

REQUEST FOR PROPOSALS

FOR

INVESTOR EDUCATION

PUBLIC SERVICE ANNOUNCEMENT

PROJECT

FOR THE STATE OF HAWAII

BUSINESS REGISTRATION DIVISION

DEPARTMENT OF COMMERCE

AND CONSUMER AFFAIRS

RFP NO. BREG-05-2

Date: May 2, 2005

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PUBLIC NOTICE TO OFFERORS

NOTICE is hereby given that SEALED PROPOSALS shall be received by the Business Registration Division ("**BREG**") of the State of Hawaii ("**STATE**") Department of Commerce and Consumer Affairs ("**DCCA**"), King Kalakaua Building, 335 Merchant Street, Room 203, Honolulu, Hawaii 96813 up to 4:00 p.m. (HST), June 1, 2005 for RFP No. BREG-05-2 for BREG's Investor Education Public Service Announcement Project ("**Project**") as advertised in the Hawaii State and County Public Notices on May 2, 2005.

Proposals shall not be opened publicly, but shall be opened in the presence of the Commissioner of Securities. A register of proposals shall be prepared by BREG and shall be made available to the public after the contract is awarded and signed. Proposals received after 4:00 p.m. (HST), June 1, 2005 shall not be considered. This RFP may be cancelled and any or all proposals may be rejected (in whole or in part), when it is in the best interest of BREG and/or the STATE.

This RFP may be obtained from the above address, at no cost, beginning at 9:00 a.m. (HST), May 2, 2005.

Questions relating to this RFP may be directed to Ms. Corinna M. Wong, Commissioner of Securities ("**COMMISSIONER**"), by mail at the above address, by telephone at (808) 586-2744, or by fax at (808) 586-2733.

Corinna M. Wong
Commissioner of Securities

Date: May 2, 2005

I. CALENDAR OF EVENTS

- | | | |
|----|--|---------------------------------|
| 1. | Advertisement | May 2, 2005 |
| 2. | Proposal Available for Distribution | May 2, 2005
9:00 a.m. (HST) |
| 3. | Deadline to Submit Written Questions | May 9, 2005
4:00 p.m. (HST) |
| 4. | Deadline for BREG to Respond to Written Questions | May 26, 2005
2:00 p.m. (HST) |
| 5. | Deadline to submit proposals/best and final offers | June 1, 2005
4:00 p.m. (HST) |
| 6. | Selection of CONTRACTOR | June 9, 2005 |

Note: All times specified herein are based on Hawaii Standard Time ("**HST**").

Proposals must be received in the office of the COMMISSIONER by 4:00 p.m. (HST), June 1, 2005. Late proposals shall be rejected and not be considered.

The above dates are estimates only and are subject to change at the COMMISSIONER'S sole discretion. The COMMISSIONER reserves the right to change any date(s) as deemed necessary and in the best interest of the STATE.

II. INTRODUCTION

- A. The Commissioner and BREG are responsible for enforcing the securities laws of the State and have two main objectives: protect Hawaii investors from unscrupulous business practices, and educate today's and tomorrow's investors so they will be better able to make wise choices when it comes to investing in their financial future.
- B. BREG therefore wishes to create a public service announcement campaign consisting of primarily a series of three 30-second public service announcements (PSA) for broadcast by television stations in Hawaii to educate investors on investing wisely and on self-protection against potential investment fraud and abuse.

III. SCOPE OF WORK

The requirements specified in this section are designed to assist the OFFEROR in submitting a proposal that will best meet the needs of BREG and/or the STATE. The requirements presented specify the services to be provided by the successful OFFEROR and the minimum capabilities required:

- A. Introduction Develop a comprehensive, culturally appropriate public service announcement campaign to increase awareness of the services offered by the Commissioner of Securities' Office in BREG through a series of three 30-second PSAs that would focus on the following messages:
 - 1. The benefits of saving for the future (primary target: youth K-12 and college students).
 - 2. How to invest wisely (primary target: working adults).
 - 3. Protection from financial scams and schemes (primary target: seniors).
- B. Creative Execution Work closely with BREG staff to understand BREG's objectives and develop customized concepts to address the respective target markets, including, but not limited to, concept creation, art direction, copywriting, and account management.
- C. Production Produce the customized/creative concepts approved by BREG into three 30-second PSAs suitable for broadcast as television commercials. The OFFEROR shall be responsible for providing preproduction, production and post production services, including, direction, cast, film crew, location, film and editing for the PSAs. The three PSAs and footage from the Project shall be the exclusive property of and owned by BREG.

- D. Reports Provide BREG with a work plan, time line and schedule for the proposed deliverables and regular written reports to update BREG on the progress of the Project.
- E. Attending Meetings Attend meetings as may be requested by BREG to explain the Project and answer questions.
- F. Other Services Provide other services in the connection with the Project as reasonably required by BREG.

IV. INFORMATION INCLUDED IN PROPOSAL

A. Introduction

1. An OFFEROR'S Proposal shall describe general concepts of the proposed television style commercials, work plan, time line and the proposed cost, along with supporting experience and references relating to its ability to satisfactorily perform the tasks in the RFP. The Proposal shall describe the OFFEROR's overall qualifications for this type of work, and describe those factors that may uniquely qualify it for the Project.
2. A director's reel of public service announcement spots of different styles produced by the OFFEROR will be helpful for the evaluation and review process.
3. To facilitate the evaluation and review process, the OFFEROR shall identify in the Proposal the relevant section number and heading in the order listed, and immediately below provide a detailed response to each requirement.

B. OFFEROR'S Experience, History, and Reliability

1. The experience and reliability of the OFFEROR'S organization shall be considered in the evaluation process. Therefore, the OFFEROR shall submit any information that documents successful and reliable experience in past performance, especially those performances related to the requirements of this RFP.
2. The OFFEROR is to specifically describe the following:
 - a. What is the principal business of the OFFEROR and when did the OFFEROR begin providing services in the area of producing commercials for television broadcast?
 - b. Is your company a subsidiary or affiliate of another company? If so, please provide information on your parent company or affiliated company, and fully describe the nature of your direct or indirect relationship. Failure to disclose shall constitute grounds for rejection of any Proposal or termination of any Contract.

- c. Describe any pending or proposed agreements to merge or sell the company.
 - d. Is there any pending litigation against the company? If so, give details and provide an opinion of legal counsel that the pending litigation will not impair the company's performance.
 - e. Has there ever been any litigation or formal complaint against your company resulting from its current or past involvement providing services in the area of producing commercials for television broadcast? If so, please describe fully. Failure to disclose shall constitute grounds for rejection of any Proposal or termination of any Contract.
3. Provide the following general company information:
- a. Name and address of company, name of the official who will coordinate all activities related to the Project, telephone and fax number, and location of local office(s).
 - b. When was the company established?
 - c. What professional liability insurance coverage's are maintained by your company for errors or omissions or any other acts committed by your company or your employees?
4. The OFFEROR shall be authorized to transact business in the STATE. Are you authorized to transact business in the STATE and do you satisfy the requirements of the STATE'S Procurement Code in HRS chapter 103D?
5. The OFFEROR shall provide the following information related to previous and current contracts that are considered similar to the requirements of this RFP:
- a. Name, address and telephone number of contracting agency and person who may be contacted for verification of all data submitted.
 - b. Give a brief history and include relevant information of your organization's current and past experience providing services in the area of producing commercials for television broadcast.

- c. Given your current contractual obligations, will you have any problem with handling this Contract?
- d. List all governmental clients, within the last ten (10) years, for whom you provide or provided services in the area of producing PSA style commercials for television broadcast. Provide for each: briefly describe the PSA, the focus of the PSA, contact person, address and telephone number.
- e. Has any contract of your company ever been terminated for cause? If so, when, by whom and under what circumstances?
- f. Do you now, or have you ever had, a contract with the STATE to provide products or services? Briefly describe the nature and scope of the contract.

C. OFFEROR's Customer References

- 1. Provide the names, addresses, and telephone numbers of at least (5) governmental entities (if any) for which the OFFEROR has provided services in the area of producing PSA style commercials for television broadcast that we may contact.
- 2. All work for references shall have been performed within the past ten (10) years.

D. Expertise of OFFEROR'S Personnel

- 1. The qualifications of the personnel proposed by the OFFEROR to perform the requirements of this RFP shall be considered in the evaluation. Therefore, the OFFEROR shall submit information relating to the experience and qualification of its staff. Provide resumes of the key employees.
- 2. Attach an organization chart of the company (or any part of the company associated with this Contract) showing principal officers and staff members to be associated with this Contract.

E. OFFEROR'S Subcontractors

1. OFFERORS who intend to utilize the services of subcontractors shall identify each person or firm to be engaged by the OFFEROR as a joint OFFEROR or subcontractor in the performance of work required under this RFP.
2. Include the qualifications and resumes of any joint OFFEROR or subcontractor employees, if any, to be used in the performance of services under the Project.
3. Describe the work to be performed by the joint OFFEROR or subcontractor.
4. The OFFEROR shall not subcontract any of the work to be performed under the Contract nor shall OFFEROR assign the Contract to any other person or firm without the prior written approval of BREG.

F. Proposed Methods of Performance In presenting the proposed methods of performance, the OFFEROR shall specifically provide the following information. Failure to provide this information may constitute grounds to reject your Proposal.

1. Include a detailed discussion of the OFFEROR's approach to applicable service activities and management requirements, including a work plan of all services, activities and tasks to be completed, related work assignments, responsibilities and time lines and schedules.

G. Additional Services

- a. Describe any additional services your company is willing to provide BREG and/or any additional information on your Proposal.

V. COMPENSATION

- A. The CONTRACTOR shall be compensated for the services provided under this RFP solely from BREG. The Contractor shall not be entitled to any other STATE funds whatsoever.
- B. OFFEROR should submit a budget or fee proposal showing a breakdown of dollar allotments for all the services to be provided under this RFP, if the OFFEROR proposes to provide the services under this RFP in separate stages, the OFFEROR shall submit a budget or fee proposal for each separate stage. The pricing structure shall be fixed prices.
- C. The CONTRACTOR shall be paid an initial payment of 20% of the project cost and thereafter upon completion of each stage of the Project, e.g., conception, preproduction, production and post-production.
- D. At the end of each month or stage, the CONTRACTOR shall submit an invoice to BREG (in triplicate) which shall: (1) list the services provided and the breakdown of the fees associated thereto based on the budget proposed. The initial deposit shall be credited against the fees and BREG shall not be required to make payment until the initial deposit has been exhausted and (2) include any other information reasonably requested by BREG.
- D. Upon receipt of a proper invoice, BREG shall pay the OFFEROR within thirty (30) calendar days after receipt of the invoice.

VI. ADMINISTRATIVE PROVISIONS

A. STATE Procurement Code

1. This RFP is issued in accordance with the provisions of the STATE'S Procurement Code contained in HRS chapter 103D and the administrative rules thereunder.
2. All OFFERORS are charged with presumptive knowledge of all requirements of the cited authorities and STATE law. The submission of a properly executed Proposal by an OFFEROR shall constitute certification and representation of such knowledge.

B. Issuing Officer

1. This RFP is issued by the Commissioner of Securities.
2. The individual listed below shall be the point of contact from the date this RFP is issued to the date an OFFEROR is selected to be the CONTRACTOR:

Ms. Corinna M. Wong
Commissioner of Securities
Business Registration Division
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, HI 96813

Telephone: (808) 586-2744
Fax: (808) 587-2733

C. Procurement Officer

1. The Procurement Officer or her designee shall serve as the STATE'S primary liaison with the CONTRACTOR in working with other STATE staff during the term of the Contract. The Procurement Officer or her designee shall provide overall direction during the term of the Contract, and monitor and assess the CONTRACTOR'S performance.
2. The Procurement Officer for the Contract is Ms. Corinna M. Wong, Commissioner of Securities.

D. Written Questions

1. OFFERORS may submit typewritten questions about this RFP to BREG by the date and time specified in "CALENDAR OF EVENTS". Questions may be sent by facsimile; provided they are received by the specified deadline. Such documents shall contain pertinent information to identify the prospective OFFEROR, the OFFEROR's mailing address, telephone, and FAX number, the RFP NO., and be addressed to BREG.
2. The Issuing Officer shall respond to the typewritten questions by the date specified in "CALENDAR OF EVENTS". The Issuing Officer shall not be responsible for any delays or non-receipt of responses to prospective OFFERORS.

E. RFP Amendments BREG reserves the right to amend this RFP any time prior to the closing date for final receipt of Proposals (i.e., prior to 4:00 p.m. (HST), June 1, 2005).

F. Cancellation of RFP/Rejection of Proposals

1. BREG reserves the right to cancel the RFP when, in the BREG's opinion, such cancellation is in the best interest of BREG and/or the STATE.
2. BREG may reject Proposals, in whole or in part, and waive any defects, when in BREG's opinion, such rejection or waiver will be in the best interest of BREG and/or the STATE.
3. BREG shall not be liable for any costs, expenses, loss of profits, or damages whatsoever incurred by the OFFERORS in the event this RFP is canceled or a Proposal is rejected.
4. Multiple, alternate, or conditional Proposals shall not be accepted.

G. Tax Clearances

1. The resulting Contract shall be subject to HRS section 103-53, and HRS chapter 103D, as amended (and other similar STATE laws, if any).
2. The law requires all businesses to obtain a tax clearance certificate from the STATE Department of Taxation and the Internal Revenue Service in order to enter into a STATE contract. The CONTRACTOR shall be required to submit an approved STATE Application for Tax Clearance,

Form A-6, for contract execution and for final payment and subject to general excise tax and State of Hawaii income tax requirements. Forms and additional information are available from the Department of Taxation (“DOTAX”) or at DOTAX’s Website (<http://www.hawaii.gov/tax/tax.html>).

H. Insurance

1. The CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of the Contract as follows:
 - a. STATE requirements for workers’ compensation, temporary disability, unemployment, and prepaid health care insurance coverage; and
 - b. Professional liability insurance coverage - minimum of \$500,000 per occurrence; provided that this policy shall contain the following clauses:
 1. “This insurance shall not be canceled, limited in scope of coverage, or non-renewed unless at least thirty (30) calendar days written notice has been given to the State of Hawaii Commissioner of Securities.”
 2. “It is agreed that any insurance maintained by the State of Hawaii shall only apply in excess of, and not contribute with, the insurance provided by this policy.”
 - c. Appropriate errors and omissions liability insurance policy covering the CONTRACTOR against claims that may arise as a consequence of errors or omissions in providing services (including any such claims which may arise in connection with the services provided under the Contract). The provisions of this section H. shall survive the expiration or earlier termination of the Contract.
 - d. The CONTRACTOR agrees to deposit with BREG, on or before the effective date of the Contract, certificate(s) of insurance necessary to satisfy BREG that the provisions of the Contract have been complied with, and to keep such insurance in effect and provide the certificate(s) of insurance to BREG during the entire term of the Contract. Upon request by BREG, the CONTRACTOR shall furnish a copy of the policy or policies.

- e. Failure of the CONTRACTOR to provide and keep in force such insurance shall constitute a material default under the Contract, entitling BREG to exercise any or all of the remedies provided in the Contract (including without limitation terminating the Contract). The procuring of any required policy or policies of insurance shall not be construed to limit the CONTRACTOR'S liability hereunder, or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be responsible for the full and total amount of any damage, injury, or loss caused by the CONTRACTOR'S negligence or neglect in the provision of services under the Contract.

I. Americans with Disabilities Act of 1990

- 1. The CONTRACTOR shall comply with the Americans with Disabilities Act of 1990, as amended ("**ADA**").
- 2. In its Proposal, the OFFEROR shall agree to comply with the ADA in the provision of services under this RFP and the Contract, at no cost to BREG.

J. Quiet Period

- 1. OFFERORS and their agents, officers, principals, and employees shall not engage in any written or verbal communication with BREG, BREG's staff, the COMMISSIONER, or the Evaluation Committee during the procurement and selection process. The process ends at the time the Contract is executed, unless otherwise requested by BREG.
- 2. OFFERORS shall not engage in any lobbying efforts, or other attempts to influence BREG, BREG's staff, the COMMISSIONER, or the Evaluation Committee in an effort to be selected.
- 3. Any violation of this section J. may constitute grounds to reject a Proposal.

VII. PROPOSAL SUBMISSION INSTRUCTIONS AND REQUIREMENTS

A. Submission of Proposals

1. To be considered responsive, an OFFEROR'S Proposal must be for all items specified in this RFP (and any subsequent Addendum(s)). Any Proposal offering any other set of terms and conditions contradictory to those included herein (or in any subsequent Addendum) may be rejected without further consideration.
2. An OFFEROR must complete the "Standard Proposal Letter" in Appendix "A", and identify the name and telephone number of a person who may be contacted during the evaluation process to discuss the proposal.
 - a. By signing the "Standard Proposal Letter", the OFFEROR agrees to comply with the requirements of this RFP, and all applicable federal and STATE laws.
 - b. The "Standard Proposal Letter" must be signed by an officer (an original signature is required) who has authority to bind the OFFEROR, and evidence of that authority must be attached and the corporate seal, if any, affixed to the "Standard Proposal Letter".
3. An OFFEROR shall prepare and submit a Proposal that fully describes the services, time frame, and compensation that the OFFEROR proposes in response to this RFP. An OFFEROR shall describe how its Proposal meets BREG'S requirements on a point-by-point basis as itemized in Part III "SCOPE OF WORK", Part IV "INFORMATION INCLUDED IN PROPOSAL", and other applicable provisions in this RFP. The description shall be in sufficient detail to enable BREG to evaluate the services offered. This is in addition to any brochures or printed materials that may be submitted with this RFP.
 - a. The following format shall be used when responding to requirements of this RFP:
 1. Identify the relevant section number and heading; and
 2. Provide the response to the matter as appropriate.

- b. Any supplemental information thought to be relevant, but not applicable to the specified categories, should be provided as an appendix to the proposal.
 - c. All Proposal responses must be in accordance with the terms and conditions stated herein. Descriptions may be submitted on additional sheets not provided for in this RFP.
 - d. An OFFEROR shall submit a written Proposal.
- 4. An OFFEROR shall complete the "WAGE CERTIFICATION" form in Appendix "B" and submit it with its Proposal.
 - 5. An OFFEROR is required to submit its Proposal using the OFFEROR'S exact legal name, as registered in the state in which it is incorporated. Failure to do so may delay proper execution of the Contract. The original Proposal response must also contain original signatures, and facsimiles shall not be accepted.
 - 6. All materials submitted shall become the property of BREG and/or the STATE, unless otherwise noted, and shall not be returned.
 - 7. BREG reserves the right to hold all Proposals received for a period of ninety (90) days from the date of the Proposal opening, during which time they shall be irrevocable, unless otherwise required by law.
 - 8. Proposals shall be mailed or delivered to the Issuing Officer at the address specified above. Proposals must be received and time-stamped by the Issuing Officer no later than 4:00 p.m., HST, on June 1, 2005.
 - a. Any Proposal received after that date and time shall be rejected. Faxed or e-mailed Proposals shall not be accepted or considered for award.
 - b. The outside cover of the package containing the Proposal shall be marked:

"Proposal Submitted in Response to RFP No. BREG-05-2 for the Investor Education Public Service Announcement Project for the State of Hawaii Business Registration Division, Department of Commerce and Consumer Affairs (Name, address, and fax number of OFFEROR)"

- c. All Proposals must be typewritten or mechanically printed on 8 ½" x 11" paper.
- 9. Each qualified OFFEROR shall submit one (1) single-sided unbound original of the Proposal and three (3) copies (for a total of four (4)) concurrently. Proposals shall be time-stamped upon receipt and shall not be opened publicly.
- 10. Any OFFEROR may modify or withdraw a Proposal before the opening date (i.e., prior to June 2, 2005, 10:00 a.m.).

B. Trade Secrets/Proprietary Data

- 1. If an OFFEROR considers any part of a Proposal a trade secret or proprietary data, the OFFEROR must clearly designate that portion as confidential in order to obtain any protection from disclosure that may be available under Hawaii Administrative Rules ("**HAR**") section 3-122-58, and HRS chapter 92F. Simply marking a section "confidential" shall not ensure protection. Each sheet of such information must be marked with the following: "This data constitutes a trade secret or proprietary data under HAR section 3-122-58, and/or HRS chapter 92F." Materials shall be readily separable from the Proposal in order to facilitate inspection of the nonconfidential portion of the Proposal.
- 2. OFFERORS shall submit reasons why the marked material constitutes a trade secret or proprietary data under the applicable section or chapter, and attach such justification with the Proposal. The OFFEROR'S pricing information for this RFP shall be open to public inspection and shall not be regarded as confidential.

C. Costs for Proposal Preparation Any and all costs incurred by an OFFEROR in preparing or submitting a Proposal shall be the OFFEROR'S sole responsibility, and shall not be reimbursed by BREG and/or the STATE whatsoever.

D. Executive Summary

- 1. An OFFEROR shall also provide an executive summary of the OFFEROR'S Proposal that shall:
 - a. Not to exceed three (3) pages in length;

- b. Fully disclose ALL materials facts, terms, and conditions, and include a detailed summary of:
 - 1. The OFFEROR'S qualifications and experience;
 - 2. The OFFEROR'S proposed fees; and
 - 3. Why the OFFEROR should be selected.
- 2. The Executive Summary shall be detachable from the OFFEROR'S main Proposal.

VIII. PROPOSAL EVALUATION AND SELECTION

A. Introduction

1. Only those Proposals that substantially meet all of the terms, conditions, and requirements specified in this RFP shall be considered. All other Proposals shall be considered non-responsive and shall be eliminated from the evaluation and selection process.
2. BREG is committed to a fair and impartial evaluation of all Proposals received.

B. Evaluation Criteria

The evaluation shall be based on the following criteria and the corresponding point system:

<u>Criteria</u>	<u>Maximum Points</u>
1. OFFEROR'S Experience, Performance History, Reliability, Service, Administrative Capability, and Methods of Performance	70
2. OFFEROR'S proposed fees/costs	25
3. Additional services	<u>5</u>
TOTAL	100 =====

- C. Evaluation Committee BREG shall appoint an Evaluation Committee of seven (7) that shall review and evaluate all Proposals submitted by the deadline specified in this RFP.

D. Evaluation Process

The evaluation of Proposals shall be conducted in six (6) phases:

1. Phase 1 - Initial Classification of Proposals

Proposals shall be classified initially as "acceptable", "potentially acceptable", or "unacceptable". All responsive, responsible OFFERORS who submit "acceptable" or "potentially acceptable" Proposals shall be eligible for the priority list in Phase 2.

The purpose of this phase is to determine whether an OFFEROR'S Proposal is sufficiently responsive to the RFP to permit a complete evaluation. OFFERORS must submit the "Standard Proposal Letter", and a Proposal that addresses all of the requirements specified in this RFP and is in the format specified in this RFP. Failure to meet these requirements shall be grounds to deem the Proposal "unacceptable".

2. Phase 2 - Establishment of Priority-Listed Offerors

If there are more than three (3) "acceptable" or "potentially acceptable" Proposals, the Evaluation Committee shall evaluate the Proposals under the evaluation criteria above, rank the Proposals, and limit the priority list to at least three (3) responsive, responsible OFFERORS who submitted the highest-ranked Proposals. Those responsive, responsible OFFERORS who are selected for the priority list shall be referred to as the "Priority-Listed Offerors".

3. Phase 3 - Interviews with Priority-Listed Offerors

During this phase, BREG may (in its sole discretion) conduct interviews only with Priority-Listed Offerors. BREG may require oral presentations from the Priority-Listed Offerors to ensure a thorough, mutual understanding of each Proposal. BREG shall schedule the time and location for these presentations as soon as reasonably practicable or as required by the Evaluation Committee. Any Priority-Listed OFFEROR who is requested to make a presentation but fails to make the presentation on the scheduled date to the Evaluation Committee shall not be considered for the final award. Any and all costs incurred by an OFFEROR in making the presentation shall be the OFFEROR'S sole responsibility and shall not be reimbursed by BREG whatsoever.

4. Phase 4 - Submission of Best and Final Offers

Priority-Listed Offerors shall submit their best and final offers by 4:00 p.m. (HST), June 2, 2005. Best and final offers shall be submitted only once unless it is determined in writing by BREG to be in the best interest of the STATE to conduct additional discussions, or change BREG'S requirements, and require another submission of best and final offers.

Priority-Listed Offerors that do not submit a best and final offer shall have their immediate previous Proposal considered their best and final offer.

5. Phase 5 - Final Evaluation of Proposals

During this phase, the Evaluation Committee may conduct final evaluations of the Priority-Listed Offeror's best and final offers submitted

by the OFFERORS. If best and final offers are not required, the Evaluation Committee shall conduct final evaluations of the Proposals received. Final evaluations may include interviews with the finalists to clarify any further information on each Proposal. BREG may schedule the interviews by telephone during the time frame in the "CALENDAR OF EVENTS" or as required by the Evaluation Committee.

6. Phase 6 - Recommendation for Award

The Evaluation Committee shall prepare a short report summarizing its findings and rankings, and shall make the final selection of the CONTRACTOR.

E. Contract Period

1. The successful OFFEROR shall be required to enter into a Contract to commence work on this Project.
2. Either party may elect to terminate the Contract at anytime upon providing the other party sixty (60) calendar days prior written notice of its intent to terminate the Contract.

F. Contract Execution

1. The successful OFFEROR shall be required to enter into a formal written Contract in accordance with the laws, rules and regulations of the STATE. It is anticipated that the contract shall be executed within approximately thirty (30) days of the date of notification of the award.
2. BREG intends to use the "State of Hawaii Agreement for Goods or Services based upon Competitive Sealed Proposals"; and the "General Conditions" in Appendix "C"; provided that the following termination provisions shall also apply:
 - "a. BREG may terminate the Contract immediately if:
 1. The CONTRACTOR fails to comply with any applicable STATE or federal licensing requirement(s) necessary to provide the services under the Contract; or
 2. The award of the Contract to the CONTRACTOR or the Contract itself is deemed invalid by any court or administrative tribunal;

- b. Except as otherwise provided in the Contract, if BREG is dissatisfied with the performance of the CONTRACTOR (or any of its subcontractors), the CONTRACTOR fails to perform its obligations under this Agreement, or the CONTRACTOR otherwise breaches the provisions of the Contract:
1. BREG shall immediately notify the CONTRACTOR in writing of BREG'S dissatisfaction, or that the CONTRACTOR has failed to perform or is in breach;
 2. The CONTRACTOR shall have thirty (30) calendar days from receipt of the notification to cure the problem to the satisfaction of BREG;
 3. During the thirty (30) day period, the CONTRACTOR shall continue to comply with the requirements of the Contract;
 4. If the CONTRACTOR fails to cure the problem within the thirty (30) day period, BREG may terminate the Contract immediately thereafter; and
 5. If at any time after notification, the CONTRACTOR refuses to cure the problem, BREG may terminate this Agreement within thirty (30) calendar days after such refusal.
- c. Upon termination, expiration, or non-renewal of the Contract:
1. BREG shall not be liable to the CONTRACTOR (or its approved subcontractors) for any costs, expenses, loss of profits, or damages whatsoever incurred by the CONTRACTOR (or its approved subcontractors) in the performance of services required under the Contract;
 2. BREG shall have the right to secure services in the open market, or from the next OFFEROR whose proposal is deemed most advantageous to the STATE; and
 3. The CONTRACTOR shall be required to assist with and fully cooperate with BREG in transitioning the Project to another Third Party Vendor at no cost to BREG and/or the STATE.
- d. Additional rights and remedies. The rights and remedies provided in this section are in addition to any other rights and remedies provided by law or under the Contract.

APPENDIX "A"

STANDARD PROPOSAL LETTER

**FOR THE INVESTOR EDUCATION PUBLIC SERVICE
ANNOUNCEMENT PROJECT FOR THE STATE OF
HAWAII BUSINESS REGISTRATION DIVISION**

Ms. Corinna M. Wong
Commissioner of Securities
Business Registration Division
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, Hawaii 96813
Fax No. (808) 586-2733

Dear Commissioner Wong:

The undersigned has carefully read and fully understands the requirements of RFP NO. BREG-05-2 and hereby agrees to furnish and deliver all in strict compliance with the RFP, if selected.

Any questions that BREG may have regarding this Proposal should be directed to:

Name: _____

Title*: _____

Company: _____

Address: _____

City/State: _____ Zip: _____

Telephone No: _____ Facsimile No: _____

The undersigned understands and agrees that:

1. BREG reserves the right to cancel this RFP, reject any and/or all proposals, and to waive any defects when, in BREG's opinion, such cancellation, rejection, or waiver will be in the best interest of BREG and/or the STATE;
2. By submitting this Proposal, the undersigned is declaring that its Proposal is not in violation of HRS § 84-15, concerning prohibited STATE contracts; and

3. If awarded the Contract, all services performed shall be in accordance with all applicable STATE and federal laws.

Respectfully submitted,

Title
(affix Corporate Seal here**)

Hawaii General Excise Tax Number or Federal I.D.

- * Please attach to this Proposal evidence of authority of this officer to act on behalf of the company.
- ** If the Corporate Seal is not available at the local or branch office where the Proposal is prepared, a letter signed by an authorized corporate officer indicating the location of the seal may be attached to the Proposal as an acceptable substitute.

APPENDIX “B”

WAGE CERTIFICATION

**FOR THE INVESTOR EDUCATION PUBLIC
SERVICE ANNOUNCEMENT PROJECT FOR THE
STATE OF HAWAII BUSINESS REGISTRATION
DIVISION**

To the extent that HRS § 103-55 applies, I hereby certify that if awarded the Contract, the services to be rendered shall be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to public officers and employees for similar work, if similar positions are listed in the classification plan of the STATE government.
2. All applicable laws of the federal and STATE governments, including but not limited to workers' compensation, unemployment insurance, payment of wages, and safety, shall be fully complied with.

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

OFFEROR: _____

Signature: _____

Title: _____

Date: _____

APPENDIX “C”

STATE OF HAWAII GENERAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The "head of the purchasing agency," (which term includes the designee of the head of the purchasing agency), 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 the head of the purchasing agency at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency 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 services.
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, showing that all delinquent taxes, if any, levied or accrued under state law 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 237-45, 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.

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, showing that all delinquent taxes, if any, levied or accrued under state law 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 CPO 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 therefor, 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.

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 126, Procurement Rules, 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 not exceed sixty consecutive days and 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 126, Procurement Rules. 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. 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 subchapter 15, chapter 3-122, Procurement Rules, 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) of the Procurement Rules 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 DIRECTOR 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 dispersed to subcontractors within ten 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 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 237-45, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR have been paid.

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.

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 Contract of modification is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a 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, showing that all delinquent taxes, if any, levied or accrued under state law 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 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 of the Procurement Rules.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122 of the Procurement Rules.
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 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 head of the purchasing agency, the CPO, the DIRECTOR, 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 purchasing 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 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. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
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 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 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 Contracts, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior Contracts, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no Contracts, 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.