple or Alternate Proposals**. Multiple or alternate proposals shall not be accepted unless specifically provided for in Section 2. In the event alternate

proposals are not accepted and an applicant submits alternate proposals, but clearly indicates a primary proposal, it shall be considered for award as though it were the only proposal submitted by the applicant.

- D. **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.
- **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.)
 - **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.)
 - **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.)
- E. **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.)
- F. **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.)
- G. **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.

- H. **Proposal Submittal.** All mail-ins shall be postmarked by the United States Postal System (USPS) and received by the State purchasing agency no later than the submittal deadline indicated on the attached Proposal Mail-in and Delivery Information Sheet, or as amended. All hand deliveries shall be received by the State purchasing agency by the date and time designated on the Proposal Mail-In and Delivery Information Sheet, or as amended. Proposals shall be rejected when:
1. Postmarked after the designated date; or
 2. Postmarked by the designated date but not received within 10 days from the submittal deadline; or
 3. If hand delivered, received after the designated date and time.

The number of copies required is located on the Proposal Mail-In and Delivery Information Sheet. Deliveries by private mail services such as FEDEX shall be considered hand deliveries and shall be rejected if received after the submittal deadline. Dated USPS shipping labels are not considered postmarks.

1.10 Discussions with Applicants

- A. **Prior to Submittal Deadline.** Discussions may be conducted with potential applicants to promote understanding of the purchasing agency's requirements.
- B. **After Proposal Submittal Deadline -** Discussions may 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 with HAR §3-143-403.

1.11 Opening of Proposals

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

Procurement files shall be open to public inspection after a contract has been awarded and executed by all parties.

1.12 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.

1.13 RFP Amendments

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

1.14 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 applicant's final revised proposal. *The applicant shall submit **only** the section(s) of the proposal that are amended, along with the Proposal Application Identification Form (SPOH-200).* After final revised proposals are received, final evaluations will be conducted for an award.

1.15 Cancellation of Request for Proposal

The RFP may be canceled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the State.

1.16 Costs for Proposal Preparation

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

1.17 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 RFP, including the sharing of information on community needs, best practices, and providers' resources, shall not disqualify providers from submitting proposals, if conducted in accordance with HAR §§3-142-202 and 3-142-203.

1.18 Rejection of Proposals

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

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

- (1) Rejection for failure to cooperate or deal in good faith. (HAR §3-141-201)
- (2) Rejection for 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))

1.19 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.

1.20 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 1.2, 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: Administrator
Mailing Address: 94-275 Mokuola Street, Room 200 Waipahu, HI 96797	Mailing Address: OCISS/CIB/SES 475 22 nd Avenue Honolulu, HI 96816
Business Address: Same as above.	Business Address: Same as above.

1.21 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 HRS Chapter 37, and subject to the availability of State and/or Federal funds.

1.22 General and Special Conditions of Contract

The general conditions that will be imposed contractually are on the SPO website. (See subsection 1.2, Website Reference for website address.) Special conditions may also be imposed contractually by the state purchasing agency, as deemed necessary.

1.23 Cost Principles

To promote uniform purchasing practices among state purchasing agencies procuring health and human services under HRS Chapter 103F, state purchasing agencies will utilize standard cost principles outlined in Form SPOH-201, which is available on the SPO website. (See subsection 1.2 Website Reference for website address.) Nothing in this section shall be construed to create an exemption from any cost principle arising under federal law.

Section 2

Service Specifications

Section 2

Service Specifications

Commonly used abbreviations or acronyms

CA	Contract Administrator, identified in the Special Conditions section of the Agreement
HIDOE	State of Hawai`i, Department of Education
e-CSSS	Electronic Comprehensive Student Support System (Database)
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights & Privacy Act
GAL	Guardian Ad Litem
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
HYCF	Hawaii Youth Correctional Facility, Olomana School
IDEA	Individual with Disabilities Improvement Act of 2004
IEP	Individualized Education Program is a written statement about the education program for a student with a disability. The IEP guides the delivery of special education supports and services for the student with a disability.
MP	Modification Plan is designed to address the needs of a Section 504 eligible student and the modifications or accommodations related to the student's disability.
Surrogate Parent	PROVIDER's employees, agents, volunteers, representatives or subcontractors providing surrogate parent services.

2.1 Introduction

A. Overview, purpose or need

The federal law that supports special education and related services for children and youth with disabilities is called the Individuals with Disabilities Education Improvement Act 2004 (IDEA). IDEA has its roots in Public Law 94-142, which was originally enacted in 1975 to establish grants to States for the education of children with disabilities. Under Part B of Title 34, Code of Federal Regulations §300.1, all children with disabilities shall have available to them a free appropriate public education (FAPE).

The Vocational Rehabilitation Act of 1973 (amended by the Rehabilitation Act of 1992) is a federal civil rights law which protects persons with disabilities, enforced by the Office of Civil Rights. Subpart D of Section 504 regulations requires that public schools provide qualified students with disabilities an education comparable to the education provided to students without disabilities. The student need not qualify for special education in order to be qualified under Section 504.

The Department of Education (HIDOE) is federally and state mandated to provide surrogate parent services for those eligible students.

B. Planning activities conducted in preparation for this RFP

The issuance of a Request for Information (RFI) meeting for this RFP was waived by the head of purchasing agency in accordance with Chapter 103F Hawaii Administrative Rules (HAR) §3-142-202(e), Waiver for good cause.

C. Description of the service goals

The surrogate parent may represent the student in all matters relating to:

- The identification, evaluation, and educational placement of the student
- The provision of a Free Appropriate Public Education (FAPE) to the students

The PROVIDER shall provide continuous and uninterrupted surrogate parent services for the duration of this Agreement. Services shall be made available in all schools of the HIDOE, including public charter schools. The PROVIDER is to implement the detailed plan as presented in the proposal, which is incorporated in this Contract by reference, unless otherwise specified in this contract.

Surrogate Parent shall engage in at least one contact, either direct or indirect, as described below, to all student cases assigned to the Surrogate Parent member each month school is in session.

1. Case Referrals

A case referral is a request initiated by the public school at the time a student requiring surrogate parent services is first identified. The public school must submit a written referral form to the PROVIDER (i.e. DOE Form 0-51) to initiate the request. Upon receipt of the referral, the PROVIDER shall review the referral and respond to the public school request for service within two (2) working days of the request for services. PROVIDER response may be in the form of a fax, confirmation phone call, or in writing via email or letter and the original form completed and returned to the public school.

Within one week of Surrogate Parent case assignment; if not sooner, the Surrogate Parent will contact the referring school personnel to begin the process of case coordination and working with the school.

2. Direct Services

Direct services are face to face contact time with students, school personnel, or other participants involved in the student's case. Direct services would be approximately 15-20 (fifteen-twenty) hours a week, or upon approval of the PROVIDER and would encompass the following:

- a. Attend and participate in IDEA and 504 meetings related to the development (i.e. student support team, eligibility) and implementation of an IEP or MP and may include the development of a Functional Behavioral Assessment/Behavioral support plan, transition meetings, non-IDEA and 504 meetings such as Coordinated Service Plan, Treatment Team, parent/teacher conference
 - b. Coordinate with the public school an interview and/or observation of the student(s) in the classroom(s)
 - c. Develop, communicate and maintain cooperative relationships with all providers of educational services to the student(s)
 - d. Consult with service providers, independent consultants
3. Indirect Services
Indirect services would be approximately 10-15 (ten-fifteen) hours a week, or upon approval of the PROVIDER and would encompass the following:
- a. Monitor educational progress of cases
 - b. Telephone contact with collateral contacts
 - c. Collect, prepare and maintain student related documentation in case records and/or work area
 - d. Review case related documents, (i.e. referrals, evaluations, IEPs and Prior Written Notices).
 - e. Prepare correspondence, reports and other materials as necessary for the provision of service
 - f. Travel time
 - g. Obtain educational information pertaining to each student from the school or district office
4. Administrative Services
Administrative services would be approximately 5 (five) hours a week, or upon approval of the PROVIDER and would encompass the following:
- a. Supervision
 - b. Attend Staff meeting(s)
 - c. Staffing the agency office to be available for telephone inquiries, faxes and communications from the schools regarding referral procedures, case assignments, etc.
 - d. Time records
 - e. Plan the recruitment and screening of applicants and the training of prospective Surrogate Parents
 - f. Maintain assigned files, records and work area(s)
 - g. Prepare various reports
 - h. Duplicate copies of materials
 - i. Compile monthly population reports (i.e. student data statistically reported in agency database) and caseload updates (i.e. notification of changes in the appointment of a Surrogate Parent (case transfer) or case closure)
 - j. Maintain a running list of all referrals and students
 - k. Maintain confidential records in an appropriate fashion
 - l. Miscellaneous

D. Description of the target population to be served

The target population is special education and section 504 students in the Department of Education who require surrogate parent services as defined in the IDEA, No Child Left Behind

(42 U.S.C. 11431 et seq.), HRS §302A-491, HAR Title 8, DOE Chapter 60, and section 504 of the Vocational Rehabilitation Act of 1973.

The purpose of the program is to ensure that the rights of a student are protected when:

1. No parent(s) can be identified,
2. The department, after reasonable efforts, cannot locate a parent,
3. The student is a ward of the State under the laws of the State of Hawaii,
4. The student is an unaccompanied youth identified under the McKinney-Vento Act,
5. There is no relative willing and able to serve as an educational representative for a student who has reached the age of majority (18 years old) and lacks decisional capacity to provide informed consent.
6. An individual has a Caregiver Consent Affidavit and no parent(s) can be identified or located after reasonable efforts are undertaken.

E. Geographic coverage of service

Services shall be made available in all schools of the HIDOE, including public charter schools.

F. Probable funding amounts, source, and period of availability

It is expected that State funds will be used to support these services. Funding is subject to availability. It is expected that the current level of funding in the amount of approximately \$349,920.00 will be allocated for this contract period.

2.2 Contract Monitoring and Evaluation

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

A. Performance/Outcome Measures

- Number of incident reports filed by the HIDOE against the agency or HIDOE agency monitoring that resulted in a finding of agency non-compliance with contract requirements
- Appropriateness of services delivered to each student
- Ability to maintain internal processes to assure services are delivered in a timely manner.

B. Output Measures

- Sufficient staffing and resources to deliver services as required by this RFP and contract
 - o Number of times an agency was referred a case but was unable to accept the referral
- Degree to which access to services is maintained in accordance with this RFP and contract
 - o Number of times an agency was referred a case but was not able to initiate services within the required timelines
- Submittal of all required data, reports, and improvement or corrective action plans and deliverables
- Adequacy and timeliness of responses to any required information, program improvements, and corrective actions

- Accuracy and completeness of student records and documentation
- Degree of adherence to credentialing process and accuracy and completeness of credentialing files

C. Quality of Services

- Degree to which eligible students are receiving services in accordance with standards and requirements as described in the RFP and contract
- Degree of service integrity and adequacy of service processes
- Demonstrated ability to comply with training requirements and provide timely, complete and effective training modules
 - Degree of quality and frequency of supervision and training processes as described in the RFP and contract

D. Financial Management

- Accuracy and completeness of accounting files and fiscal records
- Accuracy and timeline of fiscal operations

E. Administrative Requirements

- Overall compliance with contract terms
- Consistent, sound administrative practices

2.3 General Requirements

A. Specific qualifications or requirements, including but not limited to licensure or accreditation

The PROVIDER shall comply with the Chapter 103F, HRS Cost Principles for Purchases of Health and Human Services identified in SPO-H-201, which can be accessed at <http://hawaii.gov/spo/health-human-svcs/cost-principles-for-procurement-of-health-and-human-services>

B. 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.

C. Multiple or alternate proposals

(Refer to HAR §3-143-605)

Allowed Unallowed

D. Single or multiple contracts to be awarded

(Refer to HAR §3-143-206)

Single Multiple Single & Multiple

Criteria for multiple awards:

Contract shall be awarded to the Proposal earning the highest score, providing that the Proposal earns at least seventy (70) points. If a Proposal does not score at least seventy (70) points, the Proposal will be considered non-responsive and will not be considered for award.

E. Single or multi-term contracts to be awarded

(Refer to HAR §3-149-302)

Single term (2 years or less)

Multi-term (more than 2 years)

Contract terms:

Initial Term of Contract	One (1) year
Length of each extension	One (1) year
Number of possible extensions	Three (3) extensions
Maximum length of contract	Four (4) years
Initial period	Shall commence on the contract start date
Conditions for extension	Extension must be in writing, must be executed prior to expiration and is contingent upon potential changes to HIDOE's approach to service delivery, availability of funding beyond first year, and upon mutual agreement

2.4 Scope of Work

The scope of work encompasses the following tasks and responsibilities:

A. Service Activities

(Minimum and/or mandatory tasks and responsibilities)

The PROVIDER shall provide the following services:

- Provide representation for students requiring surrogate parent services in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student
- Respond to requests for service within two (2) working days of request
- Review referrals of said students
- Attend meetings related to development and implementation of Individualized Education Programs (IEPs) or Modification Plan (MP) for the identified students
- Interview and/or observe the student(s) in the classroom(s)
- Monitor educational progress of cases
- Develop and maintain cooperative relationships with all providers of educational services to the students
- Prepare correspondence, reports and other materials as necessary for the provision of service

- Plan the recruitment and screening of applicants and the training of Surrogate Parents
- Provide to the HIDOE the names and addresses of persons interested in serving as Surrogate Parents for eligible students
- Maintain assigned files, records and work areas
- Prepare various reports
- Conduct physical inventory annually or more often
- Duplicate copies of materials
- Compile monthly population reports and case load updates
- Maintain a running list of all referrals and students
- Obtain educational information pertaining to each student from the school or district office
- Create various forms to supplement Surrogate Parent services
- Maintain confidential records in appropriate fashion
- Provide continuous and uninterrupted services in case of changes in personnel

As meetings may occur before or after school hours, a flexible work schedule is required. Work hours vary, and may begin as early as 7:00 am. Services are required most frequently when school is in session, and on occasion during the summer and intersession periods. Surrogate Parents shall be accessible to telephone calls from school staff after the usual business hours.

B. Management Requirements (Minimum and/or mandatory requirements)

1. Personnel

The number of other staff members and types of staff expertise required to provide services indicated in the RFP will be left to the discretion of the Applicant, and subject to the funds available to the RFP.

- Vitae of qualified personnel will be attached to the Proposal.

a) Personnel shall have the following qualifications:

- Satisfactory completion of a four-year course leading to a bachelor's degree from an accredited university with a minimum twelve (12) semester hours in such courses as psychology, education, social work, or other related social service is desirable
- Personnel shall conduct themselves in a professional manner and have the suitability in personal qualities and temperament for this type of job
- Have a sense of responsibility, initiative, respect for clients and colleagues, and a desire to help people
- Must possess sound judgment and sympathetic insight in dealing with those they serve, patience in accommodating the behavior of others, and adaptability to various situations
- Possess a valid state of Hawaii motor vehicle operator's license and access to a motor vehicle
- One to one and one half years of progressively responsible work experience which involved performing a variety of standard clerical work such as typing correspondence, reports and other materials

- Demonstrated knowledge of English grammar, spelling, arithmetic, common office equipment, light bookkeeping, good telephone skills
- Possess or have access to a computer
- Have a general knowledge of the IDEA and the HIDEOE
- Have a general knowledge of the Hawaii Administrative Rules (HAR) Chapter 8, DOE Chapter 60

b) Staffing and Case Assignments

i. Surrogate Parent to Student Ratio

PROVIDER shall maintain a Surrogate Parent to student ratio of one (1) Surrogate Parent to sixty (60) students or less, unless otherwise approved by the HIDEOE.

ii. Case Assignment

Case assignments are at the discretion of the PROVIDER. The PROVIDER shall notify the schools in writing of the name and contact information of the Surrogate Parent to provide services to the school. Should circumstances demand that Surrogate Parent assignments are modified either permanently or temporarily, due to changes in PROVIDER staff, or for a specific case, the PROVIDER shall notify the school immediately.

Overall, Surrogate Parents are assigned to particular schools within a complex area/district. The number of schools and the particular schools they are assigned to depends on several variables including the number of eligible children at those schools, the experience and expertise of the staff, and, on occasion, special requests from a school.

One staffing exception to case assignment is for those students who are under minority commitment to the HYCF but physically released from HYCF and are attending their neighborhood school. To provide continuity for this high risk very special needs group of students with criminal and status offense histories, one Surrogate Parent is assigned to follow such students through their educational careers while they reside on Oahu, including if they return to HYCF.

There may be unique situations, based on student needs, in which a Surrogate Parent may request to continue as the student's Surrogate Parent into a school not "assigned" to him/her; upon the PROVIDER's decision; in such cases the surrogate parent is to notify key school personnel immediately if s/he will continue assignment to the student.

iii. Surrogate Parent Development and Evaluation

The PROVIDER shall ensure the Surrogate Parents are provided adequate and ongoing professional development and training, and are evaluated to ensure Surrogate Parents are knowledgeable and adequately prepared to provide surrogate parent services. Supporting documentation of such training (i.e. sign-in sheets with the time/date/topic, agendas, etc.) and evaluations shall be provided to the STATE within three (3) working days of request by the STATE. At minimum, each Surrogate Parent shall be:

- (1) Required to attend a minimum of 40 hours of professional development, training or case review each year. The type and schedule of training is to be linked to understanding the various rules and regulations related to surrogate

parent services, including IDEA, Vocational Rehabilitation Act (Section 504), appropriate FAPE and DOE policies and procedures and/or related to a student's specific case.

- (2) Subject to an annual job performance review with documented individual development plans for each Surrogate Parent.

c) FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

PROVIDER shall adhere to this federal privacy law that gives parents certain protections with regard to their children's education records, such as report cards, transcripts, disciplinary records, contact and family information, and class schedule.

d) VERIFICATION OF EMPLOYEES

i. Criminal History Record Checks:

At this time, the Department is actively seeking legislation that will amend current law to allow the HIDOE to perform local and national fingerprinting checks of all of its employees, subcontracted providers and volunteers who work in close proximity to children. Should legislation be enacted, the PROVIDER will be subject to any statutory and regulatory requirements promulgated for this purpose.

Applicants should be prepared to conduct the following record checks:

In accordance with State rules and regulations, PROVIDER shall conduct mandatory criminal background checks at no cost to the STATE, on any employee, volunteer, or sub-contractor working directly with students.

PROVIDER shall maintain the background check records, and shall make the records available for review upon request. Upon review of these records, the STATE reserves the right to request additional background information.

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

- o Any employee, agent or volunteer's license or certification required to perform services under this Contract is suspended, conditioned, revoked, expired, or terminated;
- o Any employee, agent or volunteer becomes the subject of any disciplinary proceeding or action before any federal or state agency or Board;
- o Any employee, agent or volunteer is convicted of a fraud or felony;
- o Any claim, judgment or settlement in which the PROVIDER or any of its employees, agents, or volunteers is named a defendant

ii. 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 HIDEOE within two (2) working days of the request.

The HIDEOE 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.

iii. 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.

2. Administrative

PROVIDER will maintain appropriate fiscal, personnel, and administrative records. Sufficient documentation on project activities and accomplishments will be maintained and shall be made available for inspection by HIDEOE upon request.

The HIDEOE reserves the right to monitor the PROVIDER's compliance with this stipulation and all other requirements for services under this agreement on an annual basis, at a minimum, through either an on-site evaluation or a documentation review.

PROVIDER shall have an adequate plan for providing continuous services in case of changes in personnel.

The HIDEOE reserves the right to require the PROVIDER to remove any employee from project upon written requires of the CA.

Applicants should be prepared to conduct the following record checks upon notification by the HIDEOE:

- The PROVIDER shall maintain a record of the mandatory criminal history checks performed on each of its employees, subcontracted providers, and volunteers in compliance with the above. A local criminal history check is required every three years.
- Additionally, PROVIDER shall maintain and update a list of all new employees, subcontracted providers, and volunteers that document the status and completion dates of the mandatory background checks.
- During the contract period, the PROVIDER must provide the HIDEOE information within 30 days for officers and service personnel if there is any change in certification, licensure, tuberculosis clearance or criminal status.

a) Quality assurance and evaluation specifications

i. Quality Assurance Plan

The PROVIDER shall implement and maintain a quality assurance plan to ensure that services are delivered in an efficient and timely manner, that the services adequately meet the needs of each case, and disputes are resolved while maintaining a satisfactory relationship with all parties involved with the student's education. This quality assurance

plan should also indicate corrective actions to be taken if any deficiencies are noted. This plan and the agency's adherence to it, is subject to inspection by HIDEOE.

The PROVIDER's quality assurance plan shall at minimum include the following:

- a. Maintenance of a comprehensive database system that includes all pertinent student information serviced by the PROVIDER to be used by Surrogate Parents to self monitor cases, by supervisor's to monitor Surrogate Parent work, and to generate monthly reports and invoices. The PROVIDER will ensure the Surrogate Parent will be able to access student files only assigned to that Surrogate Parent.
- b. The PROVIDER shall conduct individual and field supervision and case record review for all Surrogate Parents on a periodic basis.
- c. An external Quality Assurance Reviewer will review satisfaction surveys, performance reports, case records and make recommendations to the PROVIDER for improvement and professional development. Should corrective action be needed, the PROVIDER is required to meet with the Surrogate Parent, ensure corrective steps are taken and return the case within a specified time with the corrective action taken and documented.
- d. Distribution of a yearly evaluation survey to parties involved in the surrogate parent program and reported to the HIDEOE on a yearly basis.

PROVIDER shall participate in contract monitoring annually or as directed by the HIDEOE. This contract monitoring is based on compliance with all the administrative and fiscal aspects of the contract. All documentation and all student records must be made available for audits scheduled by the HIDEOE.

ii. Collaboration

Within the setting of case related meetings, all participants are encouraged to contribute their thoughts and opinions. Each member should be afforded with the respect and time to express their perspective. Consensus is the goal, but in the absence of team consensus, the school Administrator or designee has the authority to make the final decisions related to the provision of a FAPE. Should this be contradictory to the PROVIDER's opinions, the PROVIDER's usual approach is to monitor the student's educational progress with measurable data, continue to communicate collaboratively with the school and other collateral team members on this matter, and to reconvene at a later date to reassess issues as a team.

Other types of disputes within the team may be called to the PROVIDER's attention by the Surrogate Parent and/or by a team member. The PROVIDER takes leadership to facilitate resolution. Basic methods of conflict resolution are utilized including clarification of issue, each party's purpose in bringing the dispute to a third person and desired outcome. In all situations, the desired outcome should include positive impact on the child.

Additional options to resolving disputes to be considered is facilitated resolution by a third party person separate from the HIDEOE or the PROVIDER and mediation.

iii. Complaints

When dissatisfactions with a Surrogate Parent's style of communication are brought to the attention of the PROVIDER, clarification is sought and options toward resolution are discussed with the caller. The Surrogate Parent is counseled and options toward

resolution are discussed. Mediation might be an option. PROVIDER may accompany a Surrogate Parent to a subsequent meeting for observation and feedback and get back to the caller also for feedback. However, the bottom line question to staff is how is this interaction affecting the focus on the child? If conflicts amongst team members arise because of a Surrogate Parent, and the team is unable to focus on the child, the responsibilities of the Surrogate Parent to the child are being compromised. If such is the case, the PROVIDER would then transfer the child to another Surrogate Parent.

b) Output and performance/outcome measurements

The Applicant shall develop measures to determine the extent to which Program objectives are met and activities are completed.

c) Experience

The applicant will have prior experience with provision of surrogate parents or child advocate services in an educational setting.

d) Coordination of services

PROVIDER may be required to coordinate services with other agencies and community organizations as related to the students IEP/MP at the request of the HIDOE.

e) Reporting requirements for program and fiscal data

Student Records

The PROVIDER shall maintain records on the participation of eligible students in the program. A report on the students provided services shall be submitted to the HIDOE Special Education Section on a monthly basis. Other reports and access to specific records may be required at the discretion of the HIDOE. The HIDOE at its discretion may conduct an on-site review to determine compliance with the contract.

Student records including notes and evaluations in the student file shall be available for review by the STATE upon request within three (3) working days. All the records are the property of the HIDOE and are subject to FERPA. PROVIDER shall maintain student records for three (3) years after a student exits the educational system, or until age 23, whichever is later or as determined by the STATE. The method of retention is at the discretion of the PROVIDER. This requirement shall be in effect for all Department students serviced for the duration of this Agreement, notwithstanding termination of the Agreement. Should PROVIDER, following termination of this Agreement, due to unforeseen circumstances and through no fault on its part, find it is unable to retain such records as required; the PROVIDER shall make arrangements to transfer such records to the STATE.

C. Facilities

a) On Campus Conduct

PROVIDER shall comply with all campus visitor procedures and requirements and adhere to all campus rules as required by the school site.

b) Use of School Facilities

Any activities taking place at the school site shall be arranged and coordinated in advance with the school. If applicable, PROVIDER shall submit Department forms (1)

"Use of School Buildings, Facilities, or Grounds" (Form BO-1) and (2) the "Statement Indemnifying State Against Liability Claim" (Form BO-2, Rev. 8/02) to the school office at least 10 days prior to the requested date of use in accordance with Chapter 302A, HRS and Chapter 39, HAR, Use of School Buildings, Facilities and Grounds. General information regarding the Use of Facilities guidelines can be found at: http://fssb.k12.hi.us/use_of_facilities.htm

2.5 COMPENSATION AND METHOD OF PAYMENT

A. Pricing structure or pricing methodology to be used

Applicant is requested to furnish a reasonable estimate of services it can provide for which there is sufficient operating capacity (adequate, planned and budgeted space, equipment and staff).

Compensation shall be based on a flat rate based on a need to provide an estimated **400** students per year with surrogate parent services. The need for surrogate parent services varies per student with some students needing more frequent services than others.

PROVIDER will be paid on a monthly basis upon receipt of an original invoice submitted within fourteen (14) calendar days after the last day of each month.

Total compensation is based on the following budget:

Personnel Costs	\$301,080.00
Operating Expenses	\$ 48,840.00
Total	\$349,920.00

Section 3

Proposal Application Instructions

Section 3

Proposal Application Instructions

General instructions for completing applications:

- *Proposal Applications shall be submitted to the state purchasing agency using the prescribed format outlined in this section.*
- *The numerical outline for the application, the titles/subtitles, and the applicant organization and RFP identification information on the top right hand corner of each page should be retained. The instructions for each section however may be omitted.*
- *Page numbering of the Proposal Application should be consecutive, beginning with page one and continuing through for each section. See sample table of contents in Section 5.*
- *Proposals may be submitted in a three ring binder (Optional).*
- *Tabbing of sections (Recommended).*
- *Applicants must also include a Table of Contents with the Proposal Application. A sample format is reflected in Section 5, Attachment B of this RFP.*
- *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 in Section 4, Proposal Evaluation when completing the proposal.*
- *This form (SPOH-200A) is available on the SPO website (see 1.2 Website Reference). However, the form will not include items specific to each RFP. If using the website form, the applicant must include all items listed in this section.*

The Proposal Application is comprised of the following sections:

- *Proposal Application Identification Form*
- *Table of Contents*
- *Program Overview*
- *Experience and Capability*
- *Project Organization and Staffing*
- *Service Delivery*
- *Financial*
- *Other*

3.1 Program Overview

Applicant shall give a brief overview to orient evaluators as to the program/services being offered.

3.2 Experience and Capability

A. Necessary Skills

The applicant shall demonstrate that it has the necessary skills, abilities, and knowledge relating to the delivery of the proposed services.

Applicant shall have the necessary organization and facilities to be able to coordinate and provide surrogate services for the HIDOE, and delivering these services in an expedient and assistive manner.

B. Experience

Applicant shall provide a listing of verifiable experience with projects or contracts for the most recent five years that are pertinent to the proposed services.

Ideally, Applicant shall also include satisfaction surveys or testimonies of satisfactory work as applicable.

Applicant is encouraged to include points of contact, addresses, email addresses, and phone numbers. The HIDOE reserves the right to contact references to verify experience.

C. Quality Assurance and Evaluation

The applicant shall describe its own plans for quality assurance and evaluation for the proposed services, including methodology.

Applicant responses should seek to detail how work is evaluated and reviewed by supervisors and to what degree service providers are accountable for providing efficient and expedient services in accordance with the requirements set forth in this RFP.

Applicants should describe methods and its approach to providing quality representation services to students and the HIDOE, and for resolving disputes and conflicts while still maintaining a satisfactory working relationship with all parties that the Applicant is required to work with under this agreement.

D. Coordination of Services

The applicant shall demonstrate the capability to coordinate services with other agencies and resources in the community.

The Agency should describe staff, procedures, and processes in place to allow the coordination with the HIDOE and/or other service providers as specified in Section 2.4 Scope of Work, (A) "Service Activities," to implement all components of this student's IEP or MP.

Applicant shall demonstrate knowledge of the responsibilities and authority of each agency or interest involved in a student IEP or MP.

E. Facilities

Not applicable.

3.3 Project Organization and Staffing

A. Staffing

1. Proposed Staffing

The applicant shall describe the proposed staffing pattern, client/staff ratio and proposed caseload capacity appropriate for the viability of the services. (Refer to the personnel requirements in the Service Specifications, as applicable.)

Applicant shall describe the approach utilized to assign cases to staff in order to respond to requests in the most expedient and cooperative manner for the HIDOE.

Applicant shall identify the expected response time of service providers and method of response to request for services.

Applicant shall provide a detailed time analysis report identifying all major tasks and duties performed by service providers while working on an average case in order to justify the client staff ration proposed. Applicant shall also complete Attachment D, Rate Proposal Worksheet and indicate the maximum number of students that will be assigned to any one surrogate parent during any given one month period.

2. Staff Qualifications

The applicant shall provide the minimum qualifications (including experience) for staff assigned to the program. (Refer to the qualifications in the Service Specifications, as applicable)

Applicant should describe their screening and hiring process to assure qualified service providers are employed.

Applicant may attach vitae of qualified service providers documenting educational or work credentials, knowledge, experience and history or providing surrogate parent, child advocacy services or similar cases.

B. Project Organization

1. Supervision and Training

The applicant shall describe its ability to supervise, train and provide administrative direction relative to the delivery of the proposed services.

The supervision ratios of supervisors to staff should be identified, and submission of vitae of supervisors and/or administrators are encouraged.

Supervisors and staff should be easily accessible and responsive. Applicant shall describe work hours of Supervisors and expected response time.

The Applicant shall address its ability to train its personnel with a description of the training program, how it will be enforced and implemented, and what it entails should be specific.

2. Organization Chart

The applicant shall reflect the position of each staff and line of responsibility/supervision. (Include position title, name and full time equivalency) Both the "Organization-wide" and "Program" organization charts shall be attached to the Proposal Application.

3.4 Service Delivery

Applicant shall include a detailed discussion of the applicant's approach to applicable service activities and management requirements from Section 2, Item 2.4, Scope of Work, including (if indicated) a work plan of all service activities and tasks to be completed, related work assignments/responsibilities and timelines/schedules.

Applicant shall demonstrate an understanding of the various rules and regulations regarding surrogate parent services, including IDEA, Vocational Rehabilitation Act, and appropriate FAPE and the HIDOE policies and procedures.

Failure to address all of the work activities in Section 2 and in this section will be deemed as non-responsive and the proposal may be rejected. Failure to meet the minimum specifications and deadlines for each work activity in accordance with this section will be deemed non-responsive and the proposal may be rejected.

Applicant shall provide a detailed explanation of the approach, organization and programs that the Applicant will employ in order to meet and fulfill the service requirements of this RFP. If specific services will not be offered as requested, the Applicant shall note as such. Applicant should specifically describe its approach to ensuring surrogate parents employed possess the means (such as training, knowledge, and experience) to make logical, reasonable, practical decisions to determine the best interests of the student in educational matters, and how to support those needs.

Applicant should specifically address response time and process for determining distribution of case assignments, ongoing response time and approach to communicating with the school, district, and state offices regarding progress of a student's case, and documentation of services provided by the surrogate parent assigned to the case to be submitted by the HIDOE.

Applicant should describe the type of contact surrogate parents should have with each student to the parents case load, frequency of visits, interviews, observations or other contacts, level of interaction and how surrogate parents will interact with the various personnel and organizations involved with the student's case.

Applicant shall demonstrate an understanding that all records related to student's cases shall be made available upon request by the HIDOE.

3.5 Financial

A. Pricing Structure

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.

The following budget form(s) shall be submitted with the Proposal Application:

Rate & Cost Proposal Worksheet, Attachment F of this RFP

Applicant must provide a narrative with supporting monetary figures of how the cost is constructed, as well as completing **Attachment F, Rate Proposal Worksheet**. Such components, including but not limited to: compensation to providers; 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 discussed.

The 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.

B. Other Financial Related Materials

Accounting System

To determine the adequacy of the applicant's accounting system as described under the administrative rules, the following documents are requested as part of the Proposal Application (may be attached):

1. Most recent financial audit of Applicant
2. A description of how Applicant's accounting system is organized to handle this contract
3. A description of the Applicant's billing procedure including, if applicable, the procedures in which subcontractors are paid.
4. Name of individual responsible for the accounting/billing system and his/her qualifications and position description.
5. Applicant's most recent program annual report, if available.
6. Description of the internal contract structure used in the accounting system and,
7. If accounting work is subcontracted, please describe.

3.6 Other

A. Litigation

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

Section 4

Proposal Evaluation

Section 4

Proposal Evaluation

4.1 Introduction

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.

4.2 Evaluation Process

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.

The evaluation will be conducted in three phases as follows:

- Phase 1 - Evaluation of Proposal Requirements
- Phase 2 - Evaluation of Proposal Application
- Phase 3 - Recommendation for Award

Evaluation Categories and Thresholds

<u>Evaluation Categories</u>		<u>Possible Points</u>
<i>Administrative Requirements</i>		Pass or Rejected
<i>Proposal Application</i>		100 Points
Program Overview	0 points	
Experience and Capability	15 points	
Project Organization and Staffing	30 points	
Service Delivery	50 points	
Financial	5 points	
TOTAL POSSIBLE POINTS		100 Points

4.3 Evaluation Criteria

A. Phase 1 - Evaluation of Proposal Requirements

1. Administrative Requirements

- Application Checklist
- Federal Certifications, see Section 5 (Attachments)
- Rate and Cost Proposal Worksheet

2. Proposal Application Requirements

- Proposal Application Identification Form (Form SPOH-200)
- Table of Contents
- Program Overview
- Experience and Capability
- Project Organization and Staffing
- Service Delivery
- Financial (All required forms and documents)
- Program Specific Requirements (as applicable)

B. Phase 2 - Evaluation of Proposal Application (100 Points)

Program Overview: No points are assigned to Program Overview. The intent is to give the applicant an opportunity orient evaluators as to the service(s) being offered.

1. Experience and Capability (15 Points)

The State will evaluate the applicant's experience and capability relevant to the proposal contract, which shall include:

A. Necessary Skills		
<i>Demonstrated skills, abilities, and knowledge relating to the delivery of the proposed program services.</i>		2
<i>Applicant demonstrates an established organizational structure and ability to expeditiously deliver surrogate parent services as required</i>		2
B. Experience		
<i>Applicant can produce verifiable experience with this specific or similar service, to demonstrate satisfactory delivery of services.</i>		2

C. Quality Assurance and Evaluation		
<i>Sufficiency of quality assurance and evaluation plans for the proposed services, including methodology. Applicant describes in detail accountability processes.</i>		2
<i>Applicant describes methods and approach to resolving disputes while still maintain a satisfactory working relationship with various parties involved in a student's educational needs.</i>		2
D. Coordination of Services		
<i>Demonstrated capability to coordinate services with HIDOE and other agencies and resources in the community.</i>		2
<i>Applicant adequately demonstrates knowledge of the responsibilities and authority of each party involved in a student's education needs.</i>		3
TOTAL		15

2. Project Organization and Staffing (30 Points)

The State will evaluate the applicant's overall staffing approach to the service that shall include:

A. Staffing		
<i>Proposed Staffing: That the proposed staffing pattern, client/staff ratio, and proposed caseload capacity is reasonable to insure viability of the services.</i>		2
<i>Minimum qualifications (including experience) for staff assigned to the program:</i> <ul style="list-style-type: none"> · The applicant should have detailed and demonstrated a background review process. · The applicant should have a detailed screening process for determining competency of providers to deliver services in line with the Applicant's policies and the requirements of this RFP. 		2
<i>Applicants approach and process for assigning new cases and responding to requests demonstrates responsiveness, conscientiousness and intent to expeditiously provide services.</i>		3
<i>Applicant has supplied vitae of qualified service providers documenting educational or work credentials, knowledge, experience and history of providing surrogate parent, child advocacy services or similar services.</i>		2

<i>If applicant does not currently have staff employed or subcontracted, the applicant clearly details a viable plan for obtaining necessary staff</i>		2
<i>Applicant has an adequate plan for providing continuous services in case of changes in personnel</i>		2
<i>Applicant has provided a reasonable time analysis report to justify the staff/case ratio proposed</i>		2
B. Project Organization		
<i>Applicant includes a detailed organization chart both for the “organization-wide” and program organization.</i>		
· Applicant demonstrates an established organizational structure and ability to expeditiously deliver surrogate parent services as required		2
· Approach and rationale for the structure, functions, and staffing of the proposed organization for the overall service activity and tasks is described.		2
C. Supervision and Training		
<i>The supervision ratios of supervisors to staff are reasonable to ensure proper oversight and that the ratios are reflective of the degree of oversight needed for the respective ability of the individual providers.</i>		2
· The applicant’s ability to train its personnel is specifically addressed. The training program, how it will be enforced, documented and implemented, and what it entails should be specifically described.		3
· Evidence of the training program and what it entails with desired learner outcomes, specific topics should be specifically described.		6
TOTAL		30

3. Service Delivery (50 Points)

Evaluation criteria for this section will assess the applicant’s approach to the service activities and management requirements outlined in the Proposal Application.

<ul style="list-style-type: none"> Given the service description of the required services in this RFP, the response has clearly detailed an understanding of the service in terms of the service operations and service activities in an educationally based model and how this will translate to actual provision of the service as related to the target population. 	6
<ul style="list-style-type: none"> The means in ensuring prompt responses to referral and a detailed description of the applicant's policies and procedures on how services are referred to their providers is described 	3
<ul style="list-style-type: none"> The response should clearly demonstrate how the referral system will avoid service delays or keep the HIDOE apprised of service gaps. 	3
<ul style="list-style-type: none"> The response should address how the applicant will service the remote or out-lying areas in the state and ensure services will be available throughout the state. 	3
<ul style="list-style-type: none"> <i>Applicant demonstrates an understanding of the IDEA and Vocational Rehabilitation Act and requirements of an appropriate FAPE.</i> 	6
<ul style="list-style-type: none"> <i>Applicant describes an understanding of the interaction that is required between the service provider and the various parties involved in a student's case.</i> 	5
<ul style="list-style-type: none"> <i>Applicant explains the policies and procedures and the approach that service providers utilize when working with a student's case.</i> 	4
<ul style="list-style-type: none"> <i>Applicant describes how the service providers will have adequate interaction and knowledge of specific student's situation.</i> 	6
<ul style="list-style-type: none"> <i>Proposal clearly addresses how the services will be delivered collaboratively with the HIDOE and focuses on assisting the student's functioning in the educational system.</i> 	6
<ul style="list-style-type: none"> <i>Applicant describes an adequate and appropriate record keeping and case documentation system.</i> 	4
<ul style="list-style-type: none"> <i>Applicant demonstrates an awareness of and ensures that records are kept confidential.</i> 	4
TOTAL	50

5. Financial (5 Points)

<ul style="list-style-type: none"><i>Adequacy of accounting system and infrastructure to support electronic/manual billing requirements including a demonstration of the applicant's ability to accurately track cost of related program services.</i>	5
TOTAL	5

B. Phase 3 - Recommendation for Award

Each notice of award shall contain a statement of findings and decision for the award or non-award of the contract to each applicant.

Section 5

Attachments

- A. Proposal Application Checklist
- B. Sample Table of Contents
- C. Contract Minimum and Special Conditions
- D. Wage Certificate
- E. Federal Certifications
- F. Rate and Cost Proposal Worksheet
- G. Incident Notification

Proposal Application Checklist

Applicant: _____ RFP No.: _____

The applicant's proposal must contain the following components in the order shown below. Return this checklist to the purchasing agency as part of the Proposal Application. SPOH forms are on the SPO website.

Item	Reference in RFP	Format/Instructions Provided	Required by Purchasing Agency	Applicant to place "X" for items included in Proposal
General:				
Proposal Application Identification Form (SPOH-200)	Section 1, RFP	SPO Website*	X	
Proposal Application Checklist	Section 1, RFP	Attachment A	X	
Table of Contents	Section 5, RFP	Section 5, RFP	X	
Proposal Application (SPOH-200A)	Section 3, RFP	SPO Website*	X	
Hawaii Compliance Express Verification Certificate	Section 1, RFP	Hawaii Compliance Express SPO Website*	(Required at time of award)	
Cost Proposal (Budget)				
SPO-H-205	Section 3, RFP	SPO Website*		
SPO-H-205A	Section 3, RFP	SPO Website* Special Instructions are in Section 5		
SPO-H-205B	Section 3, RFP,	SPO Website* Special Instructions are in Section 5		
SPO-H-206A	Section 3, RFP	SPO Website*	X	
SPO-H-206B	Section 3, RFP	SPO Website*	X	
SPO-H-206C	Section 3, RFP	SPO Website*		
SPO-H-206D	Section 3, RFP	SPO Website*		
SPO-H-206E	Section 3, RFP	SPO Website*	X	
SPO-H-206F	Section 3, RFP	SPO Website*	X	
SPO-H-206G	Section 3, RFP	SPO Website*		
SPO-H-206H	Section 3, RFP	SPO Website*	X	
SPO-H-206I	Section 3, RFP	SPO Website*		
SPO-H-206J	Section 3, RFP	SPO Website*		
Certifications:				
Federal Certifications				
Debarment & Suspension		Section 5, RFP	X	
Drug Free Workplace		Section 5, RFP	X	
Lobbying		Section 5, RFP	X	
Program Fraud Civil Remedies Act		Section 5, RFP	X	
Environmental Tobacco Smoke		Section 5, RFP	X	
Program Specific Requirements:				
Rate & Cost Proposal Worksheet	Section 2, RFP	Section 5, RFP	X	

*Refer to subsection 1.2, Website Reference for website address.

Proposal Application Table of Contents

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	2. Staff Qualifications	9
	B. Project Organization	10
	1. Supervision and Training	10
	2. Organization Chart (Program & Organization-wide) (See Attachments for Organization Charts	
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	SPO-H-206A Budget Justification - Personnel: Salaries & Wages	
	SPO-H-206B Budget Justification - Personnel: Payroll Taxes and Assessments, and Fringe Benefits	
	SPO-H-206C Budget Justification - Travel: Interisland	
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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 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:	Marilyn Jakeway
Telephone Number:	(808) 203-5560
e-mail Address:	marilyn_jakeway@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. VERIFICATION OF EMPLOYEES

In accordance with State rules and regulations, PROVIDER shall conduct mandatory criminal background checks at no cost to the STATE, on any employee or sub-contractor working directly with students.

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

- 4.1. Any employee, agent or volunteer's license required to perform services under this Contract is or has been suspended, conditioned, revoked, expired, or terminated;
- 4.2. Any employee, agent or volunteer becomes or has been the subject of any disciplinary proceeding or action before any federal or state agency or Board;
- 4.3. Any employee, agent or volunteer is or has been convicted of a fraud or felony;
- 4.4. Any claim, judgment or settlement in which the PROVIDER or any of its employees, agents or volunteers is or has been named a defendant;

PROVIDER shall maintain the background check records, and shall make the records available for review upon request. Upon review of these records, the STATE reserves the right to request additional background information.

5. 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 HIDEOE, its employees or students.

6. 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.

7. 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.

8. INVOICING AND PAYMENT SCHEDULE

Original invoices plus two (2) copies shall be submitted within fourteen (14) calendar days after the last day of each month to the District address to be specified. All appeals and corrections for reporting/invoice rejections shall be resolved within the next sixty (60) calendar days. Late claims shall not be accepted. Any appeals and corrections for reporting/invoice rejections shall constitute the end of HIDEOE's requirement to pay within thirty (30) days upon receipt of the original invoice. The HIDEOE's requirement to pay within thirty (30) days starts on the day the corrected invoice is re-submitted and accepted by the HIDEOE.

Invoices shall include: date of invoice, date or period of services provided, PROVIDER's name and address, and total amount due. If a copy is submitted as the original, such invoice must bear an original signature certifying that the invoice is being submitted as the original. Furthermore, ten percent (10%) of each installment payment may be retained by the HIDEOE until final completion and acceptance of all services to be performed under the Agreement to insure full and satisfactory completion of the Agreement.

9. FINAL PAYMENT

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

- 9.1. 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/>.

- 9.2. "Certification of Compliance for Final Payment" (DOE Form-22) with an original signature shall be required for final payment.

10. 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.

11. TIME OF PERFORMANCE

11.1. CONTRACT TERM

Contract shall commence on July 1, 2013 and shall end on June 30, 2014.

11.2. CONTRACT RENEWAL

This Contract may be extended for not more than three (3) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration and iii) 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.

11.3. PERFORMANCE PERIOD

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

12. 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.

13. 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"); (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.

- 13.1 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.

- 13.2 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.

14. 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:

- 14.1 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;
- 14.2 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
- 14.3 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.
- 14.4 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.

15. 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.

16. SPECIAL CONDITIONS ARE SUPPLEMENTAL

Unless otherwise stated, these Special Conditions shall serve to supplement the General Conditions; both documents remain part of the Contract with full force and effect.

17. 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.

CERTIFICATIONS

PHS-5161-1-CERTIFICATIONS (7/00)

OMB Approval No. 0920-0428

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 undersigned, 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients 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 sub awards which contain provisions for children's services and that all sub recipients 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.

2.1	Signature of Authorized Certifying Official	2.2	Title
2.3	Applicant Organization	2.4	Date Submitted

RATE AND COST PROPOSAL WORKSHEET

- ✓ Applicant shall complete worksheet and submit with Proposal using whole dollars only.
- ✓ Column 1 – indicate only those costs requested under this RFP.
- ✓ Column 2 – indicate costs that will be paid by other sources or means of funding.
- ✓ Column 3 – indicate total of Column 1 and 2.
- ✓ Column 4 – indicate organizational wide costs.
- ✓ If item is not applicable, please indicate so in the column 3, Total Program costs.
- ✓ 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.
- ✓ Additional budget forms are required – refer to V. Financial, Section 3. These budget form totals should agree with the totals on this worksheet as noted.

Service/ Expense to support program activities	Column 1 Amount Requested under this RFP	Column 2 Funds from other sources	Column 3 Total Program Costs	Column 4 Organization Wide Costs
Personnel costs:				
<u>Direct Service Personnel</u>	_____	_____	_____	_____
<u>Administrative/Managerial</u>	_____	_____	_____	_____
<u>Total Salaries (SPOH206A)</u>	_____	_____	_____	_____
<u>Fringe, Taxes, etc. (SPOH206B)</u>	_____	_____	_____	_____
<u>Total Personnel</u>	_____	_____	_____	_____
Contractual Services:				
<u>Administrative (SPOH206E)</u>	_____	_____	_____	_____
<u>Contractual (SPOH206F)</u>	_____	_____	_____	_____
<u>Total Contractual</u>	_____	_____	_____	_____
Operating Expenses (please itemize):				
<u>Program Activities (SPOH206H)</u>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
<u>Total Operating Expenses</u>	_____	_____	_____	_____
Profit:				
Other (please specify):				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
GRAND TOTAL				
Monthly price based on an average of 40 students: (This price represents applicant's proposed price for this RFP)				
Maximum capacity if less than 40 students:				

**Incident/Sentinel Event Notification
For Department of Education Contracted Providers**

**Instructions
Form ISN 82804ps**

Purpose of Form:

To be used to notify the appropriate principal, agency and Complex Area Superintendent (CAS) when there are occurrences involving serious physical/psychological harm or risk to a student, provider reports are late or not received, provider has not rendered services/gaps in services, or any incident of noncompliance with Service Activities as specified in the IEP/MP(s).

Triggers:

- | | |
|-----------------------------|---|
| *Harm or risk to student(s) | *Missing reports |
| *Late reports | *Alleged fraud claims/discrepancy in billing claims |
| *Lack of professionalism | *Questionable use of best practices application |
| *Ethics questions | *Key deliverables not rendered |
| *System concerns | |

Routing Procedures:

1. Incident/Sentinel Events require immediate action and notification to the School Principal to minimize harm or risk to the student, in addition to the submittal of written Incident/Sentinel Notification. An appropriate, individualized plan of action shall be discussed, developed, reviewed, revised and implemented to ensure student safety.
2. Agency/School personnel should try to resolve any complaints/issues with the individual provider, school, or agency. Staff should keep formal documentation on all actions/communication.
3. If personnel cannot resolve the complaints/issues, then the Leeward District CAS or Designee should be contacted for assistance. The CAS/Designee should keep formal documentation on all actions/communications, review, analysis, and follow-up. The CAS/Designee is also responsible to send a copy of the Incident/Sentinel Notification form to the State Office SPED Administrator for statewide review and analysis.
4. If contract complaints/issues cannot be resolved, then the CAS/Designee should forward all documentation to the appropriate HIDEO Procurement Office for formal resolution with the school/provider agency. The Contract Specialist CAS/Designee will work to resolve complaint/issue.

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. 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.