

Department of Hawaiian Home Lands - Land Development Division

SIGN-IN SHEET

IFB- 11 -HHL- 007	<u>Project Description</u> : Performing complete operation, maintenance and repair services including inspections and emergency calls for all pumps, reservoirs, distribution water lines, telemetering systems, equipment and other appurtenances including under the contract, in accordance with the manufacturer's specifications and recommended time intervals.
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INSTRUCTIONS

Read this packet carefully. If you have any questions, please call Patrick Young, LDD Project Manager, at 808-620-9287 or email to Patrick.k.young@hawaii.gov.

Note: Please fax this sheet to 620-9299, mail or email to kehaulani.a.quartero@hawaii.gov after downloading this document from the Department of Hawaiian Home Lands website.

Pre-Bid Conference/Site Inspection:	Date: February 1, 2011 Time: 10:00 a.m. Location: Anahola Tank Project Site
Notice Of Intention To Bid Must Be Received By:	Date: February 8, 2011 Time: 2:00 p.m. Location: 91-5420 Kapolei Parkway, Kapolei, HI 96707 Submittal of a Notice of Intention to Bid via facsimile at (808)620-9299 is acceptable.
Bid Offer Form Due Back:	Date: February 24, 2011 Time: 2:00 p.m. Location: 91-5420 Kapolei Parkway, Kapolei, HI 96707
Bid Opening:	Date: February 24, 2011 Time: 2:00 p.m. Location: 91-5420 Kapolei Parkway, Kapolei
Date: _____	
Company: _____	
Address: _____	
Phone No. _____	Cell No. _____
Fax No. _____	
Email Address: _____	
Contact Person: _____	

Signature of Person Downloading Packet (Print Name & Title after signature)

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

INVITATION FOR BIDS

IFB NO.: IFB-11-HHL-007

January 26, 2011

SEALED OFFERS
FOR
OPERATION AND MAINTENANCE OF THE DEPARTMENT OF HAWAIIAN HOME
LANDS ANAHOLA WATER SYSTEM, AND EMERGENCY AND CALL OUT SERVICES
FOR THE PUU OPAE DITCH WATER SYSTEM ON THE ISLAND OF KAUAI

WILL BE RECEIVED UNTIL 2:00 P.M. (HST) ON

FEBRUARY 24, 2011

AND OPENED SHORTLY THEREAFTER,

IN THE DEPARTMENT OF HAWAIIAN HOME LANDS OFFICE,

91-5420 KAPOLEI PARKWAY, KAPOLEI, HAWAII 96707.

DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO PATRICK YOUNG,

TELEPHONE (808) 620-9287, FACSIMILE (808) 620-9299 OR E-MAIL AT

patrick.k.young@hawaii.gov.

NOTE: If this Invitation for Bids was downloaded from the Department of Hawaiian Home Lands (DHHL) website, each interested bidder should provide contact information to the LDD Project Manager to be notified of any changes. Interested bidders may complete the IFB Sign-In Sheet (included with this solicitation) and fax, mail or email to the Project Manager. All bid Addenda will be issued on the DHHL website. Therefore, all interested bidders should check the website from now through bid opening. It is the sole responsibility of the interested bidder to be knowledgeable of all addenda related to this procurement. The DHHL shall not be responsible for any missing addenda, attachments or other information regarding this IFB if a bid offer is submitted from an incomplete IFB.

APPROVED:



ALBERT "ALAPAKI" NAHALE-A,
CHAIRMAN-DESIGNATE
HAWAIIAN HOMES COMMISSION

1/24/2011

DATE

**NOTICE TO BIDDERS
INVITATION FOR BID
Department of Hawaiian Home Lands
Land Development Division
IFB NO.: IFB-11-HHL-007**

SEALED BIDS for IFB No.: IFB-11-HHL-007, **Operation and Maintenance of the Department of Hawaiian Home Lands Anahola Water System, and Emergency and Call Out Services for the Puu Opae Ditch Water System, Island of Kauai**, will be received by the Department of Hawaiian Home Lands (DHHL), at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, until **2:00 p.m., Hawaii Standard Time (H.S.T.) February 24, 2011**, at which time all bids will be publicly opened and read aloud. Bids received after the time fixed for opening or delivered anywhere other than as specified above will not be considered.

This project consists of performing complete operation, maintenance and repair services including inspections and emergency calls for all pumps, reservoirs, distribution water lines, telemetering systems, equipment and other appurtenances included under the contract, in accordance with the manufacturer's specifications and recommended time intervals.

To be eligible to submit a bid, the Bidder and/or his subcontractors shall possess all required valid State of Hawaii licenses and specialty licenses needed to perform the work for this project. A surety bid bond will not be required for this IFB (Note: During the contract period, if major repairs are needed a surety bond will be required for the repair work).

This project is subject to Section 103D, Hawaii Revised Statutes, and to the payment of not less than the prevailing salaries and wages promulgated by the State of Hawaii, Department of Labor and Industrial Relations.

Bid documents may be examined at or obtained from DHHL at:

Department of Hawaiian Home Lands Web site: <http://hawaii.gov/dhhl/procurement>

There is no fee assessment to download the IFB documents from the DHHL Web site.

It is the responsibility of Interested Bidders to check the DHHL Web site for any addenda issued by DHHL.

A NON-MANDATORY PRE-BID MEETING will be held at **10:00 a.m., H.S.T., on THURSDAY, FEBRUARY 2, 2011**, at the Anahola Tank project site, to answer any questions regarding the IFB requirements. There will be no job-site visit following the pre-bid meeting. All interested potential bidders, offerors, subcontractors and union representatives are invited and attendance is optional. Persons needing special accommodations due to a disability may contact Mr. Patrick Young, Land Development Division, via facsimile at (808) 620-9299.

A written NOTICE OF INTENTION TO BID is required and shall be received by the DHHL, Land Development Division, at 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707, no later than **2:00 p.m., H.S.T., MONDAY, FEBRUARY 14, 2011**. Submittal of a NOTICE OF INTENTION TO BID via facsimile at (808) 620-9299 is acceptable.

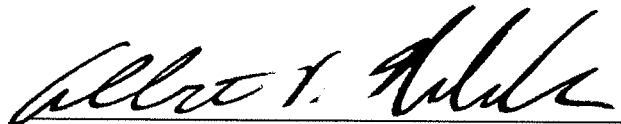
A properly executed and notarized STANDARD QUALIFICATION QUESTIONNAIRE FOR OFFERORS, SPO Form-21 ("Questionnaire") is required and shall be submitted to the DHHL for evaluation no later than eight (2) working days prior to the time advertised for the opening of bids. The Questionnaire can be downloaded at the State Procurement Office website: www.spo.hawaii.gov, under Forms for Vendors/Contractors/Service Providers.

Bids shall comply with the requirements of the IFB. Bids that do not comply with the IFB may be subject to disqualification. DHHL reserves the right to amend the IFB by written addenda, to reject any and all bids, or to waive any defects in said bids where DHHL deems it is in the best interest of the State.

Questions regarding this project may be directed in writing to Mr. Patrick Young, Land Development Division, DHHL, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 or via facsimile at (808) 620-9299.

Dated at Honolulu, Hawaii, this 26th day of January 2011.

DEPARTMENT OF HAWAIIAN HOME LANDS

A handwritten signature in black ink, appearing to read 'Albert T. Nahale-a', is written over a horizontal line.

Albert "Alapaki" Nahale-a, Chairman-Designate
Hawaiian Homes Commission

Posted on the internet at: www.spo.hawaii.gov

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STATE WAGE RATE SCHEDULES

1. **Wage Rate Schedule Bulletin No. 472
(Including Apprentice Schedule Bulletin No. 472)**

2. **Wage Rate Schedule Bulletin No. 473
Addendum to Wage Rate Schedule Bulletin No. 472
(Including Apprentice Schedule Bulletin No. 473)**

State of Hawaii
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Princess Ruth Ke`elikolani Building
830 Punchbowl Street
Honolulu, Hawaii 96813

September 20, 2010
WAGE RATE SCHEDULE BULLETIN NO. 472

This schedule of wage rates contained herein is recognized by the Director of Labor and Industrial Relations to be prevailing on public construction work for the purposes of Chapter 104, Hawaii Revised Statutes. The schedule of wage rates determines the applicable wage determination for each classification and does not impose any staffing requirements for any classification. The schedule of wage rates is applicable only to those laborers and mechanics employed at the site of work.

As required by law, future wage rates for laborers and mechanics are incorporated into this bulletin based on available information and are subject to change. Whenever the Director determines that the prevailing wage has increased as shown in the wage rate schedule, the contractor must increase the wages accordingly during the performance of the contract. For addenda or additional wage rate schedules, please consult the Internet at <http://hawaii.gov/labor/rs>.

The Apprentice Schedule is available on the Internet or upon request from the Research and Statistics Office. Pursuant to Section 12-22-6 (1), Hawaii Administrative Rules, the Apprentice Schedule is applicable only to apprentices who are parties to apprenticeship agreements registered with or recognized by the Department of Labor and Industrial Relations.

Questions on the schedule should be referred to the Research and Statistics Office at (808) 586-9019.

The next regular schedule will be issued on or about February 15, 2011

PEARL IMADA IBOSHI
Director



STATE OF HAWAII
LINDA LINGLE, Governor

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
PEARL IMADA IBOSHI, Director
COLLEEN Y. LaCLAIR, Deputy Director

RESEARCH AND STATISTICS OFFICE
NAOMI H. HARADA, Chief

OPERATIONS MANAGEMENT INFORMATION STAFF
Elienne Yoshida, Acting Supervisor
Myra Oshiro

In cooperation with:
WAGE STANDARDS DIVISION
PAMELA MARTIN, Administrator

WAGE RATE SCHEDULE BULLETIN NO. 472

Classification	Current			2010			2011			2012			Remarks See Pg 6-7
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
ASBESTOS WORKER	8/29/10						8/28/11						
	\$58.89	\$36.65	\$22.24	-	-	-	\$60.44	\$37.65	\$22.79	-	-	-	1
* ASPHALT PAVING GROUP:	2/22/10												
Asphalt Concrete Material Transfer	\$58.05	\$34.87	\$23.18	-	-	-	-	-	-	-	-	-	13
Asphalt Raker	\$57.09	\$33.91	\$23.18	-	-	-	-	-	-	-	-	-	13
Asphalt Spreader Operator	\$58.57	\$35.39	\$23.18	-	-	-	-	-	-	-	-	-	13
	7/5/10												
Laborer, Hand Roller	\$54.32	\$31.14	\$23.18	-	-	-	-	-	-	-	-	-	13
	2/22/10												
Roller Operator (5 tons and under)	\$56.82	\$33.64	\$23.18	-	-	-	-	-	-	-	-	-	13
Roller Operator (over 5 tons)	\$58.25	\$35.07	\$23.18	-	-	-	-	-	-	-	-	-	13
Screed Person	\$58.05	\$34.87	\$23.18	-	-	-	-	-	-	-	-	-	13
EQUIPMENT OPERATOR:													
Combination Loader/Backhoe (over 3/4 cu. yd.)	\$57.09	\$33.91	\$23.18	-	-	-	-	-	-	-	-	-	13
Combination Loader/Backhoe (up to 3/4 cu. yd.)	\$56.11	\$32.93	\$23.18	-	-	-	-	-	-	-	-	-	13
Concrete saws and/or Grinder (self-propelled unit on streets, highways, airports and canals)	\$58.05	\$34.87	\$23.18	-	-	-	-	-	-	-	-	-	13
Grader, Soil Stabilizer, Cold Planer	\$58.88	\$35.70	\$23.18	-	-	-	-	-	-	-	-	-	13
Loader (2-1/2 cu. yds. and under)	\$58.05	\$34.87	\$23.18	-	-	-	-	-	-	-	-	-	13
Loader (over 2-1/2 cu. yds. to and including 5 cu. yds.)	\$58.37	\$35.19	\$23.18	-	-	-	-	-	-	-	-	-	13
TRUCK DRIVER:													
Assistant to Engineer	\$56.82	\$33.64	\$23.18	-	-	-	-	-	-	-	-	-	13
Oil Tanker (double), Hot Liquid Asphalt Tanker	\$58.37	\$35.19	\$23.18	-	-	-	-	-	-	-	-	-	2,13
Semi-Trailer, Semi-Dump, Asphalt Distributor	\$58.05	\$34.87	\$23.18	-	-	-	-	-	-	-	-	-	13
Slip-in or Pup	\$58.37	\$35.19	\$23.18	-	-	-	-	-	-	-	-	-	13
Single or Rock Cans Tandem Dump Truck (8 cu. yds. & under, water level)	\$57.09	\$33.91	\$23.18	-	-	-	-	-	-	-	-	-	13
Single or Rock Cans Tandem Dump Truck (over 8 cu. yds., water level)	\$57.40	\$34.22	\$23.18	-	-	-	-	-	-	-	-	-	13
Tractor Trailer (hauling equipment)	\$58.48	\$35.30	\$23.18	-	-	-	-	-	-	-	-	-	13
Utility, Flatbed	\$56.82	\$33.64	\$23.18	-	-	-	-	-	-	-	-	-	13
* BOILERMAKER	9/20/10												
	\$55.63	\$31.00	\$24.63	-	-	-	-	-	-	-	-	-	
CARPENTER:	8/30/10						8/29/11			8/27/12			
Carpenter; Patent Scaffold Erector (Over 14 feet); Piledriver; Pneumatic Nailer	\$55.62	\$36.20	\$19.42	-	-	-	\$57.07	\$37.45	\$19.62	\$58.52	\$38.70	\$19.82	3,13
Millwright	\$55.87	\$36.45	\$19.42	-	-	-	\$57.32	\$37.70	\$19.62	\$58.77	\$38.95	\$19.82	3,13
Power Saw Operator (2 h.p. & above)	\$55.77	\$36.35	\$19.42	-	-	-	\$57.22	\$37.60	\$19.62	\$58.67	\$38.85	\$19.82	3,13
* CEMENT FINISHER:	9/20/10						8/29/11			9/3/12			
Cement Finisher; Curb Setter; Precast Panel Setter; Manhole Builder	\$54.97	\$32.40	\$22.57	-	-	-	\$56.72	\$33.85	\$22.87	\$58.22	\$35.30	\$22.92	12,13
Trowel Machine Operator	\$55.12	\$32.55	\$22.57	-	-	-	\$56.87	\$34.00	\$22.87	\$58.37	\$35.45	\$22.92	12,13
* CHLORINATOR	9/20/10												
	\$26.11	\$23.81	\$2.30	-	-	-	-	-	-	-	-	-	

WAGE RATE SCHEDULE BULLETIN NO. 472

Classification	Current			2010			2011			2012			Remarks See Pg 6-7
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
DIVER:	2/22/10												
Diver (Aqua Lung) (Scuba) - Up to a depth of 30 feet	\$70.26	\$47.43	\$22.83	-	-	-	-	-	-	-	-	-	13
Diver (Aqua Lung) (Scuba) - Over a depth of 30 feet	\$79.63	\$56.80	\$22.83	-	-	-	-	-	-	-	-	-	13
Stand-by Diver (Aqua Lung) (Scuba)	\$60.88	\$38.05	\$22.83	-	-	-	-	-	-	-	-	-	13
Diver (Other than Aqua Lung)	\$79.63	\$56.80	\$22.83	-	-	-	-	-	-	-	-	-	4,13
Stand-by Diver (Other than Aqua Lung)	\$60.88	\$38.05	\$22.83	-	-	-	-	-	-	-	-	-	4,13
Tender (Other than Aqua Lung)	\$57.85	\$35.02	\$22.83	-	-	-	-	-	-	-	-	-	13
* DRAPERY INSTALLER	9/20/10												
	\$18.12	\$15.35	\$2.77	-	-	-	-	-	-	-	-	-	
DRYWALL INSTALLER	8/30/10						8/29/11			8/27/12			
	\$55.87	\$36.45	\$19.42	-	-	-	\$57.32	\$37.70	\$19.62	\$58.77	\$38.95	\$19.82	13
ELECTRICIAN:	8/22/10						2/20/11						
Cable Splicer (inside/outside)	\$69.51	\$43.73	\$25.78	-	-	-	\$70.74	\$44.33	\$26.41	-	-	-	5
Ground Worker (outside)	\$51.33	\$29.81	\$21.52	-	-	-	\$52.32	\$30.22	\$22.10	-	-	-	5
Heavy Equipment Operator (outside)	\$59.13	\$35.78	\$23.35	-	-	-	\$60.22	\$36.27	\$23.95	-	-	-	5
Line Installer (outside); Wire Installer (inside)	\$64.31	\$39.75	\$24.56	-	-	-	\$65.48	\$40.30	\$25.18	-	-	-	5
Technician (inside/outside)	\$65.87	\$40.94	\$24.93	-	-	-	\$67.07	\$41.51	\$25.56	-	-	-	5
ELEVATOR CONSTRUCTOR MECHANIC	2/22/10												
	\$68.265	\$48.23	\$20.035	-	-	-	-	-	-	-	-	-	13
EQUIPMENT OPERATOR:	2/22/10												
Group 1	\$55.57	\$32.74	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 2	\$55.68	\$32.85	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 3	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 4	\$56.12	\$33.29	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 5	\$56.43	\$33.60	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 6	\$57.08	\$34.25	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 7	\$57.40	\$34.57	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 8	\$57.51	\$34.68	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 9	\$57.62	\$34.79	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 9A	\$57.85	\$35.02	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 10	\$57.91	\$35.08	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 10A	\$58.06	\$35.23	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 11	\$58.21	\$35.38	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 12	\$58.57	\$35.74	\$22.83	-	-	-	-	-	-	-	-	-	6,13
Group 12A	\$58.93	\$36.10	\$22.83	-	-	-	-	-	-	-	-	-	6,13
* FENCE ERECTOR (CHAIN-LINK TYPE)	9/20/10												
	\$20.87	\$15.00	\$5.87	-	-	-	-	-	-	-	-	-	
FLOOR LAYER (CARPET, LINOLEUM & SOFT TILE)	2/28/10												
	\$48.10	\$27.60	\$20.50	-	-	-	-	-	-	-	-	-	
* GLAZIER	9/20/10												
	\$54.77	\$31.05	\$23.72	-	-	-	-	-	-	-	-	-	7

WAGE RATE SCHEDULE BULLETIN NO. 472

Classification	Current			2010			2011			2012			Remarks See Pg 6-7
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
HELICOPTER WORK:	2/22/10												
Airborne Hoist Operator	\$59.43	\$36.60	\$22.83	-	-	-	-	-	-	-	-	-	13
Co-Pilot	\$59.57	\$36.74	\$22.83	-	-	-	-	-	-	-	-	-	13
Pilot	\$59.74	\$36.91	\$22.83	-	-	-	-	-	-	-	-	-	13
* IRONWORKER:	9/20/10						9/1/11						
Reinforcing, Structural	\$61.26	\$33.75	\$27.51	-	-	-	\$61.76	\$33.75	\$28.01	-	-	-	8
LABORER:	8/30/10						8/29/11			9/3/12			
Driller	\$46.21	\$30.30	\$15.91	-	-	-	\$47.21	\$31.30	\$15.91	\$48.26	\$32.30	\$15.96	3
Gunite Operator	\$45.71	\$29.80	\$15.91	-	-	-	\$46.71	\$30.80	\$15.91	\$47.76	\$31.80	\$15.96	3
High Scaler (Working Suspended)	\$45.71	\$29.80	\$15.91	-	-	-	\$46.71	\$30.80	\$15.91	\$47.76	\$31.80	\$15.96	
Laborer I	\$45.21	\$29.30	\$15.91	-	-	-	\$46.21	\$30.30	\$15.91	\$47.26	\$31.30	\$15.96	3
Laborer II	\$42.61	\$26.70	\$15.91	-	-	-	\$43.61	\$27.70	\$15.91	\$44.66	\$28.70	\$15.96	3
Light Clean-up (Janitorial) Laborer	\$31.82	\$20.70	\$11.12	-	-	-	\$33.17	\$21.70	\$11.47	\$34.37	\$22.70	\$11.67	3
Powder Blaster	\$46.21	\$30.30	\$15.91	-	-	-	\$47.21	\$31.30	\$15.91	\$48.26	\$32.30	\$15.96	3
Window Washer (Outside) (On bosun's chair, cable-suspended scaffold or work platform)	\$44.71	\$28.80	\$15.91	-	-	-	\$45.71	\$29.80	\$15.91	\$46.76	\$30.80	\$15.96	
* LANDSCAPER:	9/20/10						8/29/11			9/3/12			
Landscape & Irrigation Laborer A	\$29.55	\$21.30	\$8.25	-	-	-	\$30.22	\$21.70	\$8.52	\$31.14	\$22.15	\$8.99	
Landscape & Irrigation Laborer B	\$30.05	\$21.80	\$8.25	-	-	-	\$30.72	\$22.20	\$8.52	\$31.64	\$22.65	\$8.99	
Landscape & Irrigation Maintenance Laborer	\$26.05	\$17.80	\$8.25	-	-	-	\$26.72	\$18.20	\$8.52	\$27.64	\$18.65	\$8.99	
LATHER	8/30/10						8/29/11			8/27/12			
	\$55.87	\$36.45	\$19.42	-	-	-	\$57.32	\$37.70	\$19.62	\$58.77	\$38.95	\$19.82	13
* MASON; Bricklayer;	9/20/10						8/29/11			9/3/12			
Cement Blocklayer; Stone Mason; Precast Sill Setter	\$55.02	\$32.45	\$22.57	-	-	-	\$56.77	\$33.90	\$22.87	\$58.27	\$35.35	\$22.92	12,13
Pointer-Caulker-Weatherproofer	\$55.27	\$32.70	\$22.57	-	-	-	\$57.02	\$34.15	\$22.87	\$58.52	\$35.60	\$22.92	12,13
* PAINTER: (Note: 2 increases per year)	9/20/10						1/1/11			1/1/12			
Painter; Spray Painter; Sandblaster or Waterblaster	\$56.60	\$32.60	\$24.00	-	-	-	\$57.50	\$33.10	\$24.40	\$59.00	\$34.10	\$24.90	13
							7/1/11			7/1/12			
Painter; Spray Painter; Sandblaster or Waterblaster	-	-	-	-	-	-	\$58.25	\$33.60	\$24.65	\$59.75	\$34.60	\$25.15	13
* PLASTERER	9/20/10						8/29/11			9/3/12			
	\$55.81	\$33.24	\$22.57	-	-	-	\$57.56	\$34.69	\$22.87	\$59.06	\$36.14	\$22.92	12,13
PLUMBER:	7/5/10						7/3/11			1/1/12			
Plumber; Pipefitter; Refrigeration Fitter; Heating & Air Conditioning Fitter; Sprinkler Fitter; Steamfitter	\$57.43	\$35.60	\$21.83	-	-	-	\$58.36	\$36.10	\$22.26	\$59.26	\$36.60	\$22.66	9
										7/1/12			
Plumber; Pipefitter; Refrigeration Fitter; Heating & Air Conditioning Fitter; Sprinkler Fitter; Steamfitter	-	-	-	-	-	-	-	-	-	\$59.96	\$37.10	\$22.86	9

WAGE RATE SCHEDULE BULLETIN NO. 472

Classification	Current			2010			2011			2012			Remarks See Pg 6-7
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
ROOFER:	9/27/09			9/26/10			9/25/11						
Shingle, Tile, Built-up Roofing	\$48.78	\$33.60	\$15.18	\$50.58	\$34.85	\$15.73	\$52.43	\$36.10	\$16.33	-	-	-	
Coal Tar Pitch	\$82.38	\$67.20	\$15.18	\$85.43	\$69.70	\$15.73	\$88.53	\$72.20	\$16.33	-	-	-	
SANDBLASTER OR WATERBLASTER:													
Use wages of craft to which sand or water blasting is incidental.													
* SHEETMETAL WORKER	9/20/10												
	\$58.53	\$36.68	\$21.85	-	-	-	-	-	-	-	-	-	10
TAPER	1/1/10												
	\$55.40	\$39.00	\$16.40	-	-	-	-	-	-	-	-	-	
* TERMITE TREATER	9/20/10												
	\$11.46	\$10.00	\$1.46	-	-	-	-	-	-	-	-	-	
* TERRAZZO:	9/20/10						8/29/11			9/3/12			
Terrazzo Setter	\$55.27	\$32.70	\$22.57	-	-	-	\$57.02	\$34.15	\$22.87	\$58.52	\$35.60	\$22.92	12,13
Terrazzo Base Grinder	\$53.46	\$30.89	\$22.57	-	-	-	\$55.21	\$32.34	\$22.87	\$56.71	\$33.79	\$22.92	12,13
Certified Terrazzo Floor Grinder and Tender	\$51.91	\$29.34	\$22.57	-	-	-	\$53.66	\$30.79	\$22.87	\$55.16	\$32.24	\$22.92	12,13
Terrazzo Floor Grinder	\$50.41	\$27.84	\$22.57	-	-	-	\$52.16	\$29.29	\$22.87	\$53.66	\$30.74	\$22.92	12,13
* TILE SETTER:	9/20/10						8/29/11			9/3/12			
Ceramic Hard Tile; Marble Setter	\$55.27	\$32.70	\$22.57	-	-	-	\$57.02	\$34.15	\$22.87	\$58.52	\$35.60	\$22.92	12,13
Certified Ceramic Tile & Marble Helper	\$51.91	\$29.34	\$22.57	-	-	-	\$53.66	\$30.79	\$22.87	\$55.16	\$32.24	\$22.92	12,13
TRUCK DRIVER:	9/20/10												
* Concrete Mixer	\$32.28	\$30.00	\$2.28	-	-	-	-	-	-	-	-	-	
* Concrete Mixer/Booster	\$40.24	\$30.53	\$9.71	-	-	-	-	-	-	-	-	-	
	2/22/10												
Dump Truck, 8 cu. yds. & under (water level); Water Truck (up to & including 2,000 gallons)	\$56.12	\$33.29	\$22.83	-	-	-	-	-	-	-	-	-	13
Flatbed, Utility, etc.	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	13
End Dump, Unlicensed (Euclid, Mack, Caterpillar, or similar); Tractor Trailer (hauling equipment)	\$57.51	\$34.68	\$22.83	-	-	-	-	-	-	-	-	-	13
Semi-Trailer, Rock Cans, or Semi-Dump	\$57.08	\$34.25	\$22.83	-	-	-	-	-	-	-	-	-	13
Slip-in or Pup	\$57.40	\$34.57	\$22.83	-	-	-	-	-	-	-	-	-	13
Tandem Dump Truck, over 8 cu. yds. (water level); Water Truck (over 2,000 gallons)	\$56.43	\$33.60	\$22.83	-	-	-	-	-	-	-	-	-	13

WAGE RATE SCHEDULE BULLETIN NO. 472

Classification	Current			2010			2011			2012			Remarks See Pg 6-7
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
UNDERGROUND LABORER:	8/30/10						8/29/11			9/3/12			
Worker in a raise, shaft, or tunnel.													
Group 1	\$45.81	\$29.90	\$15.91	-	-	-	\$46.81	\$30.90	\$15.91	\$47.86	\$31.90	\$15.96	
Group 2	\$47.31	\$31.40	\$15.91	-	-	-	\$48.31	\$32.40	\$15.91	\$49.36	\$33.40	\$15.96	
Group 3	\$47.81	\$31.90	\$15.91	-	-	-	\$48.81	\$32.90	\$15.91	\$49.86	\$33.90	\$15.96	
Group 4	\$48.81	\$32.90	\$15.91	-	-	-	\$49.81	\$33.90	\$15.91	\$50.86	\$34.90	\$15.96	
Group 5	\$49.06	\$33.15	\$15.91	-	-	-	\$50.06	\$34.15	\$15.91	\$51.11	\$35.15	\$15.96	
Group 6	\$49.16	\$33.25	\$15.91	-	-	-	\$50.16	\$34.25	\$15.91	\$51.21	\$35.25	\$15.96	
Group 7	\$49.41	\$33.50	\$15.91	-	-	-	\$50.41	\$34.50	\$15.91	\$51.46	\$35.50	\$15.96	
Group 8	\$49.86	\$33.95	\$15.91	-	-	-	\$50.86	\$34.95	\$15.91	\$51.91	\$35.95	\$15.96	
WATER FRONT CONSTRUCTION (DREDGING):	2/22/10												
CLAMSHELL OR DIPPER DREDGES:													
Clamshell or Dipper Operator	\$58.57	\$35.74	\$22.83	-	-	-	-	-	-	-	-	-	11,13
Mechanic; Welder; Watch Engineer	\$57.91	\$35.08	\$22.83	-	-	-	-	-	-	-	-	-	13
Deckmate; Bargemate	\$57.51	\$34.68	\$22.83	-	-	-	-	-	-	-	-	-	13
Fire Person; Oiler; Deckhand; Barge Worker	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	13
HYDRAULIC SUCTION DREDGES:													
Lever Operator	\$58.21	\$35.38	\$22.83	-	-	-	-	-	-	-	-	-	13
Mechanic; Welder	\$57.91	\$35.08	\$22.83	-	-	-	-	-	-	-	-	-	13
Watch Engineer (steam or electric)	\$58.06	\$35.23	\$22.83	-	-	-	-	-	-	-	-	-	13
Dozer Operator	\$57.85	\$35.02	\$22.83	-	-	-	-	-	-	-	-	-	13
Deckmate	\$57.51	\$34.68	\$22.83	-	-	-	-	-	-	-	-	-	13
Winch Operator (stern winch on dredge)	\$57.40	\$34.57	\$22.83	-	-	-	-	-	-	-	-	-	13
Fire Person; Oiler; Deckhand (can operate anchor scow under direction of deckmate); Levee Operator	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	13
DERRICKS:													
Operator: Derrick, Piledriver, Crane	\$58.57	\$35.74	\$22.83	-	-	-	-	-	-	-	-	-	13
Deckmate; Saurman Type Dragline (up to & including 5 yds.)	\$57.51	\$34.68	\$22.83	-	-	-	-	-	-	-	-	-	13
Saurman Type Dragline (over 5 cu. yds.)	\$57.91	\$35.08	\$22.83	-	-	-	-	-	-	-	-	-	13
Fire Person; Oiler; Deckhand	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	13
BOAT OPERATORS:													
Master Boat Operator	\$58.21	\$35.38	\$22.83	-	-	-	-	-	-	-	-	-	13
Boat Operator	\$58.06	\$35.23	\$22.83	-	-	-	-	-	-	-	-	-	13
Boat Deckhand	\$55.85	\$33.02	\$22.83	-	-	-	-	-	-	-	-	-	13
WELDER:													
Use wages of craft to which welding is incidental.													
* WATER WELL DRILLER:	9/20/10												
Water Well Driller	\$32.25	\$27.00	\$5.25	-	-	-	-	-	-	-	-	-	
Water Well Driller Helper	\$22.11	\$17.00	\$5.11	-	-	-	-	-	-	-	-	-	

Comments: Overtime must be paid at one and one-half times the basic hourly rate plus the hourly cost of required fringe benefits.

*** Indicates a wage, fringe benefit, remark, or title change from the previous bulletin.**

REMARKS

1. Asbestos Worker: Six percent per hour shall be added to the hourly wage for hazardous pay while working from a boatswain chair, staging or free standing scaffolding erected from the ground up or mezzanine floor subject to a free fall and skyclimber suspended from a permanent structure and when working above 40 feet.
2. Asphalt Paving: Oil Tanker has been renamed to Hot Liquid Asphalt Tanker.
3. Carpenter, Laborer (excluding High Scaler, Window Washer): \$.50 per hour shall be added to the regular straight-time rate for height pay for each hour while working from a bosun's chair and/or from a cable-suspended scaffold or work platform which is free swinging (not attached to building) for each hour worked on said rig.
4. Diver:
 - A. On any dive exceeding 50 feet, the diver shall in addition be paid the following amount of "depth money":

50 feet to 100 feet	\$1.50 per foot in excess of 50 feet
100 feet to 150 feet	\$100.00 plus \$2.00 per foot in excess of 100 feet
150 feet to 200 feet	\$200.00 plus \$3.00 per foot in excess of 150 feet
 - B. When it is necessary for a Diver to enter any pipe, tunnel or other enclosure, the said Diver shall in addition to the hourly rate, receive a premium in accordance with the following schedule for distance traveled from the entrance of the pipe, tunnel or other enclosure:
 - 1) When able to stand erect, but in which there is no vertical ascent:

5 feet to 50 feet	\$5.00 per day
50 feet to 100 feet	\$7.50 per day
100 feet to 150 feet	\$12.50 per day
Greater than 150 feet	The premium shall be increased an additional \$7.50 for each succeeding 50 feet.
 - 2) When unable to stand erect and in which there is no vertical ascent:

5 feet to 50 feet	\$5.00 per day
50 feet to 100 feet	\$7.50 per day
100 feet to 150 feet	\$12.50 per day
150 feet to 200 feet	\$36.75 per day
200 feet to 300 feet	\$1.00 per foot
300 feet to 450 feet	\$1.50 per foot
450 feet to 600 feet	\$2.50 per foot
5. Electrician:
 - A. One and one-half times the straight-time rate while working in a tunnel under construction; under water with aqualung equipment; in a completed tunnel which has only one entrance or exit providing access to safety and where no other personnel are working; or in an underground structure having no access to safety or where no other personnel are working.
 - B. Double the straight-time rate shall be paid for the following types of hazardous work:
 - 1) While working from trusses, stacks, towers, tanks, bosun's chairs, swinging or rolling scaffolds, supporting structures, and open platforms, over 70 feet from the ground where the employee is subject to a free fall; provided, however, that when work is performed on stacks, towers or permanent platforms where the employees are on a firm footing within an enclosure, a hazardous condition does not exist regardless of height;
 - 2) While working outside of a railing or enclosure, or temporary platforms extending outside of a building, or from scaffolding or ladder within an enclosure where an employee's footing is within one foot of the top of such railing, and the employee is subject to a free fall of over 70 feet;
 - 3) Working on buildings while leaning over the railing or edge of the building, and is subject to a free fall of 70 feet; or
 - 4) Two hours minimum hazardous pay per day shall be paid while climbing to a stack, tower or permanent platform which exceeds 70 feet from the ground but where the employee is on a firm footing within an enclosure.
 - C. Five percent per hour shall be added to the hourly wage for height pay while working above 9,000 feet elevation.

REMARKS

6. Equipment Operator:

- A. Operators and Assistants to Engineer (climbing a boom) of cranes (under 50 tons) with booms of eighty feet or more (including jib) or of cranes (under 50 tons) with leads of one hundred feet or more, shall receive additional premium according to the following schedule:

	Per Hour
Booms of 80 feet up to, or leads of 100 feet up to, but not including 130 feet	\$0.50
Booms and/or leads of 130 feet up to, but not including 180 feet	\$0.75
Booms and/or leads of 180 feet up to and including 250 feet	\$1.15
Booms and/or leads over 250 feet	\$1.50

Operators and Assistants to Engineer (climbing a boom) of cranes (50 tons and over) with booms of 180 feet or more (including jib) shall receive additional premium according to the following schedule:

	Per Hour
Booms of 180 feet up to and including 250 feet	\$1.25
Booms over 250 feet	\$1.75

Note: The boom shall be measured from the center of the heel pin to the center of the boom or jib point sheave.

- B. \$1.25 per hour shall be added to the hourly wage while operating a rig suspended by ropes or cables or to perform work on a Yo-Yo Cat.
- C. In a raise or shaft, a premium of \$.40 per hour will be paid in addition to the regular straight time wage.
A raise is defined to be an underground excavation (lined or unlined) whose length exceeds its width and the inclination of the grade from the excavation is greater than 20 degrees from the horizontal.
A shaft is defined to be an excavation (lined or unlined) made from the surface of the earth, generally vertical in nature, but may decline up to 75 degrees from the vertical, and whose depth is greater than 15 feet and its largest horizontal dimension. Includes an underground silo.
- D. In a tunnel, a premium of \$.30 per hour will be paid in addition to the regular straight time wages.
A tunnel is defined to be an underground excavation (lined or unlined) whose length exceeds its width and the inclination of the grade from the excavation is no greater than 20 degrees from the horizontal.

7. Glazier: \$.50 per hour shall be added to the hourly wage for height pay for exterior glazing work performed from a scaffold or rigging 25 feet or more above the ground level.
8. Ironworker: \$.50 per hour shall be added to the hourly wage while working in tunnels or coffer dams. \$1.00 per hour shall be added to the hourly wage while working under or covered with water (submerged), or on the summits of Mauna Kea, Mauna Loa or Haleakala.
9. Plumber: One and one-half times the straight-time rate for height pay while working from OSHA approved trusses, stacks, towers, tanks, bosun's chair, swinging or rolling scaffolding, supporting structures or on open platforms where the employee is subject to a direct fall of 40 feet or more. Provided, however, that when said work is performed where the employee is on a firm footing within an enclosure, a hazardous condition does not exist regardless of height. \$1.00 per hour shall be added to the straight-time rate while working with flame cutting or any type of welding equipment on any galvanized material or product for at least an hour.
10. Sheetmetal Worker: A. For overtime purposes: ((Basic hourly rate less \$3.13 multiplied by 1.5) + \$3.13 + Fringe total.
B. Add \$.03 to the total fringe benefit hourly rate per Hawaii Revised Statutes, Section 104-2 (b)(2)
11. Clamshell or Dipper Operator: \$.50 per hour shall be added to the straight-time rate while working with boom (including jib) over 130 feet.
12. Cement Finisher, Mason, Plasterer, Terrazzo, Tile Setter: \$1.00 per hour shall be added to the regular straight-time rate for height pay for each hour while working from a bosun's chair and/or from a cable-suspended scaffold or work platform which is free swinging (not attached to building) for each hour worked on said rig.
13. Possible wage/fringe option increases:
Asphalt Paving: Effective WRS 473 - \$2.25; 8/29/11 - \$2.75
Carpenter, Drywall Installer, Lather: Effective 8/29/11 - \$0.30; 8/27/12 - \$0.30
Cement Finisher, Mason, Plasterer, Terrazzo, Tile Setter: Effective 9/3/12 - \$0.25
Diver, Equipment Operator, Helicopter Work, Truck Driver, Water Front Construction: Effective WRS 473 - \$2.00; 2/28/11 - \$1.25; 8/29/11 - \$1.25; 2/27/12 - \$1.50
Elevator Constructor Mechanic: Effective WRS 473 - \$3.00; 1/1/12 - \$3.00
Painter: Effective 7/1/11 - \$0.25; 1/1/12 - \$0.40; 7/1/12 - \$0.55

State of Hawaii
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Princess Ruth Ke`elikolani Building
830 Punchbowl Street
Honolulu, Hawaii 96813

November 8, 2010

WAGE RATE SCHEDULE BULLETIN NO. 473
Addendum to Wage Rate Schedule Bulletin No. 472

This addendum lists decreases in wage rates in effect subsequent to Wage Rate Schedule (WRS) Bulletin No. 472. The wage rates contained herein are recognized by the Director of Labor and Industrial Relations to be prevailing on public construction work for the purposes of Chapter 104, Hawaii Revised Statutes. Wage rates listed in WRS Bulletin No. 472 remain in effect except for the changes noted in this addendum.

For additional wage rate schedules, please consult the Internet at <http://hawaii.gov/labor/rs>.

Questions on the schedule should be referred to the Research and Statistics Office at (808) 586-9019.

The next regular schedule will be issued on or about February 15, 2011.

PEARL IMADA IBOSHI
Director



STATE OF HAWAII
LINDA LINGLE, Governor

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
PEARL IMADA IBOSHI, Director
COLLEEN Y. LaCLAIR, Deputy Director

RESEARCH AND STATISTICS OFFICE
FRANCISCO CORPUZ, Chief

OPERATIONS MANAGEMENT INFORMATION STAFF
Elienne Yoshida, Acting Supervisor
Myra Oshiro

In cooperation with:
WAGE STANDARDS DIVISION
PAMELA MARTIN, Administrator

WAGE RATE SCHEDULE BULLETIN NO. 473
Addendum to Wage Rate Schedule Bulletin No. 472

Classification	Current			2010			2011			2012			Remarks
	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	Prevailing Wage Total	Basic Hourly Rate	Fringe Hourly Rate	
CEMENT FINISHER:	11/8/10						8/29/11			9/3/12			
Cement Finisher; Curb Setter; Precast Panel Setter;	\$54.72	\$32.40	\$22.32	-	-	-	\$56.47	\$33.85	\$22.62	\$58.22	\$35.30	\$22.92	12,13
Manhole Builder	\$54.87	\$32.55	\$22.32	-	-	-	\$56.62	\$34.00	\$22.62	\$58.37	\$35.45	\$22.92	12,13
Trowel Machine Operator													
MASON; Bricklayer;	11/8/10						8/29/11			9/3/12			
Cement Blocklayer; Stone Mason; Precast Sill Setter	\$54.77	\$32.45	\$22.32	-	-	-	\$56.52	\$33.90	\$22.62	\$58.27	\$35.35	\$22.92	12,13
Pointer-Caulker-Weatherproofer	\$55.02	\$32.70	\$22.32	-	-	-	\$56.77	\$34.15	\$22.62	\$58.52	\$35.60	\$22.92	12,13
PLASTERER	11/8/10						8/29/11			9/3/12			
	\$55.56	\$33.24	\$22.32	-	-	-	\$57.31	\$34.69	\$22.62	\$59.06	\$36.14	\$22.92	12,13
TERRAZZO:	11/8/10						8/29/11			9/3/12			
Terrazzo Setter	\$55.02	\$32.70	\$22.32	-	-	-	\$56.77	\$34.15	\$22.62	\$58.52	\$35.60	\$22.92	12,13
Terrazzo Base Grinder	\$53.21	\$30.89	\$22.32	-	-	-	\$54.96	\$32.34	\$22.62	\$56.71	\$33.79	\$22.92	12,13
Certified Terrazzo Floor Grinder and Tender	\$51.66	\$29.34	\$22.32	-	-	-	\$53.41	\$30.79	\$22.62	\$55.16	\$32.24	\$22.92	12,13
Terrazzo Floor Grinder	\$50.16	\$27.84	\$22.32	-	-	-	\$51.91	\$29.29	\$22.62	\$53.66	\$30.74	\$22.92	12,13
TILE SETTER:	11/8/10						8/29/11			9/3/12			
Ceramic Hard Tile; Marble Setter	\$55.02	\$32.70	\$22.32	-	-	-	\$56.77	\$34.15	\$22.62	\$58.52	\$35.60	\$22.92	12,13
Certified Ceramic Tile & Marble Helper	\$51.66	\$29.34	\$22.32	-	-	-	\$53.41	\$30.79	\$22.62	\$55.16	\$32.24	\$22.92	12,13

Comments: Overtime must be paid at one and one-half times the basic hourly rate plus the hourly cost of required fringe benefits.

REMARKS:

12. Cement Finisher, Mason, Plasterer, Terrazzo, Tile Setter: \$1.00 per hour shall be added to the regular straight-time rate for height pay for each hour while working from a bosun's chair and/or from a cable-suspended scaffold or work platform which is free swinging (not attached to building) for each hour worked on said rig.

13. Possible wage/fringe option increases: Cement Finisher, Mason, Plasterer, Terrazzo, Tile Setter: Effective 9/3/12 - \$0.25

**SCOPE OF WORK
AND
TECHNICAL SPECIFICATIONS

FOR

OPERATION AND MAINTENANCE OF THE
ANAHOLA WATER SYSTEM AND
EMERGENCY AND CALL OUT SERVICES
FOR THE PUU OPAE DITCH WATER SYSTEM**

ISLAND OF KAUAI, HAWAII

IFB NO.: IFB-11-HHL-007

PREPARED BY

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

January 26, 2011

SCOPE OF SERVICES FOR ANAHOLA WATER SYSTEM AND EMERGENCY AND CALL OUT SERVICES FOR THE PUU OPAE DITCH WATER SYSTEM ON KAUAI

The Contractor shall perform complete operation, maintenance and repair services including inspections and emergency calls for all pumps, reservoirs, distribution water lines, telemetering systems, equipment and other appurtenances included under the contract, in accordance with the manufacturer's specifications and recommended time intervals.

If the manufacturer does not provide these Operating and Maintenance (O & M) specifications, the Contractor shall contact the Contract Administrator or his designated representative and provide recommendations regarding the maintenance and repair of the specific equipment or system. Such service shall include regularly scheduled operation and maintenance tasks and inspections and any repairs required for each listed herein.

The maintenance and repair tasks and inspection shall consist of the furnishing of all labor, equipment, parts, materials and tools necessary to perform a thorough servicing and complete repair of all integral parts, lubricating, adjusting, and touch up painting where needed to keep the units in, or return to, a continuous operating condition. Maintenance of the system shall also include all activities such as routine flushing and water leak repair to insure water quality. All services performed will be subject to inspection and approval by the Department of Hawaiian Home Lands (DHHL) prior to start of work.

All tools and labor needed to perform the operation and maintenance services shall be the responsibility of the Contractor. DHHL will reimburse the Contractor for parts and supplies on a cost plus 10% basis.. This is under normal operations and maintenance and includes all appurtenances. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

The Contractor will not be responsible for the cost of repairs due to flagrant vandalism, fire, storm or related damages that can be attributed to causes beyond his control 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 as described under General Condition Section 13 item d. However, the Contractor shall be responsible for such repairs at no cost to the State if the damages are caused by the Contractor's failure to properly maintain and service the systems and equipment.

The Contractor shall be responsible to provide and maintain a communication system to notify their maintenance personnel in the event of an emergency at the pump station.

The Contractor shall also be responsible for all extraordinary incidents above the normal operation and maintenance including emergency call-outs and equipment breakdowns. The Contractor shall provide the Contract Administrator or his designated representative with following:

1. Cost estimates if repairs can be made with in-house labor and materials. The Contractor will submit cost estimates to the Contractor Administrator or his designated representative for approval prior to starting work. Labor charges will be based on the rates for the applicable time situations listed on a current Wage Rate Schedule Bulletin published by the Department of Labor and Industrial Relations. The current Wage Rate Schedule Bulletin is included in this IFB under the section titled IFB NOTIFICATION AND INFORMATION. The current wage rate bulletin will be updated in mid February and that new bulletin can be obtained at www.hawaii.gov/labor. All material and equipment required shall be on a cost plus 10% basis. The Contractor shall submit invoice copies with reimbursement request.

Reimbursement request will not be accepted without invoice copies.

2. If repairs require using outside sub-contractors in addition to in-house labor or is more economically feasible (reduce down-time of system or special equipment or personnel to repair) to utilize outside sub-contractors, the Contractor shall be responsible to obtain quotations from sub-contractors and submit to the Contract Administrator for review. Charges for work performed by the sub-contractor will be for only the dollar amount quoted. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

Such services requires the approval of the Contract Administrator or his designated representative prior to commencement of work.

All normal operations performed by the Contractor shall include, but not be limited to the following applicable listed items:

1. **FAMILIARIZATION OF WATER SYSTEM STARTUP:** The purpose for this requirement is to insure that the Contractor is able to startup the system in the event of a power outage, equipment breakdown or heavy storms and flooding for which the Contractor shall be responsible and accountable.
 - A. Operate entire water system. A DHHL representative shall be present for training purposes.
 - B. Contractor shall maintain a regular maintenance log for record keeping of essential equipment needed to operate the system such as operating hours of pumps, water level indicators and alarm systems. Contractor shall submit format of logbook and determination of essential equipment based on the Department of Health (DOH) requirements and approval of DHHL.
 - C. Identify and establish water sample points and frequency of sampling throughout the entire water system for Coliform testing and Chlorine Residual system pursuant to the DOH requirements. Contractor shall be responsible for the submission of sample site plan to DOH and DHHL for approval.
2. **OPERATIONS AND MAINTENANCE OF ANAHOLA WATER SYSTEM**
 - A. **PUMP SYSTEM**
 1. Twice weekly
 - a. Inspect, adjust, repair and or replace if necessary, after receiving approval from DHHL, chlorine metering pump system.
 - b. Inspect, adjust, repair and or replace if necessary, after receiving approval from DHHL, flow metering and totalizer system.
 - c. Check, adjust and repair if necessary after receiving approval from DHHL, deepwell pump for vibration, noise and proper operation.

2. Monthly

- a. Check, adjust, repair and or replace if necessary, after receiving approval from DHHL, automatic pump control valves for proper operation.
- b. Check seals on deepwell pump for leakage and adjust, repair and or replace as required.
- c. Check for proper alignment of motor/pump coupling and adjust, repair and or replace if necessary after receiving approval from DHHL.
- d. Check pump bearings for abnormal temperature and replace if necessary after receiving approval from DHHL.
- e. Lubricate motor and pump bearings per manufacturer's recommendations.
- f. Check mounting bolts for tightness and tighten per manufacturer's recommendations.
- g. Clean motor starter contacts and replace if necessary.
- h. Test, check and maintain the alarm system that notifies maintenance personnel of an emergency at the pump station.

3. Quarterly

- a. Check and adjust automatic pump control system (tank to sequence switch assembly) for start/stop signal and repair if necessary after receiving approval from DHHL.
- b. Check and adjust reservoir level indicator assembly for proper operation and level readings.
- c. Inspect all sensors, gauges, monitors, control devices and adjust through field calibration if necessary for proper operation.

4. Semi-Annually

- a. Clean strainer.
- b. Check all valves for proper operation, tightness and repair or replace if necessary after receiving approval from DHHL.
- c. Thoroughly clean out all dust and dirt from inside of electrical panels and starters.

5. Annually

- a. Scrape and sand bare metal and paint all rusted areas for preventive

maintenance.

- b. Inspect condition of wiring and conduit from motor to starter and repair or replace if necessary, after receiving approval from DHHL.
- c. Open, inspect, clean and test pressure regulating and automatic control valves for proper operation and pressure setting.
- d. Megger motor and submit report and recommendations to the DHHL in writing.

B. ANAHOLA DISTRIBUTION SYSTEM

1. Twice weekly

- a. Check chlorine residual at pump station sampling point; adjust chlorinator as needed to maintain required residual.
- b. Ensure that there is sufficient supply of chlorine stock and coordinate replenishment of chlorine stock.

2. Monthly

- a. Inspect, report and repair if necessary, after receiving approval from DHHL, surface areas above system pipelines for signs of roadway failure, soft spots, or leakage.
- b. Check chlorine residual at distribution system dead ends.
- c. Test and maintain Emergency-pumping equipment for proper operation.

3. Bi-Monthly

- a. Inspect conditions of water meters and meter boxes, note signs of leakage, damage or tampering; repair or replace meter meters after receiving approval by DHHL.
- b. Submit report of pump site log activities to the Kauai District Office, Department of Hawaiian Home Lands.
- c. Inspect pressure-reducing station for proper operation; adjust as needed to maintain downstream pressure.
- d. Service pressure relief valves (PRV) as required.

4. Semi-Annually

- a. Check, and adjust all valves for proper operation and tightness; repair or replace, if necessary, after receiving approval from DHHL.

- b. Maintain integrity and cleanliness of Department of Health sampling stations.
 - c. Flush water mainlines as required or when contaminants are found, after repair of line breaks and after major components are replaced to insure that chlorination reaches dead end lines.
 - d. Flush inter-connection manifold system
- 5. Annually
 - a. Inspect and paint fire hydrants, valves, and other exposed plumbing for preventive maintenance.
 - b. Service inter-connection pressure relief valve (PRV)

C. WATER STORAGE SYSTEM

- 1. Quarterly, check storage system for the following, and repair if necessary, after receiving approval by DHHL:
 - a. 0.5 water storage tanks for leaks.
 - b. Damaged vent screens
 - c. Lock on entry port.
 - d. Safety condition of ladder.
 - e. Water level mechanism.
 - f. Operating overflow check valve.
 - g. Conditions of exterior tank surface coating.
- 2. Send quarterly reports to the Kauai District Office.

D. LANDSCAPE MAINTENANCE

- 1. Mow lawn, cut brush and weeds, and remove all rubbish within fence line of well site and storage tank.
- 2. Cut and remove brush and weeds around fire hydrants, valve boxes.

E. LABORATORY TESTING AND REPORTING

- 1. The Contractor shall be responsible to deliver samples on a timely basis to a certified laboratory that is approved by the DOH. All cost including labor to obtain samples, cost to conduct the sample analysis, material cost such as

the cost of sample containers and chill coolers, deliver/freight costs to ship samples to the respective laboratories including Phase V testing shall be the Contractor's responsibility. Contractor to submit all documents pertaining to samples, results, and correspondence from the DOH to DHHL for review. All laboratory sampling shall comply with the Amended Safe Drinking Water Act and the State DOH regulations and requirements.

2. Monthly

- a. The contractor shall collect, preserve and transport bacteriological samples to the DOH laboratory in accordance with DOH Sampling guidelines and scheduling.
- b. The contractor shall act as liaison between DHHL and DOH regarding procedures, sanitary surveys, and other regulatory matters; meet with DOH personnel at site as requested to answer questions and/or disseminate information regarding operation of the system.

3. As required by DOH, the contractor shall collect, preserve and transport bacteriological samples to the DOH Laboratory in accordance with sampling guidelines and scheduling required for Phase Contaminants Testing.

4. Annually, the contractor shall:

- a. Collect, preserve and transport water samples to the DOH laboratory in accordance with DOH lead and copper sampling guidelines and scheduling.
- b. Collect, preserve and transport water samples to the DOH laboratory in accordance with DOH asbestos sampling guidelines and scheduling.
- c. Evaluate results from DOH laboratory and submit summary reports to Safe Drinking Water Branch, with a copy to DHHL.
- d. Comply with the Amended Safe Drinking Water Act describing quality of DHHL Anahola Water System No. 432.
- e. Write and make ready for distribution to consumers annually Water Consumer Confidence Report (CCR) as required by the DOH announced annual date.

5. Three (3) year monitoring period, the contractor shall:

- a. Perform Phase V water quality three (3) year monitoring period testing.
- b. Collect, four (4) consecutive quarterly samples, for the ten (10) Phase V Contaminants, Health Department tests three (3) of the ten (10) contaminants. The sample(s) should be taken from the approved DOH sample point at the Anahola water tank.

- c. Prepare and submit samples to a certified laboratory approved by DOH to test and analyze the following Phase V Contaminants: benzo (a) pyrene, di (2-ethylhexyl) adipate, di (2-ethylhexyl) phthalate, dioxin, diquat, endothall, and cyanide. Note that systems exclusively ground water sources are required to collect only one quarterly sample for cyanide per three (3) year compliance period.

6. Contamination Notification

In the event the water system indicates a contamination level above Safe Drinking Water Act and DOH requirements, it will be the responsibility of the contractor to notify all service users and DHHL personnel accordingly and initiate corrective measures as required by the DOH.

F. METERS AND BILLINGS

1. Bi-Monthly

- a. Read all distribution system meters and calculate customer usage using DHHL handheld meter reading computer. Meters shall be read every two- (2) months indicating the days of service provided which may vary from 59 to 61 days.
- b. Forward copies of reports and water billing to DHHL Kauai District Office.

2. Install new meters in existing boxes and de-activate existing meters as authorized by DHHL representative. The Contractor shall submit invoice copies for reimbursement requests. Reimbursement request will not be accepted without invoice copies.

G. CHLORINE AND OTHER SUPPLIES

Coordinate the ordering and receiving of chlorine and other supplies required for system operation such as gasoline for mowers, replacement parts for chlorine pump, electrical components and hoses. Replacement supplies will be the responsibility of the DEPARTMENT. The CONTRACTOR shall be reimbursed the cost of such items only with DHHL approval prior to purchase.

H. EMERGENCY REPAIRS AND CALL-OUTS

Repair to equipment and appurtenances other than routine servicing described shall be performed as described under Scope of Work, SPECIFICATIONS page S-1 and S-2. Contractor shall respond to an emergency or a break in service within 60 minutes of notification.

3. SCOPE OF SERVICES FOR THE PUU OPAE DITCH WATER SYSTEM, KAUAI EMERGENCY AND CALL OUT SERVICE

The Contractor shall provide emergency and call out service for repair of a gravity flow ditch water distribution system. Repairs may include, but are not limited to, water ditches, distribution water lines, water meters and intake ducts.

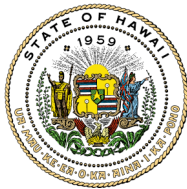
Contractor shall contact the Contract Administrator or his designated representative and provide recommendations regarding the repair of the affected portions of the system.

Repair tasks shall include inspection and shall consist of furnishing all labor, equipment, parts, materials and tools necessary to perform a thorough and complete repair to operating condition. All services shall be performed and subject to inspection and approval by the Department of Hawaiian Home Lands (DHHL) prior to the start of work.

All tools and labor needed to repair the system shall be the responsibility of the Contractor. DHHL will reimburse the Contractor for parts and supplies. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

In the event of an emergency repair and/or call out service, the Contractor shall provide the Contract Administrator, or his designated representative, with the following:

1. Cost estimates if repairs can be made with in-house labor and materials. The Contractor will submit cost estimates for approval prior to the start of work. Labor charges will be based on the rates for the applicable time situations listed on a current Wage Rate Schedule Bulletin published by the Department of Labor and Industrial Relations. All material and equipment required shall be on a cost plus 10% basis. The Contractor shall submit invoice copies with reimbursement request. Reimbursement requests will not be accepted without invoice copies.
2. If repairs require using outside sub-contractors in addition to in-house labor or is more economically feasible (reduce down-time of system or special equipment or personnel to repair) to utilize outside sub-contractors, the Contractor shall be responsible to obtain quotations from Sub-contractors and submit to the Contract Administrator for review. Charges for work performed by the sub-contractor will be for only the dollar amount quoted. The Contractor shall submit invoice copies with reimbursement request. Reimbursement requests will not be accepted without invoice copies.



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____ Department of Hawaiian Home Lands _____,
(Insert name of state department, agency, board or commission)
State of Hawaii ("STATE"), by its _____ Chairman, Hawaiian Homes Commission _____,
(Insert title of person signing for State)
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 _____
_____ and _____
("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
under the laws of the State of _____, whose business address and federal
and state taxpayer identification numbers are as follows: _____

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
- B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
- C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
- E. Pursuant to _____ HHCA of 1920, as amended _____, the STATE
(Legal authority to enter into this Contract)
is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:
- (1) _____
(Identify state sources)
- or (2) _____
(Identify federal sources)
- or both, in the following amounts: State \$ _____
Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number IFB-11-HHL-007 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

TBD _____ DOLLARS

(\$ TBD), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☒ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☒ a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of TWO HUNDRED AND NO/100 DOLLARS (\$ 200.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

Albert "Alapaki" Nahale-a

(Print Name)

Chairman Designate, Hawaiian Homes Commission

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

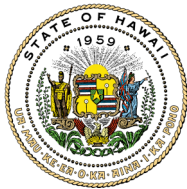
(Date)

CORPORATE SEAL
(If available)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit

Doc. Description: Contract for Goods for Services based upon
Competitive Sealed Bids

(Notary Stamp or Seal)

Notary Signature Date

NOTARY CERTIFICATION



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.

* 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).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



STATE OF HAWAII

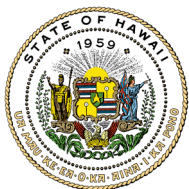
TIME OF PERFORMANCE

Project: Operation and Maintenance of the Anahola Water System and Emergency and Call Out Services for the Puu Opae Water System
Location: Island of Kauai
Contractor:

The CONTRACTOR shall enter into a contract for a three (3) year period commencing on the date specified on the Notice to Proceed issued by the STATE.

Unless terminated, the contract shall be extended for not more than one (1) additional thirty-six-month period or parts thereof, without the necessity of rebidding upon mutual agreement in writing at least sixty (60) days prior to expiration, provided that the contract price for the extended periods shall remain the same or lower than the initial bid price or as adjusted in accordance with the price adjustment provisions below and/or by State initiated contract modifications.

SAMPLE



STATE OF HAWAII

SPECIAL CONDITIONS

SC-01: INTERCHANGEABLE TERMS

The following terms are one and the same:

- a. “Contract” and “Agreement”.
- b. “Department of Hawaiian Home Lands” “DHHL” and “STATE”.
- c. “CONTRACTOR” and “Consultant”.

SC-02 INSURANCE COVERAGE

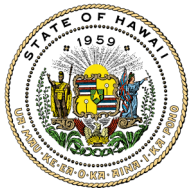
The Contractor shall obtain separate insurance coverage for this project that complies with the requirements set forth in the DHHL Interim General Conditions, Article 7, Section 7.3, as amended. Payment for all work required to comply with this item will not be paid for separately but shall be considered incidental to the various contract items.

INSURANCE REQUIREMENTS are as follows:

CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this Contract. The policies of insurance maintained by CONTRACTOR shall provide the following minimum coverage:

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate.
Automobile Insurance (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence. Property Damage: <u>\$1,000,000</u> per accident or combined single limit of <u>\$2,000,000</u> .
Workers Compensation (statutory limit is required by laws of the State of Hawaii)	Insurance to include Employer’s Liability. Both such coverages shall apply to all employees of the CONTRACTOR and, in case any sub-Contractor fails to provide adequate similar protection for all his employees, to all employees of sub-Contractors.

- a. The State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents shall be named as additional insured with respect to operation performed for the State of Hawaii. CONTRACTOR agrees to provide to the DHHL, before the effective date of the Contract, certificate(s) of insurance necessary to evidence compliance with insurance provisions of this Contract.



STATE OF HAWAII

SPECIAL CONDITIONS

- CONTRACTOR shall keep such insurance in effect and the certificate(s) on deposit with DHHL during the entire term of this Contract. Upon request by the STATE, CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of CONTRACTOR to provide and keep in force such insurance shall be regarded as a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of CONTRACTOR.
 - c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
 - d. CONTRACTOR shall immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
 - e. DHHL is a self insured State agency. CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by CONTRACTOR.

SC-03: COMPLETION SCHEDULE AND LIQUIDATED DAMAGES

The Contractor shall enter into a contract for furnishing services for a three (3) year period commencing on the date specified on the Notice to Proceed issued by the STATE.

Unless terminated, contract shall be extended for not more than one (1) additional thirty-six month period or portions thereof, without the necessity of rebidding, upon mutual agreement in writing, at least sixty (60) days prior to expiration.

The Contractor or the State may terminate the extended contract period at any time upon three (3) months prior written notice.

Refer to the State's General Conditions liquidated damages is fixed at the sum of TWO HUNDRED DOLLARS (\$200.00) per each and every calendar day the Contractor fails to perform in whole or in part any of his obligations specified herein. Liquidated damages, if assessed, may be deducted from any payments due or to become due to the Contractor.



STATE OF HAWAII
SPECIAL CONDITIONS

SC-04: PROCESS THROUGH CONSULTANT OF DHHL

Any and all submittals, reports, requests, claims and notices under the contract shall be processed through Mr. Patrick Young, Project Manager of the Land Development Division, at Hale Kalanianaʻole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.

SC-05: ALLOWANCES

The proposal may contain payment items designated as allowances. Funds listed in allowance items are to be spent at the direction of DHHL. The allowance is an estimate only and is subject to increase or decrease depending on the actual cost, and justified by time and material submitted proposal by the Contractor. The funds are for the direct costs of an item and all pricing, submittal and review, overhead, installation, profit, insurance, surety, processing of the issuance of checks for payment to other parties, and all other costs will be included. No payment will be made for incidental costs.

Allowances specifically set aside for construction work and materials will be negotiated when the scope of work is determined. Any unspent allowance costs will be deducted from the contract by change order prior to final payment.

SC-06: CONTRACTOR'S LICENSING

It is each Contractor's sole responsibility to review the requirements of this project and determine the appropriate contractor's licenses that are required to complete the project. If the Contractor does not hold all of the licenses required to perform a particular item of work on this project with its own workers, the bidder must list subcontractors that hold the appropriate licenses in its proposal.

Proposals from Contractors that fail to comply with these requirements shall be rejected per DHHL Interim General Condition 3.2.

SC-07: OFFERER QUALIFICATIONS

In addition to meeting legal and other requirements of this IFB, offeror must meet these bidder qualification requirements to be considered for award:

1. The Offeror shall have a minimum of five (5) consecutive years of experience at the time of bid opening in the operations and maintenance of domestic water systems. Offeror shall submit with offer, documented operations and maintenance and repair experience to substantiate 5 consecutive years of experience requirement.
2. Offeror must possess the necessary business and tax licenses to conduct business in the State of Hawaii.



STATE OF HAWAII
SPECIAL CONDITIONS

3. Offeror, or, Offeror's subcontractor performing plumbing services, shall have at the time of bid submittal, current C-37 contractor license or C-37d and C-37e contractor licenses issued by the Department of Commerce and Consumer Affairs (DCCA) pursuant to Chapter 444, HRS. In addition, plumber mechanics of the Offeror or its subcontractor who will be physically performing plumbing work shall possess a Chapter 448E, HRS, journey worker or master plumber license issued by the DCCA at the time of bid submittal. Questions as to the procedures for obtaining and registering for such licenses should be addressed to:

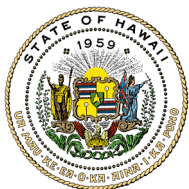
DCCA, Division of Professional and Vocational Licensing
Princess Victoria Kamamalu Building
1010 Richards Street, 1st and 17th Floor
Honolulu, Hawaii 96813
Phone: (808) 586-3000
E-mail: <http://www.state.hi.us/dcca/pvl/contact.html>

On the appropriate Bid Offer Form page, Offeror shall list its company name or its subcontractor's name along with the type(s) of HRS Chapter 444 Contractor license(s) and number(s). Offeror shall also list the name(s) of the plumber mechanic(s) who will physically perform the plumbing work and the HRS Chapter 448E license number(s). Copies of the licenses shall be submitted to the State within five (5) working days upon request. Failure to provide current licenses upon request shall result in rejection of bid.

4. Offeror's personnel or personnel of subcontractor in responsible charge of the water system shall have obtained water distribution system operator certification as required by the State Department of Health (DOH) at the time of bid opening. Questions as to the procedures for obtaining and registering for such certification should be addressed to:

DOH, EMD
Safe Drinking Water Branch
919 Ala Moana Blvd, Room 308
Honolulu, Hawaii 96814
Phone: (808) 586-4258
E-mail: <http://www.azane.eha.health.state.hi.us>
Contact: Ann Takushi Zane P.E.
Nora Macariola-See P.E.

Copies of the certificate shall be submitted to the State within five (5) working days if requested. Failure to provide current certificate shall result in rejection of bid.



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5. The Contractor shall have a service facility on the island of Kauai where servicing and repair of equipment will be performed. The State shall have access to Contractor's personnel via telephone 24 hours a day, seven (7) days a week, who shall respond to complaints or emergency service requests. This information shall be provided on the appropriate Bid Offer Form page. Contractor must be able to respond to emergencies within one hour of notification.

It the Offeror does not have a facility on the island of Kauai, arrangements shall be made with a company on the island to provide the State with repair services. Offeror shall provide the name and address of this facility in the space provided on the appropriate Bid Offer Form page. The State reserves the right to inspect the designated service facility to determine acceptability under this requirement. Failure on the part of the bidder to meet this requirement shall result in rejection of bid.

SC-08: CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a bid in response to this IFB, bidder certifies as follows:

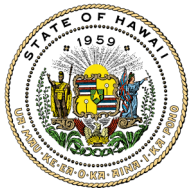
1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

SC-09: SITE INSPECTION

Prior to submittal of an offer, Offerors may inspect the location to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed. Offeror inspection is not mandatory, however, submission of an offer shall be evidence that the Offeror understands the scope of the project and shall comply with specifications herein, if awarded the contract. No additional compensation, subsequent to bid opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

SC-10: INQUIRIES

All inquiries regarding any item in this IFB shall be in writing and received by the Issuing Officer by February 11, 2011, 2:00 p.m. (HST). Only those written inquiries received by



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the deadline shall be responded to. An addendum shall be issued to provide offerors with a list of inquiries and responses. The State's responses shall not be construed to make any changes to the IFB unless otherwise revised by an addendum.

SC-11: STATUTORY REQUIREMENTS OF SECTION 103-55, HRS

Offeror shall complete and submit the attached wage certification by which offeror certifies that the services required will be performed pursuant to Section 103-55, HRS, as amended.

Offerors are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Contractor will be obliged to provide wages no less than those increase wages.

Contractor shall be further obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of business accessible to all employees, or Contractor may include such notice with each paycheck or pay envelope furnished to the employee.

To assist the Offeror in determining whether the work his employees are to perform under this contract is similar to that performed by public employees, attached are class specifications for State positions. Effective 3/1/2009, the basic hourly wages paid to the State positions are as follows:

<u>Class</u>	<u>Hourly Rate</u>
Water System Maintenance Worker (10.145)	\$ 22.23
Water System Maintenance Helper (10.140)	\$ 17.77
Plumber I (10.130)	\$ 22.23
Plumber II (10.133)	\$ 23.54
(See Attachment for Position Class Specification)	

Accordingly, Offeror should consider the aforementioned wage rates when preparing his/her quote.

SC-12: PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES

At the release of this IFB, only the current wages of State employees performing similar work are known. Should their wages increase during any period of the contract, including supplements, the Contractor may request for increase in contract price if the current wages paid for similar positions are lower than wages paid to State employees. The



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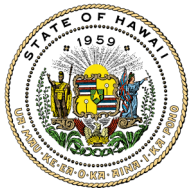
increase requested must result in increase in wages to the Contractor's employees performing the work herein, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

Contractor's request for increase must meet the following criteria:

1. At the time of a request, Contractor must provide documentation to show that he is in compliance with Section 103-55, HRS, i.e., its employees are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees' payroll records and a statement that the employees are being utilized for this contract.
2. At the time of bidding, the Contractor must have specified on the appropriate Bid Offer Form page, the percentage of the unit bid price that represents labor costs. If the Contractor fails to specify the percentage, the Contractor's request for increase will not be considered.
3. Request for increase must be made in writing to DHHL on a timely basis.
 - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employee.
 - b. Request for increase for a supplemental period of the contract must be made prior to the start of the supplement. Contractor should call the Project Manager named on the cover of this invitation for Bids to obtain the current wage information.
4. Contract price adjustment shall be considered:
 - a. Only upon request by the Contractor accompanied by proof satisfactory to the State that its employees have been paid comparable wages to State employees; and
 - b. Only if there is a wage increase to public employees performing comparable work; and
 - c. Only for the contract period in which the price adjustment request is submitted (current contract period only).

Example:

Original contract period:	March 7, 2003 to March 6, 2004
Extension period:	March 7, 2004 to March 6, 2005



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The option to extend the original contract is exercised for the period March 7, 2004 to March 6, 2005. On March 1, 2005, the State announces a pay raise retroactive to July 1, 2003 and the Contractor soon thereafter submits a request of modification is issued accompanied by acceptable documentation. A contract modification is issued to reflect a price adjustment for the current period of the contract, March 7, 2004 to March 6, 2005. Note that the price adjustment is not applied retroactively to July 1, 2003 since the condition of this contract allows price adjustment to the current contract period only.

5. Price adjustment based on the actual dollar increase per hour per State employee shall be calculated as follows:

- a. Bid Price/Hr/Officer (A) = (A) for example = \$15.00/hr
- b. Current Hourly Wage Rate (B) = (B) for example = \$11.00/hr
- c. New Hourly Wage Rate paid
To State Employees (C) = (C) for example = \$11.50/hr
- d. Hourly Wage Increase to
State employees (D) = (D) for example = \$.50/hr
- e. Adjusted Bid Price/Hr/Officer (E) = (A) + (D), or
\$15.00 + \$.50 = \$15.50/hr

6. In addition to the actual dollar amount of wage increase, Contractor may apply for the percentage (%) fringe benefits required by Statute. However, the resulting fringe benefit percentage shall only be applicable to the actual dollar amount of increase and the State shall only consider those benefits that are required by contract and are directly affected by the wage increase.

If request includes adjustment for wage related fringe benefits, Contractor must provide support documentation and an itemized percentage breakdown of the fringe benefits being paid.

The State has determined that the applicable fringe benefits for wage related price adjustments shall be limited to: 1) Federal Old Age Benefits, 2) Worker Compensation, 3) Temporary Disability Insurance, and 4) Unemployment Insurance. Based on past experience, it has been determined that the percentage increase be set at 16%. If Contractor is able to document that its percent for fringe is higher than 16%, the State will review and consider Contractor's claim.

The following method of calculation shall be applied for the fringe benefits:

- a. 16% for Allowable Fringe Benefits

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- b. \$ Adjusted for Allowable Fringe Benefits (F) = (D) x (.16) = F, or
\$.50 x .16 = \$.08
- c. Adjusted Bid Price/Hr/Officer + Fringe Benefits =(E) + (F), or
\$15.50 = \$.08 =
\$15.58
- After the contract modification for the increase is issued by the State, but before payment of an increase is made on the portion of the current contract period already performed, the Contractor shall show proof that its employees were given the retroactive wage increase.

The increase shall be reflected in either a contract modification or in the supplemental agreement issued for any extended period of the initial contract.

SC-13: ACCEPTANCE OF OFFER

Acceptance of Offeror, if any, will be made within sixty (60) calendar days after the opening of Offerors, and the prices quoted by the Offeror shall remain firm for the sixty day period or a longer period as may be allowed upon mutual agreement of the parties.

SC-14: CONTRACT EXECUTION

The State shall forward a formal contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned within ten (10) days after receipt by the Offeror or as may be otherwise allowed by the Procurement Officer.

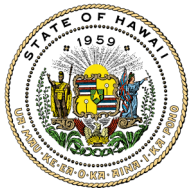
If the option(s) to extend are mutually agreed upon, Contractor shall enter into a supplemental agreement for the extended period, and will also continue to receive purchase orders from DHHL for Group IIA of this contract, if required.

The Contractor or the State may terminate the extended contract period at any time upon three (3) months prior written notice.

SC-15: NOTICE TO PROCEED

Work will commence on the official commencement date specified on the Notice to Proceed.

No work is to be undertaken by the Contractor prior to the official commencement date on the Notice to Proceed. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Contractor prior to the work start date.



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SC-16: SURETY BOND

A surety bond will not be required for the maintenance portion of this contract. However during the contract period, if major repairs are needed a surety bond will be required for the repair work.

SC-17: PROCESSING AND REVIEW OF WORK

All work submittals, reports, requests, claims and notices under the contract shall be processed by the Contractor and shall be subject to review and approval of the Project Manager or his designated representative.

SC-18: SUBCONTRACTORS

Subcontractors may be used by the Contractor in performing any portion of the services requested in this IFB; however the Contractor will be the sole point of contact with regards to contractual matters including payment of any and all charges from the contract, and will be responsible for all services whether or not the Contractor performs them, as permitted by law. DHHL shall have the general right to inspect work in progress to determine whether, in DHHL's opinion, the work being performed by subcontractor is in accordance with the provisions of this contract.

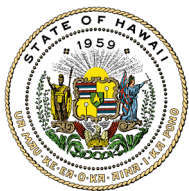
SC-19: LOSSES OR DAMAGES

The Contractor agrees not to hold the State of Hawaii, DHHL, their agents and employees, liable or responsible for any losses or damages arising from action or the elements of the nature of the work to be done under these specifications, or from any unforeseen obstructions, Acts of God, vandalism, fires, or encumbrances which may be encountered in the prosecution of the work.

SC-20: ENVIRONMENTAL POLLUTION CONTROL

General. Environmental pollution control shall consist of the protection of the environment from pollution during and as a result of operations under the contract. The control of the environmental pollution requires the consideration of air, water, land, and involves noise, dust, solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, and County laws and regulations concerning environmental pollution control and abatement and to secure all necessary permits.

Protection of Land Resources. Land resources within the project area and outside the limits of work performed under the contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounding area. Any tree or other landscape feature scarred or damaged by the



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Contractor's equipment or operation shall be restored as nearly as possible to its original condition at the Contractor's expense.

Water Pollution. The Contractor shall not pollute water resources, including streams and drainage systems, with fuel, oils, bituminous materials, calcium chloride, acids, construction waste, wash waters, or other harmful materials. Objectionable construction discharges shall be processed, filtered, ponded or otherwise treated prior to their discharge into a waterway or drainage system. Disposal of any material, garbage, oil, grease, chemicals, trash and other similar materials on areas adjacent to streams or drainage systems shall not be allowed.

Protection of Fish and Wildlife. The Contractor shall at all times perform all work and take steps to prevent any interference or disturbance to fish and wildlife.

Non-Compliance. The Project Manager or his designated representative will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. If the Contractor fails or refuses to comply promptly, DHHL may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damages shall be made for the time lost due to such action.

SC-21: RE-EXECUTION OF WORK

The contractor shall re-execute any work that fails to conform to the requirements of the contract and shall immediately remedy any defects due to faulty workmanship by the Contractor. Should the Contractor fail to comply, the State reserves the right to engage the services of another company to perform the services and to deduct such costs from monies due to the Contractor.

SC-22: REMOVAL OF CONTRACTOR'S EMPLOYEES

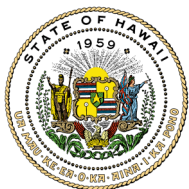
Contractor agrees to remove any of its employees from service rendered and to be rendered to the State, upon request in writing by the procurement officer.

SC-23: INSPECTION

The State retains the general right of inspection by a designated representative in order to judge, whether in the State's opinion, such work is being performed by the Contractor in accordance with terms of this bid proposal.

SC-24: INVOICING

Invoices shall be payable upon certification by the Project Manager that the Contractor has satisfactorily performed the required services.



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Contractor shall submit original and three copies of the invoice to the following address:

State of Hawaii
Department of Hawaiian Home Lands
Mr. Patrick Young, Project Manager
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Invoice shall reference both the contract number and the IFB number.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services, & Construction – Chapter 103D, HRS, menu. Alternately, a "Certificate of Vendor Compliance," issued through the Hawaii Compliance Express system, shall be acceptable for final payment requirements.

For emergency services or extra work approved by the Project Manager, a separate detailed invoice is required. Invoices shall contain a description of the work done, the amount and purchase order number authorizing the work. The Contractor shall also submit copies of material invoices and labor time sheets to substantiate parts and service charges to the State.

SC-25: PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

SC-26: REVISIONS TO DHHL INTERIM GENERAL CONDITIONS (DATED AUGUST 16, 2005)

Throughout the DHHL Interim General Conditions, replace the address: "1099 Alakea Street, Suite 2000, Honolulu, Hawaii 96813" with "Hale Kalanianaʻole, 91-5420 Kapolei Parkway, Kapolei, Hawaii, 96707."

In addition, the following changes to the DHHL Interim General Conditions shall be in effect:



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ARTICLE 2: PROPOSAL REQUIREMENTS AND CONDITIONS

Replace section 2.14, titled “PROTESTS,” on page 18 in its entirety with the following:

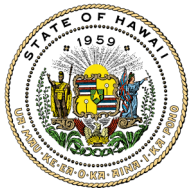
2.14 PROTESTS

- 2.14.1 Protests shall be governed by Section 103D-701, Hawaii Revised Statutes, and amended hereafter, and its implementing rules set forth in Title 3, Chapter 126, Subchapter 1, of the Hawaii Administrative Rules, and as amended hereafter.
- 2.14.2 The Chairman is the Department’s chief procurement officer to whom protests shall be addressed unless specified otherwise in the solicitation.

ARTICLE 3: AWARD AND EXECUTION OF CONTRACT

After Section 3.4.4 on page 21, insert the following new sections:

- 3.4.5 Responsibility of Offerors (§103D-310(c), HRS, and §3-122-112, HAR). Upon award of the contract under this solicitation, Offeror shall provide:
 - (a) An original tax clearance certificate from the Department of Taxation and the Internal Revenue Service, current within six months of issuance date;
 - (b) A certificate of compliance for Chapter 383 - Unemployment Insurance, Chapter 386 - Workers Compensation; Chapter 392 - Temporary Disability Insurance and Chapter 393 - Prepaid Health Care, from the Department of Labor and Industrial Relations, current within six months of issuance date (**Form LIR #27**); and
 - (c) A certificate of good standing from the Business Registration Division of the Department of Commerce and Consumer Affairs, within six months of issuance date.
- 3.4.5.1 Tax Clearance. Refer to Section 2.1.2.
- 3.4.5.2 Unemployment Insurance (HRS Chapter 383), Workers’ Compensation (HRS Chapter 386), Temporary Disability Insurance (HRS Chapter 392), and Prepaid Health Care (HRS Chapter 393). Successful Offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the purchasing agency.



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The certificate of compliance shall be obtained on the State of Hawaii, DLIR Application for Certificate of Compliance with Section 3-122-112, HAR, Form LIR#27 which is available at www.dlir.state.hi.us/LIR#27, or at neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the purchasing agency.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the purchasing agency.

- 3.4.5.3 Certificate of Good Standing. Successful Offeror shall be required to submit one of the following as applicable:
- (a) Hawaii business. A business entity referred to as a “Hawaii business”, is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, Offeror shall submit a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG).
 - (b) Sole Proprietorship. A Hawaii business that is a sole proprietorship, is not required to register with the BREG, and therefore not required to submit the certificate. An Offeror’s status as sole proprietor or other business entity and its business street address indicated on the Bid Offer Form page OF-1 will be used to confirm that the Offeror is a Hawaii business.
 - (c) Compliant non-Hawaii business. A business entity referred to as a “compliant non-Hawaii business” is not incorporated or organized under the laws of the State of Hawaii, but is registered to do business in the State. As evidence of compliance, Offeror shall submit a Certificate of Good Standing.

A Certificate of Good Standing may be obtained online at www.BusinessRegistrations.com, or by phone at (808) 586-2727 (M-F 7:45 to 4:30 HST). The “Certificate of Good Standing” is valid for six months from date of issue and must be valid on the date it is received by the purchasing agency. Offerors are advised that there are costs associated with registering and obtaining a “Certificate of Good Standing” from the DCCA.

- 3.4.5.4 Hawaii Compliance Express. Instead of separately applying for the abovementioned paper certificates at the various state/federal agencies, Offerors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register on-line at:

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



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The HCE provides the vendor with a "Certificate of Vendor Compliance" with current status as of the issuance date, accepted for both contracting purposes and final payment. Vendors that elect to use the HCE services are required to pay an annual fee of \$12.00.

ARTICLE 4: SCOPE OF WORK

4.5 - ALLOWANCES FOR OVERHEAD AND PROFIT (3-125-13-HAR)

- In both Sections 4.5.1.1 and Section 4.5.1.2, replace: “fifteen percent (15%)” with **[twenty percent (20%)]**
- In Section 4.5.1.3, replace: “seven percent (7%)” with **[ten percent (10 %)]**

ARTICLE 5: CONTROL OF WORK

5.2 – AUTHORITY OF THE PROJECT MANAGER

Under Section 5.2, Authority of the Project Manager, add the following sentence at the end of the paragraph:

“The Administrator of the Land Development Division of the Department, or his designee, shall also have authority to act on behalf of the Department on all matters regarding the contract that are not reserved for the Chairman.”

5.5 - SHOP DRAWINGS AND OTHER SUBMITTALS

In the second and fourth sentences of Section 5.5.1(c), replace “licensed professional Manager” with “licensed professional Engineer.”

5.6 – COORDINATION OF CONTRACT DOCUMENTS

After Section 5.6.4.1, insert the following new section:

5.6.4.2: In the event of a conflict between Form AG-008 (4/15/09) (the “General Conditions”) and the DHHL Interim General Conditions (August 16, 2005), the requirements of the “DHHL Interim General Conditions (August 16, 2005)” will apply to the extent provided by and as allowed under law.

5.9.3 – MANAGERING WORK

- Replace the word: “Managering” in this section title with “Engineering.”
- In the first, second, and fourth sentences of this section, replace the words “Managering” with “engineering.”



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- In Section 5.9.3.4 – Replace the phrase "Civil Manager" with "Civil Engineer."

1. 5.12 – VALUE MANAGERING INCENTIVE

- Replace the word: “Managering” in this section title with “Engineering.”
- In Sections 5.12.1 and 5.12.2, replace the word “Managering” with “Engineering.”
- In Section 5.12.4, replace the word "Manager" in this section title with "Engineer" and replace the phrase "professional architect or Manager" with "professional architect or engineer."

5.13 – SUBCONTRACTS

In Section 5.13.6 SUBCONTRACTING, add the following at the end: "For the purposes of this section, the Contractor's work is defined as: direct cost labor for contractor's forces; direct cost materials installed by the contractor's direct cost labor force; direct cost equipment, either owned or leased, used by the contractor's direct cost labor force; and field overhead cost to include: field supervision, field office trailer (if any), field office equipment and supplies, etc."

ARTICLE 7: PROSECUTION AND PROGRESS

Modify the following subsection on page 45 under:

7.2 - COMMENCEMENT REQUIREMENTS

After Section 7.2.1 on page 45, add the following new section:

7.2.1.1 Identification of the surveyor who shall be licensed in the State of Hawaii and will work for it throughout the course of the project per DHHL Interim General Condition 5.9.3.4.

7.3 - INSURANCE REQUIREMENTS

Delete the limits of liability insurance specified in items 7.3.7.2. and insert the following section:

“General Liability and Automobile Insurance. CONTRACTOR shall maintain, at its own expense, the minimum insurance coverage specified below throughout the term of this Contact.



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- a. General Liability insurance providing coverage of no less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate.
- b. Automobile insurance providing coverage of no less than ONE MILLION DOLLARS (\$1,000,000.00) per accident.”

ARTICLE 8: MEASUREMENT AND PAYMENT

Modify the following subsections:

8.1 - MEASUREMENT OF QUANTITIES

- Under Section 8.1.2 on page 74, delete the following phrase: "except where slope exceeds ten percent (10%)."

8.4 - PROGRESS AND/OR PARTIAL PAYMENTS

- After Section 8.4.5 on page 79, insert the following new section:

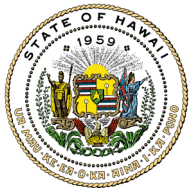
8.4.6 Final Payment Requirements (§3-122-112, HAR). Contractor will submit the following with its invoice for final payment on the contract:
 - (a) An original tax clearance certificate, not over two months old.
 - (b) An original “Certification of Compliance for Final Payment” (SPO Form-22).

8.6 - RETAINAGE

- In Section 8.6.1. delete the second and third sentences and replace with the following new sentences:

“After fifty percent (50%) of the work is completed and progress is satisfactory, no additional sum will be withheld. If progress is not satisfactory, the Department may continue to withhold retainage sums not exceeding five percent (5%) of the amount due the Contractor.”
- After Section 8.6.1, add the following new sections:

8.6.1.1. Contractor may withhold from amounts due its subcontractors, only the same percentage of retainage as that of the Contractor, and only if its subcontractors have provided valid performance and payments bonds or other bond or collateral acceptable to the Contractor.



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- 8.6.1.2. Contractor or Subcontractor may negotiate with, and retain from its respective subcontractors, a different retainage percentage which cannot exceed ten percent (10%).
- Insert at the beginning of Section 8.6.3 on page 80: “Subject to approval by the Chairman, and at the Chairman’s sole discretion.”

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.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

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.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

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

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

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

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

Department of Hawaiian Home Lands
INTERIM GENERAL CONDITIONS
Dated August 16, 2005

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ARTICLE 1: DEFINITIONS AND ABBREVIATIONS

- 1.1 DEFINITIONS.** Whenever the following terms or pronouns are used in these Bidding and Execution of Contract Requirements, and General Conditions, or in any contract documents or instruments where these Bidding and Execution of Contract Requirements, and General Conditions govern, the intent and meaning shall be interpreted as follows:

ADDENDUM (*plural - Addenda*). A written or graphic document, including Drawings and Specifications, issued by the Chairman during the bidding period which modifies or interprets the bidding documents, by additions, deletions, clarifications or corrections, which shall be considered and made a part of the bid proposal and the contract.

ADDITION (*to the contract sum*). Amount added to the contract sum by Change Order.

ADMINISTRATIVE RULES. Hawaii Administrative Rules for Chapter 103-D of the Hawaii Revised Statutes.

ADVERTISEMENT. A public announcement inviting bids for work to be performed or materials to be furnished.

BAD WEATHER DAY. When weather or other conditions prevent a minimum of four hours of work with the Contractor's normal work force on controlling items of work at the site. (See excess bad weather day.)

BENEFICIAL OCCUPANCY. The point of project completion when the Department can use the constructed facility in whole or in part for its intended purpose even though substantial completion may not be achieved.

BID. See PROPOSAL.

BID SECURITY. The security furnished by the Bidder from which the Department may recover its damages in the event the Bidder breaches its promise to enter into a contract with the Department and fails to execute the required bonds covering the work contemplated, if its proposal is accepted.

BIDDER. Any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, a proposal for the work contemplated.

BIDDING DOCUMENTS. The advertisement "Notice to Contractors", or invitation to bid, instructions to Bidders, proposal requirements, the bid form and the proposed Contract Documents including all addenda issued prior to receipt of Bids.

BULLETIN. A written notice to the Contractor requesting a price and / or time proposal for contemplated changes preparatory to the issuance of a field order or change order.

BY OR TO THE PROJECT MANAGER. To avoid cumbersome and confusing repetition of expressions in these General Conditions, it is provided that whenever the following words or words of like import are used, they shall be understood as if they were followed by the words "by the Project Manager" or "to the Project Manager", unless the context clearly indicates another meaning: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved,

acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned.

CALENDAR DAY. Any day shown on the calendar beginning at midnight and ending at midnight the following day. If no designation of calendar or working day is made, “day” shall mean calendar day.

CHANGE ORDER. A written order signed by the Chairman that establishes the full payment and final settlement of all claims for direct, indirect and consequential costs, including costs of delays, and establishes any adjustments to contract time related to the work covered and affected by one or more field orders, or for change work done or agreed to be done without issuance of a separate field order. A change order signed by all the parties to the contract constitutes a supplemental agreement.

COMPLETION. See SUBSTANTIAL COMPLETION and FINAL COMPLETION.

CONSULTANT. A person, firm or corporation having a contract with the Department to furnish services with respect to the project.

CONTRACT. The written agreement between the Contractor and the Department by its Chairman, by which the Contractor is bound to furnish all labor, equipment, and materials and to perform the specified work within the contract time stipulated, and by which DHHL is obligated to compensate the Contractor therefor at the prices set forth therein. The contract shall include the Contract Documents, also any and all amendments, and change orders, which are required to complete the construction in an acceptable manner.

CONTRACT COMPLETION DATE. The calendar day on which all work on the project, required by the contract, must be completed. See CONTRACT TIME and FINAL COMPLETION.

CONTRACT DOCUMENTS. The Contract, Addenda (which pertain to the Contract Documents, Contractor’s Proposal (including Wage Schedule, List of Subcontractors and other documentation accompanying the Bid and any post bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the contract, the Notice to Proceed, the Bonds, these General Conditions, the SPECIAL CONDITIONS, the Specifications and the Drawings as the same are more specifically identified in the contract together with all written Amendments, Change Orders, Field Orders, any written order for minor changes in the work and Project Manager’s written interpretations and clarifications issued on or after the effective date of the contract.

CONTRACT PRICE. The amount designated on the face of the contract for the performance of work including allowances, if any.

CONTRACT TIME. The number of working or calendar days provided in the contract for completion of the contract, exclusive of authorized time extensions. The number of days shall begin running on the effective date in the Notice to Proceed. If in lieu of providing a number of working or calendar days, the contract requires completion by a certain date, the work shall be completed by that date.

CONTRACTOR. Any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the State of Hawaii, and acting directly or through its agents, or employees.

DEPARTMENT. The Department of Hawaiian Home Lands (abbreviated DHHL).

DRAWINGS (or Plans). The contract drawings in graphic or pictorial form, which show the design, location, character, dimensions and details of the Work to be done and which shall be a part of the Contract Documents.

EQUAL OR APPROVED EQUAL. Whenever this term is used in the drawings or specifications, it shall be interpreted to mean a brand or article, prequalified in accordance with Section 6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING, that may be used in place of the one specified.

EXCESS BAD WEATHER DAY. A working day on which inclement weather prevents work on the contract and is beyond the average weather for the location of the project and the time of the year.

CHAIRMAN. The Chairman of the Hawaiian Homes Commission, Department of Hawaiian Home Lands.

FIELD ORDER. A written order issued by the Project Manager to the Contractor requiring the contract work to be performed in accordance with a change or changes in the work. A field order may (1) establish a price adjustment and/or time adjustment in an amount the Project Manager believes is reasonable for the change; or (2) may declare that the Project Manager does not intend to adjust contract time or price for the work; or (3) may request the Contractor to submit a proposal for an adjustment to the contract time and/or price by a certain date.

FINAL COMPLETION. The date set by the Chairman that all work required by the contract and any amendments or changes thereto is in full compliance with the contract.

FORCE ACCOUNT. Term used when Work is ordered to be done at the sole option of the Department and is to be billed for at cost of labor, materials and equipment, insurance(s), taxes, etc., plus a percentage for overhead and profit.

GUARANTEE. Legally enforceable assurance of the duration of satisfactory performance of quality of a product or Work.

HAZARDOUS MATERIALS. Any and all radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, toxic substances or materials cited in Hazardous Material Laws. Abandoned motor vehicles or parts thereof are not hazardous material.

DHHL. Department of Hawaiian Home Lands.

HOLIDAYS. The days of each year which are set apart and established as State holidays pursuant to Chapter 8, Hawaii Revised Statutes.

INSPECTOR. The person assigned by the Department to make detailed inspections of contract performance and materials supplied for the work.

LAWS. All Federal, State, City and County Laws, ordinances, rules and regulations, and standard specifications, including any amendments thereto effective as of the date of the call for sealed bids.

LIQUIDATED DAMAGES. The amount prescribed in the Special Conditions, LIQUIDATED DAMAGES to be paid to the Department or to be deducted from any payments due or to become due the

Contractor for each working day or calendar day (as applicable) delay in completing the whole or any specified portion of the work beyond the Contract Time.

LETTER OF AWARD. A written notice from the Chairman to the successful Bidder(s) stating that the Department has accepted its proposal.

MAJOR UNIT PRICE ITEM. A unit price item which, when extended on its estimated quantities in the proposal form, exceeds five percent (5%) of the total base bid proposal less any allowance and contingent items included in the proposal.

NON-CONFORMING WORK. Work that does not meet the requirements of the Contract Documents.

NOTICE TO BIDDERS/CONTRACTORS. The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate the location of the work to be done or the character of the material to be furnished and the time and place of the opening of proposals.

NOTICE TO PROCEED. A written notice from the Project Manager to the Contractor advising it of the date on which it is to begin the prosecution of the Work, which date shall also be the beginning of Contract Time.

POST CONTRACT DRAWINGS. Drawings issued after the award of the contract for the purpose of clarification and / or changes to the work indicated in the original drawings and which may be made a part of the contract.

PROJECT ACCEPTANCE DATE. The calendar day on which the Project Manager accepts the project as sufficiently completed in compliance with the contract so that the Department can occupy or utilize the Work for its intended use. See SUBSTANTIAL COMPLETION.

PROJECT CONTRACT LIMITS (or CONTRACT ZONE). The portion of the site as delineated on the drawings which define the Contractor's primary area of operation for the prosecution of the work. It does not define the exact limits of all construction that may be required under the contract.

PROJECT MANAGER. The Department's Contract Administrator as described in ARTICLE 5, CONTROL OF WORK.

PROJECT GUARANTEE. A guarantee issued by the Contractor to the Department. See GUARANTEE.

PROPOSAL (BID). The executed document submitted by a Bidder in the prescribed manner, in response to a request for proposals or invitation to Bid, to perform at the prices quoted, for the work specified under the contract, within the time prescribed for performance.

PROPOSAL FORM. The form prepared by the Department on which the written offer or formal bid for the work to be done is submitted by the Bidder. By submitting a bid on the proposal form, a Bidder adopts the language therein as its own.

PUNCHLIST. A list compiled by the Project Manager (or Contractor) stating work yet to be completed or corrected by the Contractor in order to substantially complete or finally complete the contract requirements.

QUESTIONNAIRE. The specified forms on which the Bidder shall furnish required information as to its ability to perform and finance the work.

SHOP DRAWINGS/SUBMITTALS. All drawings, diagrams illustrations, schedules and other data or information which are prepared or assembled by the Contractor and submitted by Contractor to illustrate some portion of the Work.

SPECIAL CONDITIONS. The specific clauses that supplements or modify the standard clauses of the GENERAL CONDITIONS setting forth conditions or requirements peculiar to the individual project under consideration, which are not thoroughly or satisfactorily covered, described or explained in these GENERAL CONDITIONS.

SPECIFICATIONS. That portion of the Contract Documents consisting of written descriptions for materials, equipment, construction systems, standards, workmanship, directions, provisions and requirements that pertain to the method and manner of performing the work and certain administrative requirements applicable thereto.

STATE. The State of Hawaii acting through its authorized representative.

SUBCONTRACT. Any written agreement between the Contractor and its subcontractors which contains the conditions under which the subcontractor is to perform a portion of the work for the Contractor.

SUBCONTRACTOR. An individual, partnership, firm, corporation, joint venture or other legal entity, as covered in Chapter 444, Hawaii Revised Statutes, which enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

SUBSTANTIAL COMPLETION. The status of the project when the Contractor has completed all the work and (1) all utilities and services are connected and working; (2) all equipment is in acceptable working condition; (3) additional activity by the Contractor to correct punchlist items as described herein will not prevent or disrupt use of the work or the facility in which the work is located; and 4) the building, structure, improvement or facility can be used for its intended purpose.

SUPERINTENDENT. The employee of the Contractor, authorized to receive and fulfill instructions from the Project Manager, who is charged with the responsibility of all the Work.

SURETY. The qualified individual, firm or corporation other than the Contractor, which executes a bond with and for the Contractor to ensure its acceptable performance of the contract.

UNUSUALLY SEVERE WEATHER. Uncommonly harsh weather including but not limited to hurricanes, tornadoes, tropical storms and tropical depressions. (See General Conditions, Section 7.21.8.6).

WORK. The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

WORKING DAY. A calendar day, exclusive of Saturdays, Sundays and State-recognized legal holidays for the month in question.

1.2 ABBREVIATIONS

HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
VECP	Value Managering Cost Proposal
DOTAX	State Department of Taxation
IRS	Internal Revenue Service

~ END OF ARTICLE 1~

ARTICLE 2: PROPOSAL REQUIREMENTS AND CONDITIONS

- 2.1 QUALIFICATION OF BIDDERS. Prospective Bidders must be capable of performing the work for which bids are invited, and must be capable of entering into a public contract of \$25,000 (twenty five thousand dollars) or more.
- 2.1.1 NOTICE OF INTENTION TO BID
- 2.1.1.1 In accordance with Section 103D-310, Hawaii Revised Statutes, and Section 3-122-108, Hawaii Administrative Rules, a written notice of intention to bid must be filed for the construction of any public building or public work when the bid is \$25,000 (twenty five thousand dollars) or more. A written notice of intention to bid need not be filed for the mere furnishing and installing of furniture, equipment, appliances, material and any combination of these items when a Contractor's license is not required under Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board.
- 2.1.1.2 The written notice must be addressed to the Chairman, who is the officer charged with letting the contract. The words, "INTENTION TO BID" must be clearly written or typed on the face of the envelope containing the written notice of intention to bid. The notice may be faxed, hand carried or mailed to the office indicated in the Notice to Contractors.
- 2.1.1.3 The written notice must be received by the office indicated in the Notice to Contractors no later than 2:00 p.m. on the 10th calendar day prior to the day designated for opening bids. If the 10th calendar day prior to the day designated for opening bids is a Saturday, Sunday, or legal State holiday, then the written notice must be received by the Department no later than 2:00 p.m. on the last working day immediately prior to said Saturday, Sunday, or legal State holiday. The written notice will be time stamped when received by said office. The time designated by the time stamping device in said office shall be official. If the written notice is hand carried, then the bearer is responsible to ensure that the notice is time stamped by said office. If the notice is faxed, the time of receipt by the Department fax machine shall be official.
- 2.1.1.4 It is the responsibility of the prospective Bidder to ensure that the written notice of intention to bid is received in time and the Department assumes no responsibility for failure of timely delivery caused by the prospective Bidder or by any method of conveyance chosen by the prospective Bidder.
- 2.1.1.5 If two (2) or more prospective Bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint ventures are required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license. The joint venture

must registered with the office of the Director of Commerce and Consumer Affairs in accordance with Chapter 425 of the Hawaii Revised Statutes, as amended.

- 2.1.1.6 No persons, firm or corporation may bid where (1) the person, firm, or corporation, or (2) a corporation owned substantially by the person, firm, or corporation, or (3) a substantial stockholder or an officer of the corporation, or (4) a partner or substantial investor in the firm is in arrears in any payment owed to the State of Hawaii or any of its political subdivisions or is in default of any obligation to the State of Hawaii or to all or to any of its political subdivisions, including default as a surety or failure to perform faithfully and diligently any previous contract with the Department.
- 2.1.1.7 The Chairman may, in accordance with Section 103D-310 Hawaii Revised Statutes, require the prospective Bidder to submit answers to questions contained in the STANDARD QUALIFICATION QUESTIONNAIRE FOR PROSPECTIVE BIDDERS ON PUBLIC WORKS CONTRACTS, on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective Bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment, at least two (2) working days prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the Bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the Bidder after it has served its purpose.
- 2.1.1.8 If upon review of the Questionnaire, or otherwise, the Bidder appears not fully qualified or able to perform the intended work, the Chairman shall, after affording the Bidder an opportunity to be heard and if still of the opinion that the Bidder is not fully qualified to perform the work, refuse to receive or to consider any bid offered by the prospective Bidder.
- 2.1.1.9 Failure to complete and submit the prequalification questionnaire by the designated deadline will be sufficient cause for the Department to disqualify a prospective Bidder.
- 2.1.2 TAX CLEARANCE (§103D-328 HRS)
 - 2.1.2.1 Contractors are required to provide both state and federal tax clearances as a prerequisite to entering into a public contract of \$25,000 or more. To meet this requirement, all Bidders shall submit valid tax clearances with their bid proposals when the bid is \$25,000 or more. An additional tax clearance will be required before final payment can be made.
 - 2.1.2.2 Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The application may be obtained from the DOTAX, the IRS, or the Public Works Division, Kalanimoku Building, Room 422, 1151 Punchbowl Street, Honolulu, Hawaii. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within twenty-one (21) calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest.
 - 2.1.2.3 Only original tax clearance certificates or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates may be sufficient grounds for the Department to refuse to receive or consider the prospective Bidder's proposal.
 - 2.1.2.4 Tax clearance certificates are valid for six (6) months. The six-month period will begin with the later approval date stamped on the tax clearance. An original copy of a tax clearance that bears an original

green certified copy stamp will be accepted by the Department for final payment. The period of validity for final payment is forty-five (45) days.

- 2.1.2.5 The tax clearances submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.
- 2.1.2.6 Any person, firm or corporation that is not presently doing business in the State of Hawaii and submits a Notice of Intention to Bid must submit along with said Notice of Intention to Bid a certified letter stating that said person, firm or corporation is not doing business in the State of Hawaii and is not in default of any obligations due to the State or any of its political subdivisions.
- 2.1.2.7 If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a "special letter" from DOTAX and/or the IRS. The "special letter" may only be obtained if (1) the business has an existing installment agreement with the tax agency, or (2) the delinquency is the subject of an administrative or judicial appeal. The Bidder is cautioned that the "special letter" from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these "special letters". Instructions to obtain the "special letter" are available from each respective tax agency.
- 2.1.2.8 Various combinations of tax clearance certificates and "special letters" are acceptable for this purpose as follows:
 - (a) Tax clearance certificate signed by both tax agencies;
 - (b) Individual tax clearance certificates from each tax agency, respectively;
 - (c) Tax clearance certificate from one tax agency and a "special letter" from the other tax agency;
 - (d) "Special letters" from both tax agencies.
- 2.1.3 **WRONGFUL REFUSAL TO ACCEPT A BID.** In the event the Chairman, for any reason, wrongfully refuses to accept what would otherwise be a responsive and responsible lowest bid, the exclusive remedy for such lowest Bidder shall be the recovery of the reasonable actual costs of preparing the bid. No other Bidder shall have any claim for damages. Refer to Section 2.14, **PROTESTS.**
- 2.2 **INTERPRETATION OF QUANTITIES IN BID SCHEDULE**
- 2.2.1 When quantities for individual items of work are listed in the proposal form for which respective unit prices are asked, said quantities are estimated or approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication agrees that the actual quantity of work will correspond therewith.
- 2.2.2 After determining the low Bidder by comparison of bids submitted in accordance with the proposal form and Section 3.1, **CONSIDERATION OF PROPOSALS; CANCELLATION** in these Contract Documents, the quantities of unit price items of work may increase or decrease.
- 2.2.3 On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid, subject to Section 4.7, **VARIATIONS IN ESTIMATED QUANTITIES.** It is understood and agreed that the Contractor shall make no claim for anticipated profit, loss of profit or unabsorbed field, branch or home office overhead and impact losses due to the

exercise of the Departments right to eliminate entire portions of the work or to increase or decrease any or all the quantities shown in the proposal form.

2.3 CONTENTS OF PROPOSAL FORMS

2.3.1 Prospective Bidders will be furnished with proposal forms giving the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

2.3.2 All papers bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered when the proposal is submitted.

2.3.3 The drawings, specifications and other documents designated in the proposal form will also be considered a part thereof whether attached or not.

2.3.4 By submitting a bid on the proposal form, a Bidder accepts the language therein as its own.

2.4 BIDDER'S RESPONSIBILITY FOR EXAMINATION OF CONTRACT DOCUMENTS, SITE OF WORK, ETC.

2.4.1 The Bidder shall carefully examine the project site contemplated all Contract Documents and any documents or items referenced therein and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the Bidder has made such examination and is informed of the conditions to be encountered in performing the Work and of the requirements of the Contract Documents and any documents and items referenced therein, and contract and bonds.

2.5 UTILITIES AND SERVICES

2.5.1 Where its operations are next to or near properties of utility companies or other property, the Contractor shall not start work until the Contractor makes arrangements necessary for the protection of said property.

2.5.2 The Contractor shall cooperate, coordinate and schedule its work to suit the owners of underground or overhead utility lines or other property in removing or altering such lines or providing new services in order for the work to progress according to the contract. Cooperation includes rearranging the Contractor's operations and normal work schedules and realignment of work as approved by the Department in order to accommodate the operations and work of the utilities and/or other property in and around the work site at no additional cost to the Department.

2.5.3 The Contractor shall contact all the various utility companies before the start of the work to ascertain any existing utilities and to develop a full understanding of the utility requirements with respect to this project. The Contractor shall furnish the Project Manager with evidence that the Contractor has contacted the utility companies.

2.5.4 If the Contractor discovers that the existence and location of utilities in the contract plans are not correct, the Contractor shall not disturb the utilities and immediately notify the Project Manager. The Project Manager will advise the Contractor regarding actions to take.

- 2.5.5 The Contractor shall ascertain the exact location and depth of utilities within the project area. The Contractor shall mark such locations to warn workers or equipment operators of their existence and location. The Contractor shall be responsible to acquaint personnel working near utilities with the type, size, location and depth of the utilities and the consequences that might result from disturbances. The Contractor shall not start trenching or start similar operations until the Contractor has taken reasonable and appropriate precautions to protect the utilities.
- 2.5.6 Any utilities or other property that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.
- 2.5.7 In the event the utilities or other property are damaged or disturbed by the Contractor, the Contractor shall be liable for all such damage where the utilities or other property are:
- (a) Shown on the plan in its actual or approximate location; or
 - (b) Exposed on the job as it progresses; or
 - (c) Pointed out to the Contractor in the field.
- 2.5.8 Such utilities or other property as described above shall be “known utilities or other property.” If the Contractor encounters an unknown utility or other property, it shall not proceed until it has notified the Project Manager and receives instructions. If the Project Manager directs additional work, it shall be paid for under Section 4.2, CHANGES.
- 2.5.9 The Contractor shall repair and restore to pre-damaged condition any utilities or any other property it may damage, and it shall be liable for any and all resulting damage at no cost to the Department, the work or utility owner or property owner. Any damage claim due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor who shall defend, indemnify and hold harmless the Department from all suits, actions or claims of any character brought on account of such damages, whether or not the Department may have been partially at fault. Public liability and property damage insurance to be obtained by the Contractor pursuant to ARTICLE 7, PROSECUTION AND PROGRESS shall cover such risk of damage.
- 2.5.10 In the event the Contractor simultaneously with the discovery of an unknown utility or other property damages that utility or other property, the Contractor shall not be held liable beyond the extent of the Contractor’s liability insurance but shall immediately notify the Project Manager. Upon instruction from the Project Manager, the Contractor shall repair all damages and execute a plan for dealing with the damaged utility or other property. This repair work shall be considered additional work as covered in Section 4.2, CHANGES.
- 2.6 ADDENDA AND BID CLARIFICATIONS
- 2.6.1 The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum.
- 2.6.2 The Department may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.
- 2.6.3 If a Bidder discovers what it considers to be a discrepancy, ambiguity, omission or doubt as to the meaning of drawings, specifications and any other bid or contract documents, the Bidder shall request in writing an interpretation from the Chairman.

- 2.6.4 If the Department agrees that a discrepancy, ambiguity, omission or doubt exists, it shall issue a written addendum to the bid documents to all prospective Bidders at the respective offices furnished for such purposes eight (8) days before the bids are opened. The Department may extend the bid opening to allow at least eight (8) days from the notification date of the addendum. Upon notification by the Department, all Bidders/addressees shall be deemed to be on notice of the information therein whether or not the addendum is actually received. All addenda so issued shall become part of the contract documents.
- 2.6.5 No claim for additional compensation and/or time for performance will be allowed if the Contractor discovered, or in the exercise of reasonable care, should have discovered a discrepancy, ambiguity, omission or doubt for which an interpretation was not requested.
- 2.7 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING
- 2.7.1 Brand names of materials or equipment are specified or shown on the drawings to indicate a quality, style, appearance or performance and not to limit competition. The Bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualifications of such proposed alternate brands shall be submitted in writing and addressed to the Project Manager. The face of the envelope containing the request must be clearly marked "SUBSTITUTION REQUEST". The request may be hand carried or mailed to DHHL, 1099 Alakea Street, Suite 2000, Honolulu, Hawaii 96813. In either case, the written request must be received by DHHL no later than fourteen (14) days before the bid opening date and time specified in the Notice to Bidders. The written request will be time stamped by DHHL. For the purpose of this section, the time designated by the time stamping device in DHHL shall be official. If the written request is hand carried, the bearer is responsible to ensure that the request is time stamped by DHHL.
- 2.7.2 Submit three (3) sets of the written request, technical brochures, and a statement of variances. Refer to the Appendix for the Sample "Request for Substitution."
- 2.7.3 STATEMENT OF VARIANCES. The statement of variances must list all features of the proposed substitution which differ from the drawings, specifications and/or product(s) specified and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, etc., and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, Contractor shall immediately replace the product with a specified product at no cost to the Department.
- 2.7.4 SUBSTITUTION DENIAL - Any substitution request not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by Project Manager after the deadline above will be denied.
- 2.7.5 An addendum shall be issued to inform all prospective Bidders of any accepted substitution in accordance with Section 2.6, ADDENDA AND BID CLARIFICATIONS.
- 2.7.6 For substitutions of materials and equipment after issuance of the Letter of Award, refer to Section 6.3, SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING.
- 2.8 PREPARATION OF PROPOSAL

- 2.8.1 The Bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions thereon. The Bidder must state, both in words and numerals, the lump sum price or total sum bid at which the work contemplated is proposed to be done. These prices must be written in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The Bidder shall sign the proposal in the spaces provided with ink. By submitting a bid, the Bidder adopts the language of the proposal as its own.
- 2.8.2 If the proposal is made by an individual, the person's name and post office address must be shown in the space provided. If made by a partnership the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the Department. If made by a corporation the proposal must show the name, title and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the Department. If made by a joint-venture the name and post office address of each member of the individual firm, partnership or corporation comprising the joint-venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint-venture or evidence in the form of a Joint-Venture Agreement must be submitted showing the authority of the joint-venture's representative to enter on behalf of said joint-venture into contract with the Department.
- 2.8.3 Pursuant to the requirements of Section 103D-302, HRS, each Bidder shall include in its bid the name of each person or firm to be engaged by the Bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor and their respective contractor's license number. A joint contractor or subcontractor performing less than or equal to one percent of the total bid amount is not required to be listed in the proposal. The Bidder shall be solely responsible for verifying that their joint contractor or subcontractor has the proper license at the time of the submitted bid.
- 2.9 BID SECURITY
- 2.9.1 Subject to the exceptions in Section 3-122-223(d) HAR, all lump sum bids of \$25,000 (twenty five thousand dollars) and higher, or lump sum base bids including alternates of \$25,000 (twenty five thousand dollars) and higher, that are not accompanied by bid security are non-responsive. Bid security shall be one of the following: §3-122-222(a) HAR
- 2.9.1.1 Surety bid bond underwritten by a company licensed to issue bonds in this State which shall be substantially in the form of the Surety Bid Bond form in the Appendix; or
- 2.9.1.2 Legal Tender; or
- 2.9.1.3 Certificate of Deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
- (a) These instruments may be utilized only to a maximum of \$100,000 (one hundred thousand dollars).

- (b) If the required security or bond amount totals over \$100,000 (one hundred thousand dollars), more than one instrument not exceeding \$100,000 (one hundred thousand dollars) each and issued by different financial institutions shall be accepted.
- (c) CAUTION - Bidders are cautioned that certificates of deposit or share certificates with an early withdrawal penalty must have a face value sufficient to cover the maximum penalty amount in addition to the proposal guaranty requirement. If the certificate is made out to two names, the certificate must be assigned unconditionally to the Chairman .

- 2.9.2 Unless otherwise stated, the bid security shall be in an amount equal to at least five percent (5%) of the lump sum bid or lump sum base bid including all additive alternates or in an amount required by the terms of the federal funding, where applicable.
- 2.9.3 If the Bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. (See sample in Appendix.) If the Bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.
- 2.9.4 If the Bidder is a joint-venture, all parties to the joint-venture must sign the bond; provided, that one party to the joint-venture may sign on behalf of the joint-venture if evidence in the form of a joint-venture agreement or power of attorney, is submitted showing the authority of the signatory to sign the bond on behalf of the joint-venture.
- 2.9.5 In the case where the award will be made on a group or item basis, the amount of bid security shall be based on the total bid for all groups or items submitted.
- 2.9.6 Bidders are cautioned that surety bid bonds which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make claim other than allowed by statutes or these GENERAL CONDITIONS are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bid accompanied by such surety bid bond will be automatically rejected.
- 2.10 DELIVERY OF PROPOSALS. The entire proposal shall be placed together with the bid security, in a sealed envelope no smaller than 9-1/2" x 12" so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the Bidder and then delivered as indicated in the Notice to Contractors. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must be in the hands of the official by the time indicated. The words "SEALED BID" must be clearly written or typed on the face of the sealed envelope containing the proposal and bid security.
- 2.11 WITHDRAWAL OR REVISION OF PROPOSAL. Proposal may be modified prior to the deadline to submit the proposal by any of the following documents:
 - 2.11.1 Withdrawal of Proposals:
 - 2.11.1.1 A signed, written notice received in the office designated in the solicitation; or
 - 2.11.1.2 A signed written notice faxed to the office designated in the solicitation.
 - 2.11.2 Modification of Proposals:

- 2.11.2.1 A signed written notice received in the office designated in the solicitation, accompanied by a duly executed certificate of resolution for corporations, partnerships and joint-ventures, stating that a modification to the proposal is submitted; and
- 2.11.2.2 The actual modification sealed securely in a separate envelope or container, accompanying the written notice.
- 2.12 PUBLIC OPENING OF PROPOSALS. Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors. Bidders, their authorized agents and other interested parties are invited to be present.
- 2.13 DISQUALIFICATION OF BIDDERS. Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:
 - 2.13.1 Non-compliance with Section 2.1, QUALIFICATION OF BIDDERS;
 - 2.13.2 Evidence of collusion among Bidders;
 - 2.13.3 Lack of responsibility and cooperation as shown by past work such as failing to complete all of the requirements to close the project within a reasonable time or engaging in a pattern of unreasonable or frivolous claims for extra compensation;
 - 2.13.4 Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii;
 - 2.13.5 Lack of proper equipment and/or sufficient experience to perform the work contemplated, as revealed by the Standard Questionnaire and Financial Statement for Bidders;
 - 2.13.6 No contractor's license or a contractor's license which does not cover type of work contemplated;
 - 2.13.7 More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name;
 - 2.13.8 Delivery of bids after the deadline specified in the advertisement calling for bids;
 - 2.13.9 Failure to pay, or satisfactorily settle, all bills overdue for labor and materials of former contracts in force at the time of issuance of proposal forms; and/or
 - 2.13.10 Debarment or suspension pursuant to the provisions of Chapters 103D, 104 and 444, Hawaii Revised Statutes, as amended.
- 2.14 PROTESTS
 - 2.14.1 Protests shall be adjudicated in accordance with §103D-701, HRS and as amended.
 - 2.14.2 No Protest based upon the contents of the solicitation shall be considered unless it is submitted in writing to the Chairman, prior to the date set for the receipt of proposals.

- 2.14.3 A protest of an award or proposed award pursuant to §103D-302 or §103D-303, HRS, shall be submitted in writing to the Chairman, within five (5) working days after the posting of the award of the Contract.
- 2.14.4 When a protest is sustained and the protestor should have been awarded the contract under the solicitation but is not, then the exclusive remedy for such protestor shall be the recovery of the reasonable actual costs of preparing the bid, but not attorney's fees.

~ END OF ARTICLE 2 ~

ARTICLE 3: AWARD AND EXECUTION OF CONTRACT

- 3.1 **CONSIDERATION OF PROPOSALS; CANCELLATION.** After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall be made public. In the event of a tie bid, the low Bidder shall be determined by lot. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, the Department may cancel the solicitation, reject any and all proposals in whole or part and may waive any defects or technicalities whenever such action is deemed to be in the best interest of the Department.
- 3.2 **IRREGULAR PROPOSALS.** Proposals will be considered irregular and may be rejected for the following reasons:
- 3.2.1 If the proposal is unsigned.
- 3.2.2 If bid security is not in accordance with Section 2.9, BID SECURITY.
- 3.2.3 If proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof detached.
- 3.2.4 If the proposal shows any non-compliance with applicable law, alteration of form, additions not called for, conditional bids, incomplete bids, non-initialed erasures, other defects, or if the prices are obviously unbalanced.
- 3.2.5 If the Bidder adds any provisions reserving the right to accept or reject an award.
- 3.2.6 If the Bidder adds any provisions reserving the right to enter into a contract pursuant to an award.
- 3.2.7 When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a power of attorney is not submitted with the proposal.
- 3.2.8 Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractors and/or subcontractors must be performed by the Bidder with its own employees. Additions to the list of joint contractors or subcontractors will not be allowed. Whenever there is a doubt as to the completeness of the list, the Bidder will be required to submit within five (5) working days, a written confirmation that the work in question will be performed with its own work force. Whenever there is more than

one joint contractor and/or subcontractor listed for the same item of work, the Bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain within five (5) working days written releases from those joint contractors and/or subcontractors who will not be engaged.

- 3.2.9 If in the opinion of the Chairman, the Bidder and/or its listed subcontractors do not have the contractor's licenses or combination of contractor's licenses necessary to complete all of the work.

3.3 CORRECTION OF BIDS AND WITHDRAWAL OF BIDS (§3-122-31 HAR)

- 3.3.1 Corrections to bids after bid openings but prior to award may be made under the following conditions:

- 3.3.1.1 If the mistake is attributable to an arithmetical error, the Chairman shall so correct the mistake. In case of error in extension of bid price, the unit price shall govern.

- 3.3.1.2 If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Bidder shall request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Chairman shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

- (a) Typographical errors;
- (b) Transposition errors;
- (c) Failure of a Bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the Bidder's intent to be bound.

- 3.3.1.3 For reasons not allowable under Subsections 3.3.1.1 and 3.3.1.2 when the Chairman determines that the correction or waiver of an obvious mistake is in the best interest of the Department or is warranted for the fair treatment of other Bidders.

- 3.3.2 Withdrawal of bids after bid opening but prior to award may be made when the bid contains a mistake attributable to an obvious error which affects price, quantity, quality, delivery, or contractual conditions, and the Bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made. The Chairman shall prepare a written approval or denial in response to this request.

- 3.3.3 Correction or withdrawal of bids after award is not permissible except in response to a written withdrawal or correction request by the Contractor, and the Chairman makes a written determination that the Department's procurement practices and policies would not be materially affected by such correction or withdrawal.

3.4 AWARD OF CONTRACT

- 3.4.1 The award of contract, if it be awarded, will be made within one hundred twenty (120) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive Bidder (including the alternate or alternates which may be selected by the Chairman in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful Bidder will be notified, by letter mailed to the address shown on the proposal, that its bid has been accepted and that it has been awarded the contract.

- 3.4.2 If the contract is not awarded within the one hundred twenty (120) days noted in Subsection 3.4.1 above, the Department may request the successful Bidder to extend the time for the acceptance of its bid. The Bidder may reject such a request without penalty; and in such case, the Department may at its sole discretion make a similar offer to the next lowest responsive and responsible Bidder and so on until a bid is duly accepted or until the Department elects to stop making such requests.
- 3.4.3 No contract will be awarded to any person or firm suspended or debarred under the provisions of Chapters 103D, 104 and Chapter 444, Hawaii Revised Statutes as amended.
- 3.4.4 The contract will be drawn on the forms furnished by the Chairman. The contract will not be binding on the Department until all required signatures have been affixed thereto and written certification that funds are available for the work has been made.
- 3.5 **CANCELLATION OF AWARD.** The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties. The exclusive remedy to the awardee for such cancellation shall be payment of the reasonable bid preparation costs and the reimbursement of any direct expenses incurred as directed in the Notice of Award. Such cancellation will not incur any liability by the Department to any other Bidder.
- 3.6 **RETURN OF BID SECURITY.** All bid securities, except those of the four (4) lowest Bidders, will be returned following the opening and checking of the proposals. The retained bid securities of the four lowest Bidders will be returned within five (5) working days following the complete execution of the contract.
- 3.7 **REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS**
- 3.7.1 Performance and Payment Bonds shall be required for contracts \$25,000 (twenty five thousand dollars) and higher. At the time of the execution of the contract, the successful Bidder shall file good and sufficient performance and payment bonds on the form furnished by the Department (see Appendix), each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids. Acceptable performance and payment bonds shall be limited to the following:
- 3.7.1.2 Surety bonds underwritten by a company licensed to issue bonds in this State; or
- 3.7.1.3 A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the Department by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
- (a) These instruments may be utilized only a maximum of \$100,000 (one hundred thousand dollars).
- (b) If the required security or bond amount totals over \$100,000 (one hundred thousand dollars), more than one instrument not exceeding \$100,000 (one hundred thousand dollars) each and issued by different financial institutions shall be acceptable.
- 3.7.2 If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Department shall have the remedies provided under Section 3.9, FAILURE TO EXECUTE THE CONTRACT and award of the contract shall be made to the next lowest responsible and responsive Bidder.

3.8 EXECUTION OF THE CONTRACT

- 3.8.1 The contract shall be signed by the successful Bidder and returned, together with satisfactory performance and payment bonds, within ten (10) calendar days after the Bidder is awarded the contract for execution or within such further time as the Chairman may allow. No proposal or contract shall be considered binding upon the Department until the contract has been fully and properly executed by all parties thereto. For projects funded with State Capital Improvement Project (CIP) funds, the Chairman shall also endorse thereon its certificate, as required by Section 103D-309, HRS, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the Department's amount required by such contract.
- 3.8.2 On any individual award totaling less than \$25,000 (twenty five thousand dollars), the Department reserves the right to execute the contract by the issuance of a Purchase Order. Issuance of a Purchase Order shall result in a binding contract between the parties without further action by the Department. The issuance of a Purchase Order shall not be deemed a waiver of these General Conditions, and Contract Document requirements.

3.9 FAILURE TO EXECUTE THE CONTRACT

- 3.9.1 Before the Award - If a low Bidder without legal justification withdraws its bid after the opening of bids but before the award of the contract, the Department shall be entitled to retain as damages the amount established as bid security, and may take all appropriate actions to recover the damages sum from the property or third-party obligations deposited as bid security.
- 3.9.2 After the Award. If the Bidder to which a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) calendar days after such award or within such further time as the Chairman may allow, the Department shall be entitled to recover from such Bidder its actual damages, including but not limited to the difference between the bid and the next lowest responsive bid, as well as personnel and administrative costs, consulting and legal fees and other expenses incurred in arranging a contract with the next low responsible and responsive Bidder or calling for new bids. The Department may apply all or part of the amount of the bid security to reduce its damages. If upon determination by the Department that the bid security exceeds the amount of its damages, it shall release or return the excess to the person who provided same.
- 3.9.3 Chairman's Options. Upon a withdrawal of the lowest responsive bid, or upon a refusal or failure of the lowest Bidder to execute the contract, the Chairman may thereupon award the contract to the next lowest responsible and responsive Bidder or may call for new bids, whichever method the Chairman may deem to be in the best interests of the Department.

3.10 NOTICE TO PROCEED

- 3.10.1 After the contract is fully executed and signed by the Chairman, the Contractor will be sent a formal Notice to Proceed letter advising the Contractor of the date on which it may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Chairman may terminate the contract in accordance with Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.
- 3.10.2 The Contractor may commence its operations strictly at its own risk prior to receipt of the formal notice to proceed, provided it makes a written request and has received approval from the Chairman

in writing. All work performed shall be conducted in accordance with Section 7.1, PROSECUTION OF THE WORK.

- 3.10.3 In certain cases, the Department, with agreement of the Contractor, may issue a Notice to Proceed before full execution of the contract by the Chairman and it may further issue a Notice to Proceed concurrently with the Notice of Award.
- 3.10.4 In the event the Notice to Proceed is not issued within one hundred eighty (180) days after (1) the date the contract is executed by all parties; or (2) for projects funded with State Capital Improvement Project (CIP) funds, the date that the written certificate that funds are available is issued, whichever is later, the Contractor may submit a claim for increased labor and material costs (but not overhead costs) which are directly attributable to the delay beyond the first one hundred eighty (180) days. Such claims shall be accompanied with the necessary documentation to justify the claim. No payment will be made for assumed escalation costs.
- 3.11 RELATIONSHIP OF PARTIES. Independent Contractor Status and Responsibilities, including Tax Responsibilities.
 - 3.11.1 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.
 - 3.11.2 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.
 - 3.11.3 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.
 - 3.11.4 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.
 - 3.11.5 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 of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the

CONTRACTOR have been paid and submit the same to the 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 237-45, HRS, and Section 8.8, FINAL PAYMENT of these General Conditions.

- 3.11.6 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.
- 3.12 PERSONNEL REQUIREMENTS:
 - 3.12.1 The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.
 - 3.12.2 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.
- 3.13 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.
- 3.14 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.

~END OF ARTICLE 3~

ARTICLE 4: SCOPE OF WORK

- 4.1 INTENT OF CONTRACT, DUTY OF CONTRACTOR. The intent of the Contract is to provide for the construction, complete in every detail, of the work described at the accepted bid price and within the time established by the contract. The Contractor has the duty to furnish all labor, materials, equipment, tools, transportation, incidentals and supplies and to determine the means, methods and schedules required to complete the work in accordance with the drawings, specifications and terms of the contract.
 - 4.1.1 ENTIRE CONTRACT. This Contract sets forth all of the Contract, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior Contracts, conditions, understandings, promises, warranties and representations, which shall have no further force or effect. There are no Contracts, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

- 4.2 CHANGES. The Project Manager may at any time, during the progress of the work, by written order, and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the Surety, and the Contractor will perform the work as changed, as though it had been a part of the original Contract.
- 4.2.1 MINOR CHANGES. Minor changes in the work may be directed by the Project Manager with no change in contract price or time of performance. Minor changes are consistent with the intent of the Contract Documents and do not substantially alter the type of work to be performed or involve any adjustment to the contract sum or extension of the contract time.
- 4.2.2 ORAL ORDERS
- 4.2.2.1 Any oral order, direction, instruction, interpretation or determination from the Chairman or any other person which in the opinion of the Contractor causes any change, shall be considered as a change only if the Contractor gives the Chairman written notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive. Such written notice must be delivered to both the Chairman and the Project Manager before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five (5) days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time or contract price related to such work.
- 4.2.2.2 No more than five (5) days after receipt of the written notice from the Contractor, a Field Order shall be issued for the subject work if the Department agrees that it constitutes a change. If no Field Order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the failure to issue a Field Order, it shall file a written protest with the Chairman within thirty (30) days after delivery to the Chairman of the Contractor's written notice of its intention to treat the oral order as a change. In all cases, the Contractor shall proceed with the work. The protest shall be determined as provided in Section 7.25, DISPUTES AND CLAIMS.
- 4.2.3 FIELD ORDERS. All changes will be set forth in a field order or change order. Upon receipt of a field order, the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or in the adjustment or non-adjustment to the contract time and/or contract price set forth therein, it shall file with the Chairman a written protest setting forth its reasons in detail within thirty (30) days after receipt of the field order. In all cases, the Contractor shall proceed with the work as changed. The protest shall be determined as provided in Section 7.25, DISPUTES AND CLAIMS. Failure to file such a protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, amounts and adjustments or non-adjustment to the contract price and/or contract time set forth in the field order.
- 4.2.4 CHANGE ORDERS
- 4.2.4.1 The Department will issue sequentially numbered change orders at times it deems appropriate during the contract period. A change order may contain the adjustment in contract price and / or time for a number of Field Orders. The change order will be issued in the format attached (refer to the Appendix). No payment for any change will be made until the change order is issued.

- 4.2.4.2 The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every change order.
- 4.3 DUTY OF CONTRACTOR TO PROVIDE PROPOSAL FOR CHANGES
- 4.3.1 A Field Order may request the Contractor to supply the Department with a proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.
- 4.3.2 The Project Manager from time to time may issue a Bulletin to the Contractor requesting price and / or time adjustment proposals for contemplated changes in the work. A Bulletin is not a directive for the Contractor to perform the work described therein.
- 4.3.3 Within seven (7) days after receipt of a Bulletin or Field Order containing a request for proposal, the Contractor shall submit to the Project Manager a detailed written statement in a format similar to the one shown in the Appendix setting forth all charges the Contractor proposes for the change and the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. No time extension will be granted for delays caused by late Contractor pricing of changes or proposed changes. If the project is delayed because Contractor failed to submit the cost proposal within the seven (7) days, or longer as allowed by the Project Manager, liquidated damages will be assessed in accordance with Section 7.26, FAILURE TO COMPLETE THE WORK ON TIME.
- 4.3.4 No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes. No time extension will be granted for delay caused by late Contractor pricing of changes or proposed changes.
- 4.3.5 The Chairman may accept the entire proposal, or any discreet cost item contained within the proposal or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the Contractor within thirty (30) days after receipt of the proposal. The written acceptance by the Chairman of all or part of the Contractor's proposal shall create a binding agreement between the parties for that aspect of the change.
- 4.3.6 If the Department refuses to accept the Contractor's entire proposal, the Chairman may issue a Field Order for the work; or if a Field Order has already been issued, the Department may issue a supplemental Field Order establishing the remaining adjustments to contract price and/or contract time for the ordered changes. If the Contractor disagrees with any term, condition or adjustment contained in such Field Order or supplemental Field Order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 4.2.3, FIELD ORDERS.
- 4.4 PRICE ADJUSTMENT (§3-125-13 HAR)
- 4.4.1 Any adjustment in the contract price pursuant to a change or claim in this contract shall be made in one or more of the following ways:
- 4.4.1.1 By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- 4.4.1.2 By unit prices specified in the contract or subsequently agreed upon;

- 4.4.1.3 Whenever there is a variation in quantity for any work covered by any line item in the schedule of costs submitted as required by Section 7.2, COMMENCEMENT REQUIREMENTS, by the Department at its discretion, adjusting the lump sum price proportionately;
- 4.4.1.4 In such other manner as the parties may mutually agree;
- 4.4.1.5 At the sole option of the Project Manager, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as specified in Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT and the force account provision of Section 8.3, PAYMENT FOR ADDITIONAL WORK; or
- 4.4.1.6 In the absence of an agreement between the two parties, by a unilateral determination by the Department of the reasonable and necessary costs attributable to the event or situation covered by the change, plus appropriate profit or fee, all as computed in accordance with applicable Sections of Chapters 3-123 and 3-126 of the Hawaii Administrative Rules and Regulations, and Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.
- 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT (§3-125-13 HAR)
 - 4.5.1 In determining the cost or credit to the Department resulting from a change, the allowances for all overhead, including, extended overhead resulting from adjustments to contract time (including home office, branch office and field overhead, and related delay impact costs) and profit combined, shall not exceed the percentages set forth below:
 - 4.5.1.1 For the Contractor, for any work performed by its own labor forces, fifteen percent (15%) of the direct cost;
 - 4.5.1.2 For each subcontractor involved, for any work performed by its own forces, fifteen percent (15%) of the direct cost;
 - 4.5.1.3 For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent (7%) of the amount due the performing subcontractor.
 - 4.5.1.4 Field overhead includes, but is not limited to all costs of supervision, Managing, clerical, layout, temporary facilities, improvements and structures, all general condition expenditures, storage, transport and travel, housing, small tools (as defined in 8.3.4.5(h), pickup trucks and automobiles.
 - 4.5.2 Not more than three markup allowance line item additions not exceeding the maximum percentage shown above will be allowed for profit and overhead, regardless of the number of tier subcontractors.
 - 4.5.3 The allowance percentages will be applied to all credits and to the net increase of direct costs where work is added and deleted by the changes.
- 4.6 PAYMENT FOR DELETED MATERIAL
 - 4.6.1 CANCELED ORDERS. If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Project Manager, the Contractor shall use its best efforts to cancel the order. The Department shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

- 4.6.2 RETURNED MATERIALS - If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Project Manager so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluding any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Section 4.4, PRICE ADJUSTMENT.
- 4.6.3 UNCANCELLED MATERIALS. If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT. In such case, the material paid for shall become the property of the Department and the cost of further storage and handling shall be paid for as provided in Section 4.4, PRICE ADJUSTMENT.
- 4.7 VARIATIONS IN ESTIMATED QUANTITIES (§3-125-10 HAR)
- 4.7.1 Where the quantity of a major unit price item in this contract is estimated on the proposal form and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. The adjustment shall be subject to Section 4.4 PRICE ADJUSTMENT and Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT. If the quantity variation is such as to cause an increase in the time necessary for completion, the Chairman shall, upon receipt of a written request for an extension of time within thirty (30) days of the item's completion, ascertain the facts and make such adjustment to the completion date as the Chairman finds justified.
- 4.8 VARIATIONS IN BOTTOM ELEVATIONS. The Contractor shall plan and construct to the bottom elevations of footings, piles, drilled shafts, or cofferdams as shown on the drawings. When the bottom of a footing, pile, drilled shaft, or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the drawings or direction of the Project Manager. In the event the bottom elevation is lowered, the Contractor shall be entitled to additional payment in accordance with Sections 4.4 PRICE ADJUSTMENT and 4.5 ALLOWANCES FOR OVERHEAD AND PROFIT. In the event the bottom elevation is raised, the Department shall be entitled to a credit in accordance with Sections 4.2 CHANGES, 4.4, PRICE ADJUSTMENT and 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.
- 4.9 DIFFERING SITE CONDITIONS (§3-125-11 HAR)
- 4.9.1 During the progress of the work, if the Contractor encounters conditions at the site differing materially from those shown in the drawings and specifications, Contractor shall promptly, and before any such conditions are disturbed or damaged (except in an emergency as required by Subsection 7.17.8. EMERGENCIES), notify the Project Manager in writing of:
- 4.9.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or
- 4.9.1.2 Unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in

this contract. Unclaimed motor vehicles or parts thereof and discarded materials or unclaimed items are not unknown or unforeseen physical conditions. (See also Section 5.8, EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE).

- 4.9.2 After receipt of written notice, the Chairman shall promptly investigate the site, and if it is found that such conditions do materially differ and cause an increase in the Contractor's cost of, or the time required to, perform any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified accordingly. Any adjustment in contract price made pursuant to this Section 4.9, DIFFERING SITE CONDITIONS (§3-125-11 HAR) shall be determined in accordance with Sections 4.4, PRICE ADJUSTMENT and 7.25, DISPUTES AND CLAIMS.
- 4.9.3 Nothing contained in this Section 4.9, DIFFERING SITE CONDITONS shall be grounds for an adjustment in compensation if the Contractor had actual knowledge or should have known of the existence of such conditions prior to the submission of bids.
- 4.10 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) of the Procurement Rules and the following guidelines:
 - 4.10.1 Reimbursement for air transportation shall be actual cost or coach class air fare, whichever is less.
 - 4.10.2 Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
 - 4.10.3 Unless prior written approval of the CHAIRMAN is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for interisland 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 Chairman branch who are excluded from collective bargaining coverage.

~END OF ARTICLE 4~

ARTICLE 5: CONTROL OF WORK

- 5.1 **AUTHORITY OF THE CHAIRMAN** - The Chairman shall make final and conclusive decisions on all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and the rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the contract and the mutual rights of the parties to the contract. The Chairman shall have the authority to enforce and make effective such decisions and orders at the Contractor's expense when the Contractor fails to carry such decisions and orders out promptly and diligently. The Chairman shall have the authority to suspend the work wholly or in part as provided in Section 7.24, SUSPENSION OF WORK.
- 5.2 **AUTHORITY OF THE PROJECT MANAGER.** The Project Manager has the authority to act on behalf of the Department on all matters regarding the contract and the work that are not reserved for the Chairman. The Project Manager's authority is vested exclusively in the Project Manager except when specific authority to act for the Project Manager has been delegated to a specific person or persons. Such delegation of authority may be established by the Contract Documents; otherwise, it is

not effective or binding upon the Department until such written notification of the delegation is received by the Contractor.

5.3 AUTHORITY OF THE INSPECTOR

5.3.1 The Inspector shall observe and inspect the contract performance and materials. The Inspector does not have any authority vested in the Project Manager unless specifically delegated in writing.

5.3.2 The Inspector may offer advice and recommendations to the Contractor, but any such advice or recommendations are not directives from the Project Manager.

5.3.3 The Inspector has no authority to allow deviations from the Contract Documents and may reject any and all work that the Inspector deems is not in conformity with the contract requirements. Failure of an Inspector at any time to reject non-conforming work shall not be considered a waiver of the Department's right to require work in strict conformity with the Contract Documents as a condition of final acceptance.

5.4 AUTHORITY OF CONSULTANT(S). The Department may engage Consultant(s) for limited or full observation to supplement the inspections performed by the Department and respective Counties. Unless otherwise specified in writing to the Contractor, such retained Consultant(s) will have the authority of an Inspector.

5.5 SHOP DRAWINGS AND OTHER SUBMITTALS. The following documents shall be submitted where required by the Contract Documents:

5.5.1 SHOP DRAWING

- (a) The Contractor shall prepare, thoroughly check, and approve all shop drawings, including those prepared by subcontractors or any other persons. The Contractor shall indicate its approval by stamping and signing each drawing. Any shop drawing submitted without being reviewed, stamped and signed will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's responsibility.
- (b) Shop drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with work of other trades or other separate contractors. Shop drawings for structural steel, millwork and pre-cast concrete shall consist of calculations, fabrication details, erection drawings and other working drawings to show the details, dimensions, sizes of members, anchor bolt plans, insert locations and other information for the complete fabrication and erection of the structure to be constructed.
- (c) The Contractor shall be responsible for the design of all structural curtain walls, all connections and fasteners for structural steel and architectural and structural precast concrete. Curtain walls, connections and fasteners shall be designed by a licensed professional Manager to carry the indicated or necessary loads. The precast concrete pieces shall be designed to withstand erection, transportation and final loading stresses. All calculations shall be performed by a licensed professional Manager and submitted to the Project Manager for review.
- (d) The cost of shop drawings or any other submittal shall not be a separate or individual pay item. All costs of furnishing shop drawings required by the contract shall be included in the price agreed to be paid for the various contract items of work, and no additional allowances will be made therefor.

- (e) All shop drawings as required by the contract, or as determined by the Project Manager to be necessary to illustrate details of the Work shall be submitted to the Project Manager with such promptness as to cause no delay in the work or in that of any other Contractor. Delay caused by the failure of the Contractor to submit shop drawings on a timely basis to allow for review, possible resubmittal and acceptance will not be considered as a justifiable reason for a contract time extension. Contractor, at its own risk, may proceed with the work affected by the shop drawings before receiving acceptance; however the Department shall not be liable for any costs or time required for the correction of work done without the benefit of accepted shop drawings.
- (f) It is the Contractor's obligation and responsibility to check all of its and its subcontractor's shop drawings and be fully responsible for them and for coordination with connecting and other related work. The Contractor shall prepare, and submit to the Project Manager coordination drawings showing the installation locations of all plumbing, piping, duct and electrical work including equipment throughout the project. By approving and submitting shop drawings, the Contractor thereby represents that it has determined and verified all field measurements and field construction criteria, or will do so, and that it has checked and coordinated each shop drawing with the requirements of the work and the contract documents. When shop drawings are prepared and processed before field measurements and field construction criteria can be or have been determined or verified, the Contractor shall make all necessary adjustments in the work or resubmit further shop drawings, all at no change in contract price or time.

5.5.1.1 **SHOP DRAWING FORM.** Each drawing and/or series of drawings submitted must be accompanied by a letter of transmittal giving a list of the titles and number of the drawings. Each series shall be numbered consecutively for ready reference and each drawing shall be marked with the following information:

- (a) Date of Submission
- (b) Name of Project
- (c) Project Number
- (d) Location of Project
- (e) Name of submitting Contractor and Subcontractor
- (f) Revision Number
- (g) Specification and/or any drawing reference by article or sheet number.

5.5.1.2 No shop drawing shall be smaller than 24" x 36" nor larger than 28" x 42". At the determination of the Project Manager, each sheet of drawings for the submittal shall consist of either (1) reproducible transparency and three ozalid prints; or (2) six ozalid prints 5.5.1.3 The Department will not be responsible for any cost of modifying/adjusting precast structures to fit the final as-built design, actual field conditions and finished work. To this end, the Contractor shall follow the following procedures:

- (a) Submit shop drawings for general design conformity for approval. Delay precasting operations.
- (b) Start infrastructure work. Expose, check grade and install improvements requiring precast structures. Resubmit shop drawings with schedule for all structures indicating required deviations, correct and final inverts, depths, openings, special reinforcing and details, alignments, correct configurations, tops, grating, etc. The Contractor shall submit a schedule for the precasting work. Precast operations may commence based on approved shop drawings. During precast operations, the Project Manager may inspect the operations at least once per differing group of structures. The Contractor shall assume all risks and costs associated with

modifying/adjusting the precast structures due to incomplete field verification, premature analysis and shop drawings.

- 5.5.2 **DESCRIPTIVE SHEETS AND OTHER SUBMITTALS.** When a submittal is required by the contract, the Contractor shall submit to the Project Manager eight (8) complete sets of descriptive sheets such as brochures, catalogs, illustrations, etc., which will completely describe the material, product, equipment, furniture or appliances to be used in the project as shown in the drawings and specifications. Prior to the submittal, the Contractor will review and check all descriptive sheets for conformity to the contract requirements and indicate such conformity by marking or stamping and signing each sheet. It is the responsibility of the Contractor to submit descriptive sheets for review and acceptance by the Project Manager as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit descriptive sheets as required will not be considered as justifiable reasons for contract time extension. The submittal shall list the seven (7) items of information as listed in Subsection 5.5.1, Shop Drawing.
- 5.5.3 **MATERIAL SAMPLES AND COLOR SAMPLES.** Prior to their submittal, all color samples and material shall be assembled and presented as required by the Department. When sample submittals are required by the contract, the Contractor shall review, approve, indicate its approval and submit to the Project Manager samples of the materials to be used in the project and color selection samples. It is the responsibility of the Contractor to submit material and color samples for review as required at the earliest possible date after the date of award in order to meet the construction schedule. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension. The submittal shall list the seven (7) items of information as listed in Subsection 5.5.1, Shop Drawing.
- 5.5.4 **SUBMITTAL VARIANCES.** The Contractor shall include with the submittal, written notification clearly identifying all deviations or variances from the contract drawings, specifications and other Contract Documents. The notice shall be in a written form separate from the submittal. The variances shall also be clearly indicated on the shop drawing, descriptive sheet, material sample or color sample. Failure to so notify of and identify such variances shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the submittal was accepted by the Project Manager. If the variances are not acceptable to the Project Manager, the Contractor will be required to furnish the item as specified or indicated on the Contract Documents at no additional cost or time.
- 5.5.5 **REVIEW AND ACCEPTANCE PROCESS.** The Project Manager shall check shop drawings and within forty-five (45) days of receipt return them to the Contractor unless otherwise agreed between the Contractor and the Department. Submittals required for work to be installed within the first sixty days after the notice to proceed shall be returned by the Project Manager within twenty (20) days. If the volume of shop drawings submitted at any time for review is unusually large, the Contractor may inform the Project Manager of its preferred order for review and the Project Manager shall use reasonable efforts to accommodate the Contractor's priorities.
- 5.5.5.1 The acceptance by the Project Manager of the Contractor's submittal relates only to their sufficiency and compliance with the intention of the contract. Acceptance by the Project Manager of the Contractor's submittal does not relieve the Contractor of any responsibility for accuracy of dimensions, details, and proper fit, and for agreement and conformity of submittal with the Contract Drawings and Specifications. Nor will the Project Manager's acceptance relieve the Contractor of responsibility for variance from the Contract Documents unless the Contractor, at the time of

submittal, has provided notice and identification of such variances required by this section. Acceptance of a variance shall not justify a contract price or time adjustment unless the Contractor requests such an adjustment at the time of submittal and the adjustment are explicitly agreed to in writing by the Department. Any such request shall include price details and proposed scheduling modifications. Acceptance of a variance is subject to all contract terms, stipulations and covenants, and is without prejudice to any and all rights under the surety bond.

- 5.5.5.2 If the Project Manager returns a submittal to the Contractor that has been rejected, the Contractor, so as not to delay the work, shall promptly make a resubmittal conforming to the requirements of the Contract Documents and indicating in writing on the transmittal and the subject submittal what portions of the resubmittal has been altered in order to meet the acceptance of the Project Manager. Any other differences between the resubmittal and the prior submittal shall also be specifically described in the transmittal.
- 5.5.5.3 No mark or notation made by the Project Manager or Consultant(s) on or accompanying the return of any submittal to the Contractor shall be considered a request or order for a change in work. If the Contractor believes any such mark or notation constitutes a request for a change in the work for which it is entitled to an adjustment in contract price and/or time, the Contractor must follow the same procedures established in Section 4.2, CHANGES for oral orders, directions, instructions, interpretations or determinations from the Project Manager or else lose its right to claim for an adjustment.
- 5.6 COORDINATION OF CONTRACT DOCUMENTS. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. The Contract Documents are complementary: any requirement occurring in one document is as binding as though occurring in all. In the event of conflict or discrepancy the priorities stated in the following Subsections shall govern:
 - 5.6.1 Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.
 - 5.6.2 Special Conditions and Proposal shall govern over the General Conditions and Specifications.
 - 5.6.3 Specifications shall govern over drawings.
 - 5.6.4 Specification Error - Should an error or conflict appear within the specification, the Contractor shall immediately notify the Project Manager. The Project Manager shall promptly issue instructions as to procedure. Any requirement occurring in one or more parts of the specification is as binding as though occurring in all applicable parts.
 - 5.6.4.1 Should an error or conflict appear within a specification section, between a listed manufacturer / product and the performance requirements of the specification section, the performance requirements shall govern.
 - 5.6.5 DRAWINGS
 - 5.6.5.1 Schedules shall govern over all other notes and drawings.
 - 5.6.5.2 Bottom elevations of footings shown on drawings shall govern over a general note such as: "All footings shall rest on firm, undisturbed soil and extend a minimum of a certain number of feet into

natural or finish grade, whichever is lower.” In the event the footing must be lowered below the bottom elevation shown, the Contractor shall be entitled to additional payment as provided in Section 4.2, CHANGES. In the event the footing is raised above the bottom elevation shown, the Department shall be entitled to a credit as provided in Section 4.2, CHANGES.

- 5.6.5.3 When a bottom of pile, drilled shaft, piling or cofferdam is shown as an estimated or approximate elevation, the Contractor shall plan and construct to that elevation or to any deeper elevation required by the plans or the direction by the Project Manager. The Project Manager, at the Project Manager's sole discretion, may order in writing termination of all or part of the work above the estimated or approximate elevation.
- 5.6.5.4 Except for drawing schedules and bottom elevations as noted above, general notes shall govern over all other portions of the drawings:
- 5.6.5.5 Larger scale drawings shall govern over smaller scale drawings.
- 5.6.5.6 Figured or numerical dimensions shall govern over dimensions obtained by scaling. Measurements from the drawings when scaled shall be subject to the approval of the Project Manager.
- 5.6.5.7 In cases of discrepancies in the figures or drawings, the discrepancies shall be immediately referred to the Project Manager without whose decision said discrepancy shall not be corrected by the Contractor save at its own risk and in the settlement of any complications arising from such adjustment without the knowledge and consent of the Project Manager, the Contractor shall bear all extra expense involved.
- 5.6.5.8 Items shown on the drawings that are completely void in terms of description, details, quality and / or performance standards in both the Drawings and Specifications to make a price determination shall be considered an omission and the Contractor shall immediately refer same to the Project Manager for a decision.
- 5.6.5.9 Where there is a conflict between the architectural sheets and the civil or landscaping or electrical sheets, etc., the conflict shall be considered a discrepancy and the Contractor shall immediately refer same to the Project Manager for a decision.
- 5.6.5.10 Any requirement occurring in one or more of the sheets is as binding as though occurring in all applicable sheets.
- 5.7 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS. The Contractor shall carefully study and compare the Contract Documents with each other, with field conditions and with the information furnished by the Department and shall at once report to the Project Manager errors, conflicts, ambiguities, inconsistencies or omissions discovered. Should an item not be sufficiently detailed or explained in the Contract Documents, Contractor shall report and request the Project Manager's clarification and interpretation. The Project Manager will issue a final clarification or final interpretation.
- 5.8 EXAMINATION OF DRAWINGS, SPECIFICATIONS, PROJECT SITE
- 5.8.1 The Contractor shall examine carefully the Project Site to become familiar with the conditions to be encountered in performing the Work and the requirements of the Contract Documents.

- 5.8.1.1 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the Work to be accomplished or the conditions to be encountered in performing the project.
- 5.8.1.2 No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge when the existence of differing site, subsurface or physical conditions could have been reasonably discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the bidding requirements or contract documents to be conducted by or for the Contractor.
- 5.8.2 When the contract drawings include a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered in its test borings and at only the location of each boring. The Contractor acknowledges that underground site conditions in Hawaii vary widely. There is no warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that other conditions may not occur.
- 5.8.3 Reference is made to the Special Conditions for identification of subsurface investigations, reports, explorations and tests utilized by the Department in preparation the Contract Documents. Such reports, drawings, boring logs etc., if any, are not part of the Contract Documents.
- 5.9 COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT
- 5.9.1 FURNISHING DRAWINGS AND SPECIFICATIONS. Contractor will be supplied copies of the Contract Drawings and Specifications as specified in the General Requirements. Contractor shall have and maintain at least one unmarked copy of the Contract Drawings and Specifications on the work site, at all times. Contractor shall cooperate with the Project Manager, the Inspector(s), and other contractors in every possible way.
- 5.9.2 SUPERINTENDENT. The Contractor shall have a competent superintendent on the work site as its designated agent. The superintendent shall be able to read and understand the project plans and specifications and shall be experienced in the type of project being undertaken and the work being performed. The superintendent shall receive instructions from the Project Manager or its authorized representative. The Contractor shall authorize the superintendent to (a) execute the orders and directions of the Project Manager or its authorized representative without delay and (b) promptly supply such materials, equipment, tools, labor and incidentals as may be required to complete the project within the prescribed contract time. The Contractor shall furnish a superintendent regardless of the amount of project work sublet.
- 5.9.2.1 If the superintendent or agent is not present at the work site, the Project Manager shall have the right to suspend the work as described under Section 7.24, SUSPENSION OF WORK.
- 5.9.2.2 The Contractor shall file with the Project Manager a written statement giving the name of the superintendent or agent assigned to the project. The Contractor shall be responsible for notifying the Project Manager in writing of any change in the superintendent or agent.
- 5.9.2.3 The requirements of this Subsection 5.9.2, SUPERINTENDENT may be waived by the Project Manager.

- 5.9.3 **MANAGERING WORK.** The Contractor shall properly and accurately lay out the work, perform all Managering work, and furnish all Managering materials and equipment required to establish and maintain all lines, grades, dimensions and elevations called for in the drawings or required in the progress of construction, unless otherwise noted in the contract documents. The Contractor will be held definitely and absolutely responsible for any errors in lines, grades, dimensions and elevations and shall at once, on instruction from the Project Manager, correct and make good such errors or any errors, or faults in the work resulting from errors in Managering performed under the requirements of its contract to the entire satisfaction of the Project Manager. Full compensation for the work shall be included in the prices paid for contract items of work. No additional allowance will be made for the correction of incorrect Managering work.
- 5.9.3.1 The Project Manager shall furnish the requisite bench elevations.
- 5.9.3.2 The Contractor shall locate and verify all lines, grades, dimensions and elevations indicated on the drawings before any excavation, or construction begins. Any discrepancy shall be immediately brought to the attention of the Project Manager; any change shall be made in accordance with the Project Manager's instruction.
- 5.9.3.3 The Contractor shall verify all street survey monuments (horizontal and vertical alignment) prior to final acceptance by the Project Manager in accordance with any governmental requirements.
- 5.9.3.4 The Contractor shall provide a surveyor or Civil Manager licensed in the State of Hawaii to verify and establish all lines, grades, dimensions and elevations.
- 5.9.4 **USE OF STRUCTURE OR IMPROVEMENT.** The Department shall have the right, at any time during construction of the structure or improvements, to enter same for the purpose of installing by government labor or by any other Contractor or utility any necessary work in connection with the installation of facilities, it being mutually understood and agreed, however, that the Contractors, utilities and the Department will, so far as possible work to the mutual advantage of all, where their several works in the above mentioned or in unforeseen instances touch upon or interfere with each other. As a convenience to those involved, the Project Manager shall allocate the work and designate the sequence of construction in case of controversy between Contractors on separate projects under Department jurisdiction.
- 5.9.4.1 The Department shall also have the right to use the structure, equipment, improvement or any part thereof, at any time after it is considered by the Project Manager as available. In the event that the structure, equipment or any part thereof is so used, the Department shall be responsible for all expenses incidental to such use and any damages resulting from the Department's use.
- 5.9.4.2 Equipment warranty will commence to run before the work is complete when and if the Department begins actual use of the equipment for the purpose for which the equipment was designed and installed.
- 5.9.4.3 If the Department enters the structure for construction and/or occupancy and the Contractor is delayed because of interference by the Department or by extra work resulting from damage which the Contractor is not responsible for, or by extraordinary measures the Contractor must take to accommodate the Department, the Contractor shall be granted an extension of time in accordance with Section 7.21, **CONTRACT TIME.** However, if such use increases the cost or delays the completion of the remaining portions of work, the Contractor shall be entitled to such extra compensation or extension of time or both, as the Department may determine to be proper. Any

additional work necessary will be paid in accordance with Section 8.3, PAYMENT FOR ADDITIONAL WORK.

- 5.10 INSPECTION. The Project Manager, the Department's consultants, Inspectors employed by the Department and other representatives duly authorized by the Department shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining at any time that the materials and the workmanship are in accordance with the requirements and intentions of the contract. All work done and all materials furnished shall be subject to inspection and acceptance.
- 5.10.1 Such inspection and approval may extend to all or part of the Work, and to the preparation, fabrication or manufacture of the materials to be used. By entering into a contract for the supply of materials, equipment or performance of labor in connection with the Work, such Material and Equipment Supplier or Labor Contractor consents to and is subject to the terms of Section 5.9, COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT to the same extent as the Contractor.
- 5.10.2 AUTHORITY TO SUSPEND OPERATIONS. The Project Manager shall have the authority to suspend operations of any work being improperly performed by issuing a written order giving the reason for shutting down the work. Should the Contractor disregard such written order, the work done thereafter will not be accepted nor paid for.
- 5.10.3 The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill the contract as prescribed. Notwithstanding prior payment and acceptance by the Project Manager, any defective and nonconforming work shall be corrected to comply with the contract requirements. Unsuitable, unspecified or unapproved materials may be rejected.
- 5.10.4 FEDERAL AGENCY INSPECTION. Projects financed in whole or in part with Federal funds shall be subject to inspection and corrective requirements at all times by the Federal Agency involved at no cost to the Department.
- 5.11 REMOVAL OF DEFECTIVE, NON-CONFORMING AND UNAUTHORIZED WORK
- 5.11.1 All work which has been rejected as not conforming to the requirements of the Contract shall be remedied or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the work limits shown on the drawings and specifications or established by the Project Manager or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense.
- 5.11.2 SCHEDULING CORRECTIVE WORK. The Contractor shall perform its corrective or remedial work at the convenience of the Department and shall obtain the Project Manager's approval of its schedule.
- 5.11.3 FAILURE TO CORRECT WORK. Upon failure on the part of the Contractor to comply promptly with any order of the Project Manager made under the provisions of Section 5.10, the Project Manager shall have authority to cause defective work to be remedied or removed and replaced, and unauthorized work to be removed, at the Contractor's expense, and to deduct the costs from any monies due or to become due the Contractor.

- 5.12 VALUE MANAGERING INCENTIVE (§3-132 HAR amended by Act 149 SLH 1999). On projects with contract amounts in excess of \$250,000 (two hundred fifty thousand dollars), the following Value Managering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals it submits.
- 5.12.1 The Value Managering Incentive Clause applies to all Value Managering Change Proposals (cost reduction proposals, hereinafter referred to as (VECP) initiated and developed by the Contractor for changing the drawings, designs, specifications or other requirements of this contract. This clause does not however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Project Manager.
- 5.12.2 VALUE MANAGERING CHANGE PROPOSAL (VECP). All VECP must:
- 5.12.2.1 Result in a savings to the Department of at least \$4000 (four thousand dollars) by providing less costly items and without impairing any essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance and all necessary features of the completed work;
- 5.12.2.2 Require, in order to be applied to this Contract, a change order to this Contract; and
- 5.12.2.3 Not adversely impact on the schedule of performance or the Contract completion date.
- 5.12.3 VECP REQUIRED INFORMATION. The VECP will be processed expeditiously and in the same manner as prescribed for any other change order proposal. As a minimum, the following information will be submitted by the Contractor with each proposal:
- 5.12.3.1 A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each including durability, service life, reliability, economy of operation, ease of maintenance, design safety standards, desired appearance, impacts due to construction and other essential or desirable functions and characteristics as appropriate;
- 5.12.3.2 An itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;
- 5.12.3.3 An estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;
- 5.12.3.4 A prediction of any effects the VECP would have on other costs to the Department, such as Department furnished property costs, costs of related items, and costs of maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;
- 5.12.3.5 A statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract noting any effect on the contract time; and 5.12.3.6 The dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.
- 5.12.4 REQUIRED USE OF LICENSED ARCHITECT OR MANAGER. When, in the judgment of the Project Manager, a VECP alters the design prepared by a registered professional architect or

Manager, the Contractor shall ensure the changes to be prepared are by or under the supervision of a licensed professional architect or Manager, and stamped and so certified.

- 5.12.5 Unless and until a change order applies a VECP to a contract, the Contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the Contractor resulting from the time required for the Department's determination of the acceptability of the VECP.
- 5.12.5.1 The determination of the Project Manager as to the acceptance of any VECP under a contract shall be final.
- 5.12.6 ACCEPTANCE OF VECP. The Project Manager may accept in whole or in part any VECP submitted pursuant to this section by issuing a change order to the Contract. Prior to issuance of the change order, the Contractor shall submit complete final contract documents similar to those of the original Contract showing the accepted changes and the new design and features as well as the following:
 - 5.12.6.1 Design calculations;
 - 5.12.6.2 The design criteria used; and
 - 5.12.6.3 A detailed breakdown of costs and expenses to construct or implement such revisions.
 - 5.12.6.4 The change order will identify the final VECP on which it is based.
- 5.12.7 VECP PRICE ADJUSTMENTS. When a VECP is accepted under a contract, an adjustment in the contract price shall be made in accordance with Section 4.4, PRICE ADJUSTMENT. The adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the Contractor for architectural, Managing, or other consultant services, and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.
- 5.12.8 The Contractor may restrict the Department's right to use the data or information or both, on any sheet of a VECP or of the supporting data, submitted pursuant to this Subsection, if it is stated on that sheet as follows:
 - 5.12.8.1 "This data or information or both shall not be disclosed outside the Department or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this VECP. This restriction shall not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this VECP is accepted by the Department by issuance of a change order after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted in any manner and for any purpose whatsoever and have others so do."
- 5.12.9 In the event of acceptance of a VECP, the Department shall have all rights to use, duplicate or disclose in whole or in part in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

- 5.12.10 The Contractor shall submit with each VECP all required information and provide all additional information as may be required by the Project Manager to evaluate and implement the VECP. The cost for preparing the VECP shall be the Contractor's responsibility, and any part of the Contractor's cost for implementing the change shall be due only when the proposal is accepted and a change order is issued.
- 5.12.11 If the service of the Department's architect, Project Manager or consultant is necessary to review and evaluate a VECP, the cost therefor shall be paid for by the Contractor.
- 5.12.12 Each VECP shall be evaluated as applicable to this contract, and past acceptance on another Department project for a similar item shall not be automatic grounds for approval.
- 5.12.13 The method by which the Contractor will share a portion of the cost savings from an accepted VECP shall be for this contract only, and no consideration shall be made for future acquisition, royalty type payment or collateral savings.
- 5.12.13.1 The Department may accept the proposed VECP in whole or in part. The Chairman shall issue a contract change order to identify and describe the accepted VECP.
- 5.13 SUBCONTRACTS. Nothing contained in the contract documents shall create a contractual relationship between the Department and any subcontractor.
- 5.13.1 SUBSTITUTING SUBCONTRACTORS. Contractors may enter into subcontracts only with subcontractors listed in the proposal. No subcontractor may be added or deleted and substitutions will be allowed only if the subcontractor:
- 5.13.1.1 Fails, refuses or is unable to enter into a subcontract; or
- 5.13.1.2 Becomes insolvent; or
- 5.13.1.3 Has its subcontractor's license suspended or revoked; or
- 5.13.1.4 Has defaulted or has otherwise breached the subcontract in connection with the subcontracted work; or
- 5.13.1.5 Is unable to comply with other requirements of law applicable to contractors, subcontractors and public works projects.
- 5.13.2 Requesting Approval to Substitute a Subcontractor. Requests to substitute a subcontractor shall be submitted to the Project Manager for approval. Contractor agrees to hold the Department harmless and indemnify the Department for all claims, liabilities, or damages whatsoever, including attorney's fees arising out of or related to the approval or disapproval of the substitution.
- 5.13.3 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and the other contract documents insofar as applicable to the work of the subcontractor and to give the Contractor the same rights regarding the termination of a subcontractor as the Department may exercise over the Contractor.
- 5.13.4 The Contractor shall not sponsor any unliquidated subcontractor's claim against the Department and shall defend, indemnify and hold the Department harmless against any direct claims by its

subcontractors. Any claim for additional compensation by a subcontractor in connection with the work shall be made only against the Contractor. The Contractor may not assert any such claim against the Department until the liability of the Contractor has been unconditionally established by negotiation, arbitration or litigation, and the amount due the subcontractor has been determined, save for interest due.

- 5.13.5 Once a subcontractor's claim is established, should the Contractor intend to make the claim against the Department, it shall follow the procedure set forth under Section 7.25, DISPUTES AND CLAIMS.
- 5.13.6 SUBCONTRACTING. Contractor shall perform with its own organization, work amounting to not less than twenty percent (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the Department in the contract as "specialty items" may be performed by a subcontractor and the cost of any such specialty items so performed by the subcontractor may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization.

~END OF ARTICLE 5~

ARTICLE 6: CONTROL OF MATERIALS AND EQUIPMENT

- 6.1 MATERIALS AND EQUIPMENT. Contractor shall furnish, pay for and install all material and equipment as called for in the drawings and specifications. Materials and equipment shall be new and the most suitable for the purpose intended unless otherwise specified. The Department does not guarantee that the specified or pre-qualified product listed in the drawings and specifications are available at the time of bid or during the contract period.
- 6.2 SOURCE OF SUPPLY AND QUALITY OF MATERIALS
- 6.2.1 Only materials conforming to the drawings and specifications and, when required by the contract have been accepted by the Project Manager, shall be used. In order to expedite the inspection and testing of materials, at the request of the Project Manager, the Contractor shall identify its proposed sources of materials within ten (10) days after notification by the Project Manager.
- 6.2.2 At the option of the Project Manager, the materials may be accepted by the Project Manager at the source of supply before delivery is started. Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or producer for examination and tested in accordance with the methods referred to under samples and tests.
- 6.2.3 PROJECT MANAGER'S AUTHORIZATION TO TEST MATERIALS. Materials proposed to be used may be inspected and tested whenever the Project Manager deems necessary to determine conformance to the specified requirements. The cost of testing shall be borne by the Contractor. However, should test results show that the material(s) is in compliance with the specified requirements; the cost of the testing will be borne by the Department.
- 6.2.4 UNACCEPTABLE MATERIALS. In the event material(s) are found to be unacceptable, the Contractor shall cease their use, remove the unacceptable material(s) that have already been installed

or applied, and furnish acceptable materials all at no additional cost to the Department. No material which is in any way unfit for use shall be used.

6.3 SUBSTITUTION OF MATERIALS AND EQUIPMENT AFTER BID OPENING

6.3.1 SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING - Refer to Section 2.7, SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING. For materials and equipment submitted in compliance with Section 2.7, SUBSTITUTION OF MATERIALS AND EQUIPMENT BEFORE BID OPENING if after installing the substituted product, an unlisted variance is discovered the Contractor shall immediately replace the product with a specified product at no cost to the Department.

6.3.2 SUBSTITUTION AFTER CONTRACT AWARD. Subject to the Project Manager's determination if the material or equipment is equal to the one specified or prequalified, substitution of material or equipment may be allowed after the Letter of Award is issued only:

6.3.2.1 If the specified or prequalified item is delayed by unforeseeable contingencies beyond the control of the Contractor which would cause a delay in the project completion; or

6.3.2.2 If any specified or prequalified item is found to be unusable or unavailable due to a change by the manufacturer or other circumstances; or

6.3.2.3 If the Contractor desires to provide a more recently developed material, equipment, or manufactured model from the same named manufacturer than the one specified or prequalified; or

6.3.2.4 If the specified material and / or equipment inadvertently lists only a single manufacturer.

6.3.3 A substitution request after the Contract is awarded shall be fully explained in writing. Contractor shall provide brochures showing that the substitute material and / or equipment is equal or better in essential features and also provide a matrix showing comparison of the essential features. Contractor shall justify its request and include quantities and unit prices involved, respective supplier's price quotations and such other documents necessary to fully support the request. Any savings in cost will be credited to the Department. Contractor shall absorb any additional cost for the substitute item(s) or for its installation. Submitting a substitution request, does not imply that substitutions, for brand name specified materials and equipment will be allowed. The Project Manager may reject and deny any request deemed irregular or not in the best interest of the Department. A request for substitution shall not in any way be grounds for an extension of contract time. At the discretion of the Project Manager, a time extension may be granted for an approved substitution.

6.4 ASBESTOS CONTAINING MATERIALS. The use of materials or equipment containing asbestos is prohibited under this contract. Contractor warrants that all materials and equipment incorporated in the project are asbestos-free.

6.5 TEST SAMPLES

6.5.1 The Project Manager may require any or all materials to be tested by means of samples or otherwise. Contractor shall collect and forward samples requested by the Project Manager. Contractor shall not use or incorporate any material represented by the samples until all required tests have been made and the material has been accepted. In all cases, the Contractor shall furnish the required samples without charge. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work. Samples so removed shall be replaced with identical material and

refinished. No additional compensation will be allowed for furnishing test samples and their replacement with new materials.

6.5.2 Tests of the material samples will be made in accordance with the latest standards of the American Society for Testing and Materials (ASTM), as amended prior to the contract date unless otherwise provided. In cases where a particular test method is necessary or specifications and serial numbers are stipulated, the test shall be made by the method stated in the above-mentioned publication. Where the test reference is the American Association of State Highway and Transportation Officials (AASHTO), it means the specifications and serial numbers of the latest edition and amendments prior to the bid date.

6.5.3 The Project Manager may, at no extra cost to the Department retest any materials which have been tested and accepted at the source of supply after the same has been delivered to the work site. The Project Manager shall reject all materials which, when retested, do not meet the requirements of the Contract.

6.6 MATERIAL SAMPLES

6.6.1 The Contractor shall furnish all samples required by the drawings and specifications or that may be requested by the Project Manager of any and all materials or equipment it proposes to use. Unless specifically required, samples are not to be submitted with the bid.

6.6.2 No materials or equipment of which samples are required shall be used on the Work until the Project Manager has received and accepted the samples. If the Contractor proceeds to use such materials before the Project Manager accepts the samples, the Contractor shall bear the risk.

6.6.3 Contractor shall furnish two (2) copies of a transmittal letter with each shipment of samples. The letter shall provide a list of the samples, the name of the building or work for which the materials are intended and the brands of the materials and names of the manufacturers. Also, each sample submitted shall have a label indicating the material represented, its place of origin, the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be marked to indicate where the materials represented are required by the drawings or specifications.

6.6.4 Acceptance of any sample(s) shall be only for the characteristics or for the uses named in such acceptance and for no other purpose. Acceptance of samples shall not change or modify any contract requirement. All samples will be provided by the Contractor at no extra cost to the Department. See also Section 5.5, SHOP DRAWINGS AND OTHER SUBMITTALS.

6.7 NON-CONFORMING MATERIALS. All materials not conforming to the requirements of this contract documents, whether in place or not, shall be rejected and removed immediately from the site of work unless otherwise permitted by the Project Manager in writing. No rejected material which has subsequently been made to conform shall be used unless and until written acceptance has been given by the Project Manager. If the Contractor fails to comply forthwith with any order of the Project Manager made under the provisions of this Section 6.7, NON-CONFORMING MATERIALS the Project Manager shall have the authority to remove and replace non-conforming materials and charge the cost of removal and replacement to the Contractor.

6.8 HANDLING MATERIALS. Contractor shall handle all materials to preserve their quality and fitness for work. Transport aggregates from the source or storage site to the work in tight vehicles to prevent loss or segregation of materials after loading and measuring.

- 6.9 STORAGE OF MATERIALS. Contractor shall store all materials to preserve their quality and fitness for the work. Unless otherwise provided, any portion of the project site within the Project Contract Limit not required for public travel may be used for storage purposes and for the Contractor's plant and equipment. Any additional space required shall be provided by the Contractor at its expense subject to the Project Manager's acceptance. Contractor shall store materials on wooden platforms or other hard, clean surfaces and covered to protect it from the weather and damage. Stored materials shall be located to allow prompt inspection.
- 6.10 PROPERTY RIGHTS IN MATERIALS. Nothing in the contract shall be construed to vest in the Contractor any right to any materials and equipment after such materials and equipment have been attached, affixed to, or placed in the work.
- 6.11 ANTITRUST CLAIMS. The STATE and the CONTRACTOR recognized 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 material 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.

~END OF SECTION 6~

ARTICLE 7: PROSECUTION AND PROGRESS (Including Legal Relations and Responsibility)

- 7.1 PROSECUTION OF THE WORK
- 7.1.1 After approval of the Contract by the Chairman, a Notice to Proceed will be given to the Contractor as described in Section 3.10, NOTICE TO PROCEED. The Notice to Proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.
- 7.1.2 The Contractor shall begin work no later than ten (10) working days from the date in the Notice to Proceed and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Project Manager at least three (3) working days before beginning work.
- 7.1.3 If any subsequent suspension and resumption of work occurs, the Contractor shall notify the Project Manager at least twenty-four (24) hours before stopping or restarting actual field operations.
- 7.1.4 WORKING PRIOR TO NOTICE TO PROCEED. The Contractor shall not begin work before the date in the Notice to Proceed. Should the Contractor begin work before receiving the Notice to Proceed, any work performed in advance of the specified date will be considered as having been done at the Contractor's risk and as a volunteer and subject to the following conditions:
- 7.1.4.1 Under no circumstances shall the Contractor commence work on site until it has notified the Project Manager of its intentions and has been advised by the Project Manager in writing that the project site is available to the Contractor. The project site will not be made available until the Contractor has complied with commencement requirements under Section 7.2, COMMENCEMENT REQUIREMENTS.

- 7.1.4.2 In the event the contract is not executed, the Contractor shall, at its own expense, do such work as is necessary to leave the site in a neat condition to the satisfaction of the Project Manager. The Contractor shall not be reimbursed for any work performed.
- 7.1.4.3 All work done prior to the Notice to Proceed shall be performed in accordance with the Contract Documents, but will only be considered authorized work and be paid for as provided in the Contract after the Notice to Proceed is issued.
- 7.1.5 For repairs and/or renovations of existing buildings, unless otherwise permitted by the Project Manager, the Contractor shall not commence with the physical construction unless all or sufficient amount of materials are available for either continuous construction or completion of a specified portion of the work. When construction is started, the Contractor shall work expeditiously and pursue the work diligently until it is complete. If only a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency at the end of each stage.
- 7.2 **COMMENCEMENT REQUIREMENTS.** Prior to beginning work on site, the Contractor shall submit the following to the Project Manager:
- 7.2.1 Identification of the Superintendent or authorized representative on the job site. Refer to Section 5.9, **COOPERATION BETWEEN THE CONTRACTOR AND THE DEPARTMENT**;
- 7.2.2 Proposed Working Hours on the job. Refer to Section 7.5, **NORMAL WORKING HOURS**;
- 7.2.3 Permits and Licenses. Refer to Section 7.4, **PERMITS AND LICENSES**;
- 7.2.4 Schedule of Prices to be accepted for the agreed Monthly Payment Application. Unless the proposal provides unit price bids on all items in this project, the successful Bidder will be required, after the award of contract, to submit a schedule of prices for the various items of construction included in the contract. For projects involving more than a single building and / or facility, the breakdown cost shall reflect a separate schedule of prices for the various items of work for each building and/or facility. The sum of the prices submitted for the various items must equal the lump sum bid in the Bidder's proposal. This schedule will be subject to acceptance by the Project Manager who may reject same and require the Bidder to submit another or several other schedules if in the Project Manager's opinion the prices are unbalanced or not sufficiently detailed. This schedule of prices shall be used for the purpose of determining the value of monthly payments due the Contractor for work installed complete in place; and may be used as the basis for determining cost and credit of added or deleted items of work, respectively;
- 7.2.4.1 The Contractor shall estimate at the close of each month the percentage of work completed under each of the various construction items during such month and submit the Monthly Payment Application to the Project Manager for review and approval. The Contractor shall be paid the approved percentage of the price established for each item less the retention provided in Section 8.4, **PROGRESS AND/OR PARTIAL PAYMENTS**; and
- 7.2.5 **PROOF OF INSURANCE COVERAGE.** Certificate of Insurance or other documentary evidence satisfactory to the Project Manager that the Contractor has in place all insurance coverage required by the contract. Refer to Section 7.3, **INSURANCE REQUIREMENTS**.
- 7.2.6 Until such time as the above items are processed and approved, the Contractor shall not be allowed to commence on any operations unless authorized by the Project Manager.

7.3 INSURANCE REQUIREMENTS

- 7.3.1 **OBLIGATION OF CONTRACTOR.** Contractor shall not commence any work until it obtains, at its own expense, all required herein insurance. Such insurance shall be provided by an insurance company authorized by the laws of the State to issue such insurance in the State of Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the carrier has a Best’s Rating of “A-VII” or better.
- 7.3.2 All insurance described herein will be maintained by the Contractor for the full period of the contract and in no event will be terminated or otherwise allowed to lapse prior to written certification of final acceptance of the work by the Department.
- 7.3.3 Certificate(s) of Insurance acceptable to the Department shall be filed with the Project Manager prior to commencement of the work. Certificates shall identify if the insurance company is a “captive” insurance company or a “Non-Admitted” carrier to the State of Hawaii. The Best’s rating must be stated for the “Non-Admitted” carrier. Certificates shall contain a provision that coverage(s) being certified will not be cancelled or materially changed without giving the Project Manager at least thirty (30) days prior written notice. The Department is to be named as Additional Insured on any of the required insurance and it shall be so noted on the certificate. Should any policy be cancelled before final acceptance of the work by the Department, and the Contractor fails to immediately procure replacement insurance as specified, the Department, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.
- 7.3.4 Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor’s responsibility for payment of damages resulting from its operations under this Contract, including the Contractor’s obligation to pay liquidated damages, nor shall it affect the Contractor’s separate and independent duty to defend, indemnify and hold the Department harmless pursuant to other provisions of this Contract. In no instance will the Department’s exercise of an option to occupy and use completed portions of the work relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance of the work.
- 7.3.5 All insurance described herein shall be primary and cover the insured for all work to be performed under the Contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside the work area and all change order work.
- 7.3.6 The Contractor shall, from time to time, furnish the Project Manager, when requested, satisfactory proof of coverage of each type of insurance required covering the work. Failure to comply with the Project Manager’s request may result in suspension of the work, and shall be sufficient grounds to withhold future payments due the Contractor and to terminate the contract for Contractor’s default.
- 7.3.7 **TYPES OF INSURANCE.** Contractor shall purchase and maintain insurance described below which shall provide coverage against claims arising out of the Contractor’s operations under the Contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
- 7.3.7.1 **WORKER’S COMPENSATION.** The Contractor shall obtain worker’s compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in

strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

- 7.3.7.2 **COMMERCIAL GENERAL LIABILITY INSURANCE AND AUTOMOBILE INSURANCE.** Contractor's commercial general liability insurance and automobile liability insurance shall both be obtained in a combined, single limit of not less than \$1,000,000 (one million dollars) unless otherwise indicated in the Special Conditions per occurrence that shall include coverage for bodily injury, sickness, disease or death of any person, arising directly or indirectly out of, in connection with, the performance of work under this contract.
- 7.3.7.3 The Contractor's property damage liability insurance shall provide for a single combined limit of not less than \$1,000,000 (one million dollars) unless otherwise indicated in the Special Conditions for all damages arising out of injury to or destruction of property of others including the Department's, arising directly or indirectly out of or in connection with the performance of the work under this contract including explosion or collapse.
- 7.3.7.4 The Contractor shall either (a) Require each of its subcontractors to procure and to maintain during the life of its subcontract, subcontractor's comprehensive general liability, automobile liability and property damage liability insurance of the type and in the same amounts specified herein; or (b) Insure the activities of its subcontractors in its own policy.
- 7.3.7.5 **BUILDERS RISK INSURANCE.** Unless excluded by the Special Conditions of this contract, the Contractor shall provide builder's risk insurance during the progress of the work and until final acceptance by the Department upon completion of the contract. It shall be "All Risk" (including but not limited to earthquake, windstorm and flood damage) completed value insurance coverage on all completed work and work in progress to the full replacement value thereof. Such insurance shall include the Department as an additional named insured. The Contractor shall submit to the Project Manager for its approval all items deemed to be uninsurable. The policy may provide for a deductible in an amount of up to twenty five percent (25%) of the amount insured by the policy. With respect to all losses up to any deductible amount, the relationship between the Contractor and the Department shall be that of insurer and the additional insured respectively as if no deductible existed. The Contractor is responsible for theft, if any item of the contract is stolen prior to, or after installation, until the work is accepted by the Department. Progress payment does not constitute acceptance.
- 7.4 **PERMITS AND LICENSES**
- 7.4.1 The Department or its representative may process Federal (e.g. Corps of Managers), State and county permit applications. The Contractor shall pick up the preprocessed Permits at the appropriate governmental agency and pay the required fees. Other permits necessary for the proper execution of the work such as utility connection permits, elevator installation permits etc., unless processed by the Department and paid for by the Contractor, shall be obtained and paid for by the Contractor.
- 7.4.2 Until such time as the above permits are approved, the Contractor shall not be allowed to commence any operations without written approval of the Project Manager.
- 7.4.3 The Project Manager reserves the right to waive application and processing of the building permit.

- 7.5 NORMAL WORKING HOURS. Prior to beginning operations, unless otherwise established by the Department, the Contractor shall notify the Project Manager in writing of the time in hours and minutes, A.M. and P.M. respectively, at which it desires to begin and end the day's work. If the Contractor desires to change the working hours, it shall request the Project Manager's approval three (3) consecutive working days prior to the date of the change.
- 7.6 HOURS OF LABOR (§104-2 HRS)
- 7.6.1 No laborer or mechanic employed on the job site of any public work of the Department or any political sub-division thereof shall be permitted or required to work on Saturday, Sunday or a legal holiday of the State or in excess of eight (8) hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday and a legal holiday of the State or in excess of eight (8) hours on any other day. For the purposes of determining overtime compensation under this Section 7.6, HOURS OF LABOR (§104-2 HRS) the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Department of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborers and mechanics on projects of similar character in the Department.
- 7.6.2 Overtime compensation means compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits.
- 7.7 PREVAILING WAGES (State §104-2 HRS & Federal Davis-Bacon)
- 7.7.1 The Contractor shall at all time observe and comply with all provisions of Chapter 104, HRS, the significant requirements of which are emphasized in the Department of Labor and Industrial Relations Publication No. H104-3 entitled "Requirements of Chapter 104, Hawaii Revised Statutes, Wages and Hours of Employees on Public Works Law". The Contractor must also comply with all provisions of Federal Davis-Bacon Act (40 U.S.C. 276-276a-5 and Code of Federal Regulation (CFR) Title 29 and related Acts.
- 7.7.2 WAGE RATE SCHEDULE. The wage rate schedule is not physically enclosed in the bid documents. However, the wage rate schedule is incorporated herein by reference and made a part of the Bid and Contract Documents. The bidder must obtain and use the latest minimum rates ten (10) days prior to the date set for the bid opening of bids. The wage rate schedule may be obtained from the DHHL, Labor Compliance Specialist, 1099 Alakea Street, Suite 2000, Honolulu, Hawaii or, State Department of Labor and Industrial Relations web site: <http://www.loihi@rs.dlir.state.hi.us> or the Federal Department of Labor (Davis- Bacon) wage rate schedule web site: <http://www.wdol.gov>.
- 7.7.3 The Contractor or its subcontractor(s) shall pay all laborers and mechanics employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics. The wages stated in the contract shall not be less than the minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the of Labor and Industrial Relations and published in wage rate schedules. Any increase in wage rates, as determined by the of Labor and Industrial Relations and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with Section 104-2(a) and (b), Hawaii Revised Statutes. Notwithstanding the provisions of the original contract, if the of Labor

and Industrial Relations determines that prevailing wages have increased during the performance of the contract, the rate of pay of laborers and mechanics shall be raised accordingly.

- 7.7.4 The applicable wage rate schedule shall be physically included in the Contract Documents executed by the successful Bidder.
- 7.7.5 **POSTING WAGE RATE SCHEDULE.** The rates of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site and a copy of such wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time the person is employed thereunder, provided that where there is a collective bargaining agreement, the Contractor does not have to provide its employees the wage rate schedules. Any revisions to the schedule of wages issued by the of Labor and Industrial Relations during the course of the Contract shall also be posted by the Contractor and a copy provided to each laborer and mechanic employed under the Contract as required above.
- 7.7.6 The Chairman may withhold from the Contractor so much of the accrued payments as the Chairman may consider necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the job site. The accrued payments withheld shall be the difference between the wages required by this Contract and the wages actually received by such laborers or mechanics.
- 7.8 **FAILURE TO PAY REQUIRED WAGES (§ 104-4, HRS or Federal Davis-Bacon).** If the Department finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the Contract, or has not received their full overtime compensation, the Department may, by written notice to the Contractor, terminate its right, or the right of any subcontractor, to proceed with the work or with the part of the work on which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and its sureties shall be liable to the Department for any excess costs occasioned thereby.
- 7.9 **PAYROLLS AND PAYROLL RECORDS (§104-3 HRS)**
- 7.9.1 A certified copy of each weekly payroll shall be submitted to the Chairman within seven (7) calendar days after the end of each weekly payroll period. Failure to do so on a timely basis shall be cause for withholding of payments, termination of the contract, and/or debarment. The Contractor shall be responsible for the timely submission of certified copies of payrolls of all subcontractors. The certification shall affirm that payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision, any amendments thereto during the period of the contract, and that the classifications set forth for each laborer and mechanic conform with the work they performed.
- 7.9.2 Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the General Contractor and its subcontractors, if any, during the course of the work and preserved for a period of four (4) years thereafter. Such records shall contain the name of each employee, their address, their correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. Such records shall be made available for inspection at a place designated by the Chairman, the U.S. Department of Labor and any authorized persons who may also interview employees during working hours on the job site.

- 7.9.3 Note that the falsification of certifications noted in this Section 7.9, PAYROLLS AND PAYROLL RECORDS (§104-3 HRS) may subject the Contractor or subcontractor to penalties and debarment under the laws referenced in Section 7.14, LAWS TO BE OBSERVED and / or criminal prosecution.
- 7.10 OVERTIME AND NIGHT WORK
- 7.10.1 Overtime work shall be considered as work performed in excess of eight (8) hours in any one (1) day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Project Manager in writing, or as called for elsewhere within these Contract Documents.
- 7.10.2 OVERTIME NOTIFICATION. Contractor shall inform the Project Manager in writing at least two (2) working days in advance as to exactly what specific work is to be done during any overtime and night period to ensure that proper inspection will be available.
- 7.10.3 In the event that work other than that contained in the above notification is performed and for which the Project Manager determines Department inspection services were necessary but not available because of the lack of notification, the Contractor may be required to remove all such work and perform the work over again in the presence of Department inspection personnel.
- 7.10.4 Any hours worked in excess of the normal eight (8) working hours per day or on Saturdays, Sundays or legal State holidays will not be considered a working day.
- 7.10.5 The Department hereby reserves the right to cancel the overtime, night, Saturday, Sunday or legal State holiday work when it is found that work during these periods is detrimental to the public welfare or the user agency.
- 7.11 OVERTIME AND NIGHT PAYMENT FOR DEPARTMENT INSPECTION SERVICE
- 7.11.1 Whenever the Contractor's operations require the Department's inspection and staff personnel to work overtime or at night, the Contractor shall reimburse the Department for the cost of such services unless otherwise instructed in the Contract. The Project Manager will notify the Contractor of the minimum number of required Department employees and other personnel engaged by the Department prior to the start of any such work. The costs chargeable to the Contractor shall include but not be limited to the following:
- 7.11.1.1 The cost of salaries which are determined by the Department and includes overtime and night time differential for the Department's staff and inspection personnel. In addition to the cost of the salaries, the Contractor shall reimburse the Department's share of contributions to the employee's retirement, medical plan, social security, vacation, sick leave, worker's compensation funds, per diem, and other applicable fringe benefits and overhead expenses;
- 7.11.1.2 The transportation cost incurred by the Department's staff and inspection personnel which are based on established rental rates or mileage allowance in use by the Department for the particular equipment or vehicle; and/or
- 7.11.1.3 Fees and other costs billed the Department by Consultants engaged on the project for overtime and/or night time work.

- 7.11.2 **PAYMENT FOR INSPECTION SERVICES.** The monies due the Department for staff and inspection work and use of vehicles and equipment as determined in Subsection 7.11.1, **OVERTIME AND NIGHT PAYMENT FOR DEPARTMENT INSPECTION SERVICE** shall be deducted from the monies due or to become due the Contractor. In any and all events, the Contractor shall not pay the Department's employees directly.
- 7.12 **LIMITATIONS OF OPERATIONS**
- 7.12.1 Contractor shall at all times conduct the work in such manner and in such sequence as will ensure the least practicable interference with pedestrian and motor traffic passageways. The Contractor shall furnish convenient detours and provide and plan other appropriate signs, flashers, personnel, warnings, barricades and other devices for handling pedestrian and motor traffic.
- 7.12.2 In the event that other contractors are also employed on the job site, the Contractor shall arrange its work and dispose of materials so as not to interfere with the operations of the other contractors engaged upon adjacent work. The Contractor shall join its work to that of others and existing buildings in a proper manner, and in accordance with the drawings and specifications, and perform its work in the proper sequence in relation to that of others, all as may be directed by the Project Manager.
- 7.12.3 Each Contractor shall be responsible for any damage done by it to work performed by another contractor. Each Contractor shall conduct its operations and maintain the work in such condition that no fugitive dust shall be created and adequate drainage shall be in effect at all times.
- 7.12.4 In the event that the Contractor fails to prosecute its work as provided in this Section 7.12, **LIMITATIONS OF OPERATIONS** or disregards the directions of the Project Manager, the Project Manager may suspend the work until such time as the Contractor provides for the prosecution of the work with minimum interference to traffic and passageways or other contractors, dust control, adequate drainage, the repair of damage and complies with the direction of the Project Manager. No payment will be made to the Contractor for the costs of such suspension.
- 7.13 **ASSIGNMENT OR CHANGE OF NAME (§3-125-14 HAR)**
- 7.13.1 **SUBCONTRACTS AND ASSIGNMENT.** 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 of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under state law against the CONTRACTOR's assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in Section 40-58, HRS.
- 7.13.2 **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:
- 7.13.2.1 The Assignee assumes all of the CONTRACTOR's obligations;

- 7.13.2.2 The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- 7.13.2.3 The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- 7.13.3 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 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.
- 7.13.4 REPORTS. All assignment Contracts and amendments to this Contract effecting changes of the CONTRACTOR's name or novations hereunder shall be reported to the CPO within thirty days of the date that the assignment Contract or amendment becomes effective.
- 7.13.5 ACTIONS AFFECTING MORE THAN ONE PURCHASING AGENCY. Notwithstanding the provisions of Subsections 7.13.2 through 7.13.4 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.
- 7.14 LAWS TO BE OBSERVED. 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.
- 7.14.1 The Contractor at all times shall observe and comply with all Federal, State and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto before and after the date of this Contract.
- 7.14.2 The Contractor shall defend, protect, hold harmless and indemnify the State and its departments and agencies and all their officers, representatives, employees or agents against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or its Subcontractor(s) or any employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Project Manager in writing.
- 7.14.3 While the Contractor must comply with all applicable laws, attention is directed to: Wage and Hours of Employees on Public Works, Chapter 104, Hawaii Revised Statutes (HRS); Hawaii Public Procurement Code, Authority to debar or suspend, Section 103D-702, HRS; Hawaii Employment Relations Act, Chapter 377, HRS; Hawaii Employment Security Law, Chapter 383, HRS; Worker's Compensation Law, Chapter 386, HRS; Wage and Hour Law, Chapter 387, HRS; Occupational Safety and Health, Chapter 396, HRS; and Authority to Debar or Suspend, Chapter 126, subchapter 2, Hawaii Administrative Rules (HAR).

- 7.14.4 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.
- 7.15 PATENTED DEVICES, MATERIALS AND PROCESSES. If the Contractor desires to use any design, device, material, or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall defend, protect, 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 attorney' 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 design, patented device, patented process, patented appliance or patented material in connection with this Contract. The Contractor shall be solely responsible for correcting or curing to the satisfaction of the DHHL any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the DHHL a substitute article, design, device, process, appliance or material acceptable to the DHHL; (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 arrangement with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use. This section shall not apply to any article, design, device, material, appliance or process covered by letters of patent or copyright, which the Contractor is required to use by the Drawings or Specifications.
- 7.16 SANITARY, HEALTH AND SAFETY PROVISIONS
- 7.16.1 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local boards of health, or other bodies or tribunals having jurisdiction. Unless otherwise stated in the drawings or specifications, the Contractor shall install toilet facilities conveniently located at the job site and maintain same in a neat and sanitary condition for the use of the employees on the job site for the duration of the Contract. The toilet facilities shall conform to the requirements of the State Department of Health. The cost of installing, maintaining and removing the toilet facilities shall be considered incidental to and paid for under various contract pay items for work or under the lump sum bids as the case may be, and no additional compensation will be made therefor. These requirements shall not modify or abrogate in any way the requirements or regulations of the State Department of Health.
- 7.16.2 Attention is directed to Federal, State and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.
- 7.17 PROTECTION OF PERSONS AND PROPERTY
- 7.17.1 SAFETY PRECAUTIONS AND PROGRAMS. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- 7.17.1.1 All persons on the Work site or who may be affected by the Work;

- 7.17.1.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor and its subcontractors; and
- 7.17.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 7.17.2 Contractor shall give notices and comply with applicable laws, ordinances, regulations, rules, and lawful orders of any public body having jurisdiction for the safety of persons or property or their protection from damage, injury or loss; and the Contractor shall erect and maintain reasonable safeguards for safety and protection, including posting danger signs, or other warnings against hazards.
- 7.17.3 The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners; and shall cooperate with the owners in the protection, removal and replacement of their property.
- 7.17.4 All damage, injury or loss to any property referred to in Subsections 7.17.1.2 and 7.17.1.3 caused by the fault or negligence or damage or loss attributable to acts or omissions directly or indirectly in whole or part by the Contractor a subcontractor or any one directly or indirectly employed by them, or by anyone for whose acts they might be liable, shall be remedied promptly by the Contractor.
- 7.17.5 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the protection of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor.
- 7.17.6 The Contractor shall not load or permit any part of the construction to be loaded so as to endanger its safety. The Contractor shall not injure or destroy trees or shrubs nor remove or cut them without permission of the Project Manager. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.
- 7.17.7 In the event the Contractor encounters on the site, material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Project Manager promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.
- 7.17.8 EMERGENCIES. In an emergency affecting the safety and protection of persons or the Work or property at the site or adjacent thereto, Contractor without special instructions or authorization from the Project Manager, shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall give the Project Manager prompt written notice of the emergency and actions taken. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined under the provisions of Section 7.25, DISPUTES AND CLAIMS.
- 7.18 ARCHAEOLOGICAL SITES
- 7.18.1 Should historic sites such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells be encountered during construction, work shall cease in the immediate vicinity of the find and the find shall be protected from further damage. The Contractor shall immediately notify the Project Manager and contact the State Historic Preservation Division

which will assess the significance of the find and recommend the appropriate mitigation measures, if necessary.

7.18.2 When required, the Contractor shall provide and install any temporary fencing to protect archaeological sites within the project. The fencing shall be installed prior to any construction activity and shall be maintained by the Contractor for the duration of the project. Fence installation and maintenance shall be to the satisfaction of the Project Manager. The Contractor shall remove the fencing upon completion of construction, or as directed by the Project Manager.

7.18.3 No work shall be done within the temporary fencing area. If any construction work is done within the temporary fencing, the Contractor shall notify the Project Manager immediately; and if the Contractor entered the archaeological site area without permission, it shall stop work in this area immediately. The Project Manager shall notify the archaeologist to assess any damage to the area. The Contractor shall allow the archaeologist sufficient time to perform the field investigation.

7.18.4 Any site requiring data recovery within the project shall not be disturbed until data recovery is completed.

7.19 RESPONSIBILITY FOR DAMAGE CLAIMS; INDEMNITY

7.19.1 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 therefor, 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 Subsection shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

7.19.2 The Contractor agrees that it will not attempt to hold the State and the Department, their officers, representatives, employees or agents, liable or responsible for any losses or damages to third parties from the action of the elements, the nature of the work to be done under these Contract Documents or from any unforeseen obstructions, acts of God, vandalism, fires or encumbrances which may be encountered in the prosecution of the work.

7.19.3 The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract and the surety bond will not be released by final acceptance and payment by the Department unless all such claims are paid or released. The Department may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract considered necessary by the Project Manager to cover such just claims until satisfactory proof of payment or the establishment of a payment plan is presented.

7.19.4 The Contractor shall defend, indemnify and hold harmless the State and the Department, their officers, representatives, employees or agents from all suits, actions or claims of any character brought on account of any claims or amounts arising out of or recovered under the Workers' Compensation Laws or violation of any other law, by-law, ordinance, order or decree.

7.19.5 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.

7.20 CHARACTER OF WORKERS OR EQUIPMENT

7.20.1 The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract.

7.20.2 Character and Proficiency of Workers - All workers shall possess the proper license and/or certification, job classification, skill and experience necessary to properly perform the work assigned to them. All workmen engaged in special work or skilled work, such as bituminous courses or mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in these Contract Documents, otherwise, the Project Manager may take action as prescribed herein.

7.20.2.1 Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Project Manager, is not careful and competent, does not perform its work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Project Manager, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Project Manager. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Project Manager may withhold all payments which are or may become due, or the Project Manager may suspend the work until the Project Manager's orders are followed, or both.

7.20.3 INSUFFICIENT WORKERS. A sufficient number of workers shall be present to ensure the work is accomplished at an acceptable rate. In addition, the proper ratio of apprentice to journey worker shall be maintained to ensure the work is properly supervised and performed. In the event that the Project Manager finds insufficient workers are present to accomplish the work at an acceptable rate of progress or if a adequate number of journey workers are not present and no corrective action is taken by the Contractor after being informed in writing, the Chairman may terminate the Contract as provided for under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.

7.20.4 EQUIPMENT REQUIREMENTS. All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be performed in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

7.20.4.1 Equipment used on any portion of the project shall be such that no injury to the work, persons at or near the site, adjacent property or other objects will result from its use.

7.20.4.2 If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.

7.20.4.3 In the event that the Contractor furnishes and operates equipment on a force account basis, it shall be operated to obtain maximum production under the prevailing conditions.

7.21 CONTRACT TIME

7.21.1 Time is of the essence for this Contract.

- 7.21.2 **CALCULATION OF CONTRACT TIME.** When the contract time is on a working day basis, the total contract time allowed for the performance of the work shall be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. Refer to ARTICLE 1, DEFINITIONS for the definition of Working Day. The count of elapsed working days to be charged against contract time shall begin from the date of the Notice to Proceed and shall continue consecutively to the date of Project Acceptance determined by the Project Manager. When the contract completion time is a fixed calendar date, it shall be the date on which all work on the project shall be completed. Maintenance periods are not included within the contract time unless specifically noted in the Contract Documents. Failure to complete the work by contract completion date shall not terminate the Contract.
- 7.21.3 **MODIFICATIONS OF CONTRACT TIME (§3-125-4 HAR)**
- 7.21.3.1 **EXTENSIONS.** For increases in the scope for work caused by alterations and additional work made under Section 4.2, CHANGES, the Contractor will be granted a time extension only if the changes increase the time of performance for the Contract. If the Contractor believes an extension of time is justified and is not adequately provided for in a Field Order, it must request the additional time sought in writing when the detailed cost breakdown required by Section 4.2, CHANGES, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Section 4.2, CHANGES.
- 7.21.3.2 The Department may direct changes to the work at any time until the work is finally accepted. The issuance of a Field Order at any time may alter or modify the contract duration only by the days specified therein; or if not specified therein, for the days the critical path must be extended for the change. Additional time to perform the extra work will be added to the time allowed in the contract without regard to the date the change directive was issued, even if the contract completion date has passed. A change requiring time will not constitute a waiver of pre-existing Contractor delay.
- 7.21.4 **DELAY FOR PERMITS.** For delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Project Manager, provided the Contractor notifies the Project Manager that the permits are not available, as soon as the delay occurs. Time extensions shall be the exclusive relief granted on account of such delays. No additional compensation will be paid for these time extensions.
- 7.21.5 **DELAYS BEYOND CONTRACTOR'S CONTROL.** For delays affecting the critical path caused by acts of God, or the public enemy, fire, unusually severe weather, earthquakes, floods, epidemics, quarantine restrictions, labor disputes, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension of time provided that:
- 7.21.5.1 The Contractor notifies the Project Manager in writing within five (5) work days after the occurrence of the circumstances described above and states the possible effects on the completion date of the contract.
- 7.21.5.2 No time extension will be granted for weather conditions other than unusually severe weather occurrences, and floods.

- 7.21.5.3 The Contractor, if requested, submits to the Project Manager within ten (10) work days after the request, a written statement describing the delay to the project. The extent of delay must be substantiated as follows:
- (a) State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date;
 - (b) Submit copies of purchase order, delivery tag, and any other pertinent documentation to support the time extension request;
 - (c) Cite the period of delay and the time extension requested; and
 - (d) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.
- 7.21.5.4 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.
- 7.21.6 DELAYS IN DELIVERY OF MATERIALS. For delays in delivery of materials and/or equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided it complies with the following procedures:
- 7.21.6.1 The Contractor must notify the Project Manager in writing within five (5) consecutive working days after it first has any knowledge of delays or anticipated delays and state the effects such delays may have on the completion date of the Contract.
- 7.21.6.2 The Contractor, if requested, must submit to the Project Manager within ten (10) working days after a firm delivery date for the material and equipment is established, a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:
- (a) State specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and / or the completion date;
 - (b) Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s) and any other pertinent correspondence to support the time extension request; and
 - (c) Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.
- 7.21.6.3 Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.
- 7.21.7 DELAYS FOR SUSPENSION OF WORK. Delay during periods of suspension of the work by the Project Manager shall be computed as follows:
- 7.21.7.1 When the performance of the work is totally suspended for one (1) or more days (calendar or working days, as appropriate) by order of the Project Manager in accordance with Subsections 7.24.1.1, 7.24.1.2, 7.24.1.4 or 7.24.1.6 the number of days from the effective date of the Project Manager's order to suspend operations to the effective date of the Project Manager's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. Should the Contractor claim for additional days in excess of the suspension period, Contractor shall provide evidence justifying the additional time. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If

the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five (5) working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim, if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

7.21.8 CONTRACTOR CAUSED DELAYS - No time extension will be considered for the following:

7.21.8.1 Delays in performing the work caused by the Contractor, subcontractor and/or supplier;

7.21.8.2 Delays in arrival of materials and equipment caused by the Contractor, subcontractor and / or supplier in ordering, fabricating, delivery, etc.;

7.21.8.3 Delays requested for changes which the Project Manager determines unjustifiable due to the lack of supporting evidence or because the change is not on the critical path;

7.21.8.4 Delays caused by the failure of the Contractor to submit for review and acceptance by the Project Manager, on a timely basis, pricing proposals, shop drawings, descriptive sheets, material samples, color samples, etc. except as covered in Subsection 7.21.5 and 7.21.6;

7.21.8.5 Failure to follow the procedure within the time allowed to qualify for a time extension; and

7.21.8.6 Days the Contractor is unable to work due to normal rainfall or other normal bad weather day conditions.

7.21.9 REDUCTION IN TIME - If the Department deletes any portion of the work, an appropriate reduction of contract time may be made in accordance with Section 4.2, CHANGES.

7.22 CONSTRUCTION SCHEDULE

7.22.1 The Contractor shall submit its detailed construction schedule to the Project Manager prior to the start of the work. The purpose of the schedule is to allow the Project Manager to monitor the Contractor's progress on the work. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of the work, schedules and coordination required by any utility, off or on site fabrications, and all other pertinent factors that relate to progress.

7.22.2 Submittal of and the Project Manager's receipt of the construction schedule shall not imply the Department's approval of the schedule's breakdown, its individual elements, and any critical path that may be shown. Any acceptance or approval of the schedule: (1) shall be for general format only and not for sequences or durations thereon; and (2) shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution.

7.22.3 In the event the Contractor submits and the Department receives an accelerated schedule (shorter than the contract time), such will not constitute an agreement to modify the contract time or completion date, nor will the receipt, acceptance or approval of such a schedule incur any obligation by the Department. The Contractor shall be solely responsible for and shall accept all risks and any delays that may materialize during the construction work until the contract completion date is reached. The contract time or completion date is established for the benefit of the Department and cannot be

changed without an appropriate change order issued by the Department. All float on an accelerated schedule belongs exclusively to the Department. The Department will not be responsible for or obligated to accept the work before the completion date established by the Contract.

- 7.23 STATEMENT OF WORKING DAYS - For all contracts on a working day basis, the Contractor will submit a statement of the number of working days for each month together with the Monthly Payment Application. The Monthly Payment Application will not be processed without the statement of working days.
- 7.24 SUSPENSION OF WORK (§3-125-7 HAR)
- 7.24.1 PROCEDURE TO BE FOLLOWED. The Chairman may, by written order to the Contractor, at any time and without notice to any surety, suspend the performance of the Work either in whole or in part for any cause, including but not limited to:
- 7.24.1.1 Weather or excess bad weather days, considered unsuitable by the Project Manager for prosecution of the work; or
- 7.24.1.2 Soil Conditions considered unsuitable by the Project Manager for prosecution of the work; or 7.24.1.3 Failure of the Contractor to:
- (a) Correct conditions unsafe for the general public or for the workers;
 - (b) Carry out orders given by the Project Manager;
 - (c) Perform the work in strict compliance with the provisions of the contract; or
 - (d) Provide a qualified Superintendent on the jobsite as described under Subsection 5.9.2, SUPERINTENDENT.
- 7.24.1.4 When any redesign is deemed necessary by the Project Manager; or
- 7.24.1.5 Disturbance due to noise, odors or dust arising from the construction even if such disturbance does not violate the section on Environmental Protection contained in the Contract Documents; or
- 7.24.1.6 The convenience of the Department.
- 7.24.2 PARTIAL OR TOTAL SUSPENSION OF WORK. Suspension of work on some but not all items of work shall be considered a partial suspension. Suspension of work on the entire work at the job site shall be considered total suspension. The period of suspension shall be computed as set forth in Subsection 7.21.7, Delays for Suspension of Work.
- 7.24.3 PAYMENT
- 7.24.3.1 In the event that the Contractor is ordered by the Chairman in writing as provided herein to suspend all work under the contract in accordance with Subsections 7.24.1.4 or 7.24.1.6, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Chairman, including costs expended for the protection of the work. Payment for equipment which must standby during such suspension of work shall be made as described in clause 8.3.4.5.(e). No payment will be made for profit on any suspension costs. An allowance of five percent (5%) will be paid on any reimbursed actual costs for indirect categories of delay costs, including extended branch and home-office overhead and delay impact costs.

- 7.24.3.2 However, no adjustment to the contract amount or time shall be made under this Section 7.24, SUSPENSION OF WORK (§3-125-7 HAR) for any suspension, delay, or interruption:
- (a) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (b) For which an adjustment is provided for or excluded under any other provision of this Contract.
- 7.24.3.3 Any adjustment in contract price made pursuant to this subsection shall be determined in accordance with this Section 7.24, SUSPENSION OF WORK (§3-125-7 HAR) and Section 4.2, CHANGES.
- 7.24.3.4 Claims for such compensation shall be filed with the Project Manager within ten (10) calendar days after the date of the order to resume work or such claims will be waived by the Contractor. Together with the claim, the Contractor shall submit substantiating documents supporting the entire amount shown on the claim. The Chairman may make such investigations as are deemed necessary and shall be the sole judge of the claim and the Chairman's decision shall be final.
- 7.24.4 CLAIMS NOT ALLOWED. No claim under this Section 7.24, SUSPENSION OF WORK (§3-125-7 HAR) shall be allowed:
- 7.24.4.1 For any direct costs incurred more than twenty (20) days before the Contractor shall have notified the Project Manager in writing of any suspension that the Contractor considers compensable. This requirement shall not apply as to a claim resulting from a suspension order under Subsections 7.24.1.4 or 7.24.1.6; and 7.24.4.2 Unless the claim is asserted in writing within ten (10) calendar days after the termination of such suspension, delay, or interruption, but in no case not later than the date of final payment under the contract.
- 7.24.4.3 No provision of this Section 7.24, SUSPENSION OF WORK (§3-125-7 HAR) shall be construed as entitling the Contractor to compensation for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, for partial suspension of work or for suspensions made by the Project Manager under the provisions of Subsections 7.24.1.1, 7.24.1.2, 7.24.1.3 and 7.24.1.5.
- 7.25 DISPUTES AND CLAIMS (§3-126-31 HAR). Disputes shall be resolved in accordance with Section 103D-703, HRS, and chapter 126, Procurement Rules, as the same may be amended from time to time.
- 7.25.1 REQUIRED NOTIFICATION. As a condition precedent for any claim, the Contractor must give notice in writing to the Project Manager in the manner and within the time periods stated in Section 4.2, CHANGES for claims for extra compensation, damages, or an extension of time due for one or more of the following reasons:
- 7.25.1.1 Requirements not clearly covered in the Contract, or not ordered by the Project Manager as an extra;
 - 7.25.1.2 Failure by the Department and Contractor to agree to an Oral Order or an adjustment in price or contract time for a Field Order or a Change Order (which was not previously agreed on by a Field Order), issued by the Department;
 - 7.25.1.3 An action or omission by the Project Manager requiring performance changes beyond the scope of the Contract; and/or

- 7.25.1.4 Failure of the Department to issue a Field Order for controversies within the scope of Section 4.2, CHANGES.
- 7.25.1.5 For any other type of claim, the Contractor shall give notice within the time periods set forth in contract provisions pertaining to that event. If no specific contract provisions pertain to the claim, then the written notice of claim must be submitted within fifteen (15) days of the event giving rise to the claim.
- 7.25.2 CONTINUED PERFORMANCE OF WORK. The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Project Manager. Continued performance by the Contractor shall not be deemed a waiver of any claim for additional compensation, damages, or an extension of time for completion, provided that the written notice of claim is submitted in accordance with Subsection 7.25.1, REQUIRED NOTIFICATION.
- 7.25.3 The requirement for timely written notice shall be a condition precedent to the assertion of a claim.
- 7.25.4 REQUIREMENTS FOR NOTICE OF CLAIM. The notice of claim shall clearly state the Contractor's intention to make claim and the reasons why the Contractor believes that additional compensation, changes or an extension of time may be remedies to which it is entitled. At a minimum, it shall provide the following:
- 7.25.4.1 Date of the protested order, decision or action;
- 7.25.4.2 The nature and circumstances which caused the claim;
- 7.25.4.3 The contract provision(s) that support the claim;
- 7.25.4.4 The estimated dollar cost, if any, of the protested work and how that estimate was determined; and
- 7.25.4.5 An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.
- 7.25.5 If the protest or claim is continuing, the information required in Subsection
- 7.25.4 REQUIREMENTS FOR NOTICE OF CLAIMS above shall be supplemented as requested by the Project Manager.
- 7.25.6 FINAL STATEMENT FOR CLAIM. The Contractor shall provide a final written statement of the actual adjustment in contract price and/or contract time requested for each notice of claim. Such statement shall clearly set forth that it is the final statement for that notice of claim. All such final statements shall be submitted within thirty (30) days after completion of the work that is the subject of the claim, but in no event no later than thirty (30) days after the Project Acceptance Date or the date of termination of the Contractor, whichever comes first.
- 7.25.7 All claims of any nature are barred if asserted after final payment under this Contract has been made.
- 7.25.8 Contractor may protest the assessment or determination by the Project Manager of amounts due the Department from the Contractor by providing a written notice to the Chairman within thirty (30) days of the date of the written assessment or determination. Said notice shall comply with all requirements of Subsections 7.25.4, REQUIREMENTS FOR NOTICE OF CLAIM and 7.25.6, FINAL

STATEMENT FOR CLAIM above. The requirement of such notice cannot be waived and it is a condition precedent to any claim by the Contractor. Failure to comply with these notice provisions constitutes a waiver of any claim.

- 7.25.9 In addition to the requirements of Subsections 7.25.4, 7.25.6, and 7.25.8, all final written statements of claim shall be certified. This certification requirement applies to the Contractor without exception, including, but not limited to, situations involving claims of subcontractors or suppliers which meet the requirements of Subsection 5.13.4. The certification must be executed by a person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:
- 7.25.9.1 “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Department is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”
- 7.25.10 DECISION ON CLAIM/APPEAL. The decision of the Chairman on the claim shall be final and conclusive, unless fraudulent, or unless the Contractor delivers to the Chairman a written appeal of the Chairman’s decision. Said appeal shall be delivered to the Chairman no later than thirty (30) days after the date of the Chairman’s decision.
- 7.25.10.1 In that event, the decision of the Chairman shall be final and conclusive, unless fraudulent or unless the Contractor brings an action seeking judicial review of the Chairman’s decision in an appropriate circuit court of this State within six (6) months from the date of the Chairman’s decision.
- 7.25.11 PAYMENT AND INTEREST. The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party. Interest on amounts ultimately determined to be due to a Contractor shall be payable at the Statutory rate applicable to judgments against the State under Chapter 662, HRS from the date of receipt of a properly certified final written statement of actual adjustment required until the date of decision; except, however, that if an action is initiated in circuit court, interest under this Section 7.25, DISPUTES AND CLAIMS (§3-126-31 HAR) shall only be calculated until the time such action is initiated. Interest on amounts due the Department from the Contractor shall be payable at the same rate from the date of issuance of the Project Manager’s notice to the Contractor. Where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.
- 7.25.12 Contractor shall comply with any decision of the Chairman and proceed diligently with performance of this contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, this Contract, except where there has been a material breach of contract by the Department; provided that in any event the Contractor shall proceed diligently with the performance of the Contract where the Project Manager has made a written determination that continuation of work under the Contract is essential to the public health and safety.
- 7.25.13 WAIVER OF ATTORNEY’S FEES. In the event of any litigation arising under, or by virtue of, this Contract, the Contractor and the Department agree to waive all claims against each other for attorney’s fees and agree to refrain from seeking attorney’s fees as part of any award or relief from any court.
- 7.26 FAILURE TO COMPLETE THE WORK ON TIME

- 7.26.1 Completion of the work within the required time is important because delay in the prosecution of the work will inconvenience the public and interfere with the Department's business. In addition, the Department will be damaged by the inability to obtain full use of the completed work and by increased Managing, inspection, superintendence, and administrative services in connection with the work. Furthermore, delay may detrimentally impact the financing, planning, or completion of other Department projects because of the need to devote Department resources to the project after the required completion date. The monetary amount of such public inconvenience, interference with Department business, and damages, is difficult, if not impossible, to accurately determine and precisely prove. Therefore, it is hereby agreed that the amount of such damages shall be the appropriate sum of liquidated damages.
- 7.26.1.1 When the Contractor fails to complete the Work or any portion of the Work within the time or times fixed in the contract or any extension thereof, it is agreed the Contractor shall pay liquidated damages to the Department in the amount of \$1,000 (one thousand dollars) per day, unless otherwise indicated in the Special Conditions.
- 7.26.1.2 If the Contractor fails to correct Punchlist deficiencies as required by Section 7.32, PROJECT ACCEPTANCE DATE, the Department will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department based upon the amount stated in GR 3 – COMPLETION AND LIQUIDATED DAMAGES of the General Requirements, Section 3.02, LIQUIDATED DAMAGES. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the Punchlist items are corrected and accepted by the Project Manager.
- 7.26.1.3 If the Contractor fails to submit final documents as required by Section 7.33, FINAL SETTLEMENT OF CONTRACT, the Department will be inconvenienced and damaged, therefore, it is agreed that the Contractor shall pay liquidated damages to the Department in the amount stated in the General Requirements. Liquidated damages shall accrue for all days after the Contract Completion Date or any extension thereof, until the date the final documents are received by the Project Manager.
- 7.26.1.4 The Project Manager shall assess the total amount of liquidated damages in accordance with the amount of \$1,000 (one thousand dollars) per day, unless otherwise indicated in the Special Conditions, and provide written notice of such assessment to the Contractor.
- 7.26.2 ACCEPTANCE OF LIQUIDATED DAMAGES. The assessment of liquidated damages by the Project Manager shall be accepted by the parties hereto as final, unless the Contractor delivers a written appeal of the Project Manager's decision in accordance with Subsection 7.25.10, DECISION ON CLAIM/APPEAL REQUIREMENTS. Any allowance of time or remission of charges or liquidated damages shall in no other manner affect the rights or obligations of the parties under this contract nor be construed to prevent action under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE. If the Department terminates the Contractor's right to proceed, the resulting damage will include such liquidated damages for such time as may be required for final completion of the work after the required contract completion date.
- 7.26.3 PAYMENTS FOR LIQUIDATED DAMAGES. Liquidated damages shall be deducted from monies due or that may become due to the Contractor under the contract or from other monies that may be due or become due to the Contractor from the Department.
- 7.26.4 If the Contractor contests the per diem liquidated charge, the Department may elect to recover the actual damages caused by the Contractor's delay. Should the Department claim liquidated damages

for delay and if such liquidated damages are disallowed for any reason, the Department shall recover the actual damages to which it is legally entitled as a result of the Contractor's delay or other breach.

7.27 TERMINATION OF CONTRACT FOR CAUSE (§3-125-18 HAR)

7.27.1 DEFAULT. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete the work within such time, or commits any other material breach of this contract, and further fails within seven (7) days after receipt of written notice from the Project Manager to commence and continue correction of the refusal or failure with diligence and promptness, the Chairman may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the Department may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the Department resulting from the Contractor's refusal or failure to complete the work within the specified time.

7.27.2 ADDITIONAL RIGHTS AND REMEDIES. The rights and remedies of the Department provided in this contract are in addition to any other rights and remedies provided by law.

7.27.3 COSTS AND CHARGES

7.27.3.1 All costs and charges incurred by the Department, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay the Department the amount of the excess.

7.27.3.2 In case of termination, the Chairman shall limit any payment to the Contractor to the part of the contract satisfactorily completed at the time of termination. Payment will not be made until the work has satisfactorily been completed and the tax clearance required by Section 8.8, FINAL PAYMENT is submitted by the Contractor. Termination shall not relieve the Contractor or Surety from liability for liquidated damages.

7.27.4 ERRONEOUS TERMINATION FOR CAUSE. If, after notice of termination of the Contractor's right to proceed under this Section 7.27, TERMINATION OF CONTRACT FOR CAUSE (§3-125-18 HAR) it is determined for any reason that good cause did not exist to allow the Department to terminate as provided herein, the rights and obligations of the parties shall be the same as, and the relief afforded the Contractor shall be limited to, the provisions contained in Section 7.28, TERMINATION FOR CONVENIENCE.

7.28 TERMINATION FOR CONVENIENCE (§3-125-22 HAR)

7.28.1 TERMINATION. The Chairman may, when the interests of the Department so require, terminate this contract in whole or in part, for the convenience of the Department. The Chairman shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

- 7.28.2 **CONTRACTOR'S OBLIGATIONS.** The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the Department's approval. The Chairman may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Department. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.
- 7.28.3 **RIGHT TO CONSTRUCTION AND GOODS.** The Chairman may require the Contractor to transfer title and delivery to the Department in the manner and to the extent directed by the Chairman, the following:
- 7.28.3.1 Any completed work; and
- 7.28.3.2 Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.
- 7.28.3.3 The Contractor shall protect and preserve all property in the possession of the Contractor in which the Department has an interest. If the Chairman does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction material for the Department's account in accordance with the standards of Section 490:2-706, HRS.
- 7.28.4 **COMPENSATION**
- 7.28.4.1 Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Chairman may pay the Contractor, if at all, an amount set in accordance with Subsection 7.28.4.3.
- 7.28.4.2 The Chairman 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 Department, the proceeds of any sales of construction, supplies, and construction materials under Subsection 7.28.3.3 of this Section, and the contract price of the work not terminated.
- 7.28.4.3 Absent complete agreement, the Chairman shall pay the Contractor the following amounts, less any payments previously made under the Contract.
- (a) The cost of all contract work performed prior to the effective date of the notice of termination work plus a five percent (5%) markup on the actual direct costs, including amounts paid to subcontractor(s), less amounts previously paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

- (b) Subcontractors shall be paid a markup of ten percent (10%) on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include payments made to the Contractor for subcontract work during the contract period.
 - (c) In any case, the total sum to be paid the Contractor shall not exceed the total contract price reduced by the amount of any sales of construction supplies, and construction materials.
- 7.28.4.4 Costs claimed, agreed to, or established by the Department shall be in accordance with chapter 3-123, HAR.
- 7.29 **CORRECTING DEFECTS.** If the Contractor fails to commence to correct any defects of any nature, within ten (10) working days after the correction thereof has been requested in writing by the Department, and thereafter to expeditiously complete the correction of said defects, the Project Manager may without further notice to the Contractor or surety and without termination of contract, correct the defects and deduct the cost thereof from the contract price.
- 7.30 **FINAL CLEANING.** Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work must be left in a neat and presentable condition to the satisfaction of the Project Manager. However, the Contractor shall not remove any warning and directional signs prior to the formal acceptance by the Project Manager. Full compensation for final cleaning will be included in the prices paid for the various items of work or lump sum bid, as the case may be, and no separate payment will be made therefor.
- 7.31 **SUBSTANTIAL COMPLETION AND FINAL INSPECTION.** Before the Department accepts the project as being completed, unless otherwise stipulated by the Project Manager the following procedure shall be followed:
 - 7.31.1 **SUBSTANTIAL COMPLETION**
 - 7.31.1.1 The Contractor and its subcontractors shall inspect the project to confirm whether the Project is Substantially Complete. This inspection effort shall include the testing of all equipment and providing a Punchlist that identifies deficiencies which must be corrected. Contractor shall make the corrections and if required repeat the procedure. Also, the Contractor shall schedule final Building, Plumbing, Electrical, Elevator, Fire and other required inspections and obtain final approvals.
 - (a) When in compliance with the above requirements, the Contractor shall notify the Project Manager in writing that project is Substantially Complete and ready for a Final Inspection. Along with the Substantial Completion notification, the Contractor shall provide its Punchlist(s) with the status of the deficiencies and dates when the deficiencies were corrected. The Project Inspector and / or the Project Manager shall make a preliminary determination whether project is Substantially Complete.
 - (b) If the Project is not Substantially Complete, the Project Manager shall inform the Contractor. The Contractor shall identify deficiencies which must be corrected, update its Punchlist, make the necessary corrections and repeat the previous step. After completing the necessary work, the Contractor shall notify the Project Manager in writing that Punchlist deficiencies have been corrected and the project is ready for a Final Inspection.

- (c) If the Project is Substantially Complete, the Project Manager shall schedule a Final Inspection within fifteen (15) days of the Contractor's notification letter or as otherwise determined by the Project Manager.
- 7.31.1.2 In addition, and to facilitate closing of the project, the Contractor shall also proceed to obtain the following closing documents (where applicable) prior to the Final Inspection:
 - (a) Field-Posted As-Built Drawings;
 - (b) Maintenance Service Contract and two (2) copies of a list of all equipment;
 - (c) Five (5) sets of operating and maintenance manuals;
 - (d) Air conditioning test and balance reports; and
 - (e) Any other final submittal required by the Contract.
- 7.31.2 **FINAL INSPECTION.** If at the Final Inspection the Project Manager determines that all work is completed, the Project Manager shall notify the Contractor in accordance with Section 7.32, **PROJECT ACCEPTANCE DATE.** Should there be remaining deficiencies which must be corrected the Contractor shall provide an updated Punchlist to the Project Manager, within five (5) days from the Final Inspection Date. The Contractor shall make the necessary corrections.
- 7.31.2.1 The Project Manager shall confirm the list of deficiencies noted by the Contractor's punchlist(s) and will notify the Contractor of any other deficiencies that must be corrected before final settlement.
- 7.31.3 The Project Manager may add to or otherwise modify the Punchlist from time to time. The Contractor shall take immediate action to correct the deficiencies.
- 7.31.4 **REVOKING SUBSTANTIAL COMPLETION.** At any time before final Project Acceptance is issued the Project Manager may revoke the determination of Substantial Completion if the Project Manager finds it was not warranted. The Project Manager shall notify the Contractor in writing with the reasons and outstanding deficiencies negating the declaration. Once notified, the Contractor shall make the necessary corrections and repeat the required steps noted in Subsections 7.31.1 and 7.31.2.
- 7.32 **PROJECT ACCEPTANCE DATE**
- 7.32.1 If upon Final Inspection, the Project Manager finds that the project has been satisfactorily completed in compliance with the contract, the Project Manager shall declare the project completed and accepted and will notify the Contractor in writing of the acceptance by way of the Project Acceptance Notice.
- 7.32.2 **PROTECTION AND MAINTENANCE.** After the Project Acceptance Date, the Contractor shall be relieved of maintaining and protecting the work except that this does not hold true for those portions of the work which have not been accepted, including Punchlist deficiencies. The Department shall be responsible for the protection and maintenance of the accepted facility.
- 7.32.3 The date of Project Acceptance shall determine:
 - 7.32.3.1 End of Contract Time;
 - 7.32.3.2 Commencement of all guaranty periods except as noted in Section 7.34, **CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS;** and
 - 7.32.3.3 Commencement of all maintenance services except as noted in Section 7.34, **CONTRACTOR'S RESPONSIBILITY FOR WORK: RISK OF LOSS.**

- 7.32.4 PUNCHLIST REQUIREMENTS. If a Punchlist is required under Section 7.31, SUBSTANTIAL COMPLETION AND FINAL INSPECTION, the Project Acceptance Notice will include the Project Manager's Punchlist and the date when correction of the deficiencies must be completed.
- 7.32.5 Upon receiving the Punchlist, the Contractor shall promptly devote the required time, labor, equipment, materials and incidentals necessary to correct the deficiencies expeditiously.
- 7.32.6 For those items of work that cannot be completed by the established date, the Contractor shall submit a schedule in writing to the Project Manager for approval along with documentation to justify the time required, no later than five (5) working days before the date stipulated for completion of the Punchlist work. A Proposed schedule submitted after the five (5) day period will not be considered.
- 7.32.7 FAILURE TO CORRECT DEFICIENCIES. After the Contract Completion Date, or any extension thereof, if the Contractor fails to correct the deficiencies within the established date or agreed to Punchlist completion date, the Project Manager shall assess liquidated damages as required by Section 7.26, FAILURE TO COMPLETE THE WORK ON TIME.
- 7.32.8 If the Contractor fails to correct the deficiencies and complete the work by the established or agreed to date, the Department also reserves the right to correct the deficiencies by whatever method it deems necessary and deduct the cost from the final payment due the Contractor.
- 7.32.9 The Contractor may further be prohibited from bidding in accordance with Section 2.12, DISQUALIFICATION OF BIDDERS. In addition, assessment of damages shall not prevent action under Section 7.27, TERMINATION OF CONTRACT FOR CAUSE.
- 7.33 FINAL SETTLEMENT OF CONTRACT
- 7.33.1 The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:
- 7.33.1.1 Necessary Submissions in addition to the items noted under Subsection 7.31.1.2.
- 7.33.1.2 All written guarantees required by the contract.
- 7.33.1.3 Complete and certified weekly payrolls for the Contractor and its Subcontractor(s).
- 7.33.1.4 Certificate of Plumbing and Electrical Inspection.
- 7.33.1.5 Certificate of Building Occupancy.
- 7.33.1.6 Certificate for Soil Treatment and Wood Treatment.
- 7.33.1.7 Certificate of Water System Chlorination.
- 7.33.1.8 Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.
- 7.33.1.9 All other documents required by the Contract.

- 7.33.2 **FAILURE TO SUBMIT CLOSING DOCUMENTS.** The Contractor shall submit the final Payment Application and the above applicable closing documents within sixty (60) days from the date of Project Acceptance or the agreed to Punchlist completion date. Should the Contractor fail to comply with these requirements, the Chairman may terminate the Contract for cause. The pertinent provisions of Section 7.27, **TERMINATION OF CONTRACT FOR CAUSE** shall be applicable.
- 7.33.3 In addition, should the Contractor fail to furnish final closing documents within the required time period, the Project Manager shall assess liquidated damages as required by Section 7.26, **FAILURE TO COMPLETE THE WORK ON TIME**.
- 7.34 **CONTRACTOR'S RESPONSIBILITY FOR WORK; RISK OF LOSS**
- 7.34.1 Until the establishment of the Project Acceptance Date or Beneficial Occupancy, whichever is sooner, the Contractor shall take every necessary precaution against injury or damage to any part of the work caused by the perils insured by an All Risk policy, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work occasioned by the perils insured by an All Risk policy before the date of final acceptance and shall bear the risk and expense thereof.
- 7.34.2 After the Project Acceptance Date or Beneficial Occupancy, whichever is sooner, the Contractor shall be relieved of maintaining and protecting the work except for those portions of the work which have not been accepted including Punchlist deficiencies.
- 7.34.3 The risk of damage to the work from any hazard or occurrence that may be covered by a required Property Insurance policy is that of the Contractor, unless such risk of loss is placed elsewhere by express language in the Contract Documents. No claims for any loss or damage shall be recognized by the Department, nor will any such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.
- 7.35 **GUARANTEE OF WORK**
- 7.35.1 In addition to any required manufacturers warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the Project Acceptance Date or as otherwise specified in the Contract Documents.
- 7.35.2 **REPAIR OF WORK.** If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Project Manager is necessary due to materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall within five (5) working days and without expense to the Department commence to:
- 7.35.2.1 Place in satisfactory condition in every instance all such guaranteed work and correct all defects therein; and
- 7.35.2.2 Make good and repair or replace to new or pre-existing condition all damages to the building, facility, work or equipment or contents thereof, resulting from such defective materials, equipment or installation thereof.

- 7.35.3 MANUFACTURER'S AND INSTALLER'S GUARANTEE. Whenever a manufacturer's or installer's guarantee on any product specified in the respective Specification sections, exceeds one year, this guarantee shall become part of this contract in addition to the Contractor's guarantee. Contractor shall complete the guarantee forms in the name of the Department and submit such forms to the manufacturer within such time required to validate the guarantee. Contractor shall submit to the Department a photocopy of the completed guarantee form for the Department's record as evidence that such guarantee form was executed by the manufacturer.
- 7.35.4 If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall again be guaranteed for the original full guarantee period. The guarantee period shall be tolled and suspended for all work affected by the defect. The guarantee period for work affected by the defect shall restart for its remaining duration upon confirmation by the Project Manager that the deficiencies have been repaired or remedied.
- 7.36 WORK OF AND CHARGES BY UTILITIES
- 7.36.1 The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable governmental agencies for permanent service installation and connections or modifications to existing utilities. The Contractor shall make available all portions of the work necessary for the utility companies to do their work. The Department shall not bear the risk of any damage to the contract work caused by any utility company, and work of repairing such damage and delay costs must be resolved between the Contractor, the utility company, and their insurers.
- 7.36.2 Unless stated as an allowance item to be paid by the Contractor, the Department will pay the utility companies and applicable governmental agencies directly for necessary modifications and connections. Contractor charges for overhead, supervision, coordination, profit, insurance and any other incidental expenses shall be included in the Contractor's Bid whether the utility is paid directly by the Department or by an allowance item in the Contract.
- 7.37 RIGHT TO AUDIT RECORDS
- 7.37.1 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 the cost or pricing data, and a State contract, including subcontracts, other than a firm fixed-price contract. The Contractor and subcontractor(s) shall maintain the books and records for a period of four (4) years from the date of final payment under the Contract.
- 7.37.2 The Contractor shall ensure that its subcontractors comply with this requirement and shall bear all costs (including attorney's fees) of enforcement in the event of its subcontractor's failure or refusal to fully cooperate.
- 7.37.3 Additionally, Sections 231-7, 235-108, 237-39 and other HRS chapters through reference, authorize the Department of Taxation to audit all taxpayers conducting business within the State. Contractors must make available to the Department of Taxation all books and records necessary to verify compliance with the tax laws.
- 7.38 RECORDS MAINTENANCE, RETENTION AND ACCESS

- 7.38.1 The Contractor and any subcontractor whose contract for services is valued at \$25,000 (twenty five thousand) or more shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of services under this Contract.
- 7.38.2 The representative of the Department, the Chairman, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any of their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of services under this Contract in order to conduct an audit or other examination and /or to make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of services and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this Contract.
- 7.38.3 The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The Contractor and subcontractor shall maintain and retain all books and records related to the Contractor and subcontractor's performance of services under this Contract, including any cost or pricing data for three (3) years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the books and records has been started before the expiration of the three (3) year period, the Contractor and subcontractors shall retain the books and records until completion of the action and resolution of all issues that arise from it, or until the end of the three (3) year retention period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any subcontractor.
- 7.39 COST OR PRICING DATA. Cost or pricing data must be submitted to the Agency purchasing 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 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.
- 7.39.1 AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
- 7.40 CONFIDENTIALITY OF MATERIAL
- 7.40.1 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.

- 7.40.2 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.
- 7.41 PUBLICITY. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any State employee, including the head of the purchasing agency, the Chief Procurement Officer, the Director, 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.
- 7.42 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.
- 7.43 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.
- 7.44 SEVERABILITY. In the event that a court declares any provision of this Contract invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 7.45 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.

~END OF ARTICLE 7~

ARTICLE 8: MEASUREMENT AND PAYMENT

- 8.1 MEASUREMENT OF QUANTITIES
- 8.1.1 All work completed under the Contract shall be measured by the Project Manager according to United States standard measures, or as stated in this Contract. The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract shall conform to good Managing practice. These measurements shall be considered correct and final unless the Contractor has protested same to the Project Manager and has

demonstrated the existence of an error by actual physical measurement before the work has progressed in a manner, which would prohibit a proper check.

- 8.1.2 All measurements of the area of the various surfaces, pavement and base courses will be made in the horizontal projection of the actual surface and no deductions will be made for fixtures or structures having an area of nine (9) square feet or less. All measurements of headers, curbs, fences and any other type of construction which is to be paid for by its length will be made in the horizontal projection of the actual driven length from toe to top of cutoff, except where slope exceeds ten percent (10%) and for piles, which will be by actual length. All materials which are specified for measurement by the cubic yard "Loose Measurement" or "Measured in the Vehicle" shall be hauled in approved vehicles and measured therein at the point of delivery. Approved vehicles for this purpose may be of any type or size satisfactory to the Project Manager, provided that the body is of such type that the actual contents may be readily and accurately determined. Unless all approved vehicles on a job are of a uniform capacity each approved vehicle must bear a plainly legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.
- 8.2 **NO WAIVER OF LEGAL RIGHTS.** The Project Manager shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement estimate or certificate is untrue or incorrectly made, or rejecting the work or materials that do not conform in fact to the contract. The Project Manager shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Department may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Project Manager or any representative of the Project Manager, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, or any possession taken by the Project Manager, shall operate as a waiver of any portion of the contract, or of any power herein reserved, or any right to damage herein provided. A waiver of any notice requirement or breach of the contract shall not be held to be a waiver of any other notice requirement or subsequent breach.
- 8.3 **PAYMENT FOR ADDITIONAL WORK**
- 8.3.1 Additional work as defined in Section 4.2, **CHANGES**, when ordered, shall be paid for as defined in Section 4.4, **PRICE ADJUSTMENT** by a duly issued change order in accordance with the terms provided therein.
- 8.3.2 On credit proposals and proposals covering both increases and decreases, the application of overhead and profit shall be on the net change in direct costs for the performance of the work.
- 8.3.3 When payment is to be made for additional work directed by a Field Order, the total price adjustment as specified in the Field Order or if not specified therein for the work contained in the related change order shall be considered full compensation for all materials, labor, insurance, taxes, equipment use or rental and overheads, both field and home office including extended home and branch office overhead and other related delay impact costs.

- 8.3.4 **FORCE ACCOUNT METHOD.** When, for the convenience of the Department, payment is to be made by the Force Account method, all work performed or labor and materials and equipment furnished shall be paid for as described below. Payment by the Force Account method will not alter any rights, duties and obligations under the contract.
- 8.3.4.1 **LABOR.** For all hourly workers, the Contractor will receive the rate of wage including fringe benefits when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.
- (a) All markups for overhead and profit shall be added subject to limitations established in Section 4.5, **ALLOWANCES FOR OVERHEAD AND PROFIT.**
 - (b) No allowance for overtime compensation will be given without the written approval of the Project Manager prior to performance of such work.
- 8.3.4.2 **INSURANCE AND TAXES.** The Contractor and subcontractor(s) will also receive the actual additional costs paid for property damage, liability, worker's compensation insurance premiums, State unemployment contributions, Federal unemployment taxes, social security and Medicare taxes.
- 8.3.4.3 **MATERIALS.** For materials accepted by the Project Manager and used, the Contractor and subcontractor(s) shall receive the actual cost of such materials delivered and incorporated into work, plus a markup allowed under Section 4.5, **ALLOWANCES FOR OVERHEAD AND PROFIT.**
- 8.3.4.4 **SUBCONTRACTORS.** Subcontractor costs shall be the actual costs of the subcontractor marked up as defined in this Section 8.3, **PAYMENT FOR ADDITIONAL WORK** plus a markup allowed under Section 4.5, **ALLOWANCES FOR OVERHEAD AND PROFIT.**
- 8.3.4.5 **EQUIPMENT**
- (a) For machinery or special equipment (other than small tools as herein defined in Subsection 8.3.4.5.(h) owned or leased by the Contractor or a related entity, the use of which has been authorized by the Project Manager:
 - (1) The Contractor will be paid at the per-hour rental rates based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Rate Blue Book for Construction Equipment including the estimated operating cost per hour and regional correction provided therein.
 - (2) If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rates shall be as agreed upon in writing by the Contractor and the Project Manager prior to the use of said machinery or equipment. If there is no agreement, the Project Manager will set a rate. The Contractor may contest the rate pursuant to Section 7.25, **DISPUTES AND CLAIMS.**
 - (3) Rental rates which are higher than those specified in the aforesaid Rental Rate Blue Book publication may be allowed where such higher rates can be justified by job conditions such as work in water and work on lava, etc. Request for such higher rates shall be submitted in writing to the Project Manager for approval prior to the use of the machinery or equipment in question.

- (b) For machinery or special equipment [other than small tools as herein defined in clause 8.3.4.5 (h)] rented by the Contractor or a related entity specifically for the Force Account work, the use of which has been authorized by the Project Manager, the Contractor will be paid the actual rental cost for the machinery or equipment, including mobilization and demobilization costs. A receipt from the equipment supplier shall be submitted to the Project Manager.
- (c) For machinery or special equipment [other than small tools as herein defined in clause 8.3.4.5 (h)] rented by the Contractor or a related entity for use in the project, but which will also be used for the Force Account work, the use of which has been authorized by the Project Manager, the Contractor will be paid the actual rental cost for the machinery or equipment. No additional mobilization and demobilization costs will be paid. A receipt from the equipment supplier shall be submitted to the Project Manager.
- (d) The rental rate for trucks not owned by the Contractor shall be those as established under the Hawaii State Public Utilities Commission, which will be paid for as an equipment item pursuant to Subsection 8.3.4.5, EQUIPMENT. Rental rates for Contractor owned trucks not listed in the Rental Rate Blue Book shall be agreed upon in writing by the Contractor and Project Manager prior to the use of said trucks. If there is no agreement, the Project Manager shall set the rate. The Contractor may contest the rate pursuant to Section 7.25, DISPUTES AND CLAIMS.
- (e) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the equipment is no longer needed. In the event the equipment must standby due to work being delayed or halted by reason of design, traffic, or other related problems uncontrollable by the Contractor, excluding Saturdays, Sundays and Legal Holidays, unless the equipment is used to perform work on such days, the rental shall be two (2) hours per day until the equipment is no longer needed.
 - (1) The rental time to be paid will be for the time actually used. The Project Manager prior to the performance of such work must approve any hours or operation in excess of eight (8) hours in any one (1) day.
 - (2) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours, if any, that the machinery or equipment was in operation.
 - (3) In the event the Force Account work is completed in less than eight (8) hours, equipment rental shall nevertheless be paid for a minimum eight (8) hours.
 - (4) For the purpose of determining the rental period the continuous and consecutive days shall be the normal eight (8) hour shift work day, Monday through Friday excluding legal holidays. Any work day to be paid less than eight (8) hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
 - (4) No additional premium beyond the normal rates used will be paid for equipment over eight (8) hours per day or forty (40) hours per week.
- (f) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

- (g) All machinery and equipment shall be in good working condition and suitable for the purpose for which the machinery and equipment is to be used.
- (h) Individual pieces of equipment or tools having a replacement value of \$2,000 (two thousand dollars) or less, whether or not consumed by use, shall be considered to be small tools and included in the allowed markup for overhead and profit and no separate payment will be made therefor.
- (i) The total of all Force Account rental charges accrued over the duration of the contract for a specific item of equipment shall not exceed the replacement cost of that equipment.
 - (1) The Contractor shall provide the cost of replacement to the Project Manager prior to using the equipment. If the Project Manager does not agree with the replacement cost, the Project Manager shall set the replacement cost. The Contractor may contest the replacement cost pursuant to Section 7.25, DISPUTES AND CLAIMS.
- (j) Should the item of equipment be rented from an unrelated entity, the rental cost will be treated as equipment cost under Subsection 8.3.4.5, EQUIPMENT.
- (k) Transportation and/or Mobilization: The following provisions shall govern in determining the compensation to be paid to the Contractor for use of equipment or machinery on the Force Account method:
 - (1) The Project Manager shall approve the location from which the equipment is to be moved or transported.
 - (2) Where the equipment must be transported to the site of the Force Account work, the Department will pay the reasonable cost of mobilizing and transporting the equipment, including its loading and unloading, from its original location to the site of Force Account work. Upon completion of the work the Department will pay the reasonable cost of mobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.
 - (3) The cost of transporting the equipment shall not exceed the rates established by the Hawaii State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Project Manager based upon the prevailing rates charged by established haulers within the locale.
 - (4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the Force Account work. Upon completion of the work the Department will pay the reasonable cost of moving of the Equipment back to its original or another location, whichever cost is less.
 - (5) At the discretion of the Project Manager, when the Contractor desires to use such equipment for other than Force Account work, the costs of mobilization and transportation shall be prorated between the Force Account and non- Force Account work.
- (l) Pickup trucks, vans, storage trailers, unless specifically rented for the Force Account work, shall be considered incidental to the Force Account work and the costs therefor are included in the markup allowed under Section 4.5, ALLOWANCES FOR OVERHEAD AND PROFIT.

- 8.3.4.6 STATE EXCISE (GROSS INCOME) TAX AND BOND. A sum equal to the current percentage rate for the State excise (Gross Income) tax on the total sum determined in Subsections 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 above, and the bond premium shall be added as compensation to the Contractor. The actual bond premium not to exceed one percent (1%) shall be added to items covered by Subsections 8.3.4.1, 8.3.4.2, 8.3.4.3 and 8.3.4.4 when applicable.
- (a) The compensation as determined in Subsections 8.3.4.1, 8.3.4.2, 8.3.4.3, 8.3.4.4 and 8.3.4.5 above shall be deemed to be payment in full for work paid on a Force Account basis.
- 8.3.4.7 RECORDS. The Contractor and the Project Manager shall compare records of the labor, materials and equipment rentals paid by the Force Account basis at the end of each day. These daily records, if signed by both parties, shall thereafter be the basis for the quantities to be paid for by the Force Account method. The Contractor shall not be entitled to payment for Force Account records not signed by the Project Manager.
- 8.3.4.8 STATEMENTS. No payment will be made for work on a Force Account basis until the Contractor has submitted to the Project Manager, duplicate itemized statements of the cost of such Force Account work detailed as follows:
- (a) Laborers. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable if any.
- (b) Equipment. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Materials:
- (1) Quantities of materials, prices and extensions.
- (2) Costs of transporting materials, if such cost is not reflected in the prices of the materials.
- (3) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractors shall submit an affidavit certifying that such materials were taken from stock and that the amount claimed represents the actual cost to the Contractor.
- (d) Insurance. Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- 8.4 PROGRESS AND/OR PARTIAL PAYMENTS
- 8.4.1 PROGRESS PAYMENTS. The Contractor will be allowed progress payments on a monthly basis upon preparing the Monthly Payment Application forms and submitting the originals to the Project Manager. The monthly payment shall be based on the items of work satisfactorily completed and the value thereof at unit prices and/or lump sum prices set forth in the contract as determined by the Project Manager and will be subject to compliance with Section 7.9, PAYROLLS AND PAYROLL RECORDS.
- 8.4.1.1 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.

- 8.4.1.2 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.
- 8.4.2 In the event the Contractor or any Subcontractor fails to submit certified copies of payrolls in accordance with the requirements of Section 7.9, PAYROLLS AND PAYROLL RECORDS, the Project Manager may retain the amount due for items of work for which payroll affidavits have not been submitted on a timely basis notwithstanding satisfactory completion of the work until such records have been duly submitted. The Contractor shall not be due any interest payment for any amount thus withheld.
- 8.4.3 PARTIAL PAYMENT FOR MATERIALS. The Contractor will also be allowed partial payments to the extent of ninety percent (90%) of the manufacturer's, supplier's, distributor's or fabricator's invoice cost of accepted materials to be incorporated in the work on the following conditions:
- 8.4.3.1 The materials are delivered and properly stored at the site of the Work; or
- 8.4.3.2 For special items of materials accepted by the Project Manager, the materials are delivered to the Contractor or subcontractor(s) and properly stored in an acceptable location within a reasonable distance to the site of the Work.
- 8.4.4 Partial payments shall be made only if the Project Manager finds that:
- 8.4.4.1 The Contractor has submitted bills of sale for the materials or otherwise demonstrates clear title to such materials.
- 8.4.4.2 The materials are insured for their full replacement value to the benefit of the Department against theft, fire, damages incurred in transportation to the site, and other hazards.
- 8.4.4.3 The materials are not subject to deterioration.
- 8.4.4.4 In case of materials stored off the project site, the materials are not commingled with other materials not to be incorporated into the project.
- 8.4.5 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.
- 8.5 PROMPT PAYMENT (§3-125-23 HAR)
- 8.5.1 Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- 8.5.2 Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fine disputes over the subcontractor's performance under the subcontract.

- 8.5.3 BONA FIDE DISPUTES. The existence of a bona fide dispute with a subcontractor or material supplier shall not release the Contractor of its prompt payment obligations as to all sums due that are not directly affected by such dispute.
- 8.5.4 FILING NON-PAYMENT COMPLAINT. Subcontractors and material suppliers may file in writing a complaint with the Chairman regarding non-payment by the Contractor. Such complaint shall include:
- 8.5.4.1 The amount past due for work performed and already paid for by the Department;
- 8.5.4.2 That all the terms, conditions or requirements of its subcontract have been met; and
- 8.5.4.3 That no bona fide dispute over its performance exists. The Department will investigate the validity of the complaint.
- 8.5.5 The Department may withhold from future progress payments amounts to cover any sums paid to the Contractor for work performed by a subcontractor if the Department finds that the subcontractor complaint regarding non-payment by the Contractor has merit.
- 8.5.6 If the Project Manager determines that the Contractor failed to make prompt payment required to a subcontractor or material supplier with whom it has no bona fide dispute, the Project Manager shall inform the Contractor of the findings and request the Contractor make payment accordingly. If the Contractor does not act promptly, the Project Manager shall take appropriate action as allowed under this Contract and/or refer the matter to the Contractor Licensing Board for appropriate action under Section 444-17, Hawaii Revised Statutes regarding the Revocation, Suspension and Renewal of (Contractor) Licenses and/or initiate a petition for debarment of the Contractor from bidding on other Department jobs.
- 8.6 RETAINAGE
- 8.6.1 The Department will retain five percent (5%) of the total amount of progress and / or partial payments until after completion of the entire Contract in an acceptable manner at which time this balance, less any previous payments, will be certified and paid to the Contractor. After fifty percent (50%) of the work is completed, and if progress is satisfactory, the Project Manager at its sole discretion may elect not to withhold further retainage. If progress is not satisfactory, the Department may continue to withhold as retainage sums not exceeding five percent (5%) of the amount earned.
- 8.6.2 The retainage shall not include sums deducted as liquidated damages from monies due or that may become due the Contractor under the Contract.
- 8.6.3 Contractor may withdraw from time to time the whole or any portion of the sum retained after endorsing over to the Department and depositing with the Department any general obligation bond of the State or its political subdivisions suitable to the Department but in no case with a face value less than the value established by law of the amount to be withdrawn. The Department may sell the bond and use the proceeds therefrom in the same way as it may use monies directly retained from progress payments or the final payment.

- 8.7 **WARRANTY OF CLEAR TITLE.** The Contractor warrants and guarantees that all work and materials covered by progress or partial payments made thereon shall be free and clear of all liens, claims, security interests or encumbrances, and shall become the sole property of the Department. This provision shall not, however, be construed as an acceptance of the work nor shall it be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Department to require the fulfillment of all the items of the Contract.
- 8.7.1 **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.
- 8.8 **FINAL PAYMENT**
- 8.8.1 Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- 8.8.2 Sums necessary to meet any claims of any kind by the Department may be retained from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.
- 8.9 **STATE'S RIGHT TO 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 Subsection, 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.

~END OF ARTICLE 8~

Instructions for Bid Submittal

General Instructions for Bid Submittal

- *Bid offers shall be submitted to the DHHL in the prescribed format outlined in this IFB.*
- *For your convenience, an “IFB Checklist for Bidders” is included in this section for your use.*
- *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- *A written response is required for each item unless indicated otherwise.*
- *Bid documents and all certifications should be written legibly or typed and completed with black ink.*

I. Bid Offer Form

The bid offer form must be completed and submitted to the DHHL by the required due date and time, and in the form prescribed by the DHHL. Electronic mail and facsimile transmissions shall not be accepted.

Interested bidders shall submit its bid under the interested bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on the Bid Offer Form. Failure to do so may delay proper execution of the Contract.

Interested bidders are required to submit the following certifications with the Bid Form. In lieu of item a below, interested bidders may also submit an original consolidated CERTIFICATE OF VENDOR COMPLIANCE as issued by the State Procurement Office via the online system, “Hawaii Compliance Express”. Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

- a. Valid tax clearance certificate (Form A-6) issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). Tax clearance certificates are valid for six (6) months and only original tax clearance certificates or certified copies will be accepted for this purpose.;
- b. Corporate Resolution evidencing who is authorized to sign bid documents and contracts on behalf of the Bidder.

Interested bidder's authorized signature shall be an original signature in ink. If the Bid Offer Form on the appropriate page(s) is unsigned or the affixed signature is a facsimile or a photocopy, the Bid Offer Form shall be automatically rejected. If the Bid Offer Form is not signed by an authorized representative as submitted on the corporate resolution, the Bid Offer Form shall be automatically rejected. Interested bidders shall include a notary public affidavit.

A bid security deposit is required for this IFB. The Bid Offer Form is included in this IFB.

Bid Quotation. The Total Sum Bid Price shall include all materials, labor, tools, equipment, machinery and all incidentals necessary, including excavation and backfill, **inclusive** of general excise tax to install or to construct these items in place, complete and in accordance with the plans and specifications contained in this IFB

II. General Conditions and DHHL Interim General Conditions

The General Conditions (AG-008 Rev. 4/15/2009) and DHHL Interim General Conditions (August 16, 2005) of the Contract are attached for interested bidder's review and information. The General Conditions and the DHHL Interim General Conditions shall be incorporated into the Contract with the Successful Bidder(s).

IFB Checklist for Bidders

IFB-11- HHL-007

Operation and Maintenance of the Department of Hawaiian Home Lands
Anahola Water System and Puu Opaē Water System

Items required prior to Bid Opening:

- ☐ SPO-38 (Hawaii Product Preference Request, if any), by 2:00 p.m., February 4, 2011.
- ☐ Notice of Intention to Bid, no later than 4:00 p.m., February 8, 2011.
- ☐ SPO- Form 21 (Standard Qualification Questionnaire), submitted to DHHL- Land Development Division by 4:00 p.m., February 22, 2011.

Items required with Sealed Bid:

- ☐ Bid Package Envelope Cover (with the words “Sealed Bid”), included with this IFB.

The Envelope Cover Form shall be used for Sealed Bid Envelopes. The cover form should be glued or taped to the front of the bid envelope and the information type- written or printed clearly in ink.

- ☐ Corporate Resolution (Indicating who is authorized to sign bid documents and contracts)
- ☐ Valid Tax Clearance Certificate, or Certificate of Vendor Compliance (via Hawaii Compliance Express)
- ☐ Bid Security
- ☐ Bid Offer Form (included with this IFB)

The total sum bid amount must be typed or clearly written in both numbers and words in the appropriate space on page 3 of the Bid Offer Form. Illegible writing on any portion of the Bid Offer Form, except for the signee’s signature, may be grounds for considering a Bid “non-responsive”.

* All sealed bids must comply with the provisions of Interim General Conditions, Section 2.10.

DEPARTMENT OF HAWAIIAN HOME LANDS

**OPERATION AND MAINTENANCE OF THE
DEPARTMENT OF HAWAIIAN HOME LANDS
ANAHOLA WATER SYSTEM AND EMERGENCY
AND CALL OUT SERVICES FOR THE PUU OPAE
DITCH WATER SYSTEM**

ISLAND OF KAUAI, Hawaii

IFB NO.: IFB-11-HHL-007

SEALED BID

Submitted by: _____

Address: _____

Date: _____

Bid Package Envelope Cover

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

BID OFFER FORM FOR

**OPERATION AND MAINTENANCE OF THE ANAHOLA WATER SYSTEM
AND EMERGENCY AND CALL OUT SERVICES FOR THE
PUU OPAE DITCH WATER SYSTEM
ISLAND OF KAUAI, HAWAII**

IFB No.: IFB-11-HHL-007

Mr. Albert "Alapaki" Nahale-a, Chairman-Designate
Hawaiian Homes Commission
Department of Hawaiian Home Lands
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Dear Mr. Nahale-a:

The undersigned has carefully examined, read, and understands the terms and conditions in the Specifications, Special Conditions attached hereto, DHHL Interim General Conditions, and General Conditions specified in the Invitation for Bids (IFB) No. IFB-11-HHL-007. The State of Hawaii's (State) Contract for Goods and Services Based on Competitive Sealed Bids AG-003 Rev. 6/22/2009, General Conditions, AG-008 Rev. 4/15/2009, are included by reference and made part hereof and available upon written request to the Procurement Officer. The undersigned hereby submits the following offer to perform the work for IFB No. IFB-11-HHL-007 as specified herein, all in accordance with the true intent and meaning thereof.

The undersigned understands and agrees that:

1. The State reserves the right to reject any and all offers and to waive any items that are defective when, in the State's opinion, such rejection or waiver will be in the best interest of the State. A solicitation may be rejected in whole or part when in the best interest of the State.
2. If awarded the contract, all services will be in accordance with Hawaii Revised Statutes (HRS) § 103-55.5.
3. In submitting this offer, the Offeror is not in violation of HRS Chapter 84, concerning prohibited State contracts.
4. By submitting this offer, the Offeror certifies that the offer was independently arrived at without collusion and the Offeror did not participate in any practices to restrict competition.
5. It is understood that the failure to receive any addendum shall not relieve the Offeror from any obligation under this IFB.

Date: _____

The undersigned represents that it is: **(Check ✓ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, is or shall be registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (DCCA-BREG) to do business in the State of Hawaii.

State of incorporation: _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other: _____

Federal ID No.: _____

Hawaii General Excise Tax ID No.: _____

Telephone No.: _____

Fax No.: _____

E-Mail Address.: _____

Payment address (other than street address below)

(Street Address, City, State, Zip Code)

Business address

(Street Address, City, State, Zip Code)

Respectfully submitted:

Authorized (Original) Signature

Name and Title (Please Type or Print)

* _____
Exact Legal Name of Company (Offeror)

*If Offeror shown above is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

The following bid is hereby submitted for _____ for the Department of
Hawaiian Home Lands.

The following bid is hereby submitted for operation and maintenance of the Anahola Water System and Emergency and Call Out Services for the Puu Opae Ditch Water System on the Island of Kauai as specified:

<u>Item No.</u>	<u>Unit Bid Price</u>	<u>No. Of Months</u>	<u>Total Bid Price</u>
<u>Group IA. Operation & Maintenance of Anahola Water System</u>			
1.	Operation and maintenance service of pumpstation, distribution system, water storage system, landscape maintenance, laboratory testing and reporting, meter and billing.	\$_____/mo. 24 mos.	\$_____
2.	Chlorine and Supplies (Allowance)		\$ <u>30,000</u>
	Sub-total Bid Price (Group IA, Item Nos. 1-2)		\$_____

<u>Item No.</u>	<u>Unit Bid Price</u>	<u>No. Of Months</u>	<u>Total Bid Price</u>
<u>Group IB. Emergency Repairs and Call-outs</u>			
3.	Twenty-four (24) hour emergency call-out services provided seven (7) days a week with one (1) hour response time performed by appropriate licensed trade (Allowance)		\$ <u>50,000</u>
4.	Unforeseen Equipment Failures: An allowance is provided for unforeseen equipment failures, including but not limited to, total replacement or replacement of parts for pumps, electrical lines, tanks, transmission and distribution lines and other related water facility needs (Allowance)		\$ <u>100,000</u>
	Sub-total Bid Price (Group IB, Item Nos.3-4)		\$_____
	SUB-TOTAL GROUP 1A AND GROUP 1B (Item Nos,. 1-5)		\$_____

Group IIA.

Puu Opae Ditch Water System Emergency Repairs and Call-outs

1. Twenty-four (24) hour emergency call-out services provided seven (7) days a week with one (1) hour response time performed by appropriate licensed trade **(Allowance)** \$ 10,000
 2. Unforeseen Equipment Failures: An allowance is provided for unforeseen equipment failures, including but not limited to, total replacement or replacement of parts for pumps, electrical lines, tanks, transmission and distribution lines and other related water facility needs **(Allowance)** \$ 25,000
- Sub-total Bid Price (Group IIA, Item Nos.1-2) \$ _____
- TOTAL SUM BID (GROUP IA + IIA)** \$ _____

THE FOLLOWING INFORMATION IS SUBMITTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE SPECIAL CONDITIONS:

1. Refer to OFFEROR QUALIFICATIONS, Item 1, SC-7 for details.

Attach documented operations and maintenance and repair experience to substantiate five (5) consecutive years experience.

2. Refer to OFFEROR QUALIFICATIONS, Item 3, SC-7 for details.

<u>Offeror or Subcontractor Name</u>	<u>Type of HRS Chapter 444E License</u>	<u>License No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

<u>Name of Licensed Plumber</u>	<u>HRS Chapter 448E License No.</u>
_____	_____

3. Refer to OFFEROR QUALIFICATIONS, Item 4 SC-7 for details.

<u>Name of Personnel</u>	<u>Certificate No.</u>
_____	_____
_____	_____
_____	_____

4. Refer to OFFEROR QUALIFICATIONS, Item 5, SC-7 for details
Service facility on the island of Kauai and name of contact person:

Name of Service Facility: _____

Address of Service Facility: _____

Name of contact person: _____

Telephone no.: _____
(Answering Service not acceptable)

Facsimile no.: _____

Offeror _____
(Name of Company)

List three (3) companies or government agencies for whom bidder has provided or is currently providing operation, maintenance, and repair services for Water system Facilities:

	<u>Name</u>	<u>Address</u>	<u>Phone No.</u>	<u>Contact Person</u>
1.	_____			

2.	_____			

3.	_____			

5. Refer to the STATUTORY REQUIREMENTS OF SECTION 103-55, HRS provision, SC-12 for details.

Are services to be performed under this contract similar to the work performed by public employees as described in the attachment specifications? Yes _____ No _____

If Yes, list similar positions: _____

6. Refer to INSURANCE COVERAGE, SC-2.

Insurance Coverage (If applicable):

	<u>Carrier</u>	<u>Policy No.</u>
1. Commercial General Liability	_____	_____
2. Worker's Compensation	_____	_____
3. Temporary Disability	_____	_____
4. Prepaid Health Care	_____	_____

Unemployment Insurance: State of Hawaii Labor No. _____

7. Refer to the PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES provision, Item 2, SC-12 for details.

Percentage of Unit Bid Price represents in-house labor cost for Group I: _____ %

Percentage of Unit Bid Price represents in-house labor cost for Group II: _____ %

PREFERENCE

It is further understood by the Bidder that if upon being granted Hawaii Products Preference, and being awarded the contract, if the Bidder fails to use such products or meet the requirements of such preference, the Bidder shall be subject to penalties, if applicable.

COMPLIANCE WITH ACT 175, HAWAII PRODUCTS PREFERENCE

Section 103D-1002, Hawaii Revised Statutes (HRS), as amended by Act 175 (Session Laws of Hawaii 2009), provides preference for Hawaii products. The previous Hawaii products list established pursuant to HRS §103D-1002 was suspended effective July 1, 2009, and a new list has been published by the State Procurement Office (SPO) at <http://www4.hawaii.gov/spoh/HiProducts/hiProducts.htm>. DHHL will be supplementing the list with additional approved products for this solicitation.

Pursuant to HRS §103D-1002(b) (2) and Procurement Circular No. 2009-13, bidders intending to use Hawaii products should distribute the attached SPO-38, *Certification for Hawaii Product Preference*, to each of the manufacturers and producers of such products which bidders intend to use if the manufacturers and producers if their products are not listed on the SPO Hawaii Products List or in the DHHL's list below. The manufacturers and producers must complete and submit SPO-38 to DHHL. The form must be received by DHHL no later than **02:00 p.m., February 4, 2011**. Submittal by facsimile (808 620-9299) is acceptable. If DHHL receives and approves SPO-38s relating to this solicitation DHHL will issue an addendum of certified and qualified Hawaii products by **04:00 p.m., February 16, 2011**.

Bidders may claim a Hawaii product preference for products that it manufactures or produces with its own workforce and equipment. The SPO-38, *Certification for Hawaii Product Preference*, must be submitted in accordance with the procedures described above in order for Bidder to claim a Hawaii product preference for such Hawaii products Bidder intends to use in this work.

A partial list of approved products is provided below.

Forms SPO-38, *Certification for Hawaii Product Preference* for the following Hawaii products have been received in compliance with the above.

Product Category	Product Subcategory as applicable	Manufacturer
Aggregates – Basaltic Termite Barrier		Ameron International Corporation
Aggregates and Sand – Basalt, Rock, Cinder, Limestone and Coral		Ameron International Corporation
		CTS Earthmoving, Inc.
		Delta Construction Corporation (11/3/09) (1/20/10)

		Edwin Deluz Trucking & Gravel LLC
		Grace Pacific (Oahu2)
		Hawaiian Cement
		Jas. W. Glover, Ltd. (Hawaii)(Kauai)
		Tileco, Inc.
		West Hawaii Concrete
		Yamada and Sons, Inc.
Aggregates – Recycled Asphalt and Concrete		Glover Honsador
		Grace Pacific (Oahu2)
		Jas. W. Glover, Ltd. (Hawaii)(Kauai)
Asphalt and Paving Materials		
		Black Plumeria LLC
		Grace Pacific Corporation (Hawaii) (Oahu) (Kauai)
		Jas. W. Glover, Ltd. (Hawaii)(Kauai)
		Maui Paving LLC
		Walker-Moody Pavement Products & Equipment
		Yamada and Sons, Inc. dba YS Rock and Con-Agg of Hawaii
Coatings – Cementitious Waterproofing		
Cement and Concrete Products		Ameron International Corporation
		BOMAT, Ltd.
		Glover Honsador
		Hawaiian Cement
		Jas. W. Glover, Ltd. (Hawaii)(Kauai)
		Kohala Coast Concrete & Precast LLC
		Tileco, Inc.
		West Hawaii Concrete
Precast Concrete Products		Hawaii Concrete Products, Inc.
		Kohala Coast Concrete & Precast LLC
		Ramtek Fabrication Co., Inc.
Environmental Sewage-Treatment Innovative System (ESIS) Individual wastewater system which utilizes anaerobic/aerobic processing to treat wastewater to R-2 quality at discharge		Environmental Waste Management Systems, Inc.
	Septic Tanks	
		Walker Industries, Ltd.
Playground surfaces, etc.		Innovative Playgrounds and Recreation, Inc.

Signs - Traffic, regulatory & construction		
		GP Roadway Solutions, Inc.
		Safety Systems Hawaii, Inc.
Soil Amendments, Mulch, Compost		Kauai Nursery & Landscaping, Inc.
		Sanford's Service Center, Inc.
Compost Filter		EnviroTech BioSolutions Hawaii, Inc.

SCHEDULE OF ACCEPTABLE HAWAII PRODUCTS AND DESIGNATION OF HAWAII PRODUCTS TO BE USED			
ACCEPTABLE HAWAII PRODUCTS		HAWAII PRODUCTS TO BE USED Cost FOB Jobsite, Unloaded Including Applicable General Excise and Use Taxes	
Description	Manufacturer	Base Bid	Additive Alternate
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____

The Bidder agrees that preference for Hawaii products shall be taken into consideration to determine the low Bidder in accordance with said sections and the rules promulgated; however, the award of contract will be in the amount of the bid offered exclusive of any preferences.

APPRENTICESHIP AGREEMENTS

Section 103-55.6, Hawaii Revised Statutes (HRS), was added by Act 17 (Special Legislative Session 1, 2009), and provides the 5% bid adjustment for bidders that are parties to apprenticeship agreements. To be eligible for the preference, the bidder shall:

1. State the trades the bidder will employ to perform the work.
2. For each trade to be employed to perform the work, the bidder shall submit a completed signed original *Certification Form 1* verifying the participation in an apprenticeship program registered with the State Department of Labor and Industrial Relations (DLIR).
3. The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the DLIR list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor.
4. The completed *Certification Form 1* for each trade must be submitted by the bidder with the proposal. Previous certifications shall not apply.

Upon receiving *Certification Form 1*, DHHL will verify with DLIR that the apprenticeship program is on the list of apprenticeship programs registered with DLIR. If the program(s) are not confirmed by DLIR, the bidder will not qualify for the preference.

<u>LIST OF CONSTRUCTION TRADES TO BE EMPLOYED</u>	
<u>TRADE</u>	<u>APPRENTICESHIP PROGRAM SPONSOR</u>

(Add additional sheets if necessary)

METHOD OF AWARD

Bidder is required to bid on the entire project. The low bidder shall be determined by the procedures outlined in items 1) through 4) below:

- 1) Prior to opening of bids, the State will determine the amount of funds available for the project. This amount will be designated the "control amount". The control amount shall be announced at, and prior to the opening of bids.
- 2) The Base Bid and Alternate, if any, of each Bidder will be adjusted to reflect the applicable preferences in accordance with Chapter 103D, HRS. The Alternate, if any, will then be added to the Base Bid and compared with the control amount.
- 3) The low bidder shall be the Bidder having the lowest aggregate amount, within the control amount (after application of the various preferences), for the Base Bid plus the Alternate, if any.
- 4) If adding the Alternate, if any, would make the aggregate amount exceed the control amount for all Bidders, the low bidder shall be the Bidder having the lowest Base Bid after application of the various preferences.

It is further understood and agreed that:

- 1) The Chairman reserves the right to reject any and/or all bids and waive any defects when, in his opinion, such rejection or waiver will be in the best interest of the State.
- 2) After determining the low bidder, an award may be made either on the amount of the Base Bid alone, or including the Alternate (exclusive of preferences), if:
 - a. It is in the best interest of the State;
 - b. Funds are available at time of the award; and
 - c. The combination of the Base Bid plus Alternate does not change the apparent low bidder.
- 3) In the event the Base Bid for all Bidders exceed the control amount, the Chairman reserves the right to negotiate with the lowest responsible and responsive bidder to award a contract within available funds.
- 4) In the event the award is made for the Base Bid alone, the Chairman reserves the right to amend the contract at a later date to include the Alternate should funds subsequently become available.

OTHER CONDITIONS

- 1) The liquidated damages per working day for failure to complete the work on time have been determined and are noted in the Special Conditions.
- 2) By submitting this bid, the undersigned is declaring that his firm has not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past one (1) year.
- 3) By submitting this bid, the undersigned is declaring that Bidder's own organization will perform at least 20% of the total contract work.
- 4) Upon the acceptance of the bid by the Chairman, the undersigned must enter into and execute a contract for the same and furnish a Performance and Payment Bond, as required by law. These bonds shall conform to the provisions of Sections 103D-324 and 325, Hawaii Revised Statutes, and any law applicable thereto.
- 5) The quantities given herewith are approximate only and are subject to increase or decrease.
- 6) The estimated quantities shown for items for which a UNIT PRICE is asked in this bid are only for the purpose of comparing on a uniform basis bids offered for the work under this contract. No claim shall be filed for anticipated profit or loss because of any difference between the quantities of the various classes of work done or the materials and equipment actually installed and the said estimated quantities. Payment on UNIT PRICE items will be made only for the actual number of units incorporated into the finished project at the contract UNIT PRICE.
- 7) If the product of the UNIT PRICE BID and the number of units does not equal the total amount stated by the undersigned in the Bid for any item, it will be assumed that the error was made in computing the total amount. For the purpose of determining the lowest Bidder, the stated UNIT PRICE alone will be considered as representing the Bidder's intention and the total amount bid on such items shall be considered to be the amount arrived at by multiplying the UNIT PRICE by the number of units.
- 8) Certification for Safety and Health Programs for Bids in Excess of \$100,000. In accordance with Sections 103D-327 and 396-18, Hawaii Revised Statutes, by submitting this bid, the undersigned certifies that his firm will have a written Safety and Health Plan for this project that will be available and implemented by the Notice to Proceed date of this project. Details of the requirements of this plan may be obtained from the Department of Labor and Industrial Relations, Occupational, Safety and Health Division.
- 9) Anti-Collusion Certification. By submitting this bid, the undersigned is declaring that the price submitted is independently arrived at without collusion.

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

Receipt of the following addenda issued by the Department is acknowledged by the date(s) of receipt indicated below:

	Date		Date
Addendum No. 1	_____	Addendum No. 5	_____
Addendum No. 2	_____	Addendum No. 6	_____
Addendum No. 3	_____	Addendum No. 7	_____
Addendum No. 4	_____	Addendum No. 8	_____

It is understood that failure to receive any such addendum shall not relieve the Contractor from any obligation under this IFB as submitted.

ALL JOINT CONTRACTORS OR SUBCONTRACTORS TO BE ENGAGED ON THIS PROJECT

The Bidder certifies that the following is a complete listing of all joint Contractors or Subcontractors covered under Chapter 444, Hawaii Revised Statutes, who will be engaged by the Bidder on this project to perform the nature and scope of work indicated pursuant to Section 103D-302, Hawaii Revised Statutes, and understands that failure to comply with this requirement shall be just cause for rejection of the bid.

The Bidder further understands that only those joint Contractors or Subcontractors listed shall be allowed to perform work on this project and that all other work necessary shall be performed by the Bidder with his own employees. If no joint Contractor or Subcontractor is listed, it shall be construed that all of the work shall be performed by the Bidder with his own employees.

The Bidders must be sure that they possess and that the Subcontractors listed in the bid possess all the necessary licenses needed to perform the work for this project. The bidder shall be solely responsible for assuring that all the specialty licenses required to perform the work are covered in his bid.

The Bidder shall include the license number of the joint Contractors or Subcontractors listed below. Failure to provide the correct names and license numbers as registered with the Contractor's Licensing Board may cause rejection of the bid submitted.

Complete Firm Name of Joint Contractor or Subcontractor for Total Sum Bid	License Number	Nature and Scope of Work to be Performed

(Add additional sheets if necessary)

Bid Security in the amount of: _____
_____ DOLLARS (\$ _____)

as required by law, is enclosed herewith in the form of:

- ☐ Surety Bond (*1)
- ☐ Legal Tender (*2)
- ☐ Cashier's Check (*3)
- ☐ Certificate of Deposit (*3)
- ☐ Certified Check (*3)
- ☐ Official Check (*3)
- ☐ Share Certificate (*3)
- ☐ Teller's Check (*3)
- ☐ Treasurer's Check (*3)

Respectfully submitted,

Name of Company, Joint Venture or Partnership

License No.

By _____
Signature (*4)

Title: _____

Date: _____

Address: _____

Telephone No.: _____

(IF A CORPORATION, AFFIX CORPORATE SEAL TO SIGNATURE, BE SURE TO FILL IN ATTACHED LIST OF SUBCONTRACTORS. THIS BID FORM MAY NOT BE ALTERED AND BIDDERS MAY NOT QUALIFY OR CONDITION THEIR BIDS IN ANY WAY.)

PLEASE FILL OUT THE ATTACHED CERTIFICATE OF RESOLUTION GIVING EVIDENCE OF THE AUTHORITY OF THIS OFFICER TO SUBMIT BIDS ON BEHALF OF THE COMPANY.

NOTES:

- *1. Surety bond underwritten by a company licensed to issue bonds in this State;
- *2. Legal tender; or
- *3. A certificate of deposit; share certificate; or cashier's, treasurer's, teller's, or official check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation of the National Credit Union Administration.
 - A. These instruments may be utilized only to a maximum of \$100,000.
 - B. If the required security or bond amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
- *4. Please attach to this page evidence of the authority of this officer to submit bids on behalf of the Company, and also the names and residence addresses of all officers of the Company.
- *5. Fill in all blank spaces with information asked for or bid may be invalidated. BID MUST BE INTACT; MISSING PAGES MAY INVALIDATE YOUR BID.

CERTIFICATE OF RESOLUTION

I, _____, Secretary of _____, a Hawaii Corporation, do hereby certify that the following is a full, true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation, at its meeting duly called and held at the office of the Corporation _____, Hawaii, on _____ day of _____, 20_____, at which a quorum was present and acting throughout; and that said resolution has not been modified, amended or rescinded and continues in full force and effect.

“RESOLVED that any individual at the time holding the position of President or Vice President, be, and each of them hereby is, authorized to execute on behalf of the Corporation any bid, proposal or contract for the sale or rental of the products of the Corporation or for the services to be performed by the Corporation and to execute any bond required by any such bid, proposal or contract with the United States Government or the State of Hawaii or the City and County of Honolulu, or any County of Municipal Government of said State, or any department or subdivision of any of them.”

IN WITNESS THEREOF, I have hereunto set my hand and affixed the corporate seal of said _____ this _____ day of _____, 2010.

.

Secretary

END OF BID

NOTICE OF INTENTION TO BID

Date: _____

Mr. Albert "Alapaki" Nahale-a
Hawaiian Homes Commission
DEPARTMENT OF HAWAIIAN HOME LANDS
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Attention: Patrick Young, Land Development Division
Notice of Intention to Bid due 2:00 p.m., February 8, 2011.

Gentlemen:

In accordance with the provisions of Section 103D-310, Hawaii Revised Statutes and Hawaii Administrative Rules 3-122-111, it is the intention of the undersigned to bid on IFB No. IFB-11-HHL-007, OPERATION AND MAINTENANCE OF THE DEPARTMENT OF HAWAIIAN HOME LANDS ANAHOLA WATER SYSTEM AND EMERGENCY AND CALL OUT SERVICES FOR THE PUU OPAE DITCH WATER SYSTEM, Island of Kauai, State of Hawaii, for which bids will be opened on **2:00 p.m., February 24, 2011**

_____ Name of Firm	_____ Contractor's License No.
_____ Address	_____ Hawaii General Excise Tax No.
_____ City, State and Zip Code	_____ Telephone No. / Facsimile No.
	_____ e-mail address

Respectfully submitted,

_____ Signature
_____ Print Name and Title

Date: _____

Gentlemen:

The Department of Hawaiian Home Lands acknowledges, on this date above, your Notice of Intention to Bid on IFB-11-HHL-007.

Albert "Alapaki" Nahale-a, Chairman-Designate
Hawaiian Homes Commission

SAMPLE

STATE OF HAWAII
STANDARD
QUALIFICATION QUESTIONNAIRE
FOR
OFFERORS

issued by the
PROCUREMENT POLICY BOARD
STATE OF HAWAII

June 16, 2003

To be filed with the procurement officer calling for offers
in accordance with Section 103D-310, HRS, as amended.

Submitted By _____

Address _____

Date _____

STANDARD QUALIFICATION QUESTIONNAIRE

COVERING EXPERIENCE, EQUIPMENT AND FINANCIAL STATEMENT OF OFFERORS. THE OFFICER CALLING FOR OFFERS MAY REQUIRE THE OFFEROR TO FURNISH ADDITIONAL INFORMATION NOT SPECIFICALLY COVERED HEREIN. ALL ITEMS MUST BE ANSWERED AND OMISSIONS MAY BE CONSIDERED GOOD CAUSE FOR UNFAVORABLE CONSIDERATION.

GENERAL INFORMATION

1. The statements contained in this Questionnaire are being furnished for consideration in submitting an offer for the following project:

(a) Project Title _____

(b) Location _____

(c) Bid Opening Date _____

2. The Questionnaire is being submitted in behalf of:

(a) Name of Offeror _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual
☐ A Joint-Venture

(b) Address _____

(c) Telephone No. _____

(d) Date Submitted _____

3. If the bid is submitted by a joint venture, composed of two or more individual firms, then each member firm comprising the joint venture must submit all information listed on pages 3 through 16, inclusive, of the Questionnaire and, in addition, answer the following:

(a) Members of joint Venture _____

(b) Date of Joint Venture Agreement _____

(c) Is agreement between members comprising the joint venture joint and several liability? _____

If not, state the terms of agreement in this respect: _____

EXPERIENCE QUESTIONNAIRE

Submitted by _____

☐ A Corporation

☐ A Partnership

☐ An Individual

Principal Office _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. How many years has your organization been in business as a [General Contractor] under your present business name? _____
2. How many years experience in [construction] _____ has your organization had: (A) as a [General Contractor] _____; (B) as a [Sub-Contractor] _____
3. Show what [construction] projects your organization has completed in the past five (5) years in the following tabulation:

Contract Amt.	Class of Work	When Completed	Name and Address of Owner

4. Have you ever failed to complete any work awarded to you? _____ If so, state when, where and why? _____

5. Has any officer or partner of your organization in the past five (5) years been an officer or partner of some other organization that failed to complete a contract? If so, state name of individual, other organization and reason therefore _____

6. Has any officer or partner of your organization in the past five (5) years failed to complete a contract handled in his own name? _____ If so, state name of individual, name of Owner and reason therefore.

7. In what other lines of business are you financially interested? _____

8. For what corporations or individuals in the past five (5) years have you performed work, and to whom do you refer? _____

9. For what counties within the State of Hawaii have you performed work and to whom do you refer?

10. For what Bureaus or Departments of the State government have you performed work and to whom do you refer?

11. Have you performed work for the U. S. Government? _____ If so, when and to whom do you refer?

12. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? _____ If so, when and to whom do you refer? _____

13. What is the [construction] experience of the principal individuals of your organization?

Individual's Name	Present Position or Office	Years of Work Experience	Magnitude and Type of Work	In What Capacity?

EQUIPMENT QUESTIONNAIRE

Submitted by _____

Principal Office _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

1. In what manner have you inspected this proposed work? Explain in detail. _____

2. Explain your plan or layout for performing the proposed work. _____

3. The work, if awarded to you, will have the personal supervision of whom? _____

4. Do you intend to do the hauling on the proposed work with your own force? _____ If so, give amount and type of equipment to be used. _____

5. If you intend to sublet the hauling or perform it through an agent, state amount of sub-contract or agent's contract, and, if known, the name and address of sub-contractor or agent, amount and type of his equipment and financial responsibility _____

6. Do you intend to do grading on the proposed work with your own forces? _____ If so, give type of equipment to be used _____

-
-
-
-
-
-

- [illegible]

-
-
-
-
-
-

- [illegible]

- 7

Quantity	Item	Description, Size, Capacity, Etc.	Approximate Cost

12. How and when will you pay for the equipment to be purchased? _____

13. Do you propose to rent any equipment for this work? _____ If so, state type, quantity
 and reasons for renting _____

FINANCIAL STATEMENT

Submitted by _____

Principal Office _____

- ☐ A Corporation
☐ A Partnership
☐ An Individual

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made

BALANCE SHEET

As of _____, 20____

Assets

Current assets:

Cash and cash equivalents (1)	\$ _____
Short-term investments (2)	_____
Accounts receivable, net (3)	_____
Inventories (4)	_____
Costs and estimated earnings in excess of billings on uncompleted contracts (5)	_____
Prepaid expenses and other (6)	_____
Sub-Total Current Assets	_____

Property and equipment:

Land (7)	_____
Buildings (8)	_____
Vehicles, machinery and equipment (9)	_____
Furniture and fixtures (10)	_____
Less accumulated depreciation	(_____)
Sub-Total Net Property and Equipment	_____

Other assets:

Cash surrender value of life insurance policies (11)	_____
Deposits and other (12)	_____
Sub-Total Other Assets	_____

Total Assets: \$ _____

BALANCE SHEET (Continued)

Liabilities and Stockholder's Equity

Current liabilities:

Current portion of long-term debt (1)	\$ _____
Accounts payable (2)	_____
Billings in excess of costs and estimated earnings on uncompleted contracts (3)	_____
Accrued liabilities and other (4)	_____
Sub-Total Current Liabilities	_____

Long-term debt, net of current portion (5)	_____
--	-------

Sub-Total Liabilities & Long-term Debt:	\$ _____
---	----------

Stockholder's equity:

Capital stock (6)	_____
Additional paid-in capital (7)	_____
Retained earnings	_____
Treasury stock (8)	(_____)
Sub-Total Stockholder's Equity	\$ _____

Total Liabilities and Stockholder's Equity	\$ _____
--	----------

DETAILS RELATIVE TO ASSETS

(1) Cash and cash equivalents:

<u>Financial Institution</u>	<u>Type of Account</u>	<u>Amount</u>
		\$ _____

		\$ _____

(2) Short-term investments:

<u>Type of Security</u>	<u>Cost</u>	<u>Unrealized Gains</u>	<u>Unrealized Losses</u>	<u>Estimated Fair Value</u>
	\$ _____	\$ _____	\$ _____	\$ _____
	_____	_____	_____	_____
	_____	_____	_____	_____
	\$ _____	\$ _____	\$ _____	\$ _____

(3) Accounts receivable (list major debtors):

Completed contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Amount Receivable</u>
		\$ _____	\$ _____	\$ _____
		_____	_____	_____
		_____	_____	_____
		\$ _____	\$ _____	\$ _____

Other than completed contracts

<u>Name</u>	<u>Description</u>	<u>Due Date</u>	<u>Amount Receivable</u>
Less allowance for doubtful accounts			(_____)
			\$ _____

(4) Inventories

<u>Description</u>	<u>Cost</u>	<u>Market Value</u>	<u>Lower of Cost or Market Value</u>
	\$ _____	\$ _____	\$ _____
	_____	_____	_____
	_____	_____	_____
	\$ _____	\$ _____	\$ _____

DETAILS RELATIVE TO ASSETS (Continued)

(5) Costs and estimated earnings in excess of billings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Costs and Estimated Earnings in Excess of Billings</u>
		\$	\$	\$	\$	
			\$	\$	\$	\$

(6) Prepaid expenses and other

<u>Description</u>	<u>Amount</u>
	\$
	\$

(7) Land

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(8) Buildings

<u>Description</u>	<u>Location</u>	<u>Amount</u>
		\$
		\$

(9) Vehicles, machinery and equipment

<u>Description</u>	<u>Amount</u>
	\$
	\$

(10) Furniture and fixtures

<u>Description</u>	<u>Amount</u>
	\$
	\$

DETAILS RELATIVE TO ASSETS (Continued)

(11) Cash surrender value of life insurance policies

<u>Key Employee</u>	<u>Insurance Company</u>	<u>Policy Amount</u>	<u>Paid-Up Additional Insurance</u>	<u>CSV Amount</u>
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Less loans payable		_____	_____	(_____)
		\$ _____	\$ _____	\$ _____

(12) Deposits and other

<u>Description</u>	<u>Amount</u>
_____	\$ _____
_____	_____
_____	_____
	\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY

(1) Current portion of long-term debt (maturing within 12 months)

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

(2) Accounts payable (list major creditors)

<u>Name</u>	<u>Past Due Amount</u>	<u>Amount</u>
	\$ _____	\$ _____
	_____	_____
	_____	_____
	\$ _____	\$ _____

(3) Billings in excess of costs and estimated earnings on uncompleted contracts

<u>Name</u>	<u>Description</u>	<u>Completion Date</u>	<u>Contract Amount</u>	<u>Costs and Estimated Earnings to Date</u>	<u>Billings to Date</u>	<u>Billings in excess of costs and Estimated Earnings</u>
			\$ _____	\$ _____	\$ _____	\$ _____
			_____	_____	_____	_____
			_____	_____	_____	_____
			\$ _____	\$ _____	\$ _____	\$ _____

(4) Accrued liabilities and other

<u>Description</u>	<u>Amount</u>
	\$ _____

	\$ _____

(5) Long-term debt, net of current portion

<u>Lender</u>	<u>Description</u>	<u>Security Pledged</u>	<u>Due Date</u>	<u>Amount</u>
				\$ _____

				\$ _____

DETAILS RELATIVE TO LIABILITIES AND STOCKHOLDER'S EQUITY (Continued)

(6) Capital stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares Authorized</u>	<u>No. of Shares Issued and Outstanding</u>	<u>Par Value</u>	<u>Amount</u>
				\$	\$
					\$

(7) Additional paid-in capital

<u>Description</u>	<u>Amount</u>
	\$
	\$

(8) Treasury stock

<u>Type of Stock</u>	<u>Class</u>	<u>No. of Shares</u>	<u>Cost</u>
			\$
			\$

STATEMENTS OF INCOME AND RETAINED EARNINGS

For the Years Ended _____, 20____ and 20____

	20____ _____	20____ _____
Contract revenues	\$ _____	\$ _____
Costs of contracts	_____	_____
Gross income from contracts		
General and administrative expenses	_____	_____
Income from operations		
Other income (expense)	_____	_____
Income before income taxes		
Income taxes	_____	_____
Net income		
Retained earnings, beginning of the year	_____	_____
Retained earnings, end of the year	\$ _____	\$ _____

If a corporation, answer this: Capital paid in cash, \$ _____ When Incorporated _____ In what State _____ Date registered in Hawaii _____ President's name _____ Vice-President's name _____ Secretary's name _____ Treasurer's name _____	If a partnership, answer this: Date of organization _____ Date registered in Hawaii _____ State whether partnership is general or limited _____ <div style="border-top: 1px solid black; height: 10px; margin-top: 5px;"></div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width: 80%;">Name and address of partners:</th> <th style="width: 20%;">Age</th> </tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </table>	Name and address of partners:	Age	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
Name and address of partners:	Age												
_____	_____												
_____	_____												
_____	_____												
_____	_____												
_____	_____												

The undersigned hereby declares: that the foregoing is a true statement of the financial condition of the individual, partnership or corporation herein first named, as of the date herein first given; that this statement is for the express purpose of inducing the party to whom it is submitted to award the offeror a contract; and that any depository, vendor or other agency herein named is hereby authorized to supply such party with any information necessary to verify this statement.

NOTE: A partnership must give firm name and signatures of all partners. A corporation must give full corporate name, signature of official, and affix corporate seal.

Affidavit for Individual

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that the foregoing financial statement, taken from his books, is a true and accurate statement of his financial condition as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Applicant must also sign here)

 Notary Public

Affidavit for Partnership

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that he is a member of the firm of _____; and that he is familiar with the books of the said firm showing its financial condition; that the foregoing financial statement, taken from the books of the said firm, is a true and accurate statement of the financial condition of the said firm as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Members of firm must also sign here)

 Notary Public

Affidavit for Corporation

STATE OF HAWAII

COUNTY OF _____

_____ being duly sworn, deposes and says that he is _____ of the _____, the corporation described in and which executed the foregoing statement; that he is familiar with the books of the said corporation showing its financial condition; that the foregoing financial statement, taken from the books of the said corporation, is a true and accurate statement of the financial condition of said corporation as of the date thereof and that the answers to the foregoing interrogatories are true.

Sworn to before me this _____ day of _____ 20____

_____ (Officer must also sign here)

 Notary Public

STATE OF HAWAII — DEPARTMENT OF TAXATION
TAX CLEARANCE APPLICATION
PLEASE TYPE OR PRINT CLEARLY

1. APPLICANT INFORMATION: (PLEASE PRINT CLEARLY)

Applicant's Name _____

Address _____

City/State/Postal/Zip Code _____

DBA/Trade Name _____

2. TAX IDENTIFICATION NUMBER:

HAWAII TAX ID # **W** _____ - _____

FEDERAL EMPLOYER ID # _____ - _____
(FEIN)

SOCIAL SECURITY # (SSN) _____ - _____

3. APPLICANT IS A/AN: (MUST CHECK ONE BOX)

- | | | |
|---|--|--|
| <input type="checkbox"/> CORPORATION | <input type="checkbox"/> S CORPORATION | <input type="checkbox"/> TAX EXEMPT ORGANIZATION |
| <input type="checkbox"/> INDIVIDUAL | <input type="checkbox"/> PARTNERSHIP | <input type="checkbox"/> ESTATE <input type="checkbox"/> TRUST |
| <input type="checkbox"/> LIMITED LIABILITY COMPANY | <input type="checkbox"/> LIMITED LIABILITY PARTNERSHIP | |
| <input type="checkbox"/> Single Member LLC disregarded as separate from owner; enter owner's FEIN/SSN _____ | | |
| <input type="checkbox"/> Subsidiary Corporation; enter parent corporation's name and FEIN _____ | | |

4. THE TAX CLEARANCE IS REQUIRED FOR: (MUST CHECK AT LEAST ONE BOX)

- | | |
|---|---|
| <input type="checkbox"/> CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII * | <input type="checkbox"/> LIQUOR LICENSE * |
| <input type="checkbox"/> REAL ESTATE LICENSE | <input type="checkbox"/> CONTRACTOR LICENSE |
| <input type="checkbox"/> FINANCIAL CLOSING | <input type="checkbox"/> BULK SALES** |
| <input type="checkbox"/> HAWAII STATE RESIDENCY | <input type="checkbox"/> PROGRESS PAYMENT |
| <input type="checkbox"/> SUBCONTRACT | <input type="checkbox"/> FEDERAL CONTRACT |
| | <input type="checkbox"/> PERSONAL |
| | <input type="checkbox"/> LOAN |
| | <input type="checkbox"/> OTHER _____ |

* IRS APPROVAL STAMP IS ONLY REQUIRED FOR PURPOSES INDICATED BY AN ASTERISK.

** ATTACH FORM G-8A, REPORT OF BULK SALE OR TRANSFER

5. NO. OF CERTIFIED COPIES REQUESTED:

6. SIGNATURE:

SIGNATURE

DATE

() -
TELEPHONE

() -
FAX

PRINT NAME

PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor

FOR OFFICE USE ONLY

BUSINESS START DATE IN HAWAII

IF APPLICABLE

/ /

HAWAII RETURNS FILED

IF APPLICABLE

20____ 20____ 20____

STATE APPROVAL STAMP
(Not valid unless stamped)

*IRS APPROVAL STAMP

CERTIFIED COPY STAMP

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, or Executor, a power of attorney (State of Hawaii, Department of Taxation, Form N-848) must be submitted with this application. **If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required.** Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

SEE PAGE 2 ON REVERSE & SEPARATE INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

7. **CITY, COUNTY, OR STATE GOVERNMENT CONTRACT:** ☐ Bid/Entering Into or Ongoing Contract ☐ Completion/Final Payment
For completion/final payment of contract, please provide the name and telephone number of the contact person at the State or County Agency.
Name: _____ Telephone Number: _____

8. **LIQUOR LICENSING:** ☐ Initial ☐ Renewal ☐ Transfer-Seller ☐ Transfer-Buyer ☐ Special Event

9. **CONTRACTOR LICENSING:** ☐ Initial ☐ Renewal

10. **STATE RESIDENCY:** DATE APPLICANT ARRIVED OR RETURNED TO HAWAII _____

11. **ACCOUNTING PERIOD:** ☐ Calendar year ☐ Fiscal year ending _____
(MM/DD)

12. **TAX EXEMPT ORGANIZATION:**

A) Provide the Internal Revenue Code Section that applies to your exemption (e.g., 501(c)(3)). _____

B) Does your organization file:

- ☐ Federal Form 990, Return of Organization Exempt from Income Tax,
☐ Federal Form 990-T, Exempt Organization Business Income Tax Return, or
☐ None of the above.

13. **INDIVIDUAL:** Spouse's Name _____ SSN _____

14. **IF YOU DO NOT HAVE A GENERAL EXCISE TAX LICENSE AND REQUIRE A TAX CLEARANCE FOR A GOVERNMENT CONTRACT:**

A) Has your firm had any previous business income in Hawaii? ☐ YES ☐ NO

B) Does your firm have an office, inventory, property, employees, or other representatives in the State of Hawaii? ☐ YES ☐ NO

C) Has your firm provided any services within the State of Hawaii (e.g., servicing computers, training sessions, etc.)? ☐ YES ☐ NO

Note: If you answer "Yes" to any of the above questions, you are required to apply for a general excise tax license.

15. **FILING THE APPLICATION FOR TAX CLEARANCE:**

The completed application may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch. Applications which require an Internal Revenue Service Tax Clearance will be forwarded to the Internal Revenue Service after processing is completed by the Department of Taxation. Allow up to **10 to 15 business days** for processing between the Department of Taxation and the Internal Revenue Service.

State Dept. of Taxation
TAXPAYER SERVICES BRANCH
P.O. BOX 259
HONOLULU, HI 96809-0259
TELEPHONE NO.: 808-587-4242
TOLL FREE: 1-800-222-3229
FAX NO.: 808-587-1488
or
830 PUNCHBOWL STREET, RM 124
HONOLULU, HI 96813-5094

Internal Revenue Service
WAGE & INVESTMENT DIVISION
-TC M/S H214
FIELD ASSISTANCE GROUP 562
300 ALA MOANA BLVD., #50089
HONOLULU, HI 96850
TELEPHONE NO.: 808-539-1555
FAX NO.: 808-539-1573
or
TAXPAYER ASSISTANCE CENTER
HONOLULU:
300 ALA MOANA BLVD., RM 1-128

Applications are available at Department of Taxation and IRS offices in Hawaii, and may also be requested by calling the Department of Taxation on Oahu at 808-587-4242 or toll-free at 1-800-222-3229. The Tax Clearance Application, Form A-6, can be downloaded from the Department of Taxation's website (www.hawaii.gov/tax).

-----FOR OFFICE USE ONLY-----

TYPE OF TAX	TAX RETURNS FILED STATUS	Clerk's Initials	ITEMS RECEIVED
INCOME			
GENERAL EXCISE/USE/ COUNTY SURCHARGE TAX			
HAWAII WITHHOLDING			
TRANSIENT ACCOMMODATIONS			
RENTAL MOTOR/TOUR VEHICLE			
UNEMPLOYMENT INSURANCE			
OTHER TAXES			



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
**INSTRUCTION SHEET FOR FORM LIR#27 APPLICATION FOR
CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR**

Purpose

The State and County Government Purchasing Offices require vendors to submit a completed copy of this certificate. **Page 1 of this application becomes the Certificate of Approval.** Facsimiles and copies of this approval form are proof of compliance. This certificate applies to the Hawaii Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance, and Prepaid Health Care programs.

Applications are available at the addresses below and can be downloaded from the Department of Labor and Industrial Relations' (DLIR) web site (www.hawaii.gov/labor). **From the DLIR web site, Form LIR#27 is listed under the Unemployment Insurance Division and Disability Compensation Division.**

DO NOT SUBMIT THIS PAGE

Approved, Not Applicable, or Pending certificates are valid for 6 months.

Date submitted to the DLIR _____ (for your use)
Allow up to a total of seven (7) business days for processing.

**FILING INSTRUCTIONS FOR THE
APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR
Form LIR#27 (Rev. 10/05)**

SUBMIT (mail, fax, or deliver) completed application only to the Department of Labor and Industrial Relations, **Unemployment Insurance Division***.

*Unemployment Insurance Division
830 Punchbowl Street, Room 437
Honolulu, Hawaii 96813
Ph: (808) 586-8926
Fax: (808) 586-8929

INQUIRIES regarding the status of an application submitted seven (7) business days earlier should be directed to the **Disability Compensation Division**** (Workers' Compensation, Temporary Disability Insurance, and Prepaid Health programs).

**Disability Compensation Division
830 Punchbowl Street, Room 209
Honolulu, Hawaii 96813
Ph: (808) 586-9200
Fax: (808) 586-9206

The **Approved, Not Applicable, or Pending** certificate of approval will be faxed to the applicant by the Disability Compensation Division. **Non-compliant** applicants will receive Form LIR#27A instructing the applicant to contact the appropriate program(s).

Visit our Website at www.hawaii.gov/labor for ALL interactive and downloadable forms.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
**FORM LIR#27 APPLICATION FOR
CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR**

1. APPLICANT INFORMATION: (Please Type or Print Clearly)

*Applicant's Business Name			
Address	City	State	Zip Code
DBA/Trade Name			

* Business name must be the same name submitted with the applicant's bid or proposal.

2. IDENTIFICATION NUMBER(S): (Complete Applicable ID Numbers)

State Department of Labor Unemployment Insurance ID#	Federal Employer ID# (FEIN)
	-

3. EMPLOYERS: If you have a State Department of Labor Unemployment Insurance ID#, please skip question 3 only:

Do you currently have employee(s) working in the State of Hawaii? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you plan to have employee(s) work in the State of Hawaii? <input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

SEE INSTRUCTION SHEET FOR FILING INSTRUCTIONS. Failure to provide above required information on this application will result in a denial of this request. Unsigned applications will not be processed.

4. SIGNATURE:

Signature	Date	Telephone No. ()	Fax No. ()
Print Name		PRINT TITLE: Corporate Officer, General Partner or Member, Individual (Sole Proprietor), Trustee, Executor	
Email Address			

NOTE: If this application is stamped "PENDING", another LIR#27 must be submitted when employees are performing services in the State to determine compliance with the State of Hawaii labor laws. Approval constitutes a certificate of compliance with labor laws based on information available to the Department as of the approval date.

THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

Facsimiles and copies of this approval form are proof of compliance.

FOR OFFICE USE ONLY		Department of Labor and Industrial Relations Approval Stamp
DLIR Log No.	Date Received	

This certificate is valid for **SIX (6) MONTHS** from the approval date.

Corporate Resolution Form

CORPORATE RESOLUTION
(Name of Corporation - Use Letterhead)

I, _____, Secretary of _____
Corporation, a _____ corporation, do hereby certify that the following is a full,
true and correct copy of a resolution duly adopted by the Board of Directors of said Corporation,
at its meeting duly called and held at the office of the Corporation located at
_____,
(address)

on the _____ day of _____, 20____, at which a quorum was present
and acting throughout; and that said resolution has not been modified, amended or rescinded and
continues in full force and effect:

"RESOLVED that any individual at the time holding the position of
President or Vice President, be, and each of them hereby is, authorized to
execute on behalf of the Corporation any bid, proposal or contract for the
sale or rental of the products of the Corporation or for services to be
performed by the Corporation and to execute any bond required by any
such bid proposal or contract with the United States Government or the
State of Hawaii or the City and County of Honolulu, or any County or
Municipal Government of said State, or any department or subdivision of
any of them."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
said _____ Corporation this _____ day of
_____, 20_____.

Secretary

(Names and Addresses of:)
President
Vice President
Secretary

EXHIBIT A

SURETY [BID] [PROPOSAL] BOND
(11/17/98)

Bond No. _____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Name or Legal Title of Offeror)

as Offeror, hereinafter called Principal, and _____,
(Name of Bonding Company)

as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety
in the State of Hawaii, are held and firmly bound unto _____,
(State/County Entity)
as Owner, hereinafter called Owner, in the penal sum of _____

(Required Amount of Bid Security)

Dollars (\$_____), lawful money of the United States of America, for the payment of
which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

WHEREAS:

The Principal has submitted an offer for _____

(Project by Number and Brief Description)

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or in the
alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the
Owner in accordance with the terms of such offer, and give such bond or bonds as may be
specified in the solicitation or Contract Documents with good and sufficient surety for the faithful
performance of such Contract and for the prompt payment of labor and material furnished in the
prosecution thereof as specified in the solicitation then this obligation shall be null and void,
otherwise to remain in full force and effect.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Offeror)

Signature

Title

(Seal)

Name of Surety

Signature

Title

EXHIBIT B

PERFORMANCE BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a
surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

DOLLARS (\$ _____), to which payment Principal and Surety bind themselves,
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on
_____, for the following project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part
hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in
strict accordance with the terms of the Contract as said Contract may be modified or amended
from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT C

PERFORMANCE BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

_____, its successors and assigns, as Oblige, hereinafter called
(State/County Entity)
Obligee, in the amount of _____

(Dollar Amount of Contract)

DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which to the said Oblige, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to
Description _____;
_____;
- ☐ Certificate of Deposit, No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
_____;
- ☐ Cashier's Check No. _____, dated _____, issued
by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
_____;

- ☐ Teller's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Treasurer's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Official Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Obligee for the following Project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____, _____.

(Seal)

Name of Contractor

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT D

LABOR AND MATERIAL PAYMENT BOND (SURETY)

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

_____,
(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligor, in the amount of _____

_____ Dollars (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed Contract with the Obligor on _____ for the following project: _____

_____ hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT E

LABOR AND MATERIAL PAYMENT BOND

(11/17/98)

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

_____, its successors and assigns, as Oblige, hereinafter called
(State/County Entity)

Oblige, in the amount of _____

(Dollar Amount of Contract)

DOLLARS (\$_____), lawful money of the United States of America, for the payment of which to the said Oblige, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to
Description _____;
_____;
- ☐ Certificate of Deposit, No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
_____;
- ☐ Cashier's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
_____;
- ☐ Teller's Check No. _____, dated _____, issued by
_____,
drawn on _____;

a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- ☐ Treasurer's Check No. _____, dated _____, issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Official Check No. _____, dated _____, issued by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Oblige for the following Project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Oblige, its officers, agents, successors or assigns, free and harmless from all suits or actions of every

nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Contractor

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT F

COMBINATION PERFORMANCE AND PAYMENT BOND

(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

_____,
(Name and Street Address of Bonding Company)

as surety, hereinafter called Surety, a corporation(s) authorized to transact business as a
surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)
its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

(Twice the Dollar Amount of Contract)

DOLLARS (\$ _____) (being _____)
DOLLARS as performance bond and _____
DOLLARS as payment bond, each in the amount of one hundred percent of the contract price
as required by 103D-324, Haw. Rev. Stat.), lawful money of the United States of America, for
the payment of which to the said Obligee, well and truly to be made, Contractor and Surety bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS:

The Principal has by written agreement dated _____ signed a contract with
Obligee for the following Project: _____

_____,
hereinafter called Contract, which Contract is incorporated herein by reference and made a part
hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Principal shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Principal or its agents or servants or the improper performance of the Contract by the Principal or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that no change, extension, alteration, deduction or addition, permitted by the Contract, in or to the terms of the Contract, or the plans or specifications pertaining thereto, shall in any way affect the obligation of the Surety on this bond; and the Surety does hereby waive notice of any such change, extension, alteration, deduction or addition in or to the terms of the Contract, or the plans or specifications pertaining thereto, or in or to the said Project.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every person who has furnished labor or material to the Principal for the performance of the Contract who has not been paid in full therefor after ninety days from the completion and final settlement of any contract, may institute an action against the Principal and its sureties, and have their rights and claims adjudicated in the action, and judgment rendered thereon. If the full amount of the liability of the sureties on the bond is insufficient to pay the full amount of the claims, then, after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

The amount of this bond may be reduced in accordance with and subject to section 3-122-225, Hawaii Administrative Rules.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT G

**PERFORMANCE BOND (SURETY)
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES
(11/17/98)**

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)
its successors and assigns, hereinafter called Obligee, in the amount of

DOLLARS (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with Obligee dated _____ for _____

and entered into Supplemental Agreement No. _____, dated _____ for the period _____;
hereinafter collectively called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its

obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal, Surety shall either remedy the Default, or take over the work to be performed under the Contract and complete such work, subject, however, to the limitation of the penal sum of this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT H

**PERFORMANCE BOND
FOR SUPPLEMENTAL AGREEMENT
FOR GOODS AND SERVICES
(11/17/98)**

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full Legal Name and Street Address of Contractor)
as Contractor, hereinafter called Contractor, is held and firmly bound unto the
_____, its successors and assigns, as Obligee, hereinafter called Obligee,
(State/County Entity)
in the amount of _____
(Dollar Amount of Contract)
DOLLARS (\$ _____), lawful money of the United States of America, for the
payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its
heirs, executors, administrators, successors and assigns, firmly by these presents. Said
amount is evidenced by:

- ☐ Legal tender;
- ☐ Share Certificate unconditionally assigned to or made payable at sight to

Description _____;
- ☐ Certificate of Deposit, No. _____, dated _____ issued
by _____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
- ☐ Cashier's Check No. _____, dated _____, drawn
on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;
- ☐ Teller's Check No. _____, dated _____, drawn
on _____,
a bank, savings institution or credit union insured by the Federal Deposit
Insurance Corporation or the National Credit Union Administration, payable at
sight or unconditionally assigned to _____;

- ☐ Treasurer's Check No. _____, dated _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Official Check No. _____, dated _____, drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- ☐ Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Obligee for the following Project: _____

and entered into Supplemental Agreement No. _____, dated _____ for the period _____; hereinafter collectively called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____, _____.

(Seal)

Name of Contractor

*

Signature

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

STATE OF HAWAII
STATE PROCUREMENT OFFICE

CERTIFICATION FOR HAWAII PRODUCT PREFERENCE

1. Legal Name of the company whose product is mined, excavated, produced, manufactured, raised or grown in the state of Hawaii

Requester:

2. dba:

3. Hawaii General Excise Tax Number:

4. Business Address

5. Email Address

6. Contact Person

7. Phone Number:

Submit one (1) form for each product.

8. Specify and provide details of the product for which preference is claimed (ie: Milk, white, 2% low fat, 1 gallon, four (4) to a case etc.):

9. Quality Standards met by product (ie. California Milk Standards, ASTM/AHSTO, USDA, etc.) :

10. Product available on: ☐ Oahu ☐ Maui ☐ Hawaii ☐ Lanai ☐ Kauai ☐ Molokai

11. Product is certified an agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product raised, grown, or harvested in the state of Hawaii.

☐ Yes or ☐ No If yes, skip to number 14.

12	Definition: "Hawaii Input" is the part of the product cost attributable to production, manufacturing, or other expenses arising within the State of Hawaii. Fill in every line in column s A, B, & C	A Hawaii Input	B Non- Hawaii input	C Total A + B
a	Cost of direct materials to mine, excavate, produce, manufacture, raise, or grow the materials in the State of Hawaii.	\$_____ per unit	\$_____ per unit	\$_____ per unit
b	Cost of imported materials incurred after landing in the state of Hawaii, including but not limited to other articles, materials, and supplies, added to the imported materials.	\$_____ per unit	\$_____ per unit	\$_____ per unit
c	Cost of labor, variable overhead, utilities, and services, incurred in the production and manufacturing of materials or products in the State of Hawaii	\$_____ per unit	\$_____ per unit	\$_____ per unit
d	Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools, and equipment situated and located in the State of Hawaii used in the production or manufacturing of a product.	\$_____ per unit	\$_____ per unit	\$_____ per unit
e	Totals	\$_____ per unit (Add Column A)	\$_____ per unit (Add Column B)	\$_____ per unit (Add Column C)

13. Percent of Hawaii Input _____ % (12e. Column A Total + Column C Total)

14. Failure to adequately verify, deliver, or supply Hawaii products. A procurement officer who has awarded a contract finds the contractor has failed to comply with HRS §103D-1002, the contract shall be cancelled and the findings shall be referred for debarment or suspension proceedings under HRS §103D-702. Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency. If debarred, the person or company shall be prohibited from bidding on any state or county government solicitations for up to three (3) years.

Should the procurement officer receiving a protest challenging the validity of the classification of a Hawaii product request an audit of the information of the proper classification of the product as defined under HRS §103D-1002, the cost of the audit shall be paid for by the requester.

In the event of any change that materially alters the offeror's ability to supply the certified Hawaii products, the offeror shall immediately notify the chief procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Information submitted is CONFIDENTIAL or PROPRIETARY DATA, and the procurement officer shall not disclose this form, pursuant to HRS §92F-13(3).

I certify, under penalties set forth in HRS §103D-1002, that the information provided herein has been examined by me and to the best of my knowledge and belief is true, correct, complete, and made in good faith pursuant to HRS §103D-101.

Signature of Authorized Representative: _____

Date: _____

Print Name of Authorized Representative: _____

Title: _____

GOVERNMENT USE ONLY

☐ APPROVED ☐ DISAPPROVED

Procurement Officer Signature _____

Government Agency _____

Print Name _____

Date _____

Reference: _____
(Contract Number) _____
(IFB/RFP Number)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker’s Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its
debarment from future awards of contracts.

Date: _____

FORM 1

CERTIFICATION OF BIDDER'S PARTICIPATION IN APPROVED APPRENTICESHIP PROGRAM UNDER ACT 17

I. Bidder's Identifying Information			
A. Legal Business Name: _____			
B. Project Bid Title & Reference No.: _____			
C. Contact Person's Name: _____			
1. Phone No.: _____		2. E-Mail: _____	
II. Apprenticeable Trades To Be Employed*	B. Apprenticeship Sponsor*	C. No. Enrolled	D. No. Completed
A. (List)	(One Sponsor Per Form)	(# of apprentices currently enrolled as of bidder's request date)	(# of apprentices who completed the apprenticeship program in the 12 months prior to request date)
1.			
2.			
3.			
4.			
5.			
6.			
III. Bidder's Certification			
I certify that the above information is accurate to the best of my knowledge. I understand that my willful misstatement of facts may cause forfeiture of the preference under Act 17 and may result in criminal action. I give permission for outside sources to be contacted and for them to disclose any information necessary to verify the bidder's preference.			
A. Name (Type) _____		B. Title _____	
C. Signature (original signature required) _____		D. Date _____	
IV. Apprenticeship Sponsor's Contact Information			
A. Training Coordinator's Name: _____			
B. Address: _____			
C. Phone No.: _____		D. E-Mail: _____	E. Fax No: _____
V. Apprenticeship Program Sponsor's Certification			
I certify that the above information is accurate to the best of my knowledge. I understand that my willful misstatement of facts may cause forfeiture of the bidder's preference and may result in criminal action. I give permission for outside sources to be contacted and for them to disclose any information necessary to verify the bidder's preference under Act 17.			
A. Name of Authorized Official _____		B. Title _____	
C. Signature (original signature required) _____		D. Date _____	

* Name of Apprenticeable Trade and Apprenticeship Sponsor must be the **same** as recorded in the List of Construction Trades in Registered Apprenticeship Programs that is posted on the State Department of Labor and Industrial Relations website.

FORM 2

MONTHLY REPORT OF CONTRACTOR'S PARTICIPATION IN APPROVED APPRENTICESHIP PROGRAM UNDER ACT 17

I. Contractor's Identifying Information		II. Reporting Period	
A. Legal Business Name:		A. Month:	B. Year:
B. Project Contract Title & Reference No.:			
C. Contact Person's Name:			
1. Phone No.:		2. E-Mail:	
III. Apprenticeship Program (Complete a separate form for <i>each</i> apprenticeship program in which workers are employed on the project.)			
A. Contractor was a party to an apprenticeship program or programs with the following sponsor: (Give sponsor's name.)*		B. Was the contractor a party to the program during the <i>entire</i> report month?	
		1. Yes <input type="checkbox"/>	
		2. No <input type="checkbox"/> If NO, state applicable period and why (may be subject to sanctions.)	
IV. Contractor's Certification			
I certify that the above information is accurate to the best of my knowledge. I understand that my willful misstatement of facts may cause forfeiture of the preference under Act 17 and may result in criminal action. I give permission for outside sources to be contacted and for them to disclose any information necessary to verify the bidder's preference.			
A. Name (Type)		B. Title	
C. Signature (original signature required)		D. Date	
V. Apprenticeship Sponsor's Contact Information			
A. Training Coordinator's Name:			
B. Address:			
C. Phone No.:		D. E-Mail:	
		E. Fax No:	
VI. Apprenticeship Program Sponsor's Certification			
I certify that the above information is accurate to the best of my knowledge. I understand that my willful misstatement of facts may cause forfeiture of the bidder's preference and may result in criminal action. I give permission for outside sources to be contacted and for them to disclose any information necessary to verify the bidder's preference under Act 17.			
A. Name of Authorized Official		B. Title	
C. Signature (original signature required)		D. Date	

* Name of Apprenticeship Sponsor must be the **same** as recorded in the List of Construction Trades in Registered Apprenticeship Programs that is posted on the State Department of Labor and Industrial Relations website.

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS
(See Special Provisions)**

Subject: IFB No.: IFB-11-HHL-007

Title of IFB: OPERATION AND MAINTENANCE OF THE DEPARTMENT OF
HAWAIIAN HOME LANDS ANAHOLA WATER SYSTEM AND
EMERGENCY AND CALL OUT SERVICES FOR THE PUU OPAE
DITCH WATER SYSTEM, ISLAND OF KAUAI

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), 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. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further 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 wage required by section 103-55, HRS.

Offeror _____

Signature _____

Title _____

Date _____