

## APPENDIX E: SPECIAL CONDITIONS

### 1.1 CONTRACT ADMINISTRATOR

For purposes of this contract, the person in *Section 1.3.2, Point of Contact*, or his/her duly authorized representative or successor in office is designated Contract Administrator (CA).

The CA is responsible for:

- A. The terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- B. Monitoring the Proposer's work, documenting that Proposer maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the Proposer, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- C. Notifying Contracts Office in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms

Notwithstanding the responsibilities set forth hereinabove, any coordination of services falling outside those articulated above shall remain with the head of the purchasing agency, as set forth in the attached General Conditions (see General Conditions, paragraph 1, entitled "Coordination of Services by the State.").

### 1.2 INSURANCE

Prior to commencing with the work, the Contractor shall, at its own expense, obtain and submit to the Department, Certificate of Insurance from an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a "non-admitted" carrier is permissible provided the carrier has AM Best's Rating of "A-VII" or better. More information can be found at this link:

<http://www.ambest.com/home/default.aspx>

All policies must provide that 30 days prior written notice of cancellation or material change in coverage be given to certificate holders stated above. Such insurance when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract and in no event shall be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the State. Such insurance aforementioned shall cover the State for all work performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including other work performed outside of the work area, and all change orders.

Any delay in the submission and approval of insurance certificates shall not be justification of or grounds for a request by the Contractor postponing the issuance of a notice to proceed notwithstanding the fact that the Contractor shall not be allowed to proceed with the work until said certificates are submitted and approved.

A separate endorsement form (CG 20 10 or equivalent shall be included with the Certificate of Insurance with the General Liability policy number printed at the top of the form. The form shall also include the project number, project title and the State of Hawaii Department of Transportation as the owner.

Each insurance policy required by this contract shall contain the following clauses:

1. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."

**A. Commercial General Liability:**

The Contractor shall obtain General Liability insurance with a limit of not less than \$1,000,000 per occurrence and in the aggregates. The General liability insurance shall include the State of Hawaii as an additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

**B. Workers' Compensation:**

The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract. The minimum limit of liability for workers compensation is the HRS 386 statutory limit.

**C. Comprehensive Automobile Liability:**

The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a combined single Limit of not less than \$1,000,000 per accident for bodily injury and property damage with the State of Hawaii named as additional insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

### **1.3 INVOICING**

All invoices shall reference the price/vendor list contract number and the RFP number. A delivery receipt(s), or copy of a completed work order for services requests, indicating the RFP and price/vendor list number, signed and dated by HDOT personnel, shall accompany the invoice. If a copy is submitted as the original, such invoice must bear an original signature certifying that the invoice is being submitted as the original.

### **1.4 PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of an accepted invoice and satisfactory delivery of goods or performance of the services, to make payment. For this reason, the State shall reject any Proposal submitted with a condition requiring payment within a shorter period. Further, the State shall reject any Proposal submitted with a condition requiring interest payments greater than that



allowed by section 103-10, HRS. The State will not recognize any requirements established by the Proposer and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with section 103-10, HRS.

During the transition period, incremental payments shall be made to the awarded Contractor on a monthly basis upon receipt of monthly progress reports documenting Contractor activity. Progress payments during the transition period will be based on a straightline calculation of the total cost for the transition period divided by the number of months the transition occurs.

During the operational program, monthly payments will be made based on receipt of monthly, quarterly and annual reporting deliverables outlined in the RFP and will be based on actual service hours delivered during each monthly period.

## **1.5 FINAL PAYMENT**

The **final payment** on the contract shall be for services rendered during the billing period just prior to the contract expiration date. In addition to the requirements in the General Conditions, the following shall accompany the final payment invoice:

1. A tax clearance certificate, not over two (2) months old and with an original green "certified copy" stamp, must accompany the invoice for final payment.
2. The "Certification of Compliance for Final Payment" (DOE Form-22) with an original signature will be required for final payment.
3. In lieu of 1 and 2 above, Proposer may also submit an original CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

All required certificate(s) for the Proposer and all Subofferors, must accompany the invoice for final payment on the Contract.

## **1.6 AVAILABILITY OF FUNDS**

This contract is subject to the availability of funds. Pursuant to Section 103D-309, HRS, except in certain instances, no contract entered into between the State and the Proposer shall be binding or of any force unless the Chief Financial Officer (CFO) certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If the contract calls for performance or payment in more than one fiscal year (July 1 to June 30), the CFO may certify only that portion of the total funds allocated to satisfy the State's obligations for payments in the current fiscal year. In that event, the State will not be liable for the unpaid balance beyond the end of the current fiscal year, and availability of funds in excess of the amount certified shall be contingent upon future appropriations or special fund revenues. All partially-funded contracts shall be enforceable only to the extent that funds are certified as available. The State agrees to notify the Proposer of such non-allocation at the earliest possible time. The State shall not be penalized in the event this provision is

exercised. This provision is not meant to permit the State to terminate the contract in order to acquire similar equipment or services from a third party.

## **1.7 SUBCONTRACTING**

Prior to award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. After award of the contract, no work or services shall be subcontracted or assigned without the prior written approval of the CA. No subcontract shall under any circumstances relieve the Proposer of its obligations and liability under its Contract with the HDOT. All persons engaged in performing the work covered by the Contract shall be considered employees of the Proposer.

## **1.8 CONTRACT STAFFING REQUIREMENTS**

Personnel, whose names and resumes are submitted in the Proposal, shall not be removed from the project without prior approval of the CA. Substitute or additional personnel shall not be used for the project until a resume is received and approved by the CA. The HDOT shall have the right, and the Proposer shall comply with any request, to remove and replace any personnel from all work on the project effective immediately upon notification by the HDOT. Personnel changes that are not approved by the CA may be grounds for Contract termination.

## **1.9 EXCLUSION OF SPECIFIC WORKERS**

The State reserves the right to require the Proposer to remove an employee, agent, SubProposer or volunteer (Worker) from performing work under this contract. The CA shall notify the Proposer in writing and this exclusion of a specific Worker(s) shall take effect as indicated on the notice. The Proposer may appeal this decision to the CA, in writing within ten (10) working days of receipt of the notice. Removal of the employee, agent, SubProposer or volunteer shall remain in effect pending the outcome of the appeal. This provision shall not infringe upon the right of the Proposer to employ the removed individual, but shall apply to any work requiring interaction with the State, its employees or consultants.

The State may require the Proposer to reimburse monies paid, may seek associated damages, and relief in accordance with law.

## **1.10 INSPECTION AND PROCEDURAL CHANGES; RELIEF AVAILABLE TO STATE**

All work is subject to inspection, evaluation, and approval by the CA. The State may employ all reasonable means to ensure that the work is being performed in compliance with the contract. Should the CA determine that corrections or changes are necessary in order to accomplish the intent or purpose of the contract, the CA may direct the Proposer to make such changes.

Failure of the Proposer to perform any provisions of the Contract (based on the identified portion of unacceptable work received) the State may determine Proposer is in non-compliance with Contract requirements and may:



- A. Suspend Payments – Temporarily withhold or disallow all or part of the billing cost/payments pending correction of a deficiency or a non-submission of a required deliverable by the Proposer.
- B. Seek Reimbursement – Seek reimbursement from the Proposer or withhold future payments for any funds paid to the Proposer subsequent to a determination that such was unauthorized, fraudulently obtained, or inappropriately billed.
- C. Seek Market Value – In the event the Proposer fails, refuses or neglects to perform the services in accordance with the requirements of these Special Conditions, the Scope of Services or the General Conditions, the State reserves the right to purchase, in the open market, a corresponding quantity of the services specified herein and to deduct from any monies due or that may thereafter become due to the Proposer, the difference between the price named in the Contract and the actual cost to the State. In case any money due the Proposer is insufficient for said purpose, the Proposer shall pay the difference upon demand from the State. The State may also utilize all other remedies provided by law.

#### **1.11 SPECIAL CONDITIONS ARE SUPPLEMENTAL**

Nothing in the Special Conditions of the contract shall supersede the General Conditions, but shall serve to supplement the General Conditions, except where a conflict exists between the General Conditions and Special Conditions, in which case the Special Conditions shall apply.

#### **1.12 APPROVALS**

Any agreement arising out of this RFP 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.