

The Judiciary

State of Hawai`i

## **Request for Proposals**

**RFP No. J19165**

### **To Provide General Civil Legal Services for Indigent Residents of the State of Hawai`i**

August 21, 2018

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

## NOTICE TO APPLICANTS

This solicitation is provided to you for information purposes. If interested in responding to this solicitation, you may choose to submit your offer on the downloaded document provided. **You must register** your company by fax or email for this specific solicitation. If you do not register your company, you will not receive addenda, if any, and your offer **may be** rejected and not considered for award.

### Registration

**Submit FAX or Email to:**

FAX No.: (808 ) 538-5802  
 Email: [Tritia.L.Cruz@courts.hawaii.gov](mailto:Tritia.L.Cruz@courts.hawaii.gov)

**Provide the following information:**

- |                       |   |                          |
|-----------------------|---|--------------------------|
| • Name of Company     | • Mailing Address   | • Name of Contact Person |
| • Telephone Number    | • FAX Number  | • Email Address          |
| • Solicitation Number | • Fedex (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided.) |                          |

August 21, 2018

To: All Applicants

From: Suzanne Efhan, Acting Financial Services Director  
 The Judiciary, State of Hawai'i

Subject: Notice of Request for Proposals No. J19165  
 Health & Human Services for providing civil legal services to indigent persons

The Judiciary, State of Hawai'i, is requesting competitive sealed proposals from qualified applicants to provide Health & Human Services for the period October 1, 2018 through June 30, 2019, subject to availability of funds. The proposal application and contract award procedures are in accordance with Chapter 103F, Hawaii Revised Statutes. Multiple contracts may be awarded pursuant to the service specification under this Request for Proposals (RFP).

The attached packet of materials outlines the requirements for proposal applications. It includes the administrative requirements, service specifications, application form, and other information. This RFP is available on our Judiciary web site at <http://www.courts.state.hi.us> under "General Information / Business with the Judiciary", or from the Contracts & Purchasing Office listed below, or from the contact persons listed in the RFP Section Two - Service Specifications.

Persons or organizations must submit 4 sets (Orig. + 3 copies) of their completed proposal applications (in hard copy or in PDF format on CD) and postmarked by US Postal Service on or before **September 18, 2018** and received no later than 10 days from the submittal deadline. Hand delivered proposals shall be received **no later than 4:00 p.m., Hawaii Standard Time, on September 18, 2018.**

Deliveries by private mail services such as FEDEX shall be considered hand deliveries. Hand deliveries shall not be accepted if received after 4:00 p.m., **September 18, 2018.**

Proposals will be received at:

The Judiciary, State of Hawai'i  
Financial Services Division, Contracts & Purchasing Office  
Kauikeaouli Hale (District Court Building)  
1111 Alakea Street, 6<sup>th</sup> Floor  
Honolulu, HI 96813-2807

**Proposals postmarked or hand delivered after the appropriate dates and times shall be considered late and rejected, and will be returned to the applicant unopened. (See Section 1.9.8 - Proposal Submittal, for postmark or hand delivery restrictions.)**

The actual funding of the contract will be based on the proposal applications submitted by the applicants and the service required by the Judiciary. The Administrative Director of the Courts reserves the right and power to award the contract in any manner which he deems to be in the best interest of the Judiciary.

The Judiciary will conduct an orientation meeting on the following date, location and time indicated:

<b>September 5, 2018</b>	<b>Oahu Supreme Court</b>	<b>1:00 pm - 3:00 pm</b>
	Ali'iolani Hale	
	417 S. King Street, Room 216	
	Honolulu, HI 96813	
	Contact: Tritia Cruz	Ph. 808-538-5805
	Email: <a href="mailto:Tritia.L.Cruz@courts.hawaii.gov">Tritia.L.Cruz@courts.hawaii.gov</a>	

**All prospective applicants are encouraged to attend this orientation and to bring their RFP packets with them.**

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# **Section 1**

## **Administrative Overview**

# Section 1

## Administrative Overview

**Applicants are encouraged to read each section of the RFP thoroughly. While sections such as the administrative overview may appear similar among RFPs, state purchasing agencies may add additional information as applicable. It is the responsibility of the applicant to understand the requirements of *each* RFP.**

### 1.1 Procurement Timetable

**Note that the procurement timetable represents the Judiciary's best estimated schedule. If an activity on this schedule is delayed, the rest of the schedule will likely be shifted by the same number of days. Contract start dates may be subject to the issuance of a notice to proceed.**

<u>Activity</u>	<u>Scheduled Date</u>
Public notice announcing Request for Proposals (RFP)	August 21, 2018
Distribution of RFP	August 21, 2018 – September 18, 2018
RFP orientation session	September 5, 2018
Closing date for submission of written questions for written responses	September 6, 2018
State purchasing agency's response to applicants' written questions	On or about September 10, 2018
Proposal submittal deadline	September 18, 2018
Proposal evaluation period	September 2018
Provider selection	September 2018
Notice of statement of findings and decision	September 2018
Contract start date (tentative)	October 1, 2018

## 1.2 Website Reference

Item		Website
1	Procurement of Health and Human Services	<a href="http://spo.hawaii.gov/for-vendors/vendor-guide/methods-of-procurement/health-human-services/competitive-purchase-of-services-procurement-method/cost-principles-table-hrs-chapter-103f-2/">http://spo.hawaii.gov/for-vendors/vendor-guide/methods-of-procurement/health-human-services/competitive-purchase-of-services-procurement-method/cost-principles-table-hrs-chapter-103f-2/</a>
2	RFP website	<a href="http://hawaii.gov/spo2/health/rfp103f/">http://hawaii.gov/spo2/health/rfp103f/</a>
3	Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR) for Purchases of Health and Human Services	<a href="http://spo.hawaii.gov">http://spo.hawaii.gov</a> Click on the “References” tab.
4	General Conditions, AG-103F13	<a href="http://hawaii.gov/forms/internal/department-of-the-attorney-general/ag-103f13-1/view">http://hawaii.gov/forms/internal/department-of-the-attorney-general/ag-103f13-1/view</a>
5	Forms	<a href="http://spo.hawaii.gov">http://spo.hawaii.gov</a> Click on the “Forms” tab.
6	Cost Principles	<a href="http://spo.hawaii.gov">http://spo.hawaii.gov</a> Search: Keywords “Cost Principles”
7	Protest Forms/Procedures	<a href="http://spo.hawaii.gov/for-vendors/vendor-guide/protests-for-health-and-human-services/">http://spo.hawaii.gov/for-vendors/vendor-guide/protests-for-health-and-human-services/</a>
8	Hawaii Compliance Express (HCE)	<a href="http://spo.hawaii.gov/hce/">http://spo.hawaii.gov/hce/</a>
9	Hawaii Revised Statutes	<a href="http://capitol.hawaii.gov/hrscurrent">http://capitol.hawaii.gov/hrscurrent</a>
10	Department of Taxation	<a href="http://tax.hawaii.gov">http://tax.hawaii.gov</a>
11	Department of Labor and Industrial Relations	<a href="http://labor.hawaii.gov">http://labor.hawaii.gov</a>
12	Department of Commerce and Consumer Affairs, Business Registration	<a href="http://cca.hawaii.gov">http://cca.hawaii.gov</a> click “Business Registration”
13	Campaign Spending Commission	<a href="http://ags.hawaii.gov/campaign/">http://ags.hawaii.gov/campaign/</a>
14	Internal Revenue Service	<a href="http://www.irs.gov/">http://www.irs.gov/</a>
<b>(Please note: website addresses may change from time to time. If a State link is not active, try the State of Hawai'i website at <a href="http://hawaii.gov">http://hawaii.gov</a>)</b>		

## 1.3 Authority

This RFP is issued under the provisions of the Hawaii Revised Statutes (HRS) Chapter 103F and its administrative rules. All prospective applicants are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed proposal by any prospective applicant shall constitute admission of such knowledge on the part of such prospective applicant.



## 1.4 RFP Organization

This RFP is organized into five sections:

***Section 1, Administrative Overview:*** Provides applicants with an overview of the procurement process.

***Section 2, Service Specifications:*** Provides applicants with a general description of the tasks to be performed, delineates applicant responsibilities, and defines deliverables (as applicable).

***Section 3, Proposal Application Instructions:*** Describes the required format and content for the proposal application.

***Section 4, Proposal Evaluation:*** Describes how proposals will be evaluated by the Judiciary.

***Section 5, Attachments:*** Provides applicants with information and forms necessary to complete the application.

## 1.5 Contracting Office

The Contracting Office is responsible for receiving and for the execution of the contract(s) resulting from this RFP. The Contracting Office is:

The Judiciary, State of Hawai`i  
Financial Services Division  
Contracts and Purchasing Office  
1111 Alakea Street, 6<sup>th</sup> Floor  
Honolulu, HI 96813-2807  
Phone: (808)538-5805 Fax: (808)538-5802  
Email: Tritia.L.Cruz@courts.hawaii.gov

## 1.6 Orientation

An orientation for applicants in reference to the request for proposals will be held as follows:

<b>Date:</b>	<u>September 5, 2018</u>	<b>Time:</b>	<u>1:00 p.m.-3:00 p.m.</u>
<b>Location:</b>	<u>417 S. King St., Room 216, Honolulu, HI 96813</u>		

Applicants are encouraged to submit written questions prior to the orientation. Impromptu questions will be permitted at the orientation and spontaneous answers provided at the Judiciary's discretion. However, answers provided at the orientation are only intended as general direction and may not represent the Judiciary's position. Formal official responses will be provided in writing. To ensure a written response from the Judiciary, any questions should be submitted in writing following the close of the

orientation, but no later than the date indicated in Section 1.1 of the Procurement Timetable.

## **1.7 Submission of Questions**

Applicants may submit questions to the RFP Contact Person identified in the Service Specifications in Section 2 of this RFP. The deadline for submission of written questions and to receive written responses from the Judiciary to those questions are indicated in Section 1.1 – Procurement Timetable.

## **1.8 Submission of Proposals**

**1.8.1 Forms/Formats** - Forms, with the exception of program specific requirements, may be found on the State Procurement Office website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov), click on “Forms.” To narrow the search, choose “Vendor” in the “Audience” box and choose “Health and Human Services” in the “Category” box. Please refer to the Proposal Application Checklist (Section 5, Attachment A) for the location of information on: a) where to obtain the forms/instructions; b) additional program specific requirements; and c) the order in which all components of the application shall be assembled and submitted to the Judiciary. Proposals must contain the following components

**1.8.1.1 Proposal Application Identification (Form SPOH-200).** Provides applicant proposal identification. Although a hard copy of the Judiciary Proposal Application Identification Form is included in Attachment B of this RFP, applicants may use the form available (and writeable) on the SPO website.

**1.8.1.2 Proposal Application Checklist.** The checklist provides applicants with information on where to obtain the required forms, information on program specific requirements, which forms are required, and the order in which all proposal components should be assembled and submitted to the Judiciary.

**1.8.1.3 Table of Contents.** A sample table of contents for proposals is located in Section 5, Attachment B. This is a sample and meant as a guide. The table of contents may vary depending on the RFP.

**1.8.1.4 Proposal Application (Form SPOH-200A).** A sample application showing the format of the application headings is located in Section 5, Attachment B. Applicant shall submit comprehensive narratives that address all of the issues contained in the Proposal Application Instructions, including a cost proposal/budget, if required. (Refer to Section 3 of this RFP.)

**1.8.2 Program Specific Requirements.** Additional program specific requirements are included in Section 2, Service Specifications, and Section 3, Proposal

Application, as applicable. If Federal and/or State certifications are required, they are listed on the Proposal Application Checklist in Section 5.

**1.8.3 Multiple or Alternate Proposals.** Multiple or alternate proposals shall not be accepted unless specifically provided for in Section 2 of this RFP. In the event alternate proposals are **not** accepted and an applicant submits alternate proposals, but clearly indicates a primary proposal, the primary proposal shall be considered for award as though it were the only proposal submitted by the applicant.

**1.8.4 Provider Compliance.** All providers shall comply with all laws governing entities doing business in the State.

**1.8.4.1 Tax Clearance.** Pursuant to Hawaii Revised Statutes (HRS) §103-53, as a prerequisite to entering into contracts of \$25,000 or more, providers are required to have a tax clearance from the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). Refer to Section 1.2, Website Reference for DOTAX and IRS website address.

**1.8.4.2 Labor Law Compliance.** Pursuant to HRS §103-55, providers shall be in compliance with all applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety. Refer to Section 1.2, Website Reference for the Department of Labor and Industrial Relations (DLIR) website address.

**1.8.4.3 Business Registration.** Prior to contracting, owners of all forms of business doing business in the state except sole proprietorships, charitable organizations, unincorporated associations and foreign insurance companies shall be registered and in good standing with the Department of Commerce and Consumer Affairs (DCCA), Business Registration Division. Foreign insurance companies must register with DCCA, Insurance Division. More information is on the DCCA website. Refer to Section 1.2, Website Reference for DCCA website address.

Providers may register with Hawaii Compliance Express (HCE) for online compliance verification from the DOTAX, IRS, DLIR, and DCCA. There is a nominal annual registration fee for the service. The HCE's online "Certificate of Vendor Compliance" provides the registered provider's current compliance status as of the issuance date, and is accepted for both contracting and final payment purposes. Refer to Section 1.2, Website Reference, for HCE's website address.

Providers not utilizing the HCE to demonstrate compliance shall provide paper certificates to the purchasing agency. All applications for applicable clearances are the responsibility of the providers. All certificates must be valid on the date it is received by the purchasing agency. The tax clearance certificate shall have an original green certified copy stamp and shall be valid for six months from the most recent approval stamp date on the certificate. The DLIR certificate is

valid for six months from the date of issue. The DCCA certificate of good standing is valid for six months from date of issue.

**1.8.4.4 Wages Law Compliance.** If applicable, by submitting a proposal, the applicant certifies that the applicant is in compliance with HRS §103-55, Wages, hours, and working conditions of employees of contractors performing services. Refer to Section 1.2, Website Reference for statutes and DLIR website address.

**1.8.5 Campaign Contributions by State and County Contractors.** HRS §11-355 prohibits campaign contributions from certain State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. Refer to Section 1.2, Website Reference for statutes and Campaign Spending Commission website address.

**1.8.6 Confidential Information.** If an applicant believes any portion of a proposal contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections of the proposal.

*Note that price is not considered confidential and will not be withheld.*

**1.8.7 Proposal Submittal.** Applicants are required to submit an original and three (3) copies of a proposal. All mail-ins shall be postmarked by the United States Postal System (USPS) and received by the Judiciary Contracts & Purchasing Office by no later than the submittal deadline indicated in Section 1.1 – Procurement Timetable. All hand deliveries shall be received by the Judiciary Contracts & Purchasing Office by the date and time designated in Section 1.1 – Procurement Timetable. Proposals shall be rejected when:

1. Postmarked after the designated date; or
2. Postmarked by the designated date but not received within 10 days from the submittal deadline; or
3. If hand delivered, received after the designated date and time.

Deliveries by private mail services such as FEDEX shall be considered hand deliveries and shall be rejected if received after the submittal deadline. Dated USPS shipping labels are not considered postmarks.

Proposals on CD – As an option to submitting hard copies of your entire proposal, proposals may be submitted on CD (4 copies of CD) in Adobe's pdf format, along with hard copies of the Proposal Application Identification Form. (See Section 5, Attachment B, Form SPOH-200.)

## **1.9 Discussions with Applicants**

**1.9.1 Prior to Submittal Deadline.** Discussions may be conducted with potential applicants to promote understanding of the Judiciary's requirements.

**1.9.2 After Proposal Submittal Deadline.** Discussions may be conducted with applicants whose proposals are determined to be reasonably susceptible of being selected for award, but proposals may be accepted without discussions, in accordance with Hawaii Administrative Rules (HAR) §3-143-403.

## **1.10 Opening of Proposals**

Upon the Judiciary's receipt of a proposal at a designated location, proposals, modifications to proposals, and withdrawals of proposals shall be date-stamped, and when possible, time-stamped. All documents so received shall be held in a secure place by the Judiciary and not examined for evaluation purposes until the submittal deadline.

Procurement files shall be open to public inspection after a contract has been awarded and executed by all parties.

## **1.11 Additional Materials and Documentation**

Upon request from the Judiciary, each applicant shall submit additional materials and documentation reasonably required by the Judiciary in its evaluation of the proposals.

## **1.12 RFP Amendments**

The Judiciary reserves the right to amend this RFP at any time prior to the closing date for final revised proposals.

## **1.13 Final Revised Proposals**

If applicable to this RFP, applicant's final revised proposal must be postmarked or hand delivered by the proposal submission deadline indicated in Section 1.1 – Proposal Timetable. Any final revised proposal that is postmarked or received after the designated date and time shall be rejected. If a final revised proposal is not submitted, the previous submittal shall be construed as the applicant's best and final offer/proposal. Only the section(s) of the proposal that are amended shall be submitted by the applicant, along with the Proposal Application Identification form (SPOH-200). After final revised proposals are received, final evaluations will be conducted for an award.

## **1.14 Cancellation of Request for Proposal**

The RFP may be canceled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of the Judiciary.

## **1.15 Costs for Proposal Preparation**

Any costs incurred by applicants in preparing or submitting a proposal are the applicants' sole responsibility.

## **1.16 Provider Participation in Planning**

Provider participation in the Judiciary's efforts to plan for or to purchase health and human services prior to the release of a request for proposals, including the sharing of information on community needs, best practices, and providers' resources, shall not disqualify providers from submitting proposals, if conducted in accordance with HAR §§ 3-142-202 and 3-142-203.

## **1.17 Rejection of Proposals**

The Judiciary reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the problems involved and comply with the service specifications. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be rejected without further notice.

A proposal may be automatically rejected for any one or more of the following reasons:

- (1) Rejection for failure to cooperate or deal in good faith. (HAR §3-141-201)
- (2) Rejection for inadequate accounting system. (HAR §3-141-202)
- (3) Late proposals (HAR §3-143-603)
- (4) Inadequate response to request for proposals (HAR §3-143-609)
- (5) Proposal not responsive (HAR §3-143-610(a)(1))
- (6) Applicant not responsible (HAR §3-143-610(a)(2))

## **1.18 Notice of Award**

A statement of findings and decision shall be provided to all applicants by mail upon completion of the evaluation of competitive purchase of service proposals.

Any agreement arising out of this solicitation is subject to the approval of the Judiciary Staff Attorney as to form.

No work is to be undertaken by the awardee prior to the contract commencement date. The Judiciary is not liable for any costs incurred prior to the official starting date.

## **1.19 Proposals and Awards**

HRS §103F-401.5 states:

**Proposals and awards.** (a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for

proposals, with the exception of proposals from applicants to operate a child care program required to be licensed pursuant to HRS section 346-161.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder.

If a Provider is required to be licensed, accredited, or certified to perform the services being solicited under this RFP, the proposal shall include written verification or proof from the appropriate licensing, accrediting, or certifying body, of an active license, accreditation, or certification. Proposals submitted by an applicant without the requisite licensure, accreditation, or certification will be rejected and shall not be evaluated. A Provider who enters into a contract with the Judiciary shall maintain the necessary license, accreditation, or certification for the duration of the contract period. Provider's failure to maintain the necessary license/accreditation/certification may result in termination.

## **1.20 Protests**

Pursuant to HRS §103F-501 and HAR Chapter 148 of Title 3, an applicant aggrieved by an award of a contract may file a protest. The Notice of Protest form, SPOH-801, and related forms are available on the SPO website. Refer to Section 1.2, Website Reference for website address. Only the following matters may be protested:

- (1) The Judiciary's failure to follow procedures established by Chapter 103F of the Hawaii Revised Statutes;
- (2) The Judiciary's failure to follow any rule established by Chapter 103F of the Hawaii Revised Statutes; and
- (3) The Judiciary's failure to follow any procedure, requirement, or evaluation criterion contained in the RFP.

The Notice of Protest shall be postmarked by USPS or hand delivered to the head of the state purchasing agency conducting the protested procurement, as indicated below, within five working days of the postmark of the Notice of Findings and Decision sent to the protestor. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the Judiciary.

Susan Pang Gochros  
Chief Staff Attorney/Intergovernmental & Community Relations Department Head  
Ali 'iolani Hale  
417 S. King St., Room 209  
Honolulu, HI 96813-2943

## **1.21 Availability of Funds**

The award of a contract and any allowed renewal or extension thereof, is subject to allotments made by the Administrative Director of the Courts, and subject to the availability of State and/or Federal funds.

## **1.22 Monitoring and Evaluation**

The criteria by which the performance of the contract will be monitored and evaluated are:

- (1) Performance/Outcome measures
- (2) Output measures
- (3) Quality of services
- (4) Financial management
- (5) Administrative requirements

## **1.23 General and Special Conditions of Contract**

The general conditions that will be imposed contractually are on the SPO website. Special conditions may also be imposed contractually by the state purchasing agency, as deemed necessary

## **1.24 Cost Principles**

To promote uniform purchasing practices among state purchasing agencies procuring health and human services under HRS Chapter 103F, state purchasing agencies will utilize standard cost principles as outlined on the SPO website. Refer to Section 1.2 Website Reference for website address. Nothing in this section shall be construed to create an exemption from any cost principle arising under federal law.

END OF SECTION



# **Section 2**

## **Service Specifications**

## **Section 2**

### **Service Specifications**

#### **2.1 Introduction**

##### **2.1.1 Description of the service goals**

The goal of the requested service is to provide general civil legal services without charge to indigent residents of the State of Hawai‘i. Applicants must be able to provide general legal services in a variety of areas of the law, such as housing, government benefits, family law, and other legal issues encountered by indigent residents.

##### **2.1.2 Description of the target population to be served**

The target population consists of indigent residents throughout the State of Hawai‘i. “Indigent” means that clients’ income levels do not exceed 250 per cent of the applicable federal poverty level for Hawai‘i.

##### **2.1.3 Geographic coverage of service**

Service areas include the following:

First Circuit	O‘ahu
Second Circuit	Maui, Lana‘i, and Moloka‘i
Third Circuit	Island of Hawai‘i
Fifth Circuit	Kaua‘i

The applicant shall demonstrate actual capacity to provide the required services in the area(s) in which it is applying.

Applicants may propose to service clients in one or more geographic areas. Applicants are not required to submit separate proposals for each circuit/island. If an applicant proposes to service clients from one or more circuits/islands, the proposal shall indicate the specific services and capacities it is proposing for each circuit/island.

#### **2.1.4 Probable funding amounts, source, and period of availability**

State general funds in the total amount of \$450,000.00 are available during fiscal year 2019. Applicants shall propose funding amounts based on their best estimates for the cost of providing the services as described in their proposal. Applicants may submit proposals to receive funding for the entire \$450,000.00 or for amounts less than \$450,000.00. Applicants may also submit scalable proposals, e.g., for \$100,000.00, applicant can provide X services; for \$200,000.00, applicant can provide XY services; for \$450,000.00 applicant can provide XYZ services. The contract(s) awarded pursuant to this RFP shall be effective upon execution and shall remain in effect until June 30, 2019. Funds are only available for fiscal year 2019 (July 1, 2018 – June 30, 2019). Contingent upon appropriation by the legislature, however, the contract may be extended for an additional twelve (12) months.

## **2.2 General Requirements**

#### **2.2.1 Specific qualifications or requirements, including but not limited to licensure or accreditation**

- (1) The proposed services must meet all required licensing or certification standards, provide assurances for fair hearing and grievance procedures for clientele, civil rights compliance, information and safeguarding practices, and provide proof of insurance coverage.
- (2) Four (4) sets (original plus 3 copies) of the completed proposal must be submitted to the Financial Services Division.
- (3) The applicant shall submit in a timely manner any additional information requested by the Judiciary to make a decision on applicant's proposal. The Judiciary may request an oral discussion or presentation in support of the proposal.
- (4) The applicant shall comply with Chapter 103F, Hawaii Revised Statutes, Cost Principles for Purchase of Health and Human Services which can be found on the State Procurement Office website by typing "Cost Principles" in the search box. (See Section 5, Proposal Application Checklist, for the website address.)
- (5) The applicant shall have an accounting system in compliance with generally accepted accounting practices.

#### **2.2.2 Secondary purchaser participation**

(Refer to HAR §3-143-608)

After-the-fact secondary purchases will not be allowed.

#### **2.2.3 Multiple or alternate proposals**

(Refer to HAR §3-143-605)

☒ Allowed ☐ Not allowed

Applicants may submit scalable proposals as described in Section 2.1.4. Applicants who submit scalable proposals shall combine all proposals into one proposal (combined proposal). A combined proposal shall clearly state that multiple scalable proposals are being submitted and shall clearly delineate each separate proposal.

**2.2.4 Single or multiple contracts to be awarded**

(Refer to HAR §3-143-206)

☐ Single ☐ Multiple ☒ Single & Multiple

Criteria for multiple awards: Awards will be based on the applicant's ability to provide necessary services in one or more of the geographic area(s) set forth in Section 2.1.3 above.

**2.2.5 Single or multi-term contracts to be awarded**

(Refer to HAR §3-143-302)

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

Contract terms:

The contract term will cover the period during Fiscal Year 2019 from execution of the contract until June 30, 2019. Funds are only available for this initial term of the contract. The contract may be extended for an additional twelve (12) months, subject to the appropriation and availability of funds and satisfactory performance of services by providers. Execution of a contract amendment is required to extend the contract for another term.

**2.2.6 RFP Contact Persons**

The individuals listed below are the points of contact from the date of release of this RFP until the award of the contracts to providers. Written questions should be submitted to the RFP contact persons listed below and must be received on or before the date and time specified in Section 1.1 (Procurement Timetable) of this RFP.

For technical questions related to the Request for Proposals process, please contact the following individual:

Judiciary Contracts and Purchasing Office  
Tritia Cruz  
Phone: (808)538-5805; Fax: (808)538-5802  
Email: [Tritia.L.Cruz@courts.hawaii.gov](mailto:Tritia.L.Cruz@courts.hawaii.gov)

For programmatic questions regarding the requested services, please contact the following individual:

Administrative Staff Attorney's Office  
Lynn Inafuku  
Phone: (808)539-4990; (808)539-4794  
Email: [Lynn.M.Inafuku@courts.hawaii.gov](mailto:Lynn.M.Inafuku@courts.hawaii.gov)

## **2.3 Scope of Work**

The scope of work encompasses the following tasks and responsibilities:

### **2.3.1 Service Activities**

Service activities shall consist of direct legal services provided by attorneys or attorney-supervised staff to indigent residents of the State of Hawai'i in various civil matters, including but not limited to housing, applying for and/or maintaining government benefits, family/domestic issues, and consumer issues. Applicants must be able to provide legal services in multiple subject areas of the law, rather than specializing in specific areas. Services may include pro bono, judicial, and administrative advocacy and providing legal advice and information. "Indigent" means that clients' income levels do not exceed 250 per cent of the applicable federal poverty level for Hawai'i.

### **2.3.2 Management Requirements (Minimum and/or mandatory requirements)**

#### **2.3.2.1 Personnel**

- (1) All legal services shall be provided by attorneys licensed in the State of Hawai'i, or by staff who are supervised by an attorney licensed in the State of Hawai'i. Organizations that utilize volunteer attorneys to provide legal services shall ensure that the attorneys are accepted as volunteers through established procedures and that there is appropriate monitoring of the volunteer attorneys. Applicants' personnel must have the requisite training, knowledge, and experience to effectively resolve the problems of their clientele.
- (2) The applicant shall conduct a criminal history record check based on a search of [www.ecrim.hawaii.gov](http://www.ecrim.hawaii.gov) (Adult Criminal Conviction

Information System, Hawai'i Criminal Justice Data Center) for any officer, employee, volunteer or subcontractor who provides the services described in applicant's proposal. In addition, the applicant will conduct a search of the State and National Sex Offender Registries, <http://sexoffenders.ehawaii.gov> (State Sex Offender Registry), and [www.nsopr.gov](http://www.nsopr.gov) (National Sex Offender Public Registry), for any officer, employee, volunteer or subcontractor who provides the services described in applicant's proposal. The record check shall be conducted at the outset of the contract period if such checks have never been conducted. A prior record check that was conducted within four (4) years of the effective date of the contract shall be valid. Results of all criminal history and sex offender registry record checks shall be maintained by the applicant and shall be available for the Judiciary to review. The applicant shall have a written plan for addressing any findings that result from a criminal history and/or sex offender registry record check of an officer, employee volunteer or subcontractor who provides described in applicant's proposal.

#### **2.3.2.2 Administrative**

Applicants must meet the following administrative requirements:

- (1) Must be duly organized in accordance with applicable laws.
- (2) Must be an organization with current and valid IRS 501(c)(3) status.
- (3) Have bylaws or policies that describe the manner in which business is conducted, and policies that relate to nepotism and management of conflict of interest situations.
- (4) Have procedures and guidelines that effectively screen for income eligibility and legal services requested.
- (5) Have sound financial management systems, a client grievance procedure, and a method of monitoring the quality of legal services provided.

#### **2.3.2.3 Quality assurance and evaluation specifications**

Applicants shall have a quality assurance plan which identifies the mission of the organization, what services will be provided, how they are delivered, and what standards are used to assess or evaluate the quality and utilization of services. Applicants shall agree that the Judiciary may conduct a program evaluation and/or audit to assess the legal services provided to indigent clients.

#### **2.3.2.4 Output and performance/outcome measurements**

Output measures: Applicants shall maintain a record of all clients served and services provided.

Outcome measures: Applicants shall utilize measurement tools by which effectiveness of the services may be determined.

#### **2.3.2.5 Experience**

Applicants must have demonstrated competence or qualifications to perform the required services. Applicants must have a minimum of one (1) year experience in providing civil legal services to indigent persons.

#### **2.3.2.6 Reporting requirements for program and fiscal data**

Applicants shall submit written periodic reports and a year-end report, summarizing output and outcome data, performance accomplishments, challenges and actual expenditures of funds. Periodic reports shall be due on January 31, 2019, and April 30, 2019. A year-end report shall be due on July 31, 2019.

Reports shall consist of information on the number of clients served, the services that were provided to clients, identification of any immediate problems, and plans for resolving the problems. If requested by the Judiciary, applicants shall be required to meet with Judiciary representatives to discuss matters relating to the contract.

### **2.4 Compensation and Method of Payment**

The initial payment will be made during the last quarter of 2018 following execution of the contract, the second payment will be made in early 2019, and final payment will be made upon completion of the contract. Payment shall be made upon submission of an invoice to the Contract Administrator, certifying that services were performed in accordance with the terms of the contract, and upon submission of reports.

### **2.5 Contract Monitoring and Evaluation**

The criteria by which the performance of the contract will be monitored and evaluated are:

- (1) Performance/Outcome Measures
- (2) Output Measures
- (3) Quality of Services
- (4) Financial Management
- (5) Administrative Requirements

END OF SECTION

## **Section 3**

# **Proposal Application Instructions**



## Section 3

# Proposal Application Instructions

### General instructions for completing applications:

- *Proposal Applications shall be submitted to the state purchasing agency using the prescribed format outlined in this section.*
- *The numerical outline for the application, the titles/subtitles, and the applicant organization and RFP identification information on the top right hand corner of each page should be retained. The instructions for each section however may be omitted.*
- *Page numbering of the Proposal Application should be consecutive, beginning with page one and continuing through for each section. See sample table of contents in Section 5.*
- *Proposals may be submitted in a three ring binder (Optional).*
- *Tabbing of sections (Recommended).*
- *Applicants must also include a Table of Contents with the Proposal Application. A sample format is reflected in Section 5, Attachment B of this RFP.*
- *A written response is required for **each** item unless indicated otherwise. Failure to answer any of the items will impact upon an applicant's score.*
- *Applicants are **strongly** encouraged to review evaluation criteria in Section 4, Proposal Evaluation when completing the proposal.*
- *This form (SPOH-200A) is available on the SPO website (Refer to Section 1.2 Website Reference). However, the form will not include items specific to each RFP. If using the website form, the applicant must include all items listed in this section.*

### The Proposal Application is comprised of the following sections:

- *Proposal Application Identification Form*
- *Table of Contents*
- *Program Overview*
- *Experience and Capability*
- *Project Organization and Staffing*
- *Service Delivery*
- *Financial*
- *Other*

### **3.1 Program Overview**

Applicant shall give a brief overview of the services being offered.

### **3.2 Experience and Capability**

#### **3.2.1 Necessary Skills**

The applicant shall demonstrate that it has the necessary skills, abilities, and knowledge relating to the delivery of the proposed services.

#### **3.2.2 Experience**

The applicant shall describe projects/services in which it has been involved in the past year that demonstrate its ability to provide the proposed services.

#### **3.2.3 Quality Assurance and Evaluation**

The applicant shall describe its own plans for quality assurance and evaluation for the proposed services, including methodology.

### **3.3 Project Organization and Staffing**

#### **3.3.1 Staffing**

##### **3.3.1.1 Proposed Staffing**

The applicant shall describe the proposed staffing pattern, client/staff ratio and proposed caseload capacity appropriate for the viability of the services. (Refer to the personnel requirements in Section 2, Service Specifications, as applicable.)

##### **3.3.1.2 Staff Qualifications**

The applicant shall provide the minimum qualifications (including experience) for staff assigned to the program. (Refer to the qualifications in Section 2, Service Specifications, as applicable)

### **3.3.2 Project Organization**

#### **3.3.2.1 Supervision and Training**

The applicant shall describe its ability to supervise, train and provide administrative direction to its staff and/or volunteers relative to the delivery of the proposed services.

#### **3.3.2.2 Organization Chart**

The applicant shall reflect the position of each staff and line of responsibility/supervision. (Include position title, name and full time equivalency) Both the “Organization-wide” and “Program” organization charts shall be attached to the Proposal Application.

### **3.4 Service Delivery**

Applicant shall include a detailed discussion regarding its ability to provide civil legal services to indigent persons and its approach to providing such services. This discussion should include but is not limited to, the following:

Description of applicant’s past and current activities in providing civil legal services;

Description of applicant’s current staff;

A statement of the need for the proposed services, and statistical or other information that supports this statement;

If awarded a contract, an explanation of how applicant will use the funds to provide the services pursuant to this RFP, including the specific types of services that will be provided and the geographic area(s) in which services will be provided.

### **3.5 Financial**

#### **3.5.1 Pricing Structure**

Applicant shall submit a cost proposal based on a reasonable estimate of services it can provide for which it has sufficient operating capacity (e.g., space, equipment, and staff). The following forms, which are available on the State Procurement Office website on the “Procurement Forms and Instructions for State Agencies” page, shall be submitted with the Proposal Application:

*Budget – SPOH-205*

*Personnel – Salaries and Wages – SPOH-206A*

*Personnel – Payroll Taxes, Assessments, and Fringe Benefits – SPOH-206B*

*Budget Justification, Travel – Inter-Island-SPOH-206C (If applicable)*

*Budget Justification, Travel – Out of State-SPOH-206D (If applicable)*

*Budget Justification, Contractual Services-Administrative-SPOH-206E (If applicable)*

*Budget Justification, Contractual Services-Subcontracts-SPOH-206F (If applicable)*

*Budget Justification, Program Activities-SPOH-206H (If applicable)*

*Budget Justification, Equipment Purchases-SPOH-206I (If applicable)*

*Budget Justification, Motor Vehicle-SPOH-206J (If applicable)*

To access these forms, go the State Procurement Office website and click on “Forms.” In the box titled “Audience,” select “Vendor,” and in the box titled “Category,” select “Health and Human Services.”

### **3.5.2 Accounting System**

To determine the adequacy of the applicant’s accounting system as required under the administrative rules, the applicant shall provide its most recent financial audit as part of the Proposal Application. The document may be attached to the Proposal Application.

## **3.6 Other**

The applicant shall disclose and explain any pending litigation in which they are a party, including the disclosure of any outstanding judgment.

END OF SECTION 3

## **Section 4**

# **Proposal Evaluation**

## Section 4

# Proposal Evaluation

### 4.1 Introduction

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

### 4.2 Evaluation Process

The Judiciary will assemble an evaluation committee to review and evaluate proposals. The evaluation committee will be comprised of individuals with experience in, knowledge of, and/or program responsibility for program service and financing.

The evaluation will be conducted in three phases as follows:

- Phase 1 - Evaluation of Proposal Requirements
- Phase 2 - Evaluation of Proposal Application
- Phase 3 - Recommendation for Award

#### Evaluation Categories and Thresholds

<u>Evaluation Categories</u>	<u>Possible Points</u>
<i>Administrative Requirements</i>	
<i>Proposal Application</i>	<b>100 Points</b>
Program Overview	0 points
Experience and Capability	20 points
Project Organization and Staffing	15 points
Service Delivery	55 points
Financial	10 Points
<b>TOTAL POSSIBLE POINTS</b>	<b>100 Points</b>

## **4.3 Evaluation Criteria**

### **4.3.1 Phase 1 - Evaluation of Proposal Requirements**

#### **4.3.1.1 Administrative Requirements**

- ☐ Application Checklist

#### **4.3.1.2 Proposal Application Requirements**

- ☐ Proposal Application Identification Form (Form SPOH-200)
- ☐ Table of Contents
- ☐ Program Overview
- ☐ Experience and Capability
- ☐ Project Organization and Staffing
- ☐ Service Delivery
- ☐ Financial (All required forms and documents)
- ☐ Program Specific Requirements (as applicable)

### **4.3.2 Phase 2 - Evaluation of Proposal Application (100 Points)**

**4.3.2.1 Program Overview:** No points are assigned to Program Overview. The intent is to give the applicant an opportunity to orient evaluators as to the services being offered.

#### **4.3.2.2 Experience and Capability (20 Points)**

The evaluation committee will evaluate the applicant's experience and capability relevant to the proposal contract, which shall include:

- ☐ Demonstrated skills, abilities, knowledge of, and experience relating to the delivery of the proposed services.
  - ☐ Sufficiency of quality assurance and evaluation plans for the proposed services
-

#### **4.3.2.3 Project Organization and Staffing (15 Points)**

The evaluation committee will evaluate the applicant's overall staffing approach to the service that shall include:

- ☐ The proposed staffing pattern, client/staff ratio, proposed service and/or caseload capacity is reasonable to ensure that quality services are provided.
- ☐ Minimum qualifications (including experience) for staff assigned to the program.
- ☐ Demonstrated ability to supervise, train and provide administrative direction to staff relative to the delivery of the proposed services.
- ☐ Organization Chart (Approach and rationale for the structure, functions, and staffing of the proposed organization for the overall service activity and tasks.)

#### **4.3.2.4 Service Delivery (55 Points)**

The evaluation committee will assess the applicant's overall plan to provide civil legal services to indigent persons. Assessment will be made of applicant's explanation of the legal issues confronting the target population in the geographic area(s) to be served, and how applicant's proposal addresses the needs of that population. Assessment will also be made of the scope and seriousness of the issues, and the extent to which the applicant can provide services in multiple geographic areas.

#### **4.3.2.5 Financial (10 Points)**

The evaluation committee will assess the applicant's proposal budget and whether it is reasonable, given program resources and operational capacity. Assessment will include review of the salaries and fringe benefits of applicant's staff and other administrative expenses. The assessment will also include a review of the applicant's financial audit to determine the adequacy and integrity of applicant's financial and accounting practices.

### **4.3.3 Phase 3 - Recommendation for Award**

Each notice of award shall contain a statement of findings and decision for the award or non-award of the contract to each applicant.

END OF SECTION



# **Section 5**

## **Attachments**

- A. Proposal Application Checklist
- B. Sample Table of Contents
- C. General Conditions and Special Conditions
- D. Hawaii Judiciary Policy Discrimination/Harrassment-Free Workplace

## Proposal Application Checklist

Applicant: \_\_\_\_\_ RFP No.: \_\_\_\_\_

The applicant's proposal must contain the following components in the order shown below. Return this checklist to the purchasing agency as part of the Proposal Application. SPOH forms are on the SPO website.

Item	Reference in RFP	Format/Instructions Provided	Required by Purchasing Agency	Applicant to place "X" for items included in Proposal
<b>General:</b>				
Proposal Application Identification Form (SPOH-200)	Section 1, RFP	SPO Website*	<b>X</b>	
Proposal Application Checklist	Section 1, RFP	Attachment A	<b>X</b>	
Table of Contents	Section 5, RFP	Section 5, RFP	<b>X</b>	
Proposal Application (SPOH-200A)	Section 3, RFP	SPO Website*	<b>X</b>	
Provider Compliance	Section 1, RFP	SPO Website*		
Cost Proposal (Budget)				
SPO-H-205	Section 3, RFP	SPO Website*	<b>X</b>	
SPO-H-205A	Section 3, RFP	SPO Website* Special Instructions are in Section 5		
SPO-H-205B	Section 3, RFP,	SPO Website* Special Instructions are in Section 5		
SPO-H-206A	Section 3, RFP	SPO Website*	<b>X</b>	
SPO-H-206B	Section 3, RFP	SPO Website*	<b>X</b>	
SPO-H-206C	Section 3, RFP	SPO Website*		
SPO-H-206D	Section 3, RFP	SPO Website*		
SPO-H-206E	Section 3, RFP	SPO Website*		
SPO-H-206F	Section 3, RFP	SPO Website*		
SPO-H-206G	Section 3, RFP	SPO Website*		
SPO-H-206H	Section 3, RFP	SPO Website*		
SPO-H-206I	Section 3, RFP	SPO Website*		
SPO-H-206J	Section 3, RFP	SPO Website*		
<b>Certifications:</b>				
<b><i>Federal Certifications</i></b>		SPO Website*		
Debarment & Suspension		SPO Website*		
Drug Free Workplace		SPO Website*		
Lobbying		SPO Website*		
Program Fraud Civil Remedies Act		SPO Website*		
Environmental Tobacco Smoke		SPO Website*		
<b>Program Specific Requirements:</b>				

\*Refer to Section 1.2, Website Reference for website address.

## Proposal Application Table of Contents

<b>1.0</b>	<b>Program Overview .....</b>	<b>1</b>
<b>2.0</b>	<b>Experience and Capability .....</b>	<b>1</b>
	A. Necessary Skills .....	2
	B. Experience.....	4
	C. Quality Assurance and Evaluation.....	5
	D. Coordination of Services.....	6
	E. Facilities .....	6
<b>3.0</b>	<b>Project Organization and Staffing .....</b>	<b>7</b>
	A. Staffing.....	7
	1. Proposed Staffing .....	7
	2. Staff Qualifications .....	9
	B. Project Organization .....	10
	1. Supervision and Training .....	10
	2. Organization Chart (Program & Organization-wide) (See Attachments for Organization Charts)	
<b>4.0</b>	<b>Service Delivery .....</b>	<b>12</b>
<b>5.0</b>	<b>Financial.....</b>	<b>20</b>
	See Attachments for Cost Proposal	
<b>6.0</b>	<b>Litigation.....</b>	<b>20</b>
<b>7.0</b>	<b>Attachments</b>	
	A. Cost Proposal	
	SPO-H-205 Proposal Budget	
	SPO-H-206A Budget Justification - Personnel: Salaries & Wages	
	SPO-H-206B Budget Justification - Personnel: Payroll Taxes and Assessments, and Fringe Benefits	
	SPO-H-206C Budget Justification - Travel: Interisland	
	SPO-H-206E Budget Justification - Contractual Services – Administrative	
	B. Other Financial Related Materials	
	Financial Audit for fiscal year ended June 30, 1996	
	C. Organization Chart	
	Program	
	Organization-wide	
	D. Performance and Output Measurement Tables	
	Table A	
	Table B	
	Table C	
	E. Program Specific Requirement	

## GENERAL CONDITIONS FOR HEALTH & HUMAN SERVICES CONTRACTS

### 1. Representations and Conditions Precedent

#### 1.1 Contract Subject to the Availability of State and Federal Funds.

1.1.1 State Funds. This Contract is, at all times, subject to the appropriation and allotment of state funds, and may be terminated without liability to either the PROVIDER or the STATE in the event that state funds are not appropriated or available.

1.1.2 Federal Funds. To the extent that this Contract is funded partly or wholly by federal funds, this Contract is subject to the availability of such federal funds. The portion of this Contract that is to be funded federally shall be deemed severable, and such federally funded portion may be terminated without liability to either the PROVIDER or the STATE in the event that federal funds are not available. In any case, this Contract shall not be construed to obligate the STATE to expend state funds to cover any shortfall created by the unavailability of anticipated federal funds.

#### 1.2 Representations of the PROVIDER. As a necessary condition to the formation of this Contract, the PROVIDER makes the representations contained in this paragraph, and the STATE relies upon such representations as a material inducement to entering into this Contract.

1.2.1 Compliance with Laws. As of the date of this Contract, the PROVIDER complies 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 PROVIDER's performance of this Contract.

1.2.2 Licensing and Accreditation. As of the date of this Contract, the PROVIDER holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, rules, and regulations to provide the Required Services under this Contract.

#### 1.3 Compliance with Laws. The PROVIDER 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 PROVIDER's performance of this Contract, including but not limited to the laws specifically enumerated in this paragraph:

1.3.1 Smoking Policy. The PROVIDER shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes (HRS), or its successor provision.

1.3.2 Drug Free Workplace. The PROVIDER shall implement and maintain a drug free workplace as required by the Drug Free Workplace Act of 1988.

- 1.3.3 Persons with Disabilities. The PROVIDER shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101, et seq.), and the Rehabilitation Act (29 U.S.C. §701, et seq.).
- 1.3.4 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 1.4 Insurance Requirements. The PROVIDER shall obtain from a company authorized by law to issue such insurance in the State of Hawai'i commercial general liability insurance ("liability insurance") in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) coverage for bodily injury and property damage resulting from the PROVIDER's performance under this Contract. The PROVIDER shall maintain in effect this liability insurance until the STATE certifies that the PROVIDER's work under the Contract has been completed satisfactorily.
- The liability insurance shall be primary and shall cover the insured for all work to be performed under the Contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith.
- A certificate of the liability insurance shall be given to the STATE by the PROVIDER. The certificate shall provide that the STATE and its officers and employees are Additional Insureds. The certificate shall provide that the coverages being certified will not be cancelled or materially changed without giving the STATE at least 30 days prior written notice by registered mail.
- Should the "liability insurance" coverages be cancelled before the PROVIDER's work under the Contract is certified by the STATE to have been completed satisfactorily, the PROVIDER shall immediately procure replacement insurance that complies in all respects with the requirements of this section.
- Nothing in the insurance requirements of this Contract shall be construed as limiting the extent of PROVIDER's responsibility for payment of damages resulting from its operations under this Contract, including the PROVIDER's separate and independent duty to defend, indemnify, and hold the STATE and its officers and employees harmless pursuant to other provisions of this Contract.
- 1.5 Notice to Clients. Provided that the term of this Contract is at least one year in duration, within 180 days after the effective date of this Contract, the PROVIDER shall create written procedures for the orderly termination of services to any clients receiving the Required Services under this Contract, and for the transition to services supplied by another provider upon termination of this Contract, regardless of the circumstances of such termination. These procedures shall include, at

the minimum, timely notice to such clients of the termination of this Contract, and appropriate counseling.

- 1.6 Reporting Requirements. The PROVIDER shall submit a Final Project Report to the STATE containing the information specified in this Contract if applicable, or otherwise satisfactory to the STATE, documenting the PROVIDER's overall efforts toward meeting the requirements of this Contract, and listing expenditures actually incurred in the performance of this Contract. The PROVIDER shall return any unexpended funds to the STATE.
- 1.7 Conflicts of Interest. In addition to the Certification provided in the Standards of Conduct Declaration to this Contract, the PROVIDER represents that neither the PROVIDER nor any employee or agent of the PROVIDER, 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 PROVIDER's performance under this Contract.

## 2. Documents and Files

- 2.1 Confidentiality of Material.
  - 2.1.1 Proprietary or Confidential Information. All material given to or made available to the PROVIDER by virtue of this Contract that is identified as proprietary or confidential information shall be safeguarded by the PROVIDER and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - 2.1.2 Uniform Information Practices Act. All information, data, or other material provided by the PROVIDER to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, and any other applicable law concerning information practices or confidentiality.
- 2.2 Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished that is developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the PROVIDER pursuant to this Contract.
- 2.3 Records Retention. The PROVIDER and any subcontractors shall maintain the books and records that relate to the Contract, and any cost or pricing data for three (3) years from the date of final payment under the Contract. In the event that any litigation, claim, investigation, audit, or other action involving the records retained under this provision arises, then such records shall be retained for three (3) years from the date of final payment, or the date of the resolution of the action, whichever occurs later. During the period that records are retained under this section, the

PROVIDER and any subcontractors shall allow the STATE free and unrestricted access to such records.

### **3. Relationship between Parties**

- 3.1 Coordination of Services by the STATE. The STATE shall coordinate the services to be provided by the PROVIDER in order to complete the performance required in the Contract. The PROVIDER shall maintain communications with the STATE at all stages of the PROVIDER's work, and submit to the STATE for resolution any questions which may arise as to the performance of this Contract.
- 3.2 Subcontracts and Assignments. The PROVIDER may assign or subcontract any of the PROVIDER's duties, obligations, or interests under this Contract, but only if (i) the PROVIDER obtains the prior written consent of the STATE and (ii) the PROVIDER's assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER's assignee or subcontractor have been paid. Additionally, no assignment by the PROVIDER of the PROVIDER's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawai'i, as provided in section 40-58, HRS.
- 3.3 Change of Name. When the PROVIDER asks to change the name in which it holds this Contract, the STATE, shall, upon receipt of a document acceptable or satisfactory to the STATE indicating such change of name such as an amendment to the PROVIDER's articles of incorporation, enter into an amendment to this Contract with the PROVIDER to effect the change of name. Such amendment to this Contract changing the PROVIDER's name shall specifically indicate that no other terms and conditions of this Contract are thereby changed, unless the change of name amendment is incorporated with a modification or amendment to the Contract under paragraph 4.1 of these General Conditions.
- 3.4 Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - 3.4.1 Independent Contractor. In the performance of services required under this Contract, the PROVIDER is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE's opinion, the services are being performed by the PROVIDER in compliance with this Contract.
  - 3.4.2 Contracts with Other Individuals and Entities. Unless otherwise provided by special condition, the STATE shall be free to contract with other individuals and entities to provide services similar to those performed by the Provider under this Contract, and the

PROVIDER shall be free to contract to provide services to other individuals or entities while under contract with the STATE.

- 3.4.3 PROVIDER's Employees and Agents. The PROVIDER and the PROVIDER's employees and agents are not by reason of this Contract, agents or employees of the State for any purpose. The PROVIDER and the PROVIDER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees. Unless specifically authorized in writing by the STATE, the PROVIDER and the PROVIDER's employees and agents are not authorized to speak on behalf and no statement or admission made by the PROVIDER or the PROVIDER's employees or agents shall be attributed to the STATE, unless specifically adopted by the STATE in writing.
- 3.4.4 PROVIDER's Responsibilities. The PROVIDER shall be responsible for the accuracy, completeness, and adequacy of the PROVIDER's performance under this Contract.

Furthermore, the PROVIDER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the PROVIDER's employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the PROVIDER, or the PROVIDER's employees or agents in the course of their employment.

The PROVIDER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the PROVIDER by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The PROVIDER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

The PROVIDER shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The PROVIDER shall obtain a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state law against the PROVIDER have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The PROVIDER 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 these General Conditions.

The PROVIDER is responsible for securing all employee-related insurance coverage for the PROVIDER and the PROVIDER'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.



**3.5 Personnel Requirements.**

- 3.5.1 Personnel. The PROVIDER shall secure, at the PROVIDER's own expense, all personnel required to perform this Contract, unless otherwise provided in this Contract.
- 3.5.2 Requirements. The PROVIDER shall ensure that the PROVIDER'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. Modification and Termination of Contract**

**4.1 Modification of Contract.**

- 4.1.1 In Writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the PROVIDER and the STATE.
- 4.1.2 No Oral Modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Contract shall be permitted.
- 4.1.3 Tax Clearance. The STATE may, at its discretion, require the PROVIDER to submit to the STATE, prior to the STATE's approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service showing that all delinquent taxes, if any, levied or accrued under state and federal law against the PROVIDER have been paid.

- 4.2 Termination in General. This Contract may be terminated in whole or in part because of a reduction of funds available to pay the PROVIDER, or when, in its sole discretion, the STATE determines (i) that there has been a change in the conditions upon which the need for the Required Services was based, or (ii) that the PROVIDER has failed to provide the Required Services adequately or satisfactorily, or (iii) that other good cause for the whole or partial termination of this Contract exists. Termination under this section shall be made by a written notice sent to the PROVIDER ten (10) working days prior to the termination date that includes a brief statement of the reason for the termination. If the Contract is terminated under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.

- 4.3 Termination for Necessity or Convenience. If the STATE determines, in its sole discretion, that it is necessary or convenient, this Contract may be terminated in whole or in part at the option of the STATE upon ten (10) working days' written notice to the PROVIDER. If the STATE elects to terminate under this paragraph, the PROVIDER shall be entitled to reasonable payment as determined by the STATE for satisfactory services rendered under this Contract up to the time of termination. If the STATE elects to terminate under this section, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.4 Termination by PROVIDER. The PROVIDER may withdraw from this Contract after obtaining the written consent of the STATE. The STATE, upon the PROVIDER's withdrawal, shall determine whether payment is due to the PROVIDER, and the amount that is due. If the STATE consents to a termination under this paragraph, the PROVIDER shall cooperate with the STATE to effect an orderly transition of services to clients.
- 4.5 STATE's Right of Offset. The STATE may offset against any monies or other obligations that STATE owes to the PROVIDER under this Contract, any amounts owed to the State of Hawai'i by the PROVIDER under this Contract, or any other contract, or pursuant to any law or other obligation owed to the State of Hawai'i by the PROVIDER, including but not limited to the payment of any taxes or levies of any kind or nature. The STATE shall notify the PROVIDER in writing of any exercise of its right of offset and the nature and amount of such offset. For purposes of this paragraph, amounts owed to the State of Hawai'i shall not include debts or obligations which have been liquidated by contract with the PROVIDER, and that are covered by an installment payment or other settlement plan approved by the State of Hawai'i, provided, however, that the PROVIDER shall be entitled to such exclusion only to the extent that the PROVIDER is current, and in compliance with, and not delinquent on, any payments, obligations, or duties owed to the State of Hawai'i under such payment or other settlement plan.

## 5. Indemnification

- 5.1 Indemnification and Defense. The PROVIDER shall defend, indemnify, and hold harmless the State of Hawai'i, the contracting agency, and their officers, employees, and agents from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, and demands arising out of or in connection with the acts or omissions of the PROVIDER or the PROVIDER'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.
- 5.2 Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the PROVIDER in connection with this Contract, the PROVIDER shall pay any cost and expense incurred by or imposed on the STATE, including attorneys' fees.

**6. Publicity**

- 6.1 Acknowledgment of State Support. The PROVIDER shall, in all news releases, public statements, announcements, broadcasts, posters, programs, computer postings, and other printed, published, or electronically disseminated materials relating to the PROVIDER's performance under this Contract, acknowledge the support by the State of Hawai'i and the purchasing agency.
- 6.2 PROVIDER's Publicity Not Related to Contract. The PROVIDER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, or to the services or goods, or both provided under this Contract, in any of the PROVIDER's publicity not related to the PROVIDER's performance under this Contract, including but not limited to commercial advertisements, recruiting materials, and solicitations for charitable donations.

**7. Miscellaneous Provisions**

- 7.1 Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the PROVIDER, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
- 7.2 Paragraph Headings. The paragraph headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They shall not be used to define, limit, or extend the scope or intent of the sections to which they pertain.
- 7.3 Antitrust Claims. The STATE and the PROVIDER recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the PROVIDER hereby assigns to the STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
- 7.4 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 Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
- 7.5 Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the Procurement Rules or a Procurement Directive, the Procurement Rules or any Procurement Directive in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 7.6 Entire Contract. This Contract sets forth all of the contracts, conditions, understandings, promises, warranties, and representations between the STATE and the PROVIDER 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 contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the PROVIDER other than as set forth or as referred to herein.

- 7.7 **Severability.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 7.8 **Waiver.** The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the Procurement Rules or one section of the Hawai'i Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE's rights or the PROVIDER's obligations under the Procurement Rules or statutes.
- 7.9 **Execution in Counterparts.** This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one instrument.

## **8. Confidentiality of Personal Information**

### **8.1 Definitions.**

8.1.1 **Personal Information.** "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.

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

## 8.2 Confidentiality of Material.

8.2.1 Safeguarding of Material. All material given to or made available to the PROVIDER by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the PROVIDER and shall not be disclosed without the prior written approval of the STATE.

8.2.2 Retention, Use, or Disclosure. PROVIDER agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

8.2.3 Implementation of Technological Safeguards. PROVIDER agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

8.2.4 Reporting of Security Breaches. PROVIDER shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

8.2.5 Mitigation of Harmful Effect. PROVIDER agrees to mitigate, to the extent practicable, any harmful effect that is known to PROVIDER because of a use or disclosure of personal information by PROVIDER in violation of the requirements of this paragraph.

8.2.6 Log of Disclosures. PROVIDER shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by PROVIDER on behalf of the STATE.

## 8.3 Security Awareness Training and Confidentiality Agreements.

8.3.1 Certification of Completed Training. PROVIDER certifies that all of its employees who will have access to the personal information have completed training on security awareness topics related to protecting personal information.

8.3.2 Certification of Confidentiality Agreements. PROVIDER certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

- 1) The personal information collected, used, or maintained by the PROVIDER will be treated as confidential;
- 2) Access to the personal information will be allowed only as necessary to perform the Contract; and
- 3) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

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

8.5 Records Retention.

8.5.1 Destruction of Personal Information. Upon any termination of this Contract, PROVIDER shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

8.5.2 Maintenance of Files, Books, Records. The PROVIDER and any subcontractors shall maintain the files, books, and records, that relate to the Contract, including any personal information created or received by the PROVIDER on behalf of the STATE, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

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## SPECIAL CONDITIONS

1. The Provider shall conduct a State and Federal fingerprint- based criminal history record check for any person, including, but not limited to any officer, employee, volunteer or subcontractor, who performs work or services which necessitates close proximity to or unsupervised access to vulnerable clients such as children, disabled, and/or the elderly , or other program related vulnerable clients . In addition, the Provider will conduct a search of the State and National Sex Offender Registries, <http://sexoffenders.ehawaii.gov> (State Sex Offender Registry) and the [www.nsopr.gov](http://www.nsopr.gov) (National Sex Offender Public Registry). The minimum record check will be conducted once every four years for each person, and/or at the outset of the contract period if such checks have never been conducted. Further, the Provider will ensure the continued suitability of any officer, employee, volunteer or subcontractor to work or provide services to vulnerable clients. Results of all criminal history and sex offender registry record checks shall be maintained by the applicant and shall be available for the Judiciary to review. The Provider further shall have a written plan for addressing any findings that result from a criminal history record check that may affect the treatment milieu (e.g. actively under the supervision of any criminal justice agency, convicted sex offenders). The Provider shall ensure that any officer, employee, volunteer or subcontractor is suitable to be performing work or services in close proximity to or with unsupervised access to children, disabled, and/or elderly clients will be of reputable and responsible character and will not pose a risk to the health, safety, security, or well-being of clients, staff and the general public.
2. Pursuant to HRS 321C-3, to ensure compliance with Title VI, Providers must take reasonable steps to ensure that Limited English Proficient persons have meaningful access to the Provider's programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.
3. Insurance. In addition to Paragraph 1.4, Insurance, General Conditions, the PROVIDER further agrees to the following:

In order to protect the PROVIDER as well as the State of Hawaii, the STATE, and their officers and employees covered under the indemnification provision in this Contract, the PROVIDER shall obtain and keep in force throughout the period of this Contract the following automobile insurance:

Automobile liability insurance for automobiles owned or leased by the PROVIDER and used to carry out services specified in this Contract shall be obtained from a company authorized to do business in the State, or meet Section 431:8-301, Hawaii Revised Statutes if utilizing an insurance company not licensed by the State of Hawaii, and complying with the Hawaii No Fault Insurance Law. The combined amount shall be at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) with respect to bodily injury and to property damage. The PROVIDER's policy shall name the STATE, the

State of Hawaii, and their officers and employees as additional insured. Prior to or upon execution of this Contract, the PROVIDER shall furnish the STATE with a Certificate of Insurance, verifying the existence of such insurance. Such certificate shall also expressly provide that such insurance shall not be canceled unless the insurance company has first given to the STATE thirty (30) calendar days' written notice of the intended cancellation.

An umbrella policy may be utilized as applicable to the Provider's insurance policy.

If the PROVIDER is authorized by the STATE to subcontract, subcontractor(s) is not excused from the Indemnification and/or Insurance provisions of this Contract. The PROVIDER agrees to require its subcontractor(s) to obtain insurance in order to indemnify the STATE.

Failure of the PROVIDER to provide and keep in force such insurance shall be regarded as material default under this Contract, entitling the STATE to exercise any or all of the remedies provided in this Contract for default of the PROVIDER.

The procuring of such required policy or policies of insurance shall not be construed to limit the PROVIDER's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, the PROVIDER shall be obliged for the full and total amount of any damage, injury, or loss caused by the negligent act or omission of the PROVIDER or its authorized representatives.

## **HAWAI'I JUDICIARY POLICY DISCRIMINATION/HARASSMENT-FREE WORKPLACE**

### **I. Authority and Background**

The Judiciary is committed to promoting and maintaining a productive work environment free of any form of discrimination and harassment. The Judiciary does not tolerate workplace discrimination or harassment. The Judiciary will take appropriate action when discrimination or harassment is based on a person's "protected class." The Judiciary will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action.

### **II. Zero Tolerance Policy**

Judiciary employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. The Judiciary will take appropriate action when discrimination or harassment is based on a person's race, color, sex, including gender identity or expression,<sup>1</sup> sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information,<sup>2</sup> marital status, arrest and court record, income assignment for child support, national guard absence, uniformed service, veteran status, citizenship, credit history or credit report unless directly related to a bona fide occupational qualification, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status (*protected class discrimination*).

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<sup>1</sup> "Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity (including transgender), gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex assigned at birth. "Transgender" refers to a person whose sex assigned at birth is different from their self-identified gender (e.g. a person whose sex assigned at birth is male who identifies as female and/or a person whose sex assigned at birth is female who identifies as male). A transgender person does not have to have undergone medical treatment or surgical procedures to be protected under the Policy. An individual's self-declaration of gender is sufficient to be provided protection under the Policy.

<sup>2</sup> "Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e., an individual's family medical history). Family medical history is included in the definition of "genetic information" because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

#### **A. Scope of Policy**

This policy applies to all employees, justices and judges, volunteers, applicants for employment, and persons or entities providing services to the Judiciary, whether on a contract, per diem, full or part-time basis. This policy covers all interactions with staff, clients, and the public.

All Judiciary employees are responsible for ensuring that work in the courts and court-related programs is conducted in an atmosphere that respects the dignity of every Judiciary employee, and people with whom the Judiciary conducts business.

#### **B. Examples of Prohibited Conduct**

1. It is a violation of this policy to engage in protected class discrimination.
2. Discrimination or harassment prohibited under this policy includes, but is not limited to, oral, written, physical or visual behavior, that offends, demeans, or intimidates, or refusing to provide services and/or denying access to Judiciary facilities and/or programs, based on a person's status in a protected class.
3. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in an adverse change in benefits, or terms and conditions of employment.
4. Other harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:
  - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
  - b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;
  - c. Lewd comments, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
  - d. Displays of demeaning, insulting, or sexually suggestive objects, pictures, or photographs;

- e. Demeaning, insulting, intimidating, or sexually suggestive, written, recorded, or electronically transmitted messages (such as e-mail, voicemail, and Internet materials);
  - f. Offensive comments, slurs, jokes, profanity, anecdotes, offensive and/or inappropriate questions or statements to, about or regarding any protected class;
  - g. Refusal to address a person by their preferred name, provided that such name shall not be used when deemed to be inappropriate for a business setting; and
  - h. Disregarding a person's preferences based on his or her self-identified gender. This may include, but is not limited to, failing to address a person by his or her preferred name and/or pronoun, not allowing a person to use the restroom and/or locker room of his or her self-identified gender or limiting a person to using facilities that are an unreasonable distance or travel time from the worksite or Judiciary program location because the individual is transgender, requiring a transgender person to follow procedures that conflict with the person's self-identified gender, refusing to provide services and/or denying access to Judiciary facilities and/or programs based on the person's self-identified gender and/or being transgender.
5. Retaliation: The Judiciary encourages reporting of incidents of discrimination, harassment or retaliation. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information, is prohibited. A person who experiences retaliatory action after taking the following actions should report the matter to the investigator in charge of the complaint or the Equal Employment Opportunity (EEO) Officer:
- a. Making a complaint of harassment or discrimination;
  - b. Making a disability related request for reasonable accommodation; or
  - c. Participating in a complaint investigation.

### **C. Reporting Procedures**

The Judiciary encourages employees to report discrimination and/or harassment before it becomes severe or pervasive so that steps may be taken to stop the harassment before it rises to the level of unlawful behavior.

Anyone who observes or experiences discrimination or harassment prohibited

under this policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. The incidents should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the EEO Officer who after reviewing the complaint will determine the appropriate follow-up. Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

While this section describes the general procedures for reporting complaints of discrimination, harassment or retaliation in the workplace, more specific procedural information is attached to this policy as Attachment 1 and describes, in detail, how to report a complaint, including how to report a complaint to an external agency. Regardless of how the complaint is made, all complaints will be taken seriously and investigated promptly.

#### **D. Limited Confidentiality**

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for safety, security, and other interests.

### **III. Responsibility for Implementing Policy**

Judges, chief court administrators and department heads shall ensure that this policy is implemented and enforced within their own courtrooms and programs.

A violation of this policy may result in disciplinary action, up to and including discharge.

### **IV. Review of Policy**

This policy was established in 1998 and amended in 2000, 2007, 2012, and 2017.

Approved:   
Rodney A. Maile  
Administrative Director of the Courts

Date: MAY 20 2017

## **Attachment 1**

### **PROCEDURES FOR REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION IN THE WORKPLACE**

#### **I. Procedures**

The Judiciary urges the reporting of any incidents of discrimination, harassment, or retaliation, regardless of the identity of the alleged offender. Anyone who observes or experiences discrimination or harassment prohibited under the Discrimination/Harassment-Free Workplace Policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the Equal Employment Opportunity (EEO) Officer at 539-4336.

Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

A complaint or report may be made either orally or in writing (a complaint form is available through the EEO Officer). A complaint or report, whether oral or written, should include: name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, with the dates, times and places of the incidents, the names of witnesses to the events, and copies of documents, if any, that support the complaint or report.

#### **II. Limited Confidentiality**

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for safety, security, and other interests.

#### **III. Action Taken on Complaints**

All complaints will be investigated promptly. The Judiciary may take appropriate interim action while an investigation is pending, including placing the accused person on leave or temporary assignment.

If the Judiciary finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Judiciary will take appropriate corrective action, up to and including discharge of the employee. If an investigation shows that a justice or judge violated the Discrimination/Harassment-Free Workplace Policy, the matter shall be referred to the Commission on Judicial Conduct, which has exclusive authority to take disciplinary action against justices and judges. If the person found to have violated the policy is not employed



by the Judiciary, other appropriate action shall be taken, including notice to the employer. If the person found to have violated the policy is a lawyer, the findings shall also be reported to the Office of Disciplinary Counsel.

#### **IV. Referring Complaints to External Agencies**

In addition to the procedures described above, complaints about discrimination, harassment, or retaliation in the workplace may also be reported to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission, the Hawai'i Civil Rights Commission, and labor unions. Conduct by a justice or judge that violates the Discrimination/Harassment-Free Workplace Policy shall be reported to the Commission on Judicial Conduct and the Judicial Selection Commission.

Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days, or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date of: (1) the alleged unlawful discriminatory act; or (2) the last occurrence of discrimination in a pattern of ongoing discriminatory conduct.

Persons wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer, including the Judiciary. Contact information for other agencies are as follows:

Equal Employment Opportunity Commission  
300 Ala Moana Boulevard, Room 7-127  
P.O. Box 50082  
Honolulu, Hawai'i 96850-0051  
Telephone: 1-800-669-4000                      [info@eeoc.gov](mailto:info@eeoc.gov)

Hawai'i Civil Rights Commission  
830 Punchbowl Street, Room 411  
Honolulu, Hawai'i 96813  
Telephone: (808) 586-8636                      [DLIR.HCRC.INFO@hawaii.gov](mailto:DLIR.HCRC.INFO@hawaii.gov)

Hawai'i Government Employees Association Headquarters  
888 Mililani Street, Suite 401  
Honolulu, Hawai'i 96813-2991  
Telephone: (808) 536-2351                      [oahudiv@hgea.org](mailto:oahudiv@hgea.org)

United Public Workers Headquarters  
1426 North School Street  
Honolulu, Hawai'i 96817  
Telephone: (808) 847-2631

Office of Disciplinary Counsel  
201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone: (808) 521-4591

Commission on Judicial Conduct  
426 Queen Street, Room 118  
Honolulu, Hawai'i 96813-2914  
Telephone: (808) 539-4790  
[judconduct.c.comm@courts.hawaii.gov](mailto:judconduct.c.comm@courts.hawaii.gov)

Judicial Selection Commission  
417 South King Street  
Honolulu, Hawai'i 96813-2902  
Telephone: (808) 538-5200