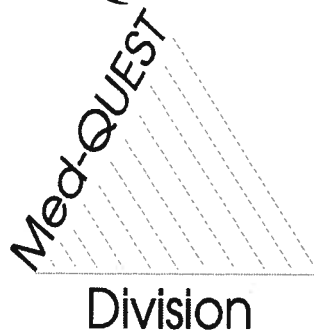


STATE OF HAWAII  
Department of Human Services

REQUEST FOR PROPOSAL

**Criminal History Record  
and Background Check**

RFP-MQD-2013-001



Med-QUEST Division- Finance Office  
Issued April 16, 2012

**STATE OF HAWAII**

**DEPARTMENT OF HUMAN SERVICES  
MED-QUEST DIVISION  
KAPOLEI, HAWAII**

**Legal Ad Date: April 16, 2012**

**REQUEST FOR PROPOSALS**

**No.: RFP-MQD-2013-001**

**Competitive Sealed Proposals:**

**Criminal History Record and Background Check**

**will be received up to 2:00 p.m. Hawaii Standard Time (H.S.T.)  
on May 16, 2012  
in the Department of Human Services  
1001 Kamokila Blvd., Suite 317  
Kapolei, Hawaii 96707**

**Questions relating to this solicitation may be directed to:  
Dona Jean Watanabe  
Telephone: (808) 692-7973  
Fax: (808) 692-7989**



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**Kenneth S. Fink, MD, MGA, MPH  
Med-QUEST Division Administrator  
Department of Human Services**

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## **SECTION 10 ADMINISTRATIVE OVERVIEW**

### **10.100 Purpose of the Request for Proposals (RFP)**

The Department of Human Service (DHS or Department), Med-QUEST Division (MQD) is seeking to solicit proposals to provide criminal history record and background record check services for MQD programs. The Department of Health (DOH) will require services from the awardee under this contract (Contractor) at a near-future point in time.

Criminal history record checks are required for individuals who function as personal care givers for dependent children and adults that receive their services through the QUEST Expanded Access (QExA) program or the Developmental Disability or Intellectual Disability (DD/ID) 1915(c) Home and Community-Based Services Waiver (authorized under Section 1915(c) of the Social Security Act) that is operated out of the Developmental Disabilities Division (DDD) in the DOH.

Criminal history record checks are conducted pursuant to federal and state statutes and Department rules and policies. Hawaii Revised Statutes (HRS) Section 846-2.7, specifies that criminal history record checks include the submission of fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check; and to the Hawaii Criminal Justice Data Center (HCJDC) for a state criminal history check that shall include non-conviction data.

For the purpose of this Request For Proposals (RFP), criminal history record checks will involve three discrete activities: 1) FBI fingerprint checks; 2) Hawaii State criminal history check; and 3) Registry checks, specifically the DHS Child Abuse/Neglect (CAN), Adult Protective Service Registry (APS), and certified nurse aid (CNA) registries. Detailed specifications and requirements are described in Section 40, Provision of Services.

### **10.200 Authority for Issuance of RFP**

This RFP is issued under the authority of Title XIX of the Social Security Act, 42 USC Section 1396, et.seq, as amended, Hawaii

Revised Statutes (HRS) Title 9, Chapter 103D, and the implementing regulations and administrative rules issued under the authority thereof. All Offerors are charged with presumptive knowledge of all requirements cited by these authorities, and submission of a valid executed proposal by any Offeror shall constitute admission of such knowledge on the part of such Offeror. Failure to comply with any requirement may result in the rejection of the proposal. The DHS reserves the right to reject any or all proposals received or to cancel this RFP, according to the best interest of the State.

### **10.300 Issuing Officer**

This RFP is issued by the State of Hawaii, DHS-MQD. The Issuing Officer is within the DHS and is the sole point of contact from the date of release of this RFP until the selection of a successful Offeror. The Issuing Officer is:

Ms. Patricia M. Bazin  
Department of Human Services/Med-QUEST Division  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707  
Telephone: (808) 692-7739

### **10.400 Use of Subcontractors**

In the event of a proposal submitted jointly or by multiple organizations, one organization shall be designated as the prime Offeror and shall have responsibility for not less than forty percent (40%) of the work to be performed. The project leader shall be an employee of the prime Offeror. All other participants shall be designated as subcontractors. Subcontractors shall be identified by name and by a description of the services/functions they will be performing. The prime Offeror shall be wholly responsible for the entire performance whether subcontractors are used. The prime Offeror shall sign the contract with the DHS.

### **10.500 Organization of the RFP**

This RFP is composed of eight sections plus appendices:



- Section 10 – Administrative Overview – Provides general information on the purpose of the RFP, the authorities relating to the issuance of the RFP, the use of subcontractors and the organization of the RFP
- Section 20 – RFP Schedule and Requirements - Provides information on the rules and schedules for procurement of this RFP
- Section 30 – Background and DHS Responsibilities – Describes the current providers requiring criminal history record checks and the role of the DHS
- Section 40 – Provision of Services – Provides information on the scope of services to be provided and the administrative requirements of the contract
- Section 50 – Terms and Conditions – Describes the terms and conditions under which the work shall be performed
- Section 60 – Technical Proposal – Defines the required format of the technical proposal and the minimum information to be provided in the proposal
- Section 70 – Cost Proposal – Defines the required format of the cost proposal and the minimum information to be provided in the proposal
- Section 80 – Evaluation and Selection – Defines the evaluation criteria and explains the evaluation process

Various appendices are included to support the information presented in Sections 10 through 80.

## **SECTION 20 RFP SCHEDULE AND REQUIREMENTS**

### **20.100 RFP Timeline**

The delivery schedule set forth below represents the DHS's best estimate of the schedule that will be followed. If a component of this schedule, such as Proposal Due Date, is delayed, the rest of the schedule will likely be shifted by the same number of days. The proposed schedule is as follows:

Advertising of RFP (i.e., Legal Ad Date)	April 16, 2012
Submission of Written Questions	April 25, 2012
Notice of Intent to Propose	May 2, 2012
Written Responses to Questions	May 2, 2012
Proposal Due Date	May 16, 2012
Estimated Contract Award	June 1, 2012
Implementation	July 1, 2012

### **20.200 Submission of Written Questions**

Potential Offerors shall submit questions in writing via e-mail or on diskette in Word 2010 format (.docx) or lower to the following mailing address or e-mail address:

Dona Jean Watanabe  
Med-QUEST Division-Finance Office  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707-2005  
Email Address: [dwatanabe@medicaid.dhs.state.hi.us](mailto:dwatanabe@medicaid.dhs.state.hi.us)

The written questions shall reference the RFP section, page and paragraph number in the format provided in Appendix A. Offerors must submit written questions on the technical proposal by 2:00 p.m. (H.S.T.) on the date identified in Section 20.100. The DHS shall respond to the written questions no later than the date identified in Section 20.100. No verbal responses shall be considered as official.

### **20.300 Notice of Intent to Propose**

Potential Offerors shall submit a Notice of Intent to Propose to the Issuing Office no later than the date identified in Section

20.100 by 2:00 p.m. (H.S.T.). Submission of a Notice of Intent to Propose is not a prerequisite for the submission of a proposal, but it is necessary that the Issuing Officer receive the letter by this deadline to assure proper distribution of amendments, questions and answers and other communication regarding this RFP.

The Notice of Intent to Propose can be mailed, e-mailed or faxed to:

Dona Jean Watanabe  
Med-QUEST Division-Finance Office  
1001 Kamokila Boulevard, Suite 317  
Kapolei, Hawaii 96707-2005  
Fax Number: (808) 692-7989  
Email Address: [dwatanabe@medicaid.dhs.state.hi.us](mailto:dwatanabe@medicaid.dhs.state.hi.us)

#### **20.400 On-Site Visits**

The Department reserves the right to conduct an on-site visit to verify the appropriateness and adequacy of the Offeror's proposal before the award of the contract.

After the award of the contract, prior to implementation, an on-site readiness review will be conducted by a team from the Med-QUEST Division and will examine the prospective Offeror's information system, staffing for operations, sub-contractors and provider contracts, and other areas that will be specified prior to review.

#### **20.500 References**

Offerors will list, on Appendix H, government agencies for whom services similar to those requested herein were within the last two years, or are currently being performed. The State reserves the right to contact the references provided.

#### **20.600 Documentation**

Offerors may review information describing Hawaii's Medicaid program, QUEST, and QExA by visiting the DHS MQD website: <http://www.med-QUEST.us>

## **20.700 Compliance with HRS §103D-310(c)**

If awarded a contract under this RFP, Offeror shall, upon award of the contract, furnish proof of compliance with the following requirements of HRS §103D-310(c) and §3-122-112, Hawaii Administrative Rules (HAR):

1. HRS Chapter 237, tax clearance;
2. HRS Chapter 383, unemployment insurance;
3. HRS Chapter 386, workers' compensation;
4. HRS Chapter 392, temporary disability insurance;
5. HRS Chapter 393, prepaid health care; and,
6. One of the following:
  - a. Be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); **or**
  - b. Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

## **20.800 Hawaii Compliance Express (HCE)**

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates for DOTAX and IRS tax clearances, Department of Labor and Industrial Relations (DLIR) labor law compliance, and DCCA good standing compliance. There is a nominal annual fee for the service. The "Certificate of Vendor Compliance" issued online through HCE provides the registered Offeror's current compliance status as of the issuance date, and is accepted for both contracting and final payment purposes. See website:

<https://vendors.ehawaii.gov/hce/splash/welcome.html>

HCE certificate is required prior to any award of contracts.

## **20.900 Rules of Procurement**

To facilitate the procurement process, various rules have been established as described in the following subsections.

**20.910 No Contingent Fees**

No Offeror shall employ any company or person, other than a bona fide employee working solely for the Offeror or company regularly employed as its marketing agent, to solicit or secure this contract, nor shall it pay or agree to pay any company or person, other than a bona fide employee working solely for the Offeror or a company regularly employed by the Offeror as its marketing agent, any fee commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award of a contract to perform the specifications of this RFP.

**20.920 Restriction on Communication with State Staff**

In order to provide equal treatment to all Offerors, questions shall be submitted in writing and answers shall be distributed to all who requested an RFP.

**20.930 RFP Amendments**

DHS reserves the right to amend the RFP any time prior to the closing date for the submission of the proposal.

**20.940 Costs of Preparing Proposal**

Any costs incurred by the Offerors for the development and submittal of a proposal in response to this RFP are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii shall provide no reimbursement for such costs.

**20.950 Disposition of Proposals**

All proposals become the property of the State of Hawaii. The successful proposal shall be incorporated into the resulting contract and shall be public record. The State of Hawaii shall have the right to use all ideas, or adaptations to those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal shall not affect this right.

## 20.960 Rules for Withdrawal or Revision of proposal

A proposal may be withdrawn or revised at any time prior to, but not after, the deadline for submission of proposals, provided that a request in writing executed by an Offeror or its duly authorized representative for the withdrawal or revision of such proposal is filed with DHS before the deadline for receipt of proposals. The withdrawal of a proposal shall not prejudice the right of an Offeror to submit a new proposal prior to the deadline for receipt of proposals.

## 20.970 Independent Price Determination

State law requires that a bid shall not be considered for award if the price in the bid was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Offeror or with any competitor.

An Offeror shall include a certified statement in the proposal certifying that the bid was arrived at without any conflict of interest, as described above. Should a conflict of interest be detected at any time during the term of the contract, the contract shall be null and void and the Offeror shall assume all costs of this project until such time that a new Offeror is selected.

## 20.980 Confidentiality of Information

If an Offeror seeks to maintain the confidentiality of sections of the technical proposal, each page of the section(s) should be marked as "Proprietary" or "Confidential." Proprietary or confidential information includes, but is not limited to, business, financial information, medical records, and beneficiary information. An explanation to DHS of how substantial competitive harm would occur if the information is released is required. An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly

marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. DHS shall maintain the confidentiality of the information to the extent allowed by law. Blanket labeling of the entire document as "Proprietary," however, is inappropriate.

## **21.100 Acceptance of Proposals**

DHS reserves the right to reject any or all proposals received or to cancel this RFP according to the best interest of the State.

DHS also reserves the right to waive minor irregularities in proposals providing such action is in the best interest of the State.

Where DHS may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse an Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the contract.

DHS also reserves the right to consider as acceptable only those proposals submitted in accordance with all technical requirements set forth in this RFP and which demonstrate an understanding of the requirements. Any proposal offering any other set of terms and conditions contradictory to those included in this RFP may be disqualified without further notice.

## **21.200 Submission of Proposals**

Each qualified Offeror may submit only one (1) proposal. More than one proposal shall not be accepted from any Offeror. The Offer Form (OF-1) shall be completed and submitted with the proposal (Appendix A). Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs. Failure to do so may delay proper execution of the contract. The authorized signature on the Offer form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

Proposals shall be submitted in two parts: technical and cost proposals. The format and content of each are specified in Sections 60 and 70 respectively.

The technical proposal shall be submitted in the following manner: original proposal bound and two (2) additional bound copies and (1) complete electronic version in MS Word 2010 or lower or PDF, on a CD. Cost proposal shall include one (1) bound and one (1) complete electronic version in MS Word 2010 or lower or PDF, on a CD. Proposals shall be received by the DHS Issuing Officer no later than 2:00 p.m. HST, on the date identified in Section 20.100. Any proposals received after the deadline will be rejected and returned to the Offeror. Proposals shall be mailed or delivered to:

Ms. Patricia M. Bazin  
c/o Dona Jean Watanabe  
Department of Human Services  
Med-QUEST Division-Finance Office  
1001 Kamokila Boulevard, Suite 317  
Kapolei, HI 96707-2005

The outside cover of the package containing the technical proposal copied shall be marked as follows:

Hawaii DHS/RFP-MQD-2013-001  
Criminal History Record and Background Check  
Technical Proposal  
(Name of Applicant)

The outside cover of the package containing the cost proposal copied shall be marked:

Hawaii DHS/RFP-MQD-2013-001  
Criminal History Record and Background Check  
Cost Proposal  
(Name of Offeror)

Any amendments to proposals shall be submitted in a manner consistent with this Section.



### **21.300 Proposal Opening and Inspection**

During the proposal evaluation and award recommendation period, proposals shall not be available for inspection. Proposals shall not be opened publicly, but shall be opened in the presence of two or more State officials. The register of proposals and Offeror's proposals shall be open to public inspection after a contract has been awarded and executed by all parties.

### **21.400 Disqualification of Offerors**

An Offeror shall be disqualified and the proposal automatically rejected for any one or more of the following reasons:

- Proof of collusion among Offerors, in which case all bids involved in the collusive action shall be rejected and any participant to such collusion shall be barred from future bidding until reinstated as a qualified Offeror;
- An Offeror's lack of responsibility and cooperation as shown by past work or services;
- An Offeror's being in arrears on existing contracts with the State or having defaulted on previous contracts;
- An Offeror's lack of proper license to cover the type of work contemplated, if required;
- An Offeror shows any noncompliance with applicable laws;
- An Offeror's delivery of proposal after the deadline specified in the advertisement calling for bids;
- An Offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former contracts with the State at the time of issuance of this RFP;
- An Offeror's lack of financial stability and viability;
- An Offeror's consistently substandard performance related to meeting the DHS requirements from previous contracts;

- An Offeror's lack of sufficient experience to perform the work contemplated.

## **21.500 Irregular Proposals**

Proposals shall be considered irregular and will be rejected for the following reasons including, but not limited to, the following:

- If either the transmittal letter or Offer Form is unsigned by an Offeror or does not include notarized evidence of authority of the officer submitting the proposal to submit such proposal;
- If the proposal shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditional bids, incomplete bids, or irregularities of any kind, which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning; or
- If an Offeror adds any provisions reserving the right to accept or reject an award, or enters into a contract pursuant to an award, or adds provisions contrary to those in the solicitation.

## **21.600 Cancellation of RFP**

The RFP may be cancelled 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 State, pursuant to Hawaii Administrative Rules (HAR) Section 3-122-96 through 3-122-97. The State shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

## **21.700 Additional Materials and Documentation**

Upon request from the state purchasing agency, each Offeror shall submit any additional materials and documentation reasonably required by the state purchasing agency in its evaluation of the proposal.

## **21.800     Award Notice**

The notice of intended contract award, if any, shall be sent to the selected Offeror on or about the date specified in section 20.100.

The contract award is subject to availability of funding.

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

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

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

## **Section 30     BACKGROUND AND DHS RESPONSIBILITIES**

### **30.100     General Background**

#### **30.110     Overview**

The Department of Human Services (DHS) is a state agency that has four divisions with three support offices that function to coordinate and administer specific benefits and services.

The four divisions under DHS are the following:

1. The Med-QUEST Division (MQD) that administers health insurance (i.e., Medicaid) and medical programs to low-income families through several programs to include QUEST, QUEST Expanded Access (QExA) and fee-for-service (FFS);
2. The Benefit, Employment and Support Services Division (BESSD) that administers various programs to provide clients with monthly benefits such as food, shelter and child care.
3. The Social Services Division (SSD) that administers child protective services, adult protective services, and other home and community-based services to non-Medicaid clients; and
4. The Vocational Rehabilitation and Services to the Blind Division (VRSBD) that provides services to eligible persons who are disabled, blind or visually impaired, and deaf or hard of hearing.

Each program has administrative rules requiring criminal history record and background checks for its service providers to help ensure the health, safety, and well-being of its clients. This RFP is only requesting services for providers offering services to Medicaid clients within the MQD.

### 30.120 Goals and Objectives

The goal of this service is to ensure the health, safety and well-being of children and dependent adults served by the MQD by conducting criminal history record and background checks on service providers who care for them. The objectives of this service are to:

1. Complete the criminal history record and background checks within fourteen (14) calendar days of referral from background check applicant, and
2. Conduct the criminal history record and background checks in the most expedient, convenient manner possible, taking into account matters of time, distance, physical conditions, and resources of the Department and of the service providers in need of the criminal history record and background checks.

### 30.130 Planning Activities Conducted in preparation For this RFP

Planning for this procurement included the following: a review of the existing workload of the current contracted staff; an assessment of the current contract and comments received from the Request For Information (RFI) meeting that was held on July 11, 2011 and from the posting of the RFI notice on the State of Hawaii Procurement Office (SPO) website <http://spo.hawaii.spo> on June 30, 2011.

Another RFI was conducted by the DOH on December 15, 2011 with results submitted by January 13, 2012.

### 30.200 Definitions/Acronyms

**Abuse** - Any of the following, separately or in combination:

- Physical abuse;
- Psychological abuse;

- Sexual abuse;
- Financial exploitation;
- Caregiver neglect; or
- Self-neglect;

Abuse does not include physical, psychological, or financial conditions that results when a vulnerable adult seeks, or when a caregiver provides or permits to be provided, treatment with the express consent of the vulnerable adult or in accordance with the vulnerable adult's religious or spiritual practices.

**Adult** - A person eighteen years of age or older.

**Adverse Action** - The denial of a background check applicant to work for a provider that offers healthcare services to Medicaid clients.

**Affordable Care Act of 2010 (ACA)** – Federal legislation that, among other things, puts in place comprehensive health insurance reforms.

**Appeal** - A request for review of an action.

**Applicant** - A person who is either applying for a job or who has a position with a Medicare or Medicaid provider and is undergoing a criminal history record check for potential or continued employment.

**APS Check** - A review of Adult Protective Services registry to determine if a background check applicants has a confirmed allegation of vulnerable adult abuse.

**Authorized Recipient** - (1) a nongovernmental entity authorized by federal statute or federal executive order to receive Criminal History Record Information (CHRI) for noncriminal justice purposes, or (2) a government agency authorized by federal statute, federal executive order, or state

statute which has been approved by the United States Attorney General to receive CHRI for noncriminal justice purposes.

**Background Check-** A process that includes criminal history record check, APS, CAN, and CNA registry checks.

**CAN Check** - A review of Child Abuse and Neglect registry to determine if a background check applicants has a confirmed allegation of child abuse and/or neglect to a child.

**Certified Nurse Aid (CNA) Check** - A review of CNA registry to determine if a CNA is eligible to be hired at a nursing home or other Medicare certified health care organization.

**Child** - A person under eighteen (18) years of age.

**The Centers for Medicare & Medicaid Services (CMS)** – The Centers for Medicare & Medicaid Services of the U. S. Department of Health and Human Services.

**Contract** - Written agreement between the DHS and the Contractor that includes the State's Agreement (form AG-004-Rev (11/15/2005)), general conditions, any special conditions and/or appendices, this RFP, including all attachments and addenda, and the Contractor's proposal.

**Criminal History Record Information (CHRI)** - Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

**Department of Human Services (DHS)** – State of Hawaii, Department of Human Services.

**Department of Health (DOH)** – State of Hawaii, Department of Health.

**Federal Bureau of Investigation (FBI)** - A Federal agency that maintains criminal history in its Criminal Justice Information Services (CJIS) Division.

**Criminal History Record Check** - An authorized noncriminal justice fingerprint-based search of the state criminal history record repository and the FBI system.

**Green light determination** - A fitness determination where the applicant's background check results meet the criteria established by the DHS for hire by a Medicare or Medicaid provider.

**Hawaii state criminal history check** includes:

- 1) a fingerprint-based search of the Hawaii Automated Fingerprint Identification System (AFIS) database maintained by the Hawaii Criminal Justice Data Center (fingerprint data is sent simultaneously to AFIS when the FBI check is performed; and
- 2) a name search of the Hawaii Criminal Justice Information System (CJIS-Hawaii) database, done via a networked personal computer terminal with results (arrest and/or conviction data) viewed at the terminal (computer monitor).

**Home and Community-Based Services (HCBS)** - Medicaid providers who are offering services in the community to Medicaid clients. Examples include personal care attendants, adult day care and skilled nursing.

**Medicaid** - A federal/state program authorized by Title XIX of the Social Security Act, as amended, which provides federal matching funds for a Medicaid program for members of federally aided public assistance and Supplemental Security Income (SSI) benefits and other specified groups. Certain minimal populations and services must be included to receive Federal financial participation (FFP); however, states may choose to include certain additional populations and services at State expense and also receive FFP.



**Medicaid beneficiary** - Any person determined eligible by the DHS to receive medical services under the DHS Medicaid programs.

**Medicare** - A federal program authorized by Title XVIII of the Social Security Act, as amended, which provides health insurance for persons aged 65 years and older and for other specified groups. Part A of Medicare covers hospitalization; Part B of the program covers outpatient services and is voluntary, and Part D of the program covers prescription drugs and is voluntary.

**Med-QUEST Division (MQD)** – The State entity responsible for administering the Medical Assistance programs under the State of Hawaii, Department of Human Services, for the State.

**Office of Health Care Assurance (OHCA)** - An office in the Department of Health responsible for state licensing survey and Medicare certification of health care facilities and other provider organizations.

**Provider** - An individual or agency responsible for the provision of health services under the State Medical assistance programs administered by the DHS.

**Red light determination** - A fitness determination where the applicant's background check results do not meet the criteria established by the DHS for hire by a Medicare or Medicaid provider.

### **30.300 Medical Assistance in Hawaii**

MQD is the unit within the Department of Human Services (DHS) that administers the medical assistance programs. Medicaid, a federal and state partnership program created by Congress in 1965, provides medical assistance benefits to qualified uninsured and underinsured individuals through the QUEST, QExA, QUEST-Net, and QUEST-ACE programs.

Together, Medicaid covers approximately 285,000 individuals (240,000 in QUEST and 45,000 in QExA). In addition to asset

and income limits, the basic eligibility requirements for Medicaid include: 1) Being a U.S. citizen or qualified alien; 2) Being a Hawaii resident; and 3) Not residing in a public institution such as prison or the State psychiatric hospital. Different eligibility categories such as pregnant women and children have different income thresholds and are not subject to an asset limit.

MQD also administers state-funded programs for immigrant women who meet requirements for the Breast and Cervical Cancer program and individuals from the freely associated states in the Compact of Free Association. Eligibility requirements are the same as for Medicaid, but there is no U.S. citizenship requirement. Eligible persons are placed either in the QUEST managed care plans or the QExA program. Federal dollars are not claimed for these eligibility groups.

#### **30.400 Department of Human Services**

MQD is the organizational unit within DHS that is responsible for the operation and administration of the medical assistance programs including QUEST, QUEST-Net, QUEST-ACE, and QExA programs. For purposes related to this RFP, the basic functions or responsibilities of MQD includes monitoring the quality of services provided by its Contractors and assuring that its providers meet State and Federal credentialing standards.

#### **30.500 Hawaii QUEST (QUEST)**

QUEST is a statewide Medicaid demonstration project (Section 1115 waiver) that provides medical, dental, and behavioral health services through competitive managed care delivery systems. QUEST includes individuals who are eligible for medical assistance. Generally, these individuals include:

- Temporary Assistance for Needy Family (TANF) and TANF related programs
- Foster Care
- General Assistance (GA) Program
- Others who meet QUEST eligibility requirements

QUEST incorporates separate plans for the provision of medical services and specialized behavioral health services: QUEST Adult and QUEST Keiki. Certain transplants for children and adults are also "carved-out" of the medical plans and are provided through an administrative contract.

### **30.600 QUEST-Net**

QUEST-Net is a program implemented on April 1, 1996, providing limited medical and behavioral health services. This program was developed primarily to serve as a safety net for persons who become ineligible for QUEST or ABD because their assets or income exceed the allowable retention limitations. Applicants with any type of medical coverage including Medicare, VA, or CHAMPUS, are not eligible for QUEST-Net.

Participants must meet basic eligibility criteria and not be eligible for employer sponsored coverage.

QUEST-Net children receive the same benefit package as QUEST children and the State shall reimburse the health plan the QUEST rate for each QUEST-Net child. For purposes of QUEST-Net, children include any recipient up to the age of 21. Individuals 21 and over in QUEST-Net receive QUEST Adult as their benefit package.

### **30.700 QUEST-Adult Coverage Expansion (QUEST-ACE)**

QUEST-ACE is a health coverage program for a gap group of adults, ages 19 through 64, as well as clients who are ABD, who meet eligibility criteria, who are uninsured or unable to enroll in QUEST due to the enrollment cap and are unable to enroll in

QUEST-Net because they were not already QUEST or Medicaid fee-for-service clients.

Benefits are the QUEST-Adult package.

**30.800 QUEST Expanded Access (QExA)**

The State's Medicaid QExA program provides medical assistance to eligible individuals under Title XIX of the Social Security Act. The QExA program is a state administered program, which receives federal funding for at least 50% of its expenditures.

Hawaii's QExA program covers all mandatory Medicaid groups as well as several optional eligibility groups. The QExA program currently provides health services to approximately 45,000 individuals.

**30.900 Description of the Target Population to Be Served**

Within DHS and DOH, each program served by this RFP has specific target groups of individual service providers who must undergo criminal history record and background checks. During the course of this contract, it is possible that other target populations may be included in the scope of service.

## **Section 40     PROVISION OF SERVICES**

### **40.100     Goals and Objectives**

The goal of this service is to ensure the health, safety and well-being of children and dependent adults served by the DHS and the DOH, in the future, by conducting background checks on service providers who care for them. The objectives of this service are: 1) to complete the criminal history record checks within fourteen (14) calendar days of referral from background check applicant; and 2) to conduct the criminal history record checks in the most expedient, convenient manner possible, taking into account matters of time, distance, physical conditions, and resources of the Department and of the service providers in need of the criminal history record checks.

### **40.200     Target Population**

Within DHS and DOH, each program served by this RFP has specific target groups of individuals who must undergo background checks. During the course of this contract, it is possible that other target populations may be included in the scope of service.

The numbers cited are estimates of work volume based on current need and some projection of future need. It is possible that the volume of work required may change at any time. Background checks are comprised of two discreet activities:

- 1) FBI and State fingerprint-based searches through the Hawaii Criminal Justice Data Center (HCJDC); and
- 2) Child Protective Services Child Abuse and Neglect or Adult Protective Services (CPSS/CAN/APS) or certified nurse aid (CNA) checks.

# 40.210 Department of Human Services (DHS), Med-QUEST Division (MQD)

The MQD requires criminal history record checks for home and community-based service (HCBS) providers such as Adult Day Care, Adult Day Health, and Personal Care Attendants. In addition, the MQD requires that providers offering services to the Developmental Disabilities/Intellectual Disabilities (DD/ID) 1915(c) HCBS waiver participants perform background checks on their potential employees and employees. The frequency for criminal history checks for these providers is as follows:

Agency/ Service	FBI and State Fingerprint Check		Name Search-CJIS (eCrim)			APS Screen			CAN Screen		
	Within 30 days	Within 12 months	Within 30 days	Within 12 months	There- after	Within 30 days	Within 12 months	There- after	Within 30 days	Within 12 months	There- after
DD/ID Providers	X	X	X	X	annual	X	X	annual	X	X	annual
MQD HCBS Providers	X	X	X	X	bi- annual	X	X	bi- annual	X	X	bi- annual

The estimated approximate number of annual criminal history record checks for this group is as follows:

	Annually
FBI/CJIS	2,500
CAN	2,500
APS	2,500

This estimate is based upon the number of provider agencies for both DD/ID and MQD HCBS.

	# of provider agencies
DD/ID Providers	45
MQD HCBS Providers	18

In addition, the MQD shall implement background checks for long-term care providers in accordance with the ACA, TITLE VI--TRANSPARENCY AND PROGRAM INTEGRITY, PART III--Improving Staff Training, Sec. 6201. Nationwide program for National and State background checks on direct patient access employees of long-term care facilities and providers. These providers include skilled nursing facilities, nursing facilities, home health agencies, providers of hospice care, providers of adult day care, assisted living facilities, and intermediate care facilities (ICF) for the ID population.

Implementation of background checks for ACA providers shall be implemented no later than January 1, 2014. Implementation may be sooner based upon system readiness and coordination with the provider community. Estimates of approximate number of annual background checks per year is provided below based upon number of provider agencies:

Provider-type	# of providers	FBI/CJIS	CAN	APS
Skilled Nursing Facility/Nursing Facility	50	7,500	7,500	7,500
Home Health	26	1,300	1,300	1,300
Hospice Care	9	450	450	450
Adult Day Care	19	475	475	475
Assisted Living	11	1,100	1,100	1,100
ICF for ID	18	1,800	1,800	1,800
Total		12,625	12,625	12,625

#### 40.220 Department of Health (DOH)

The DOH employs approximately 2,600 individuals statewide and hires approximately 190 new employees per year due to regular staff turnover and retirement. The DOH will require background checks as a condition of employment for caregiver positions which provide direct care to clients. This will require background checks on as many as 1,165 DOH employees during the first year of the contracted background check program.

The DOH also licenses or contracts with private or public organizations who provide health care services to the general public or to targeted populations.

The DOH Office of Health Care Assurance (OHCA or Office) is the state regulatory agency responsible to license all health care facilities and organizations in Hawaii and to ensure their compliance with state licensure laws. This responsibility is accomplished by thorough onsite survey inspections. The Office also conducts onsite Medicare certification surveys on behalf of Medicare under an 1864 Agreement with the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS). In this way, the Office serves frail or elderly or disabled adults or other individuals in a variety of settings including skilled nursing facilities, intermediate care facilities, adult residential care homes, expanded adult residential care homes, assisted living facilities, home health agencies, hospices, adult day health centers, special treatment facilities, therapeutic living programs, intermediate care facilities for the mentally retarded, homes for the developmentally disabled, adult foster homes (anticipated to begin in 2014), hospitals, rural health centers and rehabilitation agencies. Criminal history record checks are required for persons providing care or having access to residents of any of these facilities. According to the State Data Book, in 2008 there were over 21,000 persons employed at Hawaii's hospitals, nursing homes and residential care facilities. Conservatively, it is anticipated that DOH will need approximately 2,000 to 5,000 background checks initially and 1,000 background checks annually thereafter.

The DOH Behavioral Health Administration consists of the Adult Mental Health, Child and Adolescent Mental Health, and Developmental Disabilities Divisions. Together or separately, they contract with a total of approximately 200 private health care organizations to provide direct health care, housing or case management services to the DOH behavioral health clientele. These private organizations are responsible to determine the number of caregivers necessary to provide care but the total numbers could be several hundred if not thousands of individuals who would require background checks.



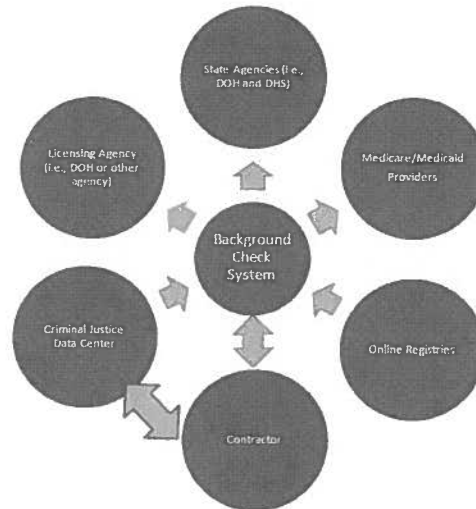
Finally, the DOH desires to implement background checks for the above described DOH employees, health care or behavioral care contractors, community-based residential facilities (adult residential care homes, expanded adult residential care homes, and assisted living facilities) beginning July 1, 2012, and no later than January 1, 2014, for other facilities or organizations described above in order to ensure the health and safety of the general public and the DOH clients as they interface with health care facilities and organizations.

#### **40.300 Background Check System**

##### **40.310 Background**

The current background check system is manual. In addition, systems do not exist to assure that once a background check is performed on a potential employee, it does not need to be repeated for a subsequent employer. The DOH, OHCA is applying for a grant with CMS to finance a Statewide electronic background check system that works in conjunction with the DHS, MQD and the Attorney General, Criminal Justice Data Center to streamline background checks in Hawaii. The anticipated date for system development is mid-2013. The Contractor shall utilize this system in the work performed under this RFP and be a vital part of assuring that the background check system in Hawaii is streamlined to an electronic system. Below is a diagram of how the system will work. In addition, Appendix I shows a flow of the revised system.

## Hawaii Proposed Criminal History Record Check System



Until the completion of the electronic system described above, the Contractor shall develop a system consistent with requirements described in this RFP to perform criminal history record checks on employees and potential employees who perform services for Medicaid beneficiaries. In addition, the Contractor shall be able to adapt their system effectively to work on concert with the Statewide criminal history record check system being developed.

### 40.320 Proposed System Description

The provider will input data from the potential employee into the background check system. The provider will be able to screen the potential employee against several online registries to include, but is not limited to, the Office of Inspector General (OIG), Nurse Aid Registry (NAR), and both the National Sex Offender Public Website (NSOPW) and Hawaii-based Sex Offender Registry that is part of the Hawaii Criminal Justice Data Center. The State may add future registries such as abuse and neglect of both adults and children.

After the user has determined that the potential employee has passed the initial registries, the potential employee will be

fingerprinted for both FBI and State criminal histories. This fingerprinting will occur through a contractor that is contracted with the State through this RFP.

Once the potential employee has obtained a clearance from both State and National sources, the Contractor shall identify this employee in the system as cleared. Thereafter, any future employers shall not have to repeat the process to determine employment clearance.

#### **40.400 Scope of Services**

##### **40.410 Summary of Responsibilities**

The Contractor is responsible for the following functions:

- Fingerprint collection;
- Transmission of fingerprints to and receipt of criminal history record check information from HCJDC;
- Registry checks for CAN, APS, and CNA;
- Fitness determination;
- Communication of fitness determination to both background check applicant and provider;
- Appeals process;
- Collection of fees from the background check applicant; and
- Payment of access fees to the HCJDC or FBI databases.

Services shall be provided Statewide to include the islands of Lanai and Molokai.

##### **40.420 Fingerprint Collection**

Fingerprints shall be obtained on a live scan or other electronic biometric reader machine (hereafter referred to as live scan machines). The Contractor may utilize their own machines or subcontract this function consistent with subcontractor responsibilities found in Section 51.100. Live scan machines shall be accessible to a background check applicant. The Contractor shall have the minimum number of locations for obtaining fingerprint collection identified below:

Island	Number of Locations	Required Locations
Hawaii	2	Hilo and Kona
Kauai	1	Lihue area
Maui	1	Wailuku area
Oahu	4	Honolulu- at least two locations Waipahu area

In addition, Contractor may utilize portable devices to obtain fingerprints from larger providers.

An exception to use of live scan machines may be made for a background check applicant on the islands of Lanai and Molokai. Fingerprints may be obtained through the local police station on these islands on a hard card for processing. The hard card shall be sent to the Contractor who will in turn send them to the HCJDC. The HCJDC shall scan the fingerprints into their system for processing.

#### 40.430 Transmission of fingerprints to and receipt of criminal history record check information from HCJDC

The live scan fingerprints shall be sent to HCJDC electronically. The HCJDC shall transmit fingerprints received from the Contractor electronically to the FBI. The FBI shall provide criminal histories to the HCJDC who will transmit the information back to the Contractor. In addition, HCJDC shall scan the fingerprints against State records. The results shall be sent back to the Contractor for fitness determination. If HCJDC has difficulty with the electronic check, their employees shall conduct a manual check.

#### 40.440 Registry checks for CAN, APS and CAN

In addition to obtaining fingerprints, the Contractor shall perform both CAN and APS registry checks on all background check applicants. These registries are available for review at the Social Services Division of the Department of Human Services (SSD) in Honolulu. The SSD shall have a desk, computer, and telephone

available for the Contractor to use for both CAN and APS registry checks.

CNA registry checks shall also be performed. This registry is available through the American Red Cross - Hawaii State Chapter website to verify the suitability of a CNA for employment.

#### 40.450 Fitness determination

The Contractor shall use the criminal history record information (CHRI) provided by the HCJDC for fitness determination. Fitness determination shall be made as either green light or red light. The Contractor shall utilize the DHS standards (see Appendix J) to make the fitness determination.

Fitness determination shall be processed within seven (7) calendar days from receipt of information from HCJDC.

Once the fitness determination is made, the Contractor shall destroy CHRI in accordance with the timeframes established. For fitness determinations of green light, CHRI shall be destroyed within twenty-four (24) hours or next business day. For fitness determination of red light, CHRI shall be maintained for thirty (30) days for an appeal to be filed.

If an appeal is not filed within forty (40) calendar days of written communication being mailed to both background check applicant and provider, then CHRI shall be destroyed within twenty-four (24) hours or next business day.

If an appeal is filed, CHRI shall be maintained until the end of appeal process but no longer than one-hundred eighty (180) days to allow for time for the appeal determination.

#### 40.460 Communication of fitness determination to both background check applicant and provider

Once the fitness determination is made, the Contractor shall send a written acknowledgement to both the background check applicant and the provider regarding the determination. Since CHRI is confidential, the letter to the provider shall only include

whether the background check applicant is able to remain employed or be hired. The letter to the background check applicant shall include the grounds for determining them unable to remain employed or be hired (i.e., a brief summary from the CHRI).

Both provider and background check applicant written communication shall include appeal rights described in Section 40.470.

#### 40.470 Appeals process

If a background check applicant does not agree with the results of the CHRI, they are allowed to request a review by an exemption panel. A panel will review the results as well as any additional information. This information is used to match against the standards to determine if the results (i.e., red light) need to be revised.

Individuals have thirty (30) calendar days to request an appeal of a fitness determination. Appeals shall be sent by either the background check applicant in writing to the Contractor. Upon receipt of an appeal request, the Contractor shall send an acknowledgement within five (5) business days of receipt. The acknowledgement letter shall describe that the appeal shall be completed within forty-five (45) calendar days of receipt of the appeal request and shall be based upon submission of information for review to revise initial determination.

The Contractor shall convene a panel consisting of three (3) professional multi-disciplinary team members to review the request. The panel shall include individuals in at least two different professions with backgrounds in criminal justice, legal and/or therapeutic mental health field. The panel shall consider the following:

- The relevancy of the individuals conviction record to the qualifications, functions, and duties of the direct service provider position the individual wishes to fill;
- Passage of time since the crime was committed; and
- Any evidence of rehabilitation such as letters from counselors or therapists attesting to a sustained

improvement in the individual's behavior, character references, and activities since conviction such as employment.

A single factor may not be evidence of rehabilitation. If necessary, the panel should request additional information from the individual seeking the exemption. Individuals requesting exemptions shall be informed in writing of the panel's decision within forty-five (45) calendar days from the date that the appeal is submitted. The panel may extend the forty-five (45) calendar days with cause and written explanation to the individual seeking the exemption.

Individuals who are dissatisfied with the panel's decision on their exemption request may appeal the panel's decision to the MQD Administrator within thirty (30) days of the written communication of the panel's decision.

In addition, if the individual questions the validity of any of background check results, the individual will be directed by the Contractor to the agency providing the background check information to resolve the problem.

#### 40.480 Collection of fees

The Contractor is responsible for collection of fees for processing of criminal history record checks. The required fees are listed below and will be paid to the appropriate agency:

Fingerprinting: FBI and State fingerprint-based check- \$46.50 for all islands except for Molokai and Lanai (\$16.50 for FBI and \$30.00 for State)

FBI and State fingerprint-based check- \$51.50 for Molokai and Lanai (\$16.50 for FBI, \$30.00 for State, and \$5.00 for processing hard card)

APS check- \$13.50

CAN check- \$13.50

In addition to the fees to be collected listed above, the Contractor will be allowed to add an administrative fee for the costs of providing services under this contract. The Contractor shall propose these administrative fees in the Business Proposal section (Section 70).

The Contractor shall establish an electronic system for collection of fees that allows a receipt to be generated. This system shall allow for both credit card payment as well as establishing an invoicing methodology for larger providers or State agencies.

#### **40.500 Additional Requirements**

##### **40.510 Outsourcing Standard**

The Outsourcing Standard is a document approved by the Compact Council after consultation with the United States Attorney General which is to be incorporated by reference into a contract between the State and a contractor. The Outsourcing Standard authorizes access to CHRI, limits the use of the information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the Compact Council may require.

The Contractor shall follow all requirements identified in the most recent version of the FBI's Outsourcing Standard from December 8, 2011, found in Appendix K. However, the Contractor shall update their operational procedures within thirty (30) days of notification of successor versions of the Outsourcing Standard and the CJIS Security Policy, whichever version is released first. In addition, the DHS shall notify Contractor of such changes or updates, within thirty (30) calendar days of changes or updates to the Outsourcing Standard or CJIS Security Policy. The updated version of the Outsourcing Standard shall replace the version in Appendix K.



#### 40.520 Adequate staff to perform contract functions

The Contractor and staff that work for the Contractor shall undergo a fingerprint-based criminal history record check. Only staff members that meet fitness determination will be able to work for the Contractor.

The work involved in conducting background checks is essentially of a clerical nature. This contract will also require appropriate supervisory and management staff to handle various administrative responsibilities.

The Contractor selected to provide services of this RFP shall recruit, hire, guide, and supervise the necessary staff to operate this project giving due consideration to the anticipated work volume. The average approximate time needed to complete an FBI fingerprint scan is 15-30 minutes; and to complete a name search using the DHS CPSS and CJIS-Hawaii systems, approximately 10-15 minutes.

The State shall provide training on the use of the computers on access to the various State and departmental electronic databases used in background checks processes.

#### 40.530 Scheduling of background check applicants to have their fingerprints obtained

The Contractor shall utilize an electronic system for scheduling appointments with potential employees or current employees to have their fingerprints obtained. The Contractor should assure that all of the data found on the draft of MQD Background Check and APS/CAN Registry Check forms (Appendix L) is included in this electronic system for scheduling. This system may be coordinated with electronic system for collection of fees.

The Contractor shall provide the background check services during normal State office hours, from 7:45 a.m. to 4:30 p.m., Monday through Friday, excluding State holidays. The Contractor may also be required to provide services during other days and hours to meet background check service needs.

#### 40.540 Record keeping

An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) The background check applicant and the provider; (B) the information disseminated; (C) the date of dissemination; and (D) the means of dissemination.

The Contractor shall maintain logs for dissemination of other types of registry checks to include APS, CAN, and CAN for a minimum of one year retention period. This log must clearly identify: (A) The background check applicant and the provider; (B) the information disseminated; (C) the date of dissemination; and (D) the means of dissemination.

If CHRI is stored or disseminated in an electronic format, the Contractor shall protect against any unauthorized persons gaining access to the equipment and any of the data. In no event shall responses containing CHRI be disseminated other than as governed by the Outsourcing Standard established by the FBI or more stringent contract requirements.

All access attempts are subject to recording and routine review for detection of inappropriate or illegal activity.

The Contractor's system shall be supported by a documented contingency plan as defined in the CJIS Security Policy and approved by the HCJDC.

#### 40.550 Develop operational procedures for assuring the scope of services are conducted in accordance with contract requirements

The Contractor shall develop operational procedures that assure that the scope of services described in this RFP is met. The Contractor shall submit their operational procedures to the DHS for review and approval no later than sixty (60) days prior to Implementation described in Section 20.100.

## 40.560 Security Program

The Contractor shall develop, document, administer, and maintain a Security Program (Physical, Personnel, and Information Technology) to comply with the most current Outsourcing Standard and the most current FBI *CJIS Security Policy*. The Security Program shall describe the implementation of the security requirements described in the FBI Outsourcing Standard and the FBI *CJIS Security Policy*. In addition, the Contractor is also responsible to set, maintain, and enforce the standards for the selection, supervision, and separation of personnel who have access to CHRI. The FBI shall provide the written approval of the Contractor's Security Program.

The requirements for a Security Program should include, at a minimum:

- a) Description of the implementation of the security requirements described in the FBI Outsourcing Standard and the *CJIS Security Policy*.
- b) Security Training
- c) Guidelines for documentation of security violations
- d) Standards for the selection, supervision, and separation of personnel with access to CHRI.

\*\*If the Contractor is using a corporate policy, it must meet the requirements outlined in the FBI Outsourcing Standard and the *CJIS Security Policy*. If the corporate policy is not this specific, it must be revised to provide enough detail where the documentation supports these requirements.

The Contractor shall be accountable for the management of the Security Program. The Contractor shall be responsible for reporting all security violations of the FBI Outsourcing Standard to the DHS.

The Contractor shall develop a Security Training Program for all Contractor personnel with access to CHRI prior to their appointment/assignment. The HCJDC shall review and provide to the Contractor written approval of the Contractor's Security Training Program. Training shall be provided upon receipt of notice from the HCJDC on any changes to federal and state laws, regulations, and standards as well as with rules, procedures, and

standards established by the Compact Council and the United States Attorney General. Annual refresher training shall also be provided and is required to be completed by the Contractor. The Contractor shall annually, not later than the anniversary date of the contract, certify in writing to the DHS that annual refresher training was completed for those Contractor's personnel with access to CHRI.

The Contractor shall make its facilities available for announced and unannounced audits performed by the DHS, the HCJDC, or the FBI on behalf of the Compact Council.

The Contractor's Security Program is subject to review by the DHS, the HCJDC, and the FBI CJIS Division. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards, as well as changes in federal and state law, are incorporated.

#### 40.570 Oversight and Monitoring

The contract will be monitored by the Department in accordance with requirements set forth in Chapter 103D, Hawaii Revised Statutes. Contract monitoring may include site visits with comprehensive evaluation of performance areas, including review of conformance with contractual requirements, agency personnel files, staff meeting minutes, training activities, review of periodic program reports and other such activity. The Contractor is responsible for keeping comprehensive program reports available for monitoring by MQD staff.

The Contractor must maintain throughout the term of the contract, a system of self-appraisal and program evaluation to determine the effectiveness of the activities provided in service delivery. The self-evaluation process must include tools or instruments used to identify program achievements and any necessary program corrective action.

#### **40.570.1**    *Monthly Reporting*

The Contractor shall submit reports monthly to the DHS on the last day of the month or next business day. These reports shall consist of:

- Number of background check applicants who were scheduled for fingerprinting and those that were processed for criminal history record check by provider agency by island (for the island of Hawaii, separated by East and West Hawaii);
- Number that were processed within fourteen (14) calendar days;
- Types of screens performed (i.e., FBI and State criminal history record check; CAN screen; APS screen; and CNA screen);
- Number of background check applicants whose fitness determination was green light;
- Number of background check applicants whose fitness determination was red light; and
- Fees collected for each activity.

Reports shall be provided on a format provided by the DHS.

#### **40.570.2**    *Annual on-site*

DHS shall perform annual on-site monitoring to assure contract compliance with the Outsourcing Standard and the FBI's *CJIS Security Policy*.

#### **40.570.3**    *Follow-Up by Contractor/Corrective Action Plans/Policies and Procedures*

The DHS shall provide a report of findings to the Contractor after completion of each review.

Unless otherwise stated, the Contractor shall have thirty (30) days from the date of receipt of a DHS report to respond to the

MQD's request for follow-up (e.g., actions, information, etc.). The Contractor's response shall be in writing and address how the Contractor resolved the issue(s). If the issue(s) has/have not been resolved, the Contractor shall submit a corrective action plan including the timetable(s) for the correction of problems or issues to DHS. In certain circumstances (i.e., concerns or issues that remain unresolved or repeated from previous reviews or urgent quality issues), MQD may request a ten (10) day plan of correction as opposed to the thirty (30) day response time allowed for follow-up responses.

The Contractor shall submit the most current copy of any policies and procedures requested. In the event the Contractor has previously submitted a copy of a specific policy or procedure and there have been no changes, the Contractor shall state so in writing and include information as to when and to whom the policy and procedure was submitted. If there are no formal policies or procedures for a specific area, the Contractor may submit other written documentation such as workflow charts or other documents that accurately document the actions the Contractor has or shall take.

## **SECTION 50 TERMS AND CONDITIONS**

### **50.100 Contract Documents**

The following documents form an integral part of the contract between the Contractor and DHS (hereafter collectively referred to as "the Contract"):

- Contract for Goods or Services: Competitive Sealed Proposals (form AG-004 Rev. 11/15/2005), including General conditions for Goods or Services Contracts (Form AG-008 (4/15/09) see Appendix C), any special conditions, attachments and addenda;
- This RFP, including all appendices, attachments and addenda, which shall be incorporated by reference; and
- The Offeror's proposal submitted in response to this RFP form, which shall be incorporated by reference.

The contract shall be construed in accordance with the laws of the State of Hawaii.

The Contractor shall comply with all applicable laws, ordinances, codes, rules and regulations of the federal, state and local governments, that in any way affect its performance under the contract.

The Contractor shall pay all taxes lawfully imposed upon it with respect to the contract or any product delivered in accordance herewith. DHS makes no representations whatsoever as to the liability or exemption from liability of a Contractor to any tax imposed by any governmental entity.

The offer shall be executed by the State of Hawaii Department of Human Services in accordance with the Hawaii Revised Statutes, Chapter 103D, and the administrative rules promulgated thereunder.

### **50.200 Term of the Contract**

This is a multi-term contract solicitation that has been deemed to be in the best interest of the State by the Director of the Department of Human Services. The contract term shall begin

on July 1, 2012, or upon execution of the Contract, whichever is later and shall continue through June 30, 2015.

Unless terminated, the Contract shall be extended without the necessity of re-bidding, for not more than three (3) additional 12-month period or parts thereof, upon mutual agreement in writing. Funds are available for only the initial term of the contract. Any renewal or extension of the contract will be subject to the appropriation and availability of funds and acceptable performance by the Contractor (to be determined by the State).

The Contractor acknowledges that other unanticipated uncertainties may arise that may require an increase or decrease in the original scope of services from the Contractor awarded this Contract. In the event that increase or decrease in services may be required, the Contractor agrees to enter into a supplemental agreement upon request by the DHS for the additional or decrease in work. The supplemental agreement may also include an extension of the period of performance and a respective increase or decrease in the compensation.

Funding for these services will not be provided by the State. The Contractor is aware that payment for these services will be provided through other means (e.g., the applicant, etc.). Funding from a non-State source does not affect the State's rights or the Contractor's rights under this Contract. The State must notify the Contractor, in writing, at least sixty (60) days prior to the expiration of the Contract.

#### **50.300 Contractor's Progress**

On-site reviews will be conducted by the DHS to verify the accuracy and appropriateness of information provided by Contractor in their proposals. DHS may request additional information or documentation from the Contractor that is reasonably required by the DHS in its evaluation of the proposal. If awarded the Contract, the Contractor shall submit a plan for implementation of criminal history record check services and shall provide progress/performance reports every two weeks beginning two weeks after the notification of contract award. The format to be used shall be approved by the DHS. The



purpose of the reports is to ensure that the Contractor will be ready to process criminal history record checks as of July 1, 2012 and that all required elements such as trained staff and the information system are in place.

#### **50.400 Liability Insurance Requirements**

The Contractor shall maintain insurance acceptable to the DHS in full force and effect throughout the term of this contract, until the DHS certifies that the Contractor's work has been completed satisfactorily.

Prior to or upon execution of the contract, the Contractor shall provide to the DHS certificate(s) of insurance dated within thirty (30) days of the effective date of the contract necessary to satisfy the DHS that the insurance provisions of this contract have been complied with. Upon request by the DHS, Contractor shall furnish a copy of the policy (ies) or endorsement(s) necessary for DHS to verify the coverages required by this section.

The policy or policies of insurance maintained by the Contractor shall be written by insurance companies licensed to do business in the State of Hawaii or meet the requirements of Section 431:8-301, et seq., HRS, if utilizing an insurance company not licensed by the State of Hawaii.

The policy (ies) shall provide at least the following limit(s) and coverage:

<b>Coverage</b>	<b>Limits</b>
Commercial General Liability	Per occurrence, not claims made <ul style="list-style-type: none"> <li>• \$1 million per occurrence</li> <li>• \$2 million in the aggregate</li> </ul>
Automobile	May be combined single limit: <ul style="list-style-type: none"> <li>• Bodily Injury: \$1 million per person, \$1 million per accident</li> <li>• Property Damage: \$1 million per accident</li> <li>• </li> </ul>

Workers Compensation / Employers Liability (E.L.)	<ul style="list-style-type: none"> <li>Workers Comp: Statutory Limits</li> <li>E.L. each accident: \$1,000,000</li> <li>E.L. disease: \$1,000,000 per employee, \$1,000,000 policy limit</li> <li>E.L. \$1 million aggregate</li> </ul>
Professional Liability, if applicable	<p>May be claims made:</p> <ul style="list-style-type: none"> <li>\$1 million per claim</li> <li>\$2 million annual aggregate</li> </ul>

Each insurance policy required by this contract shall contain the following clauses, which shall also be reflected on the certificate of insurance:

1. "The State of Hawaii is an additional insured with respect to operations performed for the State of Hawaii."
2. "Any insurance maintained by the State of Hawaii shall apply in excess of, and not contribute with, insurance provided by this policy."

Automobile liability insurance shall include excess coverage for the Contractor's employees who use their own vehicles in the course of their employment.

DHS agrees to take all necessary steps to maintain the confidentiality of any such policies made available by Contractor under the terms of this paragraph, to the extent allowed or required by law.

The Contractor shall immediately provide prompt written notice to the DHS should any of the insurance policies required under the Contract be cancelled, limited in scope, or not be renewed upon expiration to the extent affecting Contractor's compliance with the requirements hereunder.

Failure of the Contractor to provide and keep in force the insurance required under this section shall be regarded as a material default under this contract, entitling the DHS to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be liable for the full and total amount of any damage, injury, or loss caused by Contractor in connection with this contract.

If the Contractor is authorized by the DHS to subcontract, subcontractors are not excused from the indemnification and/or insurance provisions of this contract. In order to indemnify the State of Hawaii, the Contractor agrees to require its subcontractors to obtain insurance in accordance with this section.

#### **50.500 Inspection of Work Performed**

DHS, DOH, CMS, the State Auditor of Hawaii, the U.S. Department of Health and Human Services (DHHS), the General Accounting Office (GAO), the Comptroller General of the United States, the Office of the Inspector General (OIG), the Hawaii Criminal Justice Data Center (HCJDC), and the Federal Bureau of Investigation (FBI), and the Medicaid Fraud Control Unit of the Department of the Attorney General or their authorized representatives shall, during normal business hours, have the right to enter into the premises of a Contractor and/or all subcontractors and providers, or such other places where duties under the Contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Contractor and/or all sub-contractors and providers shall provide access to all records and data which may be required to administer this program, including CHRI, without the prior approval of the background check applicants. All inspections and evaluations shall be performed in such a manner as to not unduly delay the Contractor's work.

#### **50.600 Wages, Hours, and Working Conditions of Employees Providing Services**

Before a Contractor enters into a contract in excess of \$25,000, the Contractor shall certify that it complies with section 103-55,

HRS, Wages, hours and working conditions of employees of Contractors performing services. The Offeror shall complete and submit the Wage Certification as provided in Appendix F of the RFP, pursuant to Section 103-55, HRS.

**50.700 Standards of Conduct**

The Contractor shall execute the Contractor's Standards of Conduct Declaration, a copy of which is found in Appendix E, and which shall become part of the Contract between the Contractor and the State.

**50.800 Confidentiality of Information**

The Contractor shall maintain CHRI only for the period of time necessary to fulfill its contractual obligations. CHRI disseminated by a Contractor to an Authorized Recipient via an authorized Web site or e-mail address shall remain on such Web site or email inbox only for the time necessary to meet the Authorized Recipient's requirements but in no event shall that time exceed thirty (30) calendar days. This data shall be secured and any e-mail encrypted. CHRI successfully received by the Authorized Recipient, regardless of mode of transmission, shall be destroyed by the Contractor immediately after confirmation of successful receipt by the Authorized Recipient.

The DHS shall ensure that a Contractor's site is a physically secure location to protect against any unauthorized access to CHRI. In addition, all visitors to computer centers and/or terminal areas shall be escorted by authorized personnel at all times.

Only employees of the Contractor, employees of the Authorized Recipient, and such other persons as may be granted authorization by the Authorized Recipient shall be permitted access to the system. Access to the system shall be available only for official purposes consistent with this Contract. Any dissemination of CHRI data to authorized employees of the Contractor is to be for official purposes only.

Information contained in or about the system will not be provided to agencies other than the Authorized Recipient or another

entity which is specifically designated in this Contract. The Contractor shall not disseminate CHRI without the consent of the Authorized Recipient, and as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) The Authorized Recipient and the secondary recipient with unique identifiers; (B) the record disseminated; (C) the date of dissemination; (D) the statutory authority for dissemination; and (E) the means of dissemination.

If CHRI is stored or disseminated in an electronic format, the Contractor shall protect against any unauthorized persons gaining access to the equipment and any of the data. In no event shall responses containing CHRI be disseminated other than governed by the most updated FBI Outsourcing Standard or this Contract, if more stringent than FBI Outsourcing Standards.

All access attempts are subject to recording and routine review for detection of inappropriate or illegal activity.

## **50.900 Security**

### **50.910 Personnel**

The HCJDC shall conduct criminal history record checks of Contractor (and approved Sub-Contractor) personnel having access to CHRI. Criminal history record checks must be completed prior to accessing CHRI under this Contract.

The Contractor shall ensure that each employee performing work under the Contract is aware of the requirements of the FBI Outsourcing Standard and the state and federal laws governing the security and integrity of CHRI. The Contractor shall confirm in writing that each employee has certified in writing that he/she understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities. The Contractor shall maintain the employee certifications in a file that is subject to

review during audits. Employees shall make such certification prior to performing work under the Contract.

The Contractor shall maintain updated records of personnel who have access to CHRI, update those records within 24 hours when changes to that access occur, and maintain a list of personnel who have successfully completed criminal history record checks. Contractors shall notify the DHS within 24 hours when additions or deletions occur.

## 50.920 System

The Contractor's security system shall comply with the CJIS Security Policy in effect at the time the current Outsourcing Standard is incorporated into the contract and with successor versions of the CJIS Security Policy.

- a. If CHRI can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the CHRI with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile as specified by the CJIS Security Policy in order to provide a point of defense and a controlled and audited access to CHRI, both from inside and outside the networks.
- b. Data encryption shall be required throughout the network passing CHRI through a shared public carrier network.

The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.

- a. CHRI shall be stored in a physically secure location.
- b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (i.e., disks, drives, backup storage) at the completion of the Contract and/or before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.
- c. The Authorized Recipient shall ensure that a procedure is in place for the disposal or return of all non-fixed storage media (i.e., hard copies, print-outs).

To prevent and/or detect unauthorized access to CHRI in transmission or storage, each Authorized Recipient, Contractor, or sub-Contractor must be assigned a unique identifying number.

## **50.930 Violations**

### **Duties of the Authorized Recipient and Contractor**

- a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes the most recent Outsourcing Standard that is incorporated by reference.
- b. Pending investigation, the Contractor shall, upon detection or awareness, suspend any employee who commits a security violation from assignments in which he/she has access to CHRI under the Contract.
- c. The Contractor shall immediately (within four hours) notify the Authorized Recipient of any security violation to include unauthorized access to CHRI. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.
- d. The Authorized Recipient shall immediately (within four hours) notify the State Compact Officer of any security violation (to include unauthorized access to CHRI) or termination of the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to CHRI by the Contractor) to the State Compact Officer within five calendar days of receipt of the written report from the Contractor. The written report must include corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

## **51.100 Subcontractors Agreements**

The Contractor may negotiate and enter into contracts or agreements with subcontractors (with prior written consent of the DHS) to the benefit of the Contractor and the State as long

as the subcontractors meet all established criteria and provide the services in a manner consistent with the minimum standards specified. All such agreements shall be in writing and shall specify the activities and responsibilities delegated to the subcontractor. All staff of subcontractors shall undergo a fingerprint-based criminal history record check. Only staff members that meet fitness determination will be able to work for the Contractor.

The contracts must also include provisions for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate. Certain subcontracts, including but not limited to Quality Assurance activities, must be approved by DHS prior to implementation. DHS reserves the right to inspect all subcontract agreements at any time during the Contract period. Any subcontract may be subject to the DHS's prior review and approval. The Contractor's subcontractor shall submit to the Contractor a tax clearance certificate from the Director of the Department of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the subcontractor have been paid.

No subcontract or agreement that a Contractor enters into with respect to the performance under this Contract shall in any way relieve a Contractor of any responsibility for any performance required of it by this Contract. The Contractor shall provide DHS immediate notice in writing by registered or certified mail, of any action or suit filed against it by any subcontractor, and prompt notice of any claim made against any Contractor may result in litigation related in any way to the Contract with the State of Hawaii. The Contractor shall designate itself as the sole point of recovery for any subcontractor.

The Contractor shall notify DHS in writing at least fifteen days prior to adding or deleting subcontractor agreements or making any change to any provider or subcontractor agreements which may materially affect the Contractor's ability to fulfill the terms of this Contract.

All agreements or contracts with the subcontractors shall be finalized and fully executed within 30 days of this Contract



award. DHS reserves the right to review any subcontractor contracts or agreements prior to the notification of award of the Contract.

All subcontracts shall require that the subcontractors agree to comply with the confidentiality requirements imposed by this RFP, to the extent subcontractors render services or perform functions that make such provisions applicable to such agreements.

#### **51.200 Fraud and Abuse/Neglect**

Through its monitoring activities, the Contractor should identify providers who may be committing fraud and/or abuse. The Contractor shall promptly report to the Med-QUEST Division, Health Coverage Services Branch instances in which suspected fraud has occurred. The Contractor should provide any evidence it has to the above referenced State office.

#### **51.300 Use of Funds**

The Contractor shall not use any public funds for purposes of entertainment perquisites and shall comply with any and all conditions applicable to the public funds to be paid under this Contract, including those provisions of appropriate acts of the Legislature or by administrative rules adopted pursuant to law.

#### **51.400 Termination of the Contract**

This Contract may terminate or may be terminated by DHS for any or all of the following reasons in addition to the general conditions in Appendix C:

- In the event of the insolvency of or declaration of bankruptcy by the Contractor.
- For security violations involving CHRI obtained pursuant to the Contract.

#### **51.410 Termination for Bankruptcy or Insolvency**

In the event that the Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any State relating to insolvency or the protection of the rights or creditors, DHS may, at its option, terminate this Contract. In the event DHS elects to terminate the Contract under this provision it shall do so by sending notice of termination to the Contractor by registered or certified mail, return receipt requested. The date of termination shall be deemed to be the date such notice is mailed to the Contractor, unless otherwise specified.

#### **51.420 Termination for Security Violations**

In the event that the Contractor has a security violation of CHRI obtained pursuant to the Contract, fails to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation, or refuses to or is incapable of taking corrective actions to successfully resolve a security violation, DHS may, at its option, terminate this Contract.

In the event DHS elects to terminate a Contract under this provision it shall do so by sending notice of termination to the Contractor by registered or certified mail, return receipt requested. The date of termination shall be deemed to be the date such notice is mailed to the Contractor, unless otherwise specified.

#### **51.500 Conformance With Federal Regulations**

Any provision of the Contract which is in conflict with federal regulations surrounding CHRI, or CMS policy guidance is hereby amended to conform to the provisions of those laws, regulations, and Federal policy. Such amendment of the Contract will be effective on the effective date of the statutes or regulations necessitating it, and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

## **51.600 Force Majeure**

If a Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of major epidemic, act of God, war, civil disturbance, court order or any other cause beyond its control, the Contractor shall make a good faith effort to perform such obligations through its then-existing facilities and personnel; and such non-performance shall not be grounds for termination for default.

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party.

Nothing in this section shall be construed to prevent DHS from terminating this Contract for reasons other than default during the period of events set forth above, or for default if such default occurred prior to such event.

## **51.700 Prohibition of Gratuities**

Neither an Contractor nor any person, firm or corporation employed by an Contractor in the performance of this Contract shall offer or give, directly or indirectly to any employee or agent of the State of Hawaii, any gift, money or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the term of this Contract.

## **51.800 Attorney's Fees**

In addition to costs of litigation provided for under General Condition 8, in the event that DHS should prevail in any legal action arising out of the performance or non-performance of this contract, the Offeror shall pay, in addition to any damages, all expenses of such action including reasonable attorney's fees and costs. The term 'legal action' shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

**51.900      Warranty of Fiscal Integrity**

The Offeror warrants that it is of sufficient financial solvency to assure DHS of its ability to perform the requirements of this Contract. The Offeror shall provide sufficient financial data and information to prove its financial solvency.

**52.100      Authority**

Each party has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party certifies that such person has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

## **SECTION 60 TECHNICAL PROPOSAL**

### **60.100 Introduction**

The following sections described the required content and format for the technical proposal. These sections are designed to ensure submission of information essential to understanding and evaluating the proposal. There is no intent to limit the content of the proposal, which may include any additional information deemed pertinent. It is essential that the Offeror provide the information in the following order separated by tabs:

- Offer Form (OF-1)
- Transmittal letter
- Executive Summary
- Company Background and experience
- Project Organization and Staffing
- Operational and Technical expertise
- Information technology expertise
- Subcontractor Listing
- Appendices A, E, F, and H

The Offeror must state specifically where each requirement noted above is met within the RFP.

### **60.200 Offer Form**

The Offeror Form (refer to Appendix A) shall be signed by an individual authorized to legally bind the Offeror.

### **60.300 Transmittal Letter**

The transmittal letter must be on official letterhead and be signed by an individual authorized to legally bind the Offeror. It shall include:

- A statement indicating that the Offeror is a corporation or other legal entity. All subcontractors shall be identified and a statement included indicating the percentage of work to be performed by the prime Offeror and each subcontractors, as measured by percentage of total contract price;

- A statement that the Offeror is/will be registered to do business in Hawaii and has/will obtain a State of Hawaii General Excise Tax License by the start of work. Provide the Hawaii excise tax number (if applicable);
- A statement identifying all amendments and addenda to this RFP issued by the Issuing Office and received by the Offeror. If no amendments or addenda have been received, a statement to that effect should be included;
- A statement of affirmative action that the Offeror does not discriminate in its employment practices with regard to race, color, religion, creed, ancestry, age, sex including gender identity or expression, sexual orientation, marital status, national origin, or mental or physical handicap, except as provided by law;
- A statement that neither cost nor pricing is included in this letter or the technical proposal;
- If the use of subcontractor(s) is proposed, a statement from each subcontractor must be appended to the transmittal letter signed by an individual authorized to legally bind the subcontractor and stating the general scope of work to be performed by the subcontractor(s);
- A statement that no attempt had been made or will be made by the Offeror to induce any other party to submit or refrain from submitting a proposal;
- A statement that the person signing this proposal certifies that he/she is the person in the Offeror's organization responsible for, or authorized to make decisions as to the prices quoted, that the offer is firm and binding, and that he/she has not participated and will not participate in any action contrary to the above conditions;
- A statement that the Offeror has read, understands, and agrees to all provisions of this RFP;
- A statement that it is understood that if awarded the Contract, the Offeror's organization will deliver the goods and

services meeting or exceeding the specifications in the RFP and amendments;

- A statement that the bid was arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Offeror or with any competitor;
- If any page is marked "Confidential" or "Proprietary" in the Offeror's proposal, an explanation to DHS of how substantial competitive harm would occur if the information is released.

#### **60.400 Executive Summary**

The executive summary shall provide DHS with a broad understanding of the entire proposal. The executive summary shall clearly and concisely condense and highlight the contents of the technical proposal in such a way as to provide MQD with a broad understanding of the contractor's qualifications and approach to meeting the requirements of this RFP.

The executive summary chapter shall highlight the Contractor's:

- Understanding of the project requirements
- Understanding of Federal and State requirements for criminal history record checks
- Understanding of Federal CHRI Outsourcing Standards
- Overall approach to the project
- Summary of the contents of the proposal

#### **60.500 Company Background and Experience**

The company background and experience section shall include for the Offeror and each subcontractor (if any): details of the background of the company, and its size and resources (gross revenues, number of employees, type of businesses), and details of company experience relevant to this RFP.

#### **60.510 Background of the Company**

A description of the history of the company to include but not limited to:

- Provide a general description of the primary business of your organization and its client base;
- Provide a brief history and current company ownership including the ultimate parent organization and major shareholders/principals. Include date incorporated or formed and corporate domicile. Describe the areas of specialization, if applicable. An out-of-state contractor must become duly qualified to do business in the State of Hawaii before a contract can be executed;
- Ownership (public company, partnership, subsidiary, etc.), including the officers of the corporation, and the name and address of its registered agent;
- The home office location and all other offices (by city and state);
- The location of office from which any contract would be administered;
- The name, address and telephone number of the contractor's point of contact for a contract resulting from this RFP;
- The number of employees both locally and nationally; and
- The size of organization in assets, revenue and staff;
- The areas of specialization

#### 60.520 Company Experience

The Offeror shall document the experience, resources, qualifications and credentials of the Offeror by demonstrated experience in projects of similar scope and size. Proposals should demonstrate that the Offeror has sufficient corporate experience and has been successful in performance of similar or relevant projects.

Additionally, Offeror's description shall provide evidence that Offeror has sufficient physical, technological, and financial resources to conduct criminal history record check activities as well as the skills necessary to perform contract activities



consistent with Federal requirements and oversee the work of subcontractors (if any).

For each criminal history records check activity listed in the RFP, the Offeror shall provide the following information:

- A description of the scope of the activity/project performed and a comparison to the products outlined in this RFP. The Offeror shall also include:
  - Time period of the project,
  - Schedule and actual completion dates,
  - Identification of project staff, and
  - Client or customer reference: including name, job title, address and telephone number of the contact person.
- Documentation demonstrating acceptance of project deliverables to the satisfaction of client. Documentation demonstrating Offeror/Contractor initiatives approved and implemented by the client may also be included.
- A statement of the Offeror's other business or contractual obligations and a statement of Offeror's involvement in litigation that could affect this work should be included.
- To the extent that an Offeror intends to utilize subcontracting in order to meet the necessary experience, organization, technical qualifications, skills or other requirements, Offeror must document a recent performance history which indicates an acceptable subcontracting system and documentation that the prospective subcontractor(s) meet said requirements.
- Other relevant experience

## **60.600 Project Organization and Staffing**

The project organization and staffing section shall describe the Offeror's approach to organization and staffing the required level of effort to achieve the objectives of this RFP. The information should provide the State with a clear understanding of the

organization, functions of key personnel and on-site personnel during start-up and on-going operations.

## 60.610 Organization

The Offeror must describe the Offeror's and each subcontractor's (if any) project organization. At a minimum, the following must be provided:

- Offeror's organizational chart reflecting:
  - The structure of the organization and lines of authority;
  - Functional statement of each organizational department/section relevant to the RFP requirements;
  - Identification of key personnel and delineation of their job descriptions/responsibilities. At a minimum, key personnel shall include:
    - a) Program/Executive Director or key contact person;
    - b) Financial Officer; and
    - c) Information Technology Leader.

The Offeror's designated key contact person shall coordinate all activities of this contract with the State's representatives or its designees and shall maintain close and frequent communication with the State's designated contact(s).

- Names, addresses, and phone/fax numbers shall be provided for each key personnel position.
  - Identification of the proposed staff positions (position title) to be utilized in the implementation of RFP requirements.
- Relationship of the Offeror to related entities;
- Address and phone/fax number of Hawaii-based and subcontractor's personnel, if applicable.

## **60.620 Staff**

The Offeror shall:

- Identify the number of proposed administrative support full-time employees (FTEs) and shall provide a brief explanation of the development of the FTE estimate.
- Identify the number and position titles of proposed FTEs to perform the criminal history record check activities as well as a brief explanation of the development of the FTE estimate. Additionally, Offeror shall provide an assurance as well as documentation that staff performing these activities have demonstrated experience in and knowledge of:
  - Federal criminal history record check standards;
  - ACA standards for Medicare/Medicaid providers;
  - Monitoring processes consistent with Federal Outsourcing Standards; and
  - Information technology specifications to meet contract requirements.

## **60.630 Personnel Qualifications**

Resumes are required for all key professional staff. Resumes shall describe the following:

- Experience with Federal criminal history record check standards;
- Experience with Federal Outsourcing Standards;
- Length of time and description of experience with criminal history record check standards;
- Previous relevant experiences especially related to system development;
- Relevant education and training;
- Names, positions titles and telephone numbers of at least two references who can provide information on the individual's experience and competence; and
- Other relevant experience.

## **60.700 Approach**

For each activity outlined in this RFP, Offeror must provide a general description of their approach to developing the

deliverable products specified in this RFP. The approach should demonstrate the Offeror's overall understanding of the RFP requirements. Additionally, this discussion should identify any major issues and open policy decisions which will affect the achievement of the overall objectives of each criminal history record check activity.

#### **60.800 Work Plan**

For each activity outlined in this RFP, the Offeror shall provide a work plan that shall include:

- Detailed descriptions of the major phases, tasks, and subtasks necessary to accomplish the requirements of this RFP;
- Include specific timeline(s) for major phases, tasks, and subtasks necessary to accomplish the requirements of this RFP;
- Identification of the responsible party (MQD versus the Offeror) for each major phase and task; and
- Discussion of the flexibility of the work plan to meet changes in program requirements and cope with delays should they occur.

The work plan shall demonstrate an understanding of the relationship of relevant entities that are affected by the objectives sought in this RFP.

#### **60.900 Assumptions**

This section will describe the assumptions made by the Offeror in submitting the proposal.

##### **60.910 Anticipated Problem Areas**

The Offeror shall identify the problems that might reasonably be expected, and describe their approach for resolving them.

#### **61.100 Operational and Technical Expertise**

The Offeror shall describe their operational and technical expertise to include:

- Provide statewide coverage with sufficient and convenient geographic locations island wide for background check applicants to submit to fingerprinting both at fixed-sites and mobile;
- Describe if utilizing your own equipment to collect fingerprints or plan to subcontract this function. Describe equipment used;
- Describe systems to be able to turn around background check applicant requests of criminal history record check information within a reasonable timeframe;
- Ensure background check applicant CHRI remains private, confidential and secure through established business practices and policies;
- Provide an appeal mechanism for applicants to: a) dispute criminal history record check findings that may be in error or; b) for suitability exemption of old or unrelated convictions based on pre-defined criteria; and
- Assess employment suitability based on criteria established by the DHS as well as assist the State in revising their criteria, as needed.

## **61.200 Information Technology Expertise**

The Offeror shall describe their information technology expertise to include:

- System for collecting all operating fees from background check applicants or providers;
- Payment of all access or connection fees to the State and FBI to access CHRI or other State registries;
- System for online electronic access of applications to potential employees/employees or providers for criminal history record checks. Describe information technology hardware, software and support to ensure availability to background check applicants or providers for the submission of applications and Offeror's immediate connectivity to public state and federal criminal history data bases to process such applications;
- Ensure electronic security and data security.

## **61.300 Subcontractor Listing**

The Offeror shall provide a listing of all subcontractors that they plan to use under this Contract, if applicable. This information

shall include the service that each subcontractor plans to provide as well as their location. The Offeror shall describe how they plan to monitor subcontractors.

## **SECTION 70 COST PROPOSAL**

### **70.100 Introduction**

The cost proposal shall include the administrative and appeals processing rate.

### **70.200 Administrative Rate**

The Offeror shall provide a cost proposal for the administrative fee specified in this RFP. The offer submitted will be your best and final offer. The cost proposal shall include the following schedule:

- Cost Proposal (Appendix G)

### **70.300 Appeals Processing Rate**

Offeror shall submit a cost proposal detailing the administrative fees for providing appeals processing described in Section 40.470. This rate shall be charged to each background check applicant or provider that files an appeal regarding a red light determination. The cost proposal shall include the following schedule:

- Cost Proposal (Appendix G)

## **SECTION 80 EVALUATION AND SELECTION**

### **80.100 Introduction**

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

### **80.200 Evaluation Process**

The DHS shall establish an evaluation committee that shall evaluate designated sections of the proposal. The committee shall consist of members who are familiar with the programs and the minimum standards or criteria for the particular area. Additionally, the DHS may, at its discretion, designate additional representatives to assist in the evaluation process. The committee shall evaluate the proposal and document their comments, concerns and questions.

### **80.300 Mandatory Proposal Evaluation**

Each proposal shall be evaluated to determine whether the requirements as specified in this RFP have been met. The proposal shall first be evaluated against the following criteria:

- Proposal was submitted within the closing date and time for proposals as required in Section 21.300;
- The proper number of separately bound copies are in sealed envelopes as required in Section 21.300;
- All information required in Sections 60.200 and 60.300 have been submitted; and
- Proposal contains the necessary information in the proper order.

A proposal must meet all mandatory requirements prior to the technical evaluation. Any proposal that does not meet all mandatory requirements shall not have the technical proposal opened; the technical proposal shall be returned to the Offeror.



## **80.400 Proposal Evaluation**

The proposals that have met the minimum mandatory requirements shall be evaluated in order to identify those applicants that meet the minimum technical requirements detailed in Section 80.500. Each applicant must obtain a minimum of seventy-five percent (75%) of the total points for each of the required review sections in the technical proposal.

The listing of criteria is not all-inclusive and the DHS reserves the right to add, delete or modify any criteria.

### **Evaluation Categories**

### **Possible Points**

<b>Transmittal Letter</b>	0 points	<b>100 Points</b>
<b>Proposal Application</b>		
Executive Summary	0 points	
Company Background and Experience	15 points	
Project Organization and Staffing	15 points	
Operational and Technical Expertise	25 points	
Information Technology Expertise	20 points	
Subcontractor Listing	5 points	
Business Proposal	20 points	
<b>TOTAL POSSIBLE POINTS</b>		<b>100 Points</b>

Those proposals that do not meet the minimum points to pass each of the required criteria shall be returned to the applicant with a letter of explanation.

## **80.500 Evaluation Criteria**

Each section listed below shall be evaluated using the following criteria:

Weighted points (0-5) for each sub-area will be given. The weighted points for each sub-area will be multiplied by the number of applicable points for the section. The Offeror must receive a weighted point average of 3 for each sub-area to pass each sub-area. The sum of all of the sub-areas will be tallied to

receive the final score. The Offeror with the highest score shall be awarded the Contract.

**80.510 Executive Summary (0 Points)**

- No points are assigned to Executive Summary.
- The intent is to give the Offeror an opportunity to orient evaluators as to the service(s) being offered.

**80.520 Company Background and Experience (15 Points)**

The State will evaluate the Offeror's company background and experience 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, including methodology.
- Demonstrated capability to coordinate services with other agencies and resources in the community.

Offerors shall demonstrate a thorough understanding of the purpose and scope of the service activities, and also demonstrate the necessary knowledge, skills, abilities and experience to deliver the proposed services.

**80.530 Project Organization and Staffing (15 Points)**

The State will evaluate the Offeror's overall staffing approach to the service that shall include:

- The proposed staffing pattern, client/staff ratio, and proposed caseload capacity is reasonable to insure viability of the services.
- 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(s). (Approach and rationale for the structure, functions, and staffing of the proposed organization for the overall service activity and tasks).
- Approach to developing this program.
- Work plan for implementation of this program.
- Description of assumptions and anticipated problem areas reflects understanding of community and providers that will participate in this program.

#### 80.540 Operational and Technical Expertise (25 Points)

Evaluation criteria for this section will assess the Offeror's approach to the service activities and management requirements outlined in the RFP.

- Extent to which the proposal clearly describes the overall program content and design.
- Extent to which the proposal describes management oversight of the project, including clarity of work assignments and responsibilities at the various sites.
- Extent to which the proposal describes program goals and objectives that are consistent with those identified in the RFP.
- Extent to which the proposal demonstrates flexibility in service delivery.
- Extent to which the proposal describes collaboration with other community resources.

#### 80.550 Information Technology Expertise

Evaluation criteria for this section will assess the Offeror's approach to development of information technology to streamline and simplify the requirements outlined in the RFP.

- Extent to which the proposal clearly describes the overall program content and design.
- Extent to which the proposal describes program goals and objectives that are consistent with those identified in the RFP.

- Extent to which the proposal demonstrates flexibility in service delivery.
- Extent to which the proposal describes collaboration with other community resources.

#### 80.560 Subcontractor Listing (5 points)

Evaluation criteria for this section will assess the Offeror approach to using subcontractors, if applicable.

- Availability of subcontractors to background check applicants
- Approach to monitoring subcontractors.

#### 80.570 Business Proposal (20 Points)

Pricing structure based on cost reimbursement:

- Personnel costs are reasonable and comparable to positions in the community.
- Non-personnel costs are reasonable and adequately justified.
- The budget supports the scope of service and requirements of the RFP.
- Both administrative and appeal processing rates are reasonable for background check applicants and providers.

#### 80.600 Contract Award

Upon selection of the offeror that will be awarded a contract, the DHS shall initiate the contracting process. The offeror shall be notified in writing that the RFP proposal has been accepted and that the DHS intends to award a contract to the offeror. The RFP shall become part of the contract. This letter shall serve as notification that the offeror should begin to develop its programs, materials, policies and procedures for the programs.

## **APPENDIX A – OFFER FORM**

**APPENDIX A**  
**OFFER FORM- OF-1**  
**Criminal Record History and Background Check RFP**  
(DHS-RFP-2013-001)

Procurement Officer  
Department of Human Services  
1390 Miller Street  
Honolulu, Hawaii 96813

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, Form AG-008-GC (04/15/09), by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived without collusion.

Offeror is:

- ☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture
- ☐ Other \_\_\_\_\_
- \*State of incorporation \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

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

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

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

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

Respectfully submitted,

(x) \_\_\_\_\_  
Authorized (Original) Signature

Date: \_\_\_\_\_

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

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

E-mail Address: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Please Type or Print)

\*\* \_\_\_\_\_  
Exact Legal Name of Company (Offeror)

\*If Offeror is a "d.b.a." or a "division" of a corporation, furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

## **APPENDIX B – WRITTEN QUESTIONS FORMAT**

**Appendix B**  
**Written Questions Format**  
**Criminal Record History and Background Check RFP**  
**RFP-MQD-2013-001**

Offeror Name	Date Submitted	Question #	RFP Section #	RFP Page #	Paragraph #	Question



## **APPENDIX C – GENERAL CONDITIONS**

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

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

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

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

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

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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



supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR 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.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

## **APPENDIX D – BUSINESS ASSOCIATE LANGUAGE**



## APPENDIX D

### **Business Associate Language** EXHIBIT BUSINESS ASSOCIATE AGREEMENT

#### RECITALS

A. STATE is a Covered Entity as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore subject to HIPAA and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH") enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, HIPAA, the Privacy Rule, Security Rule and HITECH shall be referred to herein as the "HIPAA Regulations").

B. Protected Health Information received from STATE or created or received by CONTRACTOR on behalf of STATE ("PHI") may be needed for CONTRACTOR to perform the services (the "Services") requested by STATE and described in any underlying agreement between the parties (the "Underlying Agreement").

C. To the extent CONTRACTOR needs to access PHI to perform the Services, it will be acting as a Business Associate of STATE and will be subject to certain provisions of the HIPAA Regulations.

D. CONTRACTOR and STATE wish to set forth their understandings with regard to the use and disclosure of PHI by CONTRACTOR so as to comply with the HIPAA Regulations.

#### AGREEMENTS

In consideration of the Recitals and the mutual agreements below, the parties agree as follows:

1. Defined Terms. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.

2. CONTRACTOR's Obligations and Permitted Activities.

(a) CONTRACTOR agrees to not use or further disclose PHI other than as required to perform the Services, requested by STATE or Required By Law, or as otherwise permitted herein.

(b) CONTRACTOR agrees to use reasonable safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, and shall develop, implement, maintain and use appropriate administrative procedures, and physical and

technical safeguards, to reasonably preserve and protect the confidentiality, integrity and availability of electronic PHI.

(c) CONTRACTOR agrees to report to STATE, without unreasonable delay and in no case later than two (2) business days following actual knowledge by CONTRACTOR:

(i) Any use or disclosure of PHI not provided for by this Agreement.

(ii) Any Breach of Unsecured PHI, as defined in 45 CFR 164.402. Following the initial notification of any such Breach, CONTRACTOR shall provide a report to STATE that includes, to the extent possible: [A] a brief description of what happened, including the date of occurrence and the date of the discovery by CONTRACTOR; [B] a description of the PHI affected, including the names of any Individuals whose PHI has been or is reasonably believed to have been accessed, acquired or disclosed and the types of PHI involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and [C] a brief description of what CONTRACTOR has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. CONTRACTOR also shall provide to STATE any other available information STATE is required to include in its notification to affected Individual(s).

(d) CONTRACTOR agrees to promptly report to STATE any Security Incident of which CONTRACTOR becomes aware with respect to PHI that is in the custody of CONTRACTOR by calling the MQD Civil Defense Coordinator at (808) 348-9171.

(i) Written notice shall be provided within 2 business days of discovery. CONTRACTOR shall take prompt corrective action to cure any deficiencies, and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. CONTRACTOR shall investigate such breach and provide a written report of the investigation and resultant mitigation within thirty (30) calendar days of the discovery of the breach.

(ii) The parties acknowledge and agree that this section constitutes notice by CONTRACTOR to STATE of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents of which no additional notice to STATE shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on CONTRACTOR's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as

such incidents do not result in unauthorized access, use or disclosure of STATE's electronic PHI.

(e) CONTRACTOR agrees to train and use reasonable measures to ensure compliance with the requirements of these special conditions by employees who assist in the performance of functions or activities on behalf of the STATE under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of these special conditions, which may include termination of employment.

(f) CONTRACTOR agrees to ensure that any agent or subcontractor to whom it provides PHI agrees to the same or substantially similar restrictions and conditions as those that apply to CONTRACTOR through this Agreement with respect to such PHI.

(g) CONTRACTOR shall make its internal policies, procedures and records relating to the use and disclosure of PHI reasonably available to the Secretary or to STATE if necessary or required to assess CONTRACTOR's or the STATE's compliance with the HIPAA Regulations.

(h) It is not anticipated that CONTRACTOR will maintain a Designated Record Set on behalf of STATE; however, if CONTRACTOR maintains a Designated Record Set on behalf of STATE, CONTRACTOR agrees to, at STATE's written request: (i) provide access to such PHI in order to assist STATE in meeting its obligations under the Privacy Rule, and (ii) make any amendment(s) to such PHI as STATE so directs or agrees to pursuant to the Privacy Rule.

(i) So that STATE may meet its disclosure accounting obligations under the HIPAA Regulations, CONTRACTOR agrees to document disclosures of PHI made by CONTRACTOR which are not excepted from disclosure accounting requirements under the HIPAA Regulations.

(j) CONTRACTOR may use PHI for CONTRACTOR's proper management and administration or to carry out its legal responsibilities. CONTRACTOR may disclose PHI for CONTRACTOR's proper management and administration, provided that: (i) CONTRACTOR obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person notifies CONTRACTOR of any instances of which it is aware in which the confidentiality of PHI has been breached. CONTRACTOR also may make disclosures that are required by law.

(k) CONTRACTOR may use PHI to provide Data Aggregation services to STATE as permitted by the Privacy Rule.

(l) CONTRACTOR may, at its option:

(i) Deidentify PHI in accordance with the requirements of the Privacy Rule and maintain such deidentified health information indefinitely; provided that all identifiers are destroyed or returned in accordance with this Agreement.

(ii) Create a Limited Data Set for the purpose of providing the Services, provided that CONTRACTOR:

[a] Does not use or further disclose PHI contained in the Limited Data Set except as necessary to provide the Services or as provided for in this Agreement or otherwise Required By Law;

[b] Uses appropriate safeguards to prevent the use or disclosure of PHI contained in the Limited Data Set other than as provided for by this Agreement;

[c] Reports to STATE any use or disclosure of PHI contained in the Limited Data Set of which CONTRACTOR becomes aware that is not provided for by this Agreement;

[d] Ensures that any agents or subcontractors to whom it provides access to the Limited Data Set agree to the same restrictions and conditions that apply to CONTRACTOR under this Agreement; and

[e] Does not re-identify PHI or contact the Individuals whose information is contained within the Limited Data Set.

### 3. STATE's Obligations.

(a) STATE shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by STATE.

(b) STATE shall not provide CONTRACTOR with more PHI than that which is minimally necessary for CONTRACTOR to provide the Services and, where possible, STATE shall provide any PHI needed by CONTRACTOR to perform the Services in the form of a Limited Data Set, in accordance with the HIPAA Regulations.

(c) STATE acknowledges and agrees that neither this Agreement nor the Underlying Agreement requires CONTRACTOR to make any disclosure for which an accounting would be required under the HIPAA Regulations. STATE further agrees that it shall be solely responsible for tracking and providing Individuals an accounting of any disclosures made by STATE to CONTRACTOR.

(d) STATE acknowledges and agrees that the provisions of section 2(j)(ii) of this Agreement shall constitute a Data Use Agreement between the parties.

4. Term and Termination.

(a) Term. This Agreement shall be effective as of the date first written above, and shall terminate when all PHI is destroyed or returned to STATE. If CONTRACTOR determines, in accordance with subsection 4(c)(ii) below, that it is infeasible to return or destroy PHI, the protections of this Agreement with respect to such PHI shall remain in effect until such PHI is returned or destroyed.

(b) Termination. Upon a party's knowledge of a material breach by the other party, the nonbreaching party shall either:

(i) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the nonbreaching party; or

(ii) Immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and cure is not possible.

(c) Effect of Termination.

(i) Except as otherwise provided in subsection 4(c)(ii) below, upon termination of this Agreement for any reason, CONTRACTOR shall return or destroy all PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of CONTRACTOR.

(ii) If CONTRACTOR determines that returning or destroying any or all PHI is infeasible, the protections of this Agreement shall continue to apply to such PHI, and CONTRACTOR shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such PHI. STATE hereby acknowledges and agrees that infeasibility includes CONTRACTOR's need to retain PHI for purposes of complying with its work product documentation standards.

5. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the effective date of any final regulation or amendment to the HIPAA Regulations, this Agreement shall be deemed automatically amended so that the obligations it imposes on the parties remain in compliance with such regulations. Following amendment of the Agreement in this manner, the parties shall, as

necessary, work together to clarify their respective obligations with respect to any new requirements under the modified HIPAA Regulations.

(c) Independent Contractors. CONTRACTOR and STATE are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between CONTRACTOR and STATE. Neither CONTRACTOR nor STATE will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement.

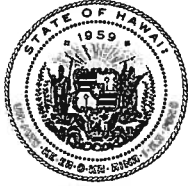
(d) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of the Underlying Agreement, then the terms of this Agreement shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the HIPAA Regulations.

(e) Entire Agreement. This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

(f) Notices: Whenever written notice is required by CONTRACTOR to the STATE under this Agreement, it should be mailed and/or faxed to:

MQD HIPAA Project Manager  
P.O. Box 700190  
Kapolei, Hawaii 96709-0190

## **APPENDIX E – STANDARDS OF CONDUCT DECLARATION**



# STATE OF HAWAII

## CONTRACTOR'S

### STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

### CONTRACTOR

By

(Signature)

Print Name

Print Title

Name of Contractor

Date



\* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

## **APPENDIX F – DISCLOSURE STATEMENT**

**APPENDIX F  
FORMS**

**DISCLOSURE STATEMENT  
OWNERSHIP**

Company/Agency Name: \_\_\_\_\_  
Address (City, State, Zip): \_\_\_\_\_  
Telephone: \_\_\_\_\_

For the period beginning: \_\_\_\_\_ and ending \_\_\_\_\_

Type of Entity:

- |  |  |
|--|--|
| <p><input type="radio"/> Sole Proprietorship</p> <p><input type="radio"/> Partnership</p> <p><input type="radio"/> Corporation</p> <p><input type="radio"/> Governmental</p> | <p><input type="radio"/> For-Profit</p> <p><input type="radio"/> Non-Profit</p> <p><input type="radio"/> Other (Specify)</p> |
|--|--|

**455.104 Information on Ownership and Control**

- a. List the names and addresses of any individuals or organizations with an ownership or controlling interest in the disclosing entity. "Ownership interest" means the possession of equity in the capital, the stock, or the profits of disclosing entity, directly or indirectly.

<u>Name</u>	<u>Address</u>	<u>Percent of Ownership of Control</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- b. List the names and addresses of any individuals or organizations with an ownership or controlling interest in any subOfferor in which the disclosing entity has direct or indirect ownership of five (5) percent or more.

<u>Name</u>	<u>Address</u>	<u>Percent of Ownership of Control</u>

- c. Names of persons named in (a) and (b) above who are related to another as spouse, parent, child, or sibling of those individuals or organizations with an ownership or controlling interest.

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- d. List the names of any other disclosing entity in which a person with an ownership or controlling interest in the disclosing entity also has an ownership or controlling interest.

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455.105 Information Related to Business Transactions

- e. List the ownership of any subcontractor with whom the Offeror has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request.

<u>Describe Ownership of Subcontractors</u>	<u>Type of Business Transaction with Provider</u>	<u>Dollar Amount of Transaction</u>

- f. List any significant business transactions between the Offeror and any wholly owned supplier or between the Offeror and any subOfferor during the five-year period ending on the date of the request.

<u>Describe Ownership of Subcontractors</u>	<u>Type of Business Transaction with Provider</u>	<u>Dollar Amount of Transaction</u>

455.106 Information on Persons Convicted of Crime

- g. List the names of any person who has ownership or controlling interest in the Offeror, or is an agent or managing employee of the Offeror and has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid or the Title XX services program since the inception of those programs.

<u>Name</u>	<u>Address</u>	<u>Title</u>

## CONTROLLING INTEREST FORM

The Offeror must provide the name and address of any individual which owns or controls more than ten percent (10%) of stock or that has a controlling interest (i.e., about to formulate, determine or veto business policy decisions, etc.). Failure to make full disclosure may result in rejection of the Offeror's proposal as unresponsive.

<u>NAME</u>	<u>ADDRESS</u>	<u>OWNER OR CONTROLLER</u>	HAS CONTROLLING INTEREST <u>YES</u>
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## GRIEVANCE SYSTEM FORM

The Offeror must complete the form below and submit with this proposal.

I hereby certify that \_\_\_\_\_  
(Offeror Name)

will have in place on the commencement date of this contract a system for reviewing and adjudicating grievances by recipients and providers arising from this contract in accordance with DHS Rules and as set forth in the Request for Proposal.

I understand such a system must provide for prompt resolution of grievances and assure the participation of individuals with authority to require corrective action.

I further understand the Offeror must have a grievance policy for recipients and providers which defines their rights regarding any adverse action by the Offeror. The grievance policy shall be in writing and shall meet the minimum standards set forth in this Request for Proposal.

I further understand evaluation of the grievance procedure shall be conducted through documentation submission, monitoring, reporting, and on-site audit, if necessary, by DHS and deficiencies are subject to sanction in accordance with DHS rules.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## WAGE CERTIFICATION

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment insurance, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, HRS.

Offeror:

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Signature:

---

Title: 

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Date: 

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## INSURANCE

Offeror shall provide the following:

1. Commercial General Liability Insurance is provided by:

Insurance Company \_\_\_\_\_

Coverage \_\_\_\_\_

2. Reinsurance is provided by:

Insurance Company \_\_\_\_\_

Coverage \_\_\_\_\_

3. Other forms of insurance will be provided by:

Type: \_\_\_\_\_

Insurance Company \_\_\_\_\_

Coverage \_\_\_\_\_

Type: \_\_\_\_\_

Insurance Company \_\_\_\_\_

Coverage \_\_\_\_\_

Type: \_\_\_\_\_

Insurance Company \_\_\_\_\_

Coverage \_\_\_\_\_

Offeror: \_\_\_\_\_

## **APPENDIX G – COST PROPOSAL**

**Cost Proposal RFP-MQD-2013-001**  
**Criminal History and Background Check**

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Contractor

Fiscal Year 2013

Administrative Fee (Section 70.200)

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Appeals Processing Fee (Section 70.300)

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**Cost Proposal RFP-MQD-2013-001**  
**Criminal History and Background Check**

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Contractor

Fiscal Year 2014

Administrative Fee (Section 70.200)

---

Appeals Processing Fee (Section 70.300)

---

**Cost Proposal RFP-MQD-2013-001**  
**Criminal History and Background Check**

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Contractor

Fiscal Year 2015

Administrative Fee (Section 70.200)

---

Appeals Processing Fee (Section 70.300)

---

## **APPENDIX H – REFERENCES**

## **APPENDIX H**

### **CLIENT REFERENCES**

The Offeror is required to supply the State with names, addresses, and telephone numbers of three (3) customers for which the Offeror has supplied products and services that are similar to those being requested in this RFP. All work for these references must have been performed within the past two- (2) years. Only three (3) references should be submitted in the proposal submission packet.

1. Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

\_\_\_\_\_

Reference Name \_\_\_\_\_

Current Phone: \_\_\_\_\_

2. Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

\_\_\_\_\_

Reference Name \_\_\_\_\_

Current Phone: \_\_\_\_\_

3. Client Name: \_\_\_\_\_

Client Address: \_\_\_\_\_

\_\_\_\_\_

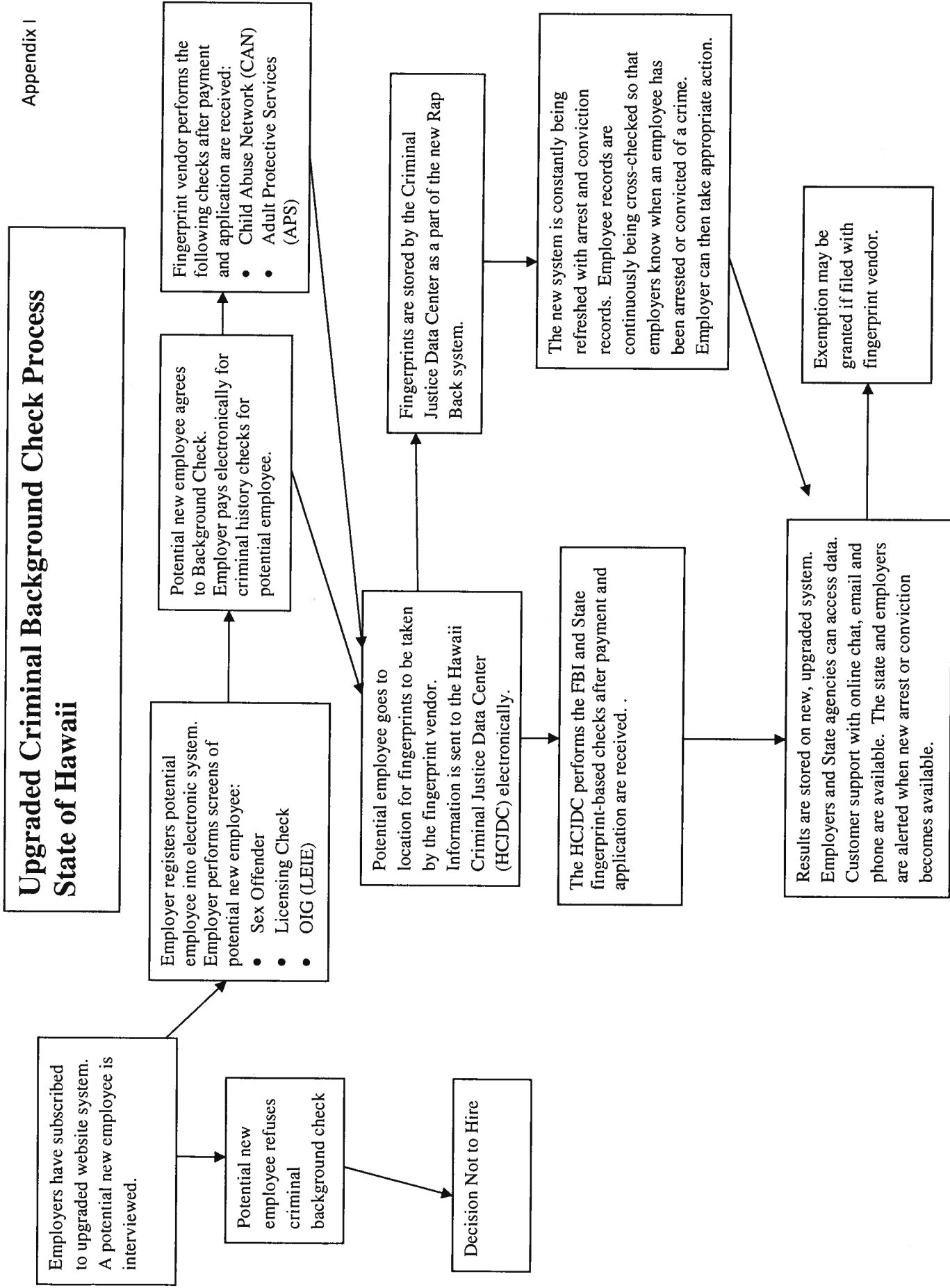
Reference Name \_\_\_\_\_

Current Phone: \_\_\_\_\_

## **APPENDIX I – FLOW OF PROPOSED BACKGROUND CHECK SYSTEM**



# Upgraded Criminal Background Check Process State of Hawaii



## **APPENDIX J – DHS STANDARDS**

## APPENDIX J

### DEPARTMENT OF HUMAN SERVICES Med-QUEST Division

#### CRIMINAL HISTORY RECORD CHECK STANDARDS

##### I. PURPOSE

To protect the health, safety and welfare of clients, criminal history information on an individual who wishes to serve as a direct service provider shall be considered in determining whether the individual is suitable to serve as a direct service provider to Med-QUEST Division (MQD) clients.

##### II. STATE CRIMINAL INFORMATION SYSTEM CHECK

- A. Upon implementation of these standards, a check of the Criminal Justice Information System (CJIS) and the Federal Bureau of Investigation (FBI) data system for a criminal history record check shall be conducted when an individual is:
  - 1. Conditionally offered a position as a direct service provider by an agency, purchase of service contractor, or individual employer. Pending the completion of the criminal history record check, the individual may be placed in a direct service provider position on a probationary status not to exceed thirty (30) days;
  - 2. In a direct service provider position when these standards become effective. The criminal history record check shall be completed within six (6) months of the effective date of these standards.
- B. The criminal history record check shall include the submission of fingerprints to the FBI and the CJIS for a State criminal history record check.
- C. Individuals shall have a criminal history record check upon initial hire or implementation of these standards and a second criminal history record check twelve months later. Thereafter, State name checks shall be conducted every other year.
- D. The responsibility for conducting a criminal history record check shall rest with the individual seeking to become a direct service provider or the individual/agency/organization hiring the individual as a direct service provider.
- E. The criminal history record checks shall be conducted through:
  - 1. For MQD providers: The Department of Human Services (DHS) designee contracted to fingerprint individuals and to submit information to and receive information from the FBI and CJIS. The individual shall complete, sign and date the DHS 1645, "Authorization for Criminal

History Record Clearance”, and submit the completed form to the DHS designee;

2. For MQD and CWSB providers: State name checks are to be obtained from the Hawaii Criminal Justice Data Center (HCJDC) website: (<http://ecrim.ehawaii.gov/ahewa/>). Individuals who do not have access to a computer may request information from the following:

**Oahu:** Hawaii Criminal Justice Data Center  
465 South King Street, Room 101  
Honolulu, Hawaii 96813

The Oahu office, for an additional fee, will process mailed-in requests for criminal history records checks.

**Neighbor Islands:** County police stations where HCJDC computer terminals are available. Molokai and Lanai are covered through the main police station on Maui.

- F. When name checks into the State name inquiry system are required for employment, a printed report of each name record check accompanied by a signed Statement of Authenticity that the criminal history record report is a true and unaltered copy shall be retained in the hired individual’s personnel file and made available for review by DHS staff or its designee for compliance monitoring purposes.
- G. Fingerprint results and/or a printed name check in the State criminal history records, dated no more than six (6) months before the date an initial criminal history record check is required, may be accepted instead of a new criminal history record check being performed.
- H. DHS shall not be directly responsible for any cost related to the criminal history record check. Funds received through a Purchase of Service contract with DHS for administrative costs may be used to meet the cost for criminal history record checks.

### III. CONVICTION RECORDS IN HIRING AND TERMINATING DIRECT SERVICE PROVIDERS

Information contained in criminal history record check reports shall be taken into consideration when hiring and terminating individuals as direct service providers. An offer of employment shall be withdrawn or the position of a direct service provider shall be terminated when a prospective or current direct service provider has a criminal history as indicated below:

- A. The criminal conviction shall have occurred within ten (10) years of the date of the criminal history record check. A criminal conviction occurring more than ten (10) years prior to the date of the criminal history record check may be considered when the criminal history of the individual may pose a risk to the health, welfare and safety of service recipients ; and
- B. The crime for which there is a conviction shall have a rational relationship to the direct service provider's position. Rational relationship means the crime for which there is a history is substantially related to the qualifications, duties and responsibilities of the direct service provider position. Crimes having rational relationships to direct service provider positions include any felony, including but not limited to theft, abuse, neglect, assault, or crimes involving violence or sexual offenses.
- C. Exemptions from the requirements of sections III. A. and B. may be approved for MQD providers by the DHS designee and for CWSB providers by the CWSB.
  - 1. Requests for exemptions shall be made in writing by using form DHS 1673, "Request for Exemption (From Criminal History Records Check Standards or Protective Services Central Registry Check Standards)", or a similar form. The individual seeking the exemption must complete the DHS 1673 or similar form. A copy of the individual's current results of a name inquiry into the State criminal history records check must accompany the request. Fingerprint results for MQD providers should already be on file with the DHS designee.
  - 2. The "Checklist for Exemption Request" may be used as a reminder of the documents to be submitted for EACH exemption request. All documents shall be submitted to the DHS designee or CWSB.
  - 3. Unless an individual is self-employed, the employer agency must be involved in the exemption process to assure the timely submittal of all required documents and appropriateness of the exemption request. Requests for exemptions shall be routed through the prospective employer agency prior to submittal to the Department or its designee.
  - 4. **For MQD Providers:** All documents shall be submitted to the DHS designee. Upon receipt of the written exemption request and other required documents listed on the "Checklist for Exemption Request", the DHS designee shall convene a panel consisting of three (3) professional level multi-disciplinary team members to review the request. The panel shall include individuals in at least two different professions with backgrounds in criminal justice, legal and/or the therapeutic mental health field.
  - 5. **For CWSB Providers:** All documents shall be submitted to the CWSB Administrator. Upon receipt of the written exemption request and other required documents listed on the "Checklist for Exemption Request", the CWSB Administrator shall convene a panel to review the request. The panel may include the CWSB Administrator or designee, the CWSB Program Development Administrator, relevant CWSB Assistant Program

and Section Administrators, and anyone else deemed appropriate by the CWSB Administrator or designee.

6. The exemption panel shall consider the following:
    - a. The relevancy of the individual's conviction record to the qualifications, functions and duties of the direct service provider position the individual wishes to fill;
    - b. Passage of time since the crime was committed; and
    - c. Any evidence of rehabilitation, such as letters from counselors or therapists attesting to a sustained improvement in the individual's behavior, character references, and activities since conviction, such as employment.
  7. A single factor may not be evidence of rehabilitation. If necessary, the panel shall request additional information from the individual seeking the exemption.
  8. Individuals requesting exemptions shall be informed in writing of the panel's decision within 45 calendar days from the date the panel receives all documents needed for a decision to be made. The panel may extend the 45-day period with cause and a written explanation to the individual seeking the exemption.
  9. Individuals who are dissatisfied with the panel decisions on their exemption requests may:
    - a. Appeal the panel's decision to the Med-QUEST Division Administrator.
- D. MQD clients may choose not to conduct criminal history record checks on individuals they hire on their own. Clients who choose not to have criminal history record checks shall complete form DHS 1672, "Consumer-Employer Choice Regarding Criminal History Record Check and Adult Protective Services (APS) Central Registry Check", to acknowledge their understanding of these standards and the purpose for the checks, and their decision not to conduct criminal history record checks or APS Central Registry checks on individuals they plan to hire as direct service providers.

#### Attachments

DHS 1645 with instructions

DHS 1672 with instructions

DHS 1673 with instructions

Statement of Authenticity

Checklist for Exemption Request

Note: These standards will be updated to assure correct form numbers are included once approval of forms through DHS system.

DEPARTMENT OF HUMAN SERVICES  
Med-QUEST Division

PROTECTIVE SERVICES  
CENTRAL REGISTRY CHECK STANDARDS

I. PURPOSE

To protect the health, safety and welfare of Med-QUEST (MQD) clients, Protective Services Central Registry information on an individual who wishes to serve as a direct service provider shall be considered in determining whether the individual is suitable to serve as a direct service provider to MQD clients.

The Protective Services Central Registry may include information from the Adult Protective Services (APS) Central Registry and the Child Welfare Services (CWS) Central Registry. The APS Central Registry shall be checked for individuals serving as direct service providers for MQD clients. The CWS Central Registry shall be checked for individuals serving as direct service providers for CWSB clients. Both Registries shall be checked for individuals serving as direct service providers for both MQD and CWSB clients, and for MQD clients who are minor children.

These Protective Services Central Registry Check Standards do not apply to direct service providers who must meet the licensing standards as specified in the Child-Caring Institution and/or Child-Placing Organization administrative rules.

II. PROTECTIVE SERVICES CENTRAL REGISTRY CHECK

- A. Upon implementation of these standards, a check of the Protective Services Central Registry shall be conducted when an individual is:
1. Conditionally offered a position as a direct service provider by an agency, purchase of service contractor, or individual employer. Pending the completion of the Protective Services Central Registry check, the individual may be placed in a direct service provider position on a probationary status not to exceed thirty (30) days; or
  2. In a direct service provider position when these standards become effective. The Protective Services Central Registry check shall be completed within six (6) months of the effective date of these standards.
- B. Individuals shall have a Protective Services Central Registry check upon initial hire or implementation of these standards and a second Protective Services Central Registry check twelve (12) months later. Thereafter, Protective Services Central Registry checks shall be conducted every other year.

- C. The Department of Human Services or its designee is responsible for conducting the Protective Services Central Registry checks upon request of the individual seeking to become a direct service provider.
1. **For MQD Direct Service Providers:** The individual shall sign and date form DHS 1507, "Authorization to Release Information from the Protective Services Central Registry, Med-QUEST Division", and mail (not fax) the completed form to:  
Insights to Success, Inc.  
1132 Bishop Street, Suite 2401  
Honolulu, Hawaii 96813
  2. **For CWSB Direct Service Providers:** The individual shall sign and date the "Child Protective Service System Central Registry Clearance Form – Experimental (2/06)" and mail (not fax) the completed form to:  
Child Welfare Services Branch  
Statewide Child Welfare Services Section  
420 Waiakamilo Road, Suite 300A  
Honolulu, Hawaii 96817  
Phone: (808) 832-0624

The release of information by the Department of Human Services or its designee shall be limited to the following:

#### ***APS CENTRAL REGISTRY CHECK***

- Notification of whether the individual requesting the information is known to the Department of Human Services to have caused the abuse of a dependent adult; and
- Notification of whether the allegation of abuse is confirmed or not confirmed.

#### ***CWS CENTRAL REGISTRY CHECK***

- Date of CONFIRMED incident(s) of child abuse or neglect; and
- Type of abuse for each incident.

- D. Upon completion of the Protective Services Central Registry check, the Department of Human Services or its designee shall mail a letter to the individual requesting the information or to the agency/organization identified by the individual to receive the information. A copy of each Protective Services Central Registry check shall be retained in the hired individual's personnel file and made available for review by Department staff for compliance monitoring purposes.
- E. A copy of a Protective Services Central Registry check, dated no more than six (6) months before the date an initial Protective Services Central Registry check is required,



may be accepted instead of a new Protective Services Central Registry check being performed.

### III. PROTECTIVE SERVICES CENTRAL REGISTRY CHECKS IN HIRING AND TERMINATING DIRECT SERVICE PROVIDERS

When the Protective Services Central Registry check indicates that abuse has been confirmed, the individual/agency/organization hiring the individual as a direct service provider must inquire of that individual as to the nature and circumstance of the confirmed abuse. Information obtained by the individual/agency/organization from the Protective Services Central Registry check shall be taken into consideration when hiring and terminating individuals as direct service providers. An offer of employment shall be withdrawn or the position of a direct service provider shall be terminated when:

- A. A prospective or current direct service provider has a Protective Services Central Registry check indicating that abuse was confirmed and that the abuse occurred within ten (10) years of the date of the Protective Services Central Registry check. A confirmation of abuse occurring more than ten (10) years of the date of the Protective Service Central Registry check may be considered when the abuse confirmation history of the individual may pose a risk to the health, welfare and safety of service recipients; and
- B. The confirmed abuse has a rational relationship to a direct service provider's position. Rational relationship means the confirmed abuse is substantially related to the qualifications, duties and responsibilities of a direct service provider position.
- C. Exemptions from the requirements of sections III. A. and B. may be approved for MQD providers by the DHS designee and for CWSB providers by the CWSB.
  - 1. Requests for exemptions shall be made in writing by using form DHS 1673, "Request for Exemption (From Criminal Conviction Records Check Standards or Protective Services Central Registry Check Standards)", or a similar form. The individual seeking the exemption must complete the DHS 1673 or similar form. A copy of the individual's current Protective Services Central Registry check must accompany the request.
  - 2. The "Checklist for Exemption Request" may be used as a reminder of the documents to be submitted for EACH exemption request.
  - 3. The employer agency must be involved in the exemption process to assure the timely submittal of all required documents and appropriateness of the exemption request. Requests for exemptions shall be routed through the prospective employer agency prior to submittal to the Department or its designee.
  - 4. **For MQD Providers:** All documents shall be submitted to the DHS designee. Upon receipt of the written exemption request and other required documents listed on the "Checklist for Exemption Request", the DHS designee shall convene a panel consisting of three (3) professional level multi-disciplinary team members to review the request. The panel

shall include individuals in at least two different professions with backgrounds in criminal justice, legal and/or the therapeutic mental health field.

5. **For CWSB Providers:** All documents shall be submitted to the CWSB Administrator. Upon receipt of the written exemption request and other required documents listed on the “Checklist for Exemption Request”, the CWSB Administrator shall convene a panel to review the request. The panel may include the CWSB Administrator or designee, the CWSB Program Development Administrator, relevant CWSB Assistant Program and Section Administrators, and anyone else deemed appropriate by the CWSB Administrator or designee.
6. The panel shall consider the following:
  - a. The relevancy of the individual’s protective services history to the qualifications, functions and duties of the direct service provider position the individual wishes to fill;
  - b. Passage of time since the abuse was committed; and
  - c. Any evidence of rehabilitation, such as letters from counselors or therapists attesting to a sustained improvement in the individual’s behavior, character references, and activities since the commission of abuse.
7. A single factor may not be evidence of rehabilitation. If necessary, the panel shall request additional information from the individual seeking the exemption.
8. Individuals requesting exemptions shall be informed in writing of the panel’s decision within 45 calendar days from the date the panel receives all documents needed for a decision to be made. The panel may extend the 45-day period with cause and a written explanation to the individual seeking the exemption.
9. Individuals who are dissatisfied with the panel decisions on their exemption requests may:
  - a. Request an informal discussion with the Med-QUEST Division Assistant Administrator; and/or
  - b. Appeal the panel’s decision to the Med-QUEST Division Administrator.

- D. MQD clients may choose not to do APS Central Registry checks on individuals they hire on their own. Clients who choose not to have APS Central Registry checks shall complete form DHS 1672, “Consumer-Employer Choice Regarding Criminal Conviction Record Check and Adult Protective Services (APS) Central Registry Check”, to acknowledge their understanding of these standards and the purpose for the checks, and their decision not to conduct criminal conviction record or APS Central Registry checks on the individuals they plan to hire as direct service providers.

Attachments:

DHS 1507 with instructions

CPS System Central Registry Clearance Form – Experimental (2/06)) with instructions

DHS 1672 with instructions  
DHS 1673 with instructions  
Checklist for Exemption Request

Note: These standards will be updated to assure correct form numbers are included once approval of forms through DHS system.

## **APPENDIX K – OUTSOURCING STANDARDS**

## SECURITY and MANAGEMENT CONTROL OUTSOURCING STANDARD for NON-CANNELERS

The goal of this document is to provide adequate security and integrity for criminal history record information (CHRI) while under the control or management of an outsourced third party, the Contractor. Adequate security is defined in Office of Management and Budget Circular A-130 as Asecurity commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information. @

The intent of this Security and Management Control Outsourcing Standard (Outsourcing Standard) is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the FBI Criminal Justice Information Services (CJIS) Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

This Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the Interstate Identification Index (III) System and CHRI are not compromised. The standard security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security.

The provisions of this Outsourcing Standard are established by the Compact Council pursuant to 28 CFR Part 906 and are subject to the scope of that rule. They apply to all personnel, systems, networks, and facilities supporting and/or acting on behalf of the Authorized Recipient to perform noncriminal justice administrative functions requiring access to CHRI without a direct connection to the FBI CJIS Wide Area Network (WAN).

### 1.0 Definitions

- 1.01 *Access to CHRI* means to view or make use of CHRI obtained from the III System but excludes direct access to the III System by computer terminal or other automated means by Contractors other than those that may be contracted by the FBI or state criminal history record repositories or as provided by title 42, United States Code, section 14614(b).
- 1.02 *Authorized Recipient* means (1) a nongovernmental entity authorized by federal statute or federal executive order to receive CHRI for noncriminal justice purposes, or (2) a government agency authorized by federal statute, federal executive order, or state statute which has been approved by the United States Attorney General to receive CHRI for noncriminal justice purposes.
- 1.03 *Chief Administrator*, as referred to in Article I(2)(B) of the Compact, means

the primary administrator of a Nonparty State=s criminal history record repository or a designee of such administrator who is a regular full-time employee of the repository.

- 1.04 *CHRI*, as referred to in Article I(4) of the Compact, means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.
- 1.05 *Criminal History Record Check*, for purposes of this Outsourcing Standard only, means an authorized noncriminal justice fingerprint-based search of a state criminal history record repository and/or the FBI system.
- 1.06 *Compact Officer*, as provided in Article I(2) of the Compact, means (A) with respect to the Federal Government, an official [FBI Compact Officer] so designated by the Director of the FBI [to administer and enforce the compact among federal agencies], or (B) with respect to a Party State, the chief administrator of the State=s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.
- 1.07 *Contractor* means a government agency, a private business, non-profit organization or individual, that is not itself an Authorized Recipient with respect to the particular noncriminal justice purpose, who has entered into a contract with an Authorized Recipient to perform noncriminal justice administrative functions requiring access to CHRI.
- 1.08 *Dissemination* means the disclosure of CHRI by an Authorized Recipient to an authorized Contractor, or by the Contractor to another Authorized Recipient consistent with the Contractor=s responsibilities and with limitations imposed by federal and state laws, regulations, and standards as well as rules, procedures, and standards established by the Compact Council and the United States Attorney General.
- 1.09 *Noncriminal Justice Administrative Functions* means the routine noncriminal justice administrative functions relating to the processing of CHRI, to include but not limited to the following:
  - 1. Making fitness determinations/recommendations
  - 2. Obtaining missing dispositions
  - 3. Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State statute approved by the United States Attorney General

4. Other authorized activities relating to the general handling, use, and storage of CHRI
- 1.10 *Noncriminal Justice Purposes*, as provided in Article I(18) of the Compact, means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.
- 1.11 *Outsourcing Standard* means a document approved by the Compact Council after consultation with the United States Attorney General which is to be incorporated by reference into a contract between an Authorized Recipient and a Contractor. The Outsourcing Standard authorizes access to CHRI, limits the use of the information to the purposes for which it is provided, prohibits retention and/or dissemination except as specifically authorized, ensures the security and confidentiality of the information, provides for audits and sanctions, provides conditions for termination of the contract, and contains such other provisions as the Compact Council may require.
- 1.12 *Physically Secure Location* means a location where access to CHRI can be obtained, and adequate protection is provided to prevent any unauthorized access to CHRI.
- 1.13 *Positive Identification*, as provided in Article I(20) of the Compact, means a determination, based upon a comparison of fingerprints<sup>1</sup> or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects= names or other non-unique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.
- 1.14 *Public Carrier Network* means a telecommunications infrastructure consisting of network components that are not owned, operated, and managed solely by the agency using that network, i.e., any telecommunications infrastructure which supports public users other than those of the agency using that network. Examples of a public carrier network include but are not limited to the following: Dial-up and Internet connections, network connections to Verizon, network connections to AT&T, ATM Frame Relay clouds, wireless networks, wireless links, and cellular telephones. A public carrier network provides network services to the public; not just to the single agency using that network.

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<sup>1</sup> The Compact Council currently defines positive identification for noncriminal justice purposes as identification based upon a qualifying ten-rolled or qualifying ten-flat fingerprint submission. Further information concerning positive identification may be obtained from the FBI Compact Council office.

- 1.15 *Security Violation* means the failure to prevent or failure to institute safeguards to prevent access, use, retention, or dissemination of CHRI in violation of: (A) Federal or state law, regulation, or Executive Order; or (B) a rule, procedure, or standard established by the Compact Council and the United States Attorney General.

2.0 *Responsibilities of the Authorized Recipient*

- 2.01 Prior to engaging in outsourcing any noncriminal justice administrative functions, the Authorized Recipient shall: (a) Request and receive written permission from (1) the State Compact Officer/Chief Administrator<sup>2</sup> or (2) the FBI Compact Officer<sup>3</sup>; (b) provide the Compact Officer/Chief Administrator copies of the specific authority for the outsourced work, criminal history record check requirements, and/or a copy of relevant portions of the contract as requested; and (c) inquire of the FBI Compact Officer whether a prospective Contractor has any security violations (See Section 8.04). The FBI Compact Officer will report those findings to the Authorized Recipient and, when applicable, to the State Compact Officer/Chief Administrator.
- 2.02 The Authorized Recipient shall execute a contract or agreement prior to providing a Contractor access to CHRI. The contract shall, at a minimum, incorporate by reference and have appended thereto this Outsourcing Standard.
- 2.03 The Authorized Recipient shall, in those instances when the Contractor is to perform duties requiring access to CHRI, specify the terms and conditions of such access; limit the use of such information to the purposes for which it is provided; limit retention of the information to a period of time not to exceed that period of time the Authorized Recipient is permitted to retain such information; prohibit dissemination of the information except as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General; ensure the security and

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<sup>2</sup>The Compact Officer/Chief Administrator may not grant such permission unless he/she has implemented a combined state/federal audit program to, at a minimum, triennially audit a representative sample of the Contractors and Authorized Recipients engaging in outsourcing with the first of such audits to be conducted within one year of the date the Contractor first receives CHRI under the approved outsourcing agreement. A representative sample will be based on generally accepted statistical sampling methods.

<sup>3</sup>State or local Authorized Recipients based on State or Federal Statutes shall contact the State Compact Officer/Chief Administrator. Federal or Regulatory Agency Authorized Recipients shall contact the FBI Compact Officer.



confidentiality of the information to include confirmation that the intended recipient is authorized to receive CHRI; provide for audits and sanctions; provide conditions for termination of the contract; and ensure that Contractor personnel comply with this Outsourcing Standard.

- a. The Authorized Recipient shall conduct criminal history record checks of Contractor personnel having access to CHRI if such checks are required or authorized of the Authorized Recipient's personnel having similar access.<sup>4</sup> The Authorized Recipient shall maintain updated records of Contractor personnel who have access to CHRI and update those records within 24 hours when changes to that access occur and, if a criminal history record check is required, the Authorized Recipient shall maintain a list of Contractor personnel who successfully completed the criminal history record check.
  - b. The Authorized Recipient shall ensure that the Contractor maintains site security.
  - c. The Authorized Recipient shall ensure that the most current version of both the Outsourcing Standard and the CJIS Security Policy are incorporated by reference at the time of contract, contract renewal, or within 30 calendar days (unless otherwise directed) of notification of successor versions of the Outsourcing Standard and/or CJIS Security Policy, whichever is sooner. The Authorized Recipient shall notify the Contractor within 30 calendar days (unless otherwise directed) of FBI notification regarding changes or updates to the Outsourcing Standard and/or CJIS Security Policy.
- 2.04 The Authorized Recipient shall understand the communications and record capabilities of the Contractor which has access to federal or state records through, or because of, its outsourcing relationship with the Authorized Recipient. The Authorized Recipient shall maintain an updated topological drawing which depicts the interconnectivity of the Contractor's network configuration.
- 2.05 The Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the

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<sup>4</sup>If a national criminal history record check of Authorized Recipient personnel having access to CHRI is mandated or authorized by a federal statute, executive order, or state statute approved by the Attorney General under Public Law 92-544, the State Compact Officer/Chief Administrator and/or the FBI Compact Officer must ensure Contractor personnel having similar access are either covered by the existing law or that the existing law is amended to include such Contractor personnel prior to authorizing outsourcing initiatives. The national criminal history record checks of Contractor personnel with access to CHRI cannot be outsourced and must be performed by the Authorized Recipient.

Outsourcing Standard. The Authorized Recipient shall certify to the Compact Officer/Chief Administrator that an audit was conducted with the Contractor within 90 days of the date the Contractor first receives CHRI under the approved outsourcing agreement.

- 2.06 The Authorized Recipient shall provide written notice of any early voluntary termination of the contract to the Compact Officer/Chief Administrator or the FBI Compact Officer.

### 3.0 *Responsibilities of the Contractor*

- 3.01 The Contractor and its employees shall comply with all federal and state laws, regulations, and standards (including the CJIS Security Policy) as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.

- 3.02 The Contractor shall develop, document, administer, and maintain a Security Program (Physical, Personnel, and Information Technology) to comply with the most current Outsourcing Standard and the most current FBI *CJIS Security Policy*. The Security Program shall describe the implementation of the security requirements described in this Outsourcing Standard and the FBI *CJIS Security Policy*. In addition, the Contractor is also responsible to set, maintain, and enforce the standards for the selection, supervision, and separation of personnel who have access to CHRI. The Authorized Recipient shall provide the written approval of a Contractor's Security Program.

- 3.03 The requirements for a Security Program should include, at a minimum:
- a) Description of the implementation of the security requirements described in this Outsourcing Standard and the *CJIS Security Policy*.
  - b) Security Training.
  - c) Guidelines for documentation of security violations.
  - d) Standards for the selection, supervision, and separation of personnel with access to CHRI.

**\*\*If the Contractor is using a corporate policy, it must meet the requirements outlined in this Outsourcing Standard and the *CJIS Security Policy*. If the corporate policy is not this specific, it must flow down to a level where the documentation supports these requirements.**

- 3.04 Except when the training requirement is retained by the Authorized Recipient, the Contractor shall develop a Security Training Program for all Contractor personnel with access to CHRI prior to their appointment/assignment. The Authorized Recipient shall review and provide to the Contractor written approval of the Security Training Program. Training shall be provided upon receipt of notice from the Compact Officer/Chief Administrator on any changes to federal and state laws, regulations, and standards as well as with

rules, procedures, and standards established by the Compact Council and the United States Attorney General. Annual refresher training shall also be provided. The Contractor shall annually, not later than the anniversary date of the contract, certify in writing to the Authorized Recipient that annual refresher training was completed for those Contractor personnel with access to CHRI.

- 3.05 The Contractor shall make its facilities available for announced and unannounced audits performed by the Authorized Recipient, the state, or the FBI on behalf of the Compact Council.
- 3.06 The Contractor's Security Program is subject to review by the Authorized Recipient, the Compact Officer/Chief Administrator, and the FBI CJIS Division. During this review, provision will be made to update the Security Program to address security violations and to ensure changes in policies and standards as well as changes in federal and state law are incorporated.
- 3.07 The Contractor shall maintain CHRI only for the period of time necessary to fulfill its contractual obligations but not to exceed the period of time that the Authorized Recipient is authorized to maintain and does maintain the CHRI.
- 3.08 The Contractor shall maintain a log of any dissemination of CHRI.

#### 4.0 *Site Security*

- 4.01 The Authorized Recipient shall ensure that the Contractor site(s) is a physically secure location to protect against any unauthorized access to CHRI.

#### 5.0 *Dissemination*

- 5.01 The Contractor shall not disseminate CHRI without the consent of the Authorized Recipient, and as specifically authorized by federal and state laws, regulations, and standards as well as with rules, procedures, and standards established by the Compact Council and the United States Attorney General.
- 5.02 An up-to-date log concerning dissemination of CHRI shall be maintained by the Contractor for a minimum one year retention period. This log must clearly identify: (A) The Authorized Recipient and the secondary recipient with unique identifiers, (B) the record disseminated, (C) the date of dissemination, (D) the statutory authority for dissemination, and (E) the means of dissemination.
- 5.03 If CHRI is stored or disseminated in an electronic format, the Contractor shall protect against unauthorized access to the equipment and any of the data. In no event shall responses containing CHRI be disseminated other than as governed by this Outsourcing Standard or more stringent contract requirements.

## 6.0 *Personnel Security*

- 6.01 If a local, state, or federal written standard requires or authorizes a criminal history record check of the Authorized Recipient's personnel with access to CHRI, then a criminal history record check shall be required of the Contractor's (and approved Sub-Contractor's) employees having access to CHRI. Criminal history record checks of Contractor and approved Sub-Contractor employees, at a minimum, will be no less stringent than criminal history record checks that are performed on the Authorized Recipient's personnel performing similar functions. Criminal history record checks must be completed prior to accessing CHRI under the contract.
- 6.02 The Contractor shall ensure that each employee performing work under the contract is aware of the requirements of the Outsourcing Standard and the state and federal laws governing the security and integrity of CHRI. The Contractor shall confirm in writing that each employee has certified in writing that he/she understands the Outsourcing Standard requirements and laws that apply to his/her responsibilities. The Contractor shall maintain the employee certifications in a file that is subject to review during audits. Employees shall make such certification prior to performing work under the contract.
- 6.03 The Contractor shall maintain updated records of personnel who have access to CHRI, update those records within 24 hours when changes to that access occur, and if a criminal history record check is required, maintain a list of personnel who have successfully completed criminal history record checks. The Contractor shall notify Authorized Recipients within 24 hours when additions or deletions occur.

## 7.0 *System Security*

- 7.01 The Contractor's security system shall comply with the CJIS Security Policy in effect at the time the Outsourcing Standard is incorporated into the contract and with successor versions of the CJIS Security Policy.
  - a. If CHRI can be accessed by unauthorized personnel via Wide Area Network/Local Area Network or the Internet, then the Contractor shall protect the CHRI with firewall-type devices to prevent such unauthorized access. These devices shall implement a minimum firewall profile as specified by the CJIS Security Policy in order to provide a point of defense and a controlled and audited access to CHRI, both from inside and outside the networks.
  - b. Data encryption shall be required throughout the network passing CHRI through a shared public carrier network.

- 7.02 The Contractor shall provide for the secure storage and disposal of all hard copy and media associated with the system to prevent access by unauthorized personnel.
- a. CHRI shall be stored in a physically secure location.
  - b. The Authorized Recipient shall ensure that a procedure is in place for sanitizing all fixed storage media (e.g., disks, drives, backup storage) at the completion of the contract and/or before it is returned for maintenance, disposal, or reuse. Sanitization procedures include overwriting the media and/or degaussing the media.
  - c. The Authorized Recipient shall ensure that a procedure is in place for the disposal or return of all non-fixed storage media (e.g., hard copies, print-outs).
- 7.03 To prevent and/or detect unauthorized access to CHRI in transmission or storage, each Authorized Recipient, Contractor, or sub-Contractor must be assigned a unique identifying number.

## 8.0 *Security Violations*

### 8.01 Duties of the Authorized Recipient and Contractor

- a. The Contractor shall develop and maintain a written policy for discipline of Contractor employees who violate the security provisions of the contract, which includes this Outsourcing Standard that is incorporated by reference.
- b. Pending investigation, the Contractor shall, upon detection or awareness, suspend any employee who commits a security violation from assignments in which he/she has access to CHRI under the contract.
- c. The Contractor shall immediately (within four hours) notify the Authorized Recipient of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. Within five calendar days of such notification, the Contractor shall provide the Authorized Recipient a written report documenting such security violation, any corrective actions taken by the Contractor to resolve such violation, and the date, time, and summary of the prior notification.
- d. The Authorized Recipient shall immediately (within four hours) notify the State Compact Officer/Chief Administrator and the FBI Compact Officer of any security violation or termination of the contract, to include unauthorized access to CHRI made available pursuant to the contract. The Authorized Recipient shall provide a written report of any security violation (to include unauthorized access to CHRI by the

Contractor) to the State Compact Officer/Chief Administrator, if applicable, and the FBI Compact Officer, within five calendar days of receipt of the written report from the Contractor. The written report must include any corrective actions taken by the Contractor and the Authorized Recipient to resolve such security violation.

- 8.02 Termination of the contract by the Authorized Recipient for security violations
- a. The contract is subject to termination by the Authorized Recipient for security violations involving CHRI obtained pursuant to the contract.
  - b. The contract is subject to termination by the Authorized Recipient for the Contractor=s failure to notify the Authorized Recipient of any security violation or to provide a written report concerning such violation.
  - c. If the Contractor refuses to or is incapable of taking corrective actions to successfully resolve a security violation, the Authorized Recipient shall terminate the contract.
- 8.03 Suspension or termination of the exchange of CHRI for security violations
- a. Notwithstanding the actions taken by the State Compact Officer, if the Authorized Recipient fails to provide a written report notifying the State Compact Officer/Chief Administrator or the FBI Compact Officer of a security violation, or refuses to or is incapable of taking corrective action to successfully resolve a security violation, the Compact Council or the United States Attorney General may suspend or terminate the exchange of CHRI with the Authorized Recipient pursuant to 28 C.F.R. ' 906.2(d).
  - b. If the exchange of CHRI is suspended, it may be reinstated after satisfactory written assurances have been provided to the Compact Council Chairman or the United States Attorney General by the Compact Officer/Chief Administrator, the Authorized Recipient and the Contractor that the security violation has been resolved. If the exchange of CHRI is terminated, the Contractor=s records (including media) containing CHRI shall be deleted or returned in accordance with the provisions and time frame as specified by the Authorized Recipient.
- 8.04 The Authorized Recipient shall provide written notice (through the State Compact Officer/Chief Administrator if applicable) to the FBI Compact Officer of the following:
- a. The termination of a contract for security violations.
  - b. Security violations involving the unauthorized access to CHRI.
  - c. The Contractor=s name and unique identification number, the nature

of the security violation, whether the violation was intentional, and the number of times the violation occurred.

- 8.05 The Compact Officer/Chief Administrator, Compact Council and the United States Attorney General reserve the right to investigate or decline to investigate any report of unauthorized access to CHRI.
- 8.06 The Compact Officer/Chief Administrator, Compact Council, and the United States Attorney General reserve the right to audit the Authorized Recipient and the Contractor's operations and procedures at scheduled or unscheduled times. The Compact Council, the United States Attorney General, and the state are authorized to perform a final audit of the Contractor's systems after termination of the contract.

9.0 *Miscellaneous Provisions*

- 9.01 This Outsourcing Standard does not confer, grant, or authorize any rights, privileges, or obligations to any persons other than the Contractor, the Authorized Recipient, Compact Officer/Chief Administrator (where applicable), and the FBI.
- 9.02 The following document is incorporated by reference and made part of this Outsourcing Standard: (1) The CJIS Security Policy.
- 9.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they provide a minimum basis for the security of the system and the CHRI accessed therefrom and it is understood that there may be terms and conditions of the appended contract which impose more stringent requirements upon the Contractor.<sup>5</sup>
- 9.04 The minimum security measures as outlined in this Outsourcing Standard may only be modified by the Compact Council. Conformance to such security measures may not be less stringent than stated in this Outsourcing Standard without the consent of the Compact Council in consultation with the United States Attorney General.
- 9.05 This Outsourcing Standard may only be modified by the Compact Council and may not be modified by the parties to the appended contract without the consent of the Compact Council.
- 9.06 Appropriate notices, assurances, and correspondence to the FBI Compact Officer, Compact Council, and the United States Attorney General required by Section 8.0 of this Outsourcing Standard shall be forwarded by First Class

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<sup>5</sup>Such conditions could include additional audits, fees, or security requirements. The Compact Council, Authorized Recipients, and the Compact Officer/Chief Administrator have the explicit authority to require more stringent standards than those contained in the Outsourcing Standard.

Mail to:

FBI Compact Officer  
1000 Custer Hollow Road  
Module D-3  
Clarksburg, WV 26306

10.0 *Exemption from Above Provisions*

10.01 An Information Technology (IT) contract need only include Sections 1.0, 2.01, 2.02, 2.03, 3.01, 6.0, 8.0, and 9.0 of this Outsourcing Standard for Non-Channelers when all of the following conditions exist:

1. Access to CHRI by the IT contractor's personnel is limited solely for the development and/or maintenance of the Authorized Recipient's computer system;
2. Access to CHRI is incidental, but necessary, to the duties being performed by the IT contractor;
3. The computer system resides within the Authorized Recipient's facility;
4. The Authorized Recipient's personnel supervise or work directly with the IT contractor personnel;
5. The Authorized Recipient maintains complete, positive control of the IT contractor's access to the computer system and CHRI contained therein; and
6. The Authorized Recipient retains all of the duties and responsibilities for the performance of its authorized noncriminal justice administrative functions, unless it executes a separate contract to perform such noncriminal justice administrative functions, subject to all applicable requirements, including the Outsourcing Standard.

10.02 An Authorized Recipient's contract where access to CHRI is limited solely for the purposes of: (A) storage (referred to as archiving in some states) of the CHRI at the Contractor's facility; (B) retrieval of the CHRI by Contractor personnel on behalf of the Authorized Recipient with appropriate security measures in place to protect the CHRI; and/or (C) destruction of the CHRI by Contractor personnel when not observed by the Authorized Recipient need only include Sections 1.0, 2.01, 2.02, 2.03, 3.01, 4.0, 6.0, 8.0, and 9.0 of this Outsourcing Standard for Non-Channelers when all of the following conditions exist:

1. Access to CHRI by the Contractor is limited solely for the



purposes of: (A) storage (referred to as archiving in some states) of the CHRI at the Contractor=s facility; (B) retrieval of the CHRI by Contractor personnel on behalf of the Authorized Recipient with appropriate security measures in place to protect the CHRI; and/or (C) destruction of the CHRI by Contractor personnel when not observed by the Authorized Recipient;

2. Access to CHRI is incidental, but necessary, to the duties being performed by the Contractor;
3. The Contractor is not authorized to disseminate CHRI to any other agency or contractor on behalf of the Authorized Recipient;
4. The Contractor=s personnel are subject to the same criminal history record checks as the Authorized Recipient=s personnel;
5. The criminal history record checks of the Contractor personnel are completed prior to work on the contract or agreement;
6. The Authorized Recipient retains all other duties and responsibilities for the performance of its authorized noncriminal justice administrative functions, unless it executes a separate contract to perform such noncriminal justice administrative functions, subject to all applicable requirements, including the Outsourcing Standard; and
7. The Contractor stores the CHRI in a physically secure location.

## **APPENDIX L – DRAFT-DHS FORMS FOR BACKGROUND CHECK**

## APPENDIX L

### Criminal History Record Check Request Form State of Hawaii, Department of Human Services, Med-QUEST Division (MQD)

Full Name: \_\_\_\_\_  
Last First Middle

Current Address: \_\_\_\_\_  
City Zip Code

Any Alias(es)/ Former Name(s), including Maiden Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Social Security No: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_ Country of Citizenship: \_\_\_\_\_  
Sex: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_

Check only one provider-type:	
<input type="checkbox"/> DOH- DD/ID waiver services	<input type="checkbox"/> MQD HCBS waiver services

Type of Service Requested	
<input type="checkbox"/> FBI Fingerprint Check or	<input type="checkbox"/> Hawaii Criminal Justice Information System (HCJIS)- Name Check
<input type="checkbox"/> Initial	<input type="checkbox"/> Recertification

Requesting Individual or Agency (Print or Type all information)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Attn: \_\_\_\_\_

I hereby authorize the Department of Human Services (DHS) or its designee to conduct a criminal history record check on me and to release the fitness determination of this information to the requesting individual or agency indicated above.

I understand that the information I provide about me shall be used solely for the purpose of conducting a criminal history record check. I also understand that the release of this information will be used as part of a background check for employment which may result in suspension, termination, or failure to be hired.

This authorization is valid for one year from the date signed below.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX L

Please check the appropriate box:

☐ I have never been convicted of a crime.

☐ I have been convicted of the crime(s) listed below: (Do not include minor traffic violations involving a fine of \$50 or less)

Date and Place of Conviction	Offense	Sentence/Fine

I, the undersigned, certify under penalty of false swearing in official matters, that the above listed information is true, accurate, and complete to the best of my knowledge.

Print Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\* FOR OFFICIAL USE ONLY\*\*\*\*\*

FBI Fingerprint Check: The following results are based upon the fingerprint results.

☐ No record of conviction found/Green light determination

☐ Record of conviction found/ Green light determination

☐ Record of conviction found/ Red light determination

I certify that the Criminal History Record Check result information is accurate as of: \_\_\_\_\_  
Date of fingerprinting

HCJIS Name Check: The following results are based upon the name check results.

☐ No record of conviction found/Green light determination

☐ Record of conviction found/ Green light determination

☐ Record of conviction found/ Red light determination

I certify that the Criminal History Record Check result information is accurate as of: \_\_\_\_\_  
Date of  
HCJDC  
Name  
Check

Criminal History Record  
Check Completed by:

\_\_\_\_\_ Date: \_\_\_\_\_  
DHS or Designee Worker's Name Phone Number

## APPENDIX L

Adult/Child Protective Service Central Registry  
Authorization to Release Information  
State of Hawaii, Department of Human Services, Med-QUEST Division (MQD)

Full Name: \_\_\_\_\_  
Last First Middle

Current Address: \_\_\_\_\_  
\_\_\_\_\_  
City Zip Code

Any Alias(es)/ Former Name(s), including Maiden Name: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_ Social Security No: \_\_\_\_\_

Check only one provider-type:	
<input type="checkbox"/> DOH- DD/ID waiver services	<input type="checkbox"/> MQD HCBS waiver services

Type of Service Requested	
<input type="checkbox"/> Adult Protective Services (APS) and	<input type="checkbox"/> Child Abuse and Neglect (CAN)
<input type="checkbox"/> Initial	<input type="checkbox"/> Recertification

Requesting Individual or Agency (Print or Type all information)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Attn: \_\_\_\_\_  
\_\_\_\_\_

I hereby authorize the Department of Human Services (DHS) or its designee to conduct a APS and CAN Protective Services Central Registry Check on me and to release the fitness determination of this information to the requesting individual or agency indicated above.

I understand that the information I provide about me shall be used solely for the purpose of conducting a APS and CAN Protective Services Central Registry Check. I also understand that the release of this information will be used as part of a background check for employment which may result in suspension, termination, or failure to be hired.

This authorization is valid for one year from the date signed below.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## APPENDIX L

\*\*\*\*\* FOR OFFICIAL USE ONLY\*\*\*\*\*

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**APS Central Registry Check:** The following results are based upon the information of the above individual.

Type(s) of Confirmed Adult Abuse or Neglect

Date(s) of Confirmation

- ☐ Caregiver Neglect (Negligent Treatment/Maltreatment)
- ☐ Financial Exploitation
- ☐ Physical Abuse
- ☐ Psychological Abuse
- ☐ Self-Neglect (Poor Self-Care)
- ☐ Sexual Abuse

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ No record of confirmed abuse on file

**CAN Central Registry Check:** The following results are based upon the information of the above individual.

Type(s) of Confirmed Child Abuse or Neglect

Date(s) of Confirmation

- ☐ Physical Harm/Abuse
  - ☐ Failure to Thrive
- ☐ Threatened Physical Harm/Abuse
- ☐ Physical Neglect
  - ☐ Abandonment
  - ☐ Lack of Supervision
  - ☐ Medical Neglect
- ☐ Threatened Physical Neglect
- ☐ Sexual Abuse
- ☐ Threatened Sexual Abuse
- ☐ Psychological Harm
  - ☐ Abuse
  - ☐ Neglect
- ☐ Threatened Psychological Harm
- ☐ Providing a child with dangerous, harmful, or detrimental drugs as defined by Section 712-1240

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☐ No record of confirmed abuse on file

Criminal History Record

Check Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

DHS or Designee Worker's Name      Phone Number