



State of Hawai‘i

RFP NHRLF 2019-03

MARKETING AND MEDIA SERVICES

ISSUED DATE: October 11, 2018

DUE DATE: November 14, 2018, 2:00 p.m. HST

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

REQUEST FOR PROPOSAL (hereinafter "RFP") No. RFP NHRLF 2019-03

Notice is hereby given that pursuant to Chapter 103D, Hawai'i Revised Statutes, as amended, (hereinafter "HRS"), the Office of Hawaiian Affairs (hereinafter "OHA"), will be accepting sealed proposals for the development of a statewide marketing campaign and resulting marketing materials and also media buying services on behalf of the OHA and its Native Hawaiian Revolving Loan Fund (hereinafter "NHRLF") to increase their loan disbursements.

This RFP may be picked up at the OHA's Main Reception Desk on Oahu located at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817 or downloaded at either the OHA website at: www.oha.org or the State Procurement Office (hereinafter "SPO") website at <https://hands.ehawaii.gov/hands/opportunities>, beginning October 11, 2018. Interested offerors must have experience with collecting and obtaining collections from various institutions.

The OHA's Procurement Unit will conduct a Pre-Proposal Conference from 9:00 a.m. to 10:00 a.m. Hawaii Standard Time (hereinafter "HST") at the OHA, 560 North Nimitz Highway, Iwikauiakaua Conference Room, Honolulu, Hawai'i 96817, Wednesday, October 24, 2018. The OHA strongly recommends that all interested offerors attend. For those interested in attending via conference call, please contact the RFP Coordinator listed below no later than 2:00 p.m. HST, Monday, October 22, 2018.

Sealed proposals will be received at the OHA's Reception Desk at 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817 until 2:00 p.m. HST, Wednesday, November 14, 2018. Electronic mail and facsimile transmissions will not be accepted. The official time will be that which is recorded on the time stamp clock of the OHA for hand-delivered proposals. Deliveries by private mail services, such as Federal Express, will be considered hand deliveries. All mail-in proposals delivered/postmarked by the United State Postal Services (hereinafter "USPS") must be received no later than 2:00 p.m. HST, Wednesday, November 14, 2018 at the OHA's office.

The OHA reserves the right to reject any and all proposals and to accept the proposal in whole or part in the best interest of the OHA and the State. Questions relating to this solicitation will be directed to the RFP Coordinator, Ms. Miki Cachola Lene, at (808) 594-1993.

OFFICE OF HAWAIIAN AFFAIRS
Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer, Head of Purchasing Agency

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Section 1 – Administrative Overview

I. Authority

In 1978, the Article XII of the State of Hawai‘i Constitutional Convention established the Office of Hawaiian Affairs (hereinafter “OHA”) to address the historical injustices and challenges arising out of those circumstances. Chapter 10 of the Hawai‘i Revised Statutes, as amended, outlines the OHA’s duties and purposes, including promoting and protecting the rights of Native Hawaiians.

The OHA is a semi-autonomous public agency of the State of Hawai‘i, with the legal mandate of bettering the conditions of Native Hawaiians. The OHA’s mission is “To mālama (protect) Hawai‘i’s people and environmental resources and the OHA’s assets toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally.”

The OHA seeks to competitively procure services for the development of a statewide marketing campaign and resulting marketing materials and also media buying services on behalf of the OHA and its NHRLF to increase their loan disbursements.

A determination has been made that the OHA is unable to secure collecting and obtaining collections through a low bid process. Factors included in the determination are: 1) price is not the primary consideration in determining an award; 2) the resulting Contract may need to be other than a fixed price type; 3) the specifications for the services cannot be sufficiently described through low bid process; 4) oral or written discussion need to be conducted with interested offerors concerning their proposals; 5) interested offerors may need to revise their proposal, including price; and 6) the award needs to be based on a comparative evaluation in order to determine the most advantageous offering to the OHA. To that end, a low bid process is not practicable to the OHA to secure marketing and media services statewide.

This RFP is issued under the provisions of Chapter 103D, HRS, as amended, and its related administrative rules. Interested offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any interested offeror will constitute admission of such knowledge on the part of such interested offeror.

II. RFP Organization

This RFP is organized into five (5) sections:

Section 1 Administrative Overview – Provides interested offerors with an overview of the procurement and contracting process.

- Section 2 Scope of Work and Specification – Provides interested offeror with a general description of the tasks to be performed, delineates interested offeror’s responsibilities, and defines deliverables as applicable.
- Section 3 Proposal Form and Instruction – Describes the required format and content for the proposal.
- Section 4 Proposal Evaluation & Award – Describes how proposals will be evaluated.
- Section 5 Attachments

III. Contracting Office

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

Office of Hawaiian Affairs
Procurement Unit
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817 Telephone: 594-1888

The RFP Coordinator or his/her designated representative is listed below:

Ms. Miki Cachola Lene
Office of Hawaiian Affairs
Procurement Unit
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817
Telephone: (808) 594-1993 Email: mikic@oha.org
Fax: (808) 594-1863

The OHA reserves the right to change the RFP Coordinator without prior written notice.

The Native Hawaiian Revolving Loan Fund program is the program responsible for administering and monitoring the Contract. The designated Contract Administrator (hereinafter “Administrator”) or his/her designated representative is responsible for monitoring the activities performed under the Contract and is identified as:

Mr. Thomas Atou
Office of Hawaiian Affairs
Native Hawaiian Revolving Loan Fund
560 North Nimitz Highway, Suite 200
Honolulu, Hawai‘i 96817

Any changes to the Contract Administrator or his/her designated representative will be provided in writing to the Successful Offeror. The OHA reserves the right to make the changes to the Contract Administrator.

Once the Successful Offeror has received the Notice to Proceed, all communications regarding approval, reports, and requests should be directed to the Contract Administrator.

IV. Terms and Acronyms

BAFO	Best and Final Offer
CEO	Chief Executive Officer
COGS	Certificate of Good Standing
CPO	OHA Chief Procurement Officer
DCCA	Department of Commerce and Consumer Affairs
FY	Fiscal Year
GET	General Excise Tax
HAR	Hawai‘i Administrative Rules
HCE	Hawai‘i Compliance Express
HOPA	Head of Purchasing Agency
HRS	Hawai‘i Revised Statutes
HST	Hawai‘i Standard Time
KP	Ka Pouhana/Chief Executive Officer
Kūkākūkā	Discussion
OHA	Office of Hawaiian Affairs
RFP	Request for Proposals
STATE	State of Hawai‘i, including its department, agencies, and political subdivisions
SOP	Standard Operating Procedures
SPO	State Procurement Office
TMK	Tax Map Key
USPS	United States Postal Service

V. Procurement Timeline

Activity	Scheduled Dates
Release of Request for Proposal	Thursday, October 11, 2018
Pre-Proposal Conference	Wednesday, October 24, 2018, 9:00 – 10:00 am HST
Due Date to Submit Written Inquires	Friday, October 26, 2018, 2:00 pm HST
OHA’s Response to Written inquires	Tuesday, October 30, 2018
Proposal Due Date/Time	Wednesday, November 14, 2018, 2:00 pm HST
Proposal Evaluation	November 15, 2018 – November 21, 2018
Discussion with Priority Listed Offerors (if necessary)	TBD
Best and Final Offer (if necessary)	TBD

Notice of Award	November 2018
Contract Execution	December 2018
Start of Services	December 2018

The OHA reserves the right to amend or revise the timeline without prior written notice when it is in the best interest of the OHA.

VI. Pre-Proposal Conference

The OHA's Procurement Unit will conduct a Pre-Proposal Conference from 9:00 a.m. to 10:00 a.m. HST at the OHA, 560 North Nimitz Highway, Iwikauikaua Conference Room, Honolulu, Hawai'i 96817, Wednesday, October 24, 2018. The OHA strongly recommends that all interested offerors attend. For those interested in attending via conference call, please contact the RFP Coordinator no later than 2:00 pm HST, Monday, October 22, 2018.

Impromptu questions will be permitted at the Pre-Proposal Conference and verbal answers will be provided. Verbal answers provided by the OHA are not binding and are only intended to provide general direction. Formal written responses to substantive questions will be issued as addendum to this RFP. Any changes required will also be issued as an addendum to this RFP.

VII. Submission of Questions

Interested offerors may submit questions to the RFP Coordinator identified in Section 1. Item III of this RFP. The deadline for submission of written questions is 2:00 p.m. HST, Friday, October 26, 2018. All written questions will be responded to in an addendum to this RFP and posted to the OHA's website and the SPO website no later than the "OHA's Response to Questions" date identified in Section 1. Item V. Procurement Timeline. The OHA does not guarantee receipt of questions submitted via electronic mail.

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

The interested offerors are advised that anything discussed at the Pre-Proposal Conference does not change any part of this RFP. All changes and/or clarifications to this RFP will be done in the form of an addendum to this RFP.

VIII. Submission of Sealed Proposal

1. Form/Formats. Proposal forms and formats such as price proposal are included in Section 5- Attachments to this RFP.

2. Proposal Submittal. Proposals must be postmarked by the USPS or hand delivered by the date and time designated in this RFP. Any proposals post-marked or received after the designated date and time will be rejected. Electronic submission such as electronic mail and facsimile transmission will not be accepted.

The register of proposals and proposals will be open to public inspection after the award of the Contract.

3. Pre-opening Modification or Withdrawal. All proposals may be modified or withdrawn prior to the deadline for submittal by written notice to modify or withdraw the proposal. All requests for modification will be sealed, accompanied by the actual modification to the proposals, and signed by an authorized signatory.

The written request must be submitted to the OHA, Procurement Unit, 560 North Nimitz Highway, Suite 200, Honolulu, Hawai'i 96817 and time stamped by the OHA. Modifications and/or withdrawals will be clearly marked and must be received by the OHA no later than 2:00 p.m. HST, Wednesday, November 14, 2018.

4. Wages and Labor Law Compliance. Prior to entering into a Contract in excess of \$25,000, an interested offeror will certify that it complies with Section 103-55, HRS, as amended, entitled Wages, Hours, and working condition of employees of contractors performing services. Section 103-55, HRS, as amended, provides that the services to be performed will be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested offerors are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, the Successful Offeror will be obligated to provide such increased wages.

Interested offerors will complete and submit the attached Wage Certificate certifying that the services required will be performed pursuant to Section 103-55, HRS, as amended. See Attachment 3.

The Successful Offeror will be further obligated to notify his/her employees performing work under this Contract regarding the provisions of Section 103-55, HRS, as amended, and current wage rates for public employees performing similar work. The Successful Offeror may meet this obligation by posting a written notice to this effect in the Successful Offeror's place of business in an area accessible to all employees.

Interested offerors are strongly encouraged to account for salary increases as posted by the State of Hawai'i Department of Human Resources Development (hereinafter "DHRD"). The OHA will consider requests for increases as a result of wage increases to public officers and employees during the Contract period or any option period that is not published. At the release of this solicitation, the effective wages through July 1, 2018 for state employees performing similar work have been published by the DHRD.

If wages increase after the execution of the Contract, the Successful Offeror may request an increase in Contract price in order to correspondingly increase the wages of the offeror's employees performing the work, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old-age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The Successful Offeror will not be paid for any reimbursement of retroactive pay negotiated by the State. The Successful Offeror's request for the increase must meet the following criteria:

- A. At the time of the offer, if the Successful Offeror's hourly wage rate is greater than the prevailing State wage, the Successful Offeror's requests for increase will not be considered.
- B. At the time of the request, the Successful Offeror must or must have provided documentation to show that it is in compliance with Section 103-55, HRS, as amended (i.e., its employees are being paid no less than the known wage rates of a State position). Documentation will include the employee's payroll records and a statement that the employees are being utilized for this Contract.
- C. Request for an increase must be made in writing to the OHA on a timely basis as follows:
 - 1) Request for increase for the initial Contract period must be made as soon as practicable after the State wage agreements are made public. Approved requests will be retroactive to the date of increase for the State employees with adequate documentation that the Successful Offeror provided its employees a wage increase.
 - 2) To obtain the current wage information, download the information from the Department of Human Resources Development's website at the following address:

<http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/salary-schedules/>

It is the sole responsibility of the Contractor to comply with Section 103-55, HRS, as amended.

- 5. Confidential Information. If an interested offeror believes that any portion of their proposal contains information that should be withheld as confidential, the interested offeror will provide a written request for nondisclosure of designated proprietary data to be kept confidential and provide justification to support confidentiality. Such data will accompany the proposal, will be clearly marked, and will be readily separable from the proposal packet to facilitate eventual public inspection of the non-confidential sections

of the proposal packet. Note that price and the provisions of the minimum required services are not considered confidential and will not be withheld.

Interested offerors that choose to identify portions of their proposal as confidential will be responsible to ensure that the minimum services are not included. The OHA will not make any determination of confidentiality for the interested offeror.

If the proposal is marked confidential in its entirety, the OHA will not make a determination of confidentiality and will refer any request for information to the OHA Corporate Counsel and/or the State's Office of Information Practices.

6. Exceptions. Interested offerors will list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Interested offerors must reference the RFP section where the exception is taken, a description of the exception taken, and any proposed alternative. The OHA will retain the right to grant exceptions to discretionary policies. Request for exceptions to the State, Federal, or local laws will not be approved.

7. Information will be kept confidential as permitted by law.

IX. Discussions with Offerors Prior to Proposal Submissions

Discussion may be conducted with the interested offeror to promote understanding of the OHA's requirements.

X. Opening of Proposals

Upon the receipt of proposals by the OHA at the designated location, the proposal, any modification to proposals, and withdrawals of proposals will be time-stamped. All documents received will be held in a secure place by the OHA and will not be examined for evaluation purposes until the submittal deadline. The procurement file will be open to public inspection after a contract has been awarded and executed by all parties. Sealed proposals will not be opened at a public proposal opening.

XI. Additional Materials and Documentation

Proposal samples or descriptive literature should not be submitted unless specifically requested within the RFP. Interested offerors may include up to five (5) pages of documentations, literatures, samples, or brochures of related services, which demonstrates experiences to related consultant services.

XII. RFP Amendments

The OHA reserves the right to amend this RFP at any time prior to the proposal submission deadline. Interested offerors will be notified of the availability of amendments through

verbal or written communications. All amendments to this RFP will be posted to the OHA website <https://www.oha.org/solicitations> and the SPO website <https://hands.chawaii.gov/hands/>.

XIII. Additional Terms and Conditions

The OHA reserves the right to add terms and conditions during contract negotiation and discussions. These terms and conditions may be applicable to the scope of the RFP and will not affect the proposal evaluation.

XIV. Trade Secrets/Confidential Information

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

XV. Intellectual Property Rights

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

The interested offeror understands that the information obtained from these efforts is the sole property of the OHA, that any use of the information must be approved by the OHA, and that any information and all materials used to complete the project will be returned to the OHA.

XVI. Cancellation of the Request for Proposals

The RFP may be canceled and any or all proposals rejected in whole or in part, without liability to the OHA, when it is determined to be in the best interest of the OHA.

XVII. Costs for Proposal Preparation and Verification

Any costs incurred by the interested offeror in preparing or submitting a proposal are the interested offeror's sole responsibility. Any cost incurred by the Successful Offeror prior to the execution of a Contract is not eligible for reimbursement.

Costs incurred in connection with the review, inspection and verification of information provided in the RFP will be the interested offeror's sole responsibility.
Interested offerors will ensure that the OHA is provided with the written authorization(s) necessary to verify information provided in the interested offeror's proposal.

XVIII. Mistakes in Proposals

While interested offerors are bound by their proposals, circumstances may arise where a correction or withdrawal of a proposal is proper. An obvious mistake in a proposal may be corrected, withdrawn, or waived by the interested offeror to the extent that it does not conflict with the best interest of the OHA or to the fair treatment of other interested offerors. Mistakes in proposals will be handled as provided for in Section 3-122, HAR.

XIX. Rejection of Proposals

The OHA reserves the right to consider as acceptable and responsive 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 (1) or more of the following reasons:

- 1) Cancellation of solicitations and rejection of offers (HAR §3-122-95);
- 2) Cancellation of solicitation (HAR §3-122-96)
- 3) Rejection of offers (HAR §3-122-97)
- 4) Reporting of anti-competitive practices (HAR §3-122-191, HAR §3-122-192, HAR §3-122-193, HAR §3-122-194, HAR §3-122-195, HAR §3-122-196);
- 5) Rejection for inadequate accounting system (HRS §103D-314(2));
- 6) Late proposals (HAR §3-122-16.08);
- 7) Proposal not responsive (HAR §3-122-97(b), HAR §3-122-97(c)); and
- 8) Offeror not responsible (HAR §3-122-97(b), HAR §3-122-97(c)).

XX. Notice of Award

Any Contract arising out of this solicitation is subject to the approval by the OHA's Program Manager as to content, the OHA's Corporate Counsel as to form, and subject to the approval by the OHA's Chief Executive Officer (hereinafter "CEO"). The CEO, Ka Pouhana (hereinafter "KP"), and Head of Purchasing Agency (hereinafter "HOPA") are all one and the same and will be referred to as the "CEO".

The Successful Offeror will receive a Notice of Award which will indicate that the Successful Offeror has been selected to provide the services under this RFP.

No work is to be undertaken by the Successful Offeror prior to the Contract commencement date. The OHA is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Successful Offeror prior to the Contract commencement date specified in the Contract.

Pursuant to Section 3-122-112, HAR, Responsibility of Offeror, the interested offeror will produce documents to the procurement officer to demonstrate compliance with this section. The Successful Offeror receiving award will be required to enter into a formal written Contract with the OHA. The General Conditions of the Contract are attached and minimum service specification are included herein. See Attachment 11.

XXI. Protests

Pursuant to Sections 103D-701, HRS, as amended, and 3-126-4, HAR, an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a Contract may submit a protest. An actual or prospective offeror may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

- 1) A state purchasing agency's failure to follow procedures established by Chapter 103D, HRS, as amended.
- 2) A state purchasing agency's failure to follow any rule established by Chapter 103D, HRS, as amended.
- 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 will be mailed by USPS or hand delivered to the head of the OHA Contracting Office conducting the protested procurement and the Procurement Officer who is conducting the procurement as indicated below within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto.

Provided that a protest based upon the content of the solicitation will be submitted in writing prior to the date set for receipt of offerors, a protest of an award or proposed award will be submitted within five (5) days after the posting of award of the Contract. Deliveries from other than USPS will be considered hand deliveries and considered submitted on the date of actual receipt by the OHA. Any notice of award letter(s), resulting from this solicitation will be posted on the Procurement Reporting System on the State Procurement Office website at <https://hands.ehawaii.gov/hands/>.

Head of OHA Contracting Office	Procurement Officer
Name: Kamana‘opono M. Crabbe, Ph.D.	Name: Phyllis Ono-Evangelista
Title: Ka Pouhana, Chief Executive Officer, Head of Purchasing Agency	Title: Procurement Manager

Mailing: Office of Hawaiian Affairs Address: 560 North Nimitz Highway Suite 200 Honolulu, Hawai‘i 96817	Address: Office of Hawaiian Affairs 560 North Nimitz Highway Suite 200 Honolulu, Hawai‘i 96817
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XXII. Availability of Funds

The award of a Contract and any allowed renewal or extension thereof, are subject to the availability and allotment of the OHA funds, State and/or Federal funds.

XXIII. Monitoring and Evaluation

The Successful Offeror’s performance under the Contract will be monitored and evaluated by the Contract Administrator or his/her designated representative, the OHA’s auditor, and/or other designated representatives.

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

XXIV. General and Special Conditions of Contract

The General Conditions that will be imposed contractually are included as an attachment. See Attachment 11.

Special Conditions may be imposed by the OHA. The OHA reserves the right to make appropriate modifications to the quantity of items or reporting requirements contingent upon unforeseen conditions.

XXV. Cost Principles

The OHA will utilize standard cost principles from Section 3-123, HAR, which are available on the SPO website. Nothing in this section will be construed to create an exemption from any cost principle arising under State and Federal laws.

XXVI. Campaign Contributions by State and County Contractor Prohibited

If awarded a Contract in response to this solicitation, the Successful Offeror agrees to comply with Chapter §11-355, HRS, which states that campaign contributions are prohibited from a State and County government contract during the term of the Contract if the Contract is paid with fund appropriate by the legislative body between the execution of the Contract through the completion of the Contract.

Section 2 – Scope of Services

I. Introduction

A. Project overview and history

The mission of the OHA’s NHRLF program is to support and enhance the economic self-sufficiency of Native Hawaiians while ensuring the availability of resources for future generations. Its purpose is to provide qualified Native Hawaiians with access to funding not available from other sources on reasonable terms and conditions. It offers both business and consumer loan products to qualified Native Hawaiian individuals. For business loans, the entity must be one hundred percent (100%) Native Hawaiian-owned. The chart below offers a breakdown of all the NHRLF’s loan products (in order of Marketing Priority), all of which offer competitive interest rates and access to technical assistance in areas such as financial literacy, debt management, or business plan writing.

LOAN PRODUCT	TARGET AUDIENCE	DESIRED OUTCOME
Hua Kanu Business Loans: \$200,000 - \$1,000,000	Native Hawaiian business owners who operate in Hawai‘i and are seeking working capital, equipment purchases, or funds to expand operations.	Success would be \$3.5 million in total loan disbursements per year; Major movement with the available funds decreasing.
Mālama Business Loans: \$2,500 – \$100,000		
Mālama Home Improvement Loans: \$2,500 - \$100,000	Native Hawaiian home owners who need financing to improve their living conditions or increase the value of their home.	
Mālama Debt Consolidation Loans: \$2,500 - \$10,000	Native Hawaiian individuals with a less risky credit score (Fair Isaac Corporation “FICO” 650 and above) who are burdened with higher interest rate debts.	
Mālama Education Loan \$2,500 - \$20,000	Native Hawaiian individuals who wish to pursue higher levels of education or professional development courses to help advance their careers.	

B. Funding source and period of availability

Funds are subject to the biennial budget as approved the OHA Board of Trustees and/or allocation by the Governor and State Legislature. Funding and period of availability may change upon notice by the OHA.

It is understood that the Contract will not be binding unless the OHA can document that there is an available and unexpended appropriation or balance of appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Any Contract entered into as a result of this RFP is binding only to the extent that funds are certified as available. The availability of funds in excess of the amount certified as available will be contingent upon future appropriation or special fund revenues.

It has been determined that there are sufficient funds to pay for the initial term of the Contract. Funds necessary for the remaining terms of the Contract are likely to be available from the Trust funds. Pursuant to Chapter §103D-315, HRS, as amended, the OHA reserves the right to cancel the Contract when funds are not allotted or otherwise made available to support continuation of performance in subsequent periods.

II. General Requirements

A. Qualifying Requirements

- 1) The Successful Offeror will comply with Section §103D-601, HRS – Cost Principles Rules Required.
- 2) The Successful Offeror must have no outstanding balances owing to the OHA. Exception may be granted by the CEO of the OHA for debts recently acquired and for debts, which have a repayment plan approved by the CEO of the OHA.
- 3) Interested offerors are advised that if awarded a Contract, the Successful Offeror must furnish proof of compliance with the requirements of Section §3-122-112, HAR:
 - a. Chapter 237, General Excise Tax Law;
 - b. Chapter 383, Hawai'i Employment Security Law
 - c. Chapter 386, Workers' Compensation Law;
 - d. Chapter 392, Temporary Disability Insurance;
 - e. Chapter 393, Prepaid Health Care Act; and
 - f. Certificate of Good Standing (hereinafter "COGS") for entities doing business in the State.

- 4) Be registered and incorporated or organized under the laws of the State of Hawai‘i (hereinafter “Hawai‘i business”)

The Successful Offeror(s) will be one (1) of the following:

- a. Hawai‘i business: A business entity referred to as a “Hawai‘i business” is registered and incorporated or organized under the laws of the State of Hawai‘i. As evidence of compliance, the Offeror will submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (hereinafter “DCCA”). A Hawai‘i business doing business as a sole proprietorship is not required to register with the DCCA, and therefore not required to submit the certificate. A Successful Offeror’s status as sole proprietor or other business entity and its business street address will be used to confirm that the Successful Offeror is a Hawai‘i business.
- b. Be registered to do business in the State of Hawai‘i (hereinafter “compliant non-Hawai‘i business”).

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

5) Business Office

The Successful Offeror will have, at a minimum, a telephone number and electronic mail address from which it conducts business and be accessible by telephone from 8:00 a.m. to 5:00 p.m. HST, for meetings, teleconferences, video conferences, concerns or requests that need immediate attention. An answering service is not acceptable. An office location, telephone number and electronic mail address will be identified in the interested offeror’s proposal.

6) Certificate of Eligibility

The Successful Offeror will demonstrate compliance with the following:

- a. Tax Clearance Form A-6
- b. Department of Labor and Industrial Relation, Applications for Certificate of Compliance Form LIR#27; and
- c. Certificate of Good Standing issued by the DCCA and the Hawai‘i Compliance

Express (hereinafter ‘HCE’), which allows businesses to register online through a simple wizard interface at:

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

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

7) Indemnification

The Successful Offeror will defend, indemnify, and hold harmless the State of Hawai‘i, the OHA, its elected and appointed officials, officers, agents and employees, from and against all liability, loss, damage, cost, and expense, including attorneys’ fees, and all claims, suits, and demands arising out of or resulting from the acts or omission of the Successful Offeror or the Successful Offeror’s officers, employees, agents or subcontractors.

8) Insurance Requirements

Within fifteen (15) days prior to the Contract start date, the Successful Offeror will furnish to the Contracting Office a valid certificate(s) of insurance as evidence of the existence of the following insurance coverage in the amount not less than the amounts specified. The insurance must be maintained in full force and effect throughout the entire performance period. Failure to maintain the required insurance is considered a material default of the Contract.

a. Commercial General Liability Insurance

Commercial general liability insurance coverage against claims for bodily injury and property damage arising out of all operations, activities, or contractual liability by the Successful Offeror, its employees, and subcontractors during the term of the Contract.

This insurance will include the following coverage and limits specified or required by any applicable law:

- i. Bodily injury and property damage coverage with a minimum of \$1,000,000 per occurrence;
- ii. Personal and advertising injury of \$1,000,000 per occurrence; and
- iii. With an aggregated limit of \$2,000,000.

The commercial general liability policy will be written on an occurrence basis and the policy will provide legal defense costs and expenses in addition to the limits of liability stated above. The Successful Offeror will be responsible for payment of any deductible applicable to this policy.

b. Automobile Liability Insurance

Automobile liability insurance covering owned, non-owned, leased, and hired vehicles with a minimum of \$1,000,000 for bodily injury for each person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage for each accident.

c. Workmen's Compensation Coverage

The policy will include coverage required by the State of Hawai‘i and include Part B coverage as follows: Employers Liability with limits of \$100,000 for each accident, \$500,000 disease policy limit, and \$100,000 disease policy limit per employee.

Insurance to include Employer's Liability. Both such coverages will apply to all employees of the Successful Offeror and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all its employees. Worker's Compensation must be issued by an admitted carrier authorized to do business in the State of Hawai‘i.

d. Professional Liability Insurance

Professional liability insurance policy will be maintained with a limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate which will provide for losses as a result of the Successful Offeror's negligent acts, errors or omissions.

e. The Certificate of Insurance for the required insurance coverages is required prior to commencement of services. The insurance policy required by this Contract will contain the following clauses:

- i. "The State of Hawai‘i, the Office of Hawaiian Affairs, its elected and appointed officials, officers, agents, and employees will be named as additional insured, except for Professional Responsibility Insurance and Workers Compensation Insurance as respects to operations performed for the State of Hawai‘i and OHA under this Contract.
- ii. "It is agreed that any insurance maintained by OHA will apply in excess of, and not contribute with, insurance provided by this policy."

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

The minimum insurance required shall be in full compliance with the Hawai'i Insurance Code throughout the entire term of the Contract, including all Supplemental Contracts.

Upon execution of the Contract, the Successful Offeror agrees to deposit with the OHA, a valid certificate(s) of insurance necessary to satisfy the OHA that the insurance provision of this Contract have been complied with and to keep such insurance in effect and the certificate(s) on deposit with the OHA during the entire term of this Contract. Upon request of the OHA, the Successful Offeror will be responsible for furnishing a copy of the policy or policies.

Failure of the Successful Offeror to provide and keep in full force and effect such insurance will constitute a material default under the Contract, entitling the OHA to exercise any or all of the remedies provided in the Contract for default of the Successful Offeror.

The procuring of any required policy or policies of insurance will not be construed to limit the Successful Offeror's liability hereunder or to fulfill the indemnification provisions of the Contract. Notwithstanding said policy or policies of insurance, the Successful Offeror will be obligated for the full and total amount of any damage, injury, or loss caused by the Successful Offeror's negligence or neglect in the provision of services under the Contract.

The OHA is a self-insured State agency. The Successful Offeror's insurance will be primary. Any insurance maintained by the State of Hawai'i and the OHA will apply in excess of, and will not contribute with, insurance provided by the Successful Offeror.

The Successful Offeror will provide written notice to the OHA of any cancellation or change in provision thirty (30) calendar days prior to the effective date of any such cancellation or change.

f. Other Additional Insurance

The Successful Offeror may, at its own expense, obtain additional insurance coverage for further protection subject to the OHA's approval. Request for

approval will include a description of the additional insurance coverage, premium and justification.

9) Minority/Women Business Participation (hereinafter “MBE/WBE”)

Whenever possible, the interested offeror awarded the contract agrees to subcontract with minority owned business enterprises and/or women owned business enterprises certified as such as recognized.

10) Using Best Effort to Fulfill Minority/Women Business Participation

In the event that the OHA has reasonable belief that the interested offeror will not use its best efforts to meet the MBE/WBE participation goal, the OHA reserves the right to cancel the Contract in whole or in part. Best efforts may be established by demonstrating that the interested offeror has contracted or solicited bid/quotes from subcontractors in identifying MBE/WBE.

B. Type of Contract

1) The Successful Offeror will be required to execute a Contract for Goods and Services Based on Competitive Sealed Proposals. See Attachment 6.

The Contract will be on a reimbursement basis. All cost incurred must be supported by verifiable evidence that payment was made (e.g. invoices and/or receipts). No profit or administrative mark-up will be allowed on project reimbursable expenses, including, without limitation, postage, supplies, and travel.

Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the Successful Offeror will execute and deliver to the OHA a Contract in such number of copies as required by the OHA.

The Successful Offeror will be required to enter into a formal written Contract with the OHA in accordance with the laws, rules and regulations of the State of Hawai‘i. The stated requirement appearing elsewhere in this RFP will be incorporated and will become part of the terms and conditions of the Contract.

By submission of a proposal, the interested offeror warrants and represents that they have read and are familiar with the contractual and service requirements set forth in the RFP and its attachments, the provisions of which are expressly incorporated into this RFP by reference.

All proposals will become the property of the OHA. The Successful Offeror’s proposal will be incorporated in the resulting Contract by reference.

2) Subcontracting

No work or services will be subcontracted or assigned without the prior written approval of the OHA. No subcontract will under any circumstances relieve the Successful Offeror of his/her obligation and liability under contract with the OHA. All persons engaged in performing the work covered by the Contract will be considered employees or agents of the Successful Offeror.

3) Contract Modification

The Contract may be modified only by a written supplemental contract signed by the OHA and the authorized signatory designated to sign contracts on behalf of the Successful Offeror as designated in a corporate resolution, if applicable.

4) Additional Services and Fees

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

5) Laws, Rules, Ordinances and Regulations

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

6) Bonds

No performance or payment bond is required.

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

☐ Allowed ☒ Not allowed

D. Single or Multiple Contract to be Awarded (Refer to HRS §103D-322)

☒ Single ☐ Multiple ☐ Single & Multiple

E. Single or Multi-Term Contract to be Awarded (Refer to HRS §103D-315)

☐ Single term (2 years or less) ☒ Multi-term (more than 2 years)

Initial term of Contract: Sixty (60) months

Maximum Length of Contract: Sixty (60) months

F. Condition for Contract Extensions

The initial period will commence on the Contract start date. The following Conditions must be met for an extension:

- 1) The Contract experienced cost saving and has unexpended funds available that can be used to provide additional goods and services; or
- 2) The OHA determines there is an ongoing need for the services and has funds to extend services not to exceed twelve (12) months. Contract extensions will be awarded as agreed upon in the Primary Contract. Exceptions will be granted upon satisfactory justification such as increase in cost of services or goods; and
- 3) A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
- 4) The Successful Offeror must obtain the OHA approval in writing.

The option to extend the Contract will be at the sole discretion of the OHA. The Contract will be extended at the same rates as proposed in the original proposal unless price adjustments are provided. Submission of a proposal constitutes acknowledgement of the interested offeror that the interested offeror is able and willing to contract for services for the duration of the Contract period. If the Successful Offeror is unwilling or unable to fulfill the scope of services described in the Contract, the OHA reserves the right to assign the costs of reprourement to any payment owed under the Contract. These costs may include without limitations reproduction costs, staff time, and postage.

The Successful Offeror will provide the requested insurance information and a completed wage certificate. The Successful Offeror will pay the State of Hawai'i general excise tax and all other applicable taxes.

G. Contract price adjustments (other than wage rate increases)

Each proposal offered will be firm for a sixty (60) month period upon issuance of the Notice to Proceed.

Contract price adjustment will be limited to liability and/or automobile insurance. The follow conditions must be met for the OHA to consider a price adjustment:

- 1) The Contractor provides adequate documentation of price increase, such as an insurance policy statement; and
- 2) The increase will not exceed five percent (5%) from the original price for each budget line item; and
- 3) The request for increase must be reasonable and there must be a sufficient amount of funds available to support the increase.

III. Contract Monitoring and Remedies

A. Monitoring

- 1) The satisfactory provision of goods and services will be monitored by the Contract Administrator. Performance will be monitored on an ongoing basis by the OHA through desk monitoring, site inspection and/or other methods by the Contract Administrator and his/her designated representative(s).
- 2) Should the Successful Offeror fail to comply with the requirements of the Contract, the OHA may request a written corrective action plan, a timeline for implementation, and the responsible parties. The OHA will monitor the Successful Offeror for implementation of the corrective action plan. The OHA reserves the right to request regular or additional reports on progress towards compliance with the Contract and the corrective action plan.
- 3) Should the Successful Offeror continue to fail to comply with the requirements of the Contract, the OHA reserves the right to engage the services of another firm to perform the services to remedy the defect or failure and to deduct such costs from monies due to the Successful Offeror or to directly assess the Successful Offeror.
- 4) In the event the Successful Offeror fails, refuses, or neglects to perform the services in accordance with the requirements of this RFP and the Contract, the OHA reserves the right to purchase in the open market, corresponding services, and to deduct this cost from the monies due or that may thereafter become due to the Successful Offeror. If monies due to the Successful Offeror is insufficient for this purpose, the Successful Offeror shall pay the difference upon demand by the OHA. The OHA may also utilize all other remedies provided under the Contract and by law and rules.
- 5) In the event the Successful Offeror is not performing the required services as contracted, the OHA reserves the right to extend the Contract for intervals of less than twelve (12) months. During this time, the OHA will monitor the Successful Offeror's performance and/or improvement and the implementation of its corrective action plan to determine whether the OHA will continue to Contract with the Successful Offeror.

B. Termination

The OHA reserves the right to terminate the Contract without penalty for cause or convenience as provided in the General Conditions.

IV. Scope of Work

All services and for whom services are to be provided for will be in accordance with this RFP, including its attachments and any addenda.

A. Scope of Work

- 1) The Successful Offeror shall develop a statewide marketing campaign that will promote awareness of the NHRLF program and its loan products which will lead to increased loan disbursements.
- 2) The Successful Offeror shall negotiate and execute radio, television, print, digital and other media buys as approved by and on behalf of the OHA, including existing marketing materials and advertisements as provided by the OHA, that will promote awareness of the NHRLF program and its loan products which will lead to increased loan disbursements.
- 3) The Successful Offeror shall be responsible for procuring all necessary permits, licenses, goods, services, and materials as required to complete the scope of work.
- 4) The Successful Offeror shall meet with the NHRLF staff to provide strategic and media planning services that address their need to increase loan disbursements.
- 5) The Successful Offeror shall design and implement a research strategy to quantify the effectiveness of the campaign, specifically to determine increases in awareness, in loan applications, and in loan disbursements.
- 6) The Successful Offeror shall work with the NHRLF to produce all creative marketing materials and advertisements that shall be used in the campaign.
- 7) The marketing campaign shall use multiple media outlets to achieve statewide reach and appeal. The media outlets shall include, but not be limited to, television, radio, newspaper, and social and digital media.
- 8) The Successful Offeror shall handle all purchases made as approved by and on behalf of the OHA.
- 9) The Successful Offeror shall be responsible for paying all vendors and shall invoice the OHA for reimbursement of media buys approved by the OHA. A copy of the

original vendor invoice shall accompany the Successful Offeror's invoice upon request for reimbursement.

- 10) The Successful Offeror shall be available to meet with or present to the OHA, its Board of Trustees, the NHRLF Board of Directors, and OHA staff as is necessary to complete this scope of work, and at a frequency determined by the OHA.
- 11) The OHA Administrator shall act as the contract monitor and principal liaison between the Successful Offeror and the OHA. The Administrator shall assist in resolving policy questions, expediting decisions, and the review of the work performed.

B. Requirement & Qualifications

1) Specific Qualifications and Requirements

The interested offeror's qualifications and requirements shall include, but may not be limited to, the following:

- a. The interested offeror shall demonstrate prior experience with developing successful marketing campaigns.
- b. The interested offeror shall demonstrate prior experience with producing creative marketing materials and advertisements used in marketing campaigns.
- c. The interested offeror shall demonstrate prior experience in negotiating and acquiring desirable time slots and media space for advertisements.
- d. The interested offeror shall demonstrate prior experience in forming good relationships with advertising sales agents.
- e. The interested offeror shall demonstrate that key staff member(s) and/or Subcontractors have the appropriate experience and skills to accomplish the scope of work for the resulting contract.
- f. The interested offeror shall demonstrate prior experience in successfully obtaining the best prices and values.
- g. The interested offeror shall comply with all State, Federal, and County requirements and shall obtain all necessary permits, licenses, goods, services, and materials as required to complete this Scope of Work.

2) Administrative Requirements

- a. The Successful Offeror will designate a contact person who will be responsible for project oversight and ensure Contract performance. The contact person will be able to respond to the OHA's inquiries, complaints/problems within one (1) working day.
- b. The OHA's Contract Administrator may send a monitoring report to the Successful Offeror's contact person. The monitoring report will document any discrepancies or Contract violation(s) for correction within the designated time periods provided.
- c. The Successful Offeror will ensure adequate and appropriate representation at regular meetings with the OHA and/or the OHA Board of Trustees. At this time, OHA anticipates monthly meetings with the Successful Offeror's contact person who will be responsible for oversight of Contract performance. Additional meetings may be required by the OHA.

C. Personnel

- 1) All personnel will be considered employees or agents of the Successful Offeror.
- 2) The Successful Offeror will ensure that all personnel meet the minimum qualifications, including State licensing laws and experience requirements. The current wage rates and position class specifications for personnel are available at: <http://dhrd.hawaii.gov/state-hr-professionals/class-and-comp/>.
- 3) All staff training such as training required to ensure that the minimum services are provided in compliance with State/Federal laws, rules, and regulations, will be the responsibility of the Successful Offeror.
- 4) The Successful Offeror will be solely responsible for the behavior and conduct of its employees or agents on the OHA property. Supervision will be the responsibility of the Successful Offeror.
- 5) The Successful Offeror will ensure the confidentiality of all information, documents, or materials viewed or discussed. The Successful Offeror's personnel will not provide confidential information to the general public without the expressed written consent of the OHA by either policy, rules or letter.
- 6) During the performance of this Contract, the Successful Offeror agrees not to discriminate against any employee or applicant for employment. The Successful Offeror will take affirmative action to ensure equal treatment of its employees. Such actions will include, without limitation, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Successful Offeror will insert provisions similar to the foregoing in all subcontracts.

- 7) The Successful Offeror agrees to remove any of its employees from providing services to the OHA upon written request by the OHA Administrator. At the request of the OHA, the Successful Offeror will remove forthwith and will not employ in any portion of the work, any person who, in the opinion of the OHA, does not perform his/her duties and responsibilities in a proper and skillful manner, is intoxicated, disorderly, abusive, or unable to demonstrate tact and diplomacy in dealing with the public.

D. Reporting Requirements

The Successful Offeror will be responsible for the timely submission of reports as requested by the OHA, including without limitation, the following:

- 1) Detailed Monthly Progress reports on the implementation and completion of the marketing strategy. This shall include approval of any changes to the original marketing strategy with justification for the changes; and/or
- 2) Special requests in response to inquiries from the OHA Board of Trustees, the NHRLF Board of Directors, and/or other government agencies.

E. Payment

- 1) The OHA will have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. For this reason, the OHA will reject any proposal submitted with a condition requiring payment within a shorter period.
- 2) The OHA will reimburse the Successful Offeror for all salaries, wages, related taxes, other related administrative expenses and reimbursable expenses as agreed to in the Contract.
- 3) The Successful Offeror will submit invoices for payment, listing dates of services performed with an itemized breakdown of expenses and costs. Invoices for reimbursable expenses must include original invoices(s) for said expenses.

The Successful Offeror will clearly indicate any adjustment made to the billing statement for work not performed.

All invoices will reference the Contract number assigned to the Contract. Payment will be made upon certification by the Administrator that the Successful Offeror has provided the goods and services specified in the Contract.

The Successful Offeror will submit original invoices for services performed to:

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

Upon receipt of the invoice, the OHA will date stamp the invoice and use that receipt date to calculate the 30-day payment period. For purposes of this paragraph, the Successful Offeror's invoice date will not be considered.

- 4) For final payment, the Successful Offeror must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form - 22). The Successful Offeror is required to submit a tax clearance certificate for final payment on the Contract. A valid Hawai'i Compliance Express Certificate of Vendor Compliance in lieu of the tax clearance is acceptable.

(END OF SECTION)

Section 3 – Proposal Format and Instructions

I. General Instructions for Completing Forms

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

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

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

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

Before submitting a proposal, each interested offeror must:

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

Proposals will be submitted to the OHA in the prescribed format outlined in this RFP. A written response is required for each item unless indicated otherwise.

Interested offerors may include supplemental literatures, brochures or other information, which may demonstrate related experience in the proposal package. Supplemental literatures or other information may not exceed five (5) double-sided pages (8-1/2" x 11").

II. Proposal Forms

- A. The proposal forms will be completed and submitted to the OHA by the required due date and time and in the form prescribed by the OHA. Electronic mail and facsimile transmissions will not be accepted.

- B. Interested offerors will submit their proposals under the Offeror's exact legal name that is registered with the State of Hawai'i Department of Commerce and Consumer Affairs and will indicate that this is its exact legal name. Failure to do so may delay proper execution of the Contract.
- C. Interested offeror's authorized signature will be an original signature in ink. If the proposal is unsigned or the affixed signature is a facsimile or a photocopy, the proposal will be automatically rejected. If the proposal is not signed by an authorized signatory as shown on the corporate resolution, the proposal will be automatically rejected.
- D. A proposal security deposit is not required for this RFP.
- E. Proposal will be typed on plain, white, letter-size paper with one-inch margins on all sides in twelve (12) point font and printed on one (1) side only.
- F. Proposals will be submitted on white 8 ½" x 11" paper and will be bound by a spiral binding. Do not submit proposals in a three (3)-ring binder. Submission of a proposal in this manner is disfavored by the OHA.
- G. Tabbing of sections is required.
- H. Documents that require submission on 11" x 17" paper to be legible is allowable.
- I. The numerical outline for the application, the titles/subtitles, and the Offeror name and RFP identification information on the top right hand corner of each page should be included.
- J. Consecutive page numbering of the proposal application should begin with page one (1) and end with the last numbered page of the complete proposal.
- K. Other supporting documents may be submitted in an Appendix, including visual aids, to further explain specific points in the proposal; if used, they should be referenced.

III. Proposal Application

A. Cover Letter

A Cover Letter will be included in the proposal. See Attachment 5. The Cover Letter will include the following requirements:

- 1) Be printed on official business letterhead;
- 2) Original signature by an authorized signatory;

3) The following statement:

“The undersigned has read and understands the terms and conditions specified in the RFP NHRLF 2019-03 and in the General Conditions, and hereby submits the following Proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this competitive sealed Proposal, 1) he/she is declaring his/her Proposal is not in violation of Chapter 84, Hawai‘i Revised Statutes, concerning prohibited State Contracts, 2) he/she is certifying that the prices(s) submitted was (were) independently arrived at without collusion, and 3) he/she hereby authorizes the Office of Hawaiian Affairs to verify information provided in this Proposal”;

- 4) The exact legal name and address of the Offeror;
- 5) Contact person’s name, telephone number and email address;
- 6) A statement indicating that the interested offeror is a corporation or other legal entity and the taxpayer identification number of the legal entity.
- 7) A statement that the interested offeror is or will be registered to do business in Hawai‘i and has or will obtain a State General Excise Tax License before the start of the work.

B. Acknowledgement of Addendum

By completing the Acknowledgement of Addendum form, the interested offeror will acknowledge and identify that all addenda to this RFP issued by the OHA have been received by the interested offeror. See Attachment 2. If no addendum has been received, the interested offeror will check the appropriate box on the form.

C. Experience and Capability

The OHA is requiring that the Successful Offeror have a minimum of three (3) years of experience in marketing and media services on projects of similar size and nature.

1) Necessary Skills and Experience

The interested offeror will demonstrate that it has the necessary skills, abilities, knowledge, and experience relating to the delivery of the proposed services. The interested offeror will also provide a listing of verifiable experiences with projects or contracts related to the services that were provided to a government agency or private entity within the last five (5) years. Identify the name of the client, the nature and duration of the engagement, and primary accomplishments.

Provide a list of companies or governmental organizations to which your proposed team is/are currently providing services. If this does not include at least five (5) entities, then provide the names of the entities for which similar services have been provided. For each entity include:

- i. Term, beginning and ending dates, of your contract agreement;
- ii. Brief description of the scope of work; and
- iii. Name, address, and telephone number of the individual that administered your contract(s).

2) Professional References

The interested offeror will provide a list of professional references for the last five (5) years, including contact information.

3) Quality Assurance and Evaluation

The interested offeror will describe its quality assurance and evaluation plans for the proposed services, including methodology. Evaluation plans must include client surveys as appropriate.

4) Coordination of Services

The interested offeror will demonstrate the capability to coordinate services with other agencies and resources in the community.

5) Past Performance

The OHA reserves the right to verify the documented experience directly with the owner/contact person as submitted in the proposal. Only information that is submitted directly to the OHA in the proposal package will be considered unless the OHA seeks additional information during the evaluation process. The OHA reserves the right to review and consider past performance the Successful Offeror may have had with the OHA.

D. Personnel – Project Organization and Staffing

1) Proposed Staffing

This section will describe the staff necessary and specific time available to ensure the performance of work in an accurate and timely manner. Staff titles, qualifications and expected responsibilities are to be included in the response. Detail the proposed team's capacity to successfully plan, implement and develop the proposed work.

2) Staff Qualifications

This section will provide the minimum qualifications including experience of staff assigned to the program. Describe the knowledge and experience of your proposed project director and/or staff including the day-to-day management. Attach resumes and relevant professional background/experience of each key staff position.

3) Supervision and Training

The interested offeror will describe its ability to supervise, train and provide administrative direction relative to the delivery of the proposed services.

4) Organization Chart

If applicable, this section will reflect the position of each staff and line of responsibility/supervision. Please include position title, name, and full or part time status. If applicable, a project organization chart must be included with the proposal.

E. Service Delivery

This section will include a detailed discussion of the following:

- 1) The interested offeror's approach to applicable services, activities and requirements from Section 2. Item IV. Scope of Work including, but may not be limited to phases, work plans of all service activities and tasks to be completed, and related work assignments/responsibilities.
- 2) How the interested offeror's approach is the most advantageous in terms of meeting the scope of work, cost effectiveness, and reliability.

F. Financial Capacity

This section will state the interested offeror's status of current projects and the financial capacity. Given the state of the interested offeror's current workload and work in progress, provide information as to the financial capacity to complete the project in a timely and orderly manner.

G. Price Proposal

This section will include a proposed cost for the Contract period. Include a description of the basis for the cost of performing the requested services, including professional fees by labor category, other direct costs chargeable to the contract and general administration, overhead/profit and reimbursable expenses.

H. Cost Reimbursement for All Costs Related to Personnel

The cost reimbursement pricing structure reflects a “not to exceed purchase arrangement” in which the OHA pays the Successful Offeror for budgeted costs that are actually incurred in delivering the services specified in the Contract, up to a state maximum obligation. Cost reimbursement will include, without limitation, personnel salaries, wages medical benefits, payroll taxes and other expenses such as liability insurance, airfare lodging, and transportation. The Successful Offeror will be required to submit invoices detailing the amount(s) to be reimbursed.

I. Commitment to Section 2 Requirement

This section will describe the interested offeror’s approach to furthering the OHA’s commitment to the Section 2. Item II.A.10 requirement, Using Best Effort to Fulfill Minority/Women Business Participation.

(END OF SECTION)

Section 4 – Proposal Evaluation and Award

I. Proposal Evaluation

An evaluation committee approved by the OHA's CEO or designee will evaluate all responsive and responsible proposals. The evaluation of such proposals will be based solely on the evaluation criteria set out in this RFP. The evaluation committee's primary responsibility will be to review the technical aspects of the proposal submitted. The price proposal review will be conducted by the evaluation committee chairperson. The review criteria will be as follows:

Evaluation Categories	Possible Points
<u>Mandatory Requirement</u>	<u>Pass or Rejected</u>
Experience and Capability Up to 30 points will be awarded based on the degree to which the interested offeror clearly and concisely demonstrates that it has the experience, necessary skills, abilities, knowledge of, and participated and successfully completed similar projects anywhere within the United States.	30 points
Personnel: Project Organization and Staffing Up to 15 points will be awarded based on the degree to which the interested offeror clearly and concisely demonstrates that it has the qualified personnel, expertise, capacity and time to perform the requested services.	15 points
Service Delivery Up to 30 points will be awarded based on the degree to which the interested offeror clearly and concisely demonstrates its approach to the scope of work, cost effectiveness, and reliability.	30 points
Financial Capacity Up to 10 points will be awarded based on the degree to which the interested offeror clearly details the budget required to meet all of the objectives of this proposal. Also, concisely demonstrates that it has the financial capacity to complete the project in a timely and orderly manner.	10 points

Price Proposal	10 points
Up to 10 points will be awarded based on the degree to which the interested offeror clearly indicates the lowest price will be assigned the maximum points. Each proposal that has a higher cost factor than the lowest will be assigned a lower rating.	
Commitment to Section 2	5 points
Up to 5 points will be awarded based on the degree to which the interested offeror clearly and concisely demonstrates their approach to furthering the OHA's commitment to the Section 2. Item II.A.10 requirement, Using Best Effort to Fulfill Minority/Women Business Participation.	
TOTAL POSSIBLE POINTS	100 Points

Each proposal will be classified initially as acceptable, potentially acceptable, or unacceptable. If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three (3) responsive and responsible offerors who submitted the highest-ranked proposals. If there are less than three (3) acceptable or potentially acceptable proposals, the OHA will not be required to hold discussion with these offerors who submitted unacceptable proposals.

II. Mandatory Requirements

The OHA will conduct an initial review to ensure that all proposals meet the minimum threshold requirements. Each proposal will be reviewed to ensure submittal of all required attachments, certifications, forms, and narrative sections.

Statements which indicate that mandatory certification will be submitted upon Contract award will be unacceptable.

III. Financial/Price Proposal Review

The financial/price proposal review will be evaluated for financial and contractual acceptability and reasonableness of the price proposal. The proposal with the lowest cost factor will receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest will be assigned a lower rating for cost.

The points allocated higher to higher priced proposals must be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price as follows:

$$\frac{\text{Price of the lowest price proposal} \times 10}{\text{Price of the proposal being rated}}$$

In determining whether a proposal is responsive, the OHA will evaluate the costs and its supporting documentation against realistic operational expenses.

The OHA will also review the most recent audited statements of the Successful Offeror.

IV. Technical Review

The Successful Offeror's proposal will be in the form prescribed by this solicitation and will contain a response to each of the areas identified that affects the evaluation factors for award.

A. The technical proposal will be evaluated to determine if the Successful Offeror possesses the capability to successfully perform the requirements of the solicitation. The proposal criteria are shown below:

- 1) Experience and Capability;
- 2) Personnel and Staffing;
- 3) Service Delivery;
- 4) Financial Capacity; and
- 5) Commitment to Section 2/Other Requirements

B. Proposals will be evaluated for technical and contractual acceptability. Proposals will be prepared in accordance with the instructions given in the RFP and will meet all requirements set forth in this RFP.

C. All proposals will be reviewed for reasonableness. All interested offerors whose offer is not within the competitive range will be notified that their proposals are unacceptable, negotiations/discussions with them are not contemplated, and any revisions of their proposals will not be considered.

D. Award will be made to the responsible offeror whose proposal conforms to the solicitation, will be most advantageous to the OHA, considering price and other factors as indicated below.

Pursuant to Section 3-122-59, HAR, if for a given request for proposals, there is only one (1) responsive and responsible offeror submitting an acceptable proposal, an award may be made to the single offeror, or rejected, if conditions in Section 3-122-59(a)(1) are not met, and new requests for proposal may be solicited or the procurement may be cancelled.

E. The OHA reserves the right to award a Contract on the basis of the initial offers received without discussion. Offers are solicited on an "all or none" basis.

Failure to submit offers for all items and quantities listed will be cause for rejection.

All proposals submitted will be evaluated on the basis of the evaluation criteria listed herein. Proposals will conform to all terms and conditions contained in the Request for Proposals. Proposals which do not conform to all requirements expressed in this solicitation may be rejected without further evaluation, deliberation or discussion.

- F. Past Performance. The OHA may evaluate the quality of each Offeror's past performance. The assessment of an Offeror's past performance will be used as one (1) means of evaluating the credibility of the Offeror's approach to work accomplishment. A record of marginal or unacceptable past performance may be an indication that the promises made by the Offeror are less than reliable. Such an indication will be reflected in the OHA's overall assessment of the Offeror's proposal. However, a record of acceptable or even excellent past performance will not result in a favorable assessment of an otherwise unacceptable technical proposal.

In investigating an Offeror's past performance, the OHA may consider information in the Offeror's proposal and information obtained from other sources, including past and present customers and their employees; other government agencies, including state and local agencies, consumer protection organizations and better business bureaus; former subcontractors; and others. Evaluation of past performance is a subjective assessment based on a consideration of all relevant facts and circumstances. The OHA may seek to determine whether the Offeror has consistently demonstrated a commitment to customer satisfaction and timely delivery of quality goods and services at fair and reasonable prices.

The OHA's conclusions about the overall quality of the Offeror's past performance may be influential in determining the relative merits of the Offeror's proposal and in selecting the Successful Offeror whose proposal is considered most advantageous to the OHA.

Past performance includes the Offeror's record of conforming to specifications and to standards of good workmanship; the Offeror's adherence to Contract schedules, including the administrative aspects of performance, the Offeror's control of costs, including costs incurred for changes in the scope of services; the Offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and, generally, the Offeror's business-like concern for the interests of the client.

V. Discussions - Kūkākūkā

Discussions may be conducted with priority listed offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without discussions. The objective of these discussions is to: 1) promote understanding of the requirements set forth in the RFP and the interested offeror's proposal; and 2) facilitate arriving at a contract that will provide the best value to the OHA,

taking into consideration the evaluation factors set forth in this RFP. Any discussion is not intended to require an award of contract by the OHA.

(END OF SECTION)

Section 5 – Attachments

- Attachment 1 - Proposal Submittal Checklist
- Attachment 2 - Acknowledgement of Addenda
- Attachment 3 - Wage Certificate Form for Service Contract
- Attachment 4 - RFP Registration Form
- Attachment 5 - Sample Cover Letter
- Attachment 6 - Sample Contract for Goods and Services Based on Competitive Sealed Proposals
- Attachment 7 - Sample of Contract – Attachment S1, Scope of Services
- Attachment 8 - Sample of Contract - Attachment S2, Compensation and Payment Schedule
- Attachment 9 - Sample of Contract – Attachment S3, Time of Performance
- Attachment 10 - Sample of Contract – Attachment S4, Special Conditions
- Attachment 11 - General Conditions, OHA-2018 103D General Conditions
- Attachment 12 - Holiday Schedule

PROPOSAL SUBMITTAL CHECKLIST**RFP NHRLF 2019-03
Marketing and Media Services**

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

- ☐ 1. Transmittal Letter (original signature required)
- ☐ 2. Proposal
 - ☐ a. Title Page
 - ☐ b. Table of Contents
 - ☐ c. Background and Summary
 - ☐ d. Experience and Capability
 - ☐ e. Personnel: Project Organization and Staffing
 - ☐ f. Management Plan
 - ☐ g. Financial
 - ☐ h. Other
 - ☐ 1. Financial Related Materials
 - ☐ 2. Certification and Representations of Offerors (Form HUD 5369-C)
 - ☐ 3. Administrative Policies
 - ☐ 4. Wage Certificate
 - ☐ 5. Hawaii Compliance Express Certificate of Vendor Compliance OR
 - ☐ a. Department of Labor and Industrial Relations, Certificate of Compliance with section 3-122-112, HAR, Form LIR #27; and
 - ☐ b. Department of Consumer and Commerce Affairs Certificate of Good Standing; and
 - ☐ c. State and Federal Tax Clearance Certificates
 - ☐ 6. Corporate Resolution indicating authorized signer for proposal and contractual documents
- ☐ 3. Submit proposal in a sealed envelope or box identified with RFP [Program] 2019-[--], [Name of RFP], offeror's legal name, business address, phone number, fax number, and address it to the attention of the RFP Coordinator.

ACKNOWLEDGEMENT OF ADDENDA

RFP NHRLF 2019-03
Marketing and Media Services

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

		Check box if Addendum not received
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>
Addendum Number: _____	Date Received: _____	<input type="checkbox"/>

Offeror's Name

Authorized Signature (Original)

Print Authorized Signature Name

WAGE CERTIFICATE

DESCRIPTION OF PROJECT

Development of a statewide marketing campaign and resulting marketing materials, and media buying services on behalf of the OHA and its Native Hawaiian Revolving Loan Fund

Pursuant to Section 103-55, Hawai'i Revised Statutes (HRS), I hereby certify that if awarded the contract and it is in excess of \$2,000.00 the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work; and
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

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

BY: _____
Signature of Person Authorized to Sign

Please Print

NAME: _____

TITLE: _____

VENDOR: _____

DATE: _____

RFP REGISTRATION FORM

RFP NHRLF 2019-03	Development of a statewide marketing campaign and resulting marketing materials, and media buying services on behalf of the OHA and its NHRLF
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INSTRUCTIONS: If picking up your RFP packet from the OHA office, please complete this Registration Form and leave the original with the OHA's Procurement Unit. A copy will be made for you. The copy contains important dates, times, and information. If this form was downloaded online with the RFP packet, please complete and e-mail or mail this form to the RFP Coordinator: Miki Cachola Lene, mikic@oha.org, 560 N. Nimitz Highway, Suite 200, Honolulu, Hawai'i, 96817.

Read this packet carefully. If you have any questions, please call Miki Cachola Lene at (808) 594-1993.

Registration Forms Due	Due by Wednesday, October 24, 2018, 2:00 p.m. HST
Pre-Proposal Conference	<p>Scheduled for Wednesday, October 24, 2018, 9:00 a.m. HST At the OHA, 560 N. Nimitz Hwy, Ste. 200, Honolulu, HI 96817</p> <p>RFP Coordinator: Miki Cachola Lene at (808) 594-1993, E-mail: mikic@oha.org</p> <p>Teleconference may be available during the Pre-Proposal Conference session upon request. Please contact the RFP Coordinator to request for arrangements by:</p> <p>Monday, October 22, 2018, 2:00 p.m. HST</p>
Proposal Submittals Due	<p>Due by Wednesday, November 14, 2018, 2:00 p.m. HST</p> <p>Submit at: OHA, 560 N. Nimitz Hwy, Ste. 200, Honolulu, HI 96817</p> <p>E-mail and facsimile transmissions shall not be accepted.</p>
Notice of Award	November 2018
Contract Start Date	December 2018 or Upon Notice to Proceed
<p style="text-align: right;">Date: _____</p> <p>Company: _____</p> <p>Address: _____</p> <p>Phone: _____ E-mail: _____</p> <p>Contact Person: _____</p> <p>Name of Person picking up packet: _____</p> <p>Signature of Person picking up packet: _____</p>	

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

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

Dear Dr. Crabbe:

The undersigned has carefully read and understands the terms and conditions specified in the RFP NHRLF 2019-03 and in the General Conditions, and hereby submits the following Proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees that by submitting this competitive sealed Proposal, 1) he/she is declaring his/her Proposal is not in violation of Chapter 84, Hawai‘i Revised Statutes, concerning prohibited State Contracts, 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion, and 3) he/she hereby authorizes the Office of Hawaiian Affairs to verify information provided in this Proposal.

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

Date: _____ Respectfully submitted,

Phone: _____
Exact Legal Name of Company (Offeror)

Remittance Address, if different from
Business Address _____
Authorized Signature (Original)

_____ Print Name: _____

_____ Title: _____

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

Federal Tax I.D./Social Security No: _____

_____ E-mail: _____



OFFICE OF HAWAIIAN AFFAIRS
CONTRACT FOR GOODS AND SERVICES
BASED UPON COMPETITIVE SEALED PROPOSALS

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

RECITALS

A. The OHA desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The OHA has issued a request for competitive sealed proposals and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawai‘i Revised Statutes (“HRS”), Hawai‘i Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 (“HAR”), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer (“CPO”).

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the OHA, taking into consideration price and the evaluation factors set forth in the request.

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

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

(1) _____ *(Identify OHA source)*

(2) _____ *(Identify state source)*

or (3) _____ *(Identify federal source)*

or all, in the following amounts: OHA \$ _____

State \$ _____

Federal \$ _____.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the OHA, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number _____ (“RFP”) and the CONTRACTOR’s accepted proposal (“Proposal”), both of which, even if not physically attached to this Contract, are made a part of this Contract. See Attachment – S1, which is made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed _____ DOLLARS (\$_____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR’s Proposal. See Attachment – S2, which is made part of this Contract.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment – S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$_____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$_____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the OHA shall be sent to the HOPA’s address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR’s address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the OHA in writing of any change of address.

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

OHA

(Signature)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title) *

(Date)

APPROVED AS TO CONTENT:

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

(Signature)

(Print Name)

(Print Title)

(Date)

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



**OFFICE OF HAWAIIAN AFFAIRS
CONTRACTOR'S ACKNOWLEDGMENT**

STATE OF _____)

COUNTY OF _____)

On this _____ day of _____, _____ before me
appeared _____, to me known, to be the person
described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ of _____,
the CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to
sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they
executed said instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Document Date: _____ # of Pages: _____

Notary Name: _____ Circuit _____

Document Description: _____

Notary Signature

Date

(Notary Stamp or Seal)

NOTARY CERTIFICATION



OFFICE OF HAWAIIAN AFFAIRS
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

“Agency” means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

“Controlling interest” means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

“Employee” means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is * ☐ is not a legislator or an employee or a business which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14(d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the “is” block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



OFFICE OF HAWAIIAN AFFAIRS SCOPE OF SERVICES

Attachment – S1

Project: [Project Name]
 Description: [Description of Project]
 Location: TMK No: [NO.]

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

- A. The following documents, and any amendments or addenda thereto, comprise the Contract between the parties and are fully a part of this Contract governing the work to be performed by the CONTRACTOR for the [NAME OF PROJECT]: (1) CONTRACTOR's accepted proposal dated [Date of Proposal Submitted]; (2) Request for Proposal No. [No. of RFP]; and (3) OHA Non-Grant General Conditions effective January 28, 2016; and (4) this Contract. These documents collectively comprise the "Contract".
- B. The CONTRACTOR shall provide and perform the services set forth in a satisfactory and proper manner as determined by the OHA. The services shall include, but may not be limited to, the following:
 1. The CONTRACTOR shall develop a statewide marketing campaign and related materials, and negotiate and execute media advertisements for radio, television, and print, approved by and on behalf of the OHA, that promote awareness of the NHRLF that will lead to increased loan disbursements.
 2. The CONTRACTOR shall be responsible for procuring all necessary permits, licenses, goods, services, and materials as required to complete the scope of work.
 3. The CONTRACTOR shall meet with the NHRLF staff to provide strategic and media planning services that address their need to increase loan disbursements.
 4. The CONTRACTOR shall design and execute a research strategy to quantify the effectiveness of the campaign, specifically: the increase in awareness of and inquiries regarding the NHRLF loan programs, the increase in loan applications, and the increase in loan disbursements.
 5. The CONTRACTOR shall work with the NHRLF to produce all creative marketing materials and advertisements that shall be used in the campaign.
 6. The following are the number of ads to be created through this Contract:



**OFFICE OF HAWAIIAN AFFAIRS
SCOPE OF SERVICES**

Attachment – S1

- a. Minimum of TWO (2) radio spots per Contract year;
 - b. Minimum of TWO (2) television commercials per Contract year; and
 - c. Minimum of THREE (3) print and or digital ads per Contract year.
7. The CONTRACTOR shall negotiate and execute radio, television, print, digital and other media buys as approved by and on behalf of the OHA, including existing marketing materials and advertisements as provided by the OHA.
 8. The CONTRACTOR shall handle all purchases made as approved by and on behalf of the OHA.
 9. The CONTRACTOR shall be responsible for paying the vendor and shall invoice the OHA for reimbursement of media buys approved by the OHA. A copy of the original vendor invoice shall accompany the CONTRACTOR's invoice upon request for reimbursement.
 10. The CONTRACTOR shall be available to meet with or present to the OHA, its Board of Trustees, the NHRLF Board of Directors, and OHA staff as is necessary to complete this scope of work, and at a frequency determined by the OHA.
- C. The OHA Administrator will act as the contract monitor and principal liaison between the CONTRACTOR and the OHA. The Administrator shall assist in resolving policy questions expediting decisions and the review of the work performed.

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OFFICE OF HAWAIIAN AFFAIRS COMPENSATION

Attachment – S2

Project: [Project Name]
 Description: [Description of Project]
 Location: TMK No: [NO.]

- A. The OHA agrees to pay the CONTRACTOR, subject to the availability of funds, a maximum amount not to exceed [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] (\$[AMOUNT]) inclusive of all actual reasonable ordinary necessary costs and expenses, including general excise tax currently at the rate of (4.712% [for Oahu only] or 4.166% [for neighbor islands]), for services satisfactorily rendered under this Contract.
- B. Compensation shall be paid pursuant to the schedule set forth below and upon presentment of invoice and satisfactory performance of the work described in ATTACHMENT – S1 SCOPE OF SERVICES and shall be approved by the OHA Contract Administrator. The Administrator's written approval shall be required before incurring any exceptional cost and/or expenses. Compensation shall be paid in the following manner:

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

- C. The OHA shall retain TEN PERCENT (10%) equal to [DOLLAR AMOUNT WRITTEN OUT AND NO/100 DOLLARS] (\$[AMOUNT]), including general excise tax currently at the rate of (4.712% [for Oahu only] or 4.166% [for neighbor islands]), of the total Contract amount as the final payment under this Contract. Payment of the retained amount shall be made upon the completion and approval by the OHA of deliverables as stated in the payment.
- D. For final payment, the CONTRACTOR must submit a valid tax clearance certificate and a "Certification of Compliance for Final Payment" (Form SPO-22). An original tax clearance certificate not over two (2) months old with an original green certified copy stamp or a valid HCE Certificate of Vendor Compliance, in lieu of the tax clearance certificate, is acceptable. A copy of Form SPO-22 is available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors from the Chapter 103D, HRS, link.



**OFFICE OF HAWAIIAN AFFAIRS
COMPENSATION**

Attachment – S2

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

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

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

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

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OFFICE OF HAWAIIAN AFFAIRS TIME OF PERFORMANCE

Attachment – S3

Project: [Project Name]
 Description: [Description of Project]
 Location: TMK No: [NO.]

- A. The CONTRACTOR shall perform the services required under this Contract from [Date] through and including [Date] unless this Contract is sooner terminated.
- B. The manner in which the services are to be performed and the specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited, however, to the maximum amount payable as specified in this Contract.
- C. Option to Extend: The Time of Performance of this Contract may be extended at negotiated fees, subject to the availability of funds, upon mutual agreement in writing prior to the end of the current Contract. It is understood that a Supplemental Contract (Amendment) will be executed by both the CONTRACTOR and the OHA to exercise any and all extensions.

Initial term of Contract: [NO. OF MONTHS WRITTEN OUT] (#) months

Length of each extension: Up to [NO. OF MONTHS WRITTEN OUT] (#) months, may be less than [NO. OF MONTHS WRITTEN OUT] (#) months when it is in the best interest of the OHA

Maximum length of Contract: Not to exceed [NO. OF MONTHS WRITTEN OUT] (#) months

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**OFFICE OF HAWAIIAN AFFAIRS
SPECIAL CONDITIONS**

Attachment – S4

Project: [Project Name]
Description: [Description of Project]
Location: TMK No: [NO.]

- A. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall prevail.

Sample

GENERAL CONDITIONS

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1. Coordination of Services by the OHA. The head of the purchasing agency (“HOPA”) (which term includes the designee of the HOPA) shall coordinated 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 CONTRACTORS’S work, and submit to HOPA for resolution any questions which may arise as to the performance of the Contract. “Purchasing agency” as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the OHA shall have a general right to inspect work in progress to determine whether, in the OHA’S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the OHA does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the OHA.

 - b. The CONTRACTOR and the CONTRACTOR’S employees and agents are not by reason of this Contract, agents or employees of the OHA for any purpose, and the CONTRACTOR and the CONTRACTOR’S employees and agents shall not be entitled to claim or receive from the OHA any vacation, sick leave, retirement, workers’ compensation, unemployment insurance, or other benefits provided to OHA employees.

 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR’S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR’S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR’S employees or agents in the course of their employment.

 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and 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 OHA prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of 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 OHA, and (ii) the CONTRACTOR’S assignee or subcontractor submits to the OHA 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 OHA, a successor in interest may be recognized in an assignment contract in which the OHA, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the “Assignee”) agree that:
 - (1) The Assignee assumes all of the CONTRACTOR’S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the OHA; and

- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the OHA, the procurement officer of the purchasing agency (hereinafter referred to as the “Agency procurement officer”) shall, upon receipt of a document acceptable or satisfactory to the Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR’S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR’S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.
- 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 OHA CPO’s office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii and Office of Hawaiian Affairs, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys’ fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR’S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
8. Cost of Litigation. In case the OHA shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the OHA, including attorneys’ fees.
9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in

the time specified, it is agreed the CONTRACTOR shall pay to the OHA the amount , if any, set forth in this Contract per calendar day from the date set for cure until either (i) the OHA reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR Is not terminated for default. To the extent that the CONTRACTOR’S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. OHA’S Right of Offset. The OHA may offset against any monies or other obligations the OHA owes to the CONTRACTOR under this Contract, any amounts owed to the State of 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 OHA will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of 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 OHA reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be

taken on subcontractors; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

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

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

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

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

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

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will endure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the OHA has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the OHA shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The OHA may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the OHA against loss because of outstanding liens or claims and to reimburse the OHA for the excess costs expected to be incurred by the OHA in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of the Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other

labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the OHA under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the OHA so require, terminate this Contract in whole or in part, for the convenience of the OHA. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination become effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the OHA'S approval. The

Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR’S right, title, and interest under terminated orders or subcontractors to the OHA. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the OHA in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called “manufacturing material”) as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the Agency Procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the OHA has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the OHA has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost and pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the OHA, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
- (A) Contract prices for goods and services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.
- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) 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 OHA, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any OHA officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
 - 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 OHA officers and employees who are excluded from collective bargaining coverage.
17. Payment Procedures; Final Payment; Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
 - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
 - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of 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 OHA to received anticipated federal funds shall not be considered a breach by the OHA or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the OHA, provided that change orders shall be made in accordance with paragraph 20 herein.
 - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of the Contract shall be permitted.
 - c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency Procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of 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 sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the OHA, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the OHA in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
 - b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
 - c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
 - d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

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

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the OHA and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten 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 services;
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the OHA in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
- c. The CONTACTOR 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 contact.

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the OHA.
- b. All information, data, or other material provided by the CONTRACTOR to the OHA shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the OHA, or any office, agency, or officer thereof, or any OHA employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contracts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The OHA shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the OHA upon expiration or termination of this Contract. The OHA, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The OHA may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A OHA contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless

otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

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

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the OHA may require an audit of cost or pricing data.
31. Records Retention.
 - (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the OHA.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the OHA, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) 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 OHA at the request of the OHA.
32. Antitrust Claims. The OHA and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to OHA any and all claims for overcharges as to goods and materials purchase in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the OHA under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the OHA, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all 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 OHA any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the OHA a substitute article, process, or appliance acceptable to the OHA, (b) 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 OHA and the CONTRACTOR relative to this contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implies, between the OHA and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the OHA to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the OHA'S right to enforce the same in accordance with this

Contract. The fact that the OHA specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the OHA’S rights or the CONTRACTOR’S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a “release” or a “threatened release” of a reportable quantity of a “hazardous substance,” “pollutant,” or “contaminant” as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the OHA and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the OHA determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from the specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Person 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 OHA by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the OHA.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate “technological safeguards” that are acceptable to the OHA to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the OHA in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STAET, or personal information created or received by CONTRACTOR on behalf of the OHA.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

- (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of personal information will be restricted to uses consistent with the services subject to this Contract.
- d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the OHA learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the OHA may at its sole discretion:
- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
 - (2) Immediately terminate this Contract.

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

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

43. Insurance Requirements

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

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

- b. The State of Hawaii, the OHA, its elected and appointed officials, employees, agents and volunteers are added as additional insured with respect operation performed under this Contract. The CONTRACTOR agrees to provide the OHA before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the OHA that the insurance provision of this Contract have been complies with and to keep such insurance in effect and the certificate(s) therefore on deposit with the OHA during the entire term of this Contract. The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental contracts. Upon request by the OHA, the CONTRACTOR shall furnish a copy of the policy or policies.
- c. Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as a material default under this Contract, entitling the OHA to exercise any or all the remedies provided in this Contract for default of the CONTRACTOR.
- d. The procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR's liability hereunder or to fulfill the indemnification

provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the CONTRACTOR shall be obliged for the full and total amount of damage, injury, or loss cause by negligence or neglect connected with this Contract.

- e. To satisfy the minimum coverage limits required by this Contract, the Successful Offeror may use an umbrella policy in addition to the mandatory insurance policies(i.e. General Liability insurance, Automobile Insurance, and Workers' Compensation) provided that the OHA approves, and the umbrella policy follows the underlying coverage forms
- f. The CONTRACTOR shall notify the OHA in writing of any cancellation or change in provision thirty calendar days prior to the effective date of such cancellation or change.
- g. The OHA is a self-insured semi-autonomous STATE agency. The CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii and OHA shall apply in excess of, and shall not contribute with, insurance provided by the CONTRACTOR.

Years 2017 and 2018**www.dhrd.hawaii.gov****Holidays to be observed by the
HAWAII STATE GOVERNMENT**

Website where State Holiday Schedule posted

Year 2017 HAWAII STATE HOLIDAYS

(Hawaii Rev. Statutes, Sec. 8-1)	Day Observed in 2017	Official Date Designated in Statute/Constitution
New Year's Day.....	Jan. 2 Monday	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 16 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 20 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalanianaʻole Day.....	Mar. 27 Monday	The twenty-sixth day in March
Good Friday.....	April 14 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 29 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 12 Monday.....	The eleventh day in June
Independence Day.....	July 4 Tuesday.....	The fourth day in July
Statehood Day.....	Aug. 18 Friday.....	The third Friday in August
Labor Day.....	Sept. 4 Monday.....	The first Monday in September
Veterans' Day.....	Nov. 10 Friday.....	The eleventh day in November
Thanksgiving.....	Nov. 23 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Monday.....	The twenty-fifth day in December

Year 2018 HAWAII STATE HOLIDAYS

(Hawaii Rev. Statutes, Sec. 8-1)	Day Observed in 2018	Official Date Designated in Statute/Constitution
New Year's Day.....	Jan. 1 Monday.....	The first day in January
Dr. Martin Luther King, Jr. Day.....	Jan. 15 Monday.....	The third Monday in January
Presidents' Day.....	Feb. 19 Monday.....	The third Monday in February
Prince Jonah Kuhio Kalanianaʻole Day.....	Mar. 26 Monday.....	The twenty-sixth day in March
Good Friday.....	Mar. 30 Friday.....	The Friday preceding Easter Sunday
Memorial Day.....	May 28 Monday.....	The last Monday in May
King Kamehameha I Day.....	June 11 Monday.....	The eleventh day in June
Independence Day.....	July 4 Wednesday.....	The fourth day in July
Statehood Day.....	Aug. 17 Friday.....	The third Friday in August
Labor Day.....	Sept. 3 Monday.....	The first Monday in September
General Election Day.....	Nov. 6 Tuesday.....	The first Tuesday in Nov. following the first Monday of even-numbered years. <i>(Hawaii State Constitution, Article 2 – Section 8)</i>
Veterans' Day.....	Nov. 12 Monday.....	The eleventh day in November
Thanksgiving.....	Nov. 22 Thursday.....	The fourth Thursday in November
Christmas.....	Dec. 25 Tuesday.....	The twenty-fifth day in December

FOOTNOTES: For use solely by State government agencies. Federal government and local banking holidays may differ. For State agencies that operate on other than Monday-Friday 7:45 AM to 4:30 PM schedules, also refer to appropriate collective bargaining agreements. Created by the Department of Human Resources Development 9/21/2016; subject to change.