

SECTION FIVE

SPECIAL PROVISIONS

5.01 SCOPE

All services provided to the Hawaii Department of Transportation shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the General Conditions (GC), included by reference and available at the:

State of Hawaii
Department of Transportation
Highways Division
Contracts Office
869 Punchbowl Street
Honolulu, Hawaii 96813

5.02 RESPONSIBILITY OF OFFERORS

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

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

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

5.03 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 3.02, Experience and Capabilities, will likely have an adverse affect on Offeror's proposal evaluation.

5.04 TERM OF CONTRACT

Successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The contract time shall be of the following durations:

1. Tasks 1 through 8: Two-hundred (200) working days from NTP

2. Task 9: Sixty (60) calendar days following the completion of the 30 Days Operational Acceptance Test
3. Task 10: Three-hundred sixty five (365) calendar days following the completion of the 30 Days Operational Acceptance Test.

5.05 CONTACT PERSON

For the purposes of this contract, Mr. Benson Chow , State of Hawaii Department of Transportation Highways Division, Traffic Branch, 601 Kamokila Boulevard, Room 602 Kapolei, Hawaii, 96707, Telephone: (808) 692-7676, Facsimile: (808) 692-7690, or authorized representative, is designated the as the Contact Person for this contract.

5.06 OVERVIEW OF THE RFP PROCESS

- a. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.
- b. The procurement process begins with the issuance of the RFP by HDOT and the formal response by HDOT to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
- c. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.
- d. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.
- e. The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria in Section Four. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
- f. Proposals may be accepted on evaluation without discussion with the Offerors. However, if 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 may be limited to three 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.
- g. If 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.
- h. Following any discussions, priority listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the top three

(3) Priority Listed Offerors prior to the submission of the BAFO. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

- i. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section Four.
- j. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once award notice is posted, all proposals, successful and unsuccessful, will become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
- k. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
- l. The 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 of Hawaii.

5.07 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 Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support a confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. 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.

Pursuant to HAR Section 3-122-58, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

5.08 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the State of Hawaii, Department of Transportation, Highway Division, prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates. This will allow issuance of any necessary corrections and/or amendments to the RFP. It will help prevent the opening of a defective solicitation and exposure of Offeror's proposal upon which award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the *Exceptions* section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.

5.09 QUESTIONS PRIOR TO OPENING OF PROPOSALS

A prospective Offeror may submit a request, in writing, to the Contact person identified in Section 5.05 for clarification or interpretation of any aspect of this request for proposal. If it should appear to a prospective Offeror that the performance of the work under the request for proposal, or any matter relating thereto, is not sufficiently described or explained in this request for proposals, or that any conflict or inconsistency exists between different parts of this proposal is in conflict with Federal, State, or County law, statutes, ordinance, rules, or regulations, then the prospective Offeror shall submit a request for clarification. No responses will be made to oral inquiries. Written requests for clarification or interpretation of this request for proposal may be submitted by facsimile number (808) 692-7690 or sent to the following:

State of Hawaii
Department of Transportation
Highways Division/Traffic Branch
601 Kamokila Blvd., Rm. #602
Kapolei, HI 96707
Attn: Benson Chow

Written requests for clarification or interpretation shall be received by the date indicated in Section One, 1.04 RFP Schedule and Significant Dates, or as amended.

5.10 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97.

5.11 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal will be incorporated into the contract.

5.12 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the course of this contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the State of Hawaii, Department of Transportation, Highways Division and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued.

5.13 PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation 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) working days after the posting of award of the contract.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Contact Person listed in Section 5.05.

5.14 GOVERNING LAW: COST OF LITIGATION

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 of law or equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a part 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.

5.15 SUBMISSION OF PROPOSAL

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the

RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

- a. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, any attachments, plans referred to herein, and any other relevant documents;
- b. Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

5.16 PROPOSAL PREPARATION

- a. OFFER FORM, page OF-1. See Attachment 1. Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate spaces on Offer Form page OF-1. Failure to do so may delay proper execution of the contract.

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

- b. Offer Guaranty. An offer guaranty is NOT required for this RFP.
- c. Tax Liability. Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii GET at the current 4% rate and the applicable use tax at the current 1/2% rate. 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.
- d. Taxpayer Preference. For evaluation purposes, pursuant to HRS §103D-1008, the Offeror's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.
- e. Original Proposal and Copies to be Submitted. Offeror shall submit one (1) original proposal marked "ORIGINAL", six (6) copies of the original marked "COPY", and one (1) electronic copy, in a format readable by Adobe Reader, on a CD. It is imperative to note that the Offeror submit only one original and the required number of copies. DO NOT SUBMIT MORE THAN ONE ORIGINAL.

Offeror is encouraged to submit typewritten offers. If handwritten, it should be clearly printed. Offeror is cautioned that illegible offers, or any items within an

offer, may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

- f. Costs for developing the Proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs.
- g. All proposals become the property of the State of Hawaii.
- h. Copies of documents transmitted by Offerors via facsimile machines shall be limited to the modifications or withdrawal of an offer pursuant to HAR Sections 3-122-108 and 3-122-28, respectively.

5.17 SUBMISSION OF PROPOSAL

Offers shall be received at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813, no later than the date and time stated in Section 1.04, as amended. Timely receipt of offers shall be evidenced by the date and time registered by the State of Hawaii, Department of Transportation, Contracts Office. Offers received after the deadline shall be returned unopened.

If the Offeror chooses to deliver its offer by United States Postal Service (USPS), please be aware that the USPS does not deliver directly to the State of Hawaii, Department of Transportation, Contracts Office, but to a central mailroom. This may cause a delay in receipt by the Department of Transportation, Contracts Office, and the offer may reach the Department of Transportation, Contracts Office, after the deadline, resulting in automatic rejection.

5.18 PRICING

Pricing shall include labor, materials, supplies, all applicable taxes, **including the GET, currently 4.5%, which may be added as a separate line item and shall not exceed the current rate**, and any other costs incurred to provide the specified services.

The pricing shall be the all-inclusive cost, including the GET, to the State and no other costs will be honored.

5.19 ECONOMY OF PRESENTATION

Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content. If any additional information is required by the State regarding any aspects of the Offeror's proposal, it shall be provided within four (4) business days.

5.20 PROPOSAL OPENING

Proposals will be opened at the date, time, and place specified in Section One, or as amended. Proposals shall not be opened publicly, but shall be opened in the

presence of two or more procurement officials. The register of proposals and Offeror's proposals shall be open to public inspection after all parties sign the contract.

5.21 EVALUATION OF PROPOSALS

The Procurement Officer, or an evaluation committee of at least three (3) qualified state employees selected by the Procurement Officer shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. Discussion may be conducted with priority listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without such discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposals before the best and final offer, if necessary.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible Offerors who submitted the highest-ranked proposals.

5.22 DISCUSSION WITH PRIORITY LISTED OFFERORS

Priority listed Offerors may have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, normally within the timeframe indicated in Section 1.04.

5.23 CANCELLATION OF RFP AND PROPOSAL REJECTION

The State reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the State, pursuant to HAR Section 3-122-96 through 3-122-97.

The State 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.

5.24 ADDITIONAL TERMS AND CONDITIONS

The State reserves the right to add terms and conditions during the contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

5.25 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the commencement date. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

5.26 PAYMENT

Incremental payments shall be made to the awarded Contractor on a monthly basis, upon receipt of deliverables that meet the expectations of the RFP. Payment for these deliverables will be based on a percentage of the total bid in Offer Form OF-2. The receipt of deliverables shall be due based on the timeline submitted by the Contractor in the proposal, or as amended.

Communications Migration Plan	5%
Testing of Existing Fiber	5%
Procurement of Communications Equipment:	
Halawa Ring	5%
Haiku Ring	5%
Tunnel Ring	20%
Installation of Communications Equipment, Functional Test, and System Integration Test	
Halawa Ring:	5%
Haiku Ring:	5%
Tunnel Ring:	20%
Replacement of Communications Hub Cabinets	
Hub 1	2.5%
Hub 2	2.5%
Hub 8	2.5%
Hub 13	2.5%
Thirty (30) Days Operational Acceptance Test:...	8%
Training and System Documentation	3%
Warranty and Support Services:	6%
Spare Parts Inventory	3%

Payment for warranty and support services will be paid on a monthly basis.

HRS Section 103-10, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any offer submitted with a condition requiring payment within a shorter period. Further, the State will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS §103-10, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

5.27 AWARD

Method of Award. The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the State based on the evaluation criteria.

Responsibility of Lowest Responsive Offeror. Reference HRS Chapter 103D-310(c). If compliance documents have not been submitted to the State of Hawaii, Department of Transportation, Highways Division, prior to award, the lowest responsive Offeror shall produce documents to the procurement officer to demonstrate compliance with this section.

HRS Chapter 237 tax clearance requirement for award. Instructions are as follows:

Pursuant to HRS §103D-328, lowest responsive Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). 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 the State of Hawaii, Department of Transportation, Highways Division.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2003) 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 & Information):
http://www.hawaii.gov/tax/a1_1alphalist.htm

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 the State of Hawaii, Department of Transportation, Highways Division. However, the tax clearance certificate shall be submitted to the State of Hawaii, Department of Transportation, Highways Division.

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 lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State 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 the State of Hawaii, Department of Transportation, Highways Division. A photocopy of the certificate is acceptable to the State of Hawaii, Department of Transportation, Highways Division.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the State of Hawaii, Department of Transportation, Highways Division.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the State of Hawaii, Department of Transportation, Highways Division. However, the certificate shall be submitted to the State of Hawaii, Department of Transportation, Highways Division.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. The lowest responsive Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the State of Hawaii, Department of Transportation, Highways Division. A photocopy of the certificate is acceptable to the State of Hawaii, Department of Transportation, Highways Division.

To obtain the Certificate, 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 certificate.

On-line business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

Final Payment Requirements. Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two 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), attached, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" menu.

Hawaii Compliance Express. Alternately, instead of separately applying for these paper certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." 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 Chapter 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the prior sections.

Timely Submission of all Certificates. The above certificates should be applied for and submitted to the State of Hawaii Department of Transportation, Highways Division, as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

5.28 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under this contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

5.29 CONTRACT INVALIDATION

If any provision of this contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

5.30 NON-DISCRIMINATION

The Contractor 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 Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

5.31 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 of this contract.

5.32 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.

5.33 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.

5.34 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this contract have been appropriated by a legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-205.5, which states that campaign contributions are prohibited from a State and county government Contractor during the term of the contract if the Contractor is paid with funds appropriated by a legislative body.

5.35 ADDITIONS, AMENDMENTS AND CLARIFICATIONS

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

Cancellation of Solicitations and Rejection of Offers. The solicitation may be cancelled or the offers may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in HAR §§3-122-95 through 3-122-97.

Confidentiality of Material. 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.

All information, data, or other material provided by the Offeror or the Contractor to the State shall be subject to the Uniform Information Practices Act, HRS chapter 92F. The Offeror shall designate in writing to the Procurement Officer those portions of its unpriced offer or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to HAR §3-122-58, in the case of an RFP, or HAR §3-122-30, in the case of an IFB. The Offeror shall state in its written communication to the Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in

such manner that the material is readily separable from the offer in order to facilitate inspection of the non-confidential portion of the offer.

Price is not confidential and will not be withheld. In addition, in the case of an IFB, makes and models, catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of opening regardless of any designation to the contrary.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Department of the Attorney General in accordance with HRS chapter 92F. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under HAR chapter 3-126. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with HRS §92F-15.5.

Nondiscrimination. No person performing work under this Agreement, including any Subcontractor, employee, or agency of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

Records Retention. The Contractor and any Subcontractors shall maintain the books and records that relate to the Agreement and any cost or pricing data for three (3) years from the date of final payment under the Agreement.

Correctional Industries. Goods and services available through Hawaii Correctional Industries (HCI) programs may be the same or similar to those awarded by competitive sealed bids or proposals. Agencies participating in State of Hawaii, Department of Transportation, Highways Division, requirements (price list) contracts may also procure directly from CI and shall not be considered in violation of the terms and conditions of any State of Hawaii, Department of Transportation, Highways Division, contract.

Competency of Offeror. Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer such inquiries will be considered non-responsive.

Preparation of Offer. An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected.