

Department of Business, Economic Development, and Tourism
General Terms and Conditions for
Goods and Services
April 15, 1996

These General Terms and Conditions for Goods and Services are hereby incorporated and made a part of all solicitations and offers.

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

GENERAL TERMS AND CONDITIONS

FOR GOODS AND SERVICES

APRIL 15, 1996

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SECTION 1 - DEFINITION OF TERMS Terms as used in these General Terms and Conditions, unless the context requires otherwise, shall have the following meaning:

- 1.1 BID Bid means any bid submitted in competitive sealed bidding or in the second phase of multi-step bidding.
- 1.2 BID OR PROPOSAL FORM The prescribed form or format that an offerer uses to submit his offer.
- 1.3 BID OR PROPOSAL GUARANTY OR SECURITY The security when required, furnished by an offerer with his offer to ensure that the offerer will enter into the contract with the State and execute the required contract and payment bonds covering the work contemplated. If his offer is accepted.
- 1.4 CHANGE ORDER Change order means a written order signed by the Procurement Officer, directing the Contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the Contractor.
- 1.5 CONTRACT Contract means the combination of the solicitation, including the instructions to offerors, the specifications or scope of work, the special provisions, and the general terms and conditions; the offer and any best and final offers; and any amendments to the solicitation or to the contract; and any terms implied by law.
- 1.6 CONTRACT BOND The approved form of security furnished by the Contractor and his surety or sureties or by the Contractor alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.
- 1.7 CONTRACT MODIFICATION Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- 1.8 CONTRACTOR An individual, partnership, firm, corporation, joint venture or other legal entity undertaking the execution of work under the terms of the contract with the State, and acting directly or through their or its agents, employees or sub-Contractors.
- 1.9 DAYS Days means calendar days unless otherwise specified.
- 1.10 HEAD OF THE PURCHASING AGENCY The head of any agency with delegated procurement authority by law or from a chief Procurement Officer of this State to enter into and administer contracts.

- 1.11 OFFER An offer means a bid or proposal as defined in sections 1.1 and 1.12, in response to any solicitation.
- 1.12 OFFEROR Any individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to a solicitation as defined in 1.17.
- 1.13 PROCUREMENT OFFICER Procurement Officer means the person with procurement delegation duly authorized to enter into and administer contracts and make written determinations with respect to the contract. The term includes an authorized representative acting within the limits of authority. The delegated authority is received from the chief Procurement Officer directly or through the head of a purchasing agency or designee to the Procurement Officer.
- 1.14 PRIORITY-LISTED OFFERORS Priority-listed offerors are the three or more responsive and responsible offerors who have submitted the highest ranked proposals.
- 1.15 PROPOSAL A proposal means any offer submitted in response to any solicitation, except a bid as defined in section 1.1.
- 1.16 PURCHASING AGENCY Purchasing agency means any governmental body which is authorized by law or rules, or by way of delegation to enter into contracts for procurement of goods, services, or construction.
- 1.17 SOLICITATION Solicitation means an invitation for bids (“IFB”), used in the competitive sealed bidding process or a request for proposals (“RFP”), used in the competitive sealed proposal process for the purpose of soliciting bids or proposals to perform a State contract.
- 1.18 SPECIAL PROVISIONS The terms and conditions pertaining to the specific solicitation in which they are contained; including but not limited to terms and conditions describing the preparation of solicitations, evaluation of offers, determination of award, plus those applicable to performance by the Contractor.
- Additions or revisions to the General Terms and Conditions, which shall be considered a part of the Contract, setting forth conditions or requirements applicable to the particular project or contract under consideration. Should any special provisions conflict with these general terms and conditions, said Special Provisions shall govern.
- 1.19 SPECIFICATIONS A description of what the purchasing agency requires and, consequently, what an offeror must offer to be considered for award.

- 1.20 STATE State means the Department of Business, Economic Development, and Tourism or the remaining departments of the executive branch and all governmental bodies administratively attached to it, excluding the judiciary, the legislature, the department of education, University of Hawaii, the division of community hospitals, and the office of Hawaiian affairs, except where specifically included in any particular solicitation.
- 1.21 SURETY The individual, firm, partnership, or corporation other than the Contractor, which executes a bond with and for the Contractor to ensure the Contractor's acceptable performance of the contract.
- 1.22 WORK The furnishing by the Contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.

SECTION 2 - OFFER REQUIREMENTS AND CONDITIONS

- 2.1 COMPENTENCY OF OFFEROR Prospective offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the offeror's ability to furnish satisfactorily the goods or services being solicited by the State. Any such inquires shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any offeror who refuses to answer such inquiries will be considered non-responsive. All answers to such questions will be handled by the purchasing agency on a confidential basis and will be returned after they have served their purpose.

The purchasing agency also reserves the right to visit an offeror's place of business to inspect the facilities and equipment and to observe an offeror's methods of operation in order to facilitate evaluation of performance capabilities.

- 2.2 SOLICITATION FORMS Prospective offerors will be furnished with solicitation forms which may include but not be limited to a statement of work, the location, description, and the contract time of the contemplated work, the various quantities being requested, estimated and/or firm, and items of work to be performed or materials to be furnished, along with a schedule of items for which unit prices and/or lump sum prices are asked, depending on the type of solicitation, e.g. invitation for bids or request for proposals

The general terms and conditions, specifications, special provisions and other documents referenced in or attached to the solicitation shall be considered a part of the offer whether attached to the solicitation or not at the time of its submission. Such documents shall not be altered in any way when the proposal is submitted and any alterations so made by the offeror may be cause for rejection of the offer.

- 2.3 EXAMINATION OF GENERAL TERMS AND CONDITIONS, SPECIFICATIONS, SITE OF WORK, ETC. The offeror shall carefully examine the site of the contemplated work, the solicitation, general terms and conditions, specifications, special provisions, amendments, required contract and bond forms, etc. before submitting offers. Then submission of an offer shall be considered as a warranty that the offeror has made such examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the proposal, general terms and conditions, specifications, supplemental specifications, special provisions, contract and bonds when required.

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 work.

- 2.4 ADDENDA AND INTERPRETATIONS Discrepancies, omissions or doubts as to the meaning of general terms and conditions, specifications or special provisions should be communicated in writing to the Procurement Officer and must be received by the purchasing agency no later than five (5) calendar days prior to the date fixed for opening. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda to the solicitation, which will be mailed, faxed, or made available for pick up by all prospective offerors, prior to the date fixed for the opening of offers. It shall be presumed that any addenda or interpretations so issued have been received by an offeror and such addenda or interpretations shall become a part of the contract documents.

- 2.5 PREPARATION OF OFFER Proposals submitted in response to request for proposals (RFP) shall be in the format prescribed by the RFP.

Bids submitted in response to an invitation for bids (IFB) must be prepared in ink or typed on the form furnished by the purchasing agency or on an exact copy thereof in full accordance with the instructions given. For each item, the offeror shall specify the unit and total price in figures in the columns provided for that purpose and, if required, the total sum of all items being offered.

Where the IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods will be made by authorized personnel. Should special requirements involving additional costs to the vendor be necessary, the requirements will be stated in the special provisions and offers for the costs therefore shall be governed by the special provisions.

Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation, or joint venture under the same or different name will be accepted. If more than one bid is offered for the same work, only the lowest priced bid may be considered; all others will be automatically rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals and these may be accepted for evaluation and award if such companies submit with their proposals a certificate of non-collusion, sworn to before a notary, which acknowledges that the offer is without collusion.

All prices shall include applicable federal, state, and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer. Offers submitted in response to an IFB or RFP shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on the offeror's behalf.

- 2.6 OFFER GUARANTY Unless required by the special provisions, a bid or proposal security deposit, performance and payment bonds, or any other guaranty is not required on any offer for goods or services.

When required by the special provisions, an acceptable bid or proposal security deposit shall be in an amount equal to at least five percent of the amount offered and shall be limited to: a bond in a form satisfactory to the State underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Certificate of deposit, share certificate, cashier's check, treasurer's check teller's check, official check, or certified check may be utilized only to a maximum of \$100,000.00, provided however, if the required security or bond amount totals over \$100,000.00, more than one instrument not exceeding \$100,000.00 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as nonresponsive, unless the failure to comply is determined by the chief Procurement Officer, the head of a purchasing agency, or the designee of such officer to be nonsubstantial pursuant to section 3-122-223, HAR.

- 2.7 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS, AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES All offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of Contractors supplying services. Before any prospective offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$5,000.00 to any governmental agency, offer shall certify that the services to be performed will be performed under the following conditions:

- a. Wages. 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.
- b. Compliance with labor laws. All applicable laws of the federal and state governments relating to workers compensation, unemployment compensation, payment of wages, and salary will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$5,000.00 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$5,000.00 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$5,000.00 including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (16) of section 76-16, HRS.
- (5) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (6) Contracts with nonprofit institutions.

2.8 PRE-OPENING MODIFICATION OR WITHDRAWAL OF OFFERS Offers may be modified or withdrawn prior to the deadline for submittal of offers by the following documents:

Withdrawal of offers: a written notice received in the office designated in the solicitation; a written notice faxed to the office designated in the solicitation; or a telegraphic message received by telephone by the office designated in the solicitation from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at the telegraph company office prior to the time and date set for opening.

Modification of offers: a written notice received in the office designated in the solicitation stating that a modification to the offer is submitted and accompanied the actual modification(s) securely sealed in a separate envelope or container.

2.9 RECIPT OPENING AND RECORDING OF BIDS Upon its receipt, each bid and modification(s) shall be time-stamped but not opened, and stored in a secure place by the Procurement Officer until the time and date set for bid opening. Copies of bids transmitted via facsimile machine shall not be acceptable, except as provided for in the Special Provisions.

Bids and modification(s) shall be opened publicly, in the presence of one or more witnesses, at the time, date, and place designated in the IFB. The name of each bidder, the bid price(s), and such other information as is deemed appropriate by the Procurement Officer or his designated representative, shall be read aloud or otherwise made available. If practicable, such information shall also be recorded at the time of bid opening; that is, the bids shall be tabulated or a bid abstract made. The name(s) and address(es) of the required witnesses shall also be recorded at the opening.

The opened bids shall be available for public inspection at the time of bid opening except to the extent that the bidder designates trade secrets or other proprietary data to be confidential. Bidders shall ensure that material so designated as confidential shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Prices and makes and model or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

The Procurement Officer, or his designated representative, shall examine the bids to determine the validity of any requests for nondisclosure or trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Officer or his designated representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the Attorney General for confidentiality. If the Attorney General determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders who were present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder protests under chapter 3-126, HAR.

The bids shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

When a purchasing agency denies a person access to a state procurement record, the person may appeal the denial to the Office of Information Practices in accordance with section 92F-42(12), HRS.

Bids shall be unconditionally accepted without alteration or correction, except as allowed in sections 2.11 and 2.12.

2.10 RECEIPT AND REGISTRATION OF PROPOSALS Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the Procurement Officer until the established due date. Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to State personnel having legitimate interest in them.

After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. The register of proposals shall be open to public inspection only after award of the contract.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Offerors shall ensure that such data so designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

Proposals of the offeror(s) shall be open to public inspection after the contract is signed by all parties as provided in section 3-122-58, HAR.

2.11 LATE OFFERS, LATE WITHDRAWALS, AND LATE MODIFICATIONS Any notice of withdrawal, notice of modification of an offer with the actual modification, or any offer received at the place designated for receipt and opening of a offer after the time and date set for receipt and opening of offers is late. A late offer, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the State. A late offer or late modification that will not be considered for award shall be returned to the bidder unopened as soon as practicable and accompanied by a letter from the State stating the reason for its return. A late withdrawal request shall be responded to with a statement of the reason for non-acceptance of the withdrawal.

2.12 MISTAKES IN BIDS

(A) A bidder may correct a mistake in bid discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in section 2.8.

(B) Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the governmental agency or the fair treatment of other bidders.

- (C) When, after bid opening but before award, the Procurement Officer knows or has reason to conclude that a mistake has been made, including obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids is submitted, such officer should request the bidder to confirm the bid, and if the bidder alleges mistake, the bid may be corrected or withdrawn by the bidder if the conditions under paragraphs (D) and (E) of this section are met and if the mistake is a minor informality which is a matter of form rather than substance evident from the bid document, or an insignificant mistake that can be waived by the Procurement Officer or corrected by the bidder without prejudice to other bidders depending on which is in the best interest of the governmental jurisdiction soliciting the bid; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or to acknowledge receipt of an amendment to the IFB (if such acknowledgement is required by the IFB) but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or the amendment involved had a negligible effect on price, quantity, quality, or delivery.
- (D) If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of such mistakes include: typographical errors; errors in extending unit prices; transposition errors; and arithmetical errors. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern. In case of error in addition, the sum of the total amount offered for each item added shall govern.
- (E) A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.
- (F) A bidder may not correct a mistake in the bid discovered after award of the contract except where the chief Procurement Officer or the head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be corrected.
- (G) When a bid is corrected or withdrawn, or correction or withdrawal is denied, under (C) or (D), the chief Procurement Officer or the head of a purchasing agency shall prepare a written determination showing that the relief was granted or denied in accordance with subchapter 5, chapter 3-122, HAR, except that the Procurement Officer shall prepare the determination required under paragraph (1) of subsection (C).

2.13 MISTAKES IN PROPOSALS

- (A) Mistakes shall not be corrected after award of contract.
- (B) When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.
- (C) Once discussions are commenced or after best and final offers are requested, any priority-listed offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- (D) If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- (E) If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an offeror to correct them if either is in the best interest of the State. Examples include the failure of an offeror to: return the number of signed proposals required by the sign the RFP, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or to acknowledge receipt of an amendment to the RFP, but only if it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms: or the amendment involved had no effect on price, quality or quantity.

- 2.14 OFFER INSPECTION Offers to competitive sealed bids may be inspected only as provided for in Section 2.9, above, and after award of contract. During the evaluation and award recommendation period, offers will not be available for inspection. For the competitive sealed proposals, except for confidential portions, the proposals shall be made available for public inspection after the contract is signed by all parties.

2.15 DISQUALIFICATION OF OFFERORS An offeror shall be disqualified and the offeror's offer automatically rejected for any one or more of the following reasons: proof of collusion, in which case, all offers involved in the collusive action will be rejected and any participant to such collusion will be barred from future solicitations until reinstated; offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with the State or having defaulted on previous contracts; offeror's lack of proper equipment and/or sufficient experience to perform the work contemplated; offeror does not possess proper license to cover the type of work contemplated, if required; offeror's delivery of the offer after the deadline specified in the public notice calling for offers or as amended, except as allowed in Section 3-122-29 (1), HAR or offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former State contracts at the time of issuance of solicitation.

2.16 STANDARDS OF CONDUCT Section 84-15, HRS, provides as follows:

(a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$4,000 unless the contract is made after public notice and competitive bidding or proposals.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the State. All offerors should be certain that their bids are not in violation of this law. The submittal form states that by submitting this offer, offeror certifies that his offer does not pose a conflict with section 84-15, HRS. Contracts awarded shall be void if there is a violation of section 84-15, HRS.

2.17 IRREGULAR OFFERS Offers will be considered irregular and shall be rejected for the following reasons including but not limited to the following: if the offer is unsigned by the offeror; if the required offer guaranty received separately from the offer is not identifiably as guaranty for a specific offer, or is received after the date and time set for the opening; if the required offer guaranty is not in accordance with Section 2.6 of these general terms and conditions; if the offeror or surety fails to sign the surety bond submitted as offer guaranty; if offeror fails to use the surety bond form furnished by the State or identical wording contained in the said form when submitting a surety bond as proposal guaranty; if the offer shows any non-compliance with applicable law or contains any unauthorized additions or deletions, conditioned, incomplete, or irregular or is in anyway making the proposal incomplete, indefinite,

or ambiguous as to its meaning; or unbalanced offers in which the price for any item is obviously out of proportion to the prices for other items.

SECTION 3 – EVALUATION, AWARD AND EXECUTION OF CONTRACT

3.1 EVALUATION

(A) HAWAII EXCISE AND USE TAXES Section 103-53-5, HRS, provides as follows:

Where the bidder or vendor is an out-of-state vendor not doing business in the State or is a person exempted from paying the applicable general excise tax, the package bid or purchase price, for the purpose of determining the lowest price bid, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The lowest responsible bidder, taking into consideration the above increases, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the bid offered and shall not include the amount of the increases.

To facilitate compliance with this requirement, each bidder possessing a Hawaii I.D. number for General Excise Tax License shall enter it in the space provided, thereby attesting that the bidder is doing business in the State and that the bidder will pay such taxes on all sales made to the State. Except as provided in the Special Provisions, any bidder who cannot furnish a valid Hawaii General Excise Tax License number in the space provided will be considered as not doing business in the State and the bid will be evaluated accordingly.

(B) PREFERENCE FOR HAWAII PRODUCTS Subchapter 1, Chapter 3-124, HAR provides as follows:

Hawaii products. In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where such products are available, provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than: three per cent, where Class I Hawaii products are involved; five per cent where Class II Hawaii products are involved; or ten per cent where Class III Hawaii products are involved.

Where offers contain both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest offer or purchase price only, the price offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent, or ten per cent where similar Class I, Class II, or Class III

Hawaii product items have been offered by another party pursuant to the preferences stated above. The lowest total offer, taking into consideration the above preferences, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of such preferences.

Any person desiring a preference pursuant to this subchapter, must have the product(s) qualified and registered on the Hawaii products list. The responsibility for qualifications shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted. Persons desiring to qualify their product(s) shall complete according to instruction and file with the administrator, the "Application for Hawaii Products Preference", which is available from the (State Procurement Office), and provide all additional information required by the administrator.

(C) PRINTING PREFERENCE Subchapter 2, Chapter 3-124, HAR, provides that:

All printing, binding, and stationery work for the state or any county, or other political subdivision thereof shall be performed within the State, including all preparatory work, presswork, bindery work, and any other production-related work, and all requests for offers or contracts for such work shall so stipulate; provided that whenever it is established that any such work cannot be performed within the State or that the lowest price for which such work can be procured within the State exceeds the bid or charge of an out-of-state manufacturer of such items by fifteen per cent, the work or any part thereof so affected may be performed outside the State.

No payment shall be made by the State or any county, or other political subdivision thereof for printing, binding, or stationery work unless it appears that the work was done within the State or was authorized to be done outside the State pursuant to this section. In addition, any manufacturer violating a stipulation in an offer or contract that all work will be performed within the State shall be subject to a civil penalty in an amount not to exceed the offer or contract price to be collected by a civil action filed by the attorney general on behalf of the State.

(D) RECIPROCAL PREFERENCE Subchapter 3, Chapter 3-124, HAR, provides that:

To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief Procurement Officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the

amount by which the non-resident preference exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident offeror, the definition used by the other state in applying a preference shall apply.

This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.

(E) RECYCLED PRODUCTS PREFERENCE Subchapter 4, Chapter 3-124, HAR, provides that:

Solicitations issued by a governmental agency pursuant to section 103D-301, HRS, and consistent with section 3-122-21, HAR, shall contain a notice stating that a price preference will be given to recycled products. The price preference will be at least five per cent of the bid price. And will be used for bid evaluation, as specified in section 3-122-33, HAR.

When a purchase specifies recycled products only or when recycled products only are offered, the price preference shall not apply. Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-23, HAR, with each other. Previous certifications shall not apply unless allowed by the solicitation.

All governmental agencies issuing solicitations shall provide an appropriate space for offeror to indicate whether a recycled or a non-recycled product is to be used or supplied and to list the prices of the recycled or non-recycled products or both being offered.

The preference shall be separate from any other preference allowed by statute.

(F) LOW TIE BIDS Subchapter 5, Chapter 3-122, HAR, provides that:

Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation of bids.

In the discretion of the chief Procurement Officer or the head of a purchasing agency, award shall be made in any permissible manner that will resolve the bids, including but not limited to:

Award the contract to a business providing goods produced or manufactured in the State or to a business that otherwise maintains a place of business in this State;

Where identical low bids include the cost or delivery, award the contract to the bidder farthest from the point of delivery; and

Award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

If no permissible method will be effective in resolving tie bids and a written determination by the Procurement Officer is made so stating, award may be made by drawing lots.

3.2 ACCEPTANCE OF OFFER

- (A) Acceptance of offer, if any, will be made within sixty calendar days after the opening of offers, and the prices quoted by the offeror shall remain firm for the sixty day period. Unless otherwise provided, each individual item or group of items will be awarded to the responsive and responsible offeror whose offer complies with all the solicitation requirements. In determining the responsive and responsible offeror, offers will be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purpose of the intended use and must conform to all requirements prescribed in the specifications. The offeror must have the ability to perform as called for in the contract terms. The State shall be the sole judge of product or vendor capability. The successful vendor will be notified by letter that the offer has been accepted and that the vendor is being awarded the contract.
- (B) If the offer is rejected or if the vendor to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, the purchasing agency may, at its discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, the head of a purchasing agency may negotiate with such bidder to reduce the scope of work, if available funds are exceeded, and to award the contract at a price which reflects the reduction in the scope of work.
- (C) The head of a purchasing agency further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

3.3 EXECUTION OF CONTRACT

- (A) This section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded.
- (B) In cases where the contract award amounts to \$10,000.00 or more the State shall forward a formal contract to the successful offeror for execution. (Refer to the Exhibits for agreement form.) The contract shall be signed by the successful vendor and returned, together with a satisfactory contract bond if

required, and the supporting documents, within ten days after receipt by the vendor or within such further time as the Procurement Officer may allow.

- (C) No such contract shall be considered binding upon the State until the contract has been fully and properly executed by all the parties thereto and the State Comptroller has, in accordance with section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the [State Comptroller] shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.
- (D) In any contract involving not only state or county funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or country funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the Contractor, only out of federal funds to be received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the federal government.
- (E) If the successful offeror is other than a sole proprietorship, it shall submit satisfactory evidence, e.g. certificate or corporate resolution, power of attorney or other such evidence of authority of the signers' authority to execute on the contract date the contract on behalf of the successful bidder. If such document has been submitted to the purchasing agency on a previous occasion, the successful offeror may submit a copy of this document, provided there has been no amendment, modification or rescission of the document previously submitted, and provided further, that no such copy shall be acceptable unless the date of the document previously submitted is dated within one year of the contract date. If there has been a modification, amendment or rescission of the evidence of authority previously submitted, then the superseding document shall be attached to the contract.

3.4 CONTRACT BOND

- (A) The requirement for contract performance and payment bonds, if any, shall be stated in the Special Provisions of the solicitation.
- (B) When required by the Special Provisions, a performance bond and a payment bond shall be delivered by the Contractor to the State at the same time the executed contract is delivered. Each amount of the performance and payment bonds shall not exceed fifty percent of the amount of the contract price;

provided, for contracts where contract price cannot be determined at the time of award, the amounts of the bonds shall be as stated in the solicitation.

- (C) The acceptable performance and payment bonds are the same as the acceptable bid or proposal security deposit specified in section 2.6. (Refer to the Exhibits for the forms to be submitted.) If a surety bond is submitted for either the performance or payment bond, in addition to the form prescribed, a power of attorney for the surety's attorney-in-fact executing the bond shall be provided.

3.5 FAILURE TO EXECUTE CONTRACT If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security as required by Section 3.4 within ten days after such award or within such further time as the Procurement Officer may allow, the purchasing agency shall pay the amount of offeror's proposal guaranty, as required under Section 2.6 into the State Treasury as a realization of the State. The Procurement Officer may thereupon award the contract to the next lowest responsible offeror or may call for new offers, whichever method the Procurement Officer may deem is in the best interest of the State.

3.6 RETURN OF OFFER GUARANTIES All offer guaranties submitted as required by subchapter 24, chapter 3-122, HAR, shall be retained until the successful offeror enters into contract and furnishes satisfactory security or if the contract is not awarded or entered into, until the Procurement Officer's determination is made to publish another call for offers. At such time, all offer guaranties, except surety bonds, will be returned.

3.7 SUBMISSION OF INSURANCE CERTIFICATION

(A) The Contractor agrees to deliver to the State, when contract documents are executed, a certificate of insurance evidencing any and all insurance required by the special provisions. Said certificate shall contain an endorsement that such insurance may not be cancelled except upon thirty days notice to the State. It shall also contain a statement to the effect that the State of Hawaii is named additional insured under the policy(s), if required by the Special Provisions.

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

SECTION 4 - PERFORMANCE OF CONTRACT

4.1 CONTRACT ADMINISTRATION It is expressly understood and agreed that the Contractor is an independent Contractor, with the authority to control and direct the performance and details of the work and services herein contemplated: however, 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 the terms of the contract.

- 4.2 COMPLIANCE WITH CONTRACT TERMS, ETC. The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the Contractor fails to so perform, the chief Procurement Officer or head of the purchasing agency, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all State contracts pursuant to Chapter 3-126, HAR.
- 4.3 CHANGE ORDERS AND MODIFICATIONS The Contractor shall not undertake to perform the portion of the work affected by the changes until a change order or modification has been approved and issued.
- 4.4 DELIVERY EXTENSIONS In the case of contracts for the purchase of goods, the delivery date or the maximum number of days for delivery will be specified by the State in its solicitation requirements, and all goods must be delivered within the time specified. However, the Contractor will not be held responsible for delay due to fire, flood, riot, labor disturbances, war, shortage of transportation, act of God or other reason beyond the Contractor's control, provided that the Contractor notifies the State of such delay and the reason therefor as soon as practicable after its occurrence and requests extension prior to the specified date of delivery. Requests for extension of time shall be accompanied by documents such as the Contractor's purchase order, manufacturer's acknowledgement, shipping manifest, and any other documents substantiating that the causes or delay were beyond the control of the Contractor. The State shall be the sole judge of whether such delay is truly beyond the control of the Contractor and whether extension will be granted. No such extension, however, shall be deemed a waiver of the right of the State to terminate the contract or to assess liquidated damages, if provided for in the contract, for delays not covered by specific authorized extension.
- 4.5 CONTRACT PROVISIONS TO CONSIDER TRAFFIC The Contractor in performance of work called for in this contract shall schedule all work and related activities to minimize adverse impact on traffic congestion during peak traffic hours as required by section 103-15, HRS. The statutory provision reads as follows:

“Unless otherwise prohibited by law, all public contracts awarded under this chapter shall consider the extent to which the work undertaken pursuant to the contract will increase traffic congestion during peak traffic hours. The contract shall contain provisions to reasonably minimize any adverse impact.”

For purposes of this requirement, morning peak traffic hours are 5:30 a.m. to 8:00 a.m. and afternoon peak traffic hours are 3:30 p.m. to 6:00 p.m.

SECTION 5 – LEGAL RELATIONS AND RESPONSIBILITY

5.1 LAWS TO BE OBSERVED

- (A) The Contractor shall at all times 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 performance of the work, the manufacture and sale of materials and equipment required under the contract, 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 references to such laws, ordinances, rules and regulations shall include any amendments thereto.
- (B) The Contractor shall defend, hold harmless, and indemnify the State and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders and decrees, whether such violation is committed by the Contractor or his subcontractor or the employees or 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 Procurement Officer in writing.

The Contractor's attention is especially directed to Chapter 103 and 103D, Hawaii Revised Statutes and the Chapter 91, Hawaii Administrative Rules issued by the Procurement Policy Board.

- 5.2 PATENTED ARTICLE The Contractor will be required to, and shall hold harmless, defend, and indemnify the State and its duly authorized representatives against all demands, claims, actions, suits or liabilities arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the Contractor and shall be deemed to be included within the proposal amount and contract price.
- 5.3 SUBCONTRACTING AND ASSIGNING The Contractor shall not subcontract any of the work to be performed under this contract with the State, nor shall the Contractor assign the contract to any other person or firm without written permission from the Procurement Officer, and no subcontract or assignment made without such permission will be recognized. No subcontract shall, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under this contract with the State, and all persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

5.4 ASSIGNMENT OF ANTITRUST CLAIMS

Vendor and purchaser recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and which are not passed on to the purchaser under an escalating clause.

- 5.5 RESPONSIBILITY FOR DAMAGE CLAIMS The Contractor shall indemnify, hold harmless, and defend the State and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgments of any character that may be brought against the State by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the Contractor, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the State and the Contractor are found to be joint tortfeasors with respect to any such injuries or damages, the Contractor's obligations to indemnify the State under this section shall extend only to the Contractor's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes.
- 5.6 PERSONAL LIABILITY OF PUBLIC OFFICIALS In carrying out any of the provisions of the contract or in exercising any power or authority granted to them by the contract, there shall be no liability upon the Procurement Officer or the Procurement Officer's authorized representatives, either personally or as officials of the State, it being understood that in such matters, they act solely as agents and representatives of the State.

SECTION 6 - MODIFICATIONS AND TERMINATIONS OF CONTRACTS FOR GOODS AND SERVICES

6.1 GENERAL

- (A) This section of the general terms and conditions apply to goods and services contracts.
- (B) Pursuant to the provisions of section 130D-501, HRS, the Chief Procurement Officer or the head of a purchasing agency shall make a written determination describing the circumstances justifying the variation or variations and provide that notice of any such material variation shall be stated in the IFB or RFP.
- (C) Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:
"General Terms and Conditions Section no. _____, entitled _____, is not a part of the general terms and conditions of this contract and has been replaced by Special Provisions clause no. _____, entitled _____."

- (D) Alternative clauses are allowed in some instances to permit accommodation of differing contract situations.

6.2 CHANGES IN FIXED-PRICE CONTRACTS

- (A) Change order. The Procurement Officer may, at any time, by a written order, 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, for the goods to be furnished, (2) Method of shipment or packing; (3) Place of delivery; (4) Description of services to be performed; (5) Time of performance (i.e. hours of day, days of week, etc.); (6) Place of performance of the services.
- (B) Adjustments of price or performance time. If any such 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 contract price made pursuant to this section shall be determined in accordance with the price adjustment Section 6.2. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Procurement Officer promptly and duly makes such provisional adjustments in payment or time for the direct cost of the work as the State deems reasonable. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the contract or these rules.
- (C) Time period for claim. Within ten days after receipt of a written change order under paragraph (A), unless such period is extended by the Procurement Officer in writing, the Contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.
- (D) Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this contract.
- (E) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim as permitted under the contract or for breach of contract.

6.3 CHANGES IN COST-REIMBURSEMENT CONTRACTS

The change order provisions of Section 6.2 (A) are also to be used for cost-reimbursement contracts, provided further that any claims for reimbursement by the Contractor shall be in accordance with Chapter 3-123, HAR, provided that if a written determination is approved at a level above the Procurement Officer, such cost principles may be modified by contract.

6.4 AUTHORIZATION FOR A STOP WORK ORDER

- (A) Section 6.5 applies to any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes, or realignment of programs.
- (B) Stop work orders shall not exceed sixty consecutive days and 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.
- (C) As soon as feasible after a stop work order is issued; (1) The contract will be terminated; or (2) The stop work order will be cancelled or extended in writing beyond the period specified in the order.
- (D) In any event, some such action must be taken before the specified stop work period expires. If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

6.5 STOP WORK ORDERS

- (A) Order to stop work. The 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 work called for by this contract. This order shall be for a specified period not exceeding sixty 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 work order issued pursuant to this paragraph. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.

- (B) Cancellation or expiration of the order. If a stop work order issued under this section is canceled 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 work. 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 work 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 days after the end of the period of work stoppage; provided that, if the 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 work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.
- (D) Adjustments or price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

6.6 VARIATIONS IN QUANTITIES FOR DEFINITE QUANTITY CONTRACTS

Variation in quantity. Upon the agreement of the parties, the quantity of goods or services or both specified in this contract may be increased by a maximum of ten percent provided: the unit prices will remain the same except for any price adjustments otherwise applicable; and the 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.

6.7 VARIATIONS IN QUANTITIES FOR INDEFINITE QUANTITY CONTRACTS

- (A) No clause is provided here because in indefinite quantity contract the flexibility as to the State's obligation to order and the Contractor's obligation to delivery should be designed to meet using agency needs.
- (B) However, the contracts Special Provisions should provide for: the minimum quantity, if any, the State is obligated to order and the Contractor to provide; whether there is a quantity the [State] expect to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract; any maximum quantity the State may order and the Contractor must provide; and whether the State is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in section 3-122-160, HAR, that the State will order its actual requirements from the Contractors under the multiple award subject to any minimum or maximum quantity stated.

6.8 PRICE ADJUSTMENT

Price adjustment. Any adjustment in contract price pursuant to a provision in the contract shall be made in one or more of the following ways:

- (A) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (B) By unit prices specified in the contract or subsequently agreed upon;
- (C) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (D) In such other manner as the parties may mutually agree; or
- (E) In the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of Chapters 3-123 and 3-126, HAR.

Submission of cost or pricing data. The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Subchapter 15, Chapter 3-122, HAR.

6.9 NOVATION OR CHANGE OF NAME

- (A) No assignment. No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer or the head of a purchasing agency provided, that a Contractor may assign monies receivable under a contract after due notice to the State.
- (B) Recognition of a successor in interest; novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor waives all rights under the contract as against the State; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.
- (C) Change of name. When a Contractor requests to change the name in which it holds a contract with the State, the Procurement Officer responsible for the contract shall, upon receipt of a document indicating such change or name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.

- (D) Reports. All change of name or novation agreements affected hereunder other than by the Chief Procurement Officer shall be reported to the Chief Procurement Officer within thirty days of the date that the agreement becomes effective.
- (E) Actions affecting more than one purchasing agency. Notwithstanding the provisions of paragraphs (A) through (C), when a Contractor holds contracts with more than one purchasing agency of the State, the novation or change of name agreements herein authorized shall be processed only through the office of the Chief Procurement Officer.

6.10 CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(A) Notice of Claim. If any action or omission on the part of a Procurement Officer or designee of such officer, 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) The Contractor shall have given written notice to the Procurement Officer or designee of such officer: Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission; Within thirty days after the Contractor did not have such knowledge prior to the commencement of the work; or within such further time as may be allowed by the Procurement Officer in writing.

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 Procurement Officer or designee of such 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 Procurement Officer or designee of such officer;

- (2) The notice required by subparagraph (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
- (3) The Contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

- (B) Limitation of clause. Nothing herein contained, shall excuse the Contractor from compliance with any rules of law precluding any State officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- (C) Adjustments of price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

6.11 TERMINATION FOR DEFAULT

- (A) Termination for 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 Procurement Officer may notify the Contractor in writing of the delay or non-performance, and if not cured in ten days or any longer time specified in writing by the 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 other breach of contract. In the event of termination in whole or in part, the Procurement Officer may procure similar goods or services in a manner and upon terms deemed appropriate by the 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 service.
- (B) Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the Contractor shall take timely and necessary action to protect and preserve property in the possession of the Contractor in which the State or County has an interest.
- (C) Compensation. Payment for completed goods delivered and accepted by the State shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Procurement Officer; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under Chapter 126, HAR. The State may withhold from amounts due the Contractor such sums as the Procurement Officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (D) Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the Contractor has notified the Procurement Officer within fifteen days after the cause of the

delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; or for delay due to reasons beyond the Contractor's control. 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 or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

- (E) Upon request of the Contractor, the 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 the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this section, the term "subcontractor" means subcontractor at any tier.
- (F) Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.12 LIQUIDATED DAMAGES

- (A) The following is for goods or services contracts when it is difficult to determine with reasonable accuracy the amount of damage to the State due to delays caused by late Contractor performance or nonperformance and the contract contains the termination for default clause set forth in Section 3-125-11, HAR.
 - (1) Liquidated damages. When the Contractor is given notice of delay or nonperformance as specified in Section 6.11(A) termination for default clause of this contract and fails to cure in the time it is agreed specified, the Contractor shall pay to the State the dollar amount specified in the liquidated damages provision of the Special Provisions, if any, per calendar day from date set for cure until either the State reasonably obtains similar goods or services if the Contractor is terminated for default, or until the Contractor provides the supplies or services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under paragraph 6.11(D), excuse for nonperformance or delayed performance of the termination for default clause of this contract, liquidated damages shall not be due the [State]. The Contractor remains liable for damages caused other than by delay.

- (B) If the contract will not have a termination for default clause and the liquidated damages are to be assessed for reasons other than delay, the Chief Procurement Officer or the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

6.13 TERMINATION FOR CONVENIENCE

- (A) Termination for convenience. The 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 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 work and on the dates 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 [State's] approval. The 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 work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (C) Right to goods. The Procurement Officer may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: any completed goods; and 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 Procurement Officer, protect and preserve property in the possession of the Contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the State has breached the contract by exercise of the termination for convenience clause.
- (D) Compensation:
 - (1) The Contractor shall submit a termination claim specifying the amounts due based on the termination for convenience together with cost or pricing data to the extent required by Subchapter 15, 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 Procurement Officer may pay the Contractor, if at all, an amount set in accordance with subparagraph (3) below.

- (2) The Procurement Officer and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by Subchapter 15, Chapter 3-122, HAR, 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 paragraph (c), and the contract price of the work not terminated.
- (3) Absent complete agreement under subparagraph (2), the Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under subparagraph (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 preparation and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, 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;
 - (c) Subject to the prior approval of the procurement office the costs of setting and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (B) of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(b).
 - (d) The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of goods and manufacturing materials under paragraph (C), and the contract price of work not terminated.
- (4) Cost claimed, agreed to, or established under subparagraph (2) and (3) shall be in accordance with Chapter 3-123, HAR.

6.14 TERMINATION FOR COST-REIMBURSEMENT CONTRACTS

Termination for cost-reimbursement contracts. The only cost recognized as allowable shall be in accordance with the cost principles set forth in Chapter 3-123, HAR, provided that if a written determination is approved at a level above the procurement officer, such cost principle may be modified by contract.

6.15 COMPLAINTS AND PROTESTS Chapter 3-126, HAR, provides that:

- (A) Complaints should seek resolution of their complaints initially with the procurement officer or the office that issued the solicitation. Such complaints should be made in writing.
- (B) Protests shall be made in writing to the Chief Procurement Officer or the head of a purchasing agency, and shall be filed in duplicate within five working days after the protestor knows or should have known of the facts giving rise therein. A protest is considered filed when received by the Chief Procurement Officer or the head of a purchasing agency. Protests filed after the five day period shall not be considered.
- (C) Protestors may file a protest on any phase or solicitation or award including but not limited to specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.
- (D) To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the Chief Procurement Officer or head of a purchasing agency. The written protest shall include as a minimum the following:
 - (1) The name and address of the protestor;
 - (2) Appropriate identification of the procurement, and, if a contract has been awarded, its number;
 - (3) A statement of reasons for the protest; and
 - (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.
- (E) The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed as provided in this paragraph, or communicated and filed when received personally by the chief Procurement Officer or the head of the purchasing agency.

6.16 DISPUTES

- (A) All controversies between the State and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within one hundred twenty calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Procurement Officer does not issue a written decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.
- (B) The Procurement Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

- (C) Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the circuit court of the State within the six months from the date of receipt of the decision.
- (D) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this contract pending final resolution by the circuit court of this State or any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the State; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer has made a written determination that continuation of work under the contract is essential to the public health and safety.

6.17 REMEDIES

Any dispute arising under or out of this contract is subject to Chapter 3-126, HAR.

SECTION 7- PAYMENT

- 7.1 METHOD OF PAYMENT The method of payment under the contract shall be as set forth in the Special Provisions. Further, payment to the Contractor shall be made in accordance with contract provisions at the contracted price(s). Invoices shall be payable upon certification by authorized State personnel that the Contractor has satisfactorily performed the work required herein.
- 7.2 FINAL PAYMENT In accordance with Section 103-53, HRS, final payment under any contract of \$10,000.00 or more shall not be made until the Contractor has filed with the purchasing agency a tax clearance from the State Director of Taxation stating that all delinquent taxes levied or accrued under State statutes have been paid.
- 7.3 INTEREST Interest on amounts ultimately determined to be due to a Contractor or the State shall be payable at the statutory rate applicable to judgments against the State under Chapter 622, HRS, from the date the claim arose through the date of decision or judgment, whichever is later.

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 Obligee 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 Obligee 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 Obligee, 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 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 _____, 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 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 Contract with the 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 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 Obligee, 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 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 _____, 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 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, 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 Oblige, 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 Oblige, 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 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, 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 Oblige, 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 I

CONTRACTOR ACKNOWLEDGMENT

[FOR USE WITH PERFORMANCE AND PAYMENT BONDS]
(11/12/97)

CONTRACTOR ACKNOWLEDGMENT:

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

On this _____ day of _____, 19____, 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 in behalf of the Contractor, and acknowledges that he/she/they executed said instrument as the free act and deed of the Contractor.

(Notary Seal)

Notary Public
State of _____
My commission expires: _____

EXHIBIT J

SURETY ACKNOWLEDGMENT

[FOR USE WITH SURETY PERFORMANCE AND PAYMENT BONDS]
(11/12/97)

SURETY ACKNOWLEDGMENT:

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

On this _____ day of _____, 19____, before me personally came _____ to me known to be the person described in and, who, being by me, did depose and say that _____ resides in _____; that _____ is the Attorney-in-Fact of _____ the corporation described in and which executed the attached instrument; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that _____ signed _____ name thereto by like order.

(Notary Seal)

Notary Public
State of _____
My commission expires: _____



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

This Contract, executed on the respective dates indicated below, is effective as of
between
State of Hawaii ("STATE"), by its
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
whose address is
and
("CONTRACTOR"), a
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 a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.
C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.
E. Pursuant to
the STATE 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 request for competitive sealed proposals number ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), 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 _____ DOLLARS (\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

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 RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) 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)

(Print Name)

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

(Name of Contractor)

(Signature)

(Print Name)

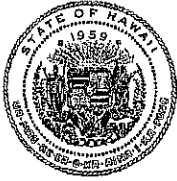
(Print Title)

(Date)

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
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its _____,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____ 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 _____,
(Legal authority to enter into this Contract)
 the STATE 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") 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 _____

DOLLARS

(\$ _____), 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 _____ DOLLARS (\$ _____) 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)

(Print Name)

(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 Seal

(Signature)

(Print Name)
 Notary Public, State of _____
 My commission expires: _____



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments or Agencies as Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

(Date)

(Print Name)

(Print Title)

* This part of the form may be used by all department heads and others to whom the Director of DHRD has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. **NOTE:** Authority to certify exemptions under §§76-16(b)(2), 76-16(b)(12), and 76-16(b)(15), HRS, has not been delegated; only the Director of DHRD may certify §§76-16(b)(2), 76-16(b)(12), and 76-16(b)(15) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

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

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

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

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

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____

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



Attachment - S1

STATE OF HAWAII
SCOPE OF SERVICES



Attachment - S2

STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE



Attachment - S3

STATE OF HAWAII
TIME OF PERFORMANCE



Attachment – S5

STATE OF HAWAII
SPECIAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

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

14. Termination for Convenience.

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

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

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

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

d. Compensation.

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

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

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

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

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

21. Price Adjustment.

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

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

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

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

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

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention. The CONTRACTOR and any subcontractors shall maintain the books and records that relate to the Contract and any cost or pricing data for three (3) years from the date of final payment under the Contract.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
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, 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 three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the STATE. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.