

Impact Grant Contract Provisions

1. **PAYMENT.** Payment shall be made available to the Contractor upon execution of the contract, and upon receipt of proper invoicing, proof of Contractor's appropriate tax clearances, written reports and other information required from the contractor under the contract. All such information shall be mailed or delivered to the Department of Research and Development, 25 Aupuni Street, Room 1301, Hilo, Hawai'i, 96720. Final payment shall be made available to the Contractor upon the County's receipt and approval of the contractor's final written report in accordance with the requirements described in Notices of Availability of Impact Grants for Fiscal Year 2024-2025, and the County's issuance of a notice of final approval and acceptance advising the Contractor of the satisfactory fulfillment of the terms of the contract and compliance with ACT 190, HRS section 103D-310(c), as amended.
2. **FUNDING.** Funding shall be expended in accordance with the proposal's project budget, unless modified to and agreed to in writing by the Department.
3. **PURCHASE OF ALCOHOL PROHIBITED.** Any funds contributed by the County shall not be used for the purchase of alcohol for consumption. No exceptions apply.
4. **PROGRESS PAYMENTS.** The Contractor's compensation shall be paid in periodic progress payments only if specifically called for by a schedule in the contract.
5. **TAX CLEARANCE AND VENDOR COMPLIANCE.** Responsibility of Proposers in §3-122- 112, Hawai'i Administrative Rules. Effective July 1, 2011, the Governor of Hawai'i signed Act 190 into law, which requires compliance documentation for awards of \$2,500.00 or more:

All vendors doing business with the State or County are required to comply with the applicable statutes, administrative rules and procedures. All vendors must verify compliance throughout the term of the contract including through final payment.

Acceptable verification is through Hawai'i Compliance Express (HCE). Vendors wishing to do business with the State or County must register in HCE and be in compliance.

HCE is a one-stop online program where vendors verify and manage their compliance. Once a vendor is registered, HCE provides the following proof of compliance/compliance documentation:

- Certificate of Good Standing from the Department of Commerce and Consumer Affairs Business Registration Division.
- Tax Clearances (federal and state) from the Department of Taxation. Compliance with HRS Chapters 383 Hawai'i Employment Security Law (Unemployment Insurance), 386 Worker's Compensation Law, 392 Temporary Disability Insurance and 393 Prepaid Healthcare Act, from the Department of Labor and Industrial Relations.

There is a nominal fee to subscribe to HCE. Please note that it may take two or more weeks to establish a vendor account in HCE. For more information and to register, see <http://vendors.ehawaii.gov>.

6. **TERM.** The term of the contract shall commence as of the effective date of the contract and continue to and including the date specified in the contract, unless the contract is terminated sooner as provided in the contract. Notwithstanding the foregoing, the term of the contract may be extended by written, mutual agreement of the parties.
7. **REPRESENTATIONS AND WARRANTIES.** The Contractor represents and warrants it is compliant with the following conditions throughout the duration of this contract:
 - a. Contractor employs and appoints persons on the basis of merit and ability.
 - b. Contractor agrees not to use any public funds for purposes of entertainment or perquisites not previously approved by the COUNTY.
 - c. Contractor shall comply with such other requirements as the Director may prescribe to ensure adherence by the Contractor with Federal, State, and County laws, and established standards for fiscal and program management.
 - d. At no cost to the County, and for the sole purpose of the County's evaluation of the Program, if applicable, the Contractor shall make available one (1) registration, ticket, or other license to the County for the program, conference, or other activity upon County's request.
8. **RECORDS.** The Contractor shall follow all generally accepted accounting procedures and practices and shall maintain books, records, documents, and other evidence which sufficiently and properly account for the expenditure of County funds. The books, records and documents shall be subject at all reasonable times to inspection, reviews, or audits by the Department. The Department, The County Director of Finance, or County Council may request periodic written reports on the use of County funds.
9. **REPORTS.** The Contractor shall prepare and submit to the Department written reports as specified in the contract using the Department's Grant Portal. The Final Report shall be submitted no later than sixty (60) days after termination of the contract. In addition to any other remedy provided by law, if the Contractor fails to submit the final written report within sixty (60) days of its due date, the County may require the nonprofit to return all grant funds awarded and deem the Contractor ineligible to receive future grant awards for at least the following fiscal year, and for all subsequent fiscal years until such time as that written report is submitted to, and accepted by, the Department. Should the final written report be deemed by the County to contain insufficient information, the Contractor shall be notified of the deficiencies and shall provide the additional information within thirty (30) calendar days of notice or the Contractor will be deemed to be in violation of this section.

10. **PROGRAM APPROVAL.** All programs funded by the County under the contract shall be subject to, and receive approval of, the County prior to any payment to the Contractor. Any changes or deviations to any program must be submitted in writing for the review and approval of the Department. The Department's approval shall be in writing.
11. **PRINT AND BROADCAST MEDIA.** The Contractor shall acknowledge the County of Hawai'i Department of Research and Development as a contributor of funds in all printed, broadcast, and other advertisement and educational material and documents relating to the Contractor's program.
12. **MODIFICATIONS OF CONTRACT.** The County may at any time make such modifications in the contract, which shall be made by a written supplemental agreement. Modifications involving no reduction or increase in compensation may be made by written order of the Director of the Department of Research and Development. All modifications requested by the Contractor shall be in writing.
13. **DELAY IN PERFORMANCE OF CONTRACT.** If any delay in the performance under the contract occurs as a result of unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not limited to: acts of God, acts of the public enemy, acts of the County with respect to the contract, acts of another contractor in the performance of a contract with the County, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers, then the Contractor may be granted an extension of the time for performance corresponding to the delay. No extension of time however, may be granted unless a written application therefore stating in detail the cause or causes of delay is filed by the Contractor with the Director within ten (10) calendar days after the commencement of the delay. No extension of time shall be deemed a waiver of the right of the County to require the completion of the services under the contract within the time required herein as so extended by the specific terms of such extension, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension.
14. **ABANDONMENT OF THE PROGRAM. Death or Disability of Contractor.** In the event the County terminates the contract because it wishes to abandon, defer, restudy or revise the program, or in the event the Contractor, in the case of an individual, dies or becomes physically or mentally disabled, the contractor or the contractor's estate shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.
15. **RIGHT OF THE COUNTY TO TERMINATE.** The County shall have the right to suspend performance under the contract or terminate the contract in whole or in part at any time by written notice to the Contractor. If the termination is for reasons other than

default of the Contractor, the Contractor shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.

16. **TERMINATION DUE TO CONTRACTOR'S DEFAULT.** The County shall have the right to terminate the contract, if the Contractor:
 - a. Fails to begin work under the contract at the required times; or
 - b. Unnecessarily delays the performance of the Contract or any part thereof; or
 - c. Fails to perform the contract in accordance with specified times; or
 - d. Fails to perform the contract in accordance with directions from the Director; or
 - e. Discontinues performance of the contract; or
 - f. Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency; or
 - g. Fails to pay for all labor, tools, material and/or equipment; or
 - h. Violates or fails to comply with any of the terms, covenants and conditions of the contract.
17. **AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE.** The County may withhold such amounts from the money due or to become payable under the contract to the Contractor as may be necessary to protect the County against liability or to satisfy the obligations of the Contractor to the County.
18. **RETURN OF GRANT BALANCE.** In the event the Contractor is unwilling or unable to provide the service(s) for which the grant funds were appropriated, the Director may direct the return of the full grant amount or the balance of the unexpended funds. Upon completion of the Program, the Contractor shall return the balance of the unexpended funds.
19. **INDEMNITY.** The Contractor shall perform the contract as an independent contractor and shall indemnify and save the County and its officers and employees harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefore, caused by error, omissions or negligence in the performance of the contract by the Contractor or the Contractor's subcontractors, agents and/or employees, until such time as action against the Contractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, as amended, relating to limitations of action.
20. **AUTHORITY OF THE DIRECTOR.** The Director shall decide any question or dispute concerning any provision of the contract, which may arise during its performance. The Director's decision shall be final and binding upon all parties unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that nothing

herein shall be construed as making final and binding any decision of the Director on a question of law. Pending final decision of any dispute or question, the Contractor shall proceed diligently with the performance under the contract in accordance with the decision of the Director.

21. **LAWS AND REGULATIONS.** The contractor shall be responsible for being fully informed of all state and federal laws, ordinances, codes, rules and regulations, which in any manner may affect the contract and the performance thereof, including but not limited to:
- a. All sections of the Hawai'i County Charter and Hawai'i County Code;
 - b. Chapter 103, Hawai'i Revised Statutes, as amended, relating to expenditure of public money;
 - c. Chapter 378, Hawai'i Revised Statutes, as amended, relating to fair employment practices;
 - d. Chapter 489, Hawai'i Revised Statutes, as amended, relating to discrimination in public accommodations;
 - e. Chapter 396, Hawai'i Revised Statutes, as amended, relating to occupational safety and health; and
 - f. Chapter 386, Hawai'i Revised Statutes, as amended, relating to workers' compensation law.

The Contractor shall comply with all such present county, state, and federal laws, ordinances, codes, rules and regulations, and all amendments thereto. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule or regulation, the Contractor shall forthwith report the same in writing to the Director.

22. **NONDISCRIMINATION CLAUSE.** Pursuant to Executive Order No. 142, County of Hawai'i, dated February 11, 2005, and amended on February 8, 2012, during the performance of this contract, the contractor agrees as follows:
- a. The Contractor shall comply with all requirements set forth in federal and state laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for nondiscrimination in federally assisted programs.
 - b. The Contractor shall comply with applicable Federal and State laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or handicap.
 - c. The Contractor shall not discriminate against any employee or applicant for employment because of sex, pregnancy, race, ancestry, national origin, religion, color, disability, age, handicap, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The Contractor shall assure that applicants are employed and that employees are

treated fairly during employment without regard to race, ancestry, national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, pregnancy, race, ancestry, national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.

- d. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the Contractor may be declared ineligible for further county contracts until such time that the Contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
- e. The contractor who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to Section 16-d above.
- f. The County may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the ground of sex, pregnancy, race, ancestry, national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein.

The contractor shall comply with all such present county, state and federal laws, ordinances, codes, rules and regulations, and all amendments thereto. If any discrepancy or inconsistency is discovered between the contract and any such laws, ordinance, code, rule or regulation, the Contractor shall forthwith report the same in writing to the Director

23. **REMEDIES NOT EXCLUSIVE.** The express provision in the contract of certain measures which may be exercised by the County for its protection shall not be construed to preclude the County from exercising any other or further legal or equitable right to protect its interests.
24. **PROTESTS AND FORUM SELECTION.** Any protest regarding procurement law or procedure shall strictly follow the procedures pursuant to HRS, Chapter 103D, and its implementing administrative rules. No action or proceeding involving the contract shall be commenced by either party except in the Circuit or District Courts of the Third Circuit, County of Hawai'i, State of Hawai'i; nor shall any action commenced in such court be removed or transferred to any other state or federal court.
25. **CONTRACTOR'S FAILURE TO COMPLY WITH ALL REQUIREMENTS OF SOLICITATION AND CONTRACTUAL CONDITIONS.** The Contractor's failure to comply with any and all of the conditions of the contract and the Solicitation for Proposals, referenced in the contract and made a part thereof, may result in the denial or rejection of future funding to the Contractor from the County.
26. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural whenever required in the context of the contract.
27. **NON-DEBARMENT REQUIREMENTS.** The Contractor certifies, and, if the County, State of Hawai'i or the United States Federal government requires, shall further certify that they were not debarred by the State of Hawai'i or the United States Federal government at the time of submitting a proposal, and hereby certifies and will further certify that the Contractor shall immediately notify the County should their debarment status change anytime during the agreement period.
28. **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS PROHIBITED.**

Contractor agrees to comply with HRS Chapter 11-355, which states that campaign contributions are prohibited from a State and County government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.
29. **CODE OF ETHICS.** Contractor has complied with HCC §2-83(c), if applicable. Contractor understands and agrees that this contract shall be void if an officer or employee fails to comply with the disclosure requirements set forth in §2-83(c), or if the Board of Ethics finds there is a conflict of interest, or any preferential treatment involved.