



**State of Hawaii**

**Department of Commerce and Consumer Affairs**

**Cable Television Division**

**Request for Proposals**

**No. RFP-CATV-16-001-SW  
REQUEST FOR PROPOSALS TO PROVIDE HAWAIIAN  
LANGUAGE VIDEO CONTENT**

**Date Issued: April 20, 2016**

**PROPOSAL MUST BE POSTMARKED BY June 6, 2016**

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Catherine P. Awakuni Colón

Director and Procurement Officer

Department of Commerce and Consumer Affairs

## NOTICE TO INTERESTED PARTIES

The State of Hawaii Department of Commerce and Consumer Affairs (DCCA) through its Cable Television Division (CATV) is seeking proposals in response to a Request for Proposals (RFP) for Hawaiian Language Video Content (RFP-CATV-16-001-SW).

The Hawaiian Language Video Content RFP requests proposals for the development and distribution of a minimum of twelve (12) Hawaiian language video programs per twelve-month period. To achieve this goal, DCCA announces the availability of up to **\$300,000 per twelve-month period** on a fixed-price contract for this project.

This solicitation is provided for informational purposes. If you are interested in responding to this solicitation, you may choose to submit your proposal provided you register your organization by email for this specified solicitation. If you do not register your organization, you will not receive addenda, which may impact your proposal and more than likely result in a lower score.

### Registration of Solicitation

Submit EMAIL to: [kyle.j.kagihara@dcca.hawaii.gov](mailto:kyle.j.kagihara@dcca.hawaii.gov)

Provide the following information:

Name of Company  
Mailing Address  
Telephone Number  
Facsimile Number  
Name of Contact Person  
Email Address  
RFP Number

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Attachment 1

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Appendix 1

Appendix 2

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

# **1. INTRODUCTION**

## **1.1 INTRODUCTION**

DCCA is empowered to issue cable franchises to cable operators for the operation of a cable television system in the State of Hawaii (State). Annual fees collected from each cable operator pursuant to HRS § 440G-15 are used for, among other things, support of non-commercial programming content where DCCA believes that the continued viability of such cablecasting and the creation of that programming content is in the public interest. DCCA believes that the creation of more Hawaiian language video programs, and the distribution of these programs to a large audience across all geographies and demographics, is also in the public interest.

This RFP provides estimated dates for the various events in the submission process, selection process, and performance of work. Although these dates are subject to change, prospective Offerors must be prepared to meet them as they currently appear in this RFP. Any failure to meet a deadline in the submission or evaluation phases and any objection to the dates for performance in the work phase may result in DCCA refusing to consider the proposal of the Offeror.

## **1.2 OBJECTIVE**

The objective of this RFP is to select a Contractor to develop and distribute twelve (12) programs of Hawaiian Language Video Content during a twelve-month period beginning August 1, 2016, or a mutually agreed upon date. The Contractor will enter into a twelve-month Contract with DCCA, with two (2) options to extend the Contract for twelve (12) months each, if mutually agreed upon in writing prior to the expiration of the Contract. Should the Contract be extended, the Contractor shall develop and distribute an additional twelve (12) new videos of Hawaiian Language Video Content for each twelve-month extension. The Hawaiian Language Video Content is to be distributed statewide in a manner that will maximize viewership and access to the video programs.

## **1.3 TERMS AND ACRONYMS USED HEREIN**

"Business day" means every day from 7:45 a.m. to 4:30 p.m., Hawaii Standard Time (HST), except Saturday, Sunday, and any State of Hawaii holiday.

"Broadcast" means the airing of television or video program material

via television stations within the State of Hawaii that are licensed by the Federal Communications Commission to transmit television signals over the public airwaves, and the act of showing a television or video program via licensed television stations within the State of Hawaii.

"Cablecast" or "cablecasting" means a television or video program shown via State of Hawaii franchised cable television systems, or the act of showing a television or video program via a State of Hawaii franchised cable television systems.

"CATV" means the Cable Television Division of DCCA.

"Contract" means the agreement between the Contractor and DCCA for the development and distribution of Hawaiian Language Video Content.

"Contract Administrator" means the staff person designated by the Director of DCCA to administer the Contract contemplated by this RFP.

"Contractor" means a Successful Offeror who has come to an agreement with DCCA regarding the Contract to develop and distribute Hawaiian Language Video Content.

"DCCA" or "Department" means the State of Hawaii Department of Commerce and Consumer Affairs.

"Deliverables" means work associated with RFP-CATV-16-001-SW along with the development and distribution of Hawaiian Language Video Content including, but not limited to all phases of development, pre-production, production, post-production, and distribution activities.

"Development" and "develop" means the creation of video content, including all phases of development, pre-production, production, post-production, and marketing.

"Distribution" and "distribute" means facilitating the scheduling and showing of Hawaiian Language Video Content to a statewide audience through broadcasting, cablecasting, and/or other media platform.

"DOTAX" means the State of Hawaii Department of Taxation.

"GC" means General Conditions, issued by the State of Hawaii Department of the Attorney General (Form AG-008 103D).

"GET" or "General Excise Tax" mean the applicable tax imposed under HRS Chapter 237.



"Hawaiian Language Video Content" means original educational, cultural, historical, or local community video programming utilizing the Hawaiian language at a minimum of 51% throughout the video program.

"HAR" means Hawaii Administrative Rules.

"HRS" means Hawaii Revised Statutes.

"Offeror" means any individual, partnership, firm, corporation, joint venture, organization, or other entity submitting directly or through a duly authorized representative or agent, a bid for the goods, service, or deliverables contemplated.

"Procurement Officer" means the Executive Officer of the Department.

"RFP" and "Request for Proposals" mean the procurement process described in HRS § 103D-303.

"State" means the State of Hawaii, including its departments, agencies, and divisions.

"Successful Offeror" means the Offeror awarded opportunity to discuss a contract to develop and distribute Hawaiian Language Video Content.

#### **1.4 BACKGROUND**

The Hawaii State Constitution (Constitution) designates Hawaiian as an official language of Hawaii and states within the context of education that the State shall promote the study of Hawaiian culture, history, and language. In promoting Hawaiian education, the Constitution further states that the use of community expertise shall be encouraged as a suitable and essential means. Consistent with these constitutional mandates, the State of Hawaii Legislature (Legislature) has taken various actions to protect, revitalize, and expand the role of the Hawaiian language in the State, including use of community non-profit organizations with expertise in Hawaiian language, education, history, and culture to further the State's educational efforts. The use of such community expertise allows the State to meet its constitutional mandates and provides an essential and cost-effective means to further Hawaiian education. The Legislature has expressed the State's continued need to utilize community expertise to expand services that meet the State's Hawaiian language needs.

## **1.5 OFFICIAL MEANS OF COMMUNICATION**

During the solicitation process for this RFP, all official communications must be submitted in writing and directed to DCCA by email or mail. All communications and inquiries concerning this RFP should be directed to:

Department of Commerce and Consumer Affairs  
Cable Television Division  
Attn: Contract Administrator  
335 Merchant Street, Room 101  
Honolulu, Hawai'i 96813

Telephone: (808) 586-2620  
Email: [kyle.j.kagihara@dcca.hawaii.gov](mailto:kyle.j.kagihara@dcca.hawaii.gov)

Written inquiries must be received by the Contract Administrator at the address identified above and shall state the page, paragraph, and line or sentence to which the question relates, when applicable. The subject line of all emailed inquiries shall include the title and number of the RFP. All written inquiries must be received by the deadline specified in Section 1.7.

Replies to Offerors' questions shall be considered official only if (1) DCCA receives the questions in writing via email or mail by the date specified herein; and (2) DCCA provides a written reply as an addendum to the RFP.

Registered Offerors shall receive a written response via email or mail. DCCA shall not be responsible for notifying those potential Offerors who have failed to provide their necessary contact information.

## **1.6 ISSUING OFFICE**

This RFP is issued by DCCA. DCCA is the sole point of contact concerning this RFP.

## **1.7 RFP SCHEDULE - SIGNIFICANT DATES**

The schedule for the work set out herein represents the DCCA's best estimate of the schedule that shall be followed. If a component of this schedule, such as Closing Date is delayed, the rest of the schedule shall be shifted by the same number of days. The approximate schedule is as follows:

<b><u>Activity</u></b>	<b><u>Scheduled Date</u></b>
Public notice announcing RFP	April 20, 2016
Registration deadline	April 29, 2016 (by 4:30 p.m. HST)
Deadline to receive written inquiries	May 13, 2016 (by 4:30 p.m. HST)
Issuance of responses to written inquiries	May 25, 2016
Closing date - proposal submittal deadline	June 6, 2016 (electronic proposals emailed by 4:30 p.m. HST)
Proposal evaluation period	Through June 17, 2016
Optional discussion w/ priority-listed Offerors	June 20 – 29, 2016
If required, Best and Final Offers due	July 8, 2016
Successful Offeror selection	July 15, 2016
Contract discussions	Through July 29, 2016
Contract start date	August 1, 2016 or mutually agreed upon date

Prospective Offerors should be aware of the specified time that an item is due, in addition to the date that it is due.

## **1.8 REGISTRATION REQUIREMENT**

You MUST REGISTER your company by the date specified in Section 1.7, to ensure receiving any addenda that are issued. Registration shall include Company Name, Company Contact Person, Address, Telephone Number, Facsimile Number, and Email Address and shall be submitted either by facsimile to DCCA to the attention of the Contract Administrator, at (808) 586-2625 or by email to [kyle.j.kagihara@dcca.hawaii.gov](mailto:kyle.j.kagihara@dcca.hawaii.gov). Telephone calls WILL NOT BE HONORED. Failure to register with DCCA will impact your proposal and more than likely result in a lower score. It is the Offeror's responsibility to confirm that DCCA has received the faxed or emailed registration submittal.

## **1.9 AUTHORITY**

This RFP is issued pursuant to the provisions of the Hawaii State Procurement Code (HRS § 103D), and the State Procurement Office's applicable directives, circulars, and administrative rules, which are governed by Hawaii law. All prospective Offerors are charged with the presumptive knowledge of all legal authorities. These and other pertinent materials are available on the State of Hawaii State

Procurement Office website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Submission of a valid executed offer by any Offeror shall constitute admission of such knowledge on the part of such Offeror.

Any agreement arising out of this RFP is subject to the approval of the State of Hawaii Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

## **1.10 GENERAL INSTRUCTIONS FOR PROPOSAL**

DCCA requests clear and concise proposals in response to this RFP. However, Offerors should take care to completely answer questions and meet this RFP's stated requirements.

Each Offeror may submit only one (1) proposal. Alternate proposal(s) will not be accepted.

Each proposal must be organized in an indexed binder ordered in the same manner as identified in Section 3. The detailed requirements for the proposal's contents and formatting are contained within this RFP.

Offeror shall submit one (1) unbound, indexed, original proposal marked "ORIGINAL," six (6) bound, indexed copies of the original marked "COPY," an electronic version of the proposal sent via email or submitted on a USB flash drive, and two (2) compact discs or digital video discs of sample video content (no longer than ten (10) minutes of edited video content) developed solely by the Offeror. It is imperative to note that the Offeror must submit only one (1) original proposal and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

Proposals shall be typewritten in English.

Proposals shall be submitted in a sealed envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall be made to the attention of the Contract Administrator.

Proposals shall be postmarked no later than the date stated in Section 1.7. Electronic submissions sent by email must comply with Section 1.7.

## **1.11 PURPOSE OF THIS RFP**

### **1.11.1 Mandatory Requirements**

Mandatory requirements are explicitly stated within this RFP. Offerors should consider the following general mandatory requirements prior to deciding to respond to this RFP:

Offeror must be prepared to act in an independent capacity and not as officers or employees of the State. Offeror must indemnify, defend, and hold harmless the State and/or DCCA and its officers and employees from liability and any claim, suit, judgment, and damages arising as a result of the Successful Offeror's acts and/or omissions in the performance of its duties.

Offeror must be prepared to enter into a twelve-month Contract with DCCA beginning August 1, 2016 or a mutually agreed upon date, with two (2) options to extend the Contract for twelve (12) months each if mutually agreed upon in writing prior to the expiration of the Contract.

Offeror must possess experience in all facets of the development of video content.

Offeror must have a reasonable plan to distribute Hawaiian Language Video Content statewide in a manner that will maximize viewership and provide the public alternate means to access and view the content.

Offeror must propose a lead staff member who will coordinate the Deliverables associated with this Hawaiian Language Video Content RFP, and who will serve as a single point of contact.

Offeror shall provide DCCA with a list of key staff that will perform work associated with the Deliverables.

Offeror shall NOT replace or alter the duties of key staff during the term of the Contract without express written authorization, in advance, from the Contract Administrator.

Offeror must provide its own equipment, office space, and materials for work associated with the development and distribution of the Hawaiian Language Video Content.

#### **1.11.2 Relationship of the Successful Offeror to DCCA**

The relationship between the Successful Offeror and DCCA shall be governed by the Contract entered into by and between the Successful Offeror and DCCA.

Copies of any reports or other communications from the Successful

Offeror to DCCA or vice versa (other than administrative matters concerning the Successful Offeror's Contract with DCCA) shall be available to the public upon request, unless deemed confidential.

## **1.12 PROPOSAL MODIFICATIONS AND WITHDRAWALS**

Proposals may be modified or withdrawn prior to the deadline for submission of proposals by the following:

1. Modifications: A written notice shall be sent by the Offeror and received by the Contract Administrator stating that a modification to a submitted proposal is being provided by the Offeror. The written notice must accompany the actual modification securely sealed in a separate envelope or container.
2. Withdrawal: A written notice shall be sent by the Offeror and received by the Contract Administrator. The withdrawal shall state that the Offeror wishes to withdraw its proposal that has already been received.
3. Modifications and withdrawals shall be submitted in an envelope clearly identified with the RFP number, title, and Offeror's name on the outside of the envelope. The envelope shall also be made to the attention of the Contract Administrator.

Modifications and withdrawals shall be postmarked no later than the submittal deadline provided in Section 1.7.

## **1.13 SUBMISSION OF PROPOSAL**

Submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of the performance of the work. Before submitting a proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, and any other relevant documents.
2. Become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work specified herein.

#### **1.14 COST OF RFP**

The Offeror shall be responsible for all costs incurred in preparing or responding to this RFP.

DCCA and the State shall not be liable for any costs, including discussions, incurred by any Offeror in responding to this RFP, even if DCCA does not award the Contract through this process or an Offeror's proposal is rejected and subsequently destroyed by DCCA. DCCA may in its sole discretion decide not to award the Contract for the work. DCCA may in its sole discretion also cancel this RFP and the Contract for the work through some other process or by issuing another RFP.

#### **1.15 PROPERTY OF THE STATE**

All materials and documents submitted in response to this RFP shall become the property of the State and/or DCCA and shall not be returned.

## **2. SCOPE OF DELIVERABLES**

### **2.1 INTRODUCTION**

The Hawaiian language is promoted throughout all levels of education in Hawaii and serves as a way for individuals to foster a deeper appreciation of the history and traditions of Hawaii. As interest in the Hawaiian language and culture increases, new outlets to cultivate learning and introduce the Hawaiian language to a larger audience should be sought.

Television and other media platforms have the ability to inform, educate, and, most importantly, reach a statewide audience. These platforms can expose individuals to the Hawaiian language and culture, and provide an opportunity for speakers of Hawaiian to develop and maintain their skills.

The goal of this RFP is to identify a Contractor that can develop and distribute Hawaiian Language Video Content according to requirements and standards set forth in Section 2.3.

### **2.2 COMPENSATION**

Payment shall be made to the Contractor according to a mutually agreed upon payment schedule. Neither the State nor DCCA shall be liable or responsible for any compensation to the Contractor for the Deliverables provided under this RFP or for this project that is greater than the total Contract amount. Contractor shall be paid in accordance with the State of Hawaii's GC #17. See Appendix 1 for GCs.

Consistent with HAR § 3-122-136 on fixed-price contracts, the following terms apply:

1. Funds are available for only the initial term of the Contract, and the contractual obligation of both parties in each fiscal period succeeding the first is subject to the availability of funds.
2. The Contract shall be cancelled if funds are not available for Hawaiian Language Video Content in any Contract period succeeding the initial term of the Contract; however, this does not affect either the State's rights or the Contractor's rights under any termination clause of the Contract.
3. The Contract Administrator shall notify the Contractor on a timely basis, not less than one (1) month prior to the expiration of the Contract that the funds are, or are not, available for the



extension of the Contract.

## **2.3 GENERAL REQUIREMENTS**

### **2.3.1 Contractor Tasks, Guidelines, and Target Outcomes**

The Contractor shall meet the following requirements in providing the Deliverables:

1. The Contractor shall develop a minimum of twelve (12) original video programs per each twelve-month period of the Contract. Each video program shall be a minimum of thirty (30) minutes in length for a minimum combined total of six (6) hours of edited video content.
2. The subject matter of the Hawaiian Language Video Content shall be educational, cultural, historical, or local community programming.
3. The Hawaiian Language Video Content shall utilize the Hawaiian language at a minimum of 51% throughout each video program.
4. The primary audio shall be in Hawaiian, therefore, the video programs should be open captioned in English to facilitate learning.
5. The video programs shall be submitted in 1920x1080i/30 broadcast/cablecast format or a required format. Standard definition format versions of these video programs should be available in the event standard definition is required.
6. The Hawaiian Language Video Content shall be distributed statewide in a manner that will maximize viewership and provide access to the content.
7. The Hawaiian Language Video Content must comply with all State and federal requirements and laws.

The following are target outcomes for each twelve (12) month period while under Contract:

1. Within two (2) months after the start of the Contract, one (1) video program shall be completed and ready for statewide distribution.

2. Within six (6) months after the date of the Contract award, at least five (5) video programs shall be completed and ready for statewide distribution.
3. Within nine (9) months after the date of the Contract award, at least eight (8) video programs should have commenced development, and at least ten (10) video programs shall be completed and ready for statewide distribution.
4. Within twelve (12) months after the date of the Contract award, twelve (12) video programs shall be completed and ready for statewide distribution.

#### 2.3.1.1 Reports

The Contractor shall submit semi-annual reports. The reports are due six (6) months and twelve (12) months after the start of the Contract period. The reports shall be delivered to the DCCA in hard copy and in electronic form sent via email, as directed under Section 1.5. The reports shall address the following areas:

1. Video Content Development: A summary report by month regarding the number of video programs that have begun development and the number of video programs completed.
2. Video Content Distribution: A summary report containing a description of each video program, its identification, the length of the video program, and how it was distributed during the period for which the report is being submitted. If the content is made available via an "on demand" platform, the report shall also contain the number of times that specific programs have been viewed by the public during each reporting period to the extent possible.
3. Expenditures: An accounting of all funds used for the Deliverables for the period which the report is being filed.

If there has been a failure on the part of the Contractor to meet target outcomes, the required reports must include a narrative explanation of the failure and a proposed action plan to correct the performance problem.

#### 2.3.1.2 Facility, Equipment, and Capabilities

The Offeror must furnish its own facility, materials, and equipment to develop the Hawaiian Language Video Content. The Offeror shall

provide evidence of its capabilities to perform all tasks described in this RFP.

#### **2.3.1.3 Advertising and Community Outreach**

The Contractor should provide advertising for the Hawaiian Language Video Content, including informational materials, the airing of promotional videos, or other effective methods of making viewers aware of the available content.

The Offeror should describe its plan to advertise and/or provide community outreach to notify the public how they can access the Hawaiian Language Video Content. Should there be any costs associated with advertising and community outreach, the Offeror should include it as part of the cost breakdown in the Offeror's Fixed Total Price pursuant to Section 3.8. The Offeror should also include examples of advertising and community outreach that have been used in its prior projects.

#### **2.3.1.4 Authorizations**

Unless otherwise provided in this RFP, the Successful Offeror shall be responsible for obtaining all official licenses, approvals, clearances, and similar authorizations required by any local, state, or federal agency for the work required in this RFP.

### **2.3.2 Management**

#### **Administration**

The Contract Administrator shall serve as DCCA's primary liaison with the Contractor during the term of the Contract. The Contract Administrator, or designee, shall provide overall direction during the term of the Contract and monitor and assess the Contractor's performance. The Contract Administrator shall monitor the status of the Contractor's work through review of reports to be submitted by the Contractor.

#### **Authorization to Proceed**

DCCA does not encourage, and shall not in any way be bound by, work performed on behalf of DCCA without approval of the Procurement Officer. Any work performed by a Successful Offeror or Contractor prior to the approval by the Procurement Officer to proceed is done at the Successful Offeror's or Contractor's own risk.

## **2.4 CONTRACTOR'S USE OF SUBCONTRACTORS**

The Contractor may support the requirements of this RFP, including but not limited to the development and distribution of Hawaiian Language Video Content, directly or through subcontractors. Given that the Contractor or subcontractor shall not be a State entity or agency, Offerors should be aware that the Contractor shall not be required to adhere to State procurement procedures when engaging subcontractors. Nevertheless, contract agreements with subcontractors must be consistent with prudent business practices, employ fair employment practices, and include adequate insurance coverage for all subcontractors, and shall comply with any and all applicable laws, rules, and ordinances.

If the Contractor opts to utilize the services of a subcontractor to fulfill the requirements of this RFP, the Contractor shall be fully responsible for all duties, obligations, and requirements of the RFP regardless of whether it is performed by the Contractor or its subcontractor.

## **2.5 GENERAL RESPONSIBILITY TO COMPLY WITH STATE REQUIREMENTS**

Unless otherwise provided in this RFP, the Successful Offeror shall be responsible for obtaining all official licenses, approvals, clearances, and similar authorizations required by any local, state, or federal agency for the work required in this RFP.

### **3. PROPOSAL FORMAT AND CONTENTS**

#### **3.1 INTRODUCTION**

Offerors are required to present their proposals in accordance with this section. Proposals should be prepared simply and economically to provide a concise description of the Offeror's approach and capabilities for satisfying the required Deliverables outlined in this RFP.

It is important that proposals be complete. In the event an Offeror chooses not to respond to any section of the response format, the Offeror should then, in place of the appropriate section, indicate its reason for the omission of a response. In addition, Offerors should address any and all anticipated difficulties and problem areas along with potential approaches to their resolution.

Offerors shall refer to Section 1.10 for guidance of proposal submission materials.

The following sections are also incorporated in the evaluation criteria set out in Section 4. Please refer to that section for further guidance in developing a proposal.

If any additional information is required by DCCA regarding any aspect of the Offeror's proposal, it shall be provided by the Offeror within four (4) business days of the request for additional information from DCCA, or prior to the deadline and issuance of responses to written inquiries, whichever comes first.

The proposal shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. The proposal shall include, without limitation, all of the information requested in this RFP in the order specified and pages must be numbered.

- Transmittal Letter
- Table of Contents
- Executive Summary
- Offeror Background, Organization, and Staff Experience
- Technical Response
- Management and Control
- Proposed Fixed Prices
- Sample Video

The proposal submission shall comply with Section 1.

## **3.2 TRANSMITTAL LETTER**

A transmittal letter must be included as part of the Offeror's technical proposal. The transmittal letter must be on the Offeror's official business letterhead and must be in the form of a standard business letter that is signed by an individual or individuals authorized to legally bind the Offeror.

The transmittal letter must be counter-signed by all subcontractors that the Offeror proposes to use.

The transmittal letter shall include the following:

### **3.2.1 Terms and Conditions**

A statement indicating that the Offeror understands and shall comply with all terms and conditions in the RFP.

### **3.2.2 Legal Entity**

A statement indicating that the Offeror is a corporation or other legal entity (which must be specified, i.e., corporation, partnership, joint venture, etc.), and indicating the jurisdiction where the Offeror is organized.

#### **3.2.2.1 Nonprofit Status**

A statement indicating that the Offeror is a 501(c)(3) nonprofit organization eligible to conduct business in the State of Hawaii and shall maintain 501(c)(3) status throughout the duration of the Contract.

### **3.2.3 Federal Tax ID No.**

A statement setting forth the Offeror's Federal tax identification number (ID).

### **3.2.4 Contractor**

A statement that the Offeror maintains an active and current certificate of registration as required by HRS § 103D-310. A true and certified copy of its certificate of registration must be provided and a State GET ID must also be provided. See Section 5.10.5 for additional information and instructions.

The Successful Offeror shall be required to assume responsibility for the life of the Contract for all contractual activities, products, and

Deliverables identified in the RFP and offered in the Successful Offeror's accepted proposal whether or not the Successful Offeror directly performs or provides them.

Furthermore, the Successful Offeror shall be considered to be the sole point of contact regarding the contractual matters. If it is known that a part of the work is to be subcontracted or provided by a third party, the Successful Offeror's proposal shall include, at a minimum, the following information:

1. List of all known subcontractors and other providers of products or Deliverables;
2. Names and addresses of all subcontractors, and other providers of Deliverables;
3. Description of work to be subcontracted and Deliverables to be provided by third parties;
4. Descriptive information concerning the organization of all subcontractors and third parties as well as resumes, including two (2) professional references, of subcontractors' staff;
5. Descriptive information about the previous relevant experience of all subcontractors and third parties and their proposed staffs;
6. Descriptive information relating to the nature and duration of the previous relationship of all subcontractors and third parties with the Offeror; and
7. Explanation of any existing contractual relationships between the Offeror and subcontractors, or among subcontractors.

### **3.2.5 Subcontractor**

If one or more subcontractors are used, a statement shall be submitted by each subcontractor, signed by an individual authorized to legally bind the subcontractor and stating:

1. The general scope of work to be performed by the subcontractor; and
2. The subcontractor's willingness to perform the work indicated.

In addition, each subcontractor shall submit to DCCA, a tax clearance certificate from the DOTAX and the Internal Revenue Service (IRS) showing that all delinquent taxes, if any, levied or accrued under State law and the federal Internal Revenue Code of 1986, as amended, against the subcontractor have been paid.

If the Offeror chooses to subcontract any work required by this RFP within its proposal, the Offeror is responsible for including appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Offeror and DCCA, and to ensure that the State and/or DCCA is indemnified against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the Contract between the DCCA and the Offeror. The Offeror shall expressly understand and agree that it shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The Offeror shall agree and understand that utilization of a subcontractor to provide any of the Deliverables in the Contract shall in no way relieve it of the responsibility for providing the Deliverables as described and set forth herein, and in the Contract. In addition, the activities performed by all subcontractors must be integrated with the operations of the Offeror, such that DCCA perceives a single service entity.

The Successful Offeror must provide DCCA with notice prior to establishing any new subcontracting arrangements and before changing any subcontractors. DCCA reserves the right to require the Successful Offeror to replace subcontractors, as well as staff members, found to be unacceptable to DCCA for any reason.

### **3.2.6 Non-discrimination**

A statement of affirmative action that the Offeror does not discriminate in its employment and collection practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap, or disability.

### **3.2.7 Approval of Offeror's Recommendations**

A statement that the Offeror agrees that the State and/or DCCA reserves the right to disapprove Offeror recommendations without penalty, when they conflict with the policy or fiscal interests of the State and/or DCCA, as determined by DCCA.

### **3.2.8 Contact Person**



Include the name, email, and telephone number of a person who may be contacted during the evaluation process to discuss the Offeror's proposal.

### **3.2.9 Availability**

This section shall describe the Offeror's availability in order to provide the Deliverables described in this RFP.

## **3.3 TABLE OF CONTENTS**

Include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections listed in Section 3.1.

## **3.4 EXECUTIVE SUMMARY**

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal to provide DCCA with a clear and broad understanding of the entire proposal. The executive summary shall include all of the items below:

### **3.4.1 Benefits to the State**

A brief synopsis of the overall benefits of the proposal to the State. This synopsis should not exceed three (3) pages in length and should be easily understandable.

### **3.4.2 Offer Form - OF-1**

Refer to Section 6 for the Offer Form.

### **3.4.3 Evidence of Insurance**

Certificate of insurance evidencing Commercial General Liability Insurance (occurrence form), Automobile Liability Insurance, and Professional Liability Insurance. Refer to Section 5 for information on Insurance Requirements.

## **3.5 OFFEROR'S BACKGROUND, ORGANIZATION AND STAFF EXPERIENCE**

### **3.5.1 Offeror's Background and Experience**

#### **3.5.1.1 Offeror's Background**

A separate section must be completed in the proposal regarding the Offeror. Background information on the Offeror and its size and resources shall cover the following:

1. Legal name of Offeror;
2. Physical address of Offeror's principal place of business and all other offices including the location of the office performing the work under this RFP;
3. Mailing address (if different from above);
4. Date established;
5. Ownership (public or private company, partnership, subsidiary, etc.);
6. Offeror's primary line of business;
7. Number of employees;
8. Number of employees engaged in tasks directly related to the requirements in this RFP;
9. History of Offeror's name changes and the dates associated with each name; and
10. Location where Offeror was incorporated or otherwise legally established.

#### 3.5.1.2 Financial Stability and Financial Commitment

The Offeror shall provide information on the Offeror's financial stability, including the following: annual revenues over the last five (5) years (or the number of years the Offeror has been in operation, whichever is less), number of employees for each of the last five (5) years, years in business, evidence of business insurance for professional liability, and financial references (which may include audited financial statements, compiled financial statements, and references from banking relationships).

The Offeror shall submit the Offeror's audited financial statements and annual reports, if any, for the last two (2) years. If unaudited financial statements are submitted, copies of filed tax returns shall be provided to support the statements.

As with trade secrets or other proprietary data, an Offeror may request in writing that the financial information provided be kept confidential. If requested, the Offeror must include a written statement requesting that portions of the unpriced proposal that contain trade secrets or other proprietary data are to remain confidential, pursuant to HAR § 3-122-46(9). Otherwise, contents of all proposals shall be made public as provided in HAR § 3-122-58 upon posting of the award.

### 3.5.1.3 Offeror Performance

The Offeror shall provide information that demonstrates the following:

1. Responsiveness to previous clients;
2. Timeliness of meeting schedules;
3. Adherence to contract requirements of previous clients; and

The Offeror must provide the following information relative to the past five (5) years (or the number of years the Offeror has been in business, whichever is less):

1. Whether the Offeror has had a contract terminated for default or cause. If so, the Offeror must submit full details, including the other party's name, address, and telephone number.
2. Where the Offeror has been assessed any penalties in excess of \$10,000.00, including liquidated damages, under any of its existing or past contracts with any organization (including any governmental agency). If so, the Offeror must provide complete details of the assessment, including the name of the organization, the reason for the penalty, and the penalty amount for each incident.
3. Whether the Offeror was the subject of any governmental action limiting the rights of the Offeror to do business with that entity or any other governmental entity.
4. Whether the Offeror, any officer of the Offeror, or any owner in the Offeror has filed for bankruptcy, reorganization, a debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding.
5. Whether the Offeror, any officer of the Offeror, or any owner in

the Offeror has been convicted of a felony or is currently under indictment on any felony charge.

While an affirmative answer to any of these items will not automatically disqualify an Offeror from consideration, at the sole discretion of the evaluation committee, such an answer and a review of the background details may result in a rejection of the Offeror's proposal. The evaluation committee shall make this decision based on its determination of the seriousness of the matter, the matter's possible impact on the Offeror's performance of the work, and the best interests of the State.

#### **3.5.1.4 Offeror Experience**

The Offeror shall provide details of the Offeror's, and each subcontractor's, skills, abilities, experience, and knowledge in all areas necessary to develop Hawaiian Language Video Content. Moreover, the Offeror should have experience developing cultural, historical, informational, and/or educational video content, and experience distributing video content. Should the Offeror have experience with Hawaiian language video programming, this should be highlighted.

The proposal shall include a listing of the Offeror's experience working with government entities in areas relative to the required work described in this RFP. Include a listing of experience obtained by senior management employees or officers, who shall be primarily assigned to perform or oversee the work described in the Offeror's proposal.

The Offeror must also include references for which the Offeror and each subcontractor has successfully provided services on projects that were similar in their nature, size, and scope of work. Offerors, at minimum, must include a brief analysis of the degree of similarity in the nature, size, and scope of work provided.

Refer to Section 6 for the Vendor Reference form. The Offeror must use this form and fill it out completely for each reference. The forms may be recreated electronically, but all fields and formats must be retained. Failure to recreate the forms accurately will likely result in a lower score of the Offeror's proposal. By listing the references, Offerors and their subcontractors grant the State and DCCA authorization to contact these client references to assess the Offeror's quality of work performed.

#### **3.5.2 Organization and Staffing**

The organization and staffing subsection shall include organizational charts of proposed personnel projected to work on this RFP and their job titles and responsibilities. The chart must describe the management approach and a detailed narrative describing who the key personnel are and how key personnel's experience and educational background enable them to successfully complete their assigned tasks. The Offeror should also provide details if key personnel have any experience or educational background in Hawaiian language or Hawaiian culture. A statement setting forth the Offeror's adherence to journalistic standards of quality and integrity in the development of video content shall be provided. DCCA reserves the right to disqualify any potential Contractor that changes key personnel assigned to performing work under this RFP, prior to the execution of the contract.

Resumes of all key personnel assigned to perform work under this RFP must be included and should include information relating to each person's experience, education, and skills (including, but not limited to, specific degrees, dates, names of employers, and educational institutions). Each resume shall be no more than three (3) pages in length. The Offeror should also indicate whether any or all of the key personnel have worked together on projects that were similar in their nature, size, and scope of work in the past.

The Offeror must also include references for which the Offeror's proposed key personnel has successfully provided management services on projects that were similar in their nature, size, and scope of work.

### **3.6 TECHNICAL RESPONSE**

The technical response section shall include a detailed discussion of the Offeror's approach to accomplishing the required work described in this RFP, including a work schedule for the development and distribution of Hawaiian Language Video Content. It shall also describe the processes and procedures that the Offeror will undertake to carry out the required work, specifically, plans to distribute the video content. The Offeror should address how it will distribute the video content so that it can maximize viewership. Please include the media platforms the Offeror intends to use and how a statewide audience can access the video content.

The Offeror must provide a detailed work schedule for all RFP milestones. The work schedule should be delivered in a chart format, preferably in a format similar to a Gantt chart, showing all major tasks and events, estimated hours required to perform the tasks and events, and personnel proposed to perform each task and event on a weekly

schedule to serve as the basis for managing the work under this RFP. The schedule should clearly demonstrate how the Offeror shall accomplish milestones set forth in this RFP. The Offeror shall also identify and describe all risk factors associated with the forecasted milestone schedule. The project work schedule is crucial to allow DCCA to gauge the Offeror's relative understanding of the tasks at hand.

### **3.7 MANAGEMENT AND CONTROL**

The management and control section shall include details of the method to be used in managing the work and operation associated with this RFP, including details about the Offeror's approach to communication with DCCA, subcontractors, third parties, and cable operators; and the Offeror's approach to ensuring quality, timeliness of activities and completion of tasks, and fulfillment of responsibilities.

This section shall also include a discussion of any conflict of interest the Offeror may have in providing the Deliverables described in its proposal and any problems or concerns that the Offeror wishes to bring to DCCA's attention. OFFERORS SHOULD NOTE THAT CONFLICTS OF INTEREST MAY BE GROUNDS FOR DISQUALIFICATION FROM CONSIDERATION AND NONDISCLOSURE MAY BE GROUNDS FOR DISQUALIFICATION FROM CONSIDERATION OR THE TERMINATION OF CONTRACT.

### **3.8 PROPOSED FIXED PRICES**

This section of the proposal must contain the Offeror's proposed fixed price for this RFP, which should include a breakdown of development and distribution costs, and other categories, if applicable. Estimated proposal prices are not acceptable. Offeror's proposed fixed price should not exceed the fixed-price Contract amount specified on Page 1 (i.e., \$300,000). Each Offeror shall carefully evaluate numerous factors in arriving at its proposed fixed price. Offerors MUST submit proposed fixed prices for the Deliverables in this RFP.

Estimated prices, incomplete prices, or prices that are not categorized in a cost breakdown will likely result in a lower score of the Offeror's proposal. The proposed fixed price contained in the Successful Offeror's proposal shall be binding throughout the RFP process. The Successful Offeror must be prepared to enter into a twelve-month Contract with DCCA beginning August 1, 2016 or a mutually agreed upon date, with two (2) options to extend the Contract for twelve (12) months each, as set forth in Section 5.2 below, provided that the price cannot be increased each year. No deviations, qualifications or

counter offers shall be accepted. The proposed fixed prices shall be inclusive of all federal, state, and local taxes.

The Offeror's proposal shall include a certification that:

1. The prices and cost data were arrived at independently, without consultation, communication, or agreement with any other Offeror or competitor;
2. Unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor prior to the award of the contract;
3. No attempt was made or shall be made by the Offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition; and
4. The price shall remain in effect for ninety (90) days following the date that proposals are due.

Offerors are cautioned that, should their proposal be selected and the proposed fixed price fails to account for all requirements in this RFP, Offerors shall be required to provide them at no additional cost to the State and/or DCCA. In other words, it is the Offeror's responsibility to ascertain that the cost information presented is accurate, complete, and all-inclusive.

### **3.9 ASSUMPTIONS AND EXCEPTIONS**

The Offeror shall not make any assumptions regarding the terms, conditions, specifications, or other requirements listed here. No exceptions will be allowed to the terms and conditions that will govern the Contract. Should the Offeror have a question regarding any term, condition, specification, or other requirement, the Offeror should contact DCCA as set forth in Section 1.5.

### **3.10 SAMPLE VIDEO**

The Offeror shall provide a sample video developed by the Offeror and submitted in the format listed in Section 1.10. The sample video should give the evaluation committee an opportunity to assess the production value, quality, and capabilities of the Offeror.

## **4. PROPOSAL EVALUATION**

### **4.1 INTRODUCTION**

The evaluation of proposals received in response to this RFP shall be conducted comprehensively, fairly, and impartially. Structural, quantitative scoring techniques shall be utilized to maximize the objectivity of the evaluation.

### **4.2 EVALUATION ORGANIZATION**

A committee selected by DCCA shall review and evaluate all proposals submitted by the deadline specified in the RFP. The evaluation committee shall include individuals with experience in and knowledge of cable television programming and DCCA's duties, powers, objectives and requirements, and the specific requirements set forth under HRS Chapter 440G.

The evaluation committee may have the proposals or portions of them reviewed and evaluated by other State personnel, independent third parties, or DCCA consultants with technical or professional experience that relates to the RFP or to a criterion in the evaluation process.

All proposals shall be initially reviewed for timeliness of submission, format, and completeness. The proposals that meet the initial requirements of the RFP shall then be fully evaluated according to the criteria listed below. Proposals that only meet a portion or none of the initial requirements shall receive a lower score unless the Procurement Officer deems that initial requirement deficiencies are minor or may be clarified and corrected without resulting in an unfair advantage to the Offeror.

Overall, the proposal shall demonstrate that the Offeror understands the issues and has the ability to meet and satisfactorily develop all contractual requirements listed in the RFP, including all contractual Deliverables. The proposed fixed price must reflect the work plan, and must illustrate an aggressive, competitive approach to maximizing the limited funds provided under this RFP. The evaluation shall be conducted in six (6) phases:

- Phase 1 - Evaluation of Proposal Format and Contents
- Phase 2 - Evaluation of Proposals
- Phase 3 - Establishment of Priority List of Offerors
- Phase 4 - Optional Discussions with Priority-listed Offerors
- Phase 5 - Submission of Best and Final Offers (if deemed necessary)



by DCCA)  
Phase 6 - Recommendation for Award

#### 4.2.1 Evaluation Categories and Thresholds

<u>Evaluation Categories</u>	<u>Possible Points</u>
Proposal Format and Contents	Pass/No Pass
<b>Proposal:</b>	
Understanding of the Deliverables Requested and the State's Need	15 Points
Offeror's Background, Organization, and Staff Experience	35 Points
Technical Response	25 Points
Management and Control	20 Points
Proposed Fixed Prices	5 Points
<b>100 Total Points</b>	

#### 4.3 PHASE 1 - EVALUATION OF PROPOSAL FORMAT AND CONTENTS

(PASS/NO PASS)

The evaluation of the proposal format and contents as specified herein shall be on a "pass/no pass" basis. No points shall be assigned for these requirements. The purpose of this phase is to determine whether an Offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal shall be reviewed for responsiveness. Failure to meet the proposal format and contents requirements ("no pass") shall be grounds for deeming the proposal non-responsive to the RFP and may result in non-consideration of the proposal. Proposals meeting the proposal format and contents requirements ("pass") of Phase 1 shall be considered in Phase 2.

The proposal shall be organized in the exact prescribed format using all titles, subtitles, and numbering, with each section being tabbed and separated into sections as listed below. Offeror shall include, without limitation, all of the information requested in this RFP in the order

specified and pages must be numbered. Offerors shall review the requirements set forth in Section 3.

#### **4.4 PHASE 2 - EVALUATION OF PROPOSALS**

(100 TOTAL POSSIBLE POINTS)

During this phase, the evaluation committee shall conduct evaluations on the Offeror's proposal, against requirements specified in this RFP. Based on a 100-point scale, proposals must score a minimum of 70 points for further award consideration. Proposals scoring less than 70 points shall not be considered for project award.

##### **4.4.1 Understanding of the Deliverables Requested and the State's Needs**

(15 points)

Proposals shall be evaluated against the following criteria:

1. Has the Offeror demonstrated a thorough understanding of the purpose and scope of the Hawaiian Language Video Content that is being requested?
2. How well has the Offeror identified pertinent issues and potential problems?
3. Has the Offeror demonstrated that it understands the importance of timeliness and has the ability to meet the deadlines?

##### **4.4.2 Offeror's Background, Organization, and Staff Experience**

(35 points)

The evaluation committee shall evaluate the experience, performance, resources, and qualifications of the Offeror and subcontractors (if any). References shall be verified and findings incorporated into the evaluation.

###### **4.4.2.1 Offeror Background**

Background information provided about the Offeror and its size and resources shall be evaluated by the evaluation committee, including whether or not the Offeror has provided sufficient general background information to make such an evaluation.

#### 4.4.2.2 Financial Stability and Financial Commitment

The evaluation committee shall evaluate the financial condition of the Offeror to determine whether, in its opinion, the Offeror has sufficient financial resources to meet all terms and conditions of this RFP.

Specifically, the proposal shall be evaluated against the following criteria:

1. Has the Offeror submitted financial statements that provide sufficient reliable information to confirm the financial stability and financial commitment of the Offeror?
2. Does the Offeror possess sufficient resources to perform under the RFP?

#### 4.4.2.3 Offeror Performance

As part of the evaluation of the Offeror's experience, the evaluation committee shall evaluate relevant performance references to determine:

1. Has the Offeror been responsive to previous clients?
2. Has the Offeror been timely in meeting deliverables and service deadlines for previous clients?
3. Does the Offeror adhere to contract requirements of previous clients?

#### 4.4.2.4 Offeror's Experience

The evaluation committee shall evaluate the Offeror's experience in developing and distribution of video programing that is similar to the scope of work contained in this RFP.

#### 4.4.2.4 Organization and Staffing

The evaluation of the Offeror's organization and staffing shall involve detailed criteria to evaluate the Offeror's overall staffing, qualifications of key personnel, and the past performance of the organization and the key individuals. Offeror's proposed organization and staffing resources shall be evaluated to assess the Offeror's capability to carry out the duties and responsibilities under this RFP.

The evaluation committee shall evaluate the key management personnel and other key personnel proposed to perform work under this RFP, based on the experiences listed under the individual resumes.

#### **4.4.3 Technical Response**

(25 points)

Evaluation criteria for this section shall assess the Offeror's approach to performing its responsibilities under the RFP. Specifically, proposals shall be evaluated against the following criteria:

1. Adequacy of approach to meeting the requirements specified in this RFP.
2. Adequacy of Offeror's plan to distribute and provide access to video content.
3. Production value, quality, and capabilities of the Offeror based on the submission of the sample video.

##### **4.4.3.1 Adequacy of Approach to Meeting the Requirements Specified in this RFP.**

The evaluation committee shall evaluate the adequacy of the approach proposed to satisfy the requirements specified in this RFP.

This area of evaluation includes an assessment of the detailed work plan, including the logic of the work plan, and the reasonableness of the tasks and schedules.

#### **4.4.4 Management and Control**

(20 Points)

This part of the evaluation assesses the Offeror's approach to management and control methods, and tools to successfully complete the tasks described in its proposal.

The Offeror shall address, and proposals shall be evaluated against, the following criteria:

1. Management approach;

2. Authority of the manager (if any);
3. Project control approach (including demonstrated previous use of control methods and tools to successfully provide service);
4. Approach to ensuring completion of tasks and fulfillment of responsibilities; and
5. Clarity of work assignments and organizational roles, responsibilities, and authorities.

#### **4.4.5 Proposed Fixed Prices**

(5 Points)

The evaluation committee shall analyze the Offeror's proposed budget utilizing a numerical rating system. Of the qualifying proposals, the one with the lowest proposed fixed price shall be awarded the maximum possible points for this component. Other proposals shall be awarded points for this component equal to the lowest proposed fixed price multiplied by the maximum possible points for this component, divided by the higher proposed fixed price.

In addition, the proposal must address any non-required work, in which the Offeror chooses to provide within its proposal, as separate budget line items.

#### **4.5 PHASE 3 - ESTABLISHMENT OF PRIORITY LIST OF OFFERORS**

The evaluation committee scores for each proposal, as determined in Phase 2 - Evaluation of Proposals, shall be ranked and averaged to determine if the proposal is acceptable, potentially acceptable, or unacceptable. Proposals must meet a minimum of seventy (70) points to be considered for the priority list of Offerors. No more than three (3) acceptable or potentially acceptable proposals with the highest average ranking shall be designated as the priority list of Offerors, as set forth under HAR § 3-122-53.

#### **4.6 PHASE 4 - OPTIONAL DISCUSSIONS WITH PRIORITY-LISTED OFFERORS**

During the course of this phase, DCCA may (in its sole discretion) conduct discussions only with priority-listed Offerors. Proposals may be accepted without such discussions. These discussions are intended to answer any questions the evaluation committee may have regarding a priority-listed Offeror's proposal. The content and extent of

each discussion shall be determined by the committee's evaluation of the deficiencies in each proposal. The evaluation committee shall not indicate to a priority-listed Offeror a price that it must meet in order to obtain further consideration nor shall it advise a priority-listed Offeror of its price standing relative to another priority-listed Offeror. However, the evaluation committee may hold discussions to better understand the costs represented in the Offeror's proposal.

The evaluation committee shall attempt to disclose all deficiencies noted in the priority-listed Offerors' proposals. These deficiencies may include: proposed personnel considered to be unqualified, unrealistically low or high estimated efforts, and questionable technical or management approaches. The intent of the discussions is NOT to initiate a pricing or service auction, but rather to give the Offeror the opportunity to clarify or correct proposal deficiencies.

If during the discussions there is a need for any substantial clarification or change of the RFP, the RFP shall be amended by an addendum. Such addenda to the RFP shall be distributed only to the priority-listed Offerors. The priority-listed Offerors shall be permitted to submit new proposals or amend those submitted through a best and final offer.

The evaluation committee may request other State personnel, independent third parties, or DCCA consultants, with technical or professional experience that relates to the RFP to participate in this process.

#### **4.7 PHASE 5 - SUBMISSION OF BEST AND FINAL OFFERS (if deemed required by DCCA)**

The priority-listed Offerors' best and final offers (BAFO), if required, must be postmarked no later than the date and time specified in the RFP Schedule. Offeror shall submit one (1) unbound, indexed, original proposal marked "ORIGINAL," six (6) bound, indexed copies of the original marked "COPY," an electronic version of the proposal submitted via email or on a USB flash drive, and two (2) compact discs or digital video discs of sample video content (no longer than ten (10) minutes of edited video content) developed by the Offeror. It is imperative to note that the Offeror submit only one original BAFO proposal and the required number of copies. **DO NOT SUBMIT MORE THAN ONE ORIGINAL.** If a BAFO is not submitted, the previous submittal shall be construed as the best and final offer. After all timely BAFOs are received, final evaluations shall be conducted for an award.

#### **4.8 PHASE 6 - RECOMMENDATION FOR AWARD**

The evaluation committee shall prepare and submit a recommendation for the Procurement Officer's review and approval.

## **5. SPECIAL PROVISIONS**

### **5.1 SCOPE**

The Offeror's proposal shall be in accordance with the RFP in its entirety; including these Special Provisions and the General Conditions (Appendix 1) included by reference in Section 7.

### **5.2 TERM OF CONTRACT**

The Contractor shall enter into a fixed-price Contract to commence work on this project.

The term of the Contract shall begin on the start date specified in Section 1.7 or a mutually agreed upon date. The Contractor will enter into a twelve-month Contract with DCCA, with two (2) options to extend the Contract for twelve (12) months each, if mutually agreed upon in writing prior to the expiration of the Contract. DCCA may terminate the Contract at any time, if it is in the best interest of the State and/or DCCA.

### **5.3 OVERVIEW OF THE RFP PROCESS**

This RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS § 103D-303.

The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP shall be made only by addendum.

Proposals shall not be opened publicly. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the State and/or DCCA and shall not be returned.

An evaluation committee shall evaluate the proposals in accordance with the evaluation criteria in Section 4. The committee may have the proposals or portions of them reviewed and evaluated by independent third parties or other State personnel with technical or professional experience that relates to the RFP or to a criterion in the evaluation process. The proposals shall be classified initially as acceptable, potentially acceptable,



or unacceptable. This review shall be a pass/no pass determination with no points assigned.

Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary, prior to entering into discussions, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list shall be limited to a maximum of three (3) responsible Offerors who submitted the highest ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered, if required by DCCA.

If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority-listed Offerors who submit acceptable or potentially acceptable proposals. The Procurement Officer or the evaluation committee reserves the right to have additional rounds of discussions with the priority-listed Offerors prior to the submission of the BAFO, if required by DCCA.

Following any discussions, priority-listed Offerors shall be invited to submit their BAFO, if required. The submission of BAFOs shall follow the requirements set forth in Section 4.7.

The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.7. If an Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section 4, the evaluation committee shall make its recommendation and submit it for the Procurement Officer's review and approval. The Procurement Officer shall award the right to discuss the Contract with the Offeror whose proposal is determined to be the most advantageous to the State and/or DCCA taking into consideration the evaluation factors set forth in Section 4.

The contents of any proposal shall not be disclosed during the review, evaluation, or discussion process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offerors classifies as confidential and proprietary must be identified as

such by the Offerors and those identified sections shall be excluded from public inspection.

The Procurement Officer or the evaluation committee reserves the right to determine what is in the best interest of the State and/or DCCA for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer and the evaluation committee shall conduct a comprehensive, fair, and impartial evaluation of proposals received in response to the RFP.

This RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the Contract. All proposals shall become the property of the State and/or DCCA.

#### **5.4 RESPONSIBILITY OF OFFERORS**

Offeror is advised that if awarded the Contract under this solicitation, Offeror shall, upon award of the Contract, furnish proof of compliance with the requirements of HRS § 103D-310(c), specifically:

1. HRS Chapter 237, tax clearance;
2. HRS Chapter 383, unemployment insurance;
3. HRS Chapter 386, workers' compensation;
4. HRS Chapter 392, temporary disability insurance;
5. HRS Chapter 393, prepaid health care; and
6. HRS § 103D-310(c), Certificate of Good Standing (CoGS) for entities doing business in the State.

Refer to Section 5.10 for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

Although proof of compliance with these requirements is required prior to entering into the Contract with DCCA, due to the compressed timeline of this RFP, it is highly recommended that Offerors furnish this proof of compliance with their proposal.

#### **5.5 PROPOSAL PREPARATION**

### **5.5.1 OFFER FORM - OF-1**

Proposals shall be submitted using Offeror's exact legal name as registered with the DCCA Business Registration Division (BREG), if applicable; and to indicate Offeror's exact legal name in the appropriate spaces on Offer Form OF-1. Failure to do so may delay proper execution of the contract. See Attachment 1 of Section 6 for the Offer Form.

The authorized signature on the first page of the Offer Form shall be an original signature in blue or black ink. If unsigned or the affixed signature is a facsimile or a photocopy, the proposal shall be deemed incomplete unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

### **5.5.2 Offer Guaranty**

An offer guaranty is NOT required for this RFP.

### **5.5.3 Tax Liability**

Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237 and vendors are advised that they are liable for the GET. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

## **5.6 REQUIRED REVIEW**

Offeror shall carefully review this solicitation for defects and questionable or objectionable matters. Comments concerning defects and questionable or objectionable matters must be made in writing and should be received by DCCA by the due date specified in Section 1.7. This allows for issuance of any necessary amendments to the RFP. It shall also help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made.

## **5.7 CONFIDENTIAL INFORMATION**

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Contract

Administrator should be so advised in writing and provided with justification to support the confidentiality claim. Compensation methodology as related to pricing is not considered confidential.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, pursuant to HAR § 3-122-46(9). Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Section 3.5.1.2 should also be consulted regarding confidential information.

If a person requests to inspect the portions of an Offeror's proposal designated as confidential, pursuant to HAR § 3-122-46(9), the inspection shall be subject to written determination by the State Attorney General for confidentiality in accordance with HRS Chapter 92F consistent with HAR § 3-122-58. If the request for confidentiality is denied by the State Attorney General, such information shall be disclosed as public information, unless the person requesting that such information be determined confidential appeals the denial to the Office of Information Practices in accordance with HRS § 92F-42(1).

## **5.8 CANCELLATION OF RFP AND PROPOSAL REJECTION**

DCCA reserves the right to cancel this RFP and seek to perform the proposed work in this RFP through a new RFP or other means when it is determined to be in the best interest of the State, pursuant to HAR § 3-122-96.

DCCA also reserves the right to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State or DCCA, including that the State and/or DCCA believes the proposal is excessive in price.

The State and/or DCCA shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

## **5.9 PROPOSAL ACCEPTANCE PERIOD**

DCCA's acceptance of a submitted proposal, if any, shall be made within ninety (90) business days after the opening of submitted proposals. Offeror's proposal shall remain firm for the ninety (90) business days.

## **5.10 AWARD OF CONTRACT**

### **5.10.1 Method of Award**

The award, if any, shall be made to the responsible Offeror whose proposal is determined to be the most advantageous to the State and/or DCCA taking into consideration the evaluation factors set forth in this RFP.

### **5.10.2 Responsibility of Successful Offeror - Reference to HRS § 103D-310(c)**

If compliance documents have not been submitted to DCCA prior to award, the Successful Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

The Successful Offeror shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein prior to commencing work under the Contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

### **5.10.3 Timely Submission of all Certificates**

The required certificates should be applied for and submitted to DCCA as soon as possible. If a valid certificate is not submitted on a timely basis for an award of contract, an Offeror otherwise responsible may not receive the award.

### **5.10.4 Hawaii Compliance Express**

In lieu of requesting individual compliance documents, Offerors may expedite the process by utilizing the Hawaii Compliance Express (HCE), which can provide a "Certificate of Vendor Compliance" for your business entity. Businesses register online through a simple wizard interface at <http://vendors.ehawaii.gov>. The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of HRS § 103D-310(c) shall be accepted for both contracting purposes and final payment. Vendors that elect to use HCE services shall be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). HCE can be accessed online at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.

It is strongly recommended that vendors utilize HCE. Vendors choosing not to participate in the HCE program shall be required to provide each of the paper certificates as instructed below.

#### **5.10.5 HRS Chapter 237 Tax Clearance Requirement for Award**

Instructions are as follows:

Pursuant to HRS § 103D-328, the Successful Offeror shall be required to submit an original tax clearance certificate issued by the DOTAX and the IRS. Offerors are urged to submit a valid tax clearance certificate together with their proposals. If this is not feasible, the certificate should be applied for at DOTAX or the IRS and submitted to DCCA as soon as possible. If a valid certificate is not submitted on a timely basis prior to award of the Contract, an offer otherwise responsive and responsible may be rejected and not considered for award.

The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by DCCA, and a valid certificate must always be in the Successful Offeror's possession throughout the contract.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms):

[http://tax.hawaii.gov/forms/a1\\_1alphalist/](http://tax.hawaii.gov/forms/a1_1alphalist/)

DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and

not to DCCA. However, the tax clearance certificate shall be submitted to DCCA.

**5.10.6 HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) Requirements for Award**

Instructions are as follows:

Pursuant to HRS § 103D-310(c), the Successful Offeror shall be required to submit a certificate of compliance issued by the State of Hawaii Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by DCCA. A photocopy of the certificate is acceptable to DCCA.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112(3), Form LIR#27 which is available at <http://labor.hawaii.gov/ui/files/2012/12/LIR27.pdf>. The DLIR shall return the form to the Offeror who in turn shall submit it DCCA.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to DCCA. However, the certificate shall be submitted to DCCA.

**5.10.7 Compliance with HRS § 103D-310(c) for an Entity Doing Business in the State**

Pursuant to HAR § 3-122-112, the Offeror shall be required to submit a CoGS issued by BREG of the DCCA. The CoGS is valid for six (6) months from date of issue and must be valid on the date it is received by DCCA. A photocopy of the CoGS is acceptable to DCCA.

To obtain the CoGS, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the CoGS. On-line business registration and the CoGS are available at <http://cca.hawaii.gov/breg/online/>. To register or obtain the CoGS by phone, call (808) 586-2727 (M-F 7:45 a.m. to 4:30 p.m. HST). Offerors are advised that there are costs associated with registering and obtaining the CoGS.

**5.10.8 Final Payment Requirements**

The Successful Offeror is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two (2) months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22) shall be required for final payment. A copy of this form is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the menu.

#### **5.11 NON-APPROPRIATION OF FUNDS**

Execution of any agreement between DCCA and the Contractor is contingent upon the availability of funds. Non-availability of funds shall cause any agreement to become void and unenforceable and no damages shall accrue to the State and/or DCCA as a result.

#### **5.12 CONTRACT EXECUTION**

The Successful Offeror selected under this RFP shall be notified by letter and will enter into discussions with DCCA. Upon the completion of successful discussions, the Successful Offeror shall be required to enter into a Contract. DCCA shall forward the Contract to the Successful Offeror for execution. The Contract shall be signed by the Successful Offeror and returned within ten (10) business days after receipt by the Successful Offeror, or within such further time as may be allowed by the Procurement Officer. If the Successful Offeror to whom the Contract is awarded fails or neglects to enter into the Contract within thirty (30) days after issuance of the notice of award or within such further time as may be allowed by the Contract Administrator, the Procurement Officer may award the Contract to the Offeror who is next in line, or call for new offers if it is deemed to be in the best interest of the State or DCCA.

No Contract shall be considered binding upon DCCA and the State until the Contract has been fully and properly executed by all parties thereto.

Any work undertaken or paid for by the Successful Offeror prior to the official Contract commencement date specified on the Contract shall be the sole responsibility of the Successful Offeror.



### **5.13 PROPOSAL AS PART OF THE CONTRACT**

All of this RFP and the successful proposal shall be incorporated into the Contract.

### **5.14 CONTRACT ADMINISTRATOR**

For the purposes of the Contract, Kyle Kagihara, (808) 586-2620, is designated as the Contract Administrator. DCCA shall notify the Successful Offeror should the Contract Administrator change.

### **5.15 INSURANCE REQUIREMENTS**

Prior to awarding the Contract, the State and/or DCCA shall require verification of the following insurance coverage:

1. Worker's Compensation
2. Temporary Disability
3. Unemployment Insurance
4. Prepaid Health Insurance

Upon the Successful Offeror's execution of the Contract or earlier, the Successful Offeror agrees to deposit, with DCCA, certificate(s) of insurance necessary to satisfy DCCA with assurances that the following insurance provisions of the Contract have been complied with and that such insurance shall be kept in effect and the certificate(s) therefore on deposit with the DCCA during the entire term of the Contract, including those of its subcontractor(s), where appropriate. Upon request by DCCA, the Successful Offeror shall be responsible for furnishing a copy of the policy or policies.

The Successful Offeror shall maintain in full force and effect, during the life of the Contract, liability and property damage insurance to protect the Successful Offeror and its subcontractors, if any, from claims for damages for personal injury, accidental death, and property damage which may arise from operations under the Contract, whether such operations be by the Successful Offeror or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Successful Offeror providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, the Successful Offeror may require the subcontractor to provide its own insurance that meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Successful Offeror's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Successful Offeror, including its subcontractor(s) where appropriate:

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (CGL)	\$1,000,000 per occurrence \$2,000,000 aggregate limit
Automobile Liability	\$1,000,000 combined single limit per occurrence for personal injury, and property damage
Professional Liability	\$1,000,000 per occurrence \$1,000,000 aggregate limit

(If non-owned vehicles are used, the policy must provide evidence of coverage.)

Each insurance policy to be required by the Contract, including a subcontractor's policy, shall contain the following clauses:

- "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Commerce and Consumer Affairs, Cable Television Division, 355 Merchant Street, Room 101, Honolulu, Hawaii 96813."
- "The State of Hawaii is added as an additional insured with respect to operations performed for the State of Hawaii."
- "It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements to extend the Contract.

Failure of the Successful Offeror to provide and keep in force such insurance shall be regarded as material default under the Contract, entitling the State or DCCA to exercise any or all of the remedies to be provided in the Contract for a default of the Successful Offeror.

The procuring of such required insurance shall not be construed to limit the Successful Offeror's liability hereunder or to fulfill the indemnification provisions and requirements of the Contract. Notwithstanding said policy or policies of insurance, the Successful Offeror shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with the Contract.

#### **5.16 OWNERSHIP RIGHTS AND COPYRIGHT**

The Successful Offeror shall have complete ownership of all materials, both finished and unfinished, which is developed, prepared, assembled, or conceived by the Successful Offeror pursuant to the Contract.

#### **5.17 CONTRACT MODIFICATION - UNANTICIPATED AMENDMENTS**

During the course of the Contract, the Contractor may be required to alter projected work that is within the general scope of the Contract. When such work is required, the altered projected work is not-to-exceed the costs contained in the Contract. The Contract Administrator shall provide the Contractor a written description of the altered projected work and request the Successful Offeror to submit a firm time schedule for accomplishing the work.

Changes to the Contract may be modified only by written document (contract modification) signed by the Procurement Officer and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor shall not commence modified work until a signed contract modification has been issued.

#### **5.18 SUBCONTRACTING**

No work or Deliverables shall be subcontracted without prior written notification to the Contract Administrator. No subcontractor shall under any circumstances relieve the Successful Offeror of its obligations and liability under the Contract with the State or DCCA. All persons engaged in performing the work covered by the Contract shall be considered employees of the Successful Offeror.

#### **5.19 PROTEST**

A protest shall be submitted in writing within five (5) business days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further, provided that a protest of an award or proposed award shall be submitted within five (5) business days after the posting of award of the contract.

The notice of award letter, if any, resulting from this solicitation shall be posted on the first floor bulletin board between the restrooms in the King Kalakaua Building, 335 Merchant Street, Honolulu, Hawaii 96813.

Any protest pursuant to HRS § 103D-701 and HAR § 3-126-3, shall be submitted in writing to the Contract Administrator, Cable Television Division, 335 Merchant Street, Room 101, Honolulu, Hawaii 96813.

#### **5.20 GOVERNING LAW - COST OF LITIGATION**

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State. Any action at law or equity to enforce or interpret the provisions of the Contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State or DCCA shall, without any fault on their part, be made a part to any litigation commenced by or against the Successful Offeror in connection with this Contract, the Successful Offeror shall pay all costs and expenses incurred by or imposed on the State or DCCA, including all attorneys' fees.

#### **5.21 ADDITIONAL CONTRACT TERMS AND CONDITIONS**

DCCA reserves the right to add terms and conditions to the RFP. These terms and conditions shall be within the scope of the RFP and shall not affect the proposal evaluation.

**5.22 CONTRACT INVALIDATION**

If any provision of the Contract is found to be invalid, such invalidity shall not be construed to invalidate the entire Contract.

**5.23 INSPECTION & MODIFICATIONS – REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES**

The Successful Offeror is responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and approval by the Contract Administrator. DCCA may employ all reasonable means to ensure that the work is being performed in compliance with the Contract.

Should the Contract Administrator determine that corrections or modifications are necessary in order to accomplish its intent, the Contract Administrator may direct the Successful Offeror to make such changes.

Substantial failure of the Successful Offeror to perform the Contract requirements may cause the State to terminate the Contract. In this event, DCCA may require the Successful Offeror to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

**5.24 NON-DISCRIMINATION**

The Successful Offeror shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Successful Offeror or in participation in the benefits of any program or activity funded in whole or in part by the State.

**5.25 WAIVER**

The failure of DCCA to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of DCCA's right to enforce the same in accordance with the Contract.

**5.26 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 the Contract.

**5.27 TERMINATION**

DCCA reserves and has the right, at any time during the term of the Contract, in its sole discretion, to terminate and cancel the Contract in the public interest or for the convenience of the State or DCCA. The Successful Offeror's obligation under the Contract shall continue until the specified termination date.

**5.28 DEFAULT**

Pursuant to HAR § 3-125-17, if the Successful Offeror refuses or fails to perform any of the provisions of the Contract with such diligence to ensure that Contract provisions are met, within any time requirements specified in the Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of the Contract, the Contract Administrator may notify the Successful Offeror in writing of the delay or non-performance. If the delay or non-performance is not cured in ten (10) business days, or any longer time specified in writing by the Contract Administrator, the Contract may be terminated in whole or in part, as applicable.

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**SECTION 6**  
**ATTACHMENTS**

Attachment 1  
Attachment 2

Offer Form  
Vendor Reference Form

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# ATTACHMENT 1



**OFFER FORM - OF-1  
HAWAIIAN LANGUAGE VIDEO CONTENT  
RFP-CATV-16-001-SW**

Contract Administrator  
Cable Television Division  
Honolulu, Hawaii 96813

Dear Sir/Madam:

The undersigned has carefully read and understands the terms and conditions specified in the RFP, and in the General Conditions, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture  
☐ Other \_\_\_\_\_

\*State of incorporation: \_\_\_\_\_

Hawaii General Excise Tax License ID No. \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

Date: \_\_\_\_\_ (X) \_\_\_\_\_

Authorized (Original) Signature

Telephone No.: \_\_\_\_\_

Name and Title (Type or Print)

Fax No.: \_\_\_\_\_ \*\* \_\_\_\_\_

Exact Legal Name of Company (Offeror)

\*\* If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the potential awarded Contract shall be executed

# ATTACHMENT 2

**Vendor Reference Form**

Vendor (Subcontractor/Partner) Name(s):

Subject: RFP No.: RFP-CATV-16-001-SW

Title of RFP: HAWAIIAN LANGUAGE VIDEO CONTENT.

Company:

Contact:

Address:

Phone & Fax No.:

Email:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

Company:

Contact:

Address:

Phone & Fax No.:

Email:

Project Name:

Beginning Date of Project: Month/Year

Ending Date of Project: Month/Year

Description of related services provided:

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**SECTION 7**  
**APPENDICES**

Appendix 1  
Appendix 2

General Conditions  
Sample State Goods and Services Contract and Attachments

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# Appendix 1

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the



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

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

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

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

- d. Compensation.

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

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

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

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

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. 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 a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

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

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

21. Price Adjustment.

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

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

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

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



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

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

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

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

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

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

31. Records Retention.

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

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

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

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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

# Appendix 2



**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_,  
(Insert name of state department, agency, board or commission)  
State of Hawaii ("STATE"), by its \_\_\_\_\_,  
(Insert title of person signing for State)  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is \_\_\_\_\_ and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_,  
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
under the laws of the State of \_\_\_\_\_, whose business address and federal and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE 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 STATE 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, Hawaii Revised Statutes ("HRS"), Hawaii 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 STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to \_\_\_\_\_, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

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

(1) \_\_\_\_\_  
(Identify state sources)

or (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ \_\_\_\_\_  
Federal \$ \_\_\_\_\_

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, 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.

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.

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 a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a 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 a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE 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 STATE 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.

#### STATE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

#### CONTRACTOR

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

CORPORATE SEAL  
(If available)

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

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





## STATE OF HAWAII

## CONTRACTOR'S ACKNOWLEDGMENT

**STATE OF** Hawaii )  
 ) SS.  
                 **COUNTY OF**                  )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are \_\_\_\_\_ and \_\_\_\_\_ 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: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

(Notary Stamp or Seal)

Notary Signature \_\_\_\_\_ Date \_\_\_\_\_

## NOTARY CERTIFICATION



# STATE OF HAWAII

## 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 in 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 \_\_\_\_\_



STATE OF HAWAII  
SCOPE OF SERVICES

[Language to be inserted based on the required scope of services in Request for Proposals No. RFP-CATV-16-001 and Successful Offeror's Proposal.]



STATE OF HAWAII  
COMPENSATION AND PAYMENT SCHEDULE

[Language to be inserted based on the compensation and payment schedule, and fixed proposed price in Request for Proposals No. RFP-CATV-16-001 and Successful Offeror's Proposal.]



STATE OF HAWAII  
TIME OF PERFORMANCE

This Contract, which commences on the Effective date, shall be a twelve-month fixed-price contract. Two (2) options to extend the Contract for twelve (12) months each are available, if mutually agreed upon in writing prior to the expiration of the Contract. The State may terminate the Contract at any time, if it is in the best interest of the State.



STATE OF HAWAII  
SPECIAL CONDITIONS

[Language to be inserted based on Request for Proposals No. RFP-CATV-16-001, Successful Offeror's Proposal, and discussions with the Successful Offeror.]