



**OFFICE OF COUNCIL SERVICES
COUNTY OF MAUI**

RELEASE DATE: SEPTEMBER 26, 2017

**REQUEST FOR PROPOSALS
No. RFP-17-176**

**SEALED OFFERS
FOR**

**PERFORMANCE AND FISCAL AUDITS OF
THE DEPARTMENT OF TRANSPORTATION**

WILL BE RECEIVED UP TO 12:00 NOON HST ON
OCTOBER 31, 2017

IN THE OFFICE OF COUNCIL SERVICES, 200 SOUTH HIGH
STREET, ROOM 703, WAILUKU, HAWAII 96793. SEND
QUESTIONS RELATING TO THIS SOLICITATION TO GREG
GARNEAU, SUPERVISING LEGISLATIVE ATTORNEY, OFFICE
OF COUNCIL SERVICES, AT
GREG.GARNEAU@MAUICOUNTY.US.

A handwritten signature in black ink, appearing to read "Mike White", is written above a horizontal line.

Mike White
Chief Procurement Officer

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1) INTRODUCTION

- a) Section 3-6 of the Maui County Charter authorizes the Council to conduct investigations of (a) the operation of any department or function of the County and (b) any subject upon which the Council may legislate.
- b) On behalf of the Maui County Council, the Office of Council Services (“OCS”) intends to engage the services of a qualified consultant to conduct a performance and fiscal audit of the County of Maui’s Department of Transportation as authorized by Resolution 17-117. The purpose of this Request for Proposals (“RFP”) is to solicit sealed proposals to establish a contract through competitive procurement for the services described in these specifications. These specifications provide information concerning the objectives, scope, general methodology, and conduct of the investigation, and instructions for submitting a proposal. All provisions of these specifications and instructions shall be part of the contract executed by the Contractor selected and the Chief Procurement Officer (“CPO”), unless otherwise expressly provided in the contract. The CPO may delegate his authority under the contract to the extent permitted by law.

The draft report for the Audit is due on February 15, 2018. Since time is of the essence, once the highest-ranked proposal is determined, OCS will be checking with the online Hawaii Compliance Express (“HCE”) system to determine whether the Contractor is compliant with State-required certificates. Pursuant to Hawaii Revised Statutes (“HRS”) Section 103D-310(c), upon award of contract, Contractor shall demonstrate compliance with all applicable State laws.

2) CANCELLATION

- a) This RFP may be canceled and any or all proposals rejected in whole or in part, without liability to the County, when it is in the best interest of the County.

3) TERMS

- a) Definitions. Unless the context requires otherwise, terms used in this document shall have the following definitions:
 - i) “Audit” means the performance and fiscal audit of the Department of Transportation.

- ii) “Contractor” means the Offeror who has been awarded the contract to perform the Audit.
- iii) “Council” means the Maui County Council.
- iv) “Chief Procurement Officer” means the Chair of the Maui County Council, or the Chair’s designated representative.
- v) “County” means the County of Maui.
- vi) “Department” means the County’s Department of Transportation.
- vii) “Offeror” means any individual, partnership, firm, corporation, joint venture, or representative or agent responding to the RFP.

4) RFP SCHEDULE AND SIGNIFICANT DATES

The schedule represents OCS’s best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (“HST”). If a component of this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days. Any change to the RFP Schedule and Significant Dates shall be reflected in and issued in an addendum. The approximate schedule is as follows, dates subject to change:

Release of Request for Proposals	September 26, 2017
Due Date to Submit Questions	October 13, 2017
OCS’s Response to Questions	October 20, 2017
Proposals Due Date and Time	October 31, 2017 12:00 noon
Proposal Evaluation	November 6, 2017
Discussion with Priority Listed Offerors, if necessary	November 9, 2017
Notice of Award	November 13, 2017
Contract Start Date	November 30, 2017
Draft Audit Plan Due	December 15, 2017
Draft Report Due Date	February 15, 2018
Final Report Due Date	March 7, 2018

5) BACKGROUND

- a) The County of Maui (“County”) is comprised of three separate islands: Maui, Molokai, and Lanai, for a combined population of approximately 165,000 residents, which has grown from 141,500

just ten years ago. Each month, there are approximately 204,000 visitors to the County, primarily to Maui, for an estimated de facto population of 215,439.

- b) The Revised Charter of the County of Maui (1983), as amended, tasks the Director of Transportation with responsibility for the planning and implementation of all modes of transportation in the County, including those in the air, on water and on land; responsibility for planning and development of an efficient program to facilitate the rapid, safe, and economical movement of people and goods in the County; and coordinating the County's transportation programs with other County departments and state and federal government agencies.
- c) The stated mission of the Department of Transportation ("Department") is "to oversee and support transportation systems that facilitate the movement of people throughout Maui County, including public transit, commuter, paratransit, human services transit, and air ambulance in a safe, efficient and cost-effective manner."
- d) Public transportation is relied upon heavily on Maui, as demonstrated by the growth in ridership count from less than 200,000 passenger trips per year ten years ago, to approximately 2,500,000 per year today. The increase in ridership also resulted in a rise in the number of buses needed to provide services. Aging and disabled resident populations are also currently increasing, translating to greater demands on the County's public transit system.
- e) Public transportation is especially vital in more rural areas of the County, where distance and scattered populations make connections to work, school, healthcare, social, recreational, and educational opportunities crucial to the well-being of the community.
- f) Human Transportation for County residents began as early as 1969 through non-profit Maui Economic Opportunity ("MEO") as a grass-roots approach to providing rides to and from school for Head Start preschool children. This soon led to an expansion of services to include seniors and the disabled, along with serving as a transportation option for rural areas. The County has been involved with this program through annual grant allocations, which continues until today.

- g) County-funded public transit services began in 2002 with five fixed routes financed by the Department and one privately-funded fixed route. The Maui Bus officially began operations in 2006 and has grown to 13 bus routes funded by the County and operated under contract agreements.
- h) Although ridership has grown, so have costs. General Fund subsidies for transportation grew from approximately \$1 million in 2002, when County-funded public transit began, to over \$6 million in Fiscal Year (“FY”) 2018. Use of Highway Funds have increased from approximately \$4 million to \$11 million over the same period.

Programs

- i) The Department supports four major programs: Administration, Public Transit (comprised of Fixed Route, Paratransit, and Commuter Services), Human Services Transportation (seniors, youth, disabled, dialysis transportation, etc.), and Air Ambulance. The Fixed Route, Paratransit, and Commuter Service are branded the “Maui Bus.” There are six employees in the Department.
- j) The Department has agreements for bus services with the following entities:
 - i) A contract agreement with Robert’s for the Fixed Route and Commuter Service programs, with services on Maui Island only.
 - ii) A contract agreement with MEO for the Paratransit program on Maui Island only and a grant agreement with MEO for the Human Services Transportation program on Maui, Molokai, and Lanai. Registration is required for persons with disabilities to qualify for special rates for paratransit (Americans with Disabilities Act or “ADA”) routes. Registration is required for all riders in the Human Service Transportation program.
- k) Contracts are solicited through a Requests for Proposals (“RFP”) process and awarded to manage and operate services for an initial term of one year, with four one-year options to renew the contract based on performance and Council funding. Historically, the County has opted to renew contracts up to the full allowable term.
- l) The contracts with both Roberts and MEO will reach their five-year limit in FY 2018 and RFPs are due by October 9, 2017, for services to commence on July 1, 2018, the beginning of FY 2019.

- m) Starting with the RFP for FY 2014, the Department separated the Fixed Route, Commuter Service, and Paratransit contracts. Previous RFPs issued required one entity to provide all three services. Due to Maui's relatively small transportation market, combining all three services likely limited the number of bidders.
- n) Once contracts are issued, awardees are responsible for meeting all requirements specified in the RFP, including: management, personnel, training, dispatching, operations, facility, vehicle maintenance, fuel, insurance, recordkeeping and reporting, computer hardware and administrative software, telecommunications equipment and systems, and vehicles for driver relief and road calls.
- o) In addition to managing and overseeing contracts, the Department is responsible for the development of service schedules, routes, and public timetables. To assist with evaluating public transit operations, the Department performs onboard rider surveys. It also implemented a TransLoc application for smartphones to track the real-time locations and arrival times for Fixed Routes and minimize wait times for buses. The application also allows riders to submit feedback and receive announcements regarding route detours and service interruptions.
- p) The Department also administratively supports the Maui Metropolitan Planning Organization ("MPO") formed in 2016 after the geographic area encompassing Kahului, Wailuku, and Paia was found to have a population greater than 50,000 individuals, thus constituting an "urbanized area." The MPO is a federally mandated government agency responsible for the Maui Long Range Transportation Plan, the Transportation Improvement Plan, the Unified Planning Work Program, and the Public Participation Plan.

Funding

- q) The Department uses a combination of appropriations from the General Fund and Highway Fund to administer its programs. The Department's FY 2017 and FY 2018 Council-appropriated budgets are highlighted below, along with actuals from the five prior fiscal years. The public transit contracts may include a maximum funding increase per annum of up to 5 percent, subject to funding availability and Council approval. The potential increases are not guaranteed. Other funding sources include State and Federal grants, some of which require a percentage of County matching funds.

Department Budget					
	Administration Program		Human Services Transportation	Public Transit Program*	
FY	General Fund	Highway Fund	General Fund - Grant to MEO	Highway Fund	Total**
2018 (Adopted)	\$1,194,759	\$400,000	\$6,180,013	\$10,860,015	\$19,307,002
2017 (Adopted)	\$1,496,103	\$400,000	\$6,180,013	\$10,365,515	\$19,113,846
2016 (Actual)	\$790,442	\$0	\$6,705,483	\$10,300,215	\$18,468,355
2015 (Actual)	\$830,446	\$440,875	\$6,000,440	\$9,877,021	\$17,820,997
2014 (Actual)	\$551,932	\$1,000,000	\$5,825,670	\$9,678,295	\$17,728,112
2013 (Actual)(Actual)	\$520,044	\$855,000	\$6,237,414	\$10,724,132	\$19,008,805
**Totals include \$672,215 appropriation each year for Air Ambulance Program					

*Public Transit Program Budget – Highway Fund					
FY	Fixed Route	Paratransit	Commuter Service	Other Costs	Total
2018 (Adopted)	\$7,552,125	\$2,060,515	\$1,047,375	\$200,000	\$10,860,015
2017 (Adopted)	\$7,192,500	\$2,060,515	\$997,500	\$115,000	\$10,365,515
2016 (Actual)	\$7,192,500	\$2,000,500	\$997,500	\$109,715	\$10,300,215
2015 (Actual)	\$6,850,000	\$2,000,500	\$950,000	\$76,521	\$9,877,021
2014 (Actual)	\$6,850,000	\$2,279,657	\$950,000	-\$401,362	\$9,678,295

- r) The Maui Short-Range Transit Plan includes a cost-of-service improvement plan totaling \$78.7 million for the period 2017 to 2022 to pay for current public transit services, additional routes, and administrative costs and marketing. Proposed funding sources for these improvements include increases to the single ride fare and cost of passes, revenue from advertising in or on buses, and an increase to fuel taxes.
- s) In FY 2018, the Department anticipates receiving nearly \$4 million in grant revenue from various federal grants.

Fares

- t) Fares are set by the County Council. One-way rates are \$2 for Fixed Route, Paratransit, and Commuter routes. A daily pass is \$4 for Fixed Route and Paratransit routes. The cost for a monthly pass varies from \$25 for passengers ages 55 years and older (Fixed Route only) to \$45 for general boarding. Vendors collect fares and submit a monthly revenue collection report by route, and a consolidated revenue collection report no later than the 10th day of the following month as part of their quarterly reports.
- u) The last fare increase proposed by the Department and approved by the Council was in Fiscal Year 2013. One-way Fixed route fares were increased from \$1 to \$2, and daily passes were increased from \$2 to \$4. The last fare increase for Commuter routes was in Fiscal Year 2011. One-way Commuter route fares were increased from \$1 to \$2. No additional increases have been proposed since 2013. The Department cited the desire to complete the Short-Range Transit Plan before raising any fees. The study was completed in April 2016.
- v) Human Transportation fares are not controlled by the County. MEO does not charge for their services, but does accept voluntary donations.

Service Quality and Delivery

- w) In preparing the Short-Range Transit Plan, the Department held informational meetings in Kihei, West Maui, Upcountry, and Central Maui in 2015 to obtain community input on the current public transit system and ideas for future services. While the clear majority of individuals present at the meetings were appreciative of the current services provided, the community requested more frequent services, expansion of service to new areas, added bus stops and shelters, and expansion of Paratransit routes outside the required three-fourths mile radius from the Fixed route system.
- x) According to the Short-Range Transit Plan, the majority of Maui Bus customers surveyed are satisfied with the services they are receiving. Based on 1,110 responses received, over 85 percent of the passengers rated overall service quality as “excellent” or “good.”

Fixed Route Service

- y) Fixed Route service operates between 6:30 a.m. and 10 p.m. daily, depending on the route, including holidays. Current routes include: Wailuku Loop Routes #1 and #2, Kahului Loop Routes #5 and #6, Kihei Islander Route #10, Kihei Villager Route #15, Lahaina Islander Route #20, Lahaina Villager Route #23,

Kaanapali Islander Route #25, West Maui Islander Route #28, Haiku Islander Route #35, Kula Villager Route #39, and Upcountry Islander Route #40.

- z) The County provides a minimum number of buses to Robert's and allows for the possible addition of vehicles, depending on County funding. Operations are governed by the Federal Transit Administration ("FTA") and the County because buses are purchased using funds from both entities.
- aa) All Fixed Route vehicles are required to be outfitted with a GPS tracking system to ensure on-time performance and help to identify bus locations. The Department has access to the GPS system and reporting.
- bb) The central transportation hub for the Fixed Route service is currently located at the privately-owned Queen Kaahumanu Shopping Center in Kahului, Maui. This location is already over capacity to support existing services and cannot be expanded. Because the hub is on private property, the transit hub is operating at the will of the private owner.
- cc) A new central transportation hub is needed to accommodate up to 12 buses at a time and should be located as close as possible to the existing site. The Short-Range Transit Plan includes a projected cost of \$15 million for the period 2017 to 2022 for land acquisition and the planning, design, and construction of a transit center.
- dd) The Department included in its proposed FY 2018 Budget a request to add expansion hours for the following routes, with additional costs as noted: Kihei Islander Route \$66,900; Lahaina Islander Route \$67,000; Kihei Villager Route \$62,600; Kaanapali Islander Route \$46,400; and Napili Islander Route \$57,100. The anticipated cost of adding a Waihee Villager Route was \$500,000. Absent a plan to pay for these additional hours and routes, the Council disapproved the expansion requests pending further discussion and evaluation of current services and fares. Instead, the Council approved \$50,000 in funding and urged the Department to conduct a study on the Waihee Bus Route and to identify possible alternatives (shuttles, ridesharing, etc.).
- ee) The Kula Villager route was a point of discussion during the FY 2018 Budget deliberations. Initiated in the FY 2013 Budget, the route had a total of 12,408 boardings at a cost of \$445,000 in FY 2016, raising questions relating to the minimum passenger count

needed to keep a route operational before redirecting resources. A decision was deferred pending ridership outcomes after adjustments to the route by the Department.

Paratransit Service

- ff) The Department is responsible for providing Paratransit service for persons with disabilities or health conditions unable to use the Fixed Route service for accessibility reasons, within three-fourths of a mile of the fixed routes, pursuant to the ADA. There are 13 total Paratransit bus routes which mirror the services provided by the Fixed Route service. The Paratransit service requires a reservation and provides curb-to-curb service for qualified riders. Submission of an application is required to determine eligibility.
- gg) MEO secured the bid to provide paratransit services starting in FY 2014 over previous provider Robert's. MEO began using a software program and all necessary hardware for scheduling and dispatching services to help develop an efficient route schedule. The current system being used is EcoLane, which also assists in complying with the National Transportation Database and FTA reporting. All information and reports gathered from the system are fully accessible to the Department for monitoring and reporting purposes.
- hh) Prior to the software implementation, Robert's manually scheduled pick-ups and operated more of an "on-demand" service. Since the switch to a software system, which also led to a consolidation of routes, complaints have ranged from longer call times to make a reservation, missed or delayed pick-ups and drop-offs, longer wait times for a pick-up, and the length of time riders remain on the bus before reaching their stop.
- ii) Complaints have also been made in regards to a decrease in customer service and drivers who are unfamiliar with transit routes possibly due to high turnover or sick calls.
- jj) The Department also instituted a policy that paratransit reservations had to be one hour apart and riders had to disembark the bus at their destination.
- kk) The County provides a minimum number of buses to MEO and allows for the possible addition of vehicles, depending on County funding. Operations are governed by the FTA and the County since buses are purchased using funds from both entities.

Commuter Service

- ll) Commuter service provides four service routes on Maui, contracted through Robert's to assist with work transportation needs of Maui residents to large employment centers on the island. Commuter service routes include: Haiku-Wailea, Makawao-Kapalua, Wailuku-Kapalua, and Kihei-Kapalua.

- mm) The Department does not provide any vehicles under the Commuter service contract. Vehicles are coach-type buses with a minimum of 50 seats, with reasonable accommodations for ADA passengers.

Human Services Transportation Program

- nn) The Human Services Transportation Program provides transportation for youth, seniors, the disabled, persons in rural areas, persons with special needs, and non-emergency transportation services for kidney dialysis patients.
 - i. Youth Transportation provides services to County youth ages nine and eighteen to and from county-funded programs and facility locations.
 - ii. Senior Services provides transportation to Kaunoa Senior Service and throughout the community, allowing seniors to participate in activities and events, including Senior Fair, club excursions, Kupuna Aloha Luncheon, Kaunoa Leisure/Wellness and Nutrition excursions, and club meetings, providing house-to-house pick-ups and returns. It also provides transportation to adult day care centers, specialized transportation for clients with special needs who participate in program activities, and employment transportation for persons with disabilities and persons who are low-income or economically challenged.
 - iii. Rural areas of the County such as Molokai, Lanai, and Hana heavily rely on Human Transportation Services. In many cases, no transportation alternatives exist. Rural shopping shuttles provide curb-to-curb rides for registered clients that stop at various medical, financial and shopping facilities, primarily throughout the central corridor of the islands of Maui and Molokai, as well as within Lanai City and Hana.

- oo) General Funds are granted to MEO, therefore, they do not have to comply with FTA rules, allowing their service to be more flexible. EcoLane software is used on all Human Services Transportation routes and allows for data gathering to report to the County.

pp) Similar to the paratransit system, since the implementation of EcoLane, complaints with the software reservation system include missed or delayed pick-ups and drop-offs, a decrease in customer service, and an increase in the length of time elderly riders remain on the bus before reaching their stop (possibly due to a consolidation of routes). Issues with drivers who are unfamiliar with transit routes because of high turnover or sick calls have also been a concern.

qq) Relevant laws may be accessed at www.mauicounty.us/transportationaudit.

i) Chapter 51, Hawaii Revised Statutes.

ii) Title 11, Maui County Code.

iii) Article 8, Chapter 14, Revised Charter of the County of Maui (1983), as amended.

iv) County's Budget Ordinances.

rr) Reference materials may be accessed at www.mauicounty.us/transportationaudit.

i) Resolution 17-117, adopted July 28, 2017.

ii) Maui Short-Range Transit Plan dated April 2016.

iii) Contracts for Fixed Route, Paratransit, and Commuter service.

iv) Grant for Human Services Transportation.

v) Request for Proposals 17-18P-17-FY18 Fixed Bus Routes.

vi) Request for Proposals 17-18P-18-FY18 ADA Paratransit.

vii) Request for Proposals 17-18P-19-FY18 Commuter Service.

6) SPECIFICATIONS

a) Audit Objective. The objective of this audit is to provide the Council and the Department with a management tool to identify long-term, decision-making solutions to improve the cost-effectiveness, operational efficiency, and quality and reliability of program services to benefit the Department and the general public.

- b) Audit Scope. The scope of the audit is to conduct a performance and financial audit to review the Department's Fixed Route, Paratransit, Human Services Transportation, and Commuter Service transit programs. At a minimum, the audit shall:
- i) Analyze the contracts and services provided by the Fixed Route, Paratransit, Human Services Transportation, and Commuter Services programs.
 - 1) Determine whether duplicative services exist between programs. If duplicative services do exist, determine the cost-benefit and impact of eliminating duplication.
 - 2) Review all contract and grant agreements to determine if services are being fully provided as required by the agreements. Determine whether the Department regularly reviews all aspects of the agreement to ensure requirements are fully executed.
 - 3) Determine if additional benchmarks or reporting requirements are needed in the agreements for the Department to more effectively monitor and/or provide oversight of contractors/grantees.
 - 4) Review whether contractors/grantees are fulfilling the following aspects of their agreements:
 - a) Maintaining appropriate staffing levels to ensure all routes meet required pick-up and wait times as specified in the agreement.
 - b) Providing high quality training for staff to meet customer service requirements.
 - c) Determine whether contract/grant costs to provide public transportation is comparable to municipalities of similar population sizes, services, and geographic challenges.
 - ii) Determine whether the number and location of routes along with the number and size of vehicles are appropriate for the County's population and transportation needs.

- iii) Review and evaluate the Department's vehicle and equipment procurement and replacement policy for vehicles provided by the County for contractor services.
- iv) Review the Department's methodology for maintaining current services and decision-making processes to expand services. Determine whether decisions are being made using best practices and takes into account revenue sources and costs.
- v) Review the Department's funding sources and current fare structure.
 - 1) Determine whether current fares and ridership subsidies are comparable to similarly sized transit programs with similar programs.
 - 2) Determine how much of an increase in revenue and fares are needed to pay for additional routes, a central transportation hub and other services as requested by the community, while maintaining or gradually increasing ridership levels.

7) BUDGET LIMITATIONS AND PAYMENT SCHEDULE

- a) The total sum to be allocated for conducting the Audit shall be limited to the extent of funds appropriated for this purpose and the continued availability of such funds during the course of the project.
- b) The County processes payments based on written invoices. Payments will be made in increments subject to acceptance of progress reports or reports delivered, as set forth in the proposal. With each invoice, the Contractor will submit a signed statement of actual costs incurred and the type of work performed. Prepayment will be allowed only for unavoidable costs.
- c) It is estimated that the Audit will take no longer than approximately three months from the contract start date until the date the final report is submitted to the CPO. The draft report shall be completed by February 15, 2018. The final report shall be completed by March 7, 2018.

8) PROPOSAL

- a) Offeror's Authority to Submit an Offer. OCS will not participate in determinations regarding an Offeror's authority to sell a product or service. If there is a question or doubt regarding an Offeror's right

or ability to obtain and sell a product or service, the Offeror shall resolve that question prior to submitting an offer.

b) Required Review.

i) Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP and any attachment, addendum, and other relevant document to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with County, State, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.

ii) Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify OCS in writing prior to the deadline for written questions as stated in the RFP Schedule and Significant Dates, as amended. This will allow the issuance of any necessary corrections or amendments to the RFP by addendum, and mitigate reliance of a defective solicitation and exposure of proposals upon which award could not be made.

c) Proposal Preparation Costs. Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. OCS shall not reimburse such costs.

d) Tax Liability.

i) Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that they are liable for the Hawaii GET at the current rates of 4.5 percent for sales made on Oahu and 4 percent rate for other islands. 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.

ii) Offeror shall submit its current Federal Tax ID and Hawaii GET License numbers in the space provided on Offer Form, OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

e) Property of the County. All proposals become the property of the County.

f) Proposal Forms. To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions provided in the RFP or in any subsequent addendum may be rejected without further consideration.

i) Offer Form, OF-1. Offer Form, OF-1 is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (Exhibit "A"). Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

ii) Offer Form, OF-2. Pricing shall be submitted on Offer Form OF-2 (Exhibit "B"). The price shall be the all-inclusive cost, including the GET, to the Council. No other costs will be honored. Any unit prices shall be inclusive.

g) Proposal Content. In preparing the proposal for the Audit, the Offeror shall fully describe the following:

i) Methodology. Describe the approach, method, and procedure the Offeror intends to use, in developing the Audit plan. In addition, if the Offeror intends to hire outside consultants to perform a portion of the Audit, the Offeror shall identify who they are and how they will be used. Finally, explain how the Audit conforms to the Audit objectives and scope as set forth in this RFP.

ii) Description of the Offeror.

1) General. Describe the Offeror, including the nature of services and how the Offeror is organized to perform the Audit.

2) Qualifications. Describe the experience of the Offeror, as well as key personnel that shall be assigned to the Audit.

- 3) Quality Control Program. Describe briefly the quality control system for the organization and provide a copy of the latest external quality control review report.
 - 4) Previous Work. Indicate audit work relating to the State of Hawaii and the counties of Hawaii done within the last three years.
 - 5) Independence. The Contractor shall provide an affirmative statement that it is independent of the County. The Contractor shall disclose any potential conflict of interest that may affect the current Audit. Examples of potential conflicts include having close ties to Department employees and having conducted previous studies on behalf of the Department. If there is a potential conflict of interest, the Contractor shall indicate how it can be minimized to safeguard the independence of the present Audit.
- iii) Resources to Be Used. Identify the resources that the Offeror intends to commit to the work, including the qualifications, experience, and recent relevant training of the management and staff assigned to the Audit.
- 1) Indicate the number of hours to be worked by managers and other professional staff assigned to the engagement and their hourly rates.
 - 2) Present a breakdown of other expenses such as supplies, travel, and taxes.
 - 3) If appropriate, provide an affirmative statement that personnel to be assigned to the Audit meet the continuing education requirements set forth in the *Government Auditing Standards*. The proposal shall identify the individual who will represent the Contractor in all matters concerning the Audit.
 - 4) Indicate how the quality of staff over the term of the contract will be assured.
 - 5) Subcontractors may be used by the offeror in performing any portion of the services requested in this RFP; however, the offeror shall be the sole point of contact, including payment of any and all charges resulting from the contract, and shall be responsible for all services whether or not the offeror performs them. If a subcontractor will be used, a statement

from each subcontractor shall be included in the proposal, signed by an individual authorized to legally bind the subcontractor, and stating the following:

- a) The subcontractor's name, mailing address, telephone number, fax number, and contact person;
 - b) The general scope of work to be performed by the subcontractor; and
 - c) The subcontractor's ability and willingness to perform the work indicated.
- 6) Note that the Contractor will be required to notify the CPO of any changes to the Audit management and professional staff identified in the proposal. Furthermore, the CPO's approval will be required before assigning any other management or professional staff to this engagement.
- iv) Timetable and Compensation. Payment will be based on, and in proportion to, the work performed. The proposal shall include a timetable of the dates for the delivery of the Audit plan, preliminary findings and recommendations, preliminary draft report, and final Audit report, and the proposed compensation, including a payment schedule.
 - v) Address Where the Audit Will Be Conducted. The proposal shall specify the address of the office from which the Contractor shall conduct and coordinate its activities. The proposal shall specify facilities, equipment, or anything else the Contractor requires the County to provide. Available office space within the County building and in the Department is scarce and providing a room to the Contractor may not be possible. However, the Council will make a good faith effort to accommodate the needs of the Contractor.
- h) Submittal of Proposal.
- i) The proposal for conducting the Audit as outlined herein, along with five copies, shall be submitted in sealed envelopes or packages marked "Proposal for the Performance and Fiscal Audits of the Department of Transportation RFP-17-176" and mailed or delivered to:

Chief Procurement Officer
Office of Council Services
County of Maui
200 South High Street, Room 703
Wailuku, Hawaii 96793

- ii) The proposal shall be received by the CPO no later than 12:00 noon HST on October 31, 2017. Timely receipt of offers shall be evidenced by the date and time registered by OCS time-stamp clock. Proposals received after the deadline shall be rejected and returned.
- iii) If the Offeror chooses to deliver its proposal by United States Postal Services (“USPS”), please be aware that the USPS does not deliver to Room 703, but rather to a central County mailroom. This may cause a delay in receipt by the CPO, and the proposal may reach the CPO after the deadline, resulting in an automatic rejection.
- iv) Proposals will not be publicly opened, but shall be opened only in the presence of the CPO and two or more employees of OCS. Proposals will become public information after the posting of the award or rejection of all proposals.
- v) Proposals submitted via email or fax shall not be accepted.
- vi) Performance and payment bonds are NOT required for responding to this RFP.
- vii) Multiple or alternate proposals shall not be accepted.
- viii) Proposals may be accepted without discussion. However, if deemed necessary, discussions may occur with priority-listed auditors who have submitted acceptable and potentially acceptable proposals. The priority list may be limited to a minimum of three responsible proposers who submitted the highest-ranked proposals (pursuant to Section 3-122-53, Hawaii Administrative Rules).
- ix) Confidential Information. Offerors shall designate in writing those portions of the unpriced proposal that contain trade secrets or other proprietary data that are to remain confidential, subject to Section 3-122-58, Hawaii Administrative Rules; and material designated as confidential shall be readily separable from the proposal in order to

facilitate inspection of the nonconfidential portion of the proposal.

- x) Offeror is advised that in order to be awarded a contract under this solicitation, Offeror will be required to be compliant with all laws governing entities doing business in the State, including the following HRS provisions:

- 1) Chapter 237, General Excise Tax (“GET”) Law;
- 2) Chapter 383, Hawaii Employment Security Law;
- 3) Chapter 386, Worker’s Compensation Law;
- 4) Chapter 392, Temporary Disability Insurance
- 5) Chapter 393, Prepaid Health Care Act; and
- 6) Section 103D-310(c), Certificate of Good Standing for entities doing business in the State.

OCS will verify compliance on HCE. The HCE is an electronic system that allows contractors doing business with government agencies to quickly and easily demonstrate compliance with acceptable laws. It is an online system that eliminates the need for paper compliance certificates from the State Department of Taxation, the Federal Internal Revenue Service, the State Department of Labor and Industrial Relations, and the State Department of Commerce and Consumer Affairs.

Offerors should register with HCE prior to submitting an offer at <https://vendors.ehawaii.gov>. If the Offeror is not compliant on HCE at the time of award, the Offeror will not receive the award.

- xi) Failure to comply with the specified instructions and requirements may result in rejection of the proposal.
- xii) A statement by the auditor agreeing to abide by the terms of this RFP shall be included in the proposal.
- xiii) No proposal security is required.
- i) Official Contact Person. The official contact for all technical communication regarding this RFP is:

Greg Garneau, Supervising Legislative Attorney
Office of Council Services
200 South High Street
Wailuku, Hawaii 96793
greg.garneau@mauicounty.us

9) EVALUATION CRITERIA AND AWARD

- a) Evaluation Criteria. Proposals submitted will be evaluated by the CPO. Proposals shall be evaluated based on the following criteria:
- i) Scope of services to be performed, including feasibility and suitability of proposed procedure for providing requested services and structuring of work to minimize the likelihood of cost overruns. (38 points)
 - ii) Qualifications of the Offeror and key personnel, including education and training, experience in performing audits and other similar projects, professional standing and credibility, and knowledge of auditee and workforce. (33 points)
 - iii) Price and suitability of compensation structure (i.e., fee accruals and payment schedule) that, together with status reports, allow the County to monitor progress and quickly terminate services found to be unnecessary, while allowing the Contractor a fair opportunity to recover costs and realize a profit. (29 points)

The total number of points used to score this proposal is 100.

- b) Award of contract.
- i) Award, if any, shall be made to the responsive, responsible Contractor whose proposals are determined to be the most advantageous to the Council, taking into consideration the evaluation criteria set forth in this RFP.
 - ii) After the CPO has made a determination, the successful Offeror shall be notified in writing by the CPO that it has been selected as the Contractor, and the contract shall be awarded with reasonable promptness.

10) COMPLIANCE WITH COUNTY'S GENERAL TERMS AND CONDITIONS

The substance of the standard General Terms and Conditions for County contracts shall be incorporated into the contract to the extent pertinent. A copy of the standard General Terms and Conditions are attached as Exhibit "C" of this document. Any modifications to the General Conditions must be done prior to the execution of the contract. Offerors acknowledge and agree there shall be no post-award revision to the General Conditions.

11) SERVICES NOT EXCLUSIVE

During the contract term, OCS or the Council may or may not contract with other entities for similar services within the scope of this RFP.

ocs:proj:audit:2017-18:transportation:rfp 17-176 transportation audit

**OFFER FORM
OF-1**

PERFORMANCE AND FISCAL AUDITS OF
THE DEPARTMENT OF TRANSPORTATION
COUNTY OF MAUI, OFFICE OF COUNCIL SERVICES
RFP-17-176

Chief Procurement Officer
Office of Council Services
County of Maui
200 South High Street, Room 703
Wailuku, Hawaii 96793

Dear Chief Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Request for Proposals attached hereto, and in the County of Maui General Terms and Conditions, 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) she or he is declaring her or his offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) she or he is certifying that the price or prices submitted were independently arrived at without collusion.

Offeror is:

Sole Proprietor Partnership *Corporation Joint Venture
 Other _____

*State of incorporation: _____

Hawaii General Excise Tax License ID _____

Federal Tax ID _____

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.: _____

Fax No.: _____ Name and Title (Please Type or Print)

Email Address: _____ ** _____
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 awarded contract will be executed:

**OFFER FORM
OF-2**

PERFORMANCE AND FISCAL AUDITS OF
THE DEPARTMENT OF TRANSPORTATION
COUNTY OF MAUI, OFFICE OF COUNCIL SERVICES
RFP-17-176

Total contract cost for accomplishing the development and delivery of the services.

\$ _____

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR PURCHASE OF GOODS AND SERVICES**

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY'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 COUNTY 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 COUNTY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY 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. Unless provided otherwise by agreement between the parties, 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, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY 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 Section 103-53, 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 sections 3-122-112, Hawaii Administrative rules, ("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 employees 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; CHANGE OF NAME.

a. No assignment without consent. 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 (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, 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 COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said 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 or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novations hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any 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 for any reason.

8. COST OF LITIGATION. In case the COUNTY 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 any cost and expense incurred by or imposed on the COUNTY, 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 COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY 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 Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owned to the COUNTY 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 COUNTY, 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 COUNTY under such payment or other settlement plan.

11. DISPUTES. Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, HAR.

12. SUSPENSION OF AGREEMENT. The COUNTY 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 head of the purchasing agency 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 of time 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. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and 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 head of the purchasing agency 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 or performance schedule or compensation, 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 adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency 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 provisions 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, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency 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 head of the purchasing agency, the head of the purchasing agency 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 failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. 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 and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY 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 head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the 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 obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she 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 or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." 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 d., "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 BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such 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 shall 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 County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the

CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

1) Any completed goods or work product or both; 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 head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR's best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY 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 cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with d.(3) of this Paragraph.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122 of the HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph d.2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph d.3)(B).

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR.

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) 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 proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

(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 head of the purchasing agency in writing.

2) 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 head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee.

3) The notice required by Subparagraph a.1) of this Paragraph must describe 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) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County 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. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST 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 airfare, 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 head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract.

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 all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

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 OR STATE FUNDS. If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the

federal or State government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or

State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
- 2) Method of shipment or packing;
- 3) Place of delivery;
- 4) Description of services to be performed;
- 5) Time of performance (I. e., hours of the day, days of the week, etc.);
- 6) Place of performance of the services; or
- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment 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 price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, 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.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension 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 County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY's approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and
- 2) Changes in the time of performance of the Contract that do not alter the scope of the contract work.

b. 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, an adjustment shall be made and the 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 provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the

contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

2) Other claims not barred. In the absence of such a change order, nothing in this clause 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;

2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency 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 agreement.

23. CHANGES IN COST-REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

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 COUNTY 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 head of the purchasing agency shall make a equitable adjustment in the 1) estimated cost, deliver 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 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency 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 the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, 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 the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS; and

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the Contractor shall be referred by the procurement officer to the contractors license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection.

No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. Contractor shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. 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 COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or Officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the COUNTY council members, or members or directors of any County Board, 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 without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY 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 for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, 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.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall provide COUNTY not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY 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 county contract, including subcontracts, other than a firm fixed-price contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

b. 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 County 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.

34. AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the County may require an audit of cost or pricing data.

35. RECORDS RETENTION.

a. 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 COUNTY.

b. 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 COUNTY, and any cost or pricing data, for at least three 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 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 County at the request of the County.

36. ANTITRUST CLAIMS. The COUNTY 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 the COUNTY 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 COUNTY under an escalation clause.

37. PATENTED ARTICLES. The CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, 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 COUNTY any such infringement or improper or unauthorized use, including, without limitation a. furnishing at no cost to the COUNTY a substitute article, process, or appliance acceptable to the COUNTY; 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.

38. 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 COUNTY 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 COUNTY determines that this Contract requires and adjustment of the time for performance, the Contract shall be modified in writing accordingly.

39. 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 procedure 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 COUNTY 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 COUNTY.

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 COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY 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 COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

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 COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY 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.

40. 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 Wailuku, Maui, Hawaii.

41. 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. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

42. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

43. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under Section 11-355, HRS, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Contract through the completion of the Contract to: (a) directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any

candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.

44. DRAFTING. No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

45. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

46. COUNTERPARTS. This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

47. SEVERABILITY. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

48. WAIVER. The failure of the COUNTY 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 COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

49. ENTIRE AGREEMENT. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY 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 COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS OF PURCHASE OF GOODS AND SERVICES]